

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

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CONFERENCE PROCEEDINGS

SREBRENICA

21 MAY 2005



United Nations
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International Criminal Tribunal
for the former Yugoslavia
Tribunal Penal International
pour l'ex-Yougoslavie

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The Bridging the Gap conference in Srebrenica 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 Neighbourhood Programme of the Danish Ministry of Foreign Affairs.

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
SREBRENICA
21 MAY 2005

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Foreword

During 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 Srebrenica enabled the Tribunal to provide key audiences - 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 aiding and abetting genocide, murder, extermination and persecutions were proven before the court. Radislav Krstić was found guilty of aiding and abetting genocide, violations of the laws or customs of war and crimes against humanity and sentenced to 35 years imprisonment. Dražen Erdemović pleaded guilty to violations of the laws or customs of war and Dragan Obrenović pleaded guilty to crimes against humanity and they were sentenced to five and 17 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.

Listed below are the speakers who participated in the conference:

Abdurahman Malkić
Mayor of Srebrenica

Branko Todorović
Chairman of the Helsinki Committee for Human Rights in Republika Srpska

Matias Hellman
Outreach Coordinator for Bosnia and Herzegovina, Registry, ICTY

Olga Kavran
Deputy Coordinator, Outreach, Registry, ICTY

Jean-René Ruez
Former Investigator, Office of the Prosecutor, ICTY

Mark Harmon
Senior Trial Attorney, Office of the Prosecutor, ICTY

Gabrielle McIntyre
Deputy Chef de Cabinet, Chambers, ICTY

Welcome and Introductory Remarks

Matias Hellman, Outreach Coordinator for Bosnia and Herzegovina, Registry, ICTY:
Good morning everyone. I am the ICTY Registry's representative in Bosnia and Herzegovina. On behalf of the Tribunal, I would like to wish you a warm welcome to this event.

Let me say right at the beginning that the purpose of this conference is to serve you, the people of Srebrenica. The Tribunal is located far away in the Netherlands and we are fully aware that the distance often makes it difficult to clearly see what the court does. That is the reason why we are here today, to present to you, directly and in person, what it is that the Tribunal has done with regard to crimes committed in the area of Srebrenica.

Guests from the Tribunal will take us through the entire criminal process, beginning with the massive investigations the Tribunal has conducted into the events in Srebrenica, followed by trial proceedings and the appeals process. The presentations will focus mainly on the three cases in which final judgements have been issued - the cases of Radislav Krstić, Dragan Obrenović and Dražen Erdemović. We will hear about the facts that were established in those cases beyond reasonable doubt, including the conviction of General Krstić for genocide.

Three other cases related to Srebrenica are under appeals, one trial is ongoing, and nine accused are in the pre-trial phase. Three accused are at large - hopefully not for long. The Tribunal will work for at least five more years and a very large part of our work in the remaining period will focus on the crimes committed in Srebrenica.

A great deal of today's conference will consist of presentation of evidence collected in the investigations and testimonies of witnesses from the trials, and this will be done with the help of video footage and photographs. We are fully aware of the deep sentiments involved in this topic and realise that some of the material may be upsetting. I apologise in advance if any of the victims present feel that some of the material shouldn't have been included in the presentations.

I would also like to explain briefly what we cannot do today. First of all, we will not be able to discuss every crime that took place in this area and by this I also refer to the crimes committed against victims of different ethnicities. And even though we will do our best to address all issues of interest to you, we cannot say much about political questions or ongoing proceedings or investigations, particularly if they are conducted by national authorities. We are representatives of a judicial organ and we have to act in accordance with that.

In other words, this conference has its limits and when we leave this room today many questions will remain and many things that are on your minds will not have been discussed. But we do have this one day at our disposal and the speakers from The Hague have prepared detailed presentations in order to relay as much information as possible. Therefore we believe it to be best if we first hear out all the presentations and only in the last session attempt to answer questions from the audience.

I would now like to present the people that are going to speak to you today. Jean-René Ruez was the chief investigator in charge of the Srebrenica investigations from the period of 1995 to 2001. He then left the Tribunal and assumed a senior position in the French police. Mark Harmon was the senior trial attorney of the Prosecution in the trial

of General Krstić. Gabrielle McIntyre has been working for many years as a legal officer with the Tribunal's judges and she was also involved in the appeals proceedings of General Krstić. And finally, Olga Kavran is the deputy coordinator of the Tribunal's Outreach Programme, she is here primarily to speak about the rights of the defence and arguments presented by the accused. I will be chairing today's conference as a representative of the Tribunal's neutral organ, the Registry.

In concluding, please allow me to express my gratitude to the Helsinki Committee for organising this event together with us and also to the Neighbourhood Programme of the Danish Ministry of Foreign Affairs for funding it. Once again, I wish you all welcome and now I will hand the floor to Branko Todorović, Chairman of the Helsinki Committee for Human Rights in Republika Srpska.

Branko Todorović, Chairman Helsinki Committee for Human Rights in Republika Srpska: Ladies and gentlemen, this is the fourth in a series of five conferences aimed at acquainting local communities where war crimes occurred with the work of the ICTY in regard to those crimes. Last year, we organised such conferences in Brčko, Foča and Konjic, and later we will be organising a similar conference in Prijedor.

Besides informing the local community about the work of the Tribunal, in these conferences we would like to contribute to the process of facing the truth, which is sometimes so painful that people, consciously or perhaps unconsciously, avoid it. So I ask myself; do we have the courage and the strength to face the truth and the scale of the crimes that were committed in the region of Srebrenica?

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The second question which we will discuss here today is the question of justice. Will the eyes of the victims finally close when justice is done or they will never close? This is a question posed by Miguel Asturias, the Nobel Prize winner in literature from Guatemala. Are we on the way to achieve justice and what is the contribution of the International Criminal Tribunal in The Hague towards that goal? Are we about to achieve justice for the families before the courts in Bosnia and Herzegovina? It's frightening to think of the fact that only one case for war crimes has been conducted before the judiciary organs of Republika Srpska (RS). It is tragic that several thousand families are still looking for the bodies of their relatives and their loved ones. Unless those who committed the crimes are brought to trial there can be no justice. Without justice there can be no reconciliation and there can be no forgiveness and no building of confidence and trust. Ordinary people's perception of whether justice is being done will decide whether court proceedings will contribute to reconciliation or not. The peace process cannot begin without bringing to trial the perpetrators of crimes such as the one in Srebrenica. Unfortunately, some of the leading actors behind the war crimes in Bosnia and Herzegovina, including Srebrenica, are still free.

Can we build a democratic society in the region if we don't face our tragic past? Certainly not, and that is why we support the trials at the Hague Tribunal against people who committed war crimes in our country and our region. At the same time, we call upon the judiciary in Bosnia and Herzegovina, especially in Republika Srpska, to finally start doing their work and to bring the perpetrators of war crimes to justice. The recent report of the Commission for Srebrenica indicates that the institutions of Republika Srpska still have, in various positions, almost 900 direct participants of the crimes in Srebrenica - that presents a huge challenge for the RS judiciary.

Political stability is an important precondition for the building of democracy, respect for human rights and the building of a lasting peace. In that way peace will become a

precondition of reconciliation. Today in Bosnia and Herzegovina we have a fragile peace. In order to create a lasting peace, we must learn about the gravest violations of human rights that took place. Our institutions must punish the perpetrators and our society, as a whole, must express true solidarity and compassion with the families of the victims. Only in that way can we lay the foundations for peaceful coexistence of citizens in Bosnia and Herzegovina.

Can we re-build the humanistic philosophy of equality of all men regardless of their race or ethnic or religious affiliation? Can we take upon ourselves the responsibility to apply tolerance and basic human values as guarantees for a new life? Building trust between different ethnic groups in a multi-ethnic society represents the foundation not only for the survival of that society, but also the future of our country.

Finally, I would like to finish with a quote from Nelson Mandela:

"I always knew that deep in the heart of every person is compassion and goodness. No one was born hating another person because of the colour of their skin, their origin and their religion. People have to be taught to hate. If they can be taught to hate then they can also be taught to love because love is more natural for the human heart than hatred. Human goodness is a flame that can be hidden but it can never be extinguished."

Abdurahman Malkić, Mayor of Srebrenica:

Ladies and gentlemen, respected families of the innocent victims, mothers, fathers, sisters, brothers and other relatives, gentlemen, the former investigator of the Hague Tribunal, Mr Ruez, Prosecutor Mr Harmon and representatives of the Tribunal, Ms McIntyre and Ms Kavran; all the friends of Srebrenica and other guests; I would like to welcome and bless you all. Before I say anything, I would like us to pay our respects to the innocent victims with a prayer and a minute of silence.

Thank you. In view of the topic that we will discuss today and also in view of the bad weather, I don't know how you will feel in Srebrenica today. I pray to God to give us all patience to listen and to hear all the panellists and questions and that we come to the understanding and accept the understanding that someone, in someone's name, in the name of the people, committed crimes against others only because they bore different names and were of a different religion.

Unfortunately, many of us participated actively and passively. No man, no person, particularly not an intellectual of Srebrenica, Bosnia and Herzegovina, the Balkans, Europe and the world has the right to be indifferent towards the suffering in Bosnia and Herzegovina, and especially in Srebrenica. Only when we all show our solidarity with the victims of Srebrenica and we jointly ask that the perpetrators be punished, will we create a healthy environment, which will be the basis for a happy future in this area. If we do not do this, things will quieten down, they will be concealed and other generations will come and God forbid commit something similar.

As opposed to previous wars, everything was recorded in this war, everything was noted and there are still many witnesses alive who can testify to the suffering. That is why I appeal to you: let us discover the perpetrators, let us bravely embark on the process of confronting the past, let us support the efforts and the results of the Hague Tribunal, let us not question their decisions and let us not politicise them, in order to finally get to the truth and to restore trust. It is my wish that you carry away with you from this gathering in Srebrenica today, the message that time is behind us. It was a

time of craziness, of bad and evil leaders, which must never, ever, be repeated anywhere again. Srebrenica, as a dark stain on the conscience of mankind, is a symbol of reflection on the basic question about the root of man's desire to hate.

Why did Europe allow this genocide to happen? Why is it that 10 years after the crime, the perpetrators are walking around in freedom and making fools of Europe and the world? Why 10 years after the war, the rights of the victims have still not been restored? Why 10 years later do the victims still have to bear glances full of hatred and the ridicule and abuse of the criminals?

Ladies and gentlemen, words cannot change the past, but memory and recollection can change the future. Srebrenica must be remembered eternally. Peace, tolerance and coexistence are the only certainty, everything else is just illusory. Srebrenica must affirm life because only life, for its own sake, can prompt recollection and present a kind of warning. Srebrenica must produce dialogue as well as unity, in which memory, and not oblivion, will be a condition of survival.

In 1993, the Srebrenica area, in resolutions 819 and 824 was declared a safe zone by the Security Council of the United Nations and it was under the protection of the peace-keeping forces. It is a question why this massacre or genocide of innocent citizens was permitted to happen? On 11 July, the greatest stain on the conscience of humanity was perpetrated. In memory of all the innocent victims in Bosnia and Herzegovina, I would like to finish with a message from Mustafa Cerić, the Reis-ul-ulema of the Islamic community in Bosnia and Herzegovina: "In the name of merciful God, please almighty God, let sadness turn into hope, let revenge turn into justice, let a mother's tear become a prayer and that Srebrenica is never repeated to anyone or anywhere again."

Session One

Introduction to procedure before the ICTY

Olga Kavran, Deputy Coordinator, Outreach, Registry, ICTY:

On behalf of the Hague Tribunal, I would like to welcome you all to this meeting.

It is my task to say a couple of words about the criminal procedure before the Tribunal because in order to understand everything that you will see and hear, it is important to explain how this specific criminal procedure is governed. It is in accordance with all the legal instruments of international law that the many stages of the proceedings are conducted in order to protect the rights of the accused.

The basic rule is as follows: the Tribunal works upon the presumption of innocence, the burden of proof is on the prosecution and guilt must be proven beyond reasonable doubt. That is why you will hear mostly today about how the prosecution of the Hague Tribunal proved its allegations and which ones were taken into account by the Trial and Appeals Chamber while they were making their decisions on guilt and sentencing.

While you are listening please keep in mind that any allegation in court must be proved beyond reasonable doubt and sometimes you need a lot of time and evidence in order to prove something that appears to be quite obvious. Proceedings before the Tribunal respect the equality of arms: the Prosecution and Defence are in an equal procedural position. The right to defence is a guarantee, including the right to a legal representative that the Tribunal will pay for if the accused cannot afford to hire one himself. I will speak about that after lunch.

Trial in absentia is not permitted at the Tribunal. That means that proceedings will start only once the accused appears before the Tribunal. Unfortunately we have the example of Karadžić and Mladić, who were indicted 10 years ago, but have not been arrested, so trials against them cannot begin. Furthermore, the Tribunal cannot pass a death sentence and the right to appeal is guaranteed under the Statute. The right to a public hearing is also guaranteed. The accused has the right to question witnesses that are accusing him, to present his case and to question witnesses of the defence, and also not to testify against himself. As far as the proceedings are concerned, the adopted procedure most resembles the criminal proceedings in the United States, Great Britain and as of recently, Bosnia and Herzegovina. It is different from the proceedings which were used in the former Yugoslavia. The Prosecutor is focusing on the most serious crimes and persons who were at the most senior positions. He or she is not able to prosecute all of the perpetrators and has to allow domestic courts to try some of those people. It is up to you to apply pressure on your courts to ensure that they do their share of the work.

Mr Jean-René Ruez will explain how the investigation into the Srebrenica genocide started and was conducted. When the Prosecutor considers that there are reasonable grounds to believe that crimes have been committed by certain persons, an indictment will be issued. It will be submitted to one of the Judges, who will then look at it and either reject or confirm it. Gabrielle McIntyre will speak about that later.

Following an arrest or voluntary surrender, the accused is transferred to the Detention Unit (DU) in The Hague and will appear before the Judges of the Tribunal as early as possible and plead guilty or not guilty. If he pleads guilty and the Trial Chamber is convinced that the criteria for such a plea are fulfilled, a sentencing hearing will follow. It is important to know that this kind of a hearing means that the court does not have to try the facts. This is some-

thing that Mr Harmon and Ms McIntyre will talk about - a sentence based on a guilty plea. If the accused pleads not guilty, which happens in the majority of cases, a trial will be held.

Trial proceedings are held in English and French and that is why in the courtroom we have interpreters who simultaneously interpret everything that is said into Bosnian, Croatian or Serbian, and also Albanian and Macedonian if necessary - as well as English and French. Just like here today everybody can, through headphones, follow in their own language what is being said. The trial begins with an opening statement by the prosecution, after that the defence can give its opening statement or they can do it later at the start of their case. Mr Harmon will later today explain the kind of evidence presented by the prosecution, especially in connection with the responsibility of General Radislav Krstić and the case relating to the genocide committed here in Srebrenica.

The court will first have the presentation of the prosecution case and then the defence case. After that there might be some questions by the Trial Chamber. If necessary, relevant information is also presented to assist the chamber in determining a just sentence. During the proceedings we have the examination-in-chief and cross-examination of witnesses.

Unless the Trial Chamber decides otherwise, all the proceedings are public and open to the media, which can use video and audio recordings of the public hearings. However, judges can also decide on protective measures for certain witnesses if they do not violate the rights of the accused. Why does this possibility exist? As you all know, in some situations witnesses have justified reasons and are afraid about the possible consequences of their testimony. The reasons differ depending on the type of witness in question. Perhaps you have a situation in which a woman who was raped does not wish to publicly talk about her suffering in front of the media. Or, an eyewitness of crimes in which members of his military unit took part could be afraid of retribution from his co-fighters. If the reasons for protective measures are justified, the Trial Chamber will allow them. We can use a pseudonym, voice distortion and image distortion in order to keep the identity of the witness confidential. A witness can testify in closed session and the contents of which will not be published. This of course only relates to the public and the media. The accused and his lawyers are present throughout the case. Of course, they have to keep the confidentiality of the witness, otherwise they will possibly be subject to prison and monetary fines.

You will see questioning of witnesses in the courtroom and sometimes you will see that the image of a person has been concealed and you can only hear the voice of the witness. In some cases a witness will testify under a pseudonym and his name will not be published. So these are some examples of protective measures for witnesses we use at the Tribunal.

At the end, the parties present their closing arguments and after that the Trial Chamber will withdraw in order to render the judgement, which must be voted for by majority of the Judges. Ms McIntyre will talk about the appeals process; and specifically she will explain the verdicts in the cases of Krstić, Erdemović and Obrenović. A convicted person may be sentenced to imprisonment for a term up to and including the remainder of his life. There is no death penalty at the Tribunal. The accused who are sentenced then serve sentences in countries with which the Tribunal has special agreements. If they are acquitted, they are released immediately. The appeals are a very important element of our work and Ms McIntyre will explain more about that later.

Mr Jean-René Ruez will now explain to us the investigation conducted into the crimes committed in Srebrenica.

Session Two Investigations

Jean-René Ruez, former Investigator, Office of the Prosecutor, ICTY:

Before presenting you the events as reconstructed by the investigation, we will start with a short film of about 25 minutes that is a summary of the existing videos that are available to the Tribunal. The total would be about two and a half hours, so this is a short summary. I invite you to pay attention especially to all the public comments that Mladić is making in front of the camera.

(Shows footage)

The investigation into these events started on 20 July 1995 and its first aim was to understand and reconstruct the events. This lasted from 1995 to 1997 and I am now going to summarize the findings.

Operation Krivaja 95 is the code name given to the operation by the Bosnian Serb Army. Its goal initially was to shrink the enclave and the size of the town and to create an unbearable situation for the population in order to force the international community to evacuate the area. The investigation of these events focused on the events that started on 11 July. Therefore it is not an investigation of the attack on the enclave, it is an investigation of the criminal events that followed the takeover of the enclave.

As you could see in the video, the population took two courses of action. The women, the children, the elderly and an undetermined number of men went in the direction of Potočari in order to seek shelter in the proximity of the UN soldiers who were based there. Meanwhile, approximately 15,000 men in the area of Šušnjari exited the enclave during the night and the following day.

On 12 July, the forcible transfer towards Kladanj of the population gathered in Potočari started. It was facilitated by inflicting an atmosphere of terror, based on individual murders. I will, however, not detail the events of Potočari.

Meanwhile, the column of men tried to reach a section of Konjević Polje and cross the asphalt road in that location in order to exit the territory of Republika Srpska and the area of Nežuk. I will also not enter into the details of what happened with the armed force that managed to pass Konjević Polje. What is important to know is that after a first large group of armed men passed Konjević Polje, the entire area was sealed and all the people that did not cross in the evening of 12 July were trapped in this area. These photographs show the landscape the people had to go through in order to reach Konjević Polje and the area where they intended to cross.

On 13 July, a massive surrender movement of Muslim men starts, encouraged by the Serb forces along the road using stolen UN equipment, giving false promises to the people and providing them with security guarantees. Image 1 shows the areas of grouping of the prisoners. This is an important aspect since the question has often been raised regarding whether these men were soldiers, or civilians, armed or not. At this point it doesn't make a difference what the colour of the clothing is or whether someone has the status of a combatant or non-combatant: these people are now all prisoners of war.

The first execution site regarding the people who were separated on 12 July is Bratunac. They were initially taken to a hangar that is located behind the Vuk Karadžić

School. Approximately 100 people were killed during the night, between the 12th and 13th in the vicinity of this hangar.

This is the area of Sandići that you could see in the previous video and you see an aerial photograph taken on 13 July showing a big gathering of prisoners on this meadow. It is important to assess the number of people but it's a few hundred persons at this instant. Sandići was not the only area of grouping; several meadows in the area were used as well. At Konjević Polje there was also grouping areas at some barracks used by the 5th Engineering Battalion, as well as in a destroyed abandoned warehouse that was at the intersection at that time. Now there is a gas station at that spot.

One main area of grouping was also the soccer field at Nova Kasaba and in image 2 you can see two large groups of prisoners gathered there. In Nova Kasaba prisoners were also detained at the compound of the 65th Protection Regiment.

Finally, the men who could board buses in the first stages of the operation were separated before crossing toward Kladanj and were taken to an elementary school at Luke. That same day, 13 July 1995, a series of massacres starts. In Bratunac, the killing spots were mainly the hangar behind the Vuk Karadžić School, as well as the football field. The detention facilities used were the Vuk Karadžić School, the hangar and also the old school.

The prisoners were taken to the elementary school at Luke and then transported on board trucks toward Vlasenica. Then they headed north and were executed in some meadow that we could never locate, nor could we locate the grave. But there is a surviving witness from these transports.

At Konjević Polje killings happened as well, but one cannot say if that was on a massive scale although graves were nevertheless found in the area. What you see in the next photographs is an individual grave, but it corroborated stories of individual executions in that location and a mass grave was also found in the vicinity thanks to aerial imagery. At least 16 of the prisoners who were taken to the warehouse were driven on a bus towards the canyon at the Drinjača River and shot there. One of them survived and identified one of the shooters as a member of the police.

At least 16 of the prisoners who were taken to the warehouse were driven on a bus towards the canyon at the Drinjača River and shot there.

At Nova Kasaba, several executions took place. At least three groups of prisoners were lined up in a meadow and soldiers on top of stolen UN APCs (armoured personnel carriers) opened fire on them. A witness could observe the scene from a hill and he could see three groups of approximately 30 persons each being shot at that location. Approximately 100 bodies were exhumed from the various graves in the vicinity of the execution site. Image 3 indicates areas of disturbed earth. You might know that they were shown by Madeleine Albright at the United Nations in August 1995. Image 4 shows one of the graves at Nova Kasaba during an initial probe of the grave. One can see that the bodies have their hands tied behind their backs (image 5). Prisoners were also taken to the Cerska Valley in three buses, escorted by two APC's. The prisoners were lined up along the dirt road and shot by soldiers who were on the left side. Then an excavator came, took soil from this part of the hill and dumped it on top of the bodies that fell along this slope. The site was fully exhumed and 150 bodies were discovered there. Most of them had their hands tied behind their backs and even their feet attached together.

A large execution took place at Kravica, probably in at least two separate events. The prisoners were marched from the Sandići field and taken to the warehouse. One part of the warehouse was completely filled with prisoners. Another part, which had an open space, was only partially filled with prisoners. All of them were executed at that spot and there is a very, very short video of this execution which shows the warehouse at the moment the execution is taking place. And on a still taken from this video you see bodies at one of the entrances of those who were shot as they tried to escape from the warehouse (image 6). Then you see the two areas of the warehouse that were used (image 7). Image 8 is a sample of what can be seen inside. The warehouse was fully analysed; blood, hair and skin was found as well as explosives, shell casings, grenade handles and so forth.

On 13 July, prisoners were transported by buses and trucks to Bratunac, and we know at least one example indicating that those who by the end of the day could not be transported were executed on the spot. So, by the evening of 13 July, all the prisoners are in Bratunac, which is the main detention centre for the entire area. There were so many prisoners that most of them had to stay on board buses and trucks that were lined up at various places in town, near the Vihor garage, in front of the Vuk Karadžić School, in front of the Bratunac Brigade and a convoy near the exit of the town in the direction of Kravica.

On the night between 13 and 14 July, around midnight, the evacuation of the prisoners from Bratunac started. The day before, security officers of the Zvornik Brigade went to the Zvornik area in order to identify detention places for these prisoners, but didn't take any provisions of food or water to sustain them. They identified easily accessible detention sites nearby, and if possible, remote execution sites.

The first convoy of prisoners was taken to the Grbavci School, west of Zvornik, and were placed in the gym of that school. That same day prisoners were taken to Petkovci School and the entire school, a two-storey building, was filled with prisoners. On 14 July, sometime in the afternoon, the prisoners were taken out of the school, blindfolded and transported to a field located 800 metres away. Image 9 shows blindfolds that we found in a rubbish site at the Grbavci School. The same type of blindfolds were found later in the mass graves.

The next photograph shows the first execution site that was used by the executioners, a company of the Zvornik Brigade. Once the site behind an elevated railroad was covered with bodies, the executioners decided to change location and went to another site that is just along the road, in the vicinity of the school, where the rest of the prisoners were executed. Image 10 shows some remains that could be found at the surface of the grave site prior to the exhumation.

On 14 July, the prisoners who had been detained and quite badly mistreated at the Petkovci School were transported to the dam of the aluminium factory in Karakaj, where an execution squad was waiting for them. Image 11 shows the execution site, where the prisoners had to find for themselves a free spot among the dead bodies. They had no blindfolds, but most of them had their hands tied behind their backs.

On 14 and 15 July the evacuation from Bratunac continued and prisoners were taken to a school at Ročević. That same day, 15 July, the persons executed at the site in Orahovac near the Grbavci School were buried. This is a view from the back of the Ročević School, visible from the asphalt road. On 15 July, the prisoners of Ročević School were taken on board trucks and driven through Kozluk and took a turning that led towards the barracks of the Drina Wolves, a special unit of the Zvornik Brigade, and

continued to a site at the edge of the Drina River, where all of them were executed. There is not a single survivor from this execution. The assessment was that approximately 500 people were killed.

The evacuation of Bratunac is still not over on 15 July, it lasts for over two days due to the number of prisoners. One group is taken to the Pilica School at Kula (image 12), a large school that also has a gym. Apparently the entire place was packed with prisoners, due to buses taking prisoners there during the night. The prisoners were unloaded from the bus, but couldn't enter the school and were shot outside the school. Finally, another location used, probably for the reason that the school at Luke was full, it was the last detention site - the Dom Kulture (Culture House) of Pilica (image 13), located in a hamlet along the asphalt road that leads towards Bijeljina.

On 16 July, the prisoners who were at the Pilica School were informed that they were going to be exchanged. They were taken on buses and in fact driven to Branjevo Farm where a group of executioners, composed of the elements of the 10th Sabotage Detachment and also a few members of the Bratunac Brigade, shot them from 10 in the morning through to three in the afternoon.

*... a group of executioners, ...,
shot them from 10 in the morning
through to three in the afternoon.*

The site is not visible from the asphalt road. The buses were parked on this access road. Then the prisoners were taken off the bus, lined up on the large field and

executed. Once this massacre was over, the same executioners were instructed to go and execute the prisoners who were inside the Dom Kulture of Pilica. Image 14 depicts the inside of the Dom Kulture. Some of the prisoners tried to hide under the stage where they were killed with grenades. Explosive residues as well as human residues were found on the walls of the Dom Kulture.

On 17 July, the executions were over. The bodies of those who were in the Dom Kulture of Pilica were transported to Branjevo Farm where they were buried together with the victims from the school. In Image 15 you can see markings that are dead bodies being buried on 17 July. The mass graves are at the bottom left of image 16.

The next photograph shows all the mass graves we know about on 17 July 1995, both in what we call Area South and the Area North. An important aspect is that all detention, execution and burial sites are located within the area of responsibility of the Drina Corps and the limit of that area is exactly at the level of the Dom Kulture at Pilica.

Once the sites were identified, the exhumations started in 1996. Unfortunately, at the end of this process it was obvious that all of these sites, except a few small sites in Area South, had been tampered with and only part of the total amount of bodies could be found there. At Branjevo Farm, only a cluster of approximately 100 or 150 bodies were discovered, which is far under the assessment of Dražen Erdemović who estimated that 1,200 people were killed that day at the farm.

A second stage of the investigation started at that moment in order to locate the places where the bodies from the Branjevo Farm could have been hidden. At the end of September and beginning of October, a massive cover-up operation took place in the Drina Corps. Image 17 shows an excavation going on at the Branjevo Farm on 27 September, with heavy equipment at the farm. The bodies were taken to the remote Čančari Valley, where they were deposited in pre-dug holes, all of them of the size of a

tank, but leaving the turret out of the hole - typically military engineer work. This is a sample of the view of these sites. Nine of them connected with the Branjevo farm can be found and this is the example of the Čančari 12 site. This next photograph is taken from a helicopter during the exhumation. You can see the set up of the exhumation team. Here you have a vehicle and here you have the containers, the water reserve, things like that. Image 18 is a view of a secondary site, in fact the entire mound of soil is composed of bodies. In the following photograph the yellow dots symbolise the secondary sites in the Čančari Valley, those connected to Branjevo Farm.

The connection is mainly made through shell casings and other analysis. Due to the way the executions took place, shell casings are spread all over the bodies and it is possible to compare those found at the execution site with those found in the secondary graves. Blindfold analysis, soil analysis, pollen analysis and scientific methods also enabled connections. Sometimes very specific elements coming from an execution site are found in the graves. The bodies of the persons killed at the Orahovac execution sites were taken to a road west of Zvornik that we named the Hodžići road. Seven sites were found there and are connected with the Orahovac killing spot. An aerial view of the Hodžići road shows the various places where these graves were located. The bodies that were initially exhumed on the plateau of the Karakaj dam were transported to a remote place named Liplje and deposited in four secondary graves.

The Kozluk mass grave was only partially robbed, since 250 bodies were left in the primary site. The rest of the bodies were also taken to the Čančari Valley, which contains 12 sites in total. This photograph shows the total amount of secondary sites that can be found in what we call Area North.

The disturbance took place in Area South as well, except for some of the Nova Kasaba sites, for the simple reason that the photographs had been shown in public at the United Nations in August 1995 and everyone could see that they were under surveillance. The same situation happened with the bodies in the Cerska Valley. The main site that was disturbed is the site at Glogova that contained bodies of all the people killed in Bratunac town and during the clearing of the road between Sandići and Nova Kasaba, mainly in the area of Konjević Polje, where individual killings happened the moment that people surrendered. In addition it also contained the bodies of the people killed at the Kravica warehouse.

At Glogova and Redžići, there are two mass grave areas, each composed of several graves. A photograph, dated 5 July, shows the area with nothing specific to be seen, aside from the destroyed houses of the Glogova village. Image 19 shows the same site on 17 July 1995, and the areas of disturbed earth can be seen. At the top right part of the picture there is a bulldozer parked near the road. These bodies were taken to six sites at Zeleni Jadar. Finally, image 20 shows all the grave investigations identified by the Tribunal investigators by the end of 2001. It does not mean that all of them have been found.

That was an overview of the series of events that unfolded after the fall of the enclave. Stage two of the investigation consisted mainly of the reconstruction of the facts through interviews of witnesses and victims during 1995 and 1996. It continued into 1997, with less and less new information, since unfortunately the number of survivors is fairly limited. In total, only 10 people survived the mass executions.

*In total, only 10 people survived
the mass executions.*

It was only when the facts were reconstructed that we could aim the investigation at identifying the units that committed these atrocities, and the perpetrators. This started in 1998, mainly through searches of the Zvornik Brigade, the Bratunac Brigade and a process of interviews of Serb police and military personnel, as well as interviews of suspects. I won't enter into the details of these findings, the perpetrator aspect, as there are still ongoing trials and it is quite difficult for me to differentiate between what is and what is not yet in the public domain.

That was the main summary of the investigation. The important issue of the numbers will be addressed later. What I could talk about briefly is the aerial imagery, because it might raise some questions. Someone could think that because these pictures exist, it means that those who took these pictures knew everything. One has to understand how this works, and what I am going to tell you is not a secret. You can choose a picture, a photograph of approximately 30 square kilometres, and you can zoom in on this picture up to a certain level. You need to have the information that enables you to know exactly where to look. The potential for information is there but if you do not know where to look you will never find anything. So believing that, for example, the USA knew everything because they are the providers of these pictures is a total fantasy. You need an investigation and then you can confirm things through imagery - but not the other way around. The method is extremely efficient since many of these graves, mainly the secondary graves, 90% of them, were found through the imagery, and the same goes for the execution sites. The persons were blindfolded, they were on trucks with canvas, they couldn't see outside, and they didn't know where they were. Most of these schools look the same. We would not have been able to find these locations only with their descriptions. Even when they went back to the area, they did not recognise the places. So we could only narrow down the areas and then through individual requests and comparison of the photographs, before and after, identify suspicious zones and then check these zones by digging in the ground and checking what was underneath.

Images



Image 1
Aerial view taken on 13 July 1995 showing a large group of Bosnian Muslim prisoners.

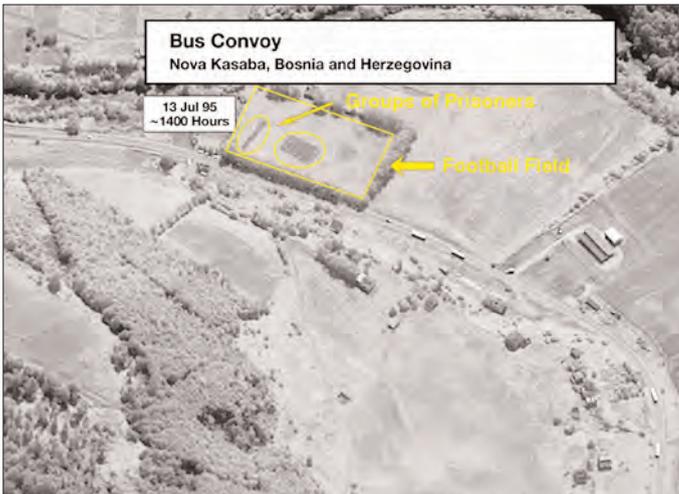


Image 2
Aerial view taken on 13 July 1995 showing a large group of Bosnian Muslim prisoners at Nova Kasaba soccer field.



Image 3
Aerial view taken on 27 July 1995 showing disturbed earth at Nova Kasaba, an execution site.



Image 4
A grave at Nova Kasaba,
taken during initial probe of
site.



Image 5
A grave at Nova Kasaba,
taken during initial probe of
site, showing body with
hands tied behind back.



Image 6
Execution at Kravica warehouse (still taken from video shot on the day of the killing).



Image 7
Kravica warehouse.



Image 8
Inside Kravica warehouse, showing evidence of killing.



Image 9
Blindfolds found at Grbavci School.

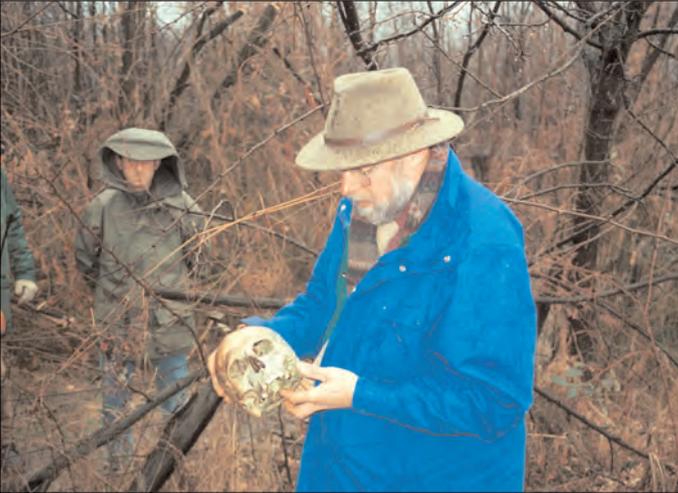


Image 10
Remains found near an execution site used by the Bosnian Serb Army Zvornik Brigade.



Image 11
The dam at the aluminium factory in Karakaj, an execution site.



Image 12
Pilica School where prisoners were held.

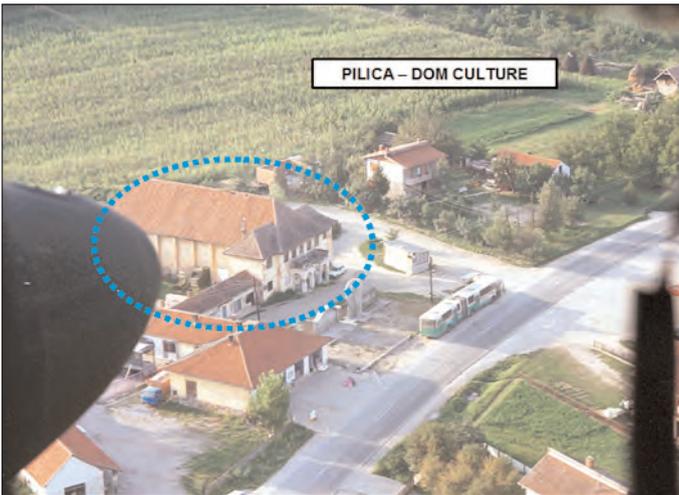


Image 13
Dom Kulture in Pilica where prisoners were executed.



Image 14
Inside Dom Kulture in Pilica where prisoners were executed.

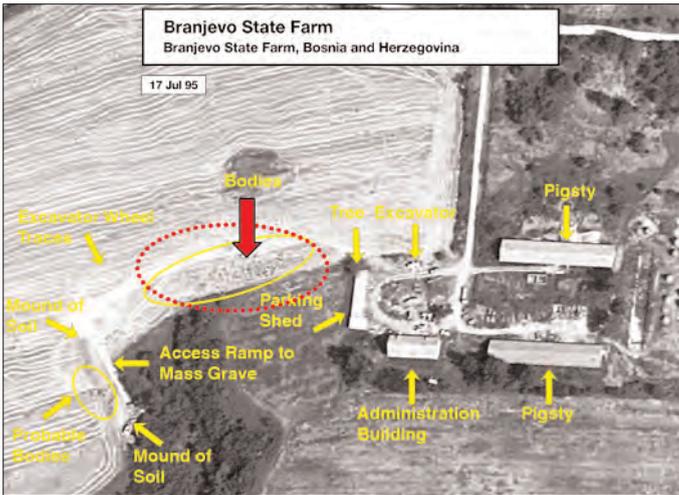


Image 15
 Aerial view of Branjevo Farm and markings showing where prisoners were executed.



Image 16
 Aerial view of Branjevo Farm and mass graves.



Image 17
 Aerial view of Branjevo Farm, excavation activity in late September 1995.



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Image 18
Exhumation site showing mounds of bodies in the Čančari Valley.

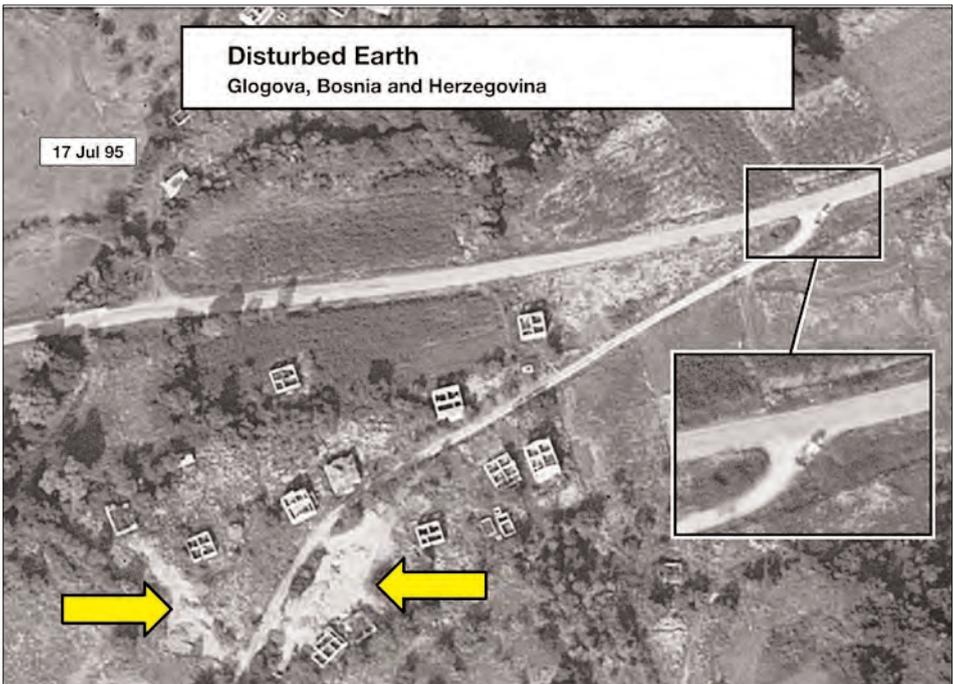


Image 19
Aerial view of disturbed earth at Glogova taken on 17 July 1995.

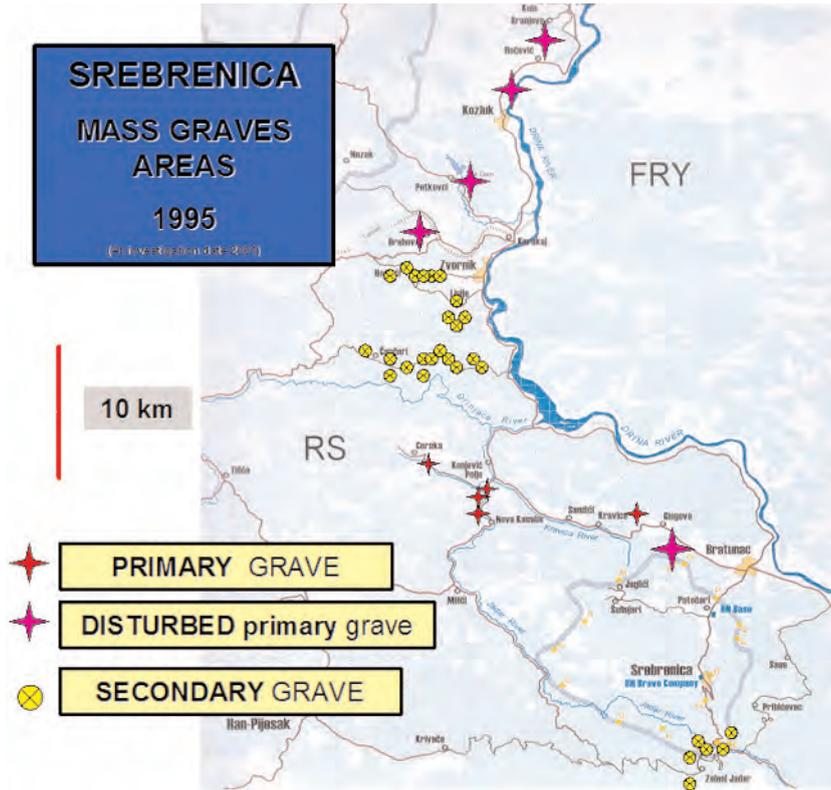


Image 20
Mass graves identified by Tribunal investigators.



Image 21
Dražen Erdemović (IT-96-22), a soldier in the 10th Sabotage Detachment of the Bosnian Serb Army.



Image 22
Radislav Krstić (IT-98-33), Bosnian Serb Army Chief of Staff/Deputy Commander of the Drina Corps. Promoted to the rank of General-Major in June 1995, assumed command of the Drina Corps on 13 July 1995. Promoted to the rank Lieutenant Colonel-General in April 1998.



Image 23
Dragan Obrenović (IT-02-60/2), Bosnian Serb Army Chief of Staff/Deputy Commander of the 1st Zvornik Infantry Brigade ("Zvornik Brigade") from December 1992 through November 1996.

BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA



Image 24
Vidoje Blagojević (IT-02-60),
Bosnian Serb Army Colonel in
command of the 1st Bratunac Light
Infantry Brigade.



Image 25
Dragan Jokić (IT-02-60), Bosnian
Serb Army Major, Chief of
Engineering of the Zvornik Brigade.

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Image 26
Momir Nikolić (IT-02-60/1), Bosnian
Serb Army Major, Chief of Security
and Intelligence, Bratunac Brigade.



Image 27
Slobodan Milošević (IT-02-54),
President of Serbia.



Image 28
Ljubiša Beara (IT-02-58), Bosnian Serb Army Colonel, Chief of Security of the Main Staff.



Image 29
2nd Lieutenant Drago Nikolić (IT-02-63), Bosnian Serb Army Chief of Security of the Zvornik Brigade.

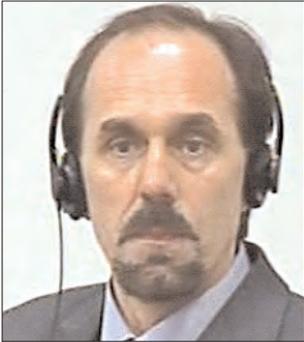


Image 30
Ljubomir Borovčanin (IT-02-64), Deputy Commander of the Special Police Brigade of the Bosnian Serb Ministry of Interior.



Image 31
Radivoje Miletić (IT-05-88), General, Acting Chief of Staff, Main Staff of the Bosnian Serb Army.



Image 32
Milan Gvero (IT-04-80), Assistant Commander for Morale, Legal and Religious Affairs of the Main Staff of the Bosnian Serb Army.



Image 33
Momčilo Perišić (IT-04-81), Chief of General Staff of the Yugoslav Army.



Image 34
Vinko Pandurević (IT-05-86), Bosnian Serb Army Colonel, Commander of the 1st Zvornik Light Infantry Brigade.



Image 35
Milorad Trbić (IT-05-88), Bosnian Serb Army Deputy Commander of the 3rd Battalion of the Zvornik Brigade. He was later transferred to the security organ of the Zvornik Brigade. In July 1995, he held the rank of reserve Captain. Reported directly to Lieutenant Drago Nikolić, Chief of Security of the Zvornik Brigade.



Image 36
Vujadin Popović (IT-02-57), Bosnian Serb Army Lieutenant Colonel, Assistant Commander for Security of the Drina Corps.



Image 37
Zdravko Tolimir (IT-04-80), General, Assistant Commander for Intelligence and Security, Main Staff of the Bosnian Serb Army.



Image 38
Radovan Karadžić (IT-95-5/18), Bosnian Serb wartime political leader.



Image 39
Ratko Mladić (IT-95-5/18), Commander of the Main Staff of the Bosnian Serb Army.



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Image 40

Body recovered from exhumation site clearly showing blindfold and arms tied behind the back.



Image 41

Body recovered from exhumation site clearly showing blindfold and cloth ligature tying arms behind the back.

Date	Killings	Position
12 – 13 July	Potočari	Gen. Krstić, Chief of Staff, Drina Corps
13 July	Kravica Warehouse Jadar River Cerska Valley	Gen. Krstić, Commander, Drina Corps (Prosecution Position)
12 – 14 July	Bratunac	
14 – 15 July	Orahovac The Dam	
15 – 16 July	Pilica School	
15 – 16 July	Kozluk	
16 July	Branjevo Farm Pilica Dom	
Sept / Oct	Reburials	20 - 21 July – Gen. Krstić, Commander, Drina Corps (Krstić Testimony)

Image 42
 Killing dates and locations.

OTP copy

0463

00966021

Revised translation

COMMAND OF THE DRINA CORPS

Strictly confidential no. 01 / 4 -157-5

Date: 13 July 1995

Search of terrain

Order

To the commands of: 1st Brlpbr /Bratunac light infantry brigade/, 1st Mlpbr /Milići light infantry brigade/, Skelani sb /independent battalion/

After the successfully carried out operation for liberation of Srebrenica and in order to conduct a thorough search of the liberated area,

I HEREBY ORDER,

1. The 1st Brlpbr shall search the terrain of the former Srebrenica enclave up to the following line: Ravni Buljim /excluded/ - Zvijezda /trig point 906/ - Šiljato Brdo /trig point - 901/ - Slapovići village - along the Zeleni Jadar River bank up to Zeleni Jadar bridge /excluded/.
2. The Skelani sb shall search the terrain up to the following line: Slapovići village /excluded/ - Koštar /trig point - 936/ - Šed /trig point - 1134/. The line of separation from the 1st Brlpbr is the Zeleni Jadar River.
3. The 1st Mlpbr shall search the terrain from the aforementioned lines of the Skelani sb and the 1st Brlpbr into the depths of its territory.
4. Start with the search immediately and finish it by 16 July 1995.
5. Men who participate in the search of the terrain will wear a white band on their right shoulders as an identification mark.
6. At the end of the search submit a written report on 17 July 1995 until 1200 hours.

COMMANDER
Major-General
Radislav KRSTIĆ
/signed/

/handwritten/:

13 July 2000 hours /illegible signature/

10709 400 - 3

13 July 2030 hours /illegible signature/

0096-6021-0096-6021.doc

OTP Ex. 463 / a

Image 43

Order from General Krstić, dated 13 July 1995, clearly showing his title of commander.

Session Three Indictments

Mark Harmon, Senior Trial Attorney, Office of the Prosecutor, ICTY:

Good afternoon everyone, it's a privilege to be here to discuss with you the fruits of our labour at the Tribunal during the last 11 years. I'm here as a senior trial lawyer who was one of the prosecutors in the Krstić case. I, along with my colleagues Peter McCloskey, Magda Karagiannakis and Andrew Cayley composed the prosecution of the Krstić case. On the defence side, representing General Krstić, were two lawyers from Belgrade.

Later today we will discuss at length the Krstić trial and the types of evidence that we introduced, but before we get to the trial and the courtroom, there's a legal step that takes place first, the preparation of an indictment. In his overview of the crimes committed in respect of the Srebrenica massacres, Jean-René Ruez touched upon only a small portion of the evidence that is available to the prosecutors. In addition to photographic and aerial image evidence, we had interviewed a significant number of witnesses and collected a significant amount of documentation through search warrants; documents from the Bratunac and Zvornik Brigades. Through the investigation, a considerable volume of evidence had been amassed that then went to the prosecutors to assess whether that evidence was sufficient to prepare an indictment against a person who was responsible for the commission of crimes at Srebrenica.

*Through the investigation,
a considerable volume of evidence
had been amassed...*

In referring specifically to General Krstić, the prosecution reviewed and assessed that evidence in a number of respects. First, was it sufficient to establish the case against General Krstić for his responsibility in the events of Srebrenica? And second, what law violations had taken place? How would we characterise the crimes based on the evidence that was available to us?

So what happened in the Krstić case - and in virtually every other case that was indicted during that time - was that the people from the investigative division presented their evidence to us, and a panel of lawyers, one who was working closely with Jean-René and a group of neutral lawyers, prosecutors in my office, considered the evidence. It was examined with a very critical eye in an indictment review process. What happens is the team that advocates the indictment should go forward, present all of the evidence, its strengths and its weaknesses, to peers. Those peers were seasoned prosecutors from the United States, Canada and elsewhere. A fair and critical judgement was made, based on the evidence that was presented. If there was a weakness in the case, it was identified. Additional investigation was pursued if required.

After the final analysis and a complete and full debate about the quality of the evidence, the decision is made, a recommendation on whether to indict the case, and on what charges. A report with those recommendations and a draft indictment would be prepared and forwarded to the Chief Prosecutor for her examination because it is the Chief Prosecutor who signs the indictment.

I want to emphasise to this audience that there are times in these indictment processes when the draft indictment does not pass through the critical eye of the reviewers and is not forwarded to the Prosecutor for signature. It is a rigorous process,

it has been a rigorous process and in respect of the massacres in Srebrenica, 19 persons have been indicted by the Office of the Prosecutor (OTP). Let me divide these 19 indictees into three categories:

In the first category, are the people who have been convicted in relation to the massacres that took place in July 1995. The first, Dražen Erdemović (image 21), entered a guilty plea. He was a soldier from the 10th Sabotage Detachment of the Bosnian Serb Army. The next person who was convicted is General Radislav Krstić (image 22), who was the Commander of the Drina Corps. His trial lasted approximately 15 months in calendar time. The next person who has been convicted is Dragan Obrenović (image 23). He was the Chief of Staff and the Deputy Commander of the Zvornik Brigade. Obrenović was convicted by virtue of his plea of guilty. The next person indicted and convicted was Colonel Vidoje Blagojević (image 24). He was in command of the first Bratunac Light Infantry Brigade. His conviction is currently on appeal. The next individual convicted was Major Dragan Jokić (image 25), Chief of Engineering of the Zvornik Brigade. His conviction is also on appeal. The final person convicted is Major Momir Nikolić (image 26) - the Chief of Intelligence and Security at the Bratunac Brigade. He entered a guilty plea and his plea of guilty is on appeal.

Secondly, people indicted for these massacres as well, in custody and either in trial or pending trial are: Slobodan Milošević (image 27), he needs no introduction; Colonel Ljubiša Beara (image 28), Chief of Security of the VRS (Vojska Republike Srpske, Bosnian Serb Army); 2nd Lieutenant Drago Nikolić (image 29), who was Chief of Security of the First Light Infantry Brigade in Zvornik; Ljubomir Borovčanin (image 30), Deputy Commander of the Special Police of the Ministry of the Interior; Radivoje Miletić (image 31), acting Chief of Staff of the Main Staff of the VRS; Milan Gvero (image 32), Assistant Commander for Morale, Legal and Religious Affairs of the Main Staff of the VRS; Momčilo Perišić (image 33), Chief of the General Staff of the VJ (Vojska Jugoslavije, Yugoslav Army); Colonel Vinko Pandurević (image 34); Commander of the 1st Zvornik Light Infantry Brigade; Milorad Trbić (image 35), Deputy Commander of the 3rd Battalion of the Zvornik Brigade, later transferred to the security organ of the Zvornik Brigade; and Vujadin Popović (image 36), Assistant Commander for Security of the Drina Corps. Later in this afternoon's presentation you will hear intercepted radio communications involving this man who is now in custody and awaiting trial.

In the third category, there are three fugitives from justice indicted in respect of the massacres that occurred in Srebrenica: Zdravko Tolimir (image 37), General Assistant Commander of Intelligence and Security for the Main Staff of the VRS; Radovan Karadžić (image 38), President of Republika Srpska; and finally General Ratko Mladić (image 39), who was Head of the Main Staff of the VRS.

Those are the people who have been indicted for the massacres at Srebrenica. In addition, indicted for events related to Srebrenica is Naser Orić, who was the commander of the units that were in the enclave.

Gabrielle McIntyre, Deputy Chef de Cabinet, Chambers, ICTY:

As Mark said, the Prosecutor is the one that does the investigation and prepares the indictment. At the Tribunal we have an adversarial process of trial, so the judge really isn't involved at all in the investigations or in the Prosecutor's decision of who to indict. The judge does not enter the picture until the prosecution decides to come forward with an indictment. A judge has to review that indictment before it can have legal effect in order for arrest warrants to be issued and people apprehended and transferred to the Tribunal.

What a judge does in the review process is to review every count alleged by the Prosecutor and look at the supporting material the Prosecutor relies upon in support of each count. On the basis of the material, without assessing its reliability, the judge must be satisfied that it is sufficient for an accused person to answer to each and every count. If he or she is not satisfied in relation to a particular count, he or she can dismiss it or he and she can request the Prosecutor to provide further information. Once a judge is satisfied, he or she can either, confirm each count of the indictment, dismiss some, or ask the prosecution for further information in relation to some.

The reason why we have this process of confirmation of an indictment in the Tribunal is in order not to have a situation where an accused person, once arrested, could claim that there was no reasonable suspicion for the arrest. Now he or she does not have that right because it has been confirmed in the confirmation process.

The confirmed indictment is not set in stone. The prosecution can, at a later stage, make an application to amend the indictment to add additional charges. Again, the same process will be undertaken by the judge, he or she must be satisfied that there is prima facie sufficient evidence, not assessing the reliability at all, to go ahead and to have an accused person answer those counts.

Generally, if a prosecutor wants to withdraw charges, that will wait until the start of the trial. They just won't bring in the evidence on those charges at trial and then they will move at the end of the trial to withdraw the evidence at that stage.

Session Four Arrest and Transfer

Mark Harmon:

After an indictment has been confirmed, the Prosecutor's Office receives that indictment and it is necessary that the accused be notified of that. First international arrest warrants are issued for the individual. Earlier Jean-René showed you some film footage in respect of General Mladić. Ten years ago, there was a hearing before the Tribunal in The Hague called the Rule 61 hearing. The purpose of that was to review evidence with the Judges and to establish whether there was enough evidence to issue international arrest warrants. This is some film footage from that very early hearing at which time we had requested that international arrest warrants be issued for Radovan Karadžić and Ratko Mladić.

(court transcript)

Case name and number: Mladić and Karadžić (IT-95-18-R61)
Rule 61 hearing: Prosecutor Mark Harmon
Date: 8 July 1996

We believe, your Honours, that we have presented in our original submissions and during this hearing evidence that is more than sufficient to show that there are reasonable grounds for believing that Dr Karadžić and General Mladić have committed genocide, crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws or customs of war as set forth in the two indictments which are before you. Today both Dr Karadžić and General Mladić remain fugitives from international justice.

As we approach the first anniversary of these tragic massacres, massacres that annihilated a generation of Srebrenicians and left thousands of widows and orphans, the resulting toll of human misery is not only felt today, but will be felt for generations to come. In the Balkans, a part of the world where history is never forgotten, where the pain of centuries old battles is still palpable, Dr Karadžić's and General Mladić's perfidious and cowardly deeds will long be remembered. What should not be forgotten as well is that the world had the ability to bring these two alleged architects of genocide to justice and did nothing. It will haunt the victims and it will shame us all. We are, therefore, respectfully requesting this Honourable Court to issue international arrest warrants for Dr Karadžić and General Mladić.

Mark Harmon:

The warrants were issued as a result of that hearing. Unfortunately, those two individuals remain fugitives from justice. The majority of people indicted by our Tribunal are either arrested or they have surrendered themselves. It is more advantageous for somebody to surrender as they can later go before a Trial Chamber and use that in their credit in a motion to be released pending trial. However, after a person either self-surrenders or is arrested, they are transferred to The Hague and they are incarcerated at the United Nations Detention Unit - a facility that is specially allocated to our Tribunal for people who are to be tried before our court.

Shortly after that, the initial court appearance follows, at which time certain legal rights apply to an accused - they are entitled to counsel, they may delay their plea for 30 days but they must come back before the Tribunal with counsel in 30 days and enter

a plea, usually a plea of not guilty. That initiates the procedure and thereafter the Defence Counsel and the Prosecution are in a mode of preparing for trial, and a trial will eventually commence, depending on the availability of a courtroom, taking into account other people who may have been in custody longer. Later this afternoon, I will have the opportunity to discuss the trial of General Krstić.

That finishes the summary of the process from the beginning of the investigation through to the considering of the indictment, the confirmation of an indictment, to the issuance of international arrest warrants and ultimately trial.

Olga Kavran:

I would like to stress once more why we are discussing the three cases mentioned - Krstić, Erdemović and Obrenović. The reason is of a legal nature: As representatives of the Tribunal we cannot discuss cases that are ongoing. Hopefully, when some other cases are completed that relate to the crimes committed in or around Srebrenica, we will be able to organise another meeting like this at which we could discuss cases which are currently underway. You have heard from Mark Harmon that there are still many ongoing cases that relate to these particular crimes.

Mark Harmon:

One of the legacies of Srebrenica today is a culture of denial, denial that Srebrenica happened. Its seed was planted at the very instant the crimes were taking place and it has continued for a decade. I can illustrate that by a number of quotations. The first is a press release that was issued on 17 July 1995, when executions were still continuing, quoting Jovan Zametica, an advisor to Radovan Karadžić;

"In the past several days, the international media, aided by the Muslim authorities, have been using violent propaganda, unrealistically reporting on the events related to the situation in Srebrenica. The accusations concerning alleged torture, killing, rape and deportation of Muslim civilians are being repeated without any independent verification. The truth is that none of these accusations has a firm basis... The truth is that nothing like the above-mentioned happened."

Press release quoting Jovan Zametica, 17 July 1995.

And then shortly after the attempts to cover up the mass graves, described by Jean-René earlier this morning, I have a quote from Radovan Karadžić, who informed the public that "nothing happened". Now let us fast forward to September 2002, when a draft report about Srebrenica was published by the Documentation Centre of Republika Srpska and the Bureau of Government of Republika Srpska for Relations with ICTY. This draft report purported to be a serious study and a serious investigation conducted over a period of several years. Its alleged purpose was to provide the whole truth about the events in Srebrenica. I will say that this report was later disavowed, but in 2002, to have the assertion, I quote:

"... the number of Muslim soldiers who were executed by Bosnian Serb forces for personal revenge or for simple ignorance of the international law. It would probably stand less than one hundred."

Documentation Centre of Republika Srpska and Bureau of Government of Republika Srpska for Relations with ICTY: "Report about Case Srebrenica (The First Part)" (Banja Luka, September 2002).

Bear in mind that this draft report was issued after the 15-month public trial of General Krstić, in which the investigation results described by Mr Ruez were aired in detail and were subject to cross examination by the Defence, and in which an interna-

tional tribunal found that genocide had been committed. Now I will say that the government of the Republika Srpska subsequently disavowed this, but my point is that in 2002 such statements were being uttered. Moving on to 2005, I was sitting at my desk, thinking about what I was going to say to this audience, when a friend of mine forwarded to me a copy of an article that Ed Vulliamy, a noted international journalist, had written about Srebrenica. It appeared on 30 April 2005, and an individual from Srebrenica made in it the following assertion:

“The massacre is a lie. It is propaganda in order to make a bad picture of the Serbian people. The Muslims are lying, they are manipulating the numbers, they are exaggerating what happened.”

Article by Ed Vulliamy, quoting Miloš Milovanović, Resident of Srebrenica, 30 April 2005, The Guardian.

Such attitudes, evident from the time the massacres were committed in July of 1995, to the present date, have created a very difficult environment in which to conduct

... this stubborn resistance to acknowledge that terrible crimes were committed in Srebrenica, has fostered an environment where it is acceptable to shelter fugitives from justice, acceptable for potential witnesses who have relevant information about these crimes to abdicate their moral responsibility to bear witness and makes it acceptable for people to remain silent in the face of these grave crimes.

investigations and have complicated our efforts to bring to justice the authors of these crimes. This ignorance, this misguided public attitude, this stubborn resistance to acknowledge that terrible crimes were committed in Srebrenica, has fostered an environment where it is acceptable to shelter fugitives from justice, acceptable for potential witnesses who have relevant information about these crimes to abdicate their moral responsibility to bear witness and makes it acceptable for people to remain silent in the face of these grave crimes.

That is why it is important, ladies and gentlemen, to have conferences like this, so that fair-minded people can listen to the facts and make their own judgements. Fair-minded people can also avail themselves of the public record of trials that have been conducted for many months before the Judges of the Tribunal.

Session Five Krstić Trial

Olga Kavan:

In proceedings at the Tribunal the right to a defence is inviolable, including the right to a legal representative, who will be paid by the Tribunal if the accused cannot afford it. There are cases when the accused himself bears the expenses and there are cases, also, where they are shared between the Tribunal and the accused. Within the Registry, there is an Office for Legal Aid and Detention Matters that deals with these issues. As we have already stated, the accused has the right to use his own language during the proceedings.

As you can see from the Milošević case, the accused can also give up his right to defence counsel and represent himself. The prosecution has the burden of proof of guilt and they have to prove the allegations from the indictment. As it was mentioned, the situation in the Tribunal resembles much more the American and English system and, as of recently, that of Bosnia and Herzegovina system than the system used in the rest of the former Yugoslavia and the European continent. There is no investigative judge and there are no files that are presented to the Judges. Two opposing sides are presenting their evidence in the proceedings and when the prosecution is bringing their witnesses, the Defence cross-examines them. The Defence will try to prove that the witness is not providing the correct information or is not speaking the truth and in every way tries to undermine the evidence of the prosecution. That is the main function of the Defence lawyers. They are not obliged to prove anything themselves.

The Judges have a less active role than is the case in continental law. The Defence lawyers are appointed by the Tribunal and this is done in the following way: there is a list of attorneys who are qualified. They have to meet certain conditions, for instance they have to have a certain status within their bar and they have to speak one of the official languages of the court. However, the Registrar, in some cases, can make a decision to waive the language criterion. But the most frequent example today is to have in a defence team one lawyer who speaks either English or French, and one lawyer from the region who speaks the language of the accused.

The system of legal aid in the Tribunal is very important, and very expensive. It currently accounts for about 8% of the total budget of the Tribunal. In any case, the Defence has an important role and it is the fourth element in the Tribunal which also consists of the Registry, the Chambers and the Office of the Prosecutor. In the Krstić case, the accused used his right to be represented by an attorney and he was represented by two Belgrade attorneys, Mr Petrušić and Mr Višnjić. I have already said that the Defence does not need to prove anything before the Tribunal, but has the task of undermining the evidence of the prosecution. In his presentation of the Krstić case Mark Harmon will also touch upon what the Defence did. I will now just talk about a few aspects of the defence case. Mark Harmon will talk about evidence used by the prosecution and what the Trial Chamber then took into account when reaching their judgement.

... the Defence has an important role and it is the fourth element in the Tribunal which also consists of the Registry, the Chambers and the Office of the Prosecutor.

Briefly, in the Krstić case, the Defence tried to undermine two main points: that genocide was committed in Srebrenica and that General Krstić personally participated in this

crime and could be held responsible according to command responsibility. The Defence claimed that there was no genocide in Srebrenica. It is important to note, however, that the Defence did not dispute that the crimes had taken place - it merely disputed the legal classification as genocide. It did that by using the following arguments.

The Defence argued that regardless of the scale of the killings, there could be no question of genocide in view of the fact that the women, elderly and children were transported away and were not killed. The Defence claimed that the intention to destroy all Bosnian Muslim men cannot be interpreted as an attempt to destroy a group as such, which is something that is part of the qualification for genocide at the Tribunal. As to the position and responsibility of General Krstić, the Defence claimed that he was a professional soldier, trained in the Yugoslav Army who followed all rules of armed conflict. The Defence never disputed the presence of General Krstić with General Mladić when Srebrenica fell, his presence at two of the three meetings held at Hotel Fontana, and the fact that General Krstić was first Deputy Commander and then Commander of the Drina Corps, the geographic responsibility of which covered the entire territory where the crimes took place. However, the Defence stressed that General Krstić at no time personally conducted or committed any crime and should not be held responsible as such as a superior. They argued that the attack on Srebrenica, in whose preparation Krstić participated, was not illegal in itself. They also claimed that he became Commander of the Drina Corps only after the 20 July 1995, and found out about the mass executions of Bosnian Muslims from Srebrenica only after that date. According to the Defence, General Mladić ordered him

to lead the attack on Žepa by July 13 at the latest, so that General Krstić had to change the location of his forward command post and was therefore isolated with regard to information, which he was usually receiving. Finally, the Defence mentioned that General Krstić did not participate and was not involved in the exhumation and reburial

of bodies in secondary graves. As you will see, the prosecution had at its disposal a lot of evidence which could not be undermined by the Defence. Mark Harmon will explain how the Prosecution proved that genocide was committed in Srebrenica and that General Radislav Krstić, among others, was personally responsible for that.

Mark Harmon:

The prosecution charged General Krstić with committing genocide; complicity to commit genocide; extermination as a crime against humanity; murder as a crime against humanity; murder again as a violation of the laws or customs of war; persecutions as a crime against humanity; and deportation and inhumane acts, specifically forcible transfers. Those were the allegations that were lodged against General Krstić and which he contested in a trial. The objective trial record is available for everyone to access and I invite you to examine it with a critical eye.

What was the purpose of the trial? I heard a witness distil an answer that was right on point, in response to Judge Rodrigues's questions about what the Tribunal meant to the women and people of Srebrenica. I will show a video of that: the woman you will be seeing, Mrs Teufika Ibrahimfendić, is a healthcare professional who had been involved in treating victims of war crimes, including victims of Srebrenica. Her answer is where I would like to start the discussion of the Krstić trial.

... the prosecution proved that genocide was committed in Srebrenica and that General Radislav Krstić, among others, was personally responsible for that.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Teufika Ibrahimefendić
Date: 27 July 2000

Judge Rodrigues: You touched upon a point. I think that the whole of humanity, in my opinion, this is a humanitarian cause, and the whole of mankind should be interested, and the International Tribunal, as a part of the community, must pursue the objectives that are yours. You have experience. What do you think should be the role of the Tribunal? Please feel at ease and feel free to tell us what you think. Specifically, in this courtroom, what kind of role should it play, because this is the courtroom that victims come to. And you already have certain indications about that.

Witness: The Hague Tribunal, all the victims, all the women with whom I have had a chance to work, has a very great significance for them. They expect that justice will be done. We believed we were members of a civilized society, of a society where good will be compensated and evil punished. They do trust that the real causes of what happened will be identified and that the people will muster enough courage, including victims, to tell the story of what happened. Those who did it, that they too will be able to speak out so that we all can have a future, so that we all can have a basis for a common life together one day. Great expectations are being placed upon the Tribunal. People expect that justice will be done and that the right decisions will be reached.

Mark Harmon:

Mrs Ibrahimefendić touched upon five important elements in her statement: that justice will be done; that the causes of what happened will be identified; that the victims will tell the story of what happened; that those who committed the crimes will speak out; and that evil will be punished.

Our task at trial was to prove beyond a reasonable doubt that General Krstić had committed the crimes for which he stood accused. During the trial, we tried to establish as complete a record of the events relating to those massacres as we could.

Obviously, there is a potential to have thousands of witnesses, and as I say, trial is not a forum in which to produce the most complete record possible. The Krstić trial did result in a very significant record of the events and I once again invite people to examine the record.

There were 98 actual trial days and the trial started with an opening statement by the Prosecutor. During the course of the trial, we called 103 witnesses. The Defence called 13 witnesses, including General Krstić. The Prosecution presented 910 exhibits and there were 183 defence exhibits. The Trial Chamber can also call its own evidence, and it did so, presenting five trial exhibits. Every piece of evidence that was presented by the Prosecutor could be challenged.

Now I would like to show you a part of my opening statement:

(court transcript)

Case name and number: Krstić (IT-98-33)
Opening Statement: Prosecutor Mark Harmon
Date: 13 March 2000

Following the conquest of the UN safe area of Srebrenica by the Bosnian Serb Army in July of 1995, the victors abandoned all semblance of humanity and committed atrocities of a type and on a scale not seen since the Second World War. Over a period of about five days, thousands of Bosnian Muslim civilians and Bosnian Muslim soldiers, who had laid down their arms, were systematically murdered by members of the Bosnian Serb Army. This is a case about the triumph of evil, a story about how officers and soldiers of the Bosnian Serb army, men

The only way to attempt to eradicate this stain and to deliver justice to the victims of this tragedy is to expose the individual criminal responsibility of those persons who perpetrated and assisted in the commission of these heinous crimes.

who professed to be professional soldiers, men who professed to represent the ideals of a distinguished and Serbian past organised, planned, and willingly participated in genocide, or stood silent in the face of it. The authors of these foul deeds have left a legacy that has stained the reputation of the Serbian people and has disgraced the honourable profession of arms. In their wake, they murdered thousands of defenceless men and boys and shattered

the lives of generations of Bosnians. The only way to attempt to eradicate this stain and to deliver justice to the victims of this tragedy is to expose the individual criminal responsibility of those persons who perpetrated and assisted in the commission of these heinous crimes. The Prosecutor in this trial will prove the criminal responsibility of one of those individuals, General Radislav Krstić.

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Mark Harmon:

After delivering that opening statement, I called my first witness, Jean-René Ruez. Mr Ruez provided the court with a summary of his investigation. Our first task in the case was to establish that crimes had indeed taken place: massacres and forcible transfers of people, genocide and the other charges that I described.

To establish the genocide, substantial forensic evidence was introduced during the course of the trial. That forensic evidence was the product of four years of exhumations, conducted in 1996, 1998, 1999 and 2000. We identified, through the investigations, both primary grave sites (i.e. sites where graves were located where the executions themselves took place) and secondary grave sites (i.e. sites to which bodies were transferred from the primary sites as a result of the cover-up operation). At the time of the trial we did not exhume all of the grave sites. We exhumed a small portion of the secondary sites and a significant amount of the primary sites.

The exhumation teams that conducted these investigations were multinational and multidisciplinary: they were comprised of specialists in the fields of anthropology, archaeology, pathology, radiology and dentistry. We had the crime scenes meticulously documented by crime scene officers who collected evidence and preserved the proper chain of custody and we had forensic photographers present, taking pictures. Mr Dean Manning, who was in charge of the exhumation efforts, was a witness at the trial and I will show you a clip of his evidence where he summarizes the types of forensic examination that were conducted during this investigation.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Dean Manning
Date: 26 May 2000

Prosecutor Harmon: Now, in conducting exhumations, did the Office of the Prosecutor hire or retain experts in various fields?

Witness: Yes, they did.

Prosecutor: Could you just generally inform the Trial Chamber of the types of experts that are retained to conduct an investigation in an exhumation site?

Witness: Generally, there is a chief archaeologist and sometimes a chief anthropologist to perform the same duties. The rest of the team is made up of qualified archaeologists, anthropologists, pathologists. Also a number of those people have qualifications in other aspects of archaeology such as surveying, photography. There are also police officers, either serving or retired, who, if you like, coordinate the handling of exhibits, the tagging of such, and the initial examination of them.

Prosecutor: Do the police officers essentially ensure that there is a proper chain of custody on evidence recovered from the grave sites?

Witness: Yes, they ensure the evidence is photographed, logged, tagged, sealed, and the continuity of that item retained until it goes to the mortuary, and then ultimately to the Tribunal.

Prosecutor: Now at the end of an exhumation, in a particular year, do the experts who participated in the exhumation process prepare reports?

Witness: Yes. Specifically, the chief of the exhumation project prepares a report in relation to the exhumations under his control. That was done by Dr William Hagland for 1996, Professor Richard Wright for 1998, Professor Wright for 1999, and also Mr Jose Baraybar for the remainder of 1999.

Prosecutor: Now, Mr Manning, you've described the general type of experts that are conducting the exhumations at the sites. But in addition to those, did the Office of the Prosecutor engage experts to examine evidence and material that were found at those particular sites?

Witness: Yes, they did. They contracted chief pathologists and also other experts in the United Kingdom and in the Netherlands and the United States to examine items.

Prosecutor: For example, were ballistics experts retained to examine ballistics -- I'm sorry, shell casings that were found at the various sites?

Witness: Yes. The United States Bureau of Alcohol, Tobacco and Firearms conducted examinations of shell cases from those sites.

Prosecutor: Were experts in the field of geology and soil analysis retained by the Office of the Prosecutor to compare soil samples between the primary grave site and the secondary sites?

Witness: That's correct. Dr Tony Brown from the University of Exeter in the United Kingdom.

Prosecutor: Did the Office of the Prosecutor retain experts to analyse, for example, blindfold material that was found in the primary sites and the secondary sites?

Witness: Yes. Officers from the Netherlands Institute of Forensic Studies -- Forensic Science examined cloth blindfolds and cloth ligatures.

Prosecutor: Now, at two of the principal killing sites, the Kravica warehouse, and the Pilica Dom, blood and tissue samples were gathered and collected and turned over to the Office of the Prosecutor. Did the Office of the Prosecutor retain experts to analyse those samples to determine if there was human DNA present in them?

Witness: Yes. Again the Netherlands Forensic Institute provided experts to study those items.

Prosecutor: Did the Office of the Prosecutor retain experts to examine the explosives residue samples that were collected from the Pilica Dom and from the Kravica warehouse?

Witness: Yes. Again, the Netherlands Forensic Institute provided experts to examine the explosives for residues.

Prosecutor: Now, Mr Manning, are the expert reports that had been prepared in 1996, 1998, and 1999 voluminous reports?

Witness: Yes, they are. There's approximately 17 reports, some with multiple volumes, thousands of pages.

Mark Harmon:

Mr Manning's findings in respect of the forensic evidence at execution points and mass graves, for the years 1996, 1998 and 1999, are in a report that was submitted as an exhibit in the trial and a copy of which is available in a handout. I would urge you to take a look at the statistics in this report. The report did not include the statistics for the exhumations conducted in 2000 that was filed in a separate report. Therefore the figures that I will be quoting later are not the figures that will be found in this report, as they don't incorporate the exhumation statistics from the year 2000.

There were many impartial experts and specialists from around the world who contributed to the analysis of the evidence. They included Dr Richard Wright, an emeritus professor of anthropology from Australia, Dr William Haglund, a physical anthropologist from the United States, Jose Baraybar, an anthropologist from Peru, Dr Christopher Lawrence, a pathologist from Australia, and Dr John Clarke, a pathologist from Scotland. The Trial Chamber also received a report from Fredy Peccerelli, who was the director of the Guatemalan Forensic Anthropology Foundation. Those experts were supported by specialists from at least 24 different countries in documenting this evidence and in presenting their conclusions.

From the various exhumation sites and crime scenes, we collected physical evidence, which included shell casings mentioned by Jean-René, blindfolds, ligatures, soil

samples, hair and body tissues, and explosive residues from the walls at the Dom Kulture in Pilica and the Kravica warehouse. We recovered artefacts that could identify people as having come from Srebrenica. All of that material was collected and documented and preserved in order to substantiate the findings of the investigative team when there were issues raised, for example ballistics questions, or whether a particular blindfold that was found in the primary grave was made of the same material as a blindfold that was found in the secondary grave, linking the bodies in the secondary grave to the Srebrenica crimes.

... we collected physical evidence, which included shell casings ..., blindfolds, ligatures, soil samples, hair and body tissues, and explosive residues from the walls...

We retained, again, expert analysts from around the world. The Netherlands Forensic Institute conducted textile analysis from blindfolds, explosive residue analysis and DNA analysis for us. The United States Naval Investigative Service conducted analysis of blood and tissue samples that we found on the Kravica warehouse walls. The United States Bureau of Alcohol, Tobacco and Firearms conducted ballistics analysis for us, comparing the shell cartridges found in the primary grave site and the cartridges found in the secondary grave sites. Dr Anthony Brown, a soil specialist from Exeter University in Great Britain, compared the soil found in primary grave sites and the soil found in the secondary grave sites, in order to match and connect the primary grave sites and the secondary grave sites. These materials were collected and preserved and you will see in Mr Manning's report that virtually all the sites that were exhumed had blindfolds and ligatures in them. They were collected, photographed, and the bodies that had these blindfolds and ligatures on them were photographed. So there could be no doubt that what we were seeing in the holes in the ground were the victims of executions.

I am going to show you pictures, and they are disturbing images, which I apologize for, but this is the reality of this case.

In image 40, you see a body that was photographed and recovered at the site. This body has the blindfold on and, although you can't see it very clearly, also the arms are tied behind his back. Image 41 shows another body that was recovered and you can see the blindfold around the head and a cloth ligature, string around the arms.

The statistics of what we recovered in those exhumations and what we presented as evidence in the Krstić trial are found in Mr Manning's report. There is a composite photograph showing ligatures of various types; cloth, wire, a variety of types of ligatures that we recovered during the process of the exhumations. Other photographs show blindfolds recovered from the various graves.

One of the challenges that were facing the investigators was that we had to convince the court that the bodies we had found in the secondary grave sites were indeed Srebrenica massacre victims and that those bodies had been part of the cover-up, the bodies that had been removed from the primary grave sites.

We were able to link the bodies found in the secondary grave site to the primary grave sites through soil and pollen samples recovered from both sites, blindfold and ligatures, textile comparison and textile analysis. There was also a variety of other evidence that link these secondary grave site bodies to the primary grave site bodies. In Kozluk where the people were massacred on top of an old glass dump, there's a bottle factory nearby

and people were shot and laid on the glass and fell onto the broken glass. We were able to recover from the secondary grave site bottle labels from the local bottle factory. We were able to recover glass when they scooped these bodies up with their big shovels; they took the glass with them and put them in the secondary site. If you study this further, you will see the way in which we were able to present evidence to the Judges, linking these primary grave sites to the secondary grave sites.

At the time of the Krstić trial, the results from the exhumations revealed a minimum number of 2,028 bodies. The report from Mr Manning only reflects 1,183 bodies, but I again reiterate that the exhumation results of year 2000 are not included in this report. Also recovered from the sites were 448 blindfolds and 423 ligatures. At the trial it was very important to exclude the possibility that the bodies that we were finding in these grave sites were there as a result of natural causes, the result of combat activities, the result of suicide or that these bodies were bodies that were not related to Srebrenica. Those were legitimate questions to be asked by the Judges and by the Defence, and it was incumbent upon us to establish that the bodies that we were finding were from Srebrenica. So let me show you two clips of testimony. The first is the clip of Judge Riad asking Dr Richard Wright a question on that topic.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Dr Richard Wright
Date: 29 May 2000

Judge Riad: Some of the information I would like to base my question on, and to ask you if you are in a position to determine whether the killing or some of it took place in a fight or took place in an execution.

Witness: Well, Your Honour, if I can just distinguish one or two points there. The absence of military clothing that applied to 800 and something individuals is for all the sites that I have exhumed. At Kozluk there were some 280 individuals, none of whom had military clothing. At Kozluk, on the fringes of the site, I was able to conclude that the people had been shot on the spot because they lay on this vegetated surface and we found bullets embedded in this surface. In the middle of the main mass of bodies at Kozluk, because they lay on glass, on broken glass, and because bodies underneath would have absorbed some of the bullets from above, I was not able to determine directly that they had been shot on the spot, but the arrangement of the bodies is consistent with their having been shot on the spot. At Kozluk, I -- where the evidence was of a sort, where the location of the bodies was of a sort that would allow me to determine whether they had been killed on the spot or been brought from somewhere else, I concluded that they had been shot on the spot. I saw no positive evidence that the bodies had been brought from anywhere else.

Judge: And being shot on the spot excludes being shot in a fight, the arrangement you mentioned?

Witness: No, I think being shot on the spot does not exclude people being shot in a fight. However, at Kozluk, 42% of the 280 individuals had their hands tied behind their back, and in my opinion, that does exclude people being shot in a fight.

Judge: And there were no weapons - no kind of weapons around these bodies which suggests that these people were carrying weapons or using them?

Witness: No, I don't remember, at Kozluk, any weapons whatsoever. We found the discarded shell cases from rifles and we found bullets, but I don't remember finding any weapons.

Mark Harmon:

Further into the trial, my distinguished colleague from the defence bar asked Dr William Haglund questions about the same topic, this time suicide.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Dr William Haglund
Date: 29 May 2000

Defence Counsel Višnjić: On the basis of which indicators has it been established that it was an execution, a murder, in the case of all of the bodies? Could causes of death also include suicide or combat?

Witness: Well, I just would like again to point out that -- I have investigated many suicides. I have never seen an individual with their hands bound behind their back shoot themselves multiple times. Many of these people have multiple injuries which are totally inconsistent with the circumstances of suicide.

Mark Harmon:

The forensic evidence was corroborated not only by the testimony of experts, but also by survivor testimony and by perpetrator testimony in some cases. So, in this efficient murder operation that took place in Srebrenica, we called to testify a significant number of the handful of survivors in these massacres and they painted an utterly terrifying picture of what had happened. Their descriptions of what had occurred at the various execution sites, identified by Mr Ruez, again were corroborated by the physical evidence that was described by our expert witnesses. I have selected the testimony of one of those survivors, a young man who is identified by the pseudonym of "Witness O" from the mass execution that took place at the dam on 14 July, where a significant number of people, estimated over a thousand, were murdered.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Witness O
Date: 13 April 2000

Witness: And the situation was chaotic. We were all tied up. We couldn't hold ourselves, and our bodies kept pushing against the sides of the truck. This all took place while the truck was moving, and then it stopped and we could hear shots.

And at one point somebody opened one side of the truck. I stood up. I don't know how I managed to stand up. I was tied up. But somehow I stood up. And they wanted five balijas to come out, so some people went out. So when the people got out -- I don't know where exactly it was, where they stopped and when they got out -- the firing started, and then they would call out people in groups of five.

We were very thirsty. And one of the captives, one of the people on the truck,

started to shout, started to yell. Some people shouted, "Give us some water first and then kill us." I was really sorry that I would die thirsty and I was trying to hide amongst the people as long as I could, like everybody else. I just wanted to live for another second or two. And when it was my turn, I jumped out with what I believe were four other people. I could feel the gravel beneath my feet. It hurt. And we were told to find a place for us. We went to the left side of the truck.

When we were on the right-hand side of the truck, I saw rows of killed people. It looked like they had been lined up one row after the other. I couldn't see the end of it, but I could somehow sense it, although it was dark.

There were several Serb soldiers there. I don't know how many there were, five or 10, but they were standing behind our backs. But it all happened very quickly, in a matter of seconds. And then I thought that I would die very fast, that I would not suffer. And I just thought that my mother would never know where I had ended up. This is what I was thinking as I was getting out of the truck. And when we reached the spot, somebody said, "Lie down." And when we started to fall down to the front, they were behind our backs, the shooting started. I fell down, and I don't know what happened then.

All I know is that while I was lying down, I felt pain in the right side of my chest. I felt pain on the right side, but I didn't know where I had been wounded, and I felt pain in my right arm. And I suffered.

And then after they had brought another group of, again, probably five people, I think that they were moving from the left to the right, and this is at least what I could observe at that point. There were approximately five people.

And the bursts of gunfire continued and the people fell down.

And once they had finished, somebody said that all the dead should be inspected. It was told that all the dead should be inspected, and they were told that if they find a warm body, they should fire one more bullet into their head. So while I was lying, at one point, and kept silent all the time, I could see a military boot stomping next to my face. And I kept watching, I didn't close my eyes. But the man stepped over me, it was a soldier, and he fired into the head of a man who was next to me.

I don't know where the soldier went, but they kept laughing. From time to time, a shot would be heard. They were killing people. When they had finished and when the engine of the truck had started, they left.

At one point I raised my head and I saw that maybe one or two rows in front of me, somebody was moving. He was maybe two or three metres away from me. And I could tell he was moving and I asked, "Are you alive?" I whispered to him. And he said, "I'm alive. Come here and untie me, please." And I said, "I cannot. I'm wounded."

And I kept rolling over the bodies. I did it several times until I reached the man who was still alive. So I managed to roll up to his mouth.

He didn't actually cut the string, but he was a very strong man and he cut it with his teeth. And I told you that it had been a rather strong, resistant kind of string which the soldier used to tie up my hands.

Prosecutor: Did there come a time when you moved away from this location near the dam and, in fact, you climbed up some hills so that you had a view of the dam beneath you?

Witness: And we got to the hill on the other side. We emerged from the woods into a meadow. After a while we heard an engine, and I saw a loader collecting dead bodies and loading them onto something. I don't know whether it was a tractor or a truck. But there was a very large pile of bodies.

Mark Harmon:

To corroborate forensic evidence and to corroborate the testimony of Witness O, we also called the second and only other survivor from that massacre to testify. An examination of the surface at the dam by our investigators revealed 464 rectangular or triangular skull fragments that we associated with the coup de grace that was described by Witness O. Numerous shell casings were recovered. Exhumations at that site did not produce many bodies, bear in mind that Witness O said that he saw a large vehicle come and start to collect and pick up the bodies, but nevertheless 43 persons were recovered there. That site had been also robbed.

In a secondary site associated with that mass execution, we found 191 individuals, 23 ligatures. The majority of bodies from that site could not be recovered. We introduced the support testimony of that execution at that site. Work records from the Zvornik Brigade work logs show that earth moving equipment was sent to Petkovci to work the day after the massacre. So the Drina Corps records themselves supported the events that were described by Witness O, in addition to the testimony of Dražen Erdemović - a man who pled guilty.

Recall if you will the statement of Mrs Ibrahimfendić that I put on a board right at the beginning where she described a trial. This part of her description of a trial included an element that those who did it, will be able to speak out. That is an important aspect of Mrs Ibrahimfendić's analysis of the trial. So we presented to the Trial Chamber the testimony of Mr Erdemović. His evidence related to the mass executions that took place at the Branjevo Military Farm on 16 July and it was significant evidence because it gave us great detail. We had at the trial testimonies of two of the four known survivors from that massacre, but the detailed evidence identifying the people who were responsible came through the testimony of one of the perpetrators and the findings by the experts.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Dražen Erdemović
Date: 22 May 2000

Dražen Erdemović: After that, when they had all left, the Lieutenant Colonel was talking to Brano and I heard him say that buses would be coming. As soon as he said that, it wasn't long after that, he left with these two policemen in a car. Then Brano came back to us and told us that buses would come with civilians from Srebrenica on them. And I and some others started objecting, saying, "What are we going to do there?" And he said that we would have to execute those people.

Then I saw two policemen taking men out, men who were in the bus, and these two men were probably the security for the transport of these men, and they

reached Brano and Vlastimir Golijan. And the first group of people were brought behind this garage down there, maybe 100 metres away, maybe more, but roughly to such a position. Then Brano told us to form a line. The men in front of us were ordered to turn their backs. When those men turned their backs to us, we shot at them. We were given orders to shoot.

The second group was brought, and they were lined up immediately behind that first group. Our backs were turned to the garage and we were moving in the direction of the garage. And that is how groups were brought in: men again turned their backs to us and we shot that group of people who were in front of us.

Prosecutor: Now, Mr Erdemović, were any of these men who were brought down to be executed blindfolded, did they have their hands tied, do you recall?

Witness: I can only remember that in the first bus they were blindfolded and their hands were tied, as far as I can remember.

Prosecutor: What time did the executions start in the morning of the 16th of July?

Witness: I think around 10.00.

Prosecutor: What time did they end on that same day?

Witness: At 4.00 in the afternoon.

Prosecutor: Now, how many people do you estimate, Mr Erdemović, were executed at the Branjevo farm on 16 July?

Witness: I think about 1,000 - 1,200.

Prosecutor: Did the Lieutenant Colonel who had escorted you to the Branjevo Farm return with anybody else later in the afternoon?

Witness: Yes. Not long after that, this Lieutenant Colonel and Brano came, Aleksandar Cvetković, Savanović, and he said that we had to go to the nearby club where there were 500 Muslims from Srebrenica who wanted to break down the door. Four of us said that we wouldn't go there to do that, that we'd had enough, that we were nobody's killing machines. Brano said, "Why?" We just said we didn't want to do it any more, that enough is enough.

Prosecutor: Describe the scene to the Judges as you entered this particular village where a cafe was located.

Witness: When you come from the Zvornik direction, the cafe is on the right-hand side. It is the Zvornik-Bijeljina road. The cafe is on the right-hand side, at a place called Pilica, and I think that is at the entrance to Pilica itself. Opposite the cafe was this other place, and when we came in front of the cafe, in front of this building on the other side, we saw people lying down on the ground, lying around on the ground, and you could hear shots.

When we arrived at the cafe -- when you go in, when you enter the cafe, at the entrance, on the right-hand side, I called this -- these were little separate places to

sit, and on the right-hand side, this Lieutenant Colonel was sitting down with another military policeman. I didn't see the other one. We all went inside. I and Franc sat right next to -- sat at the table on the left-hand side, by the door. All the others went off, Brano, Vlastimir, Aco, Boškić, Goronja. And the Lieutenant Colonel said, that is, he called the man working there and told him to bring drinks. I and Slovenac, as far as I remember, had some coffee, the others were, I think, drinking brandy, and they were talking. I didn't listen to what they were saying. You could still hear the shooting, and the detonations were heard at that point in that building.

Prosecutor: Now, when you got to Pilica, you showed us where the cafe was and it was across the street from the Pilica Dom where the detainees were kept inside. Now, this was, I gather, in the middle of the afternoon. Were there any other people around in the area? This is the middle of town, as I understand it. Besides the group that was with you in the cafe and the people who were inside the Dom across the street, there were no ordinary townspeople around?

Witness: Well, there were people there. Between these two buildings there was a checkpoint of the civilian police, and people did pass by in cars. And right next to the hall, there were houses, inhabited ones. Yes, there were civilians.

Prosecutor: So there were some people around on the streets while this was happening.

Witness: Yes. Yes. Traffic was passing.

Mark Harmon:

The Branjevo Military Farm was a location that was seriously robbed and when the exhumation teams went in there, they discovered that most of the bodies had been removed. Nevertheless, the human remains of 132 male victims were recovered from that site, aged approximately 15-61 years old. At least 130 of those persons died of gunshot wounds. Seventy-six of the victims were bound with ligatures. Seven additional ligatures were found at the grave site. Two of the victims had blindfolds and at a secondary grave site, we recovered the human remains of 171 individuals, eight blindfolds and 16 ligatures. In addition, the evidence we presented in respect of that mass execution included the Drina Corps records containing the engineering work logs and fuel logs.

Now the next big issue in the trial was when General Krstić became the Commander. He asserted that he was not the Commander at the time relevant to the massacres. His position at trial was that he only became the Commander on 21 July. The Prosecutor's position was that sometime on 13 July he had become the Commander.

Image 42 shows a chart with the killing dates and locations and the Prosecutor's and Defence's position on when Krstić became Commander. He clearly would have less or no criminal responsibility if he only became Commander after the fact. So that was the issue in the trial. I will portray some of the evidence that we introduced to establish that he had become the Commander on 13 July: The next exhibit is dated 13 July and it is an order from General Krstić. Importantly, at the bottom you will see it is signed by General Krstić under the title of Commander (image 43).

If we turn to the next exhibit dated 13 July. It is from the Drina Corps command, and I'll read the first paragraph; "Pursuant to a decree of the President of the Republika Srpska, in the presence of the VRS Main Staff Commander, Colonel General Ratko

Mladić, the handover of duties of the Drina Corps command was carried out on 13 July 1995”. And as you go down the document it says, “inform members of your unit of this decision in a suitable manner”, and it is signed by the Chief of Personnel and Legal Affairs, Lieutenant Colonel Radenko Jovičić. The providence of this document is very interesting. It came to us from General Živanović. We wanted to make sure that we had a document that was a true and correct document so we subjected this document to analysis. It went to forensic examination both for ink comparison and for a signature comparison with an exemplary document signed by Radenko Jovičić. We compared the stamp that was used to press this document. The conclusion of the experts was that this was a legitimate document. The Trial Chamber then found that General Krstić was indeed the Commander on 13 July.

The next important body in types of evidence that we introduced were the intercepted radio communications by members of the Drina Corps themselves. The Bosnian Army had their own intercept operators who would intercept and record radio communications. The standard operating order for the Bosnian Serb military was not to talk about anything sensitive over the radio, but for reasons unknown they did. We obtained copies of the original operator notes and introduced those in trial. This was critical evidence and I would just like to go through five of these intercepts to show you what I am talking about.

The first intercept is 14 July at 21:02 hours. It involves Major Jokić, who was one of the people convicted recently in the trial, and at the top he says, “Hello, Badem” -which is the code name for a location. “Let me talk to Beara and further down “Yes, hey, we have huge problems over here. There are big problems. Well with the people, I mean, the parcels”. So the word “parcel” was a code word. We needed to know what “parcels” were and we now found out what “parcels” meant - people. So this intercept was 14 July when the massacre that Witness O testified about was taking place at the dam.

The next intercept is from 15 July. It is at 10 o’clock and it’s a conversation between Colonel Beara and General Krstić. The thrust of this intercept is that Colonel Beara is asking General Krstić for men to help him in the killing operations that were taking place. The people hadn’t shown up and he had called his Commander, the Commander of the Drina Corps, to give him men to carry out those executions. Krstić in response started saying; “Well take the men from...” and he starts to name his own subordinate commanders. In the end, Beara says, “I don’t know what to do, I mean it, Krle,” - which is Krstić’s nickname - “there are still 3500 parcels that I have to distribute and I have no solution”, and Krstić says, “I’ll see what I can do”.

Now on 15 July, a number of executions still awaited to take place, such as the Branjevo Military Farm. The next intercept is dated 16 July at the time when the Branjevo Military Farm executions were taking place. It is an intercept from Lieutenant Colonel Popović, one of the people indicted by the Tribunal. Lieutenant Colonel Popović is asking desperately for 500 litres of D2, or else the work he is doing will stop. He needs fuel for the heavy machinery to transport the victims from point A to the execution sites or to dig up the grave sites.

To corroborate that intercept, just to give you an example, a Drina Corps Zvornik Brigade fuel log identifies that 500 litres of D2 fuel were issued to Lieutenant Colonel Popović as requested. So that’s the kind of tight meshing of the evidence we had.

Finally, there are two more intercepts I’d like to show you very quickly. One is an intercept of 16 July - bear in mind, this is at the end of the killing operations that took place at the Pilica Dom Kulture and the Branjevo Military Farm, described by Mr

Erdemović - this is an intercepted communication of Lieutenant Colonel Popović asking to be connected to General Krstić. He is not connected. They are unable to make the connection and Popović reports:

- "I'll come there tomorrow to tell the General. I've finished the job."
- "You've finished?"
- "I've finished everything."
- "Good."

Down the line Popović says, "Just the thing. Horrible, it was horrible." Finally, on 17 July, it is again Popović saying; "Hello, it's Popović... Boss... everything is OK. That job is done. Everything is OK. Everything has been brought to an end. No problems." He goes on to say, "Can I just take a little break, take a little break, take a shower and then I'll think again later. Basically... that all gets an A,... an A... the grade is A. Everything is OK."

Those intercepted communications also supported our evidence that General Krstić was guilty of the crimes that we alleged against him.

Finally, a part of the trial that was very important was to provide the Trial Chamber with evidence of the effect that these terrible crimes had on the victims of the genocide. We literally could have called thousands of victims. We couldn't do that within a trial of limited duration. As to the witnesses who survived, the descriptions of the enormous loss of life, the horrific circumstances which they described, the impact of that was self evident. But for obvious reasons the dead and the survivors of those massacres weren't the only victims. The living victims, the people who had been forcibly transferred out, the people who had no husbands, who had no fathers - we believed the voices of those victims should be heard and we wanted to present the Trial Chamber with evidence in respect of the impact that those crimes had on those people, so the Trial Chamber could properly consider what type of sentence is appropriate if they found General Krstić guilty. I am going to play another brief part of a testimony of one of those victims.

The living victims, the people who had been forcibly transferred out, the people who had no husbands, who had no fathers – we believed the voices of those victims should be heard...

(court transcript)

Case name and number:	Krstić (IT-98-33)
Witness:	Witness: DD
Date:	26 July 2000

Prosecutor Karagiannakis: How would you compare your standard of living today to the standard of living you had before the war?

Witness: There's no comparison. I've told you my whole life, what it was like before and what it is like now. How can you compare the two?

Prosecutor: Now, what has been the impact of these crimes on you and your son?

Witness: You can imagine what it has been. My young son, born in 1986, he has demands. He wants this and that, and he starts trembling when I tell him I don't

have it, I can't afford it. Then he accuses me of all kinds of things, saying that it was my fault that things are like this. "If I had a father, he would give me everything." So you can imagine in addition to all my stress and anxieties, I have to try and console him. He keeps blaming me. "Perhaps it would have been better if you didn't have me even." And then sometimes I also think it would be better if none of us had survived. I would prefer it.

Prosecutor: How do you feel about returning to your village?

Witness: What would you suggest to me, after everything I've been through? If I felt well, if I had strength... When war criminals are still walking around and doing what they want, what's the point about thinking -- even though I sometimes think that it would be better if we hadn't survived. Should I take him over there too to be killed and slaughtered? It's true that I loved my village and estate, but of course there's no comparison with the love one has for children. I did love it all, the house and the farm and everything, but what's the point of it all now?

Prosecutor: What do you think has happened to your husband and your two sons?

Witness: How do I know? As a mother, I still have hope. I just can't believe that this is true. How is it possible that a human being could do something like this, could destroy everything, could kill so many people? Just imagine this youngest boy I had, those little hands of his, how could they be dead? I imagine those hands picking strawberries, reading books, going to school, going on excursions. Every morning I wake up, I cover my eyes not to look at other children going to school, and husbands going to work, holding hands.

Mark Harmon:

Finally we introduced the testimony of professional health care providers from an organization called "Viva Žene" to illustrate in a compact manner the impact that these crimes had on the surviving victims.

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Teufika Ibrahimfendić
Date: 27 July 2000

Prosecutor (Mark Harmon): Can you tell the Chamber how many women have been treated in your organisation who were traumatised by the events in Srebrenica?

Witness: I worked with 60 women in our centre who spent some time at our centre as in-patients, six or seven months, for example, and I carried out a therapeutic programme with about 80 women outside the centre. I think that about 200 -- no, 140 women and 200 children have passed through our centre in total. But I was working with a higher number of people, I had numerous contacts with people from Srebrenica. However, as regards to a specific therapy programme, I conducted that kind of programme with the number of people that I stated.

Prosecutor: Now, Ms Ibrahimfendić, you mentioned the figure of 200 children. Let me put a different number to you and see if this is a number that might be correct: 300.

Witness: Yes. I only spoke about the children who were in-house patients as part of the programme, but we worked with another 150 people in Špionica refugee centre, then another 210 in the refugee centre of Nihatovići, and also we worked with children who were part of the programme at our centre. In total, about 300 children were from Srebrenica.

Prosecutor: Now, the traumatised women and children that your centre has been treating and has been involved with over the years, is that a small percentage of the Srebrenica survivor community that has been traumatised?

Witness: Yes, it is a small percentage, indeed, compared to the number of victims in Srebrenica. However, if you bear in mind the fact that there are other organisations in the area of Tuzla and that severe cases are hospitalised, then one can conclude that we did a lot of work for a small number of people. However, bearing in mind the overall situation, the result is, more or less, satisfactory.

Prosecutor: Thank you, Ms Ibrahimfendić. Tell us now, five years have passed since those tragic events, can you comment on the level of trauma that exists today in the Srebrenica survivor community?

Witness: Trauma is not forgotten, not because people don't want to forget it. It is stored in the mind and it is remembered, because during such terrible, traumatic moments, all our feelings, everything they feel, they think, they smell, they touch, it is a kind of supermemory which lasts very long, so that those memories are still alive. They have their weight and they have their totality. Among the women we worked with, and we use the sample of women with more serious psychological problems, their memories are still vivid. They still have images of what happened. These are so-called flashbacks. Suddenly, these pictures appear, excerpts from the experience they live through. In the course of their normal activities, walking around town or somewhere else, they come across something that reminds them and this provokes the flashback. Many of those women still suffer from terrible nightmares, feelings of fear, and other symptoms, irritation, nervousness, aggressiveness, a loss of concentration, irritability. Many avoid talking about those events because they are so painful. These are also symptoms of avoidance. In contact with the victim, we can easily recognise the dominant symptoms depending on the personality, its structure, its mental functions, the way the personality reacts. But if this symptom of avoiding remembering dominates, they become depressive, apathetic, passive. They lose *joie de vivre*. They don't have the need to communicate with other people. They become isolated and they suffer. It is very difficult to reach out to them. Sometimes they don't want your assistance. They simply say, "I want to die. If they have killed our men, why should I live?" They don't have the strength to face up to their living problems. They lack the willpower; they lack motivation for activity. They see the future in dark colours. They cannot imagine what can happen in a year's time. They feel persecuted because they're living in very difficult conditions. So that five years after the event, I can say that their psychological condition is still extremely grave.

Prosecutor: Now, Mrs Ibrahimfendić, let me focus your attention now on children survivors of Srebrenica, and I'd like you to assist the Trial Chamber in this respect: Can you inform the Trial Chamber of the level of trauma on these child victims, both in 1995, July of 1995 that you observed, and again, that you continue to observe today?

Witness: The children witnessed all these events. Many older children witnessed the separation of their brothers and fathers from them. Together with their mothers, they spent time in extremely adverse conditions in Potočari, one, two, or three days, depending. There were small babies of three, four, five, six days old. I worked with close to 10 women who had only just delivered their babies and who reached Potočari with those small babies, and they managed, and they survived, both they and their babies, and they reached Tuzla. Then there were also other children of different ages. And if we take into account the fact that children were in the development stage, then the traumatic effect of those events of 1995 differed. The pre-school-age children demonstrated different symptoms: bouts of crying, excessive attachment to their mothers. They had problems with their appetite, sleeping problems, feeling of fear, because they had watched all that. They were with their mothers, and they followed the reactions of those mothers. School-age children had generalised fear of people, of sounds, persons. They did not want to go to school. They had learning problems, low concentration. They had also these flashbacks. They didn't have anyone to share them with because all of them were suffused with these memories. So they had these terrible nightmares. They would get up at night. Many wet their beds, which had no medical reasons, but they were provoked by psychological reasons. Older children, adolescents, those who managed to survive, both boys and girls, had very high oscillations in their moods and behaviour. Adolescence is a period when they should start out on their own, separated from their parents, but the adult world has undermined their beliefs, their values. The world had suddenly become an insecure place, a place where they cannot feel safe, to which they do not belong. They don't know who they belong to, who they are, even. So their behaviour mostly varied from aggressiveness to withdrawal, isolation -- isolation, lack of activity, spending time at home watching TV or reading. Anyway, keeping to themselves.

Mark Harmon:

One of the elements that we wanted to establish as well was the impact of the lack of knowing what happened, to the surviving victim community. One woman who testified before the Tribunal refers to a statue that she saw of a wife looking toward the sea (because The Hague is located on the North Sea - it used to be a fishing community) looking out to sea for her husband:

(court transcript)

Case name and number: Krstić (IT-98-33)
Witness: Mirsada Malagić
Date: 4 April 2000

Judge Rodrigues: My colleagues and counsel for the prosecution and defence asked all the questions that I needed answers to. But is there something that you would like to say and have not had the opportunity of answering? If there is anything else you wish to add, you may do so now, Mrs Malagić.

Witness: I simply want to thank you once again. Yesterday afternoon, when I returned from here, I went out to walk around your city, that is what I wanted to tell you. I couldn't really see much, but what I really liked, what caught my eye, was a monument that we visited and that was a monument to women, that is, women awaiting sailors who never come back. And the monument to those wives touched me profoundly. I should like to find this statue and take it to Bosnia with me. Perhaps it could be likened to mothers and wives of Srebrenica

who have been waiting and hoping for all those years, except that we followed different roads. We could turn to our empty forests. We saw our sons and our husbands off to those woods and never found out anything about them again, whether they are alive or dead, where their bones are lying. Many mothers have died hoping against hope, and it is quite possible that all the other mothers would end up like that because their numbers are dwindling every day.

Mark Harmon:

Based on the evidence that was presented at trial it came time for the Prosecutor to request an appropriate sentence. First of all we pleaded that General Krstić, based on the evidence, be found guilty of all the counts, and we also had to plead what kind of sentence was appropriate. I'll show you the submissions that were made in the Krstić case for sentencing.

(court transcript)

Case name and number: Krstić (IT-98-33)
Closing statement: Prosecutor Mark Harmon
Date: 27 June 2001

In this case, General Krstić has had the benefit of a trial, with the full panoply of rights enshrined in international law accorded to him. A triumph of the rule of law and of civilization over the atavistic impulses that surely motivated him and his collaborators to slaughter thousands of helpless victims, to deport 35,000 people from their lands and the lands of their ancestors and to deprive them of all of their fundamental human rights. The defendant has had the benefit of a trial, his victims did not. The aggravating factors are overwhelming. I've touched on them throughout my closing submissions, meditation and planning that went into them; the suffering of the victims, both the dead and the living; the destruction of the community from eastern Bosnia and the Srebrenica area; the immediate and the long-term psychological and material impact that these crimes have had and continue to have on the surviving victims; the accused's repeated false testimony under oath and his complete lack of remorse for the crimes that he committed. It is with that in mind, Your Honours, that I request this honourable Trial Chamber to find the defendant Radislav Krstić guilty on all available counts in the indictment and that you sentence him to life sentences for each of the counts in the indictment for which he is found guilty. And further, that these life sentences be consecutive to one another.

Mark Harmon:

On 2 August 2001, an international panel of judges, (judges from Portugal, the United States and Egypt) convicted General Krstić of murder, genocide and persecution. They imposed a single sentence of 46 years imprisonment on General Krstić. As an epilogue, General Krstić appealed his conviction and his sentence. That will be the topic of discussion after the break.

Matias Hellman:

We will now hear the presentation of Gabrielle McIntyre. She is a legal advisor to the Tribunal's judges, and she will explain the judgements in the Krstić case from the aspect of the Chambers.

Gabrielle McIntyre:

Thanks, Matias. As you should know from what we have said today, the role of the judge in the adversarial trial we have at the Tribunal, is basically an arbiter of the facts. So, the judge will listen to the case made by the Prosecution and the response to the case made by the Defence. The burden is on the Prosecution to satisfy the Judges beyond reasonable doubt that the accused is guilty of the crimes that the prosecution alleges.

In the Krstić trial, the trial judges were satisfied. The prosecution case was basically that General Krstić was a participant in a joint criminal enterprise with other members of the Main Staff, mainly General Mladić, in committing genocide against the Bosnian Muslims at Srebrenica. The defence of Krstić was basically one of denial. "I didn't know that this was happening. I wasn't involved, the Main Staff came into my area of command and they issued orders and used my resources without my knowledge."

Now the Trial Chamber didn't accept that defence on the part of Krstić. It did find that the Main Staff was heavily involved in this operation but they couldn't find evidence to establish that Krstić himself instigated this plan or that he devised this plan. What they found was that the Main Staff had come into the area. They didn't have their own resources, and without the assistance of the Drina Corps they would not have been able to carry out these executions. And through the intercepts that Mark relied upon in his presentation, it was found that Krstić knew the men were being separated from the women and that they weren't being treated in accordance with practices accepted for war crimes screening, which is what the Main Staff had alleged through meetings at the Hotel Fontana - to separate the men to screen them for war criminals. And it was found that he knew that there was no provision made for them with water, food, etc. He must have known of the genocidal intent on behalf of the members of the Main Staff, who the Trial Chamber found to be the main players or the main instigators of these offences.

... the Trial Chamber was satisfied that the prosecution had proved beyond reasonable doubt that the mass executions at the separate locations occurred...

In terms of the executions, the Trial Chamber was satisfied that the prosecution had proved beyond reasonable doubt that the mass executions at the separate locations occurred, but it wasn't satisfied that there was evidence that the Drina Corps was involved in every one of the executions. The Trial Chamber found that two members of the Bratunac Brigade had been involved in the executions at the Branjevo farm based on the testimony of Erdemović, as well as

evidence from the prosecution expert Richard Butler. Also, as Mark pointed out, the fuel records of the Zvornik Brigade showed that members of the Drina Corps from the Zvornik Brigade were involved in the transportation of Bosnian Muslim prisoners to execution sites and in covering up those bodies after that occurred.

The Trial Chamber also found, based on the evidence that had been presented, that Krstić had attempted to make sure that no harm fell to the Bosnian Muslim women civilians and children that were transported out of the area. So, although they found him guilty of being a participant in this joint criminal enterprise, it was basically on the basis that he knew what was going on and he allowed his resources and his men to be used in carrying out those executions. And on that basis they drew an inference of genocidal intent on his part.

Now when it came to the appeal hearing, General Krstić advanced pretty much the same argument that he advanced at trial to the Appeals Chamber. He basically said, “I didn’t devise this plan, I wasn’t involved in it. There was a parallel chain of command. The Main Staff came into my area of operations, giving orders and using my resources, by-passing me. I had been appointed Commander of the Žepa operation. On 11 July, I was off doing these military activities and I didn’t know or have any control over what was going on.”

The Appeals Chamber didn’t accept this argument in full, but it was persuaded by some of the evidence, additional evidence that was introduced at the appeals hearing, and the Appeals Chamber also went back and looked at the record and findings of the Trial Chamber. An Appeals Chamber would generally always defer to the Trial Chamber, as the Trial Chamber heard the witnesses and would be best placed to assess the evidence. It will only interfere with the finding of a fact by a Trial Chamber if it thinks that the finding is one that no reasonable Trial Chamber could have made. Now in some of the findings that were made by the Trial Chamber, the Appeals Chamber did find that these were findings that no reasonable Trial Chamber could have made. When the Appeals Chamber looked at the judgement of the Trial Chamber, it found that there were lots of findings made by the Trial Chamber that General Krstić must have known or should have known. There was little evidence in the view of the Appeals Chamber of direct knowledge on the part of General Krstić. They did find that at one point in time after 13 July he must have become aware that his resources were being used and he did nothing to stop that. With respect to the Branjevo Farm and the use of his men there, hearing additional evidence on appeal they found that Dražen Erdemović had not said that it was men from the Bratunac Brigade that assisted in those killings, but merely men from Bratunac. Because the Prosecution has the burden of proof, the accused has the presumption of innocence. The Appeals Chamber wasn’t satisfied that that evidence was sufficient to conclude beyond reasonable doubt that those men from Bratunac were actually men from the Bratunac Brigade.

Another thing that the Appeals Chamber found was that the people that had entered guilty pleas and confessed, when they were called to the appeals hearing to tell the Appeals Chamber what they knew about what happened and General Krstić’s role in it, none of those individual witnesses actually gave evidence that General Krstić had the specific intent to commit genocide or that he was directing anything or seriously involved in these crimes. So, the Appeals Chamber, hearing the additional evidence on appeal, came to the conclusion that the Trial Chamber had failed to establish the specific intent to commit genocide on behalf of General Krstić. It accepted the entire crime base that the Trial Chamber had established and the prosecution proved. It accepted that that had happened beyond reasonable doubt, there was no challenge there. But the one thing that it wasn’t convinced of was that General Krstić himself had the very specific intent to commit genocide. On that basis, the Appeals Chamber set aside the conviction for being a participant in a joint criminal enterprise to commit genocide, sharing the specific intent with General Mladić and others to commit genocide, and replaced it with a lower level of criminal liability - basically aiding and abetting genocide. And the aiding and abetting conviction was based on the fact that he allowed resources that were under his command and control - men and equipment - to be used to facilitate these killings and he didn’t take any action to stop the use of his men.

The only way you are going to really appreciate these complexities is to read the Trial Chamber judgement, read the Appeals Chamber judgement. To give you some insight into what was given by the Defence at the appeal hearing, I’ve got a brief segment of the closing argument made by the Defence. They were telling the Appeals Chamber that basically knowledge is not the same as specific intent. If you know about something, they argued, it’s a totally different form of criminal liability than specifically intending something.

(court transcript)

Case name and number: Krstić (IT-98-33)
Closing Arguments: Defence Counsel
Date: 27 November 2003

Defence Counsel Sepenuk: Finally, Your Honours, I'd like to turn to the question of General Krstić individually. The Trial Chamber held that there was a joint criminal enterprise to commit genocide. The Trial Chamber also held that General Krstić shared that genocidal intent. We believe strongly that that was an error.

The recently admitted additional evidence submitted by the Defence - and that is tabs 1, 2, and 3, attached to the Rule 115 motion - corroborates the Trial Chamber's finding that the Drina Corps and General Krstić in particular had little to do with the capture of the thousands of Bosnian Muslim men which took place on 13 July 1995. The Zvornik police reports, received by the Defence well after the Judgement in the case, show that the capture and attempted liquidation of about 8,000 Muslim soldiers, as stated in the police report, was being done solely by MUP units "without the cooperation or assistance from VRS blocking and annihilation of the huge number of enemy soldiers."

So having stated that the capture and annihilation of the Bosnian Muslim men were primarily a Main Staff operation, without the assistance of the Drina Corps as of 13 July 1995, how did the Trial Chamber conclude that "by the evening of 13 July at the latest, General Krstić knew that the Muslim men were being executed at a number of separate sites"? This was the basis for the Trial Chamber's conclusion - and I quote - "On 13 July, when he was preparing the military operation at Žepa which commenced the next day, General Krstić found out that thousands of men were fleeing in the column toward the woods towards Tuzla, thousands of Srebrenica men were fleeing in the column toward the woods towards Tuzla and had been captured on the territory of the Drina Corps. As the then corps Chief of Staff, "the primary coordinator of the corps' activity," General Krstić must have been aware that no adequate measures were being taken to provide for shelter, food, water, and medical care for several thousand captured men and that no arrangements or negotiations were ongoing for their prisoner-of-war camp -- prisoner-of-war exchange."

The Trial Chamber concluded - and I quote, paragraph 622 - "On that basis alone, the Trial Chamber must conclude that by the evening of 13 July at the latest, General Krstić knew that the Muslim men were being executed at a number of separate sites and that none had been allowed to enter government-held territory along with the women, children, and elderly. General Krstić could only surmise that the original objective of ethnic cleansing by forcible transfer had turned into a lethal plan to destroy the male population of Srebrenica once and for all."

As we've stated in our brief, the Trial Chamber could just as easily have reached what we regard as the more logical conclusion and one consistent with the presumption of innocence, and that is that General Krstić would have known that the prisoners were not given proper care and treatment, given the lack of facilities and manpower to do so. The evidence showed that the capture and detention of the men was primarily an MUP staff operation by the Main Staff. The Trial Chamber found that the conversation between General Krstić and Colonel Beara, the Main Staff officer, to be the "aggressive apex" of General Krstić's participa-

tion in the killing plan. The conversation clearly supports the Defence argument that General Krstić did not agree with the actions of the Main Staff. The Trial Chamber found that General Krstić's statement to Colonel Beara, "You guys fucked me up so much," was evidence that the Main Staff was "primarily directing the executions, albeit calling upon the resources of the Drina Corps command." When coupled with his next comment to Colonel Beara that "Fuck it, now I'll be the one to blame," it is evident that General Krstić did not have a desire to execute prisoners, let alone an intent to commit genocide, but the quite prescient belief that he would be blamed for it even though it was a Main Staff action that he wanted no part of.

Defence Counsel Petrušić: General Krstić's departure from that area shows that his basic involvement was with the combat operations around the other enclave. The Prosecutor asserted, during yesterday's hearing, that resources of the Drina Corps were used and that he must have known about that and he should have taken steps to prevent that, referring to resources of the Zvornik Brigade, and those resources of the Zvornik Brigade were two machines, ULT 220, and a machine known as BGH 700 used in the burial at Orahovac. Could he -- could General Krstić have known this? In the submission of the Defence, he did not. And as proof of such a submission, the Defence offers General Krstić's overall behaviour and also an intercepted conversation dated 17 July, when General Krstić requested the troops under his command located in Vlasenica. And the conversation went as follows:

Krstić: Bring me the soldiers you have immediately.

X: About four.

Krstić: How many?

X: I only have guards. I'm involved up there.

Krstić: I beg your pardon?

X: I'm busy up there. - Then a word that is unclear - Here where we were before.

Krstić: Where before? Fuck you.

And X says: I have Osmaci. I have three more soldiers and three on guard here. I have three.

Under whose permission did you send troops down there, says **Krstić**.

X: By orders from the Main Staff.

Krstić: Fuck you. Return those soldiers to me as soon as possible.

One can conclude from this intercepted conversation that the Main Staff, without any permission and without any knowledge or without informing subordinate commanders, is taking and using resources at will. Your Honours, it is very hard to speak of punishment if the Defence position is known from the very beginning, that is, the initial appearance of General Krstić, when he entered a plea of not guilty. During the trial itself, General Krstić and his defence upheld that position. Today

we are in a situation when the Defence says that if this Honourable Chamber comes to the conclusion and determines the existence of General Krstić's guilt, it can relate to forcible transfer in Potočari. And with regard to that segment, the Defence submits that the initial sentence should be significantly reduced.

Defence Counsel Sepenuk: The deportation, forcible transfer of the women, children, and elderly show an intention to avoid killing the Bosnian Muslim group as such. We think the only reasonable inference from the forcible transfer of that group is that it was an intent to avoid the killing of a group as such, not the promotion of the killing.

Gabrielle McIntyre:

That last bit was basically an argument that was advanced by the Defence on the appeal about the legal qualification of genocide and whether what happened in Srebrenica met that legal qualification. And the Appeals Chamber, without going into

The thing I really want to reiterate is that the Appeals Chamber was satisfied that crimes occurred: What it wasn't satisfied about was that General Krstić had the specific intent of genocide

the legal argument, upheld the finding of the Trial Chamber of genocide. The thing I really want to reiterate is that the Appeals Chamber was satisfied that crimes occurred: What it wasn't satisfied about was that General Krstić had the specific intent of genocide. It nevertheless found that he was not a reluctant participant in the forcible transfer of the women and children from Srebrenica. It also held him responsible for all the crimes that occurred

as a result of that forcible transfer, such as murder and those that occurred during the transfer from Potočari. And with regard to the sentence, because of the finding that he didn't have specific intent to genocide, the Appeals Chamber reduced his sentence from 46 years to 35 years imprisonment.

Session Six Plea Agreements and Sentencing

Matias Hellman:

We will now turn to the questions from the audience, which have been submitted in writing during the conference. There are several questions which are quite similar, relating to Dražen Erdemović with the opinion that the sentence of five years that he got was not a punishment in view of the gravity of the crime. There is criticism that guilty pleas lead to a reduction of what would be a proper sentence. Also regarding plea bargains, there are a couple of questions asking why the Hague Tribunal is dropping the count of genocide for those who are being tried for crimes in Srebrenica, if they plead guilty.

Mark Harmon:

Well since I'm the Prosecutor, I'm happy to respond to those and leave the Chambers to make decisions on plea bargains. First of all we start with plea bargains. Plea bargains are a controversial and often misunderstood way of establishing guilt. The Tribunal has a limited mandate, as you know. If we were to try every defendant who comes before us, we would in all likelihood exceed the time set for our mandate.

A plea bargain is a way of establishing the guilt of the accused without a trial. A person comes before the court and says, "I am guilty". The court has to be satisfied that what he is pleading guilty to, has in fact occurred, that there is a factual basis for it. The sentence that is imposed as the result of a guilty plea is determined by the Judges. When there is a guilty plea, the Prosecutor makes a recommendation for a sentence, but the court does not have to accept that recommendation. The Judges always have discretion above or below the recommendation made by the Prosecutor's Office. And in fact the Judges do that enough times to clearly illustrate the Trial Chamber's independence from the Prosecutor in that respect. When the court determines a sentence, it considers a number of factors. The only explicit factor that is in the Rules of Procedure and Evidence as a factor in mitigation is whether the person who is pleading guilty has cooperated substantially with the OTP. The rest of the mitigating factors are determined by the court in judicial decisions. So the court considers if the person is providing substantial cooperation. If the person has entered a guilty plea and therefore saved resources of the Tribunal, saved witnesses from having to come to the Tribunal to testify, that is a factor that the defendant gets a credit for. How much of a credit it is, that is up to the Trial Chamber to decide.

Another factor that the court can consider is to what extent the accused has clarified the historical record and prevented revisionism from occurring in events and in facts. One defendant explicitly received credit for describing the events in great detail, about what happened in Srebrenica because, as I mentioned early in my discussion, there is a certain element of society in Bosnia that wishes to continue to deny that the massacres at Srebrenica occurred. So when you have somebody such as Dragan Obrenović, an officer from the Zvornik Brigade, who comes forward and says the massacres happened and pleads guilty, the court is inclined to consider the circumstances of that plea in determining a sentence.

So what happens in respect of a plea agreement? Let me give you an illustration of one plea, the case of Dražen Erdemović. I don't hide from the fact that it's controversial, it caused great discomfort in the victim communities. When we started the investigations into the crimes in Srebrenica, the earlier stages, we did not know where the

crimes took place. We knew that there had been killings. We had heard from some survivors that they had been taken to places unknown to them. We didn't know where and they couldn't tell us where. We had heard accounts, but we needed to establish who the perpetrators of these killings were.

In the case of Dražen Erdemović, he was already in custody when he came to the Tribunal. He, immediately without hesitation, offered to talk to the Prosecutor's office and told us what happened, what his involvement was and who was involved. He also told us where certain crime scenes were located. He told us where the Branjevo Military Farm was located and that he had participated in a massacre at that location. We had had information that there had been killings at that location and he corroborated that for us. Secondly, he told us about the location of a massacre that we had no idea about, the Dom Kulture in Pilica. Had Dražen Erdemović not appeared on the scene, nobody to this day would have been aware that 500 people were murdered in the Dom Kulture in Pilica.

So what happened in terms of his assistance for the OTP, it was considered to be substantial. In addition, Dražen Erdemović agreed to testify, to provide truthful evidence against people who were to be tried for the crimes at Srebrenica. And indeed he testified first in the Rule 61 hearing against Mladić and Karadžić where international warrants were obtained for their arrest. He testified in the Krstić case, he testified in the Milošević case, he testified in the case against Blagojević and Jokić. So he's testified in five proceedings before this Tribunal.

Finally, Mr Erdemović, in the assessment of the court and, frankly, in the assessment of the Prosecutors, was genuinely remorseful for his participation in these events. With those factors in mind, they entered into an agreement with Mr Erdemović for him to plead guilty and recommended a sentence. Now, I would go through the procedural history of Mr Erdemović's plea agreements, because there were two: the first recommended sentence was not to exceed 10 years. That was later reversed on appeal for procedural reasons. And subsequently he entered into a second agreement, where the recommendation of the Prosecutor's office was seven years, and the court decided, outside of the recommendation made by the Prosecutor's office, to impose a sentence of five years on Mr Erdemović.

Now those are considerations that enter into a prosecutor's mind when assessing the evidence. The investigations into Srebrenica advanced significantly by virtue of the cooperation of Dražen Erdemović. There are other agreements as well where the principle mitigating factor for a sentence is whether somebody has provided substantial cooperation to the OTP.

I want to say something: I have been in this office for 11 years. I came when this institution started. I was involved with Jean-René in the Srebrenica case from day one. One would think that in a situation where genocide was committed that there would be people who would come forward without hesitation to inform us about the information and the evidence that they know about. And I can tell you from my experience in this investigation that I can count probably on two hands the number of people who came forward in the community who knew something about this. You heard Judge Wald asking Mr Erdemović, "Were these executions committed in public, on the road?" The answer was yes. Not only are people less than willing to come forward and tell us, but so are defendants that are in custody. Mr Erdemović came and told us information that advanced significantly our investigation, and an agreement was entered into.

I'll tell you one other story very quickly to underscore my point. Mr Erdemović described killings that took place in the Pilica Dom Kulture. Across the street was a café.

He went to that café and had a drink. Colonel Beara had a drink. The executions went on in the presence of everybody in that café. Jean-René and I went to that Dom to look at the site. We went into that café. Everybody knew who we were, we were from the United Nations, we were there investigating the crimes in Srebrenica. I would have thought that given who was present in that café, perhaps one would have come forward and provided us with relevant and useful information about the massacre of 500 people that took place right across the street during business hours. Not one person did. So you can see the value of an individual like Mr Erdemović who not only told us about the crime, but he told us about the identities of the perpetrators, he told us about the identities of the perpetrators of other crimes, and he testified.

When you think about plea agreements and investigations, it is very, very controversial, very difficult to see somebody who has committed crimes of the magnitude of Mr Erdemović. On the other side of the scales, you have to look at the countervailing considerations. So do the Judges, and it is they who decide the sentences in these cases.

A question was also put about abolishing genocide. Genocide obviously is a very, very significant crime. We consider it so. We consider crimes against humanity, such as extermination and persecution, to be very, very serious crimes. We consider those to be very, very significant crimes and there are times when somebody who cooperates substantially with the Prosecutor's Office will be pleading guilty to a very significant crime, a crime against humanity, extermination, or a crime against humanity, persecution, rather than genocide. Those are decisions that we, the Prosecutors, make. We make them in the interests of justice. Those decisions aren't immune to criticism. We accept that those decisions may not be agreed with but in terms of advancing these cases in a way that we think constructive, we occasionally do drop the charges of genocide.

Gabrielle McIntyre:

As to the sentence that was imposed on Erdemović and why it was such a low sentence, let us play a clip from his initial appearance before the Trial Chamber.

(court transcript)

Case name and number:	Erdemović (IT-96-22)
Initial Appearance:	Dražen Erdemović
Date:	31 May 1996

Your Honour, I had to do this. If I had refused, I would have been killed together with the victims. When I refused they told me, "if you are sorry for them, stand up, line up with them and we will kill you too. I am not sorry for myself but for my family, my wife and son, who then had nine months and I could not refuse because then they would have killed me. That is all I wish to add."

Gabrielle McIntyre:

In essence, Erdemović pled guilty before the Trial Chamber, but raised a defence of duress. He said, I am guilty for what I did but I was faced with this difficult moral choice where I was told that if I did not participate in this shooting, I could stand up, line up with them and be shot. The Trial Chamber accepted that and entered a sentence of 10 years. Then it went on appeal because it was argued that this was a defence of extreme necessity. If you say that you effectively had no choice but to do this, it is not consistent with pleading guilty because what you are saying is that you aren't actually criminally responsible. "I didn't intend myself to do this but because of the extreme circumstances I was under, I took this action."

And the Appeals Chamber had a very convoluted debate in its judgement whether or not duress of that type can actually ever be a defence for a crime of killing innocent human beings. The majority came down against the idea that it could ever be a complete defence. There was a lot of disagreement among the Judges, but they basically said that when you are a soldier, it's a hazard of your occupation that you might die, so you've got a greater duty not to kill innocent civilians and duress could never be a complete defence. They did say, however, that in some circumstances it could mitigate a sentence to such a degree that no sentence would be imposed. In this case, they imposed a sentence of five years.

Even though the Tribunal has taken this position that duress is not a complete defence to a war crime, the International Criminal Court in its Statute does provide that duress can be a complete defence. So in further international proceedings, duress might excuse someone like Erdemović from his actions.

With respect to plea agreements, Mark has explained quite a lot about them and as he said, the Judges aren't bound to accept any agreement that is made. The Judges aren't involved when the prosecution and accused are negotiating a plea agreement, what charges will the Prosecution drop for the accused to plead guilty. In a lot of the cases, if not all of them, what the Prosecution will do is drop charges. They won't change the factual basis. So the factual basis upon which the remaining charges are based will reflect the totality of the accused's criminal conduct. Like Mark said, they might get rid of the charges of genocide, murder, deportation, forcible transfers, or whatever, and just charge those crimes under the rubric of persecutions, except for the genocide crime.

So, the Trial Chambers in looking at plea agreements are very careful at the acceptance of that plea agreement. Most of the time what they do recognize, particularly with events like Srebrenica where there has been a history of denial, is that the Tribunal still doesn't have the main perpetrators or the main planners of that crime. These accused will enter into plea agreements and agree that they will testify. They have testified already in the Blagojević and Jokić trial, in the Krstić trial and we have a lot of outstanding defendants - some of them probably a lot more criminally responsible than those who have already been convicted. These people will be able to give evidence in these cases and that is a real benefit in terms of convicting other people at the Tribunal.

Victims have a right to criticize the sentencing practice of the Tribunal, because when you compare the sentences that are imposed against what might be imposed for a single murder in a domestic jurisdiction, they seem to be very lenient. Now the Trial Chambers and the

Appeals Chamber in looking at sentencing take account a variety of factors, but the main sentencing principle is to make sure the sentence reflects the criminality of the accused, what that person did. You start with that. What would be a sentence that would reflect that criminality? Then you look for aggregating circumstances or mitigating circumstances.

... the main sentencing principle is to make sure the sentence reflects the criminality of the accused, what that person did.

What the Tribunal is also required to do is look at the sentencing practice of the former Yugoslavia. For these crimes in the former Yugoslavia the sentence is a minimum of five years and a maximum of 20 years, or the death penalty, which no longer exists. The Trial Chambers have interpreted that as meaning life imprisonment would be imposed. But a life imprisonment sentence in many European prisons where most of

these people would be sent to serve their sentences is generally 20 years. That is why we get 35 years and sentences like that.

One of the principles that I think that the Tribunal has gained in looking at the sentencing practice in the former Yugoslavia is this idea of rehabilitation of a person, whether there is any possibility of a person rehabilitating themselves. When the accused pleads guilty and confesses to his criminal responsibility, that is seen as evidence of a capacity on the part of that person to rehabilitate himself or herself. It's not a main sentencing feature, but it is something that the Trial Chambers have to take from the sentencing practices of the former Yugoslavia. The other sentencing principles are basically retribution and deterrence. Let us watch a few of clips of statements made by persons who pleaded guilty.

(court transcript)

Case name and number: Nikolić (IT-02-63)
Accused: Momir Nikolić
Date: 29 October 2003

Your Honours, by this statement, I wish to explain to you in the simplest and shortest way possible the reasons for my guilty plea to Count 5 of the Indictment. I arrived at this decision on my own, without any kind of pressure, threat, or persuasion by my counsel or by the Prosecutors, and I decided to come before this Tribunal and admit that a crime happened in Srebrenica in which I myself participated and for which I expect adequate punishment. I sincerely wish before this Chamber and before the public, especially the Bosniak public, to express my deep and sincere remorse and regret because of the crime that occurred and to apologise to the victims, their families, and the Bosniak people for my participation in this crime. I am aware that I cannot bring back the dead, that I cannot mitigate the pain of the families by my confession, but I wish to contribute to the full truth being established about Srebrenica and the victims there and for the government organs of Republika Srpska, and all the individuals who took part in these crimes should follow in my footsteps and admit to their participation and their guilt, that they should give themselves up and be held responsible for what they have done. By my guilty plea, I wanted to help the Tribunal and the Prosecutors to arrive at the complete and full truth and the victims, their brothers, mothers, and sisters should -- I wanted to avoid their being subjected to additional suffering and not to remind them of this terrible tragedy. Your Honours, I feel that my confession is an important step toward the rebuilding of confidence and coexistence in Bosnia and Herzegovina, and after my guilty plea and sentencing, after I have served my sentence, it is my wish to go back to my native town of Bratunac and to live there with all other peoples in peace and harmony, such as prevailed before the outbreak of the war. Thank you, Your Honours, for giving me this opportunity to address you.

(court transcript)

Case name and number: Obrenović (IT-02-60/2)
Accused: Dragan Obrenović
Date: 30 October 2003

On the territory of the country in which I was born, shooting from firearms was usual when celebrating the birth of a male child. These shots tell you everything, what a new male member of the family means and what is expected of him -

strength, protection; he should be a warrior, a soldier, the head of the family, as they say in our parts. Unfortunately, when other kinds of shooting started in the former Yugoslavia, shooting in war, it was normal for every man, every male child, to put on a uniform, take up a weapon, and go to protect his homeland, his nation, and ultimately his family. This was expected of him. This was his role, a sacred role. There was no choice. You could be either a soldier or a traitor.

At the beginning of the war, it seemed as if the war and all it brought with it was impossible, that this wasn't really happening to us, and that everything would be resolved within a few days, and that finally our generation would have a chance. We didn't even notice how we were drawn into the vortex of inter-ethnic hatred and how neighbours were no longer able to live beside each other, how death moved into the vicinity, and we didn't even notice that we had got used to it. Death became our reality. Unfortunately, it became everyday reality. Who before that could have believed that the horrors of war would have become everyday reality? Who could have believed that they could become a part of our lives? Surrounded with horrors, we got used to them and went on living like that.

Among those horrors, things happened that were done by people who knew each other, people who, until yesterday, had lived almost as family members together. In Bosnia, a neighbour means more than a relative. In Bosnia, having coffee with your neighbour is a ritual, and this is what we trampled on and forgot. We lost ourselves in hatred and brutality. And in this vortex of terrible misfortune and horror, the horror of Srebrenica happened.

I am here before Your Honours because I wish to express my remorse. I have thought for a long time, and I'm always followed by the same thought - guilt. I find it very hard to say this truth. I am to blame for everything I did at that time. I am trying to erase all this and to be what I was not at that time. I am also to blame for what I did not do, for not trying to protect those prisoners. Regardless of the temporary nature of my then post. I ask myself again and again, what could I have done that I didn't do? Thousands of innocent victims perished. Graves remain behind, refugees, general destruction and misfortune and misery. I bear part of the responsibility for this.

There is misfortune on all sides that stays behind as a warning that this should never happen again. My testimony and admission of guilt will also remove blame from my nation because it is individual guilt, the guilt of a man named Dragan Obrenović. I stand by this. I am responsible for this. The guilt for this I feel remorse and for which I apologise to the victims and to their shadows. I will be happy if this contributed to reconciliation in Bosnia, if neighbours can again shake hands, if our children can again play games together, and if they have the right to a chance. I will be happy if my testimony helps the families of victims, if I can spare them having to testify again and thus relive the horrors and the pain during their testimony. It is my wish that my testimony should help prevent this ever happening again, not just in Bosnia, but anywhere in the world. It is too late for me now, but for the children living in Bosnia now, it's not too late and I hope that this will be a good warning to them.

In our wartime sufferings, no one has come out as the victim; everybody is suffering now. On all sides, there is still pain. What has won the victory is misfortune and unhappiness, as a consequence of blind hatred. The spirit of this unhappiness still hovers over our Bosnian hills, which have suffered so much, and it will

take years to wipe out the traces of this horrible war and to have smoke rise again from people's chimneys, from the hearths, and maybe decades will have to pass before the wounds in people's souls are healed. If my confession, my testimony, and my remorse, if my attempt to face myself contributes to the quicker healing of these wounds, I will have done my duty as a soldier, a fighter, a human being, and a father.

In the end, I wish to thank the Prosecution for their efforts to establish the truth and for their efforts to have justice done. I would like to thank you, Your Honours, for listening to me so attentively throughout my testimony. I tried to answer every question put to me as correctly and truthfully as I could.

Questions and Answers Session

Matias Hellman:

There is a question for Mr Harmon. First, this person wishes to congratulate him on his work and the conviction of genocide committed against the citizens of Srebrenica. Then there are some questions related to indictments being issued or not issued. “Why is Pelemis, the commander of the execution squad, not indicted?” “Why is Deronjić not held responsible for Srebrenica?” And then a question from the Women of Srebrenica based in Tuzla: “Since we have prepared a dossier on Srebrenica proving that individuals from the international community are responsible for the genocide committed against Bosniaks in Srebrenica, why have charges not been raised against individuals from the international community?”

Mark Harmon:

We have stopped issuing indictments at the Tribunal. We are now in the phase of the institution where we are going to complete our trials and then we are going to pass over our trials to the Bosnian court. The Tribunal had a limited mandate. It was to indict people who are most responsible for these crimes. I dare say, in Srebrenica and in other crimes that were committed in Bosnia, far more people could have been indicted than were. It’s a reality of the institution. We are a limited, small institution. We cannot indict everybody. The hope for continued justice is with the Bosnian court and if you have information about any individuals, you should provide that information to the State Court. The Tribunal will be transferring information and cases to that institution and indeed I think the first case was already transferred last week.

As for Mr Deronjić, he is a well known local figure, and he entered a guilty plea for crimes committed at Glogova, not for crimes committed at Srebrenica. The killing operation at Srebrenica was a military-run operation. Mr Deronjić was a civilian. He was knowledgeable about what was happening as were most people in this community. Mr Deronjić entered a guilty plea for various crimes and he has provided significant evidence in multiple trials before the Tribunal.

As far as the international community is concerned, there are civil matters being pursued in the Netherlands now in respect of the Dutch Government’s participation in the events in Srebrenica and it will be up to a court in the Netherlands to decide the case.

Matias Hellman:

There are two questions here relating to the Commission on Srebrenica and its reports: “You know, as well as we do, that a list has been published containing the names of 900 persons who were directly involved in the massacre of innocent people in Srebrenica. We know that many of them still occupy very important positions. Our question is - why these persons have not been arrested immediately after the list had been disclosed, and was this done on purpose so that they could have more time to escape?” There is also a comment that a small number of indictments have been issued against Serbs who committed crimes against the Muslims of Srebrenica.

I think that what Mark said is actually what the Tribunal can provide in terms of a response to that question. The Tribunal is no longer issuing new indictments. These are matters under the jurisdiction of the domestic judiciary and as far as I know the list mentioned is not a list of accused. What the exact status is of these people is something that we can’t make any comments on because, as I say, this is not in the jurisdiction of

the Tribunal. We have to leave that to the domestic organs and they have to provide the answers to that.

We have more questions which I will read out and ask Mark if he is able to say something in response:

“What is the difference between a Serb criminal and a Muslim criminal (since your goal is to only present Serbs as criminals)?”

“Is it possible that only Naser Orić is responsible for thousands of killed Serbs in the territory of Bratunac, Milići, Srebrenica and Skelani municipalities?”

“What is the position of the Prosecutor’s Office if it’s known that the Serbs who voluntarily remained in Srebrenica in 1992 were killed and their bodies have not been found yet (the perpetrators are known)?”

“Is it possible that the Office of the Prosecutor is not informed about prisons where Serbs were detained, tortured and killed in a most brutal way?”

“How is it possible that in 1995 there was a huge number of armed Muslim soldiers in Srebrenica if it was a protected and [de]militarised zone?”

Mark Harmon:

Well some of those questions I can’t answer. Let me start with what’s the difference between a Muslim criminal and a Serb criminal: there is no difference. As to the suggestion that only Serbs are criminals, we categorically reject that. That is not and never has been the view of the Tribunal or the OTP. I want to tell you folks something that may come as a surprise to some of you: we are equal opportunity prosecutors. The first case I had to investigate and to prosecute was a case where the victims were Serbs, and I pursued it with all of my energy for over one year and I got nowhere. The reason I got nowhere was because the evidence was either in the Republika Srpska or it was in Serbia. In 1994 and in 1995, Serbia said, “we are not going to cooperate with you, we don’t recognize you”. And Republika Srpska said, “we are not going to cooperate with you”. We are a court of law that tries cases based on evidence, not speculation, not guesswork. We need witnesses, we need documents, we need physical evidence. So that case I had, I closed it - not because I didn’t want to prosecute, believe me, I wanted to prosecute that every bit as much as I wanted to prosecute General Krstić, but I couldn’t, because I was hamstrung by the lack of cooperation with the authorities in Republika Srpska and Serbia.

Why does there appear to be a disproportionate number of Serbs? It’s not that we are prosecuting Serbs because they are Serbs. We need the evidence and we have always operated on that basis. Now, again, if there are people in this audience who believe they have evidence against those alleged war criminals then at this point in time since we are not indicting anybody anymore, you should take that evidence to the State Court and present it to the prosecutors and the investigators there. The Tribunal was never designed to prosecute every criminal who committed a crime during the wars in the former Yugoslavia. Its mandate has been to prosecute the persons who are most responsible for these crimes and defer to the domestic courts to prosecute people for the remaining crimes. That means that the domestic courts will have to be mature institutions. They have to have the support of all the people in this country to make sure that the evidence is collected and presented. There has to be a proper legal process, a proper defence bar and a proper prosecution and the courts must operate with integrity.

If the state courts are confronted with the same thing that we were confronted with at the Tribunal, people who don't have the moral courage to step forward and bear witness to the crimes that were committed, then there will be not as many prosecutions as you folks think are necessary. The responsibility to go forward in those cases is yours, people who in your communities who have that evidence. So I urge you, if you have the names of perpetrators, I would urge you to go forward with the state authorities.

Matias Hellman:

There are more questions, a number of them from Mrs Subašić. "Can the associations have the footage that was shown for their archives?" - Yes, that is possible, in principle anybody who is interested can have everything that is available, the public materials that are presented in the trials. A lot of this material is already on the CDs that we have distributed to those present. One purpose of the existence of the Tribunal is to make sure that the large amount of material that has been gathered should not only remain in the archives, but should be made available to people in Bosnia and Herzegovina.

Another question: "Why the law has not satisfied justice?" - I think that one court cannot provide total justice. I believe that it can offer some justice, but it cannot restore what was destroyed and unfortunately our court cannot provide compensation for the victims. This was discussed in The Hague and the Judges did suggest to the United Nations that some kind of model of restitution to the victims should be set up. But unfortunately that is not part of the mandate and it is not within the power of the Tribunal.

Mark Harmon:

I have a question that was addressed to me: "Where do you draw the line in the selection of defendants? Who is high enough in hierarchy?" - and the question goes on. In the beginning of our institution and the investigations in 1994, I can remember going to the institution, and initially the evidence that we had was no thicker than the book I'm holding in my hand. We started our investigations, we started to make selections of people first of all based on the evidence, which always is a strong way to start. The criteria for identifying people who the evidence showed should be indicted fell within a couple of categories. One was their rank and position, were they people who were significantly responsible for the crimes that were committed? Were they notorious offenders? There were people in some communities who were utterly barbaric, who stood head and shoulders over others, who were notorious offenders. So we took a look at those types of people as well and that is how early on we made a selection in our process of who should be indicted. It could be either a very high ranking person, or somebody who was notorious, but at the end of the day it depended upon what evidence was available. As we got toward the end of our mandate and the State Court was beginning to be a reality, it was no longer possible for us to indict notorious offenders. Low ranking notorious offenders should in our judgement be prosecuted by the State Courts. We looked at the highest ranking people. So again I come back to the role of the State Court: we can't prosecute everybody, but the State Court deserves your support. If you are interested in the prosecution of war criminals, you need to devote your energies in part to the State Court.

Matias Hellman:

Further: "If the UN forces knew that the army of Republika Srpska would attack the municipality, why was this not prevented? Why wasn't the conflict prevented as well as the consequences?" - I think that Mark has already given as much of an answer as possible.

Then there were several questions about why the Tribunal or the international community don't do more to arrest Karadžić and Mladić here. I must say that this is not something that is in our power. One must make a difference between the Hague Tribunal

and the international community. Perhaps the Hague Tribunal can be a part of the international community, but definitely within the international community, the Tribunal is an institution that is constantly insisting that all states act in accordance with their obligations and do all in their power to arrest the fugitives that are still at large. The Tribunal does not have its own police forces. It cannot go out and arrest fugitives. We are constantly reminding those whose responsibility it is to locate and arrest people. That is all that we can say about that question.

One more question: “The commander of the safe area of Srebrenica, Naser Orić, has never shied away from nor avoided cooperation with the Hague Tribunal which certainly confirms that he would respond to the Tribunal’s summon in a fine and dignified manner. Why was he arrested in a way in which fugitives are arrested?” - I am not sure if we can give you an answer, but what I can say is that generally the policy is to process all the indictments confidentially.

Jean-René Ruez:

I have one more question here: “Did anyone investigate how many prisoners of war were executed and how many were killed in combat with the column that was making its way to Tuzla?” - Yes, for sure, this issue was under investigation, and in reality, it still is. The situation is, in fact, quite simple. We know the location of the primary graves. We know the location of the secondary graves and we make connections between the two. What has to be done is the finalisation of the exhumation process. All the people who are in these graves have gone through detention sites and execution sites. These ones are not killed in combat. These ones did not blow up on mine fields trying to reach Muslim-held territory. So once all the exhumations are finalised, it will be possible to have a precise assessment of a number. It will, anyhow, always be a minimum figure because we know, for sure, that we are missing some graves that we haven’t found. There is a grave with bodies of people in Potočari that we have not found yet. One day someone will have some information and the exhumation will be possible.

So knowing that the reliable figure that we are using now is the ICRC number of missing people, it will be a subtraction of that number of missing according to ICRC records and the number of those that were found in these mass graves. The difference will be those who were either killed in combat during the way to Tuzla or died on mines. However, another thing that I didn’t develop during my presentation was that in reality the killing did not stop on 17 July. This operation was followed up by a cleansing of the terrain operation that lasted several weeks after the events and the famous conversation that General Krstić had online, having received the information who was surrounded and when he said; “Kill them all,” - it’s more certainly in that context that this sentence was pronounced. So, now the priority is to finalise these exhumations. That process was handed over to the Bosnian government in 2001 and we provided them with information on all the graves we knew about. But indeed it is a slow process, especially when one compares that process with the one that happened in Kosovo. So, we can only deplore that we are not at the end of that yet.

... in reality the killing did not stop on 17 July. This operation was followed up by a cleansing of the terrain operation that lasted several weeks after the events...

Matias Hellman:

Next question: “Bearing in mind that only a few individuals have been so far brought to trial

and also knowing the capacities of the court and the OTP in Bosnia and Herzegovina, one will have to wait for several tens of years if not more for the justice to be done. The only solution for the families to see criminals punished is to appoint a ‘special’ prosecutor for Srebrenica. I would kindly ask for your comment and answer to this.”

Again, domestic organs are now continuing investigations and issuing new indictments. It will be up to the organs of Bosnia and Herzegovina as to whether they will set up a special prosecutor for Srebrenica. In any case, it is good news that recently a special section for war crimes has been set up in the Prosecutor’s Office of Bosnia and Herzegovina. Now that the Hague Tribunal is going to finish its mandate, I am hoping that we will see more and more work done on this matter by the domestic judiciary. Of course a lot of time will be required for that, but if I remember rightly, the Prosecutor’s Office of Bosnia and Herzegovina has stated that Srebrenica is now one of their priorities.

Audience member:

Is there a possibility of trial in absentia? For example, in view of the fact that Karadžić and Mladić are the last big names left to be brought to trial and I don’t believe that they will be arrested, because they could have been arrested by now. Will they escape punishment?

Mark Harmon:

There is no possibility of a trial in absentia in front of the International Criminal Tribunal for the former Yugoslavia. Our rules specifically prohibit such a trial. I agree with you, they could have been arrested by now, and we can only wait and see what resolve the international community can direct toward that task. It’s been 10 years. It’s been too long.

Olga Kavran:

I would just like to repeat something that the President of the Hague Tribunal has said: “The Tribunal itself will not close until Karadžić and Mladić appear before the Tribunal” - so that is what we will wait for and I hope that we will see that happen.

Mark Harmon:

I should add one thing and that is this. That there is absolutely no doubt that Karadžić and Mladić know the charges that have been pending against them for about a decade. In the Rule 61 hearing that took place about nine or 10 years ago, Dr Karadžić sent two separate sets of lawyers to participate in those hearings because he wanted to intervene. And the Judge essentially said that that is not possible in these proceedings: if Dr Karadžić wanted to show up in person, he could participate in the proceedings. His two sets of lawyers were dismissed from the court room and Dr Karadžić never did appear before the Tribunal.

Audience member:

Gentlemen, I would like you to tell me when the international community and the ICTY will pressure the Serbian authorities to hand over Radovan Karadžić, because they are hiding him, and to explain to them that we from the Federation, us in the Federation, do not have any persons being tried or sought by the ICTY whom we did not hand over.

Matias Hellman:

I think that I already answered that, but I would like to state that virtually each week you can see in the media a statement by somebody from the Hague Tribunal insisting on the full cooperation of states and insisting on the arrest of all fugitives. Believe me, every one of us would be happy if all the remaining fugitives were to appear at the Tribunal tomorrow. But this is a question of political will of different states. I hope that this “political will” will be found to complete that job.

Closing Remarks

Branko Todorović:

Today we had the opportunity to face frightening crimes from our recent past and first of all, I would like to express my condolences to the family members of the victims who are here, to share and express my solidarity with them.

Listening to what was said here today, we really have to ask ourselves how to build peace and reconciliation in Bosnia and Herzegovina. It is certain that this question is something that many other peoples who had conflict in their history also faced and these conflicts resulted in tragic and perhaps even greater casualties. Today we see that some of those people are living united in the European Union and that memory or recollection of the worst crimes of Second World War actually is a factor in strengthening their unity because they have gone through a stage when they sat down together in a humane and just way and took a stand on those crimes. And I am hoping that in Bosnia and Herzegovina the time is coming, the time will come when we will discuss the crimes together as crimes regardless of who was the perpetrator and who was the victim because truly the perpetrators are inhumane and victims are just victims - regardless of where they were born, regardless of whether they were men, women or children, and regardless of what ethnic group or religious group they belong to.

... truly the perpetrators are inhumane and victims are just victims - regardless of where they were born, regardless of whether they were men, women or children, and regardless of what ethnic group or religious group they belong to.

I hope that what the Hague Tribunal has done over the past years is a contribution to justice and a contribution to peace and, of course, it is a contribution to the truth and that is why I would like to thank our visitors from The Hague, not only for participating here today but for all the time which they dedicated to investigating, processing the crimes that have taken place. I know that on top of their professionalism, their humanity is also involved in their work.

I would also like to thank the families of the victims, no matter what side they come from. And I believe that many questions in Bosnia and Herzegovina, first of all the question of missing persons, we have heard here today that over 15,000 families still have no information about their dear ones. These are things that we need and should try to resolve together. And at the end, I would like to thank all of you who are here today, who are motivated enough to be here this whole day in this very cold hall. I would also, at the end, like to say that the 10th anniversary of the Srebrenica tragedy will be an opportunity perhaps to have Srebrenica to become a common symbol of all of us in Bosnia and Herzegovina, which will constantly keep reminding us that really such tragedies should never happen again.

Abdurahman Malkić:

Ladies and gentlemen, my respected co-citizens, I would like to first of all thank Jean-René Ruez, former Investigator, who presented all of these facts to us; then to Mark Harmon, Prosecutor; then to Olga Kavran and Gabrielle McIntyre, who also, contributed today by providing a lot of information and data about the work of the Hague Tribunal. I would also like to thank the Helsinki Committee for Human Rights of Republika Srpska,

BRIDGING THE GAP

BETWEEN THE ICTY AND COMMUNITIES IN BOSNIA AND HERZEGOVINA

who organized this session. And I hope that this is a new experience for all of us when we have conversations and discussions based on fact, and in the future we will continue to cultivate a culture of dialogue and facts, instead of projections based on crime. Srebrenica must be a place of dialogue, where the condition of unity and diversity will be remembrance. Of course, I also believe that the Hague Tribunal, no matter how much it is burdened by political and other pressures, will be true to our hopes that justice will be carried out, no matter how long we have to wait.