THE PRACTICE OF THE INTERNATIONAL COURT OF JUSTICE – LEGAL OR POLITICAL?

- Case: Bosnia and Herzegovina vs. Serbia and Montenegro-

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Abstract

In reference to the practice of the International Court of Justice, we have frequent serious and sensitive scientific debates leading to significant dilemmas for both scientific workers – scholars and the professionals but also some social and political subjects. One of the dilemmas, for example, may be formulated in a question - **is it a legal or political practice, which serves as the fundament of the approach in the work of the International Court of Justice**. One of the apparent examples, which started the serious debate and division and the judiciary practice is the Judgment of the International Court of Justice in the case *Bosnia and Herzegovina vs. Serbia and Montenegro of* 26 February 2007.

Available, usable, authentic, and relevant documents contain information and data and statements which can clearly prove the culpability of Serbia and Montenegro in planning, preparation, organization, participation, and commission of genocide against Bosniacs in Bosnia and Herzegovina at the end of the 20th century. Unfortunately, by the analysis of the relevant provisions and the reasons of the Judgment, we can reliably and authentically conclude that this Judgment is a political, not the legal by its character. This fact can have some serious implications on the modern world, particularly if we consider the ever-growing extent, duration, and intensity of the violence, which by its content and form, has all the features and elements of the crime of genocide.

This paper is based on the postulates and principles of science, scientific-research practice, and scientific-theoretic, professional, and other knowledge relative to some relevant provisions of this Judgment. It will reveal huge omissions and crucial shortcomings, that will hopefully in the future be the subject of numerous analyses, whose results will be the illustration of what should not be done or how one should not behave within the responsible professional activity, while violating the ethical principles of the profession.

Key words: International Court of Justice, Judgement, Bosnia and Herzegovina, Federal Republic of Yugoslavia (Serbia and Montenegro), “Republic of Srpska”, aggression, genocide, Bosnian Muslims (Bosniacs), Yugoslav Army, “Army of the Republic of Srpska”, “Škorpioni” (special unit of the Ministry of Internal Affairs of the Republic of Serbia) etc.

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Starting from the facts that the Federal Republic of Yugoslavia (Serbia and Montenegro), under the leadership of Slobodan Milošević, and in accordance with the Great-Serbian fascist ideology, policy, and practice – genocidal by its character committed genocide in the Republic of Bosnia and Herzegovina (directly and with the assistance of their collaborationists from Bosnia and Herzegovina and the Republic of Croatia), with the objective to systematically and in an organized manner exterminate one nation (Bosniacs), on the national, ethnic, and religious ground and to conquer their living space, as the Nazis did during the WWII, that the United Nations failed to assume their responsibility pursuant to the Article I of the Convention on Prevention and Punishment of the Crime of Genocide to prevent the genocide against Bosniacs, the Republic of Bosnia and Herzegovina filed in 1993, under the hard conditions of the aggression and genocide, the Application before the International Court of Justice against the Federal Republic of Yugoslavia (Serbia and Montenegro) on the grounds of violation of Convention on prevention and punishment of crime of genocide. Namely, Francis Boyle the professor from the Chicago university and one of the avid experts in international law, known to the Bosnian public by his attempts to stop and punish the genocide against the Bosniacs and the aggression against the Republic of Bosnia and Herzegovina, had on 19 March, 1993 been named, by the President of the Presidency of the Republic of Bosnia and Herzegovina – Alija Izetbegović, the General Legal Agent of Bosnia and Herzegovina at the International Court of Justice at the Hague, at the world's supreme court and the highest judicial organ of the UN, with the mandate to initiate and manage all legal proceedings and the defense on behalf of the Republic of Bosnia and Herzegovina. Acting upon this mandate, on 20 March 1993, he had filed an Application on behalf of the Republic of Bosnia and Herzegovina, calling for the initiation of proceedings in the case of Bosnia and Herzegovina versus the Federal Republic of Yugoslavia (Serbia and Montenegro) on the basis of violations of the Convention on prevention and punishment of crime of genocide of 1948. On the same day, Bosnia and Herzegovina, "because of importance and urgency in this Application and to avoid further human losses, and physical and mental injuries of the hundreds of thousands of members of Bosnian people, as well as to prevent the human disaster of the unimaginable extent since the Second World War, 1939 to 1945", filed *Request for the provisional measures of protection*, so as to invite the Federal Republic of Yugoslavia to cease immediately (its) aggression and refrain from "all the acts of genocide and other genocidal acts against the people and the state of Bosnia and Herzegovina…", and petitioned, in accordance with the Convention on prevention and punishment of crime of genocide, for the respect of undeniable right of

Bosnia and Herzegovina to self-defense - individual and collective (getting arms, military equipment and ammunition, and sending armed troops), provided in Article 51 of the UN Charter, "to defend from the armed attacks, armed aggression and acts of genocide committed by the rump Yugoslavia and its agents and collaborators".[1] This was the first time that one state (Bosnia and Herzegovina) filed an Application invoking *Convention on prevention and punishment of crime of genocide*.

Bosnia and Herzegovina listed in the *Application* "a whole series of event in Bosnia and Herzegovina " between April 1992 and 20 March 1993, which according to the definition in the Convention on prevention and punishment of crime of genocide, "suggest the acts of genocide, and it alleges that those acts were committed by the forces which followed the instructions and orders from FR Yugoslavia (Serbia and Montenegro) or with their support, and therefore, the latter is responsible according toe the international law".[2]

Having considered the Case, the Court, taking into account the urgency of the *Request for the provisional measures*, reacted "incredibly fast". It scheduled an urgent public hearing, which was held on 1st and 2nd April 1993, during which the parties to the proceedings gave their opinions related to the Request for the provisional measures.[3]

Following the public hearing and in light of several justified opinions, the Court and the Presiding Judge, Prof. Dr Robert Jennings, found "the basis for its jurisdiction" and concluded "that circumstances required the provisional measures, provided in Article 41 of the Statute of the Court". In this regard, the Court, in accordance with Article 41 of the Statute imposed provisional measures in its Order No. 8 of 8 April 1993, in favor of Bosnia and Herzegovina:

- first, "the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in accordance with the responsibilities from the Convention on prevention and punishment of crime of genocide of 9 December 1948, **take all necessary actions** in its power to prevent **the commission of crime of genocide**";[4]

- second, "the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should particularly ensure that all the military, paramilitary or irregular armed formations that might be under its command or it supports, as well as any organizations or individuals that might be under its control, command or influence, do not commit any acts of genocide, associations to commit genocide, direct or public incitement to commit genocide or accessory to genocide, whether they be directed against the Muslim population of Bosnia and Herzegovina or any other national, ethnic, racial or religious group";[5]

International Court of Justice found in its Decision of 8 April 1993 that in Bosnia and Herzegovina "there was a serious danger that the crime of genocide was committed". In this regard, the Court cited the UN GA Resolution 96(1) of 11 December 1946, which stated that the crime of genocide "shocked the consciousness of the mankind, whose consequences are large losses for the humanity … and that it is in contravention to all laws of moral, spirit and objectives of the United Nations".[6]

On 27 July 1993, Bosnia and Herzegovina filed another Request for provisional measures before the International Court of Justice, "that needed to be undertaken immediately to protect the rights of people and the state of Bosnia and Herzegovina, before the Judgment on this matter is rendered", because the Federal Republic of Yugoslavia (Serbia and Montenegro) "did not observe the Court's Decision" an it continued "with its campaign of genocide against the people and the state of BiH, despite the Court's Decision of 8 April 1993". This extraordinary step was taken because the Federal Republic of Yugoslavia (Serbia and Montenegro) "violated all the three protective measures", imposed by the Court on 8 April 1993, "thus inflicting a grave damage to people and the state of Bosnia and Herzegovina". In addition to pursuing the "campaign of genocide", the Federal Republic of Yugoslavia (Serbia and Montenegro) "now planned, prepared, incited the conspiracy into the division, proposed and negotiated about the division, breaking into pieces, and adjoining the sovereign Bosnia and Herzegovina, a member of the Organization of the United Nations, with the help of genocide".[7]

Following the public session (25 and 26 August 1993, International Court of Justice[8] **upheld** with its Order of 13 September 1993. the provisional measures pronounced in paragraph 52 A (1), 52 A (2) and 52 B of the Court Decision of 8 April 1993, emphasizing that "**they have to be instantly and efficiently implemented**".[9]

Findings of the Court of 8 April and 13 September, relative the imposition of the provisional measures, with which the Court suggested that the Federal Republic of Yugoslavia (Serbia and Montenegro) might be responsible for the commission of the c rime of genocide, produced the legal obligations which were supposed to be observed by both parties to the proceedings.[10]

The Federal Republic of Yugoslavia (Serbia and Montenegro), unfortunately, failed to observe the Court instructions relative to the mandatory provisional measures (8 April and 13 September 1993). Namely, the Federal Republic of Yugoslavia:

- Failed to abide by its **obligation** "*to prevent the commission of genocide*", specified in paragraph 52 A (1) of the Order of 8 Aril 1993, confirmed also in the Order of

13 September 1993, to "*undertake all the necessary steps in its power to prevent the commission of crime of genocide*";

- Nor it respected certain measures that would "particularly" have to be taken to prevent the commission of genocide, specified in Paragraph 52 A (2) of the Order of 8 April 1993, also confirmed in the Order of 13 September 1993, in which t was requested that it "*ensures that all … organizations and individuals that could be subjected to its … influence … not to commit any act of crime of genocide*".[11]

The Federal Republic of Yugoslavia (Serbia and Montenegro) did everything in its power between 1993 and the beginning of process (2006) to prevent or postpone the trial, including also the cheap bargain. It kept challenging the jurisdiction of the Court ascertaining that the International Court of Justice does not have jurisdiction in this case, to which the Court on several occasions rendered its Decision that **it has jurisdiction**. After almost 13 years – the trial of the century finally began on 27 February 2006.

The Serbia and Montenegro legal team had kept **doubting jurisdiction** of the Court (claiming that the Federal Republic of Yugoslavia was not a UN member, that it had no access to the Court, that it was not bound by the Genocide Convention, as it had never been a signatory, and that it asks the Court to declare it had no jurisdiction calling itself upon the judgments in the cases of Serbia and Montenegro versus NATO member states); **denying genocide** in Bosnia and Herzegovina (not even in Srebrenica had, according to them, the crime of genocide been committed. The genocide in Srebrenica was defined as an "**ordinary military action**", a conflict between two armies, which had, "once the Bosnian army was defeated, lead to revenge"); **denying the existence of a genocidal plan**; **claiming** that **genocidal intent cannot be proven**; continuously **representing the thesis that a civil war** had taken part in Bosnia-Herzegovina, for which all three sides bear equal guilt and responsibility; the **reason of the "conflict"** in Bosnia-Herzegovina lies, according to them, in the historic intolerance among the ethnic groups in Bosnia-Herzegovina; the direct **cause** for that civil war was, in their view, the murder of Serb bridegroom in the Baščaršija quarter of Sarajevo; **admitting the intent** by Serbs to gain territory in order to form a Serb state in Bosnia-Herzegovina and join it to Serbia which, according to them, did not imply any crime. The legal team of Serbia and Montenegro at the same time kept avoiding to admit that his "Serb territory" was gained by genocide and other forms of crimes and that it needed to stay free of Muslim population and that more than half of population of the Republic of Bosnia and Herzegovina, mainly Bosniacs, were the victims of genocide and they were in the course

of aggression killed, incarcerated in the concentration camps, injured or forcibly transferred from their homes.

According to the Serbia and Montenegro legal team, **crimes were not directed against the Muslims as a group**, but rather against individuals. They were based on political grounds and could therefore not be considered genocide; "**the strategic goals of the Serb people**" (of 12 May, 1992) were neither genocidal, nor did they contain any genocidal intent, but were much more the result of a fear by Serbs that genocide would be committed against them, which is a manic *mens rea* for the justification of the planning and commission of the crime; **the combat activities** in Bosnia and Herzegovina were a result of the action of the League of Patriots and other Muslim formations; the **Yugoslav People's Army was a legitimate armed force in Bosnia and Herzegovina** with a task of protecting the Serbs; Republika Srpska and its army were not under FRY (Federal Republic of Yugoslavia) control; "Republika Srpska was an independent state" and "the Army of Republika Srpska was a fully separate organization"; **FRY authorities had no** involvement in the crimes in Bosnia-Herzegovina; **units of Serbian Police, "Šešelj troops", the "Serb Volunteer Guard", the "Red Berets"** and other, according to them - paramilitary formations, were not under control of the military and police apparatus of the FRY, but under the control of various Serb crisis staffs.

The legal team of Serbia and Montenegro **questioned the number of victims and the crimes themselves**, trying to minimize them, which is (minimizing of the number of victims) one of the most frequent notions within the state strategy of genocide denial, as well as attempt to give them a different legal qualification, thus willfully avoiding even to mention the research results of the *Commission for the research of events in and around Srebrenica* between 10 and 19 July *1995* by the Republika Srpska Government. By diminishing the number of victims and reducing them to one category, the legal team of Serbia and Montenegro claimed the crimes were not of massive character, tendentiously ignoring **mass graves** and the scope of the intentional cover up of genocide, which included throwing human remains into pits, systematic re-digging, transferring and dumping victims' bodies, and burning victims' remains in order to cover up genocide and prevent serving of justice. In Bosanska Krajina, according to their claims, only 1,699 individuals had been killed; in Srebrenica, some 5,300 – of which 3,000 had been "soldiers"; in Bratunac, only 18 – etc. In claiming that, they relied **on one of their evidence** – "data" by a private association (of citizens) from Sarajevo – Investigation – documentation center of Mirsad Tokača and the results of his dilettante, manipulative, and quasi research.[12]

This commissioned and unfinished assessment "of the victim count" published in Banja Luka on 15 December 2005, just in the eve of the hearing before the International Court of Justice, the Investigation-documentation center delivered to the Legal team of the Federal Republic of Yugoslavia (Serbia and Montenegro), which was presented by FRY before the International Court of Justice. The Serbian and Montenegro legal team persisted in using this quasi research, among other things, for the following reason: firstly, "it totally annuls the value of the Bosnian Application, and the secondly "the research shows that a large number of victims got killed during fights.[13] These reasons served the Serbia and Montenegro legal team as argument to prove the thesis relative to the civil war in Bosnia and Herzegovina.

Camps were presented as collection centers for POWs, and the **forcible transfer** of non-Serb populations was qualified as the intent to **temporarily transfer** Muslims and Croats.

The legal team of Serbia and Montenegro, however, did **admit crimes** in Bosnia-Herzegovina, and did not deny the commission of crimes by stating the claim that they were committed by the Bosnian Serbs and members of "paramilitary units" from Serbia, and that these cannot be characterized as the crime of genocide. The intent is obvious to transfer the state responsibility of Serbia and Montenegro onto Bosnian Serbs. They had also **admitted** that the Federal Republic of Yugoslavia had, until 1994, aided Bosnian Serbs.

Trying to avoid responsibility for genocide, the Serbia and Montenegro legal team had **consistently** and without arguments **denied charges** and uselessly **repeated** the same phrases and claims for tens of times. Lacking proof for their theses, the Serbia and Montenegro legal team had **openly and blatantly falsified** and **speculated with historical facts**.

In order to strengthen his credibility, the legal team of Serbia and Montenegro had intended to distance the current authorities of Serbia and Montenegro from the Slobodan Milošević regime, claiming that even the oppositions in Serbia were in conflict with the criminal regime, in which they were "subjected to the attacks and blackmailing of the organized crime". However, their overall action had shown respect to the territorial conquests of the leader of the joint criminal enterprise. The conclusions by Professor Stojanović on the lessons in the aftermath of "enormous tragedy" are tragically immoral. Anti-fascists and the democratic public had expected the legal team of Serbia and Montenegro to present at least a minimum of catharsis in its facing the truth, which, unfortunately, never came into being. The truth is, however, the *sine qua non* of future coexistence in this area.

Unlike the legal team of Serbia and Montenegro, the legal team of Bosnia and Herzegovina was in a stable and rather advantageous situation, as it had at its disposal an

enormous corpus of evidence – relevant documentation from a variety of sources. These are sufficient evidence to prove the responsibility of the Federal Republic of Yugoslavia (Serbia and Montenegro) for genocide committed in Bosnia and Herzegovina at the end of the 20th century.

Given the available time, the Legal team of Bosnia and Herzegovina had presented only the most significant evidence and events, and had particularly demonstrated the existence of the **plan, intent,** and **scope** of the joint criminal enterprise of the Federal Republic of Yugoslavia in committing genocide against the Bosniacs in the Republic of Bosnia and Herzegovina.

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In its judgment of 26 February 2007, in the application by BOSNIA AND HERZEGOVINA versus SERBIA AND MONTENEGRO, for violating the Convention on the prevention and punishment of the crime of genocide, the ICJ had determined, *inter alia*, the following:

- it had **incompletely and incorrectly identified the respondent**, claiming that the "Republic of Serbia remains the respondent and that, at the time of passing of this judgment, it is indeed the only respondent in this case", whereas the responsibility "for past events..." refers to the "state of Serbia and Montenegro";[14]
- it had **excluded the Republic of Montenegro from the proceedings** with the explanation – or rather, minute manipulation of the Court – that "it does not continue the legal subjectivity of Serbia and Montenegro";[15]
- **it had confirmed the jurisdiction** of the Court in accordance with Article 9 of the Genocide Convention to decide the proceedings initiated before it on 20 March, 1993, refusing any jurisdictional objections;[16]
- **it had defined the protected group**, or rather, the identity of the group against which genocide had been committed, as opposed to Bosnia-Herzegovina (i.e. applicant), which had negatively defined the protected group as the "non-Serb" population ("the non-Serb national, ethnic or religious group within Bosnia and Herzegovina, but not restricted to that territory, including particularly the Muslim population");[17]
- direct **participation by the FRY and its armed forces in military operations of aggression and conquest in Bosnia and Herzegovina which**, alongside ICTY Judgments in the Tadić and Čelebići cases, confirms that what happened was an

international armed conflict. Related to this, the ICJ states: "**It is true that there is much evidence of direct or indirect participation by the official army of the FRY, along with the Bosnian Serb armed forces, in military operations in Bosnia and Herzegovina in the years prior to the events at Srebrenica**", which was ("**such participation**") "**condemned by the political organs of the UN on several occasions**", "**demanding that the FRY stops with it**";[18]

- The Federal Republic of Yugoslavia was "**making its considerable military and financial support available to the Republika Srpska, and had it withdrawn that support, this would have greatly constrained the options that were available to the Republika Srpska authorities**";[19]
- **The Federal Republic of Yugoslavia had "without doubt" "was providing substantial support, *inter alia*, financial support, to the Republika Srpska (cf. paragraph 241 above), and that one of the forms that support took was payment of salaries and other benefits to some officers of the VRS**";[20]
- **firm, stable and close political, military and logistic links between "between the federal authorities in Belgrade and the authorities in Pale, between the Yugoslav army and the VRS"**;[21]
- "**major support"** that the FRY "**to the Republika Srpska, without which it could not have conduct[ed] its crucial or most significant military and paramilitary activities"**;[22]
- **The Federal Republic of Yugoslavia even in July of 1995** ("during the period under consideration") **"was in a position of influence, over the Bosnian Serbs who devised and implemented the genocide in Srebrenica, unlike that of any of the other States parties to the Genocide Convention owing to the strength of the political, military and financial links between the FRY on the one hand and the Republika Srpska and the VRS on the other, which, though somewhat weaker than in the preceding period, nonetheless remained very close**";[23]
- **genocide was committed against the Bosniacs in Bosnia and Herzegovina**. With this in mind, the Court concluded **"that the acts committed at Srebrenica, falling within Article II *(a)* and *(b)* of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide"**;[24]
- **that genocide against "Muslims of Bosnia and Herzegovina" was committed** "**in and around Srebrenica**";[25]

- **Bosnian Serbs had,** "**after taking over Srebrenica in July of 1995", "devised and committed genocide at Srebrenica"**;[26]
- **the objective "of Bosnian Serb forces" was the "extinction the forty thousand Bosnian Muslims living in Srebrenica, a group which was emblematic of the Bosnian Muslims in general"**;[27]
- **the existence of a genocidal enterprise**. Namely, **"Bosnian Serb forces were well conscious at the moment when they began this genocidal undertaking"**;[28]
- all liquidations "**systematically targeted Bosnian Muslim men of military age, regardless of whether they were civilians or soldiers"**;[29]
- **all killings were planned**;[30]
- **"some members of the VRS Main Staff intended to destroy the Bosnian Muslims in Srebrenica"**;[31]
- the decision to kill "**the adult male population of the Muslim community in Srebrenica was taken by some members of the VRS Main Staff..."**;[32]
- the genocide against the **"Muslims of Bosnia and Herzegovina"** was committed by the Vojska Republike Srpske and the (Republika Srpska) Ministry of Interior;[33]
- the genocide against the **"Muslims of Bosnia and Herzegovina"** was committed by **"Bosnian Serb forces"**– VRS and MUP (Ministry of the Interior), including senior officers;[34]
- VRS and other **"Bosnian Serb forces"** were subordinated to the **"political leadership of Republika Srpska"**;[35]
- **Republika Srpska had issued orders to the Vojska Republike Srpske and other "Bosnian Serb forces"**;[36]
- **the perpetrators of genocide had acted on behalf of Republika Srpska** ("acting on behalf of Bosnian Serb authorities, in particular the Republika Srpska") and "exercised elements of the public authority of the Republika Srpska";[37]
- **the genocide against "Muslims of Bosnia and Herzegovina" was carried out by the entity Republika Srpska**. Although it "never attained international recognition as a sovereign State, but it had *de facto* control of substantial territory, and the loyalty of large numbers of Bosnian Serbs." (235) and "enjoyed some *de facto* independence";[38]
- Republika Srpska has, **apart from genocide** in and around Srebrenica in July of 1995, committed numerous **crimes against humanity and war crimes in other areas of the** Republic of Bosnia and Herzegovina;[39]

- the crime of genocide was committed in the United Nations Safe Area of Srebrenica, in July of 1995;[40]
- the international responsibility of Serbia for not preventing and not punishing genocide in Srebrenica in July 1995 has been determined, in which way Serbia **"failed to comply with its obligation to prevent genocide in Srebrenica deriving from the Convention, and that its international responsibility is thereby engaged**";[41]
- **that Serbia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide "by having failed to transfer Ratko Mladić, indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus having failed fully to co-operate with that Tribunal"**;[42]
- **Serbia has "violated its obligation to comply with the provisional measures ordered by the Court on 8 April and 13 September 1993 in this case, inasmuch as it failed to take all measures within its power to prevent genocide in Srebrenica in July 1995"**;[43]

The ICJ in its "BOSNIA AND HERZEGOVINA VERSUS SERBIA AND MONTENEGRO" JUDGMENT, based on "**big number of evidence**"[44] has **determined** that throughout Bosnia and Herzegovina, "**mass murder was committed in certain areas and places of detention**". The presented evidence, in view of the Court, "**suggests that the victims were in large majority members of the protected group, which suggests that they may have been systematically targeted by the killings**". In relation with this, the Court considers that it has been **"established by conclusive evidence"**, that "**massive killings of members of the protected group occurred and that therefore the requirements of the material element, as defined by Article II *(a)* of the Convention, are fulfilled**".[45]

ICJ accepted the relevant evidence (**a large number of unquestionable pieces of evidence**) on a large number of **mass murders** and other forms of crimes against humanity and international law, systematically and continuously committed against Bosniacs, in various parts of Bosnia and Herzegovina (in all the occupied places and towns under siege), which Serbia and Montenegro "has never challenged".[46] Although the number of victims is often counted in tens or hundreds, and sometimes, as the Court pointed in several paragraphs, even thousands,[47] the Court, without prejudice relevant to the extent, gave a surprising example of importance and gravity of murders, committed against civilians.[48]

Ignoring (completely) its **averments**, based on a **large number** of relevant evidence on the systematic and continuous practice of mass murders of Bosniacs throughout Bosnia and Herzegovina and disregarding the dimensions and extent of crimes, ICJ **was not satisfied** "**based on available evidence that it was proven beyond reasonable doubt that the mass murders of members of protected group were committed with specific intention** (*dolus specialis*) **for the purpose of total or partial destruction of a group as such**". The Court "carefully examined the proceedings before ICTY and findings of its Chambers" and observed "**that it was not proven for any of the convicted that they acted with specific intent** (*dolus specialis*)". Mass murders of protected group – Bosnian Muslims, in view of the Court, "**may constitute war crimes and crimes against humanity**". Considering that the Court did not qualify these crimes as genocide, the Court (with a big relief and delight) concluded that "**it did not have jurisdiction to establish them**".[49] Giving such an assessment, the Court, "in exercising its jurisdiction in accordance with the Convention on Genocide", found that the Applicant (Bosnia and Herzegovina) failed to prove that the murders correspond to the acts of genocide, forbidden by the Convention.[50]

Having questioned the evidence presented to it and taken into account that presented to the ICTY, the Court "**considers that it has been established by fully conclusive evidence that members of the protected group were systematically victims of massive mistreatment, beatings, rape and torture causing serious bodily and mental harm, during the conflict and, in particular, in the detention camps.**" The requirements of "**the material element, as defined by Article II *(b)* of the Convention are thus fulfilled.**" The Court finds, however, on the basis of the evidence before it, that it has "**not been conclusively established**" that those systematic and massive atrocities, "**although they too may amount to war crimes and crimes against humanity, were committed with the specific intent *(dolus specialis)* to destroy the protected group, in whole or in part, required for a finding that genocide has been perpetrated**".[51]

The Court concludes that "**Serb forces in Sarajevo and other cities had deliberately targeted civilian members of the protected group.**" However, "**leaving aside the question whether such acts can in principle of Article II, paragraph (c) of the Convention**", the Court "**does not find sufficient evidence that the alleged acts were committed with the specific intent to destroy the protected group in whole or in part**".[52] Such a conclusion by the Court is opposed to facts determined by the ICTY /Trial and Appeal Judgments in the *Galić* case), quoted by the ICJ, according to which Serb forces using "**the tactic of siege**" "**conducted a campaign of sniping and shelling against the civilian population of**

Sarajevo" whereby the civilians "**were exposed to direct and indiscriminate attacks**" causing "**the death of hundreds and injuring of thousands of them**" and that the shelling of the Markale marketplace by Bosnian Serbs, on 5 February, 1994, "**resulting in 60 persons killed and over 140 injured", "was deliberately aimed at civilians**".[53]

The Court also determines that there is "**persuasive and conclusive evidence that deportations and expulsions of members of the protected group occurred in Bosnia and Herzegovina.**" However, the Court could not conclude, "**on the basis of the evidence presented to it, that it is conclusively established that such deportations and expulsions were accompanied by the intent to destroy the protected group in whole or in part".**[54]

The Court has found "**that there is conclusive evidence of the deliberate destruction of the historical, cultural and religious heritage of the protected group"**. However, in the Court's view, "**the destruction of historical, cultural and religious heritage cannot be considered the act of genocide within the meaning of Article II of the Genocide Convention** nor **constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group**." Despite having accepted the fact that "**there is conclusive evidence on the deliberate destruction of historic, cultural, and religious heritage of a protected group**" and that such **"destruction may be highly significant inasmuch as it is directed to the elimination of all traces of the cultural or religious presence of a group, and contrary to other legal norms**", the Court, however, concludes that "**it does not fall within the categories of acts of genocide set out in Article II of the Convention**".[55]

The Court also confirms the ICTY finding from the *Krstić* case that "**where there is physical or biological destruction, there are simultaneous attacks against cultural and religious heritage, as well as against symbols of the targeted group, which can be legitimately considered proof of the intent to bring about the physical destruction of a group**".[56] However, quoting this ICTY conclusion, the ICJ has consciously, deliberately and tendentiously left out the following phrase: "**In this case, the Trial Chamber shall therefore take the deliberate destruction of mosques and homes belonging to members of the group as proof of the intent to destroy the group**",[57] i.e. the Bosniacs. The apparent relevant evidence (ICTY) on **INTENTION** to destroy Bosniacs as a group (**attacks at historic, cultural, and religious values,** "as well as **symbols of a targeted group**", "**deliberate destruction of mosques and homes**") ICJ, persisting not to render a just Judgment, refused. Apart from that, and from the fact that **"the hiding of remains from mass graves by digging them up in order to allow the desecration of the bodies and reburial in other mass graves located in even more**

obscure areas", which, according to the ICTY, "**is a strong indicator of the intent to destroy a group as such**"[58] and which is a significant indicator of genocide and clear proof of the perpetrators' intent (to commit the crime), the ICJ did not take them into account as proof of the existence of an intent to destroy the Muslims in Bosnia and Herzegovina. Unfortunately, available relevant data conclusively confirms that the Federal Republic of Yugoslavia together with its collaborationists from the Republic of Bosnia and Herzegovina, in all occupied cities and settlements, as well as those it held under siege, had deliberately, consciously, systematically and organizedly destroyed religious and residential buildings of the Bosniacs, including their cemeteries, which, according to the ICTY, represents proof of the intent to destroy the protected group as such, and which is a fact fully ignored by the ICJ.

Based on elements given to its disposal, the Court has determined that there is "**convincing and persuasive evidence that detainees in camps were subjected to terrible conditions**". In spite of such "**convincing and persuasive evidence**", the Court finds that "**the evidence presented has not enabled the Court to find that those acts were accompanied by specific intent *(dolus specialis)* to destroy the protected group, in whole or in part**." In proving its view, the Court argues that none of the ICTY cases which relate to the (mentioned) camps had included the Tribunal concluding that the accused had acted with such a specific intent (*dolus specialis*)".[59]

The court finds that only the "**the acts committed at Srebrenica falling within Article II *(a)* and *(b)* of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such**". The mentioned acts, in accordance with the specific intent to partially destroy the Muslims of Bosnia and Herzegovina, in view of the Court, represent "**acts of genocide, committed by members of the VRS in and around Srebrenica from about 13 July 1995**".[60] **Following the takeover of Srebrenica in July 1995, "the Bosnian Serbs devised and implemented a plan to execute as many as possible of the military aged men present in the enclave**".[61] **All the executions were systematically targeted at Bosnian Muslim men of military age**".[62] In accordance with that plan and the "**specific intent to destroy in part the group of the Bosnian Muslims**", "**the Bosnian Serb forces**" have, after the takeover of Srebrenica, "**killed over 7,000 Bosnian Muslim men**".[63]

In reviewing the (factual) evidence on crimes in Bosnia and Herzegovina 1991-1995, and, related to this, confirming the existence of "**widespread and serious atrocities**", the ICJ concludes that, apart from the events at Srebrenica in July 1995, "**the necessary intent required to constitute genocide has not been conclusively shown**".[64]

Bosnia and Herzegovina has, in proving the (specific) intent for genocide (*dolus specialis*), also relied on the existence of an "**overall plan to commit genocide, indicated by the pattern of genocidal or potentially acts of genocide committed throughout the territory, against persons identified everywhere and in each case on the basis of their belonging to a specified group**".[65] "**The behavior of Serbs in a variety of camps**", where "**the genocidal intent of the Serbs had become particularly clear during depictions of events in camps, because of their similarity with what had happened throughout the territory of Bosnia and Herzegovina"**, further **the takeover of government**, **the murder of human beings, the cultural destruction** and **other acts of genocide were an obvious "expression of a single project which basically and effectively included the destruction in whole or in part of the non-Serb group, wherever this ethnically and religiously defined group could be conceived as obstructing the all-Serbs-in-one-State group concept**".[66] Relevant evidence on the intent to commit genocide (from the intent by the supreme organs of government in Serbia and Montenegro and their collaborationist organs, to the intent of the perpetrators of crimes themselves) and on the aims that articulate such an intent and the genocidal acts committed "**within an organized, institutionalized framework**",[67] demonstrate the existence of a pattern by which the Serb forces had committed genocidal acts in Bosnia and Herzegovina, confirming the existence of an integral plan to commit genocide, based on which the specific intent (*dolus specialis*) on the extermination of the Bosniacs can be deducted.

Considering the "**Strategic Goals of the Serb People**", of 12 May, 1992,[68] for which even Ratko Mladić has said that they are of genocidal character,[69] the Court has not accepted the fact that based on them one can determine the existence of a specific intent. The mentioned "strategic" goals from 1992, in the Court's judgment, "**do not include the destruction of the Bosnian Muslim population**". Related to this, the Court brusquely presents the claim that the argumentation of Bosnia and Herzegovina **"does not come to terms with the fact that an essential motive of much of the Bosnian Serb leadership - to create a larger Serb State, by a war of conquest if necessary - did not necessarily require the destruction of the Bosnian Muslims and other communities, but their expulsion.**"[70] The mentioned hypothetic attitude of the ICJ is shameful and ignorant of the facts and the to day results of the research by all the authors who study Holocaust, genocide, and other forms of crimes against humanity and international law, who are consistent that the systematic **forcible expulsion of civilians** from their homes (and forcible separation of families, mass deportations in the unknown destinations, and other forms of crimes) make the integral part of every (process of) genocide. It is even more shameful to claim that "**1992 objectives, particularly the first one, were capable of**

being achieved by the displacement of the population and by territory being acquired".[71] For the ICJ, it is of relevance that the ICTY did not brand the **"Strategic Goals" as genocidal**.[72] "The 1992 "**Strategic aims**", in the court's opinion, "**do not allow the determination of the existence of a specific intent**".[73]

Bosnia and Herzegovina did not ask the ICJ to "**to evaluate whether the Bosnian Serbs were efficient in achieving their objectives**", but rather to "**look at the pattern of conduct and draw the logically necessary inferences**".[74] The Vice President of the Court claims that jurisprudence of the international criminal tribunals on this point "**is less amenable to artificial distinctions between the intent relevant to genocide and that relevant to ethnic cleansing",** than the ICJ. In his opinion, the Appeal Chamber in the *Krstić* case has clearly held that the pattern of conduct known as ethnic cleansing, can serve to prove *mens rea* for genocide. From the wealth of evidence available on the mass systematic murder of Bosniacs and the mass forced expulsion of the population, it is obvious, claims the ICJ Vice President, that genocidal intent can be reliably confirmed, a fact also confirmed by the ICTY Trial Chamber in the *Decision on the Motion for Judgment of Acquittal* in the *Prosecutor v. Milošević* case on 16 June, 2004. "**If the sole objective was to expulse the Muslim population**", which the Court had hypothetically determined, then the "**Bosnian Serbs did only as much as was necessary to achieve this objective**". Having this in mind, the Vice President rightly asks as to "**what do mass murders mean**" - i.e. what is the meaning of the policy and practice of planned and systematic killing of members of the protected group – of Bosnian Muslims, i.e. Bosniacs? "**If the Court cannot ignore that** population transfer was one way of achieving the Strategic Goals, then why should it ignore that, in fact, the Bosnian Serbs used this method as one of many - including massive killings of members of the protected group".[75]

Confirming that the "**Strategic Goals...**" do not emanate from the Government of Serbia, the Court still concludes that "**evidence before the Court of intercepted exchanges between President Milošević of Serbia and President Karadžić of the Republika Srpska is sufficient to show that the objectives defined represented their joint view**".[76]

This conclusion by the Court, confirmed by relevant documentation, is in contradiction with the above presented positions by the Court, particularly the position that the „**Strategic Goals...**" "**do not make the existence of a specific intent improbable**". The Court's finding on the significance and weight of concrete evidence – **intercepted conversations** between Milošević and Karadžić, which, according to the Court, were sufficient to determine that the **"Strategic Goals..." represented their joint view**, confirm the crucial historic fact that the "Strategic Goals..." are a project of the Greater Serbia Movement and its leader, Slobodan

Milošević. That document speaks of the **strategic goals** of the Serbian nation as a whole, of all those Serbs that had accepted the Greater Serbian ideology, policy and practice in Bosnia-Herzegovina, implying that the achievement of these goals does not only oblige Serbs from Bosnia and Herzegovina. Be it noted that, namely, these are not the "Strategic Goals..." of the Serb people from Bosnia and Herzegovina, but rather the "Strategic Goals..." of the Serb people in Bosnia and Herzegovina from Serbia, Montenegro, Croatia and elsewhere, such as the USA or Australia, goals which have been **dictated** in accordance with the Greater Serbia project on the creation of a common Serb state by Slobodan Milošević to Radovan Karadžić and his aides. These goals, in order to cover up any role of the Greater Serbia movement and Milošević personally in that criminal enterprise, were formally adopted by the so-called Assembly of the Serb People in Bosnia-Herzegovina on 12 May, 1992.

The ICJ refuses the argument ("**a broad proposition**") by Bosnia and Herzegovina that based on a consistent pattern of acts (an overall pattern by which genocidal acts have been committed), **"which had existed during the commission of the crimes against many communities over longer periods, directed toward Bosnian Muslims and Bosnian Croats, proves the existence of the necessary intent**".[77] In its explanation, the Court relies on a variety of arguments, in which "**every is individually inadequate for its purpose and contradictory in relation to the standing practice of international criminal tribunals**".[78] ""**The *dolus specialis*, the specific intent to destroy the group in whole or in part, has to be",** in the Court's opinion, **"convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly demonstrated to exist**" Related to the pattern of "**conduct to be accepted as evidence of its existence"** it would, according to the Court, "**have to be such that it could only point to the existence of such intent**".[79]

It is obvious that the presented argument of the Court is not based on facts of social reality and social practice. Disrespect for social realities and the presentation of value-based assessments not fundamentally supported by facts has contributed to theoretic constructions which cannot be specified and made concrete, and do not correspond to the factual condition of the social reality, being opposed to the Court's findings **on systematic and mass murders, beatings, rapes and tortures** of the protected group (the Bosniacs) on the territory of Bosnia and Herzegovina, which had been confirmed by the Court based on "**conclusive evidence**".[80]

It its intention to dismiss such a claim by Bosnia and Herzegovina at any cost (i.e. the existence of the general plan and pattern of acts, of committed crimes, which prove the existence of *dolus specialis***,** the specific intent to commit genocide), the ICJ stresses a **very significant** fact that **"the proposition is not consistent with the findings of the ICTY relating to genocide**

or with the actions of the Prosecutor, including decisions not to charge genocide offences in possibly relevant indictments, and to enter into plea agreements, as in the *Plavšić* and *Sikirica et al.* cases (IT-00-40 and IT-95-8), by which the genocide-related charges were withdrawn".[81] The fact that the ICTY did not confirm the existence of genocide based on a pattern of behavior by which the Serb forces had carried out their genocidal acts in the territory of Bosnia and Herzegovina is not "**at all strange**", according to the Vice President of the Court. The ICTY "**has the jurisdiction only to judge individual criminal responsibility of individuals charged before it, where the relevant evidence is limited on the sphere of action of the accused**". Although the ICJ has recognized the **"burden of proof necessary for criminal court proceedings", it did not wish to acknowledge "that there is an essential distinction between criminal proceedings led against an individual and those that imply the responsibility of a state for genocide.**" The Court should have been obliged to check the pattern of behavior in the entire territory of Bosnia and Herzegovina, as it is not bound by the sphere of action of any given individual. However, the Court did not do this.[82]

The Court concludes that Bosnia and Herzegovina, apart from the *Srebrenica* case, where "**in the concrete massacre**" in July of 1995 "**acts of genocide were committed in operations led by members of the VRS**", has failed to prove:

- first, "**that any of the widespread and serious atrocities, complained of as constituting violations of Article II, paragraphs *(a)* to *(e)*, of the Genocide Convention, were accompanied by the necessary specific intent *(dolus specialis)* on the part of the perpetrators**" and
- second, "**the existence of that intent on the part of the Respondent** (i.e. Serbia – note by the author), **either on the basis of a concerted plan, or on the basis that the events reviewed above reveal a consistent pattern of conduct which could only point to the existence of such intent**".[83]

In giving out the mentioned conclusions and claims, the ICJ consciously ignores a variety of facts, of which we shall point out the following:

- first, the Court mostly relies on "**highly persuasive relevant findings of fact made by Tribunal" (ICTY),**[84] **giving them** "**major significance**" and "**fully**" taking them into account. Thus, ICJ for the first time in its history used the Judgments of another international court as argumentation basis, irrespective of the fact that material-legal basis of these Judgments is different from the matter considered by this Court, **making a precedent** causing the scientific academic circles to worry, especially considering that standards of such "exchange" of international law has not been defined or précised. Unfortunately, the Court

failed to abide by essential provisions if relevant scientific, and professionally verified facts, although it ascertain otherwise. Namely, the Court applied three **basic postulates** for its approach in relation to "very convincing findings of the facts", which created far-reaching and large consequences, observed from the position of science, profession, law, fairness, justice, humanity, and genocide victims:

- first is one-sided, exclusive, and selective, which based its conclusions, statements, assessments and decisions on selectively and arbitrarily chosen procedural documents, mainly ICTY Judgments, and the secondary sources that favor FRY (SMG);
- second contains the open elements of negation and the ignorant attitude towards the relevant facts, taken from the ICTY Judgments and other primary sources that favor Bosnia and Herzegovina, that is, determination of objective factual truth. Referring to ICTY, the Court ignored apparent political, legal, and ideological nexus between individual criminal responsibility and the systematic criminal enterprise, specific for the crime of genocide;
- third is an erroneous interpretation of facts, whereby Court applied such an approach in relation to certain facts that favor Bosnia and Herzegovina, that is, they are complementary with the truth.

The Court applied evidence restrictively, giving assessments that mainly support and reflect the legal positions of the FRY (Serbia and Montenegro) and it chose the procedural documents, mainly ICTY Judgments, selectively and arbitrarily, and thus violated its own Statute. The Court also erroneously applied the methodological approach in the evidentiary procedure, as it failed to consider, or better to say it did not want to consider, voluminous relevant documentation (the entire evidentiary material) presented by Bosnia and Herzegovina before the Court. The method of proving, burden of proof and standard of proof fully met the interests of FRY (Serbia and Montenegro).

The Court abused the international legal position, jurisdiction, and the ICTY mandate of the *ad hoc* international criminal tribunal for the determination of the individual criminal responsibility, especially "forgetting" limiting factors in the implementation of the ICTY mandate.

- second, using documentation materials from the ICTY, which is, also, an organ of the United Nations Security Council, the Court makes a mistake in applying an egalitarian, objective perspective in observing ICTY documents, disrespecting the fact that the **responsibility** determined by the ICJ is at a completely different level than the one determined by the ICTY, as the procedures are different. **The Court has used elements of individual criminal responsibility to determine whether a state**

was responsible or not for violating an international convention, which is a completely wrong approach, as the mandate of the ICJ is indeed to determine the legal responsibility of the state, as opposed to the ICTY, which determines the criminal responsibility of individual persons;

- third, according to the most significant ICTY Judgment in determining the character of the (international) armed conflict in the Republic of Bosnia and Herzegovina and the degree of involvement of the Federal Republic of Yugoslavia,[85] ICJ took a critical position and challenged it and so lectured the Appeal Chamber. Thus the ICJ presents a critical, disapproving stance toward that Judgment. It is obvious that the Court's intention was to free Serbia of any responsibility of genocide and other forms of crimes against humanity and international law in the Republic of Bosnia and Herzegovina, in which it has, unfortunately, succeeded. From other Judgments and ICTY materials, the ICJ has practically accepted standing views and taken over, or rather, copied the incomplete research results of ICTY without any verification or any deeper observation, in which way it is responsible for numerous omissions, such as: estimates on the killing of "men of military age, Bosnian Muslims in UN Safe Area Srebrenica in July 1995"; a wrongly determined date for the intent to eliminate all "men of military age", etc.

The ICJ has completely ignored sublimely important data on the participation of the Army of Yugoslavia in genocide, including data on the participation of the senior officials of the Army of Yugoslavia even in slaughtering children, further orders by Radovan Karadžić to commit genocide, his admission (at the session of The Republika Srpska Assembly in May 1994) that "**without Serbia nothing would happen, we do not have resources and we would be unable to pursue the war**", as well as admission of the relevant factors of FRY (Government of the Republic of Serbia, Federal government of FRY, and the Republic of Serbia President, Slobodan Milošević), of 11 May 1993, and other relevant documents;

- fourth, the conclusions, opinions, estimates, claims and the Judgment itself, including the part on the genocide in the UN safe area of Srebrenica, in July 1995, are not results of research of the ICJ, but were rather merely taken over by ICTY, which has the mandate to determine the criminal responsibility of individuals for genocide or other forms of crimes, as opposed to the ICJ, which has the mandate to decide and determine the responsibility of the state(s) for genocide. In this way, the Court relied on the legal practice of ICTY and its two Judgments in cases *Krstić* and *Blagojević* (though the latter should have been appealed) and dismissed numerous Bosnia and Herzegovina pieces of evidence of various provenance and it only took foreign

results (ICTY legal positions), carrying out a non-systematic **selection** of evidence from the ICTY, and integrating only those positions that suited the previously devised theses of the authors of the Judgment, thus violating the Rules of the Court;

- fifth, the Court took part in vulgar reductionism which derogates important facts of social reality which doubtlessly and very clearly confirm the thesis on committed genocide and the existence of intent (*mens rea*) including a specific intent (*dolus specialis*), both on the basis of a common **plan**, as well as on the basis of **widespread and systematic practice**, that is, **the elements** (**acts**) of crime of genocide (*actus reus*), that is, **events** which demonstrate the existence of a pattern of behavior by the perpetrator/s (the state of Serbia and Montenegro and their collaborationists from Bosnia and Herzegovina), which doubtlessly confirm the existence of such an intent;
- sixth, international rules do not require **widespread and systematic practice** as one of the legal elements of crime of genocide.[86] The acts of genocide in reality, according to A. Cassese "**can hardly be seen as individual or sporadic events**". They are "**usually part of widespread practice** (**tolerated or approved by authorities**, **or at least consented**) **or even policy of a Government**". However, these circumstances, according to him are "**factual and they are not provided as legal condition for the existence of a crime**. In this regard, Cassese ascertains that, "**in principle, for example, the murder of five or ten members of a religious, ethnic, national, or racial group, with the intent to destroy that group as a whole or in part**, **can be considered genocide, even if it an isolated act**".[87] Problem is in his view, "**how to prove the genocidal intent**" (*mens rea*). Specific intent according to Cassese, "**is usually taken from relevant facts**". If "**act of genocide is part of a pattern of behavior in one state** (**region or geographic area**) **or**, *a fortiori*, **is part of policy planned or pursued by authorities (or top officials of an organized political or military group), then it will be easier to extract the element of intention from the facts**". He thinks that in this way, "**the issue of widespread or systematic practice may appear as important in light of evidence, but not as a legal element of crime**";[88]
- seventh, the ICTY Trial Chamber has in the *Stakić* case, *inter alia* (that "many individuals were killed during an attack by the Bosnian Serb Army against predominantly Muslim Bosnian villages and towns throughout the municipality of Prijedor and that in multiple cases there had been a massacre against the Muslims"),

has determined that it is "**beyond any reasonable doubt that there was an overall pattern of crimes committed against Muslims in the Municipality of Prijedor in 1992.**"[89] The ICJ was well aware of these facts, as it had quoted them in its Judgment,[90] which means that these findings were not unknown to it. Apart from that, the ICJ had ignored them consciously, claiming that Bosnia and Herzegovina had not proven "**the existence of a consistent pattern of behavior**" which would prove the existence of a specific intent (*dolus specialis*) for genocide.;

- eight, the ICTY had in its DECISION ON MOTION FOR JUDGMENT OF ACQUITTAL in the *Prosecutor versus Milošević* case, of 16 June, 2004, proven the existence of a **systematic pattern** according to which Serb forces had carried out genocidal acts in Bosnia and Herzegovina, which imply genocide.[91] With this in mind, the Trial Chamber concludes the "**scope and pattern of the attacks, their intensity, the large number of Muslims killed in those seven municipalities** (i.e. Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ and Bosanski Novi – note by the author), **detention of Muslims, cruel treatment toward them at detention sites and other places and deliberate attacks targeted against people of key importance to the group's survival – all these are factors that imply genocide**".[92]
- ninth, the ICTY has determined "**the material element of the crime of genocide**" (*actus reus*) in the *Jelisić* case.[93] These arguments by the Trial Chamber are also quoted by the ICJ.[94] Apart from that, the ICJ was well aware of the "most severe violation of international humanitarian law and human rights in the area of Srebrenica, Žepa, Banja Luka and Sanski Most", described in the Report of the United Nations Secretary General of 27 November, 1995, which proves that there was a "**consistent pattern of arbitrary murder, rape, mass expulsion, arbitrary detention, forced labor and widespread disappearance**";[95] Unfortunately, even in this case this posed no significance to the ICJ.
- tenth, the ICTY had determined the "***actus reus* of genocide**" in the Krajišnik case, i.e. the factual act (the act of commission). Unfortunately, the specific intent (*dolus specialis*) was not,[96] which is absurd, because the *actus reus* of genocide is more difficult to prove than the *mens rea* (*mens rea* may exist without the *actus reus* being realized);[97]
- eleventh, the Trial Chamber of the ICTY had in its DECISION ON MOTION FOR JUDGMENT OF ACQUITTAL in the *Prosecutor versus Milošević* on 16 June, 2004, Milošević was confirmed as having **genocidal intent and the existence of a genocidal plan to destroy the Bosniacs as a national group**, concluding that "**there is enough**

evidence that genocide has been committed in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ and Bosanski Novi"[98] (the Trial Chamber only considered genocide in the area of the mentioned municipalities – note by the author.) **and that Milošević had taken part "in a joint criminal enterprise, which also included the Bosnian Serb leadership, whose aim and intent was the partial destruction of Bosnian Muslims as a group";**[99]

- twelfth, while analyzing numerous evidence, presented in the Milošević case, and which had supported the charges against him, the Chamber concluded **that there had truly been genocide against the Bosniacs and that the leadership of the collaborationist entity** (Republika Srpska), **generated by Serb Nazism over the bones of the murdered Bosniacs, had inaugurated a genocidal creation called a 'republic', and that Slobodan Milošević had shared the intent ("joint criminal enterprise") to implement this plan**.[100]

This Decision for Bosnia, among other things, speaks of "**territorial framework of the Indictment for Bosnia**" in which the geographic areas related to the charges for genocide are specified; then the evidence on genocidal intent "of the Bosnian Serb leadership" is presented (statements by Radovan Karadžić,[101] Biljana Plavšić[102], Momčilo Krajišnik, Aleksa Buha, Dragan Kalinić) to eliminate Bosniacs; the relation between Slobodan Milošević and political and military authorities of "the Bosnian Serbs", participation and responsibility of FRY (Serbia and Montenegro) in aggression, genocide, and other forms of crimes against humanity and international law, which among other things speaks of evidence that the officers of VJ participated even in the execution of children in Eastern Bosnia;[103]

- thirteenth, on the basis of the inference that may be drawn from the evidence,[104] along with the disagreement of the Judge Kwon, Trial Chamber could be satisfied beyond reasonable doubt that Slobodan Milošević "**was a member of joint criminal enterprise, for which the Trial Chamber found in paragraph 246 that it included also the leadership of the Bosnian Serbs and that he shared objectives with other members as well as intention to destroy a part of the Bosnian Muslim population**";[105]
- fourteenth, Trial Chamber concluded that Slobodan Milošević, "**was not only aware of the genocidal plan of the joint criminal enterprise, but he shared intention with his associates to partly destroy Bosnian Muslims as a group in that part of the territory of Bosnia and Herzegovina, which based on the plan needed to be included in the Serb state**";[106]

- fifteenth, Trial Chamber also based on the evidence "**could satisfy beyond any reasonable doubt that there was a joint criminal enterprise which included the leadership of the Bosnian Serbs, whose aim was to partly destroy the population of the Bosnian Muslims, and that the genocide was committed in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ, and Bosanski Novi. The genocidal intent of the Bosnian Serb leadership can be inferred from all the evidence, including the evidence set out in paragraphs 238-245. The scale and pattern of attacks, the intensity, the substantial number of Muslims killed in the seven municipalities, the detention of Muslims, their brutal treatment in detention centers and elsewhere, and the targeting of persons essential to the survival of the Muslims as a group are all factors that point to genocide**".[107]

ICJ refused the relevant documentation that clearly confirms that "Scorpions", the special unit of the Republic of Serbia Ministry of Interior, which directly participated in genocide against children, to which testify even various video recordings, were *de jure* a body of the Federal Republic of Yugoslavia.[108] This is indeed so shameful and intentional, particularly the assessment of the Court that this was a paramilitary unit.[109] Essentially, this is a forgery by the ICJ. It is obvious that the Court refused to provide an answer for such an important issue. The results of the research by the Republika Srpska Government unquestionably confirmed that the "Scorpions" were a special unit of the Republic of Serbia Ministry of Interior, just like many other.[110]

Similar to this position in relation to the "Scorpions", and in accordance with its political determination, the ICJ failed to accept the Declaration by the Council of Ministers of Serbia and Montenegro of 15 June 2005 as a clear admission of responsibility for genocide and the proof of the truthfulness of the facts that the "Scorpions" participated in the genocide against children as well (TV footage of the execution in Trnovo), which shocked the entire world. Instead, the Court, in accordance with its determination to acquit Serbia of any responsibility for the genocide in Bosnia, unfortunately, concluded that it was the statement of political character which did not constitute the admission of Serbian responsibility for the genocide in Srebrenica. To corroborate the refusal of the apparent admission by the Council of Ministers of Serbia and Montenegro, the Court called upon the jurisprudence, which, according to the Court Vice-President, confirms the opposite conclusion against the one reached by the Court. In reference to this, Judge Awn Shawkat Al-Khasawneh has in the *Dissenting Opinion* pointed out that "**The Court's lack of application of the jurisprudence it does invoke, and failure to invoke jurisprudence more directly on point is unfortunate**". The statement by the Serbian Council of Ministers, in the opinion of the Court's Vice-President, "**was taken out of context of the other evidence**

available to the Court, certainly amounts to an admission of the responsibility of President Milošević's régime for the massacres in Srebrenica, which the Court has determined amount to genocide".[111]

ICJ, among other things, stated that FRY, "**during the period under consideration**", i.e. July 1995 "**was in position of influence over Bosnian Serbs**", who according to Court, "**who devised and implemented the genocide in Srebrenica, owing to the strength of the political, military and financial links between the FRY on the one hand and the Republika Srpska and the VRS on the other, which, though somewhat weaker than in the preceding period, nonetheless remained very close**".[112] Having this in mind, several questions arise especially if those **political, military, and financial** links between FRY and RS during July 1995 "**remained very close**", **"though somewhat weaker than in the preceding period"**, how could ICJ acquit Serbia of international responsibility for genocide in Bosnia and Herzegovina?

Considering the alleged measures which FRY needed to take to prevent genocide in Srebrenica, ICJ minimized that genocide so much that it called this genocide "**tragic events**". Statement that "**FRY leadership, President Milošević above all, were fully aware of climate of deep-seated hatred between the Bosnian Serbs and the Muslims in the Srebrenica region**",[113] clearly suggests that this is a false assessment of the Legal team of Serbia and Montenegro, especially Prof. Stojanović. There cannot be any mentioning of "**deep-seated hatred**", at least among the Bosniacs, but rather this is a Great Serbian genocidal ideology, policy and practice of criminal character, whose objectives are to take over Bosnia and Herzegovina and the extermination of Bosniacs. This ideology, policy, and practice or Serbian Nazism, which, at the end of XX century, generated the worst crimes known to the mankind, ICJ did not "recognize", because it acted as a defender of FRY, the stated that designed, planned, participated and committed genocide in Bosnia and Herzegovina during 1992-1995.

ICJ **applied very high standards of proof and very strict criterion of effective control** (high level of control), insisting on this way of reasoning, in the case *Nicaragua* ("*Nicaragua test*" in different situation required the criterion of overall control). Namely, ICJ as for the standard of responsibility, respected the rule of customary law on international responsibility, contained in Article 8 of Articles *International Law Commission on State Responsibility*[114], especially the criteria developed in the case of *Military and paramilitary activities in Nicaragua and against Nicaragua (Nicaragua v. USA),*[115] in which it set **a very high level of control** to pronounce the state responsible. In that case, the Court had to decide whether USA, because they financed, organized, trained, equipped, and planned operations of organized military and paramilitary rebels in Nicaragua, were responsible of the international wrongful acts committed

by rebels. In this regard, the Court argued that **a high level of control** was needed so as the USA could be legally responsible, whereby it was necessary to prove that the state had:

- first, **"not only the effective control over the military and paramilitary operations (conducted by the *contras*) during which the alleged violations took place"**, but also that
- second, **"effective control" was exercised, or that the State's instructions were given, in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations."**[116]

The Court also found, that in order to establish that the USA were engaged in basically internal conflict (civil war) in Nicaragua and finding USA responsible for the acts committed by the *contras*, it was necessary to **prove that** it "**directed or enforced the perpetration of acts contrary to human rights and humanitarian law**". Given that the **standard was set so high**, the Court found that the acts committed by the *contras* could not be attributed to the USA.[117]

Criticizing such approach and relying on the case law of other courts, ICTY established in case **Tadić** the so-called **"overall control" standard which needed to be followed, not the high standard set in the case** *Nicaragua***.** Based on standard of **"overall control to find a state responsible for offenses committed by another group that state has to participate in planning and giving orders for military operations, but it is not necessary that his control has to extend to the issuance of specific orders or instructions for individual military actions".**[118]

The ICTY Appeals Chamber in the case *Tadić* (IT-94-1-A, Judgment, 15 July 1999) did not follow the jurisprudence of ICJ related to *Military and paramilitary activities* … (that criterion was contested by Bosnia and Herzegovina – Para. 402). The Chamber held **"that the appropriate criterion, applicable in its view both to the characterization of the armed conflict in Bosnia and Herzegovina as international, and to imputing the acts committed by Bosnian Serbs to the FRY under the law of State responsibility, was that of the "overall control" exercised over the Bosnian Serbs by the FRY, and that this criterion was satisfied in this case**". Starting from this view, the ICTY Appeals Chamber **took the position "that acts committed by Bosnian Serbs could give rise to international responsibility of the FRY on the basis of the overall control exercised by the FRY over the Republika Srpska and the VRS, without there being any need to prove that each operation during which acts were committed in breach of international law was carried out on the FRY's instructions, or under its effective control**".[119]

ICJ "carefully considered the views of ICTY Appeals Chamber". But, the Court did not support these views. In fact, the Court sated that ICTY "**was not called upon in the case** *Tadić*, **nor it was called upon at all, to decide on the matters of state responsibility, because it has criminal competence and it applies only to the individuals**", and that "**in that Judgment, the Tribunal addressed the issue which was not indispensable for the exercise of its jurisdiction**". With this in mind, the ICJ pointed out that "**it attached the utmost importance to factual and legal findings made by ICTY in ruling on the criminal liability of the accused before it and, in the present case, the Court takes fullest account of the ICTY's trial and appellate judgments dealing with the events underlying the dispute**". **Yet, contrary to these findings, the Court stated that "the situation is not the same for positions adopted by the ICTY on issues of general international law which do not lie within the specific purview of its jurisdiction and, moreover, the resolution of which is not always necessary for deciding the criminal cases before it**".[120]

Starting from these contradictions, ICJ ascertained that this was "**the case with doctrine presented in the Judgment** *Tadić*" and concluded that **"Insofar as the "overall control" test is employed to determine whether or not an armed conflict is international, which was the sole question which the Appeals Chamber was called upon to decide, it may well be that the test is applicable and suitable**". But, the Court "did not think it appropriate **to take a position on the point in the present case, as there is no need to resolve it for purposes of the present Judgment**", which is absurd. In the attempts to dismiss so important ICTY decisions, ICJ ascertained that, **"On the other hand, the ICTY presented the "overall control" test as equally applicable under the law of State responsibility for the purpose of determining - as the Court is required to do in the present case - when a State is responsible for acts committed by paramilitary units, armed forces which are not among its official organs**".[121]

Starting, by all means, from the principle of protection of Serbia from the liability of genocide in the republic of Bosnia and Herzegovina, ICJ from the beginning did not want to deal with this key issue, because, which is obvious from this view, it intended to find the liability of Serbia for actions "**committed by paramilitary units, armed forces which are not part of their (Serbian) official authorities**". With this, ICJ took directly the side of Serbia, evading to find its responsibility for actions committed by its legitimate armed forces, which were also Serbian legitimate authorities. Thus, the Court concluded that "**in this context**", in the case*: Bosnia and Herzegovina v. Serbia and Montenegro*, due to the breach of Convention

on Prevention and Punishment of Crime of Genocide, "**the argumentation supporting this criterion**", that is ICTY argumentation relative to overall control – **was unpersuasive**.[122]

Justifying this view, ICJ U "**observed**" "**that logic does not require the same test to be adopted in resolving the two issues, which are very different in nature: the degree and nature of a State's involvement in an armed conflict on another State's territory which is required for the conflict to be characterized as international, can very well, and without logical inconsistency, differ from the degree and nature of involvement required to give rise to that State's responsibility for a specific act committed in the course of the conflict**".[123] Moreover, the Court "**noted**" that **"the "overall control" test has the major drawback of broadening the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility: a State is responsible only for its own conduct, that is to say the conduct of persons acting, on whatever basis, on its behalf**". For the Court, this is **the true of acts "carried out by its official organs, and also by persons or entities which are not formally recognized as official organs under internal law but which must nevertheless be equated with State organs because they are in a relationship of complete dependence on the State. Apart from these cases, a State's responsibility can be incurred for acts committed by persons or groups of persons – neither State organs nor to be equated with such organs – only if, assuming those acts to be internationally wrongful, they are attributable to it under the rule of customary international law reflected in Article 8 cited above (paragraph 398). This is so where an organ of the State gave the instructions or provided the direction pursuant to which the perpetrators of the wrongful act acted or where it exercised effective control over the action during which the wrong was committed**". Thus, the Court holds that "i**n this regard the "overall control" test is unsuitable, for it stretches too far, almost to breaking point, the connection which must exist between the conduct of a State's organs and its international responsibility**".[124]

Thus it is on the basis of its settled jurisprudence that the Court tried to determine whether the Respondent has incurred responsibility under the rule of customary international law set out in Article 8 of the ILC Articles on State Responsibility".[125] In this regard, the Court stated that "**The Respondent has emphasized that in the final judgments of the Chambers of the ICTY relating to genocide in Srebrenica, none of its leaders have been found to have been implicated**" and that Bosnia and Herzegovina "**without challenging that reading**", "**made the point that that issue has not been before the ICTY for decision**". Having this in mind, and consciously neglecting the fact that ICTY rules on the liability of individual for genocide, not the state's responsibility, or in this case the responsibility of FRY

for the acts of genocide (committed by *de jure* its organs or entities fully dependent on it), the Court "**observed that the ICTY has indeed not up to the present been directly concerned in final judgments with the question whether those leaders might bear responsibility in that respect**". With this in mind, the Court also stated "**the fact that the report of the United Nations Secretary-General does not establish any direct involvement by President Milošević with the massacre**", recording the contacts between Milošević and the United Nations on 10 and 11 July.[126] Unfortunately, those views were based in false statements by Slobodan Milošević, to which witnesses the Special Representative of the Secretary General on 11 July 1995, when he informed Ghali about it, which was confirmed by ICJ in Para 285. The same was confirmed in the conversation between Karl Bildt, EU negotiator, and Slobodan Milošević on 14 July in Belgrade, which can further prove, what was shown in the Great Serbian offensive against the UN safe heaven – Srebrenica, that Milošević lied and that he was the supreme commander to General Mladić.[127]

The Court stated that it **"received other evidence supporting or denying the Respondent's effective control over, participation in, involvement in, or influence over the events in and around Srebrenica in July 1995."**[128] In this regard, the Court stated that the Respondent quoted "**two substantial reports prepared seven years after the events**". The first is "**Srebrenica - safe area**", published in 2002 by the Netherlands Institute for War Documentation prepared over a lengthy period by an expert team, which in views of the Respondent allegedly "**contained no suggestion that the FRY leadership was involved in planning the attack or inciting the killing of non-Serbs,...**".[129] Beside the fact that the Court stated "**that the authors of the Report did conclude that Belgrade was aware of the intended attack on Srebrenica**" and that "**the Dutch Military Intelligence Service and another Western intelligence service concluded that the July 1995 operations were coordinated with Belgrade**", what the Court "**found more significantly for present purposes, however, was that the authors stated that "there was no evidence to suggest participation in the preparations for executions on the part of Yugoslav military personnel or the security agency (RDB). In fact there was some evidence to support the opposite view**".[130]

These statements are true forgery. Given the fact that the author of the Judgment, without any verification of the Dutch authors, who worked over months in Belgrade with the political, judiciary, and intelligence organs of Serbia (police, military, intelligence, counterintelligence) for the needs of the Legal team of Serbia before ICJ, accepted those

forgeries, and the Court accepted with pleasure the following sentence: "**Everything points to a central decision by the General Staff of the VRS**".[131]

The second report is of a similar character - *Balkan Battlegrounds,* prepared by United States Central Intelligence Agency, published in 2002, which by its content is identical to the first report, which also stated based on **verbal depositions and other available evidence** that "**only Bosnian Serb troops were employed in the atrocities and executions that followed the military conquest of Srebrenica**", and based on that the Court was excited to conclude that it "**gave no indication of any involvement by the Respondent in the post-conflict atrocities which are the subject of genocide-related convictions**".[132]

In proving the thesis that FRY was not involved in genocide in UN Safe Heaven Srebrenica in July 1995, and that Belgrade did not have any responsibility for "**action**", "**in terms of attack against the enclave**", the Court stated that the Agent of the Respondent quoted the evidence by Major Franken, Dutch Battalion Deputy Commander, in the case *Milošević*, that "**he did not have any proof that the action, being the attack on the enclave, was launched in co-operation with Belgrade**".[133] Relevant correspondence between the highest political and military organs of the United Nations, and other correspondence from that period, ICJ consciously neglected, speak the opposite.

The Court also referred critically, one-sidedly and tendentiously to some of the evidence Bosnia and Herzegovina relied on, and in the Court's view, it "**mainly consisted of the evidence given at the *Milošević* trial by Lord Owen and General Wesley Clark and also Lord Owen's publications**". Instead of quoting the Bosnia and Herzegovina evidence, as it did in case of the Respondent's evidence, the Court concluded that the evidence pertained "**to the influence, rather than the control, that President Milošević had or did not have over the authorities in Pale**" and also concluded that the evidence "**did not establish a factual basis for finding the Respondent responsible on a basis of direction or control**".[134]

In the light of the information available to it, the Court finds that it has not been established:

- "**that the massacres at Srebrenica were committed by persons or entities ranking as organs of the Respondent**";
- "**that those massacres were committed on the instructions, or under the direction of organs of the Respondent State**";
- "**nor that the Respondent exercised effective control over the operations in the course of which those massacres**", which constituted the crime of genocide;

- "**that the acts of those who committed genocide at Srebrenica cannot be attributed to the Respondent under the rules of international law of State responsibility: thus, the international responsibility of the Respondent is not engaged on this basis**".[135]

The voluminous and convincing evidence, according to the Vice-president of the Court, "**corroborate the involvement of Serbia and the main actor or accomplice in genocide in Srebrenica**". Moreover, he argued that "**participation or involvement of FRY in genocide in Bosnia and Herzegovina in 1990-ies had far more serous character and far more extensive territorial scale than it is suggested by mere failure to prevent genocide in Srebrenica**". In his view, it understood "**that the charges that the genocide was committed in other parts of Bosnia and Herzegovina as well, and that FRY was responsible not only for failing to prevent genocide but also for the active participation in it – whether as a main actor or an accomplice or alternatively as an accomplice or in form of joining or inciting – would be most probably proven had the Court not applied** /different/ **methodology**". Considering all of that, the Vice-president of the Court claims "**that the facts about the responsibility of FRY for genocide in Srebrenica were proven according to the satisfactory standards**".[136] He was convinced that the Court "**could find the genocide and thus the FRY responsibility had it applied different methodology, without leaving the high standard of proof or rigidity of its judgment**". Therefore, he was "**not in agreement with the methodology of the Court in terms of evaluation of facts and inferring the conclusions form them**".[137]

The Vice-president of the Court did not agree with his learned colleagues "**about the central issue of international responsibility of Serbia that stem from its involvement as the main actor or an accomplice in genocide in Bosnia and Herzegovina**". Such an involvement, in his view, was "**corroborated by voluminous and convincing evidence**". His deep disagreement with the majority pertained "**not only to conclusions but also the foundation for their reasoning, and the methodology applied in evaluating the facts and inferring the conclusions**".[138]

On 3 March 2004, *amici curiae* filed the Motion on Judgment on Acquittal of Slobodan Milošević in accordance with the Rule 98*bis*, in which they alleged that "**there was insufficient evidence that the Accused had 'effective control' over the perpetrators of the alleged crime of genocide**..."[139]. But, the Prosecution argued that it had sufficient evidence that Slobodan Milošević "**had effective control over General Adžić, Chief of JNA Main Staff, Ratko Mladić, Chief of VRS General Staff, and Franko Simatović and Jovica Stanišić of the Serbia State Security**".[140] Moreover, the Prosecution argued that the evidence demonstrated that Milošević

"**had the ability to prevent or punish the commission of crimes by forces subordinated to these individuals**" and that the evidence "**supported a finding that the Accused's influence and control over the Bosnian Serb leadership amounted to *de facto* control**".[141]

ICTY Trial Chamber in its DECISION ON MOTION FOR JUDGMENT OF ACQUITTAL in case *Prosecutor v. Milošević*, of 16 June 2004, found that S. Milošević "**exercised *de facto* control over the JNA through his influence over the SFRY Presidency; the Chiefs of the Main Staff (Kadijević, Adžić, and Panić); the finances of the JNA; and the appointment of loyal JNA officers. The VRS and the VJ were created out of the JNA, and throughout the war the VRS received logistical support from the VJ. Indeed, funding for the VRS and the VJ emerged from a single financing plan**".[142] Milošević "had both *de jure* and *de facto* control over the Serbian MUP and the State Security Service (DB). He **"was understood to represent all of the forces operating in Bosnia and Herzegovina, including paramilitaries**". Milošević, in view of Trial Chamber, "**had intimate knowledge of events and geography, and was familiar with the strategic importance of villages and the terrain around Sarajevo**". Moreover, he "**was aware of the crimes occurring on the ground in Bosnia and Herzegovina directly through national sources, such as the Serbian MUP, Security Administration, and his close associates (*e.g.*, Radovan Karadžić), as well as international sources, such as Helsinki Watch, Ambassador Okun, and Secretary Vance**".[143]

On the basis of this evidence as well as other evidence, "**a Trial Chamber could be satisfied beyond reasonable doubt that the Accused was a superior to certain persons whom he knew or had reason to know were about to commit or had committed genocide of a part of the Bosnian Muslims as a group in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ and Bosanski Novi, and he failed to take the necessary measures to prevent the commission of genocide, or punish the perpetrators thereof"**.[144]

Trial Chamber, in relation to arguments by *amici curiae* in *Slobodan Milošević* case pertaining to genocide in Bosnia and Herzegovina, held "**that it had sufficient evidence that**:

1. **there existed a joint criminal enterprise, which included members of the Bosnian Serb leadership, the aim and intention of which was to destroy a part of the Bosnian Muslims as a group, and that its participants committed genocide in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ and Bosanski Novi**;

2. **the Accused was a participant in that joint criminal enterprise, Judge Kwon dissenting**;

3. **the Accused was a participant in a joint criminal enterprise, which included members of the Bosnian Serb leadership, to commit other crimes than genocide and it**

was reasonably foreseeable to him that, as a consequence of the commission of those crimes, genocide of a part of the Bosnian Muslims as a group would be committed by other participants in the joint criminal enterprise, and it was committed;

4. **the Accused aided and abetted or was complicit in the commission of the crime of genocide in that he had knowledge of the joint criminal enterprise, and that he gave its participants substantial assistance, being aware that its aim and intention was the destruction of a part of the Bosnian Muslims as group**;

5. **the Accused was a superior to certain persons whom he knew or had reason to know were about to commit or had committed genocide of a part of the Bosnian Muslims as a group, and he failed to take the necessary measures to prevent the commission of genocide, or punish the perpetrators thereof**".[145]

Unfortunately, ICJ did not consider the facts and legal qualifications of ICTY, although it emphasized on several places in the Judgment that it "**gave the utmost relevance**" ("**to facts of legal qualification of ICTY**") and "**fully considered those**". But, this statement by the Court is only declarative in nature.

ICJ failed to accept the allegation by Bosnia and Herzegovina that "**the crime of genocide has a particular nature, in that it may be composed of a considerable number of specific acts separate, to a greater or lesser extent, in time and space**".[146] That specific nature of crime of genocide, according to Bosnia and Herzegovina, "**would justify, among other consequences, assessing the "effective control" of the State allegedly responsible, not in relation to each of these specific acts, but in relation to the whole body of operations carried out by the direct perpetrators of the genocide**".[147] But, the Court held "**that the particular characteristics of genocide do not justify the Court in departing from the criterion elaborated in the Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America***".[148]

In order to justify non-departing from criterion elaborated in the Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, in the case where grave violations of international humanitarian law were not committed, that is, genocide or other forms of crimes against humanity and international law, the Court, consciously neglecting this key fact, called upon international customary law – *ILC Articles on State Responsibility.* In this regard, the Court quoted the following position: "**Genocide will be considered as attributable to a State if and to the extent that the physical acts constitutive of genocide that have been committed by organs or persons other than the State's own agents were**

carried out, wholly or in part, on the instructions or directions of the State, or under its effective control".[149] Shameful.

ICJ consciously and intentionally applied the criterion of "**effective control**" on the situation which is completely different from that in the case of *Nicaragua*. Namely, the criterion of "**effective control**" related to the state's responsibility in the case of *Nicaragua* **is not suitable** for the issue of responsibility of a state for the international crimes against humanity and international law committed with the common objective. Instead, **more adequate** is the criterion of "**overall control**" to define the state's responsibility in the case *Tadić*, dealing with the commission of international crimes with common objective of a state, "**which controls the non-state participants as well**".[150]

Starting from the fact that in this case there was "**unity of goals, unity of ethnicity, and common ideology"**, the Court's Vice-president held that **"effective control over non-State actors would not be necessary**".[151] Thus, he pointed out that the Court, applying the criterion of **effective control**, was guided by Article 8 of *ILC Articles* on State Responsibility. Pointing to the "**firm basis that the thesis on control is unreliable**", the Court Vice-president reminded of the following:

- first, that "**some members of** *ILC*, whose Articles (Art. 8) that define the State Responsibility were the basis for the Court, applying the criterion of effective control, "**drew attention to the fact of there being varying degrees of sufficient control required in specific legal contexts"**, and the Court failed to mention those;

- second, the ICTY Appeals Chamber decision in the *Tadić* case, as reaffirmed in the *Čelebići* case, takes this ap**proach. In the case *Čelebići* the Appeals Chamber held that "the 'overall control test could thus be fulfilled even if the armed forces acting on behalf of the 'controlling state' had autonomous choices of means and tactics although participating in a common strategy along with the controlling State**".[152]

"**In rejecting the ICTY's context-sensitive approach, the ILC Commentary to Article 8**" the Court Vice-president states "**that the Court does little more than note a distinction between the rules of attribution for the purposes of State responsibility on the one hand, and the rules of international humanitarian law for the purposes of individual criminal responsibility on the other"**. However, it should be recalled that the Appeals Chamber in *Tadić* had "**in fact framed the question as one of State responsibility, in particular whether the FRY was responsible for the acts of the VRS and therefore considered itself to be applying the rules of attribution under international law**".[153]

In rejecting the standard in the *Tadić* case, the Court, according to Vice-president Al-Khasawneh "**failed to address the crucial issue raised therein – namely that different types**

of activities, particularly in the ever evolving nature of armed conflict, may call for subtle variations in the rules of attribution". In the *Nicaragua* case, the Court, according to him, noted "**that the United States and the *Contras* shared the same objectives – namely the overthrowing of the Nicaraguan Government. These objectives, however, were achievable without the commission of war crimes or crimes against humanity. The *Contras* could indeed have limited themselves to military targets in the accomplishment of their objectives. As such, in order to attribute crimes against humanity in furtherance of the common objective, the Court *held that the crimes* themselves should be the object of control. When, however, the shared objective is the commission of international crimes, to require both control over the non-State actors and the specific operations in the context of which international crimes were committed is too high a threshold. The inherent danger in such an approach is that it gives States the opportunity to carry out criminal policies through non-state actors or surrogates without incurring direct responsibility therefore**".[154]

In the statement laid out in Para 406 of the Judgment that "**the "overall control" test has the major drawback of broadening the scope of State responsibility well beyond the fundamental principle governing the law of international responsibility**", the Court Vice-president holds it "**very unpersuasive**", "**because it fails to consider that such a link has to account for situations in which there is a common criminal purpose".** He also holds that "**It is also far from self-evident that the overall control test is always not proximate enough to trigger State responsibility**."[155]

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ICJ, having combined the methods, techniques and assumptions, inappropriate for law or facts, rendered the decision on **acquittal of Serbia** of the international responsibility for the genocide Bosnia and Herzegovina. Serbia was fond responsible for failure to meet obligations under the international agreement. The Court reached this **unbelievable result** "**faced with the abundance of evidence proving the opposite**". Namely, there is numerous evidence on direct involvement of Serbia and Montenegro and its state organs and persons in genocide in the Republic of Bosnia and Herzegovina –in all the occupied towns, and settlements under siege, in the period 1992-1995. Unfortunately, this evidence was well concealed.

ICJ **refused**:

- first, "**to inform itself regarding the twin questions of intent and attributability, the most elusive points in proving the crime of genocide and engaging State responsibility for it**";

- second, "**to translate its taking note of the refusal to divulge redacted materials into concrete steps regarding the onus and standard of proof, thereby putting the Applicant at a huge disadvantage**"; and

- third, the Court **set "too high a threshold for control and one that did not accord with the facts of this case nor with the relevant jurisprudence of the ICTY**".[156]

ICJ is responsible for the long discussion on the matter of jurisdiction of the Court and the delay in the proceedings, which is the precedent in the long history of this Court (the proceedings took almost 14 years).

Instead of protecting the interest of the genocide victims, in accordance with the Convention on Genocide, for which the Court was established, the Court unfortunately in this case protected the interests of criminal. Thus, the Court failed R. Lemkin and many other Holocaust, genocide scholars and scholars of other forms of crimes against humanity and international law.

The consistent jurisprudence of international criminal tribunals is clear in terms of admissibility (even necessity) to rely on facts and circumstances which result in conclusion on **genocidal intent**. ICTY holds that the proof on specific genocidal intent "**may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts**".[157]

Relying on the decision in the case *Jelisić*, the Appeals Chamber also held that "**when direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime**"[158].

International Criminal Tribunal for Rwanda (ICTR) was also consistent in drawing conclusions as an instrument to establish the genocidal *mens rea.* In the case *Rutaganda,* the Appeal Chamber confirmed the approach by Trial Chamber in relation to conclusion on the genocidal intent: "**The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular**."[159]

The ICTR Appeal Chamber also held that, while making anti-Tutsi utterances or being affiliated to an extremist anti-Tutsi group is not a *sine qua non* for establishing the *dolus specialis* of genocide, establishing such a fact may, nonetheless, facilitate proof of specific intent[160]. In the case *Musema*, the ICTR Appeal Chamber held that "**in practice, intent can be, on a case-by-case basis, inferred from the material evidence submitted to the Chamber, including the evidence which demonstrates a consistent pattern of conduct by the Accused**"[161].

Finally, in *Kayishema* (the reasoning of which the Appeal Chamber affirmed)[162], the Court held that: **"the perpetrator's actions, including circumstantial evidence, however may provide sufficient evidence of intent . . . The Chamber finds that the intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action. In particular, the Chamber considers evidence such as the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing. Furthermore, the number of victims from the group is also important."**[163]

In the Judgment *Nikola Jorgić*, whose most important part relates to *mens rea*, the High State Court (in German: *Oberlandsgericht*) in Düsseldorf took the position that the intention to destroy a group "**means a destruction of a group as a social unit by its specifics, uniqueness, and feeling of affiliation: biological – physical destruction of a group is not required**".[164]

Special intention, according to Antonio Cassese, usually stems from the facts. "**If the act of genocide is a part of pattern of behavior in one and the same state (region or geographic area), or, *a fatiori*, represented a part of policy planned or pursued by authority (or leading persons of an organized political or military group) then it will be easier to take the element of intention out of the facts. In that way, the issue of 'wide spread' or 'systematic' practice can appear as relevant in light of evidence but not as a true element of criminal offense**".[165]

The ICJ approach to proof of genocidal intent unfortunately did not reflect the quoted relevant jurisprudence.[166]

Genocide, by definition, the gravest, the most complex, and the most heinous crime in the history of mankind and one of the most complex social processes, projected in time and space as a process, carried out in continuity (against the unprotected, helpless, innocent, and unarmed victims), as a mutually and functionally connected various acts, committed by a large number of organized and unified participants in the process which characterizes planning, preparation, organization, execution, with the full consent, coordination, direct involvement, and control of the highest state authorities, which is characteristic for genocide against Bosniacs in Bosnia and Herzegovina at the end of XX century. It is clear that this is a

phenomenon directly produced and supported by a state as a political subject. When speaking, as an illustration, of massive participation (of people) in genocide, only in genocide against Bosniacs in Bosnia and Herzegovina, in UN safe heaven Srebrenica, in July 1995, in accordance with the research by the Republika Srpska Government, more than 25,000 people participated (on various grounds and in various ways).[167] Crime of genocide, as such, cannot be assessed in the discontinued way. Unfortunately, there are examples, within the Judgment, where this takes place, including key issues, such as responsibility of FRY for genocide in Srebrenica.[168]

ICJ refused to indicate genocide from the **"continued models of acts"**, thus neglecting the rich and relevant jurisprudence of other courts. Moreover, the Court **failed to acknowledge the complexity of the crime of genocide,** especially the definition of that worst crime against humanity and international law, or the need of overall approach in consideration of these mutually connected facts and the role of General Mladić, an officer of Yugoslav Army, whose supreme commander was Milošević, then "Scorpions" in genocide in UN safe heaven Srebrenica in July 1995. The events were observed in an unconnected way, without even a concealed attempt to enter the merits of the case professionally and morally, and finally render the fair Judgment.

In cases "**where certain facts did not fit the Court's conclusions, they were dismissed with no justification**",[169] such as, among others, the Declaration of the Council of Ministers of Serbia and Montenegro. Pointing to these facts, the Court Vice-president Al-Khasawneh, was **convinced "that as far as Srebrenica is concerned, FRY responsibility as a principal or as an accomplice is satisfied on the facts and in law**". Moreover, he held that "**with regard to other parts of Bosnia and Herzegovina, had the Court followed more appropriate methods for assessing the facts, there would have been, in all probability, positive findings as to Serbia's international responsibility**".[170]

Serbia and Montenegro refused to submit integral wording of some documents, relevant to prove the most direct participation and responsibility for the committed genocide, which were asked (demanded) by Bosnia and Herzegovina. Namely, Serbia and Montenegro refused to provide the complete copies of documents of the Supreme Defense Council (stenographic notes and minutes), delivered to ICTY under the condition of confidentiality. These documents were classified as *confidential*, "based on the decision on the military secret and confidentiality of the Council of Serbia and Montenegro, being the matter of national security", and they were protected according to the confidential decisions of the ICTY.[171] Although some of those documents- though limited number of pieces – were available to the Legal team of Bosnia and Herzegovina, those documents had no relevance, given that they

were not usable. These were the "**redacted**" documents of the Supreme Defense Council, "**or chapters where those sections were blacked out so as to be illegible** ".[172]

Bosnia and Herzegovina, in accordance with Article 49 of the Statute, required those documents from the Court. In the second round of oral presentation of arguments Bosnia and Herzegovina asked again Serbia and Montenegro to provide copies of complete unredacted copies of all shorthand records (stenographic notes) and all the records of the Supreme Defense Council, that is, the documents earlier delivered to ICTY under the condition of confidentiality, which, "**are apparently, and not in the last place in the Respondent's eyes, of direct relevance to winning or losing the present case**". In this regard, the Co-agent of Bosnia and Herzegovina **explicitly** requested "*the Court to instruct the Respondent accordingly*".[173]However, the Court did not grant the Motion of Bosnia and Herzegovina to **order** Serbia and Montenegro to deliver the requested documents.[174] In response to this question, the Court observes that Bosnia and Herzegovina has "**extensive documentation and other evidence available to it, especially from the readily accessible ICTY records**" and it has made **very ample use of it**. However, the Court did not meet a single request by Bosnia and Herzegovina "**to receive the unredacted copies of relevant documents**".[175] In this way, the key documents needed to establish the responsibility of Serbia and Montenegro for genocide in R BiH[176] remained unavailable to the Legal team of Bosnia and Herzegovina. It is san apparent example of activities of criminal character that aimed to exonerate FRY of the responsibility for genocide in Bosnia and Herzegovina at the end of XX century.

The Court refused numerous evidence Bosnia and Herzegovina tried to "tender at the last moment" and "any 'contemporary' way in which it was attempted in the presentation of evidence", and in that way Serbia and Montenegro in that part of trial "had full success" and its procedural position was fully protected. "The best example of that success", according to Saša Obradović, a member of the Legal team of Serbia and Montenegro and Legal counsel in the Embassy of Serbia and Montenegro in the Kingdom of the Netherlands, "was 'advice' by the Court President to the Agent of Bosnia and Herzegovina to withdraw CD ROM from the case file which contained numerous public documents and expert reports used before the Tribunal, because it was filed rather late for the Respondent to analyze the material and respond to it".[177]

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The Judgment is against the findings of the researches conducted by the prominent and acknowledged scientific authorities, who literally in totality appreciate the fact that the genocide is **the crime of state**. Only the modern state may orchestrate the dramatic genocidal acts of barbarism. All the crimes of genocide in the 20th century were practiced with planning, preparation, awareness, approval and participation of the state/states and its/their highest authorities, which was the case of the Federal Republic of Yugoslavia – FRY (Serbia and Montenegro), which had led the war of occupation against the Republic of Bosnia and Herzegovina at the end of the 20th century, while committing the genocide against Bosniacs.

International Court of Justice transferred all he responsibility for genocide and other acts of crime against humanity and international law from Serbia and Montenegro on their collaborators – Republika Srpska, which, according to the Court, together with the Army of Republika Srpska (VRS), including general Mladić "**or any other officers**", that were not *de jure* apparatus of FRY. "**There is no doubt that**", according to the Court, "**FRY provided significant support, amongst the rest, financial help for Republika Srpska (point 241 above in the text) and that one of the ways to providing such support was to put on a payroll some of the officers of VRS**". However, that fact, as stated by the Court, "**did not make them the organs of FRY automatically**". Although it was confirmed beyond any doubt that FRY officially provided the VRS officers with the paychecks, promotions and family accommodations, as the Legal team of Serbia and Montenegro, along with numerous documents, confirmed,[178] the Court did not find the evidence that **general Mladić or any other officer** were the officers of FRY – *de jure* the organs of **FRY**. Officers of VRS, including general Mladić, were, as stated by the Court, "**either under command of the president of Republika Srpska or subordinate to the political authorities of Republika Srpska**", where they would "**receive the orders issued by Republika Srpska and VRS**, **but not FRY**", and they would perform the tasks "**on behalf of the Bosnian Serbs authorities, not FRY…**; **they represented the elements of executing the public authority in Republika Srpska**".[179] The most relevant documentation of different origin confirms the opposite – political and military leadership of Republika Srpska did not represent any sort of individual political or military subject. This is the case of the leadership of the quasi-state of the Greater Serbia (Belgrade) regime and collaborators of Slobodan Milošević, which proved to be the practice of Nazis in the WWII. Radovan Karadžić and Ratko Mladić, like all the other officers of JNA/Yugoslav Army at service with "Republika Srpska" and "Republika Srpska Krajina" ("federal states" of FRY), received orders directly from the state and military leadership of Yugoslavia – Serbia and

Montenegro. “Republika Srpska Army” and “Republika Srpska Krajina Army” were strategic bodies of the Yugoslav Army.

Exoneration of Serbia for the genocide in Bosnia and Herzegovina is a typical example of **forgery, manipulation, contradiction, biasness, and political decision-making,** which envelops all characteristics of the political decision, having nothing in common with the profession, law, and international political-legal relations. Basically, such a political decision (Judgment) per se is an enormous crime against international law, its system and logic, then against the UN Charter and principles of international peace, justice and security, but most of all against the dignity of the genocide victims in general, particularly the genocide victims in Bosnia and Herzegovina at the end of XX century. Despite a number of relevant evidence on disposal, which speaks differently, the Court reached the **political decision,** and by doing in such a manner, bestowed Serbia for genocide and those genocide survivors were finally and irreparably hurt and punished. This Judgment is the example of precedent in the history of the Court, sending the unequivocal message to small nations, small states, powerless and weak of the world, that the same or even worse can happen in any instance of time, depending on the motives, interests and objectives of those strong, powerful and big. Also, that is probably the example of contemporary democracy, civilization development and the culture of major powers, European and world states, members of the OUN that could not even reach the better Judgment. Provided that they had adjudicated and convicted Serbia, alas, they would have sentenced partially themselves. Following this, it is clear that they had it in mind and that they did not have enough strength or courage to reach the decision which would protect the universal human values, liberties and rights, which has been the consequential behavior of the so called international community, OUN and its organs. On the eve of 11 July, 1995, they showed the highest degree of irresponsibility in abiding by the Convention on genocide, for they condoned and allowed the act genocide in the open international arena, when media coverage of genocide was uninterrupted.

Also, the Judgment of the ICJ is the obvious example of the continuing most negative politics and political practice of the international community toward Bosnia and Herzegovina and Bosniacs – genocide victims, by which the character of the social and political processes is stamped, and the most seeming question of pure survival of Bosniacs in this area has been raised.

The Judgment of the ICJ is full of forgeries, lies and deceit, which the relevant documentation cannot support. Neither the section of the Judgment concerning the confirmation of genocide (UN Safe Area Srebrenica, July 1995), is not valid enough, as it is, for instance, especially the question of ascertaining the intention for the extermination of Bosniacs and the date of its submission, identification of the age of the genocide victims, and so on.

The required, specific intent (*dolus specialis*) on the physical liquidation of Muslims in Bosnia and Herzegovina in UN safe heaven - Srebrenica, July 1995, was not created just before the genocide, nor it existed only "**around 12 or 13 July**" 1995 ("**until the change in the military target and after the takeover of Srebrenica**"), nor it was found as such,[180] as ICTY made an erroneous findings in the Trial Chamber Judgments in the cases *Krstić* and *Blagojević*, and ICJ concluded the same and without any critical approach to this matter or any investigation into the matter, it only took over this position having no reason "to leave such a firm position of the Tribunal". Decision on the physical liquidation of Bosniacs was not "**made just before its realization**", nor was it "**a short process (basically between 13th and 16th July 1995), despite a large number of victims**".[181] Relevant documentation confirms that the decision to exterminate Bosniacs in Srebrenica, and the entire region of Eastern Bosnia and the whole of the Republic of Bosnia and Herzegovina, was made before the commencement of aggression, that is, before the commission of first elements of genocide and it can be traced to the year 1991 or even earlier. In fact, this specific intent to exterminate Muslims from the Balkans, including Bosniacs in Bosnia and Herzegovina has its roots in early years of the XIX century, and it is harmonized with the Great-State Project of the fascist character, ideology, politics, and practice. This is two hundred years old process, which was renewed in the second half of the 1980-ies and it escalated in the aggressive wars and other numerous crimes against humanity and international law, including genocide against Bosniacs in the Republic of Bosnia and Herzegovina – from Prijedor, Ključ, Sanski Most to Vlasenica, Bratunac, Srebrenica, Zvornik, etc.[182]

In the genocide that took place in UN Safe Area Srebrenica, July 1995, not only those "**able-bodied men**" or "**adult male individuals of the Muslim community**" were liquidated, but also **children**, which has been proven, among the other facts, by the forensic research of ICTY and the results of the Institute for Research of Crimes against Humanity and International Law of University in Sarajevo. Namely, in July 1995, in UN Safe Area Srebrenica over 800 children and the number of women were killed.

Unfortunately, ICJ demonstrated the certain level of ignorance and misjudgment toward the international humanitarian law, which is the case of ICTY as well. Namely, the both courts arrived at a wrong conclusion in terms of the status of victims, eventually misconstruing that it is the case of **civilians** and **soldiers**. It comes as a shock that both the courts do not recognize the term of **combatant**, i.e., the international humanitarian law when treating the issue of the status of victims differentiates between **civilians** and **combatants** (not **civilians** and **soldiers**). In this way, both courts made an essential error, which contributes to the distorted

results of the research that deals with the segment of the status of victims. In fact, this is the ignorance of valid definitions of basic important and category notions.[183]

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A number of relevant sources of different origin point to two basic and starting, crucial, fundamental postulates, and features of contemporary line of events and episodes that occurred in the Republic of Bosnia and Herzegovina at the end of the 20th century:

- First, the **classic armed aggression** against the Republic of Bosnia and Herzegovina took place, that is the crime against peace and security of the mankind, which is, by the basic understanding and definition the **international armed conflict**, and
- Second, throughout the occupied territories of the Republic of Bosnia and Herzegovina, as well as in the towns under siege populated with Bosniacs, the most heinous crime – **the crime of genocide**[184] took place.

Bearing in mind the before mentioned basic statements, it is essential, for the sake of historical objectivity, to reminisce regarding the important facts established in accordance with the primary and relevant documentation:

- **Serbian Nazism** again – during the last decade of he 20th century - **generated the most vicious crimes** known to the world;
- Serbian nationalist elite (political, intellectual, and clerical), on the basis of the project of the Greater Serbia ("**all Serbs in one state**"), in the 90's of the 20th century brought up the internal crisis in SFRY and broke down the joint state;
- Republic of Serbia, by amending the Constitution on 28 September, 1990, **committed the secession,** practically (from SFRY) and overtook the functions of an independent, sovereign, and independent state, and by doing so it excused itself from the legal system of SFRY, which represented the felony of the highest degree according to the SFRY jurisprudence;
- Aggression against the Republic of Bosnia and Herzegovina and genocide against Bosniacs are the **crux of the joint criminal enterprise** of the FRY states (Serbia and Montenegro) and Republic of Croatia, their respective authorities and a number of their political, military, police and managerial leaders from the top, as well as their fifth columnists, collaborators and mercenaries;
- The intention of such a criminal act, founded on the Serbian and Croatian "greater-state" projects, for its end state had the **taking control of the Republic of Bosnia and**

Herzegovina as a state, and "final solution" for the Muslim issue – eradication of Bosniacs and their bringing to a meaningless ethnic minority. For the benefit of those criminal activities, the servile disciples and executioners, the fifth columnists from within Bosnia and Herzegovina came in handy ("Croatian Union of Herzeg-Bosnia", "Republika Srpska" and "Autonomous Province Western Bosnia") and from Republic of Croatia ("Republika Srpska Krajina");

- In order to materialize the criminal enterprise, the following activities took place: **the constitutional framework of defense of SFRY was broken; downsized and disarmed Territorial defense of Bosnia and Herzegovina as well as some other constituent elements of Federation; JNA was "transformed" from an antifascist and multiethnic armed forces into the army of the Greater Serbia; the Greater Serbia and Greater Croatia movements were reaffirmed and escalated; the methods, mechanisms and actions of planning and preparation of crime were set; the principal agreement about destruction of Bosnia and Herzegovina was reached (March 1991); the border lines of Greater Serbia and Greater Croatia were drawn; the fifth column (of Greater Serbia and Greater Croatia) were organized and armed by neighboring states in Bosnia and Herzegovina; command and control on the occupied territories was conjoined in the hands of the neighboring states' leaders – occupational powers; the pole positions were taken for aggression and other atrocities, including the genocide against Bosniacs**;
- Aggression against Bosnia and Herzegovina and genocide against Bosniacs were premeditated (intellectually, ideologically, politically, militarily, economically, in media, in intelligence, etc.), with clearly set **objective**, **ordered** from the levels of competent political and military positions and **executed** in planned, systematic and organized manner. The **state-aggressors** are well known, hereafter known are the **ideologists, planners, order-makers, executioners and conspirators, and we do know the modus operandi of the crimes and why they were committed**;
- The armed aggression, the war of conquest for territory, for "living space", for extortion of real estate of others against Bosnia and Herzegovina, was the inherent part of Milošević's official politics,[185] under which aegis the major portion of Bosnia and Herzegovina was occupied, and Bosniacs killed, expelled, and taken to the concentration camps only due to their **national and religious affiliation**. Genocide against Bosniacs is, next to the occupation and partition of Bosnia and Herzegovina

between two aggressors, represented he instrument of enabling the basic goal of the aggression – **expanding of the aggressor's lebensraum**. Important condition for enabling that goal was the biological and spiritual extermination of Bosniacs. Inexplicable passivity of the international community, inadequate bearing of United Nations enabled the aggressors and their collaborators to try to materialize extermination of Bosniacs and to commit genocide against them by using such instruments;

- Immediately before the instigation of aggression against Bosnia and Herzegovina JNA, under the pretext of performing maneuvers, took control of the strategic locations, occupied the vital facilities around towns and settlements, controlling completely all lines of communications of higher value, in order to block the functioning of the legal state. Simultaneously, JNA dug in the artillery pieces, set the machine gun pillboxes and guard sites, constructed the lines of fortification on all the strategic places around townships, displaced military and the majority of heavy armament from the barracks, drew in the new weapons, fuel, ammunition and other materiel, drafted and trained in huge numbers the Serbian population. As a result, it enabled them to effectively take control of ¾ of the state territory in the very few first months of the open aggression;
- The decree to form the army "**for Serbs in BiH**" was reached at the meeting in Belgrade on 30 April, 1992. The order for establishing the "Army of the Serb Republic BiH" was enacted by the Federal Secretariat for national defense on 10 May, 1992, and it was endorsed by the representative of the Federal Secretary for national defense (general Blagoje Adžić). In order to cover up the involvement of FRY (Serbia and Montenegro) in the aggressor war against the Republic of Bosnia and Herzegovina and genocide against Bosniacs and to allegedly differentiate it from the **chief General Staff**, by the very same order, the "General staff of VRS", with the commandant Ratko Mladić was set;
- **Commands, units and establishments** of the 2nd JNA army zone, according to the decisions of the Greater Serbia authority and Slobodan Milošević in person, "**created the backbone of the Army of Republika Srpska, with complete armament and equipment**";
- **Commanders** (Serbian officers and NCOs) who originated from Serbia and Montenegro not even close left Bosnia and Herzegovina after 19 May, 1992 . In the Army of Republika Srpska in the month of May 1992 and later, there were many

commanders who were not citizens of Bosnia and Herzegovina. Some of them declared their wish to be transferred to the territory of the Federal Republic of Yugoslavia. However, they could not leave Bosnia and Herzegovina because the General staff of the Army of Republika Srpska banned such an action, by the order (Classified, No. 25/143-1) as of 19 May, 1992. The conscripted soldiers, about 8,000 of them left Bosnia and Herzegovina: Serbs, Albanians, Montenegrins and Muslims, as well as the military cadets from Serbia and Montenegro;

- Professional soldiers of the Yugoslav Army (professional officers, professional noncommissioned officers, contracted officers, contracted noncommissioned officers and contracted privates) upon the order of the superior officer, in accordance with Article 58 of the Law of the Yugoslav Army, were sent (redeployed) to the battlefields in the Republic of Bosnia and Herzegovina – other internationally recognized state, "**as a temporary reassignment** " within the Republika Srpska Army, where they completed the tasks "**in the area of combat operations**" and "**in the areas included in the combat operations**" and they stayed and participated "**in armed operations in the territories of former SFRY**".

Among the numerous professional officers of the Yugoslav Army who took part in the aggression against the Republic of Bosnia and Herzegovina and genocide against Bosniacs, were the following generals and colonels:

- Radislav Krstić,
- Stanislav Galić,
- Dragomir Milošević,
- Zdravko Tolimir,
- Momir Talić,
- Milan Gvero,
- Novica Simić,
- Milenko Živanović,
- Svetozar Andrić,
- Bogdan Subotić,
- Nikola Delić,
- Momir Zec,
- Dušan Kukobat,
- Vlado Lizdek,

- Dragiša Masal,
- Savo Sokanović,
- Radivoje Tomanić,
- Milan Torbica,
- Boško Gvozden,
- Novak Đukić,
- Radmilo Zeljaja,
- Dragomir Keserović,
- Radivoje Miletić,
- Bogdan Kovač,
- Marko Lugonja,
- Ljubomir Obradović,
- Dragan Obrenović,
- Vinko Pandurević,
- Cvjetko Savić,
- Milivoje Samardžić,
- Čedo Sladoje,
- Bogdan Sladojević,
- Veljko Stojanović,
- Đuro Beronja,
- Ljubiša Beara
- Petar Skrbić,
- Manojlo Milovanović,
- Jovo Marić,
- Boško Kelečević,
- Vladimir Arsić,
- Radovan Grubač,
- Živomir Ninković,
- Božo Novak,
- Grujo Borić,
- Dušan Josipović,
- Luka Dragičević, and many others.

- General Ratko Mladić was practically the Commander of the Main Staff of the 30th Personnel Center of the General Headquarters of the Yugoslav Army in Belgrade, and formally he was the Commander of the Main Staff of the Republika Srpska Army.
- General Dragomir Milošević as an officer of JNA/Yugoslav Army and the citizen of Serbia (Ub, Valjevo), at service in the Military Post 3001 Beograd, was "**in the territory included in the war activities and with the unit that carried out the tasks** from 30 June 1991 to 14 December 1995". He took part **in armed operations** against Bosnia and Herzegovina - "**in decisive battles throughout RS, particularly along the Sarajevo frontline**", and other forms of crimes against humanity and international law. As a direct perpetrator of crimes in Bosnia and Herzegovina, Dragomir Milošević, as a member of the Main Staff of the 30th Personnel Center of the General Headquarters of the Yugoslav Army in the Military Post 3001 – Garrison Belgrade, was in service of the Republika Srpska Army – Military Post 7598 Lukavica - Sarajevo (Commander of the Sarajevo-Romanija Corps), where he was injured on 17 May 1995 "**during the combat operations at the target *Bosut* in the greater Zlatišta area near Sarajevo**". On 10 September 1996, he filed a damage claim against FRY on the grounds of his injuries. Milošević, according to the Judgment of the Second Municipal Court in Belgrade of 9 July 2001, "**at the time of sustaining his injuries was a professional officer of the Yugoslav Army, which paid his salary throughout that time, and his participation in the frontline in the greater Zlatišta area near Sarajevo was accompanied by the consent or the knowledge of the General Headquarters of the Yugoslav Army, or otherwise any unauthorized going of the Applicant /**Dragomir Milošević/, **being a professional officer of the Yugoslav Army to the combat theater of another internationally recognized state would result in his termination of employment, and the Applicant was not subjected to such a decision by his superiors, nor such evidence was presented to shi Court during the trial.**" thus, the Second Municipal Court in Belgrade adjudicated that "**in this specific case there is a responsibility of the Respondent – FRY for the damage incurred by the Applicant, applying the principle of direct responsibility in accordance with Article 174 of the Law of obligations, given that this was damage incurred by dangerous activity**."[186]
- JNA at that time, and later the Army of Yugoslavia (VJ), operationally planned, prepared, coordinated, controlled, and managed the combat operations against Bosnia and Herzegovina. JNA units, and later the Army of Yugoslavia, plus the

special units of the Ministry of Interior of the Republic of Serbia participated in the offensive activities on the territory of Bosnia and Herzegovina, including the parachute and special service group task forces. All strategic and operational plans for utilization of the commands and units of the Army of the Serb Republic of Bosnia and Herzegovina, that is Republika Srpska Army were drafted in the General staff of the Army of the FRY in Belgrade, and later, they would follow the chain of command and control, and would be delivered to the General staff of the Army of the Republika Srpska Army, that was in operational command to materialize and execute. That army (JNA/VJ) gave all the orders from Belgrade and distributed them to its forces in Bosnia and Herzegovina (Republika Srpska Army), which on regular basis briefed its supreme command (in Belgrade.) Those two armies were one army, that is, they were component of the Yugoslav Army (FRY);

- Republika Srpska Army was **subordinated to the Yugoslav Army**, especially in terms of activities. Basically, the establishment and the "activities" of the Republika Srpska Army was just a **legal fiction** in the attempts to cover up the involvement of the JNA/Yugoslav Army in the aggression against and genocide in Bosnia and Herzegovina. Republika Srpska Army Personnel Policy and all other criminal activities inside and against the Republic of Bosnia and Herzegovina were conducted through the 30th Personnel Center of the General Headquarters of the Yugoslav Army (Military Post 3001) in Belgrade, whose commander was General Mladić, an officer of the Yugoslav Army and a citizen of Serbia, from where (from and through Belgrade), in addition to the logistical support, planning and other support for the aggression, the regular official correspondence and telephone communications were conducted. In this way, the use of forbidden chemical and other means was ordered;
- Republika Srpska Army, as the component of the Armed Forces of the Federal Republic of Yugoslavia and its strategic element was completely dependant of Belgrade, it was dependant of the manpower in officers and soldiers, entire logistical support (aviation, combat and non-combat vehicles, tanks, transporters, artillery and infantry weapons, radars and computing equipment, ordnance, ammunition, fuel and lubricants, medical material, health care and all other military supplies). Salaries of the active and retired officers were paid in the FRY throughout the course of aggression, and the pensions are paid even today;

- Professional soldiers (professional officer, professional NCO, contracted officers, contracted NCO's and contracted soldier) of the YA "**that carried out military operations**" in and against Bosnia and Herzegovina, formally working in commands, units and establishments of RS Army, according to Articles 156 and 157 of the Law of the Army of Yugoslavia, recognized the right to pension insurance ("war service") in double duration and the right to special benefits resulted from the hardship (in specially severe conditions 34-38%), and the right to reimbursement due to the life separated from the family. Yugoslav Army **paid the salaries** to their professional soldiers who took part **in armed operations throughout the war**;
- The officers (commanders, leaders, soldiers) of the RSA were posted and promoted by the authority vested in the President of the FRY and the Chief of General Staff of the Army of Yugoslavia;
- Genocide against Bosniacs in the Republic of Bosnia and Herzegovina was well planned and systematically executed (despite the unfavorable development of situation for the aggressor caused by the presence of world media, military observers, UNPROFOR, UNHCR, and other international organizations and their neutrality in the armed conflict of international character, the strong resistance to the aggressor and genocide, the late international military intervention in prevention of genocide, etc.) along with **the massive participation of the Serb people,** unfortunately. In the genocide against Bosniacs in the UN Safe Area Srebrenica in July 1995 according to the research of the Government of Republika Srpska (different basis and ways of participation), over 25,000 people took place;[187]
- For extermination of Bosniacs, in the international humanitarian law protected groups (national and religious), **the genocidal criminal intent and the genocidal plan** existed (in addition to the strategic priorities, there were also the orders for committing genocide, including the setting up of the concentration camps.) Slobodan Milošević "**was accessory to the joint criminal enterprise, that included the leadership of the Bosnian Serbs, whose objective and intention were to partially destroy the Bosnian Muslims as a group"**;[188]
- Aggression against the Republic of Bosnia and Herzegovina is, in addition to **the arms embargo and humanitarian politics** of the United Nations, Europe and international community **and the international strategy of ignoring the fascist and genocidal project of the Greater Serbia**, was the integral part of the Milošević official politics, in the name of which the major portion of Bosnia and Herzegovina was

occupied, Bosniacs killed, expelled, and driven to concentration camps, because of their nationality and religion, and for their land, looting of their property and other movables, taking away and appropriation of their houses and apartments, and eradication of their cultural and civilized heritage;

- Collaborators of the Greater Serbian aggressors (political, military, police and governing-executing potentials of the Republika Srpska, that is the official government bodies of the Republika Srpska) were under direct leadership, organization, command, participation and support of the state of Serbia and Montenegro/Federal Republic of Yugoslavia, which seized over 70% of the territory of the Republic of Bosnia and Herzegovina, got involved in the genocide, crimes against humanity and war crimes against Bosniacs;
- Fascistic and genocidal leadership of the collaborationist construction of Republika Srpska, with Radovan Karadžić, Momčilo Krajišnik, Biljana Plavšić and others that generated the Serbian Nazism and inaugurated the structure known as a Republic on the bones of slain Bosniacs, had **genocidal intent and genocidal plan** to eradicate Bosniacs, acting accordingly;
- Beside the military and police forces of the collaborating, fascist, and genocidal Army of Republika Srpska and Army of Republika Srpska Krajina, the armed forces of Federal Republic of Yugoslavia (Yugoslav Army and the Republic of Serbia Ministry of the Interior) took part in taking over Srebrenica, the United Nations Safe Area and the execution of genocide against Bosniacs in July 1995.. For instance, in executions of captured Bosniacs the personnel of Yugoslav Army and special task forces of the Ministry of Internal Affair of Serbia directly partook in;
- Genocide against Bosniacs is, in line with the Greater Serbia genocidal ideology, politics and practice, following the model of fascism and Nazism was executed continuously, with smaller and bigger oscillations until the end of 1995, regardless the death toll. The biggest numbers of slaughters took place in the regions of around ten municipalities with Bosniac majority in Podrinje, Bosanska Posavina, Potkozarje, and in the Sana river valley, the regions that were marked as strategic priorities of the aggressor. **Mass graves and concentration camps** are important indicators of aggression and realization of its basic intent – biological and spiritual extermination of Bosniacs, i.e., the genocide against that nationality;
- Republic of Bosnia and Herzegovina, internationally recognized state and the member of the UN, during the aggression and genocide suffered enormous losses.

The total **number of the killed, forcibly transferred, injured, and other forms of crimes against humanity and the international law** has not yet been fully studied. In the up to date research, only the number of the killed goes between 25,000 and 328,000. ICTY researchers (OTP demographers), Dr Ewa Tabeau and Dr Jakub Bijak, finding the basis for their records on the results of the research by the Institute for the Research of Crimes Against Humanity and International Law of the Sarajevo University, finding them reliable and authentic, and the sources relevant, estimated around the mid 2003 **minimal number of total war related deaths in Bosnia and Herzegovina**" to be **102,622 persons, of which 55,261 (54%) civilians and 47,360 (46%)** "**military**" **deaths**, emphasizing that the number was **incomplete**. Their analysis did not include the records on "all cases of war related deaths in Bosnia and Herzegovina", nor the cases of deaths that resulted from the difficult living conditions, and "the disturbances in the reproduction processes".[189]

In addition to the mass and individual murders, numerous other forms of crimes against humanity and international law were committed, such as:

- **several hundreds of thousands of the injured**, of which several tens of thousands of children;

- **several hundreds of thousands of the incarcerated** in over 650 concentration camps and other places of incarceration;

- **several tens of thousands of rapes and sexually abused girls and women** (including the elderly women), even men;

- more than **2,200,000 persons** were expelled from their homes, who were in panic and fear, and this is more than one half of the Republic of Bosnia and Herzegovina population according to the 19991 census (March 1991);[190]

- **1,370,000 persons** are with severe psychological injuries;

- the Great Serbian aggressor, in towns under siege and safe area of the UN and other settlements near the frontline, **imposed such living conditions that targeted the destruction in full or in part of Bosniacs – targeted group**;

- ***significant increase in the mortality rate***, **caused by severe conditions of aggression and genocide.** This increase is primarily related to the elderly people and children;

- ***significant decrease of birth rate*****, related to the reduction in births, caused by severe conditions of aggression and genocide**;

- The Great Serbian aggressor and its collaborationists, in some places, **converted Muslims by force to Eastern Christianity**. There are numerous testimonies about it from people of Kalimanići, Rogatica, Bjelimići, Foča, Kozarac, Semberija and other places;
- Aggressor **plundered, demolished systematically destroyed and eradicated the traces of around 1,200 facilities of Islamic architecture**, including numerous mosques, Islamic schools, Teki, and other sacral facilities, including as well those of immense historic-cultural, artistic, or scientific value, which cannot be replaced. At the same time, the Serbian-Montenegrin fascists destroyed or damaged more than 500 Catholic church facilities and some Jewish;
- Aggressor **plundered, demolished, and burnt hundreds of thousands of residential facilities**. It is estimated that between 60% and 70% of the total residential units in the Republic of Bosnia and Herzegovina was damaged. Numerous infrastructure facilities (railways, roads, postal communications and TV transmitters) were damaged;
- Aggressor **plundered, destroyed, and demolished numerous industrial facilities, agricultural goods, hotels, motels, and tourist centers**, **entrepreneur centers and privately owned shops**. It is estimated that between 50% and 60% of industrial facilities were damaged;
- Great Serbian aggressor **destroyed about 55% of health care facilities**, including thousands of hospital beds. They killed 349 doctors and other medical professionals, mainly at work (47 only in Sarajevo). They destroyed about 400 ambulances;
- Perhaps the worst results of the aggression are **demolition and destruction of almost all educational, scientific, cultural and sports facilities**. It suffices to say that the aggressor shelled and burnt National and University Library in Sarajevo (collection of periodic publications with more than 30,000 titles from all the disciplines of science and life in general. Periodicals had almost half million of volumes, National Library had about 850,000 monographic publications). Aggressor burnt the Oriental Institute, including archive and library, and it destroyed almost all the facilities from the time of XIV Winter Olympic Games 1984, and several century old Jewish cemetery was turned into the nest for killing civilians under siege in Sarajevo;

- Aggressor **disabled or cut off water supply installations, electricity installations, gas, and telephone installations**, especially in Sarajevo. In this way, the aggressor subjected civilians to harsh conditions that were supposed to result in their destruction, full or in part;
- Serbian-Montenegrin aggressor and its collaborationists **did not abide by any war conventions**, and they used methods forbidden by all international and humanitarian laws and standards. The aggressor used fragmentation and incendiary ammunition against civilians, residential and industrial facilities and hospitals, and it also used chemical poisons, cluster bombs, sniper, etc. all the artillery pieces were used against towns and predominantly Bosniacs;
- Aggressor **systematically starved the population, especially in Sarajevo, and prevented their medical treatment and epidemiological protection, prevented UNHCR and other international and local organizations from delivering supplies**. Also, in occupied places with a smaller number of Bosniacs and Croats, the aggressor would **fire them from their jobs, evict them from their apartments,** and force them first to sign that the give up their property, and it deprived them from welfare and medical care;
- During the aggression against the Republic of Bosnia and Herzegovina, aggressor particularly **used siege as a way of warfare and indiscriminate and disproportional force**, which is characteristic for Sarajevo, Goražde, Žepa, Srebrenica, Bihać and other places under siege;
- Systematic pattern of forcible takeover of authority; crimes; extent and pattern of attack; intensity; a large number of killed Bosniacs; expelling, deportation, cruel treatment in concentration camps and other places of incarceration, targeted attacks at key individuals important for their survival as a group (prominent intellectual, political, spiritual, and rich Bosniacs) are clear proofs of **intention** and **genocide against Bosniacs**. Unfortunately, Bosnian Muslims are partly exterminated at the end of XX century. There are so many places free of them, where they used to live for centuries;
- Genocide against Bosniacs is still kept as something covert, it has been minimized, made irrelevant, and/or neglected, including the Judgments of the international (ICTY and ICJ) and national (Federal Republic of Germany and Bosnia and Herzegovina) criminal courts, as well as the results of the C*ommission on investigating the events in and surrounding Srebrenica from 10th till 19th of July 1995, of the Government of*

Republika Srpska and the Working Group for implementation of findings taken from the final report of the Commission on investigating the events in and surrounding Srebrenica from 10th till 19th of July 1995;

- The genocide victims have been permanently and continuously placed at the same level with their executioners, which is inadmissible (there have been more and more talks about the war crimes committed on "all sides". By doing so, the genocide and other forms of crimes against humanity and the international law have been reduced only to war crimes, which results, to put it politely, in insulting the researchers of these crimes, not to mention the genocide victims). Moreover, in a wrong way, in advance, without any research done, the qualifications are made about such an important issue, such as character of crime, which does not correspond with the facts and it is in contravention with relevant documentation;
- We have witnessed, regrettably, even more present manipulation with he genocide victims in Bosnia and Herzegovina at the end of the 20th century, where we can see the employment of quasi-researchers. Frontrunner of these manipulations are different and versatile, not only the individuals, but also the groups, all sorts of groups, miscellaneous associations, institutions and others, whose interests and goals are different, and it is difficult to articulate, disclose, identify, establish and assert them in unique way. We identify them as malevolent, leaning, and counterproductive for Bosnia and Herzegovina as a state and its citizens, regardless of their nationality, religion, or political affiliation. The basis for this qualification derives from the fact that these so-called researches are not organized or realized on scientific base and scientifically established procedure, which regulates the process flow, beginning with the researcher's idea to the results of the scientific research and their eventual changes in scientific and societal practice. It is a well known fact that there is only one truth, and that the objective of science is the scientific truth, which is reached by application of the scientific methods;
- Criminal prosecution and prosecution of genocide and other forms of crimes against humanity and international law before the courts in Bosnia and Herzegovina has been continually hindered, to say at least, with the powers that select the cases by the nationality of victims, in order to equate and balance the crime among three ethnicities (Bosniacs, Serbs and Croats), instead of by gravity of crime, character, status, and the number of victims. In the end, the genocide victims are findings the victims as criminals. Moreover, there is an effort to change in these criminal procedures

the character of “conflict” and the character of crime in Bosnia and Herzegovina, so that an international armed conflict, that is, aggression, become a civil war, and the crime of genocide becomes “ethnic cleansing”;

- Planners, order-issuers, participants, accessories, accomplices, and executors of genocide in the Greater Serbia ideology, politics and practice, are the biggest heroes in Serbian nation (in science, culture, arts, education), who live and work unpunished, enjoying, unfortunately, the fruits of genocide and making fun of the crime victims;
- Serbian people and its political and scientific elite have not distanced from the genocide, let alone to show any remorse for the victims and ask for forgiveness, calling for the hand of reconciliation. Instead, they continually negate the genocide and place the responsibility for crimes on the genocide victims, making up and falsifying the historical facts, such as, among other things for example, the “thesis” that the legal authorities of the Republic of Bosnia and Herzegovina expelled Serbs from the area of Sarajevo, including “more than 650 university professors and assistants”;
- The entity of Republika Srpska is the genocidal construction of the Greater Serbian Nazism, erected on the grave violations of the international humanitarian law, marked and smeared with, mainly, the blood of Bosniacs, bounded and covered with a number of mass graves and concentration camps, where the fascist organizations legally operate. The so-called international community legalized and instituted such a genocidal creation to become a constitutional category. Political authority and other structures of Republika Srpska, in line with the Greater Serbian genocidal ideology, politics and practice, in any way possible, obstruct the affirmation of the state of Bosnia and Herzegovina and incessantly conduct the politics of secession, destruction, and annihilation of the state of Bosnia and Herzegovina.

Notes:

[1] F. A. Boyle, BOSNIAN PEOPLE ACCUSATION FOR GENOCIDE: APPLICATION BEFORE THE INTERNATIONAL COURT OF JUSTICE IN THE CASE BOSNIA AND HERZEGOVINA VERSUS SERBIA IN RELATION TO PREVENTION AND PUNISHMENT OF CRIME OF GENOCIDE, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University, Sarajevo 2000, pp. 11-242; International Court of Justice, JUDGMENT, CASE RELATED TO APPLICATION OF CONVENTION ON PREVENTION AND PUNISHMENT OF CRIME OF GENOCIDE - BOSNIA AND HERZEGOVINA VERSUS SERBIA AND MONTENEGRO (hereinafter: ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**), The Hague, 26 February 2007, Para 1, 4 and 64. Bosnia and Herzegovina, in addition to Prof. Dr Francis Boyle, was also represented by Muhamed Šaćirbegović, Ambassador and Permanent representative of Bosnia and Herzegovina in UN. He attended and took part in hearings before the Court, especially on 1 and 2 April, and 25 and 26 August 1993. (F. Boyle, pp. 157-243 and 375-485).

[2] F. Boyle, p. 158

[3] Ibid, pp 157- 243.

[4] Ibid, pp. 245-519; International court of justice, *Reports*, p. 24, Para 52 (A) (1) and (2); ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, Para 451-458. The provisional measure was adopted unanimously.

[5] Ibid. The Court adopted provisions measure with 13 votes in favor and 1 against. Judge Nikolai Tarasov was against, because he thinks "that chapters in Decision may be interpreted as if Court believes that the FRY Government is really involved in these acts of genocide or at least is possible that it is involved". Thus, in his opinion, those provisions "are getting clause to prejudice in the case, irrespective of the admission of the Court that in the Decision on provisional measures it does not have the right to bring definitions of facts or law" (F. Boyle, pp. 275-276).

The Court also unanimously adopted the following provisional measure: "FRY Government (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina must not take any actions and they have to ensure that no actions shall be taken to jeopardize or expand the existing dispute in relation to prevention and punishment of crime of genocide or make it worse for solving " (ICJ, **JUDGMENT**, Para 453; F. Boyle, pp. 273-274).

[6] F. Boyle, p. 514.

[7] Ibid, pp 277-373. In the *Motion for provisional measures* of 27 July 1993, Bosnia and Herzegovina pointed at "circumstances that demand the additional provisional measures of protection" and presented the chronology of violations of the Court Decision of 8 April 1993 by FRY (Serbia and Montenegro), pointing, among other things, to its official admission of the responsibility in arming, equipping and supplying the Serb armed units in Bosnia and Herzegovina (Ibid, pp. 284-350). On that occasion, Bosnia and Herzegovina, in addition to detailed and corroborated Motion, enclosed some documents as well to amend the Motion, and in some cases the Application – see more: F. Boyle, his work, pp. 351-373.

[8] A. F. Boyle, pp. 375-485

[9] Ibid, pp 514-518. Namely, Court also stated that since the Decision of 8 April 1993, and despite numerous UN SC Resolutions, "suffering and human losses in Bosnia and Herzegovina continue in the circumstances that shock the consciousness of the world and they are apparently opposed to moral laws, spirit and objectives of UN …" (Ibid, pp. 515).

[10] ICJ, **JUDGMENT,** Para 452; F. Boyle, pp. 245-276 and 279-518. Court, according to Muhamed Šaćirbegović, at the public hearing on 25 August 1993 at the Palace of Peace in the Hague, in relation to the Second Motion for additional protective measures by Bosnia and Herzegovina concluded "partly that Serbia and

Montenegro should take all the steps to ensure that the genocide against Bosnia people, particularly Bosniacs, is not continued " (Ibid, pp. 380).
[11] F. A. Boyle, pp. 245-519; International Court of Justice, *Reports*, p. 24, Para 52 (A) (1) and (2); ICJ, **JUDGMENT**, Para 451-458.
[12] S. Čekić, **RESEARCH OF GENOCIDE VICTIMS SPECIAL ATTENTION TO BOSNIA AND HERZEGOVINA – Scientific – theoretic and methodological – methodic questions and problems**, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University - Kult B, Sarajevo 2007, pp. 117-188.
[13] **∴SERBIA BEFORE THE ICJ**, vol. 1, Belgrade 2007, pp. 53, 162 and 479.
[14] ICJ, **JUDGMENT**, Para 67-79.
[15] Ibid.
[16] Ibid, Para 80-141.
[17] Ibid, Para 191-201.
[18] Ibid, Para 386.
[19] Ibid, Para 241.
[20] Ibid. Para. 388.
[21] Ibid, Para 394 and 434.
[22] Ibid, Para 394.
[23] Ibid, Para 394 and 434.
[24] Ibid, Para 297.
[25] Ibid.
[26] Ibid, Para 292-293 and 434.
[27] Ibid, Para 292.
[28] Ibid, Para 293.
[29] Ibid, Para 292.
[30] Ibid.
[31] Ibid, Para 293.
[32] Ibid, Para 413.
[33] Ibid, Para 288 and 413.
[34] Ibid, Para 288, 290 and 388.
[35] Ibid, Para 388.
[36] Ibid.
[37] Ibid.
[38] Ibid, Para 233 and 235.
[39] Ibid, Para 249 and 277.
[40] Ibid, Para 292-293, 434 and other.
[41] Ibid, Para 438 and 450. "**Respondent**", according to the Judgment, "**failed to comply both with its obligation to prevent and its obligation to punish genocide deriving from the Convention, and that its international responsibility is thereby engaged**" (Ibid, Para 450).
[42] Ibid, Para 471.
[43] Ibid.
[44] Ibid, Para 245-276.
[45] Ibid, Para 276.
[46] Ibid, Para 276. Legal Team of Serbia and Montenegro did not deny the crimes (**∴SERBIA BEFORE ICJ**, Belgrade 2007, vol. 2, pp. 13). Court *de facto* stated that Serbia and Montenegro, trying to minimize dimensions and the extent of crimes and give them different qualification, "challenged the truthfulness of certain allegations and the victim count and motives of perpetrators, as well as circumstances in which the murders were committed and their legal qualifications" (Ibid).
[47] Ibid, Para 247, 252, 257-259, 262 and 271; ICJ, **JUDGMENT**, *Consented opinion by the Judge Ahmed Mahiou*, Para 72.
[48] ICJ, **JUDGMENT**, Para 245-276; ICJ, **JUDGMENT**, *Consented opinion by the Judge Ahmed Mahiou*, Para 72.
[49] ICJ, **JUDGMENT**, Para 277.
[50] Ibid.
[51] Ibid, Para 319.
[52] Ibid, Para 328.
[53] Ibid, Para 325.
[54] Ibid, Para 334.

[55] Ibid, Para 344. To corroborate this position, the Court cited Report by the *Commission for International Law* on the work of its 48th session (*Yearbook of the International Law Commission 1996*, vol. II, Part two, pp. 45-46, Para 12), where "**it was clearly shown during the preparation for the Convention ... destruction in question is material destruction of a group whether by physical or biological means, not the destruction of national, linguistic, religious, cultural, or any other identity of a group**" (Ibid).
[56] ICTY, Case *Krstić*, No. MT-98-33-T, Trial Chamber JUDGMENT, 2 August 2001, Para 580.
[57] Ibid, Para 580-595.
[58] Ibid, Para 596.
[59] ICJ, **JUDGMENT,** Para 354.
[60] Ibid, Para 297.
[61] Ibid, Para 292-293 and 434.
[62] Ibid, Para 292.
[63] Ibid, Para 290, 292 and 297.
[64] Ibid, Para 370 and 376.
[65] Ibid, Para 370.
[66] Ibid, Para 252-256, 262-273, 307-310, 312-318 and 370.
[67] Ibid, Para 371.
[68] Ibid, Para 371.
[69] S. Čekić, **AGGRESSION AGAINST THE REPUBLIC OF BOSNIA AND HERZEGOVINA - planning, preparation, execution** -, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University-Kult B, Sarajevo 2004, pp. 568.
[70] ICJ, **JUDGMENT,** Para 372.
[71] ICJ, **JUDGMENT,** *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 41.
[72] Ibid.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] ICJ, **JUDGMENT,** Para 371.
[77] Ibid, Para 373.
[78] ICJ, **JUDGMENT,** *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 40.
[79] ICJ, **JUDGMENT,** Para 373.
[80] Ibid, Para 276, 319 and other.
[81] Ibid, Para 374. ICJ in continuation of its arguments, grouped the criminal proceedings for genocide and similar crimes before the ICTY.
[82] ICJ, **JUDGMENT,** *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 42.
[83] ICJ, **JUDGMENT,** Para 297 and 376. Judge Ahmed Mahiou could not sign some statements presented in some of the paragraphs of the Judgment, especially 373-376, where Court "**rejects any general plan for destruction of a significant part of Bosnian Muslim population**". In this regard, Mahiouargues that "**in consideration of this matter, the Court did not genuinely consider this matter and it did not consider the perspective of the totality of material elements and elements of intent which stem from the case it considers**" (ICJ, **JUDGMENT,** *Consented opinion by the Judge Mahiou*, Para 82.
[84] Ibid, Para 223.
[85] ICTY, Case MT-94-1-A, *JUDGMENT* 1997 and *JUDGMENT* 1999. That judgment, according toe the Legal team of Serbia and Montenegro "influenced the perception of the entire conflict by the international community" (**∴SERBIA BEFORE ICJ, JUDGMENT**, vol. 2, Belgrade 2007, p. 14). This is the reason why ICJ did its maximum to reject it.
[86] A. Cassese, **INTERNATIONAL CRIMINAL LAW**, Belgrade 2005, p. 115. That conclusion according to A. Cassese is "important for procedural part, as it understands that Prosecutor in national or international trials does not have to present evidence for such a practice" (Ibid).
[87] Ibid.
[88] Ibid.
[89] ICTY, MT-97-24-T, JUDGMENT, 31 July 2003, Para 544 and 546; ICJ, **JUDGMENT,** Para 261.
[90] ICJ, **JUDGMENT,** Para 261.
[91] ICTY, PROSECUTOR vs. SLOBODAN MILOŠEVIĆ, DECISION UPON MOTION FOR JUDGMENT OF ACQUITTAL, The Hague, 16 June 2004, Para 246 and 288.
[92] Ibid, Para 246 i 288. Available evidence, in the position of the Prosecutor "**corroborate conclusion that there was a systematic pattern according to which Bosnian Serbs took over the authority in the Bosnia and Herzegovina municipalities that were planned to be part of Serbian state, and that there was a**

developed systematic pattern according to which Serb forces established the framework for the commission of genocidal crimes and crimes of persecution, within which they acted" (Ibid, Para 144).
[93] ICTY, MT-95-10-T, JUDGMENT, 14 December 1999, Para 65.
[94] ICJ, **JUDGMENT,** Para 272.
[95] UN, SECURITY COUNCIL, *Resolution 1034 (1995)*, Para 2; ICJ, **JUDGMENT,** Para 302.
[96] ICTY, Trial Chamber JUDGMENT of 27 September 2006, Para 867-869; ICJ, **JUDGMENT,** Para 219.
[97] ICTY, PROSECUTOR VERSUS SLOBODAN MILOŠEVIĆ, DECISION UPON MOTION FOR JUDGMENT OF ACQUITTAL, 16 June 2006, Para 144 and 246.
[98] Ibid, Para 246, 288-289 and 323.
[99] Ibid, Para 289 and 323.
[100] Ibid, Para 238-289.
[101] As an illustration, R. Karadžić stated on 13 October 1991: "**in two to three days, Sarajevo will disappear and there will be 500,000 dead. In a month, there will no Muslims in Bosnia and Herzegovina** " (Ibid, Para 241). Two days later, Karadžić stated: "**first of all, no one of their leadership would stay alive. They would be all killed within 3-4 hours. They would have no chances to survive** " (Ibid).
[102] On 1 May 1992, Biljana Plavšić told Mr. Doyle, personal representative of Mr. Carrington :**that if there is any division of territory, Serbs deserve a larger portion and if necessary, that 3 million people die to solve this issue, they would do so**" (Para 242).
[103] Ibid, Para 239-287.
[104] Ibid. Ibid. Evidence pertained to:
"1. the overall leadership position of the Accused among the Serbian people, including the Bosnian Serbs in Bosnia and Herzegovina;
2 the Accused's advocacy of and support for the concept of a Greater Serbia;
3. the logistical and financial support from Serbia to the Bosnian Serbs, which it is reasonable to infer was provided with the knowledge and support of the Accused ; the logistical support is illustrated by the close relationship of VJ personnel with the VRS;
4. the nature of the Accused's relationship and involvement with the Bosnian Serb political and military leadership, as evidenced by the request of Karadzic that the Accused keep in touch with him and that it was very important for Karadzic to have his assessment;
5. the authority and influence of the Accused over the Bosnian Serb leadership;
6. the intimate knowledge that the Accused had "about everything that was being done "; his insistence that he be informed "about everything that was going to the front line; and
7. the crimes committed, the scale and pattern of the attacks on the four territories, their intensity, the substantial number of Muslims killed, the brutal treatment of Muslims in detention centers and elsewhere, and the targeting of persons essential to the survival of the Muslims as a group... " (Ibid, Para 288).
[105] Ibid, Para 288.
[106] Ibid.
[107] Ibid, Para 246.
[108] ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, Para 289, 389, 395 and 413. Even the Vice-President of the Court, Al-Khasawneh in his Dissenting opinion pointed out to this, least to say, inconsistency by the Court, ascertaining that the Court needed to treat "Scorpions " as *de jure* body of the Federal Republic of Yugoslavia (ICJ, **JUDGMENT**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 53-54).
[109] ICJ, **JUDGMENT**, Para 289, 389, 395 and 413.
[110] Republika Srpska Government, Working group for the implementation of conclusions reached in Final Report of the Commission for the research of events in and around Srebrenica from 10 to 19 July 1995, ADDENDUM TO THE REPORT of 30 March 1995, Banja Luka, 30 September 2005.
[111] ICJ, **JUDGMENT**, Para 377-378; Ibid, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 56-61.
[112] ICJ, **JUDGMENT,** Para 394 and 434.
[113] Ibid, Para 438.
[114] Ibid, Para 398.
[115] ICJ, JUDGMENT, 27 June 1986, Para 109-115 and other; ICJ, **JUDGMENT,** Para 204, 213, 391-393 and 399-401.
[116] Ibid; ICJ, **JUDGMENT,** Para 399-400.
[117] Ibid. In this regard, ICJ stated (1986) that "there are bi clear evidence that USA had control in that scope that it can justify the treatment of the *contras* in all fields as if they acted on behalf of the USA". Moreover, the Court concluded that "the evidence available to the Court ... were insufficient to prove the complete dependence

(of the *contras*) on the American aid", and the Court "could not find that the *contras* could equate for the legal purposes with the forces of the USA" (Ibid, Para 391).
[118] ICTY, *Prosecutor vs. Tadić,* JUDGMENT, MT-94-1-A, 15 July 1999, Para 137.
[119] ICTY, *Prosecutor vs. Tadić,* JUDGMENT, MT-94-1-A, 15 July 1999, Para 145; ICJ, **JUDGMENT,** Para 402.
[120] ICJ, **JUDGMENT,** Para 403.
[121] Ibid, Para 404.
[122] Ibid.
[123] Ibid, Para 405.
[124] Ibid, Para 406.
[125] Ibid, Para 407.
[126] Ibid, Para 285 and 408.
[127] Ibid.
[128] Ibid, Para 410.
[129] Ibid.
[130] Ibid, Para 411.
[131] Ibid.
[132] Ibid, Para 412. Prof. Dr Radoslav Stojanović, Agent of Serbia before ICJ stated in early March 2007 that they contested the Application of the Republic of Bosnia and Herzegovina v. FRY (Serbia and Montenegro for the violation of Convention on prevention and punishment of crime of genocide of 9 December 1948 with the **CIA documents**, because allegedly 70% of these documents of the first degree were in their favor (*Oslobođenje*, Sarajevo, 5 March 2007). In this regard, Prof. Dr Smail Čekić made a public release on 6 March which was published on 7 March in *Oslobođenje*, in which he denied the Stojanović's allegations:
"- **first**, this is about the book in two volumes "BALKAN BATTLEGROUNDS" about "military conflict in the former Yugoslavia between 1990 and 1995" published in 2002 (vol. 1) and 2003 (vol. 2), by two authors – CIA military analysts. CIA is publisher, Office of Russian and European Analysis, Washington, DC;
- **second**, Preface, among other things, say that "conclusions, positions, and opinions noted in this book belong only to authors and these are not official positions of CIA or US Government";
- **third**, these are not CIA documents, especially not of the first degree, as alleged without any moral scruples and unprofessionally by Prof. Stojanović. Namely, this is an attempt of military-hybrid reconstruction of that period, whereby authors used various sources – newspaper articles and memoirs, results of some relevant research and ICTY documents, which clearly confirm the effective participation of the Yugoslav Army and Republic of Serbia Ministry of the Interior in genocide in the Republic of Bosnia and Herzegovina, even the members of the 72nd and 63rd Brigade of the Yugoslav Army, for which ICTY proved to have participated in slaughtering of children in Eastern Bosnia in 1993;
- **fourth**, Stojanović alleges that "CIA documents stated that since the withdrawal of JNA until the end of war, in a short period, there could be about 2,000 civilians, military and police from Serbia". However, these are not the CIA documents, but incorrectly quoted positions of the authors (p. 275, vol. 2);
- **fifth**, Stojanović, however, intentionally avoided the positions of the authors, that "the engagement of some officers and NCO's of the Yugoslav Army within RSA" are more important than the engagement of the Yugoslav Army and Serbian Ministry of the Interior troops for special operations;
- **sixth**, data of the authors presented on page 275 (vol. 2), under the subtitle "Assistance from Big Brother: Support of Yugoslav Army", clearly proves the effective control of the Yugoslav Army over RSA, because through the Yugoslav Army support and its personnel, the successful command over the units and operations in the R BiH was secured, along with the logistical, material, financial and other support. Anyway, Yugoslav Army and RSA were one army, those two military formations were integral parts of the single army of the FRY;
- **seventh**, it is apparent that based on these records ICJ could find a clear genocidal intent and effective control by FRY;
- **eight**, available relevant documentation proves that YNA/Yugoslav Army and Republic of Serbia Ministry of the Interior, in addition to the occupation of 70% of the R BiH territory, took part in the execution of Bosniacs, including those in the UN Safe heaven in Srebrenica in July 1995, which was also confirmed by the documents and the *Report by the Working group for the implementation of conclusions from the Final Report of the Commission for the research of events in and around Srebrenica* between 10 – 19 July *1995* of the Republika Srpska Government dated 30 September 2005. ICJ did not accept these documents as well and they know the reason" (*Oslobođenje*, Sarajevo, 7 March 2007, p. 5).
[133] Ibid. Considering the issue "**of crediting the genocide in Srebrenica to the Respondent on the basis of management or control**", that is "**whether the massacre in Srebrenica were committed by people who, although they did not have the status of organ of the Respondent, acted upon its instructions or under the leadership or control**" (ICJ, ***JUDGMENT***, Para 396-412), or whether the perpetrators of genocide were under the effective control of Serbia and Montenegro, ICJ responded negatively. It is the opinion of Saša Obradović,

Serbia provided a strong evidence for that during the verbal hearing: Report of the Dutch Institute for War Documentation, CIA report, testimony of Lord David Owen before Tribunal as well as officers of the Dutch battalion from Srebrenica, and the testimony of General Sir Michael Rose, given in the court" (**∴SERBIA BEFORE ICJ**, vol. 2, Belgrade 2007, p. 13).

The turning point of the trial, according to Saša Obradović, "appears to be", "testimony of a military expert Sir Richard Danat, brought before the Court by the Bosnian side". In reference to this, Obradović stated: "An experienced General, today the second man in the British Army, stated that he gave his evidence based on review of a huge number of documents, and upon a direct question by Judge Tomka from Slovakia if he saw any order issued by Belgrade to the authorities in Republika Srpska, he could not give a positive answer" (Ibid, pp. 13-14). This is a truly an example of deception, conspiracy, forgery, lie, breach of professional ethics, violation of human morale and consciousness. Unfortunately, the Court gladly and without hesitation, as if previously agreed, accepted all these deceptions lies, forgeries offered by Serbia and Montenegro Serbia and Montenegro, confirmed by General Danat on that occasions, who was a military expert of Bosnia and Herzegovina, which altogether confirms well designed, planned, organized, and targeted meaningful conspiracy.

[134] Ibid.

[135] Ibid, Para 415.

[136] ICJ, **JUDGMENT,** *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 30-32.

[137] Ibid, Para 34.

[138] Ibid, Para 3.

[139] ICTY, *Prosecutor vs. Slobodan Milošević,* DECISION UPON MOTION FOR JUDGMENT OF ACQUITTAL, The Hague, 16 June 2004, Para 301.

[140] Ibid, Para 302.

[141] Ibid.

[142] Ibid, Para 304.

[143] Ibid, Para 304-308.

[144] Ibid, Para 309.

[145] Ibid, Para 323.

[146] ICJ, **JUDGMENT,** Para 401.

[147] Ibid.

[148] Ibid.

[149] Ibid.

[150] ICJ, **JUDGMENT,** *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, p. 1 and Para 36.

[151] Ibid, Para 36.

[152] Ibid, Para 37; ICTY, *PROSECUTOR V. DELIĆ*, Appeals Chamber, 20 February 2001, Para 47.

[153] Ibid, Para 38; ICTY, *PROSECUTOR V. TADIĆ*, JUDGMENT, MT-94-1-A, 15 July 1999, Para 98. In this regard, the Court Vice-president cited the following author: J. Crawford, INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, Text and Commentaries, Cambridge University Press, 2002, p. 112.

[154] Ibid, Para 39.

[155] Ibid.

[156] ICJ, **JUDGMENT-BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 62.

[157] ICTY, *Jelisić*, IT-95-10-A, Judgment, 5 July 2001, Para 47; ICTY, *Jelisić*, IT-95-10, Judgment, 14. December 1999, Para 73; ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 43.

[158] ICTY, *Krstić*, *supra* note No. 20, Para 34; ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 44.

[159] ICTY, *Akayesu*, 96-4, Judgment, 2 September 1998, Para 523; ICTR, *Georges Rutaganda*, 96-3, Judgment, 6 December 1999, Para 398, both confirmed during the process *Georges Rutaganda*, ICTR-96-3-A, Judgment, 26 May 2003, Para 528; ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 45.

[160] ICTY, *Georges Rutanga*, 96-3-A, Judgment, 26 May 2003, Para 525; ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 46.

[161] ICTY, *Musema*, 96-13-A, Judgment, 27 January 2000, Para 167; ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 46.

[162] ICTY, *Kayishema*, 95-1-A, Judgment, 1 June 2001, Para 148; ICJ, **JUDGMENT - BOSNIA AND HERZEGOVINA ...**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 46.
[163] ICTY, *Kayishema*, 95-1, Judgment, 21 May 1999, Para 93; ICJ, **JUDGMENT**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 46.
[164] *A. Kaseze*, INTERNATIONAL CRIMINAL LAW, Belgrade 2005, p. 112, note 6; A. Cassese stated that the positions of the Court in Düsseldorf are extremely interesting "**about the factual and psychological elements based on which conclusion on 'intent' can be drawn**" (Ibid).
[165] *A. Cassese*, p. 115.
[166] ICJ, **JUDGMENT**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 47.
[167] REPUBLIKA SRPSKA GOVERNMENT, *Working group for the implementation of conclusions from the Final Report of the Commission for the research of events in and around Srebrenica* between 10 – 19 July *1995*, ADDENDUM TO REPORT OF 30 MARCH 1995, Banja Luka, 30 September 2005.
[168] ICJ, **JUDGMENT**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 48.

According to Antonio Cassese, genocide as well as other crimes against humanity "include grave violations that insult our understanding of humanity and they constitute attack at most basic values of the human dignity"; "they are not isolated cases, they are usually part of some bigger unity, whether they are part of an operation of a greater extent and consist of grave violation of human dignity or they are connected system of illegitimate acts" and, "although it is not a requirement that they are done by state officials or functionaries of the groups like rebels, they are usually conducted in complicity, by silent consent, or at least the authorities tolerate them or they close their eyes before them" (A. Cassese, pp. 121-122).
[169] ICJ, **JUDGMENT**, *Consented opinion by Vice-president of the Court*, Awn Shawkat Al-Khasawneh, Para 62.
[170] Ibid.
[171] ICJ, **JUDGMENT**, Para 204-205. National Council of Serbia and Montenegro for the cooperation with ICTY, upon request of the Prosecutor and the OTP delivered "all the documents of the Supreme Defense Council – originals – produced between 1992 and 1999, which were archived". The Council classified these documents as *top secret*, and the Council of Ministers of Serbia and Montenegro as *materials of national security interest* (∴ SERBIA BEFORE ICJ, Belgrade 2007, vol. 1, pp. 699-701).
National Council for cooperation, based on the Decision of Council of Ministers of Serbia and Montenegro petitioned the ICTY Trial Chamber in the case *Prosecutor vs. Slobodan Milošević* to grant protective measures pursuant to the Rule 54*bis* (F) and (I) of the Rules on Procedure and Evidence, in relation to some parts of these documents (Ibid, p. 699).
ICTY, several times upon the request and in "the interest of Serbia and Montenegro" ("vital national interest"), granted protective measures for the FRY Supreme Defense Council documents (stenographic notes and minutes), thus protecting these documents and depriving the Bosnia and Herzegovina Legal Team, ICJ and public from them. Trial Chambers evaluated that the protective measures were justified, especially the Fourth (30 July 2003.) and Ninth decisions (15 October 2003), in which the protective measures were granted accepting the Serbian and Montenegro arguments as valid, because the publication of these documents "**inflicted damage to their vital national interest in relation to the outcome of the application before ICJ filed by Bosnia and Herzegovina against Serbia and Montenegro on the grounds of genocide**" and could make "**Serbia and Montenegro pay hundreds of billions worth damage claim**" (ICTY, THE APPEALS CHAMBER, PROSECUTOR v. SLOBODAN MILOŠEVIĆ, *DECISION ON SERBIA AND MONTENEGRO'S FOR REVIEW* - CONFIDENTIAL, 20 September 2005; ICTY, IN THE APPEALS CHAMBER, PROSECUTOR v. SLOBODAN MILOŠEVIĆ, *DECISION ON REQUEST OF SERBIA AND MONTENEGRO FOR REVIEW OF THE TRIAL CHAMBER'S DECISION OF 6 DECEMBER 2005* - CONFIDENTIAL, 6 April 2006 and other confidential decision of trail Chambers).

Some Court decisions, especially Decision of the Appeals Chamber of 20 September 2005, according to which "**Trial Chamber made an error in the Fourth and Ninth decision by granting protective measures due to the national interests**", did not uphold Serbia and Montenegro requests, finding that granting protective measures to the Supreme Defense Council documents in accordance with the Rule 54*bis* on the grounds of "vital national interests", was a mistake, and they asked that the stenographic notes and minutes (parts) be unsealed and made public (Ibid). Trial Chamber, based on this decision and the OTP Motion to review the Fourth and Ninth decisions (23 September 2005), **rescinded** on 6 December 2005 the protective measures (ICTY, THE TRIAL CHAMBER, PROSECUTOR v. SLOBODAN MILOŠEVIĆ, *DECISION ON PROSECUTION MOTION FOR RECONSIDERATION OF DECISIONS CONCERNING SUPREME DEFENSE COUNCIL DOCUMENTS AND IMPLEMENTATION OF APPEALS CHAMBER REVIEW DECISION* – OF 6

DECEMBER 2005, Para. 54). Yet, by the Decision of 6 April 2006 the Appeals Chamber **rescinded** this decision of the Trial Chamber, including the order to make the documents public (Ibid). Apparently, the documents of FRY Supreme Defense Council were protected, so as to exonerate Serbia and Montenegro of the responsibility for genocide and payment of "hundreds of billions for reparation" (Ibid).

These confidential documents of ICTY confirm the fact that the FRY Supreme Defense Council documents, essential for finding Serbia and Montenegro responsible for genocide in Bosnia and Herzegovina, were protected on an erroneous legal basis, which the ICTY Chambers (Trial and Appeals) stated themselves in their confidential decisions, and they were aware of these legal errors. But, it is surprising that one Appeals Chamber, having ruled that the Trial Chamber made a legal error and the Trail Chamber corrected that error (by revoking the protective measures), rescinded the Trial Chamber decision and made a confidential order to grant protective measures to Serbia and Montenegro. Obviously, the Appeal Chamber, acknowledging the interests of Serbia and Montenegro before ICJ, where the hearings were ongoing, consciously neglecting their relevance for the genocide victims, and justice, rescinded the Trial Chamber decision of 6 December 2005. Florence Hartmann was the fist to uncover this conspiracy, scandal and crime, and because of that ICTY charged her with disclosing "information contained in some confidential decisions of the Appeals Chamber in the case IT-02-54-AR bis – *Prosecutor vs. Slobodan* Milošević" (ICTY, Case: IT-02-54-R 77.5, *Order in lieu of an Indictment of contempt in case against Florence* Hartmann, www.icty.org).

[172] Ibid, Para 204-205.

[173] Ibid.

[174] ∴ **SERBIA BEFORE ICJ, JUDGMENT**, vol. 2, Belgrade 2007, p. 12. It is interesting that the Court did not invite Serbia and Montenegro to deliver any document.

[175] ICJ, **JUDGMENT**, Para 206.

[176] FRY Supreme Defense Council documents, according to the ICTY Prosecutor of 23 September 2005. (ICTY, *Prosecution Motion* for *Reconsideration of Decisions Concerning SDC Documents and Submissions on the Implementation of the Appeals Chamber Review Decision in relation to VJ Piles and Other Documents Voluntarily Provided, filed confidentially on 23 September 2005*.) suggest the involvement of Serbia and Montenegro in armed conflicts in Croatia and Bosnia and Herzegovina; relations between Yugoslav Army and RSA and Army of Serb Krajina; presence of JNA and Yugoslav Army in Bosnia and Herzegovina; promotion and retiring of RSA and Army of Serb Krajina officers carried out by Supreme Defense Council (ICTY, THE TRIAL CHAMBER, PROSECUTOR V. SLOBODAN MILOŠEVIĆ, **DECISION ON PROSECUTION MOTION FOR RECONSIDERATION OF DECISIONS CONCERNING SUPREME DEFENSE COUNCIL DOCUMENTS AND IMPLEMENTATION OF APPEALS CHAMBER REVIEW DECISION OF 6 DECEMBER 2005, Para 24, note 30**). In reference with this, OTP rightfully raised the issue – if the Trial Chamber "was capable to render a public Judgment, as required by Rule 98*ter*, if that evidence remained protected from disclosure, despite the lack of legal basis to keep it secret"? (Ibid). Starting from the position that the key fact (protection of relevant evidence) was well known to ICJ, the question, as raised by ICTY Prosecutor, is justified: how could ICJ render a (fair?) Judgment as it was aware that the key evidence was protected from public. Unfortunately, ICJ consciously did not want to render a fair Judgment, and therefore it did not show interest in key evidence and relevance of these documents for this case and fair trial.

[177] ∴**SERBIA BEFORE ICJ, JUDGMENT**, vol. 2, Belgrade 2007, pp. 11-12. On 7 March 2006, Bosnia and Herzegovina provided the Court and Respondent with the CD-ROM containing "public evidentiary material of ICTY and other documents cited by BiH during the hearing". On 10 March, Serbia and Montenegro informed the Court "that it objected to tendering of CD ROM because tendering of such voluminous documents at such a late stage would result in serous concern for the respect of Court Rules and principle of fairness and equality of arms". After that Court decided "to withdraw CD ROM in the interest of fair trial", after which the BiH Agent withdrew (ICJ, **JUDGMENT**, Para 54).

[178] ∴**SERBIA BEFORE ICJ, JUDGMENT**, vol. 2, Belgrade 2007, p. 13.

[179] ICJ, **JUDGMENT**, Para 386 i 388.

[180] Ibid, Para 295.

[181] Ibid, Para 423.

[182] S. Čekić, **IDEOLOGY AND POLITICS OF AGGRESSION AGAINST BOSNIA AND HERZEGOVINA AND GENOCIDE AGAINST BOSNIACS**, *University informative journal*, Special edition, Sarajevo University, Sarajevo, July 2009, pp. 4-10.

[183] For details see: S. Čekić, **RESEARCH OF GENOCIDE VICTIMS SPECIAL ATTENTION TO BOSNIA AND HERZEGOVINA – Scientific – theoretic and methodological – methodic questions and problems**, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University - Kult B, Sarajevo 2007.

[184] Fore more details see: S. Čekić, **AGGRESSION AGAINST THE REPUBLIC OF BOSNIA AND HERZEGOVINA : Planning, preparation, execution**, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University -Kult B, Sarajevo 2004.

[185] The author did not deal in this paper with the issue of Great Croatian project, of fascist and genocidal character, and crimes committed in this regard in Bosnia and Herzegovina at the end of XX century.

[186] Archive of the Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University, DISTRICT COURT IN BELGRADE, XIV-P-br. 5410/99, 9 July 2001, JUDGMENT.

[187] REPUBLIKA SRPSKA GOVERNMENT, Working group for the implementation of conclusions from the Final Report of the Commission for the research of events in and around Srebrenica from 10 to 19 July 1995, *REPORT*, Banja Luka, 30 March 2005 and *ADDENDUM TO REPORT*, Banja Luka, 30 September 2005.

[188] ICTY, PROSECUTOR VS. SLOBODAN MILOŠEVIĆ, *Decision upon Motion for judgment of acquittal*, the Hague, 16 June 2004; ∴ PROVEN THAT MILOŠEVIĆ COMMITTED GENOCIDE IN BOSNIA: ICTY Decision of 16 June 2004, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University, Sarajevo 2007, p. 163.

[189] E. Tabeau - J. Bijak, WAR - RELATED DEATHS IN THE 1992-1995 ARMED CONFLICT IN BOSNIA AND HERZEGOVINA A CRITIQUE OF PREVIOUS ESTIMATES AND RECENT RESULTS, *European Journal of Population*, Springer, 2005, pp. 187-215. Critical review of the results of research by Ewa Tabeau and Jakub Bijak; see more in: S. Čekić, RESEARCH OF GENOCIDE VICTIMS WITH A SPECIAL EMPHASIS ON BOSNIA AND HERZEGOVINA – Problems and issues in Scientific theory and Methodology, Institute for Research of Crimes Against Humanity and International Law of the Sarajevo University - Kult B, Sarajevo 2007, pp. 81-188. Talking about the results of research conducted by the ICTY demographers, the following issued have to be considered in reference to the count of victims of genocide and other forms of crimes against humanity and international law in the Republic of Bosnia and Herzegovina at the end of XX century: their statistics, like "any other statistics" is conservative that is relatively low, which is connected with the nature of every judgment. Namely, their report (often) shows the minimal number of victims (or "the smallest" numbers), for which it is characteristic "that it is incomplete, meaning that the numbers are comparatively small and reduced". The demographers constantly and correctly repeated this fact in their reports, telling that "the approach of minimal numbers considered only those data relative to death/injuring directly related to war", while "the indirect death cases" (hunger, poor hygienic conditions, physical and mental fatigue, exhaustion, destroyed homes and other) were excluded from the minimal numbers, which is in contravention to the Convention on prevention and punishment of crime of genocide. Thus, they stated that their reports "should not be considered ultimate source of statistics", but they "serve only the special purposes of the ICTY cases" and they should be used only within the context of these cases. Unfortunately, many quasi researchers, especially ideologists, participants and executors of genocide, as well as those who diminish, relativize, and deny genocide in Bosnia and Herzegovina, use these data as complete, objective, and final. The Legal team of FRY (Serbia and Montenegro) used purposely this data of the ICTY demographers in the Application *Bosnia and Herzegovina vs. FRY (SMG)* before ICJ (∴WAR IN NUMBERS: demographic losses during the wars in the territory of former Yugoslavia between 1991 and 1999, prepared by Ewa Tabeau, the Helsinki Committee for Human Rights, Belgrade 2009, pp. 13-20, 575, 694 and other)

[190] Ibid, p. 210. Number of forcibly expelled persons (refugees and displaced persons) in Bosnia and Herzegovina, according to UNHCR was on 6 November 1992 – 2,626,840 (1,816,840 refugees and 810,000 displaced persons); on 1 April 1996 – 2,211,833 (1,211,833 refugees and 1,000,000 displaced persons), and on 1 December 1997 – 2,140,544 (1,324,544 refugees and 816,000 displaced persons) - Ibid, p. 210.