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CAMP JASENOVAC BEFORE THE INTERNATIONAL COURT OF JUSTICE

1. CAN PERPETRATORS OF WORLD WAR II CRIMES BE TRIED AT THE INTERNATIONAL COURT OF JUSTICE: THE ISSUE OF TEMPORAL JURISDICTION

It was as early as July 1999 that Croatia demanded from the International Court of Justice (ICJ),¹ a highest judicial body, to declare Serbia guilty of the crime of genocide committed between 1991–1995, in their opinion, by the military, police and paramilitary forces under the direct command of the FRY, i.e., Serbia. Serbia responded with a countersuit in 2010, claiming that

¹ The International Court of Justice (French: Cour internationale de Justice; commonly referred to as the World Court or ICJ) is the primary judicial branch of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states and to provide advisory opinions on legal questions submitted to it by duly authorised international branches, agencies, and the UN General Assembly. Established in 1945 by the UN Charter, the Court began work in 1946 as the successor to the Permanent Court of International Justice. The Statute of the International Court of Justice, similar to that of its predecessor, is the main constitutional document constituting and regulating the Court. The ICJ is composed of fifteen judges elected to nine-year terms by the UN General Assembly and the UN Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration. The election process is set out in Articles 4–19 of the ICJ statute. Elections are staggered with five judges elected every three years, in order to ensure continuity within the court.

Croatia committed the crime of genocide against the Serbs in the Operation “Storm”.

Quite often, both the public and concerned professionals, both before and after Croatia and Serbia filed the mutual lawsuits, wondered why the Serbs, Jews and Roma never sued Croatia for the crime of genocide committed against them by the Independent State of Croatia (NDH) during the Second World War.

From a legal point of view, Croatia cannot be held responsible for any crimes committed in the Second World War because the Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948, and only came into force in 1951, which means it does not apply retroactively, including the crimes committed in the Second World War. After all, the war crimes committed by Germany during the Second World War were not declared genocide for the same reason.

According to Professor Christian Tams,² the Genocide Convention was not adopted to be retroactively implemented and so “regulate the past”, including the Holocaust committed in the Second World War, but to “prevent genocide from happening in the future.”³

2. HOW THE CRIMES COMMITTED IN THE SECOND WORLD WAR STILL REACHED THE ICJ

The Croatian lawsuit against the Federal Republic of Yugoslavia (Serbia)⁴ for aggression and genocide against members of the Croatian people in the armed conflict between 1991-1995, irrespective of the fact it was a case of “historical irony”,⁵ opened up the possibility for Serbia to include the crimes

² Mr. Christian J. Tams, LL.M., Ph.D. (Cambridge), Professor of International Law, University of Glasgow, *comme conseillers of The Team of The Government of the Republic of Serbia*

³ RTS, 11th March 2014. “The Hague, there is no retroactive accountability”

⁴ <http://www.icj-cij.org/search/index.php?pg=1&p2=2&op=0&str=croatia+vs+serbia>

⁵ Saša Obradović, head of the legal team representing Serbia in the dispute between Serbia and Croatia on mutual genocide suits before the ICJ, Records of the ICJ, the main hearing, 10th March 2014, p. 8.

committed against the Serbs, Roma and Jews in the territory of the NDH during the Second World War in its countersuit,⁶ for a better understanding of the events from 1991 to 1995, or the “continuity of crimes committed by the Croats against the Serbs, which “the court must take into consideration with the other evidence and arguments and take a stand about it.”⁷

“At the centre of the exposition of the Serbian legal team before The Hague Tribunal will be the events between 1991 and 1995, but it is impossible to avoid the historical context which surrounds the word genocide in the minds of the Serbs.”⁸

It is true that Croatia got away cheaply with its terrible crime of genocide against the Serbs, as well as Jews and Roma, thanks to the policy of brotherhood and unity, without ever answering for it in front of a national or international court or being de-Nazified, like Germany.

That is why it is very important there has not been a mutual withdrawal of Croatia’s and Serbia’s lawsuits for the 1990’s genocide. Even though the NDH genocide against the Serbs is not the subject of the lawsuit before the International Court of Justice, the current case will be used in the way which will make the “evidence presented by Serbia enter the records of this Court, therefore also the history of the Second World War on the territory of the Kingdom of Yugoslavia.

That will essentially help today’s international community get the right idea about the mass tragedy of the Serbs in the NDH and ensure the processes marking the provoked and imposed breakup of the SFRY are seen with greater objectivity and impartiality.”⁹

⁶ <http://www.icj-cij.org/search/index.php?pg=1&p2=2&op=0&str=croatia+vs+serbia>

⁷ Savo Štrbac, President of Veritas, expert member of the legal team representing Serbia in the dispute between Serbia and Croatia on mutual genocide suits before the ICJ, International Radio Serbia (MRS), 10th March 2014, radio show “Talasanje”.

⁸ Novak Lukić, a lawyer from Belgrade, member of the legal team representing Serbia in the dispute between Serbia and Croatia on mutual genocide suits before the ICJ, MRS, 10th March 2014, radio show “Talasanje”.

⁹ Vladislav Jovanović, Minister of Foreign Affairs in the Government of the former Socialist Republic of Yugoslavia, in an op-ed published in the Belgrade daily *Politika*, 24th February 2014.

3. THE PRESENTATION OF THE SECOND WORLD WAR (INCLUDING JASENOVAC) TO THE ICJ IN SERBIA'S COUNTERSUIT

Ever since Serbia has filed a countersuit, on various occasions and in several places, including the media, there have been speculations about whether and how it has presented the Second World War, especially the Jasenovac camp, as the paradigm of the persecution of the Serbs, Roma and Jews in that war.

Such speculations were fuelled by the fact that all the documentation submitted to the ICJ was kept secret until the commencement of the main hearing, which was held from 3rd March until 1st April 2014. Serbia's countersuit and all the annexes and subsequently submitted documents were written in English, and following their publication on the website of the ICJ, they still remain inaccessible, i.e. incomprehensible to those who do not have Internet access or do not understand English or French, which are the official languages of the Tribunal.

Because of all the above and because of the importance of this issue, in agreement with the organisers of this conference, I have decided to publish the English translation¹⁰ of the original material in Serbian in its entirety and thus make it accessible to all interested parties, which the participants of this Conference on Jasenovac certainly are.

3.1 . THE COUNTERSUIT

Serbia's countersuit deals with the Second World War in its Chapter V, points 388-420, i.e., pages 135-146 and footnotes 258-294. Of these, points 412-420, pages 142-144 and footnotes 285-293 refer to the Jasenovac camp.

Chapter V is herein published in its entirety, including the footnotes.

(The meaning of some terms: The Memorial is an annex of the Croatian lawsuit, whose authors are Ivan Šimonović, currently the Assistant Secretary-General of the UN Security Council for Human Rights, and Ivo Josipović, the incumbent President of Croatia; it was submitted to the court in March 2001. The Republic of Croatia is the Applicant, and the Republic of Serbia is the Respondent.)

CHAPTER V

THE HISTORICAL AND POLITICAL BACKGROUND

Introduction

388. This Chapter will discuss Chapter 2 of the Memorial that deals with the historical and political background to the conflict that is the subject-matter of the present dispute.

389. At the outset, it should be noted that the presentation of facts in this chapter of the Memorial has apparently been drafted as the Applicant's "official" and definitive interpretation of events leading to the break up of the former Yugoslavia. As such, it also deals with the events that are largely irrelevant to the present dispute which only concerns the crime of genocide.

390. More importantly, the Applicant's presentation of events serves as part of a one-sided, biased account, designed to portray Serbia and the Serbs as having the sole responsibility for the break up of the former SFRY and the crimes committed during the armed conflicts connected with it. In general, it seems that the Applicant tried not just to prove the alleged genocide but rather to justify its official claim that an aggression by the JNA and Serbia against Croatia took place in 1991. However, this claim is not only irrelevant for the present proceedings, but it also utterly fails to take into account the complexity of the break up of the SFRY. In any case, as will be demonstrated in this Counter-Memorial, even if all the allegations presented by the Applicant were accurate (*quod non*), it does still not follow that the alleged conduct amounts to genocide.

391. In addition, the Memorial fails to deal with facts that are clearly relevant, but are not favorable to the Applicant, such as the advent and the rule of Croatian nationalism and the crimes against the Serbs in Croatia during the war 1991-1995. Similarly, as will be discussed below, the genocide against the Serbs in Croatia committed by the Independent State of Croatia during World War II is dealt with in a single sentence.¹¹

¹¹ Memorial, para. 2.08.

392. The present chapter will deal only with those allegations in Chapter 2 that are relevant to the present case. In any event, the Respondent expressly denies all the Applicant's claims that are not confirmed by the presentation of facts contained in the present Counter-Memorial.

393. The order of presentation in the present chapter will be as follows. Firstly, it will deal with the Nazi-puppet Independent State of Croatia and its genocide against the Serbs during the period 1941-1945, because these events had a significant influence over the events of 1991-1995.

394. Secondly, it will be demonstrated that the Memorial not only presents a distorted and at times inaccurate picture of Serbian nationalism, but it also fails to mention the rise of Croatian nationalism that had a major impact on the conflict in Croatia. In this regard, this chapter will deal with the rise of Croatian nationalism, and the discriminatory policies and practices of the Croatian nationalist government elected in 1990 that were directed against the Serbs in Croatia.

395. Thirdly, this chapter will deal with the development of the Serb movement in Croatia and its activity during the escalation of the crisis in the SFRY in 1989-1991.

396. Fourthly, this chapter will expose certain inaccuracies and omissions in the Applicant's overview of the political and military developments during the armed conflict in Croatia in 1991-1995. In particular, it will deal with the existence of the SFRY as a subject of international law in 1991 and early 1992, as well as with the other relevant developments in the period 1992-1995, such as the establishment of the UN protected areas in Croatia, and the establishment of the Republic of Serbian Krajina.

THE INDEPENDENT STATE OF CROATIA AND THE GENOCIDE AGAINST SERBS 1941-1945

The Memorial devotes only one single paragraph to the Independent State of Croatia and only one sentence in this paragraph to the genocide it committed against the Serbs:

“Ustashas implemented Nazi policies and persecuted Serbs, Jews,

Roma/Gypsies and anti-fascist Croats”.¹² However, the Respondent considers that that the Independent State of Croatia and the genocide against the Serbs had such an influence on the actors of events of 1991-1995 on all sides that they must be discussed and taken into account in any consideration of these events. The present section will provide some basic facts about the Independent State of Croatia and the genocide it committed. The present section is followed by a section dealing with nationalism that will show to what extent the Independent State of Croatia and the Ustashe movement were rehabilitated during the time that the Croatian nationalist government was in power in the 1990s.

The Creation of the Independent State of Croatia

397. The Independent State of Croatia (“Nezavisna država Hrvatska”)¹³ was proclaimed by the Ustashe on 10 April 1941 with the support of Nazi Germany, Italy and other Axis powers occupying Yugoslavia. The Ustashe was a terrorist organization created in 1931 that sought to create an independent and ethnically cleansed Croatian state.¹⁴ The movement’s founder and leader, Dr. Ante Pavelić, headed the Independent State of Croatia as its “Poglavnik” (“Führer”).

398. The Independent State of Croatia encompassed most of the present-day Republic of Croatia, all of Bosnia and Herzegovina, as well as Srem (Sirmium), part of present-day Serbia, stretching all the way to the town of Zemun, near Belgrade.¹⁵ The Independent State of Croatia was a Fascist puppet state that served the political interests of Fascist Italy and Nazi Germany.¹⁶

¹² M. Peršen, Ustashe’s camps [Ustaški logori], Zagreb, 1990, p. 20; also see, H. Neubacher, Sonderauftragsudost 1940-45, Bericht eines fliegenden Diplomaten (1956), p. 18 and ICTY, Tadić, IT-94-1-T, Trial Chamber Opinion and Judgement, 7 May 1997, para. 62.

¹³ For more, see L. Hory & M. Broszat, *Der Kroatische Ustascha-Staat 1941-1945* (1964); S.G. Payne, *A History of Fascism 1914-1945* (1995), pp. 405-411; I. Gutman (Editor-in-chief), *Encyclopaedia of the Holocaust*, Vol. 2, pp.739-740; *Encyclopaedia Britannica*, 1943 - Book of the Year, p. 215, Entry: Croatia;

M.A. Hoare, ‘The Ustashe Genocide’, *South Slav Journal*, Vol. 25, No. 1-2, 2004, pp. 29-38.
¹⁴ F. Jelić-Butić, *Ustaše i NDH [Ustashe and the Independent State of Croatia]*, Zagreb, 1977, p. 21.

¹⁵ Map of the Independent State of Croatia (Annex 1).

¹⁶ See, e.g. J.H.W. Verzijl, *International Law in Historical Perspective* (1974), p. 313.

The Genocidal Policies

399. Upon the assumption of his office as prime minister of the Independent State of Croatia, Pavelić was sworn-in on the “Principles of the Ustashe Movement”, a document which was signed with his own hand in 1931.¹⁷ This document envisaged the creation of a Greater Croatia within its “historical boundaries”, a state in which only Croats by birth or origin would make decisions. The Ustashe ideology created a theory about a pseudo-Gothic origin of the Croats in order to raise their standing on the Aryan ladder.¹⁸ Ethnic cleansing and land gain were at the centre of the Ustashe agenda.¹⁹

400. According to the data of the Nazi Germany Ministry of Foreign Affairs, the population of the Independent State of Croatia in April 1941 was 6,285,000 people, out of which there were 3,300,000 Croats (52.50%); 1,925,000 Serbs (30.62%); 700,000 Muslims (11.13%) and 360,000 others (5.72%).²⁰ It is apparent that the main obstacle in the Ustashe’s plan to establish an ethnically pure Croatian state was the large number of Serbs in the Independent State of Croatia.

Soon after it was created, the Independent State of Croatia adopted a number of decrees that were to provide a legal framework for a state of terror and the genocide that was to follow.²¹ At the same time, the Ustashe were ready to put this legalized system of terror into practice.

17 A. Pavelić, *The Principles of the Ustashe Movement*, 1931, translated by Siniša Đurić, available at <http://pavelic-papers.com/documents/pavelic/ap0040.html>.

18 Statement of Ante Pavelić given on 13 April 1941: “We do not have and we have never had anything to do with Serbs.

We are distinguished from Serbs by our religion and our physical appearance. It is difficult to mistake a Croat for a Serb.

We are not Slavs”, in F. Jelić-Butić, *Ustaše i NDH [Ustashe and the Independent State of Croatia]*, Zagreb, 1977, p. 139.

19 A. Pavelić, *The Principles of the Ustashe Movement*, 1931, paras. 8 & 11.

20 F. Jelić-Butić, *Ustaše i NDH [Ustashe and the Independent State of Croatia]*, Zagreb, 1977, p. 106.

21 A brief survey of names and abstracts of some of the NDH decrees will unmistakably show the nature of this “State” and its intentions:

- **The Legal Decree on the Defence of the People and the State of 17 April 1941** practically introduced a permanent state of emergency: “Whoever violates or has violated or who offends or has offended in any way the honour, life’s interest of the Croatian people or who threatens in anyway the survival of the Independent State of Croatia or its state authorities, even if such an act is only attempted, shall be held accountable for the crime of high treason.” As is clear, this decree was applied

401. The genocidal plan began to be implemented as soon as the Government took office. In preparation for the commission of crimes, Ustashe leaders held many rallies where the Croats were pitted against the Serbs with inflammatory speeches. The press served as an important method in the achievement of this

retroactively, and the sentence for this offence was death.

- The Legal Decree on Courts Marshal of 17 May 1941 and the Legal Decree on an *impromptu* Court Marshal of 24 June 1941 were intended to ensure as effective as possible carrying out of terror, based on the previous legal decree. Such courts pronounced only one type of sanctions - the death penalty to be executed three hours after the sentence was passed.

“[These] methods were initially applied on a massive scale, especially against the Seibs and Jews, and later on, against the Croats as well. Thousands of innocent people - only because they were born as Orthodox Christians or Jews, or simply because they were not Ustashe - were killed by firing squads or slain for no reason whatsoever.” Šime Balen, Pavelić, Zagreb, 1952, p. 65.

The Legal Decree on the Prohibition of the Cyrillic Script of 25 April 1941 revoked the right of Serbs to use their own alphabet;

The Legal Decree on Protecting Croatian People's Property of 18 April 1941, as well as **three legal decrees of 30 April 1941 - on citizenship, on race and on the protection of Aryan blood and honour of the Croatian people, embodied a number of provisions on discrimination against Jews and Roma;**

The Legal Decree on Sending Disobedient and Dangerous Persons to Forced Labour at Concentration and Labour Camps, dated 25 November 1941, introduced a system of camps run by the Ustashe Surveillance, as one of the legal characteristics of this state. No legal remedy was available against decisions based on this legal decree;
The Legal Decree on the Confiscation of the Property of Persons Disturbing Public Peace and Order, dated 27 December 1941, formalized robbery in the name of the Croatian state;

- The Legal Decree on the Suppression of Violent and Punishable Acts against the State, Certain Individuals or Property, dated 20 July 1942, was a response to the increasingly spreading of the Serb rebellion in the NDH, which extended the sending to camps of the families of persons "disturbing public law and security or violating peace and tranquility of the Croatian people";

- The Legal Decree on the Nationalization of Jewish Property, dated 30 October 1942, had a title which spoke for itself.

See Annex 2. The full texts of these decrees are available in Croatian in *Zbornik zakona i naredaba Nezavisne Države Hrvatske, izdanje Ministarstva pravosuđa i bogoštovlja, Zagreb, 1941 i 1942* [Code of Legal Decrees and Orders of the Independent State of Croatia, edition of the Ministry for Justice and Religion, Zagreb, 1941- 1942]; also available at <http://www.crohis.com/izvori/ustzk.pdf>.

plan.²² What followed immediately were the dismissals of Serbs from public services; the imposition of a ban on their movement; Serbs had to wear special bands around their arms; and eventually they were expelled from the country.²³

402. The State policy concerning the Serbs was decreed by Dr. Mladen Lorković, the NDH Minister of Foreign Affairs, in his speech in Donji Miholjac on 6 June 1941. He said:

“Croatian people must clean itself from all elements which are its misfortune; which are foreign and strange to that people; which dissolve the fresh powers of that people; which were pushing that people from one evil to another through decades and centuries. Those are our Serbs and our Jews.”²⁴

403. On 22 July 1941, the genocidal policy was clearly announced by Mile Budak, Minister of Religion and Education of the Independent State of Croatia, in his widely documented speech at Gospić Town:

“For the rest - Serbs, Jews and Gypsies - we have three million bullets. We will kill one part of the Serbs, the other part we will resettle, and the remaining ones we will convert to the Catholic faith, and thus make Croats of them.”²⁵

Genocide Against the Serbs

404. The Independent State of Croatia perpetrated genocide against the Serbs on a massive scale.²⁶ The parts that follow will present basic information about the ways in which this was carried out.

22 As early as 11 April 1941, an editorial comment published in the leading daily of the *Croatian People* branded Serbs collectively as the greatest and perennial enemy of Croats, sounding a warning that “they will be judged by the righteous Croatian people”. Quoted by F. Jelić-Butić, *Ustaše i NDH* [Ustashe and the Independent State of Croatia], Zagreb, 1977, p. 163.

²³ Ibid. p. 165.

²⁴ The speech was published in *Croatian People* on 28 June 1941. Quoted by F. Jelić-Butić, *Ustaše i NDH* [Ustashe and the Independent State of Croatia], Zagreb, 1977, p. 164, note 95.

²⁵ M. Peršen, *Ustashe's camps* [Ustaški logori], Zagreb, 1990, p. 20; also see, H. Neubacher, *Sonderauftragsudost 1940-45, Bericht eines fliegenden Diplomaten* (1956), p. 18 and ICTY, *Tadić, IT-94-1-T, Trial Chamber Opinion and Judgement, 7 May 1997, para. 62.*

²⁶ “Accurate figures will probably never be known, but it is clear that Pavelić's Ustashe massacred huge numbers of Serbs wherever they could be found.” Central

Massacres and Death Camps

405. The Ustashe committed the first massacres in the spring of 1941, killing 196 Serbs at the village of Gudovac near Bjelovar and around 400 at the village of Blagaj near Slunj.²⁷ In the following months, the mass-killings became commonplace, particularly in Herzegovina: thus, in June 1941 Ustashe executed 140 Serb peasants near Ljubinje; 180 Serbs from village Korita near Gacko; another 160 Serbs near Ljubinje; a further 80 Serbs near Gacko; approximately 280 Serbs near Opuzen; 90 Serbs near Ljubuško, etc.²⁸

406. Approximately two thousand Serbs were executed in the town of Glina, in central Croatia. Firstly, the Ustashe arrested and shot several hundred Serbs from the Glina area in May 1941. Most of the Serb population then went into hiding in the forests. The Ustashe responded by offering to spare those Serbs who would convert to Roman Catholicism. Many Serbs took up this offer and presented themselves at the local church in Glina, in August 1941. After the last one had entered into the church, the doors locked shut. The Ustashe began to massacre the victims using knives and clubs. Hundreds of Serbs were brutally killed. Only one of the victims, Ljuban Jednak, survived by pretending to be dead.²⁹

407. Jadovno was set up as a death camp in May 1941 in the open, on Mount Velebit, in Croatia's Lika region. Many Serbs and Jews from the Gospić town prison were temporarily deported to Jadovno in order to await their turn for execution. From 11 May to 21 August 1941, Jadovno was the place where thousands of victims were killed. Estimations of the number of

Intelligence **Agency (CIA)**, *Balkan Battlegrounds: A Military History of the Yugoslav Conflict 1990-1995* (2002), Vol. I, p. 81 (Peace Palace Library).

27 I. Goldstein, 'Nezavisna Država Hrvatska 1941: put prema katastrofi' (The Independent State of Croatia 1941: A Road to Disaster), in I. Graovac (ed.), *Dijalog povijesničara-istoričara (Dialogue of Historians)*, No. 7, Friedrich Naumann Stiftung, Zagreb, 2002, p. 144.

28 M. Peršen, *Ustashe's camps [Ustaški logori]*, Zagreb, 1990, pp. 38-39; see also F. Jelić-Butić, *Ustaše i NDH [Ustashe and the Independent State of Croatia]*, Zagreb, 1977, pp. 166-167.

29 Statement no. 33 of the State Commission for the Determination of the Crimes of the Occupation Forces **and their Collaborators**, D. no. 406/45, dated 2 March 1945.

victims made by historians vary from 15–25,000³⁰ to 35,000,³¹ and even 40,000.³²

408. Besides Jadovno, there were other camps for Serbs, Jews, Roma and anti-fascist Croats in the Independent State of Croatia.³³ A massive armed rebellion of Serbs in Eastern Herzegovina in June 1941 accelerated the preparations for a solution of the Serbian question through concentration camps. The most notorious one was the Jasenovac camp complex, which will be discussed below.

409. In addition to the listed camps, there were special camps for children who were separated from their parents. Such camps existed in the town of Sisak and a small place called Jastrebarsko, on the road between Zagreb and Karlovac, in which children were detained in dire conditions. In Sisak, 5,000 – 7,000 Serbian, Jewish and Roma children were sent to the camp, according to the estimates made by historians.³⁴ Some 1,600 of these children died in the camp itself.³⁵ In the period from 12 July to 26 August 1942, a total of 3,336

30 M. Peršen, *Ustashe 's camps [Ustaški logori]*, Zagreb, 1990, p. 102.

31 F. Jelić-Butić, *Ustaše i NDH [Ustashe and the Independent State of Croatia]*, Zagreb, 1977, p. 186.

32 Djuro Zatezalo, *Jadovno, Kompleks ustaških logora 1941 (Jadovno: A Complex of Ustashe Camps, 1941)*, Vol. I, Muzej žrtava genocida (Genocide Victims Museum), Belgrade, 2007, pp. 382–383 stating that 40,123 people, including 38,010 Serbs, 1,988 Jews and 124 other nationalities were killed in Jadovno.

33 **They were established** already in the spring of 1941, in a place called Danica near Koprivnica, in the island of Pag (which also served for the extermination of Serbs and Jews from the areas of Lika and Dalmatia); in Lobograd, in Zagorje region, **Tenja near Osijek, and in Travnik and Djakovo. Furthermore, pre-war prisons in Lepoglava near Varaždin, Kerestinec near Zagreb and Kruščica near Vitez were also used for this purpose (M. Peršen, Ustashe's camps [Ustaški logori], Zagreb, 1990, p. 44.).**

34 M. Peršen, *Ustashe 's camps [Ustaški logori]*, Zagreb, 1990, p. 290.

35 *Ibid.*, p. 291. This is how General Edmund Glaise von Horstenau, the representative of the German army in Serbia and Croatia, described his experience with the inspection of the Sisak concentration camp in November 1942:

“We now went into the concentration camp in a converted factory. Frightful conditions! Few men, many women and children, without sufficient clothing, sleeping on stone at night, pining away, wailing and crying! ... And then the worst of all: a room along whose walls, lying on straw which had just been laid down because of my inspection, something like fifty naked children, half of them dead, the other half dying. One should not forget that the inventors of the KZ were the British in the

children were sent to Jastrebarsko.³⁶ In the words of the gravedigger Franjo Ilovar, who was paid for his labour by the number of bodies he buried, in less than a month and a half, 468 children died of starvation and disease in the camp.³⁷

2. Jasenovac

410. In July 1941, the Ustashe government decided to build a new complex of camps, which stretched along the banks of the River Sava, in Slavonia.³⁸ Jasenovac was the largest complex of concentration camps in the Independent State of Croatia during the Second World War,³⁹ and as such it needs to be addressed separately.

411. As was the case in other concentration camps in the Independent State of Croatia, the Serbs constituted the majority of prisoners in Jasenovac, where they found themselves alongside Jews, Roma and anti-Fascist Croats.

412. The majority of inmates in Jasenovac were destined to perish in systematic executions that took place at various locations in the camps complex. Killings were conducted with cruelty and outright sadism.⁴⁰ In order

Boer War. However, such places have reached their peak of abomination here in Croatia, under the Poglavnik installed by us. The most wicked of all must be Jasenovac, where no ordinary **mortal is allowed to** peer in.” (Translated from **Peter Broucek (editor)**, *Ein General in Zweilicht: Die Erinnerungen von Edmund Glaise von Horstenau*, Vienna, 1980, Vol. 3, p. 167).

36 M. Peršen, *Ustashe's camps [Ustaški logori]*, Zagreb, 1990, p. 288.

37 Notebook of Franjo Ilovar, a grave digger, exhibited in the Museum Kozara, Mrakovica, reprinted in R. Milosavljevic, *Dečji ustaški koncentracioni logor Jastrebarsko (Jastrebarsko. The Ustashe Concentration Camp for Children)*, 2009, p. 81.

38 For a map of the location of the Jasenovac concentration camps, see A. Miletić, *Koncentracioni logor Jasenovac 1941-1945. Dokumenti [Concentration Camp Jasenovac 1941-1945. Documents]* (1986).

39 F. Jelić-Butić, *Ustaše i NDH [Ustashe and the Independent State of Croatia]*, Zagreb, 1977, p. 186. This complex of camps was composed of Camp no. I (Krapje), Camp no. II (Bročica), Camp no. III (Brick Factory also known as Jasenovac, Camp of Death), Labour Camp. No. IV (Tannery) and Camp no. V (Stara Gradiška), with some places of mass-executions: Mlaka, Jablanac, Uštica, Košutarica, Granik and the biggest one - Gradina.

38 This is how the witness Jakob Finzi described his experience at the camp:

to accelerate the executions, from 1942 the Ustashe cremated corpses of many of their victims, as well as live inmates.⁴¹

413. The Report of the State Commission of Croatia for the Investigation of the Crimes of the Occupation Forces and their Collaborators, dated 15 November 1945, stated as follows:

“[I]t is not possible to answer the question of precisely how many victims died in Jasenovac. Few prisoners who spent some time in the camp were released, and less than a hundred managed to break out of the camp in the final moments.

It was pointed out earlier that the Ustashe sent prisoners to Jasenovac for labor, but it has also been stated that many transports of men, women and children arrived at Jasenovac only to be taken inside and liquidated by the Ustashe, or killed nearby without being seen inside the camp at all.

The most intense years of the Ustashe terror and mass crimes were 1941 and 1942. The whole of 1943 and half of 1944 were marked by relative moderation, which means that mass executions of inmates were not carried out as often and on such a scale as before. From August of 1944 until April of 1945, large transports began to arrive and liquidations were repeated again *en masse*. ...

We will mention below some fifty mass crimes carried out by the Ustashe in Jasenovac, and if we add the number of prisoners who were killed individually to the number of victims killed in mass executions, we arrive at the figure of approximately 500,000 to 600,000 [emphasis added].

“I worked as an undertaker in the camp graveyard only for ten days. During that period of time I buried corpses without heads, without arms, with crushed skulls, with missing fingers and toes, with nails driven into their chest, with missing sexual organs, mutilated corpses black and blue from beatings. During those ten days we buried about 3,000 corpses. Among them I recognized the corpses of five undertakers finished off by the Ustashe.” *Zemaljska komisija Hrvatske za utvrđivanje zločina okupatora i njihovih pomagača, Zločini u logoru Jasenovac* [The State Commission of Croatia for the Determination of the Crimes of the Occupation Forces and their Collaborators, Crimes in the Jasenovac Camp], Zagreb, 1946, p. 26 (“State Commission of Croatia”).

39 A. Miletić, *Koncentracioni logor Jasenovac 1941-1945. Dokumenti* [Concentration Camp Jasenovac 1941-1945. Documents] (1986), Vol. I, pp. 30,

As we have pointed out, it will never be possible to determine the exact number of victims swallowed up by Jasenovac. However, based on the research conducted by this State Commission, we can conclude that the above figure approaches reality.⁴²

414. This estimation was accepted by the Yugoslav Government, and thus became the sole official estimation of the number of Jasenovac victims. The estimation of hundreds of thousands of victims has been accepted and cited by the Yad Vashem Encyclopedia of the Holocaust⁴³ and by Israel Gutman.⁴⁴ The large number of victims in the Jasenovac camp of death was confirmed by many witnesses who testified before the different international and domestic courts.

415. In this context, it should be noted that the exact number and ethnic origin of victims in the Jasenovac camp and in the Independent State of Croatia has been the subject of a bitter debate, in particular in the years before the armed conflict in Croatia in 1991. As one could expect, this debate was not confined to academia and it has had serious political repercussions. Indeed, the late President of Croatia, Dr. Franjo Tuđman, made a name for himself at the time when he was a dissident and a historian, by advocating an extreme downward revision of the number of victims.⁴⁵ It is worth noting that President Tudjman in 1993 again stirred passions by proposing that the remains of the Ustashe killed by the Yugoslav Partisans in

42 Report of the State Commission of Croatia, *op.cit.*, p. 33.

43 Encyclopedia Entries, International School for Holocaust Studies, Yad Vashem - Jasenovac, available at - <http://www1.yadvashem.org/education/entries/english/29.asp>

44 Encyclopedia of the Holocaust, edited by Israel Gutman, Vol. 1, 1995, pp. 739-740, available at - http://www.jasenovac.org/whatwas_jasenovac.php

45 See K. Pfeifer, 'Croatia - Tudjman and the genesis of Croatian revisionism', Searchlight Magazine, 2003 (Annex 10). Tuđman's estimation is based on the work of the Croatian researcher Vladimir Žerjavić, who used statistical methods to obtain information that between 83,000 and 100,000 people were killed at Jasenovac, see Memorial, para. 2.53. However, the District Court in Zagreb, which tried and convicted Dinko Ljubomir Šakić, one of the commandants of the Jasenovac camp, in 1998, did not accept Žerjavić's analysis and results. Namely, the court expert Dr. Josip Jurčević, lecturer on the general history of the twentieth century at Croatian University in Zagreb, denied Žerjavić's and all other demographic estimations, concluding that all of them, given the present level of research, were not scientifically based. The District Court in Zagreb, Trial of Dinko Ljubomir Šakić, Judgement No. V K-242/98-257, dated 1 October 1999, p. 34.

1945 be reburied together with the victims of the Ustashe at Jasenovac.⁴⁶ This met with resistance, both from the Serbs and anti- Fascist Croats.

Conclusion

416. The total number of victims of genocide in the Independent State of Croatia is difficult to precisely establish. It is however a well-known fact that sometimes entire villages perished without an eye-witness to testify later about the victims. In particular, it is difficult to establish the precise number of the victims who were killed in the largest death camp in Jasenovac. Leaving aside discussions about the exact number of victims, the fact that genocide was committed against the Serbs in the Independent State of Croatia during World War II is not seriously contested.

417. The genocide left an indelible mark on the consciences of the Serbs in Croatia and elsewhere. The events leading to the conflict of 1991-1995 and the conflict itself cannot be understood without taking this into account. However, as already mentioned, the Memorial fails to discuss either this genocide or the Independent State of Croatia in any meaningful detail.

418. As will be discussed in the next section, Serbian and Croatian nationalism went hand in hand as the crisis in the former SFRY aggravated to the level of an armed conflict. For their own purposes, both nationalisms made references to the genocide of 1941-1945 and the Independent State of Croatia. It is not contested that Serbian nationalists misused the recollections of these past events, although the claims made in this regard by the Applicant are not always accurate, as will be demonstrated in the next section. What is important in the present context, however, is that the Memorial completely fails to mention the role that the Croatian nationalism had in the events that are the subject-matter of the present dispute and in particular its rehabilitation of the Independent State of Croatia, Ustashe movement and its symbols.

46 Speech of Dr. Franjo Tuđman at the Second Congress of the Croatian Democratic Party, October 1993, cited in Viktor Ivančić, *Točka na U*, Split, 1998 (Annex 11).

3.2. ANNEXES OF THE COUNTERSUIT ON THE SECOND WORLD WAR (INCLUDING JASENOVAC)

The second volume of the countersuit of the Republic of Serbia is dedicated to the Second World War. This volume has two parts, 12 annexes, on 230 pages, of which 4 annexes (4, 5, 6 and 7), 105 pages and 26 photographs refer to the Jasenovac camp.

Below is the number, name and a brief summary of each annex:

The Independent State of Croatia 1941-1945 and Genocide against Serbs, Jews and Roma /Historical Sources/

Annex 1: Map of the Independent State of Croatia 1941- 1945

http://upload.wikimedia.org/wikipedia/commons/a/a8/Croatia_41_45.gif

Annex 2: Excerpts from the Legal Decrees of the Independent State of Croatia

LEGAL DECREE ON DEFENCE OF THE PEOPLE AND THE STATE

LEGAL DECREE ON THE PROHIBITION OF THE CYRILLIC SCRIPT

LEGAL DECREE ON COURTS MARSHAL

LEGAL DECREE ON THE PROTECTING OF CROATIAN PEOPLE'S PROPERTY

LEGAL DECREE ON CITIZENSHIP

LEGAL DECREE ON THE RACE

LEGAL DECREE ON THE PROTECTION OF THE ARIAN BLOOD AND HONOUR OF THE CROATIAN PEOPLE

LEGAL DECREE ON SENDING DISOBEDIENT AND DANGEROUS PERSONS TO FORCED LABOUR AT CONCENTRATION AND LABOUR CAMPS

- Authorisation of the Mayor of the City of Zagreb to make decisions, Zagreb, 11th April 1941

- Legal Decree on Extraordinary People's Courts, Zagreb, 17th April 1941

- Legal Decree on the Prohibition of the Cyrillic Script, Zagreb, 25th April 1941

- Order of the Ministry of the Interior on the Implementation of the Legal Decree on the Prohibition of the Cyrillic Script, Zagreb, 25th April 1941

- Legal Decree on Courts-Martial, Zagreb, 17th May 1941

- Legal Decree on the Protection of Croatian People's Property, Zagreb, 19th April 1941

- Legal Decree on the Real Estate of so-called Volunteers, Zagreb, 28th April 1941

- Legal Decree on Citizenship, Zagreb, 20th April 1941

- Legal Decree on Race, Zagreb, 30th April 1941

- Legal Decree on the Protection of Aryan Blood and the Honour of the Croatian People, Zagreb, 30th April 1941
- Order on the Establishment of the Community for Technical Oils, Zagreb, 22th November 1941
- Legal Decree on Sending Disobedient and Dangerous Persons to Forced Labour in Concentration and Labour Camps, Zagreb, 25th November 1941
- Legal Decree on the Authorisation for the Delegation of Duties from the Ministry to the Great Parishes, Zagreb, 25th November 1941
- Legal Decree on the Confiscation of Property of Persons Disturbing Public Peace and Order, Zagreb, 27th December 1941
- Procurement of Rationed Medications – Amendment of Order, Zagreb, 20th June 1942
- Legal Decree on Combating Violent Criminal Acts against the State, Individual Persons or Property .

Annex 3: Fikreta Jelić-Butić, Ustashe and the Independent State of Croatia, Zagreb, 1977, pp. 166-167, 185-187

Annex 4: Report of the State Commission of Croatia for the Investigation of the Crimes of the Occupation Forces and Their Collaborators,

Crimes in the Jasenovac Camp, Zagreb, 1946; translated by Sinisa Djuric

Annex 5: Map of the Jasenovac Concentration Camps

Annex 6: Photos from the Jasenovac Concentration Camps

Annex 7: Photos of the Children Victims of the NDH Concentration Camps

SECTION II: The 1990s Croatian Historical Revisionism and the Revival of the Ustashe Principles /Excerpts from Contemporary Literature and Original Sources/

Annex 8: Chronology of the Ustashe Movement after World War II

Annex 9: Efraim Zuroff, Operation Last Chance, New York, 2009, pp. 131- 150

Annex 10: Karl Pfeifer, Croatia - Tudjman and the Genesis of Croatian Revisionism, Searchlight Magazine, 2003

Annex 11: Viktor Ivančić, Točka na U, Split, 1998, pp.113-115, 132-133

Annex 12: Excerpts from Aleksa Cjaković, Interview with Dinko Ljubomir Šakić, former Commandant of the Jasenovac Camp, I did my duty (Obav(jao sam svoju dužnost), published in Magazin, Zagreb, 1995

4. THE PROCEEDINGS OF THE SECOND WORLD WAR HEARING (INCLUDING JASENOVAC)

*Public sitting held on Monday 10 March 2014, at 10 a.m., at the
Peace Palace,*

*Mr. Saša Obradović, First Counsellor of the Embassy of the
Republic of Serbia in the Kingdom of the Netherlands, former Legal
Adviser of the Ministry of Foreign Affairs, as Agent of The
Government of the Republic of Serbia*

...

8. This accusation for sui-genocide does not stay alone as a paradox of the Croatian case. I have a duty to inform the Court that the people of Serbia today mainly believe that the Croatian false Application is a kind of the historical irony. Namely, both Croats and Serbs knew very well what genocide was

the horrific crimes committed in Jasenovac, Jadovno, Jastrebarsko and other notorious Ustasha concentration camps of World War II (WW II). The tragic experience of the Serb people in the Nazi Independent State of Croatia and genocide committed against Serbs, Jews and Roma people from 1941 to 1945 are described in Serbia's Counter-Memorial as part of the factual background of this case⁴⁷. Our presentation is supported by the reliable historical sources⁴⁸. A chronology of the Ustasha movement after WW II, which was considered as a permanent terrorist threat to Tito's Yugoslavia from 1945 to 1990, is presented in Annex 8 with the Counter-Memorial. Without this piece of information, one can fully understand neither the significance of the 1990s appearance of Dr. Franjo Tuđman as a new political leader in Croatia who advocated the reconciliation between Croatian communists and neo-Ustasha movements, nor the uprising reaction of the Serbs in Croatia to that policy⁴⁹.

9. Although no acknowledgment of the WW II genocide is to be found anywhere in the Croatian written pleadings, the Respondent observes that

⁴⁷ Counter-Memorial of Serbia (CMS), paras. 397-420.

⁴⁸ See CMS, fn. 260-293, pp. 137-144 and Anns. 1-7 to the Counter-Memorial.

⁴⁹ CMS, paras. 426-442.

the Applicant has neither contested nor denied the presentation of facts concerning the Nazi Government in Croatia between 1941 and 1945, its intent to destroy the Serb people under its authority, and the existence of the Ustasha's view that Serbs were a threat to the Croatian national identity. Consequently, the Respondent considers that the historical background related to the crime of genocide committed in the independent State of Croatia is therefore not in dispute between the Parties.

Public sitting held on Tuesday 11 March 2014, at the Peace Palace,

Mr. Christian J. Tams, LL.M., Ph.D. (Cambridge), Professor of International Law, University of Glasgow, comme conseillers of The Government of the Republic of Serbia

35. Mr. President, Members of the Court, the Genocide Convention was not drawn up to regulate the past. It did not regulate the Holocaust; it was drawn up to prevent future holocausts. It codifies, as Croatia reminds us, an existing crime. But its focus is on prevention; on creating an international régime against genocide; and on allowing the States of the world, whatever their past, to join that régime. Croatia's construction of the Genocide Convention ignores all this.

36. And in fact, Croatia is very open about this. In its written pleadings, it expressly states that the Convention would apply to World War II *génocidaires*⁵⁰. I note that Professor Crawford did not reiterate that point when he spoke last week but it is made in the pleadings and, indeed, it seems to follow from Croatia's approach to retroactivity. But, if the Convention applies to World War II *génocidaires*, where would one stop? It would probably govern events during World War I as well – or indeed during the process of colonization. And while Croatia never says so expressly, presumably all this could be litigated before this Court – as could be questions relating to the duty to prevent genocide, which is capable, says Professor Crawford, of encompassing past events. Dismissing Serbia's concerns as "formalistic", Croatia advances an argument that would permit decade-old and century-old conflicts to be brought before this Court. Now, whether this

⁵⁰ RC, para. 7.11.

would be desirable, I do not know and it does not matter. But it is most certainly not what the drafters of the Convention had in mind. *Nothing* in “the very nature of the treaty” – *la nature même du traité* – requires the Convention to be applied retroactively.

...

42. By way of illustration, permit me to refer you to Nehemiah Robinson’s pioneering study on the Genocide Convention, first published in 1949, then republished in 1960: To Robinson, “it could hardly be contended that the [Genocide] Convention binds the signatories to punish offenders for acts committed previous to its coming into force for the given country”⁵¹.

43. Fifty years later, my colleague, Professor William Schabas, in his book on genocide agreed: “There is nothing in the Genocide Convention to suggest ‘a different intention’ [in the sense of Article 28 VCLT] . . . ‘The simple fact is that the Genocide Convention is not applicable to acts committed before its effective date.’”⁵²

44. Mr. President, the views of Robinson and Schabas are shared by State parties. I will merely refer you to one example, but it is recent, and it is unequivocal: in 2010, the German Government said this, in the German Parliament – you see it on the screen: [screen on]

“The Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 has entered into force on 12 January 1951. For the Federal Republic of Germany it has entered into force on 22 February 1955. [And here comes the crucial passage] *It does not possess retroactive effect.*”⁵³

45. Mr. President, Members of the Court, could it be clearer? And, to return to the point I made earlier, were it otherwise, would Germany have ratified

⁵¹ Robinson, *The Genocide Convention*, 1960, p. 114.

⁵² W.A. Schabas, *Genocide in International Law*, 2008, p. 643; footnote omitted.

⁵³ See Deutscher Bundestag [German Federal Parliament] doc. No. 17/1956 (2010), p. 5; emphasis added. The German original reads: “Die Konvention über die Verhütung und Bestrafung des Völkermordes vom 9. Dezember 1948 ist am 12. Januar 1951 in Kraft getreten. Für die Bundesrepublik Deutschland ist sie seit dem 22. Februar 1955 in Kraft. Sie gilt nicht rückwirkend.”

the Convention without a temporal reservation? Would other States responsible or accused of past atrocities have ratified the Convention? As the Court said in 1951, the drafters and the General Assembly wanted the Convention to be “definitely universal in scope” – “as many States as possible [said this Court] should participate”⁵⁴. Professor Crawford on Friday emphasized the Convention’s object and purpose. But the argument he put forward would undermine the drafters’ vision of a treaty “definitely universal in scope”. And it runs counter to generally-accepted principles governing the temporal scope of treaties – agreed in the ILC and at Vienna, applied since 1969 and regularly endorsed by this Court. Croatia’s retroactivity claim must fail.

Public sitting held on Thursday 13 March 2014, at the Peace Palace,

Mr Saša Obradović

2. Mr. President, distinguished Members of the Court, Operation Storm was not an isolated event. That was not a mere war incident. The operation was prepared well in advance⁵⁵ as reported by General Janko Bobetko in his book, and represented one of the key events in the deep tragedy of the Yugoslav peoples at the breakdown of their country.

3. When the international criminal tribunals judge upon massive crimes such as genocide or crimes against humanity, it is common to start any discussion with a historical and political background of those crimes. In that regard, the Respondent has provided the Court with a significant number of documents. Without a due overview of that background⁵⁶, a court of law cannot fully understand how a spiral of crimes between Croats and Serbs developed and kept going on for such a long time in history, in spite of the decades of the seemingly peaceful socialist rule, and how that spiral reached its peak in Operation Storm in 1995. If this Court did not know what had occurred in Yugoslavia during World War II, in particular in the Independent State of Croatia, it would not be able to understand those words of the young Croat

⁵⁴ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 24.

⁵⁵ See Croatian General J. Bobetko, All My Battles, p. 407; Ann. 50 to the Counter-Memorial of Serbia (CMS).

⁵⁶ See CMS, paras. 397-420; CMS, Anns. 1-12.

soldier who, entering Knin on 5 August 1995, met witness Hill, the United Nations Military Police Commander of Sector South, and told him that “he had been waiting for this since 1945”⁵⁷. Nor how it was possible that over two million books were destroyed as “unsuitable” in the infamous Croatian 1990s process of librocide because they were written by Serbian authors, or they were printed in Cyrillic alphabet, or simply because they were about Yugoslavia⁵⁸.

4. Nor can the words of the Croatian President on Brioni Island be rightly understood without the knowledge of his ideological background, which is described as “proto-fascist” by Mr. Efraim Zuroff, Director of the Simon Wiesenthal Center in Jerusalem, in his book “Operation Last Chance”⁵⁹.

...

142. Furthermore, several statements of the Croatian State Leadership given ex post facto confirmed the intent they had during Operation Storm. In his euphoric speech in Knin on 26 August 1995 President Tudjman declared:

“[T]here can be no return to the past, to the times when they the Serbs were spreading cancer in the heart of Croatia, cancer which was destroying the Croatian national being and which did not allow the Croatian people to be the master in its own house . . .”⁶⁰

143. That statement of President Tudjman is quite similar to the statement of Dr. Mladen Lorković, Minister of Foreign Affairs, who said:

“Croatian people must clean itself from all elements which are its misfortune; which are foreign and strange to that people; which dissolute from one evil

⁵⁷ Gotovina et. al, IT-060-90, Transcripts, 27 May 2008, p. 3751; Ann. 44 to the Rejoinder of Serbia (RS).

⁵⁸ 4See Slavic Review, Vol. 72, No. 2, Summer 2013, Ante Lešaja: Uništavanje knjige u Hrvatskoj 1990-ih (Destruction of the Book in Croatia in 1990s), available in English on: <http://www.jstor.org/discover/10.5612/slavicreview.72.2.0361?uid=3738736&uid=2129&uid=2&uid=70&uid=4&sid=21102533799611>.

⁵⁹ 5CMS, Ann. 9.

⁶⁰ 202BBC Summary of World Broadcasts, 28 Aug. 1995, Monday, Part 2 Central Europe, the Balkans; Former Yugoslavia; Croatia; EE/D2393/C. Available at: <http://emperors-clothes.com/docs/tudj.htm>; video available at: <http://www.youtube.com/watch?v=OOqB4sQ5am4>.

to another through decades and centuries. Those are our Serbs and our Jews.”

The only difference between the two statements is that the last one was published in the newspaper “Croatian People” 50 years ago, on 28 June 1941, at the beginning of the World War II genocide against Serbs, Jews and Roma people in the Independent State of Croatia.

144. Thus, the Applicant’s Head of State considered that “the Serbs were spreading cancer in the heart of Croatia”. The same metaphor was used by Croatian Minister of Foreign Affairs, Hrvoje Šarinić, in his conversation with the United States Ambassador Mr. Peter Galbraith, when they, after Operation Storm, discussed the opportunities for Serbs to come back to their homes in Krajina. According to Galbraith, who testified in Gotovina, Šarinić said the following: “We cannot accept them to come back. They are a cancer in the stomach of Croatia.”⁶¹ The difference between the two statements can be found rather in the location of Krajina in the Croatian national body than in the attitudes of the two State officials towards the Serbs as such.

145. In our Rejoinder, Professor Schabas explained this choice of metaphor, its meaning and poisonous language which direct to the elimination of the group of people⁶².

146. It is quite difficult to advocate today that these attitudes of the Croatian President and the Minister for Foreign Affairs appeared no earlier than Operation Storm was over. No, Mr. President, there is no doubt that these statements given ex post facto reflected their attitudes towards the Serbs from Croatia in general, the attitudes that existed at the time when the operation was being planned at Brioni. The Respondent has noticed that the Applicant has so far not adduced a single word to explain these statements of its State leadership. It speaks something for itself.

⁶¹ Gotovina et al., Testimony of witness Peter Galbraith, 23 June 2008, Transcripts, p. 4939.

⁶² RS, para. 786.

Public sitting held on Friday 14 March 2014, at the Peace Palace,

M. William Schabas, O.C., membre de la Royal Irish Academy, professeur de droit international à la Middlesex University (Londres), comme conseillers of The Government of the Republic of Serbia

31. Mr. President, Members of the Court, I now turn to the Brioni meeting, the Brioni transcript. In the annals of genocide, ethnic cleansing and related atrocities, it is rare to be able to pinpoint a meeting where a plan to destroy a group was prepared, presented and discussed. The celebrated example, of course, is the Wannsee Conference of February 1942. This meeting of senior Nazis plotted the destruction of the Jews in Europe using the notorious euphemism of the “final solution”. Some so-called historians who deny or trivialize the persecution and destruction of the Jews argue that the conference was ambiguous, anodyne and insignificant, and that the words used and the records kept defy interpretation, raising questions about what was meant rather than providing answers. But taken in its context, including the racist campaign that preceded it as well as an understanding of the tragedy that followed, there is no doubt about the core of what was decided at Wannsee.

32. Is Brioni any different? The Applicant argues that the meeting has been misrepresented, that the records are complete and equivocal. In passing, it should be noted that when the Brioni transcript appears to be helpful, for example in its suggestion that an escape route be left, the Applicant is more than happy to rely upon it¹⁶³. The Applicant also claims that our case stands or falls on Brioni, as if evidence of a planning meeting is required in order to make a case that genocide has been committed. But were that the case, the Applicant would be better to fold its tents and return home, because there is no such planning meeting alleged in the Application.

33. As it was with Wannsee, in understanding the significance of Brioni the context is everything. But I would submit that the fog of the meeting’s transcript lifts when framed by what we know about what came after as well as what came before.

Public sitting held on Tuesday 18 March 2014,

Ms Vesna Crnić-Grotić, Professor of International Law, University of Rijeka, as Agent of The Government of the Republic of Croatia

6. The account you heard last week – a revisionist history – had no basis in reality. The findings of the Trial Chamber and the Appeals Chamber thoroughly vindicate the Applicant’s position in these proceedings.

...

17. The findings in the Gotovina judgement concerning President Tuđman’s intent, demonstrate that the Brioni Minutes record a discussion about the preparation of a lawful military operation. The Applicant notes with deep regret the comments made by Professor Schabas last week equating those who deny any genocidal reading of the Brioni Minutes, with Holocaust deniers who reject the historical facts about the Wannsee Conference. This is all the more so given Professor Schabas’s own statements – outside this courtroom – that there was no genocide in Srebrenica⁶³. It is a matter of particular regret that Professor Schabas should cast aspersions on the integrity of those who do not view the Brioni Minutes in the manner that he or his client chooses to see them, including Judge Theodor Meron, himself a Holocaust survivor, and Judge Patrick Lipton Robinson, former President of the ICTY and a candidate for election to this Court. Professor Schabas’s charge is both serious and unworthy of this courtroom.

...

28. The Respondent seeks to justify its own earlier actions by claiming that the Serbs in Croatia were only reacting to the election of President Tuđman and their fear of a recurrence of World War II crimes being committed against them. This is wrong. The Serb population’s fear was created by the hate-speech campaign against Croats and their demonization as Ustasha, as we demonstrated in our claim.

⁶³ William A. Schabas, “Was Genocide Committed in Bosnia and Herzegovina? First Judgments of the International Criminal Tribunal for the Former Yugoslavia”, 25 Fordham International Law Journal 23, 2001, pp. 45, 46, 47.

29. Moreover, Mr. Obradović's claim that Serbs were only reacting to President Tuđman is also false. The Serb rebellion in Croatia goes back to at least 1989, well before President Tuđman was elected. In July 1989 near Knin, thousands of Serbs gathered, carrying photos of Slobodan Milosevic and Chetnik iconography from World War II, chanting "This is Serbia!" These are people who believed their "one country" was Serbia, not Yugoslavia as Mr. Obradović claimed. The event followed a series of similar staged "events of the people" in other parts of the former Yugoslavia where Serbs lived such as in Kosovo, in Vojvodina and Montenegro - and it caused anxiety among the Croatian population. Why were they rebelling in 1989 not just in Croatia but across former Yugoslavia? Mr. President, Members of the Court, it was Serbian nationalism and the drive for Greater Serbia that destroyed Yugoslavia and brought a war to Croatia that Croatia did not want.

Public sitting held on Friday 28 March 2014

Mr. Wayne Jordash, Q.C., Barrister, Doughty Street Chambers, London, Partner at Global Rights Compliance, as Counsel and Advocates of The Team of The Government of the Republic of Serbia

11. However, as the Respondent has consistently argued, this one-dimensional perspective is demonstrably false. It is a caricatured tale of the dissolution of the former Yugoslavia and the genesis of the violence that begins with a James Bond villain in the guise of Milošević, surrounded by his henchmen, Šešelj and others, stoking the fires of extremist Serbian nationalism with terrible genocidal consequences.

12. The problem, of course, with this account is that the Applicant removes every trace of Tuđman's poisonous régime from this convenient pastiche.

Public sitting held on Friday 28 March 2014

M. William Schabas, O.C., membre de la Royal Irish Academy, professeur de droit international à la Middlesex University (Londres), comme conseillers of The Government of the Republic of Serbia

5. There is plenty of evidence that Tudjman intended to settle Croats in the Krajina. This evidence is crucial because there was a single obstacle standing in the way of Tudjman's plans. Close to 200,000 Serbs were already living there. The operation Storm is described in Croatia's pleadings as a war of "liberation". That may have been one objective. But the other was creating *lebensraum* (living space) for hundreds of thousands of Croats.

Public sitting held on Tuesday 1 April 2014,

Mr. Philippe Sands, Q.C., Professor of Law, University College London, Barrister, Matrix Chambers, London, as Counsel and Advocates of The Government of the Republic of Croatia

9. Equally unhappy was Professor Schabas's return to the events of January 1942⁶⁴. It may be that a retraction of sorts was made: "clumsy" and "inappropriate", his words, might be said to be words of understatement. But perhaps we were not alone in feeling discomforted by the impression that what counsel gave with one hand he then took away with the other, with most unfortunate references to "Tudjman's 'final solution'"⁶⁵, and "lebensraum"⁶⁶. Sir Keir Starmer has said more than enough about the Brioni Minutes, and so has the ICTY.

⁶⁴ CR 2014/24, p. 21, para. 39 (Schabas).

⁶⁵ CR 2014/24, p. 21, para. 39 (Schabas).

⁶⁶ *Ibid.*, p. 11, para. 5 (Schabas).

6. REACTIONS TO THE “HEARING” OF THE SECOND WORLD WAR BEFORE THE ICJ

ПОЛИТИКА

*POLITIKA, 3RD MARCH 2014. SCHABAS:
THE TRIAL IN THE HAGUE IS A TRIAL TO
TUĐMAN*

“In an interview given to *Politika*, Schabas said that Serbia's lawsuit against Croatia for genocide has a strong foothold in the provocative, racist statements by Franjo Tuđman, his extremist views, as well as history that goes back to the Second World War, which along with the conduct of the Croatian Army during the Operation 'Storm' represents a strong case of genocide.”

VEČERNJI LIST, 14TH MARCH 2014.

**Večernji
list**

*ŠEKS: CROATIA SHOULD WITHDRAW ITS UNCONDI-
TIONAL SUPPORT FOR SERBIA'S ACCESSION TO THE
EU*

“I think Serbia's countersuit is a result of the need to have any sort of reaction and to counter Croatia's suit for genocide. The arguments presented by Serbia in its own genocide suit are pretty weak and inconclusive, especially when they claim Croatia is the successor of the NDH, although neither the world nor the Croatian Constitution say so. Croatia is not the legal successor of the NDH and cannot be held accountable for the Ustasha NDH regime. It is a spin that has persistently sought in the last 70-odd years to present the Croatian people as genocidal and is hoped to play on the judges' emotions. All in all, those arguments are very thin on the ground,” argues Vladimir Šeks, adding that Croatia's state policy was not genocidal, and that the atrocities committed during Operation “Storm”, before or after it are individual crimes, not crimes staged through the Croatian state government policy. On the other hand, the Serbian crimes are the result of Serbia's state policy, says Šeks.

DNEVNO.HR, 15TH MARCH 2014.



OOPS, KARAMARKO WOULD RATHER WITHDRAW HIS SUPPORT FOR SERBIA'S ACCESSION TO THE EU... DO YOU KNOW HOW HE FELT ABOUT IT BEFORE?

Tomislav Karamarko is angry with the lies Serbia's legal team has been telling The Hague Tribunal.

“Serbia has used illegitimate means in its defense and withdrawing our unreserved support for Serbia's accession to the EU is certainly one of the measures to consider,” says Karamarko, adding that he believes the goal of Operation “Storm” was not ethnic cleansing but that it was a legitimate action for the liberation of Croatian territory from an aggressor. “Enough of this venting on our fight for freedom,” he said on the eve of the celebration of the 24th anniversary of the HDZ in Virovitica.

Karamarko is right about many things because the legal team of Serbia has capitalised on loopholes and brought Jasenovac and the NDH out of mothballs, all in order to prove the “genocidal character of Croats.” He is also right when he says the withdrawal of support for Serbia's joining the EU should be considered, which now wholeheartedly undermines us, “airing the dirty laundry of the dirty Croats before the entire world.” We do need to consider the withdrawal, but Karamarko has already had his chance to do it and blown it...

TANJUG, 16th March 2014.



CROATIA'S PRIME MINISTER ZORAN MILANOVIĆ ARGUES THAT THE EVENTS IN CROATIA DURING THE 1990S ARMED CONFLICT CANNOT BE EQUATED WITH THE HOLOCAUST

Asked to comment on the trial taking place before the International Court in The Hague in regard to Croatia's and Serbia's mutual genocide suits, and on the fact Serbia has equated the events in Croatia during the latest armed conflict with the Holocaust, Milanović said:

“We know what the truth is. That's not true,” Milanović said curtly, as reported by the Hina agency.

NOVI LIST, 17TH MARCH 2014.

NOVI LIST

*INTERVIEW WITH VESNA CRNIĆ-GROTIĆ:
SERBIA FANS ETHNIC HATRED AGAIN*

The other side constantly mentions the Ustashas and Second World War, Jasenovac and the NDH, as if repeating the pattern we all remember from the late 1980's and the early 1990's, when the crimes committed in the past were brought out of mothballs as a rationale for revenge. Can the crime of genocide be justified by an earlier crime of genocide?

- Of course not. In the case of Serbia, we can see how historical facts can be manipulated to distort the truth, with bloody consequences. I am sorry my Serbian colleagues have opted for the same rhetoric in 2014.

HRVATSKI TJEDNIK
VERITAS VINCI

HRVATSKI TJEDNIK, 24TH MARCH 2014.

*ANTE NAZOR ⁶⁷: THE FABRICATIONS USED BY THE
SERBIAN LEGAL TEAM TAKE US BACK TO THE TIME OF
MILOSEVIĆ'S RULE – THE CONTINUITY OF THE GREAT
SERBIA POLICY*

This insistence on the links between the NDH of World War II and the present-day Republic of Croatia is unfounded in several respects. The Constitution of the Republic of Croatia is clear about it. And not just the Constitution. Such rhetoric - in the style of “Serbia all the way to Tokyo” - and the fallacy of relevance, i.e., falsification of history, is no foundation for a more peaceful future in the region. Not to mention comparing the Brioni meeting with the decisions intended to “permanently solve the Jewish question”, which takes the exposition of the Serbian team in the International Court at The Hague to the level of senseless squabble, without reason or dignity, between petty bourgeois idlers in a smoky tavern. The sources clearly indicate that the cause of the war in Croatia in 1991 should not be

⁶⁷ The author is director of the Croatian Memorial-Documentation Centre for the Homeland War.

sought in the previous existence of the NDH, but the continuity of the Great Serbia policy, or the content of the Great Serbia projects and documents drawn up before 1941.

ПОЛИТИКА

POLITIKA, 25TH MARCH 2014. STEVAN ĐORĐEVIĆ, THE IRONY OF THE HAGUE FATE

The crimes of ethnic cleansing committed in the Operations 'Storm' and 'Flash', given their scope, methods used to carry them out and the clear intention behind them, possess certain elements of the crime of genocide, as incriminated by the provisions of the said Genocide Convention.

They are continual and repetitive, that is, they bear a resemblance to the crimes committed against the Serbian people in the NDH. Unfortunately, the crimes committed between 1941 and 1945 in Jasenovac and other killing fields were not tried appropriately before the international community at Nuremberg in 1946 or later. It is an irony of the fate of the generations who lived in WWII to see Croatia sue Serbia for genocide. Unfortunately, there have been too many unilateral decisions and attitudes of international bodies and other countries detrimental to Serbia, too many such statements in the media about its war crimes and accountability for the armed conflicts in Yugoslavia. Different standards have been applied in identical situations. It is in the interest of future generations that all crimes committed by and against the two sides are duly acknowledged and evaluated in a court of law.

The author is the retired Professor of International Law and International Relations of the Faculty of Law, Belgrade University.



VESTI, 1ST APRIL 2014.

IT IS OFFENSIVE TO CALL THE NAZIS AND TUĐMAN SIMILAR

Croatia's legal representative (Vesna Crnić-Grotić) pointed out that it was “absolutely inappropriate” for members of the Serbian team to suggest the policy of the Croatian President Franjo Tuđman towards the Serbs was similar to the “final solution” of the Jewish question of the Nazis in the Second World war.

ПОЛИТИКА

POLITIKA, 2ND APRIL 2014.

THERE WOULD NOT HAVE BEEN THE OPERATION 'STORM' WITHOUT THE BRIONI [MEETING, T/N]

The Hague: “My goal was not to suggest there was a similarity between the Operation “Storm” and the Nazi Holocaust. Instead, I explained that the minutes of the meetings, such as those held in Brioni and Wannsee, may be the subject of a benign interpretation, if observed outside the context of the events,” says Professor William Schabas, member of our legal team, to *Politika*, commenting on the accusations he has received from the Croatian side in the last few days.

“We know the meaning of the term the 'final solution' used at the Wannsee Conference because we know the context in which it was used, from the time of the Nazi anti-Semitism that preceded the conference, to the policy of extermination which ensued. Some have tried to present the Brioni meeting as irrelevant. Such was the proposition by the Appeals Chamber of the ICTY in the Gotovina case and of course, that was the Croatian position during the hearing before the ICJ. But when that meeting is placed in context, in full awareness of Tuđman's racist attitudes and his clear intention to vacate the Krajina so Croats could be settled across an area that had been inhabited by Serbs for generations, and also taking into account all that has happened, there can be no doubt about what the significance and meaning of the Brioni meeting was,” explains Professor Schabas.

7 EXPECTATIONS

PTC 1

RTS, 5TH MARCH 2014, MORNING NEWS

Savo Štrbac, President of the Veritas Documentation and Information Centre, believes that Serbia has achieved success by the mere fact it has had a chance to present all evidence of the crimes committed against the Serbs so far collected before the International Court of Justice in The Hague.

No crime against the Serbs has been “covered” by verdicts of international courts, says Štrbac, noting that the complete documentation collected by the Serbian side will now become “world heritage”.

“Even if the court finds that there was no genocide against the Serbs, it will still change the perception of the Serbs being the only perpetrators ,” said Štrbac in the RTS News.

Savo Štrbac, President of the Veritas Documentation and Information Centre, stated today that the dispute between Croatia and Serbia cannot worsen the relations between the two countries; on the contrary, he believes they can be improved and says in its first hearing Croatia did not say anything we do not already know.

“Resolving disputes in courts of law is civilised. It is best for the court to decide whether or not there was genocide on one side or the other. This can only improve the relations between the two countries. None of the two nations would have been happy with a political agreement because the political elite are changeable both in Croatia and here,” said Štrbac in his appearance on the RTS.



*INTERNATIONAL RADIO SERBIA, 10TH MARCH
2014. THE HAGUE TRIAL: SERBIA'S ARGU-*

MENTS

Štrbac pointed out that there are three options. After the main hearing the court may decide genocide was committed by both sides, by one of the sides, or that it never occurred.

According to him, many experts believe that the third solution is the most objective one - that no genocide was committed by either side.

“It is normal for the Serbian legal team to believe that we will be able to prove that genocide was committed against the Krajina Serbs at the time, during and after Operation 'Storm', given the number of casualties, refugees, how return has been made impossible for the people, how their property has been destroyed,” said Štrbac.

If the Court , however, concludes no genocide was committed by either side, Štrbac believes it will be good for the Serbs if an answer is given to the question what it is exactly when, as he put it, more than 400,000 people are banished, more than 7,000 killed, when their property is destroyed and they are still prevented from returning to their homes 18 years after the war.

**SLOBODNA
DALMACIJA**

SLOBODNA DALMACIJA, SPLIT, 1ST APRIL 2014.

END OF THE HEARINGS IN THE GENOCIDE LAWSUIT: "IN SERBIA, ONE STILL HEARS MYTHS THAT VUKOVAR WAS LIBERATED"

Serbia's main legal representative Saša Obradović said that Belgrade maintains its stance Operation 'Storm' was a genocidal campaign, and expects to hear the same from the court.

"Hardly anyone can be satisfied when defending his or her country against charges of genocide, but we have stuck to the plan and the Croatian side did not say or do anything unexpected, and I have full confidence in the judges to make the right decision," said Obradović.

"But regardless of whether the court accepts our lawsuit, we have achieved a major goal and told the truth about the persecution of the Serbs in the Operation 'Storm' and the war in general," he added.

Crnić-Grotić says the people in Serbia need to open their eyes, relinquish their myths of lost wars and as they approach the EU, get rid of their misconceptions about the events in the 1990s.

"That will be the beginning of reconciliation in the former Yugoslavia. If we stay in the grip in our myths, we can expect the repetition of the same series of events in 20, 30, 50 years, which will be a tragedy," warned the Professor of International Law from Rijeka.

Croats find it hard to forget what happened in 1991, but they have discarded their misconceptions, as evidenced by their full membership in the EU. "Serbia should go the same way, leave its misconceptions behind and join the countries of Europe," says Crnić-Grotić.



TANJUG, 1ST APRIL 2014,

OBRADOVIĆ: I EXPECT CROATIA TO BE SENTENCED

"No statute of limitation should be applicable to war crimes. We will do it for the sake of not only Serbian or Croatian victims, but of all mankind. It is both Serbia and Croatia's duty, and it is the precondition for reconciliation," said Obradović.

He agreed with his Croatian colleague Vesna Crnić Grotić that there has to be a reconciliation, but based on historical facts, in which sense he reminded us Serbia offered Croatia, in its 2010 submission to the ICJ, to reach an agreement about the

disputable facts relating to the dead and alive and leave it to the court to decide whether or not the crime of genocide was committed, but no answer ever came from Croatia.

“The other side kept silent, because the agreement required that we also talk about the Serbian victims, not only the Croatian ones,” concluded Obradović.

He commented on today's hearing of the Croatian defense team, saying it was a case of fallacy of relevance, due to the lack of arguments and the existence of evidence of the mass killings of Serbs.

Vesna Crnić Grotić, head of the Croatian legal team, said today that her team responded in the best and most convincing manner to all allegations of Serbia's counterclaims of genocide and said she expected the court to reject the counterclaims, noting that they were not there to defend the Independent State of Croatia (WWII NDH).

“We are here to represent the interests of Croatia and it is not our job to defend the NDH. It is neither necessary nor possible to do so,” Crnić Grotić said after the hearing before the International Court of Justice in The Hague in the dispute between Serbia and Croatia on mutual genocide suits in the period 1991 to 1995 inclusive.

She believes evoking the NDH is part of the “bellicose rhetoric from the time of Slobodan Milošević intended to vilify Croats.”

Responding to the reporter's question, Crnić Grotić said Croatia has relinquished its delusions of the past and that its full membership in the European Union is a confirmation of it.

According to her, Serbia should do the same thing – give up on its misconceptions and join European countries.

ПОЛИТИКА

POLITIKA, 2ND APRIL 2014.

*THERE WOULD NOT HAVE BEEN THE
“STORM” WITHOUT THE BRIONI [MEETING,
T/N]*

(From an interview with Professor W. Schabas)

How do you feel about this hearing?

The public hearing is an important part of the proceedings before the International Court of Justice. It is an opportunity to clarify the evidence and law, and to focus attention to specific issues. I think Serbia has taken advantage of this opportunity. It

was capable of countering the shortcomings of the Croatian case. Also, Serbia found a clear and eloquent way to explain to the public the nature of the Croatian attacks during the Operation "Storm". During the proceedings, the Serbian team was dignified and professional, which earned it the respect of the judges and everyone attending the proceedings.

How important will the decision of the ICJ be for any future cases? We see how frequently the court's decision from 2010 is referred to, the one which ruled that the Declaration of Independence of Kosovo was not against international law. It is now being used by Crimea and Venice and Scotland..

It is impossible to speak about the importance of the decision for future cases before we have actually had it. Many of the judges of this court believe it is their role to improve the law. This means that when passing judgments, they do not only have in mind an actual dispute between the parties concerned, but also how it can contribute to the improvement of legislation. When returning its verdict in Bosnia and Herzegovina's suit against Serbia in 2007, the court usefully clarified on how to interpret Article 2 of the Genocide Convention. A relatively restrictive and conservative approach to the interpretation of genocide was then adopted. In my submissions I have tried to show that this approach has generally been accepted and used since 2007. I have asked the judges not to be reluctant now either, but to follow the approach they took back in 2007.