DECISION ON ADMISSIBILITY AND MERITS

(delivered on 7 March 2003)

The "Srebrenica Cases" (49 applications)

Case nos. CH/01/8365, CH/01/8397, CH/01/8398, CH/01/8399, CH/01/8410, CH/01/8411, CH/01/8412, CH/01/8414, CH/01/8428, CH/01/8484, CH/01/8487, CH/01/8521, CH/02/8842, CH/02/8927, CH/02/9357, CH/02/9375, CH/02/9385, CH/02/9390, CH/02/9403, CH/02/9427, CH/02/9431, CH/02/9433, CH/02/9470, CH/02/9484, CH/02/9485, CH/02/9486, CH/02/9487, CH/02/9505, CH/02/9506, CH/02/9507, CH/02/9508, CH/02/9513, CH/02/9514, CH/02/9515, CH/02/9528, CH/02/9529, CH/02/9530, CH/02/9532, CH/02/9542, CH/02/9546, CH/02/9547, CH/02/9548, CH/02/9549, CH/02/9550, CH/02/9552, CH/02/9553, CH/02/9594, CH/02/9595, and CH/02/9596

Ferida SELIMOVIĆ, Šefika PALIĆ, Šefika PALIĆ, Mejrema JUNUZOVIĆ, Mevlida SULEJMANOVIĆ, Mevlida SULEJMANOVIĆ, Munira SULEJMANOVIĆ, Hazreta DELIĆ, Zilha FEJZIĆ, Hafiza HRUSTIĆ and Adila HRUSTIĆ, Nura OMIĆ, Enver HAMZIĆ, Hajro OKANOVIĆ, Rabija SMAJIĆ, Jusuf MALKIĆ, Šuhra ALIĆ, Raza JUSUFOVIĆ, Ahmija MUJIĆ, Hasena AHMETAGIĆ, Fatija IBRAHIMOVIĆ, Rifet MUHIĆ, Rešida OMEROVIĆ, Timka MUJIĆ, Ifeta SELIMOVIĆ, Ifeta SELIMOVIĆ, Ifeta SELIMOVIĆ, Ifeta SELIMOVIĆ, Hata AHMETOVIĆ, Hata AHMETOVIĆ, Hata AHMETOVIĆ, Hata AHMETOVIĆ, Hanifa SMAILOVIĆ, Amira GURDIĆ, Tima GURDIĆ, Fatima RAMIĆ, Fatima RAMIĆ, Fatima RAMIĆ, Enes ĐOZIĆ, Enes ĐOZIĆ, Azem SMAJIĆ, Tahira SKELEDŽIĆ, Tahira SKELEDŽIĆ, Tahira SKELEDŽIĆ, Hakija ČAKANOVIĆ, Sabra KABILOVIĆ, Sabira JUSUFOVIĆ, Emina SALIHOVIĆ, Hamša ĆERIMOVIĆ, and Aiša ADEMOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications introduced pursuant to Article VIII(1) of the Human Rights Agreement (the "Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

TABLE OF CONTENTS

I. INTRODUCTION

1. The 49 applications comprising the "Srebrenica cases" which are addressed in the present decision all involve applications filed by immediate family members of Bosniak[1] men presumed to have been killed as part of the mass execution of some 7,000 to 8,000 Bosniaks undertaken by the Army of the Republika Srpska ("RS Army" or "VRS") during the period of 10-19 July 1995 in and around Srebrenica, a town in the eastern part of the Republika Srpska. These applications are a part of some 1800 similar applications currently pending before the Chamber — all related to the Srebrenica events. In some cases the Chamber received several different applications filed by the same applicant with respect to different missing family members. In other cases the Chamber received one application with respect to several different missing family members. In yet other cases the Chamber received one joint application filed by several related applicants with respect to a particular missing family member. Thus, in the present 49 applications, the number of applicants and missing persons does not directly correspond to the number of applications.

2. In the present applications, all the presumed victims of the Srebrenica events have been listed as missing persons with the "State Commission for Tracing Missing Persons" (the "State Commission")[2]. Some have additionally been listed as unaccounted for persons with the International Committee of the Red Cross (the "ICRC"). As far as the Chamber is aware, none of the missing persons were members of the Army of the Republic of Bosnia and Herzegovina or the Army of Bosnia and Herzegovina ("RBiH Army" or "BiH Army") or were engaged in military tasks in and around Srebrenica in July 1995. All of the applicants seek information about the fate and whereabouts of their missing loved ones. It appears that none of the applicants have received any such specific information from the competent authorities since the events in question.

3. These cases raise issues under Articles 3, 8, and 13 of the European Convention on Human Rights (the "European Convention"), and of discrimination in connection with these rights under Article II(2)(b) of the Agreement. As explained in more detail below, due to its jurisdiction under the Agreement, the Chamber is considering these cases only in connection to the rights of family members to be informed about the fate and whereabouts of their missing loved ones.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced to and registered by the Chamber between 2 November 2001 and 20 March 2002.

5. On 20 June 2002, the Chamber transmitted the 49 applications included in the present decision to the Republika Srpska. The applications were transmitted for observations on the admissibility and merits with respect to Articles 3, 8, and 13 of the European Convention and discrimination in the enjoyment of these rights and the positive obligations contained in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (the "Genocide Convention").

6. On 26 August 2002, the Republika Srpska submitted its observations on the admissibility of the applications. It offered no observations on the merits of the applications.

7. On 10 September 2002, the Chamber requested an official copy of the Report on Srebrenica published by the authorities of the Republika Srpska. On 30 September 2002, the respondent Party submitted a copy, only in English, of the "Report about Case Srebrenica", which was published by the Documentation Centre of the Republika Srpska, Bureau of Government of the Republika Srpska for Relations with the ICTY, Banja Luka, in September 2002. At the same time, the Republika Srpska

[1] Citizens of Bosnia and Herzegovina of Muslim origin and Islamic belief refer to themselves as "Bosniaks". For the most part throughout the text of this decision, the Chamber adopts this terminology. However, in sections where the Chamber is referring to other sources, Bosniaks are also called "Bosnian Muslims" and "Muslims".

[2] See paragraphs 125-126, 128 below for an explanation of the establishment and role of the State Commission in the efforts to trace missing persons on the territory of Bosnia and Herzegovina.

also submitted to the Chamber a copy of another report published by Documentation Centre, entitled "Islamic Fundamentalist's Global Network — *Modus Operandi* — Model Bosnia". On 30 September 2002, the Chamber sent a letter to the respondent Party clarifying that it would also like to receive a copy of the "Report about Case Srebrenica" in the national language. The respondent Party has not responded to that request.[3]

8. Between 10 September and 23 September 2002, the Chamber received reply observations from eight of the applicants. On 10 September 2002, the Chamber received substantially similar reply observations from the applicants Hamša Ćerimović (case no. CH/02/9595) and Aiša Ademović (case no. CH/02/9596). On 10 September 2002 and 19 September 2002, the Chamber received substantially similar reply observations from the applicants Šefika Palić (cases nos. CH/01/8397 and CH/01/8398) and Nura Omić (case no. CH/01/8487). On 16 September 2002, the Chamber received reply observations from the applicant Enver Hamzić (case no. CH/01/8521). On 19 September 2002, the Chamber received separate reply observations from the applicants Hafiza Hrustić and Adila Hrustić (case no. CH/01/8484). On 23 September 2002, the Chamber received reply observations from Raza Jusufović (case no. CH/02/9385).

9. In November 2002, the Chamber requested information from the International Commission on Missing Persons. Such information was provided on 21 November 2002 and 21 January 2003.

10. On 29 November 2002, the Chamber wrote to the ICRC seeking information related to the collection of tracing requests for persons missing from Srebrenica since July 1995. On 3 December 2002, the ICRC provided the information requested.

11. On 16 December 2002, the Chamber wrote to the applicants requesting additional information. Such additional information was received between 19 and 31 December 2002.

12. On 16 December 2002, the Chamber wrote to the Republika Srpska asking it to provide a copy of the decision or other legal provision establishing and setting forth the competencies of the Commission for Tracing Missing and Detained Persons of the Republika Srpska. The Republika Srpska provided this information to the Chamber on 31 December 2002.

13. On 10 January 2003, the Chamber wrote to Mr. Amor Mašović at the State Commission seeking additional information on the requests for information about the fate and whereabouts of the missing persons filed by the applicants. The State Commission supplied the requested information to the Chamber on 16 January 2003.

14. The plenary Chamber deliberated on the admissibility and merits of the applications on 4 June 2002, 10 October 2002, 3 December 2002, 9 January 2003, 5-6 February 2003, and 3 March 2003. It adopted the present decision on admissibility and merits on 3 March 2003. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

III. STATEMENT OF FACTS

A. Historical context as recounted in the ICTY Judgment in *Prosecutor v. Radislav Krstić*

15. On 2 August 2001, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia ("ICTY") issued its judgment in case no. IT-98-33-T, *Prosecutor v. Radislav Krstić*, in which it found General Krstić guilty of genocide and murder.[4] In reaching its judgment, the ICTY Trial

[3] Although the respondent Party has not submitted a copy of the "Report about Case Srebrenica" to the Chamber in the national language, the Report was distributed to members of the media and the public in September 2002 by the authorities of the Republika Srpska. Through these public sources, the Chamber obtained a copy of the Report in the national language.

[4] The entire text of the *Krstić* judgment of 2 August 2001, which is some 255 pages long, is available in English and the national language on the web page of the ICTY at www.un.org/icty.

Chamber heard testimony from more than 110 witnesses over 98 days of trial and examined approximately 1,000 exhibits (*Krstić* judgment at paragraph 4). The decision is presently on appeal. On 10 January 2002, the Counsel for the Defence submitted the Defence Appeal Brief on behalf of General Krstić. On appeal the Defence argues that the Trial Chamber erred in finding General Krstić guilty of genocide and, as a result of the Prosecution's discovery practices, violated his right to a fair trial. In addition, the Defence contends that the Trial Chamber erred in some of its factual and legal findings; however, with respect to the factual findings, the Defence expressly limits its challenge to "just a few key factual findings of the Trial Chamber". All of these challenges to the factual findings relate to specific factual findings on General Krstić's personal involvement in and responsibility for the Srebrenica events. The challenges do not relate to the historical context or underlying facts of the Srebrenica events, as established in the *Krstić* judgment. Moreover, the historical context and underlying facts of the Srebrenica events have also been set forth, in lesser detail, by the ICTY in *Prosecutor v. Dražen Erdemović* (case no. IT-96-22-T, sentencing judgment of 29 November 1996, paragraphs 76-80; confirmed in part on appeal in case no. IT-96-22-A, judgment of 7 October 1997, paragraph 8; confirmed on renewal of sentencing proceedings in case no. IT-96-22-T*bis*, sentencing judgment II of 5 March 1998, paragraphs 13-15 (in which the accused, a member of the RS Army, admitted to having personally participated in the massacres at Srebrenica)).

16. As the *Krstić* judgment contains a comprehensive description of the historical context and underlying facts of the Srebrenica events, established after long adversarial proceedings conducted by a reputable international court, the Chamber will utilise this judgment to set forth the historical context and underlying facts important for a full understanding of the applications considered in the present decision. In presenting such factual context, however, the Chamber will only utilise those factual portions of the *Krstić* judgment which are not included in the appeal.

17. The town of Srebrenica is situated in eastern Bosnia and Herzegovina approximately 15 kilometres from the Serbian border within the Central Podrinje region (*Krstić* judgment at paragraphs 11-12). In 1991 the population of the municipal area of Srebrenica was 37,000: 73% of Muslim origin and 25% of Serb origin (*Krstić* judgment at paragraph 11). "Bosnia [and Herzegovina] began its journey to independence with a parliamentary declaration of sovereignty on 15 October 1991". Thereafter, "a fierce struggle for territorial control ensued among the three major groups in Bosnia [and Herzegovina]: Muslim, Serb and Croat". "In the Eastern part of Bosnia [and Herzegovina], which is close to [the Republic of] Serbia, the conflict was particularly fierce between the Bosnian Serbs and Bosnian Muslims" (*Krstić* judgment at paragraph 10).

18. "During the conflict the Central Podrinje region, which included Srebrenica, was an area of significant strategic importance" to Bosnian Serbs because "control of this region was necessary in order to achieve their minimum goal of forming a political entity in Bosnia [and Herzegovina]". According to the Defence military expert, without its control, Bosnian Serbs would not be able to form a geographically contiguous political entity in Bosnia and Herzegovina, and they would not be able to eliminate the Drina River as a border between "Serb states", *i.e.*, Serbia and territories which are inhabited almost completely by Serb populations (*Krstić* judgment at paragraph 12).

19. In January 1993, Bosnian Muslim and Bosnian Serb armed forces engaged in battle in the village of Kravica near Srebrenica, resulting in severing the link between Srebrenica and nearby Žepa. As a result, Bosnian Muslims in outlying areas converged upon Srebrenica, and its population grew to 50,000 to 60,000 people (*Krstić* judgment at paragraph 14). Thereafter, the Commander of the UN Protection Force ("UNPROFOR") visited Srebrenica and noted the deplorable siege conditions (*Krstić* judgment at paragraph 15). On 13 April 1993, Bosnian Serbs informed representatives of the UN High Commissioner for Refugees ("UNHCR") that they would attack Srebrenica "unless the Bosnian Muslims surrendered and agreed to be evacuated" (*Krstić* judgment at paragraph 17). On 16 April 1993, the UN Security Council passed a resolution declaring that "all parties and others treat Srebrenica and its surroundings as a 'safe area' that should be free from armed attack or any other hostile act". Two other UN protected enclaves were also established in Žepa and Goražde (*Krstić* judgment at paragraph 18). Thereafter, UNPROFOR commanders negotiated a cease-fire agreement with the RS Army, under which the Srebrenica enclave would be disarmed under the supervision and observation of UNPROFOR peacekeeping troops (*Krstić* judgment at paragraphs 19-20). Despite violations of the "safe area" agreement by both Bosnian Muslim and Bosnian Serb forces, "a two-

year period of relative stability followed the establishment of the enclave, although the prevailing conditions for the inhabitants of Srebrenica were far from ideal" (*Krstić* judgment at paragraph 25).

20. By early 1995, the situation in Srebrenica began to "deteriorate rapidly" and there were "ominous signals from the VRS" (*Krstić* judgment at paragraphs 26-27). In March 1995, the President of the Republika Srpska, Radovan Karadžić, issued a directive to the RS Army to, among other things: "By planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica". "Just as envisaged in this decree, by mid 1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the enclave was catastrophic" (*Krstić* judgment at paragraph 28). On 31 March 1995, General Mladić directed the RS Army to conduct "active combat operations" around the enclaves of Srebrenica and Žepa (*Krstić* judgment at paragraph 29).

21. "The VRS offensive on Srebrenica began in earnest on 6 July 1995" (*Krstić* judgment at paragraph 31). By 9 July 1995, the VRS was four kilometres inside the enclave, only one kilometre outside the town of Srebrenica. "President Karadžić issued a new order authorising the VRS Drina Corps to capture the town of Srebrenica" (*Krstić* judgment at paragraph 33). Bosnian and UNPROFOR authorities inside Srebrenica sent requests for help to both NATO and the Army of the Republic of Bosnia and Herzegovina, but no meaningful assistance was forthcoming (*Krstić* judgment at paragraphs 34-35). On the afternoon of 11 July 1995, Generals Mladić and Krstić and other VRS officers "took a triumphant walk through the empty streets of Srebrenica town" (*Krstić* judgment at paragraph 36).

22. In light of the fall of Srebrenica to Bosnian Serb forces, thousands of Bosnian Muslim residents of Srebrenica fled to nearby Potočari seeking protection inside the UN compound there. By the evening of 11 July 1995, some 20,000 to 25,000 Bosnian Muslim refugees, the majority of whom were women, children, elderly, and disabled, were gathered in Potočari (*Krstić* judgment at paragraph 37). Conditions inside Potočari were "deplorable" — in addition to a state of humanitarian crisis due to the lack of food and water, people were tightly crowded, panicked, and terrified; as the refugees waited, snipers fired upon them and set fire to houses (*Krstić* judgment at paragraphs 38-39). On 12 July 1995, Bosnian Serb soldiers began "an active campaign of terror" (*Krstić* judgment at paragraph 41). Numerous sporadic killings and rapes occurred (*Krstić* judgment at paragraphs 43-46).

23. On the evening of 11 July 1995 and the following morning, General Mladić summoned UNPROFOR leaders for three meetings with VRS officials concerning plans to transport "Bosnian Muslim civilians" out of the enclave at Potočari and "to discuss the fate of the Srebrenica Muslims" (*Krstić* judgment at paragraphs 126, 129, 131). General Mladić conveyed the "clear message" "that Bosnian Muslim refugees could only survive by leaving Srebrenica" (*Krstić* judgment at paragraph 133). He further stated that "all men between the ages of about 17 and 70 would have to be separated and screened to separate out possible 'war criminals'" (*Krstić* judgment at paragraph 134).

24. On 11 July 1995, "as the situation in Potočari escalated towards crisis", some able-bodied Bosnian Muslim men decided to "take to the woods" and join soldiers of the RBiH Army in a column to attempt to break through to Bosnian Muslim territory near Tuzla. They believed they had a better chance of survival by trying to escape through the woods than by falling into the hands of Bosnian Serb forces (*Krstić* judgment at paragraph 60). An estimated 10,000 to 15,000 men retreated into the woods (*Krstić* judgment at paragraph 61). Approximately one-third of the column were soldiers of the RBiH Army and the remaining two-thirds were Bosnian Muslim civilian men from Srebrenica (*Krstić* judgment at paragraph 163). On 12 July 1995, the VRS launched an artillery attack against the men and over the next couple of days captured many as prisoners (*Krstić* judgment at paragraphs 62-63). According to VRS regulations, the column of men "qualified as a legitimate military target" (*Krstić* judgment at paragraph 163). Bosnian Muslim men who were captured from the column were forced to hand over their personal belongings and valuables to Bosnian Serb forces (*Krstić* judgment at paragraph 171).

25. On 12 and 13 July 1995, the VRS bussed women, children and elderly out of Potočari to Bosnian Muslim territory near Kladanj (*Krstić* judgment at paragraph 48). UNPROFOR forces

attempted to escort the buses, but after they accompanied the first convoy, Bosnian Serb soldiers physically prevented them from continuing their escort (*Krstić* judgment at paragraph 50). Meanwhile, Bosnian Serb forces "systematically separated out men of military age" who were trying to leave Potočari by bus (*Krstić* judgment at paragraph 53). They stripped these men of personal effects and identity cards, which were later burned (*Krstić* judgment at paragraph 160). They also stopped the buses enroute to screen them for any additional men (*Krstić* judgment at paragraph 56). The total removal of Bosnian Muslim civilians from Potočari was completed on the evening of 13 July 1995 (*Krstić* judgment at paragraph 51). The Trial Chamber found that "following the take-over of Srebrenica, in July 1995, Bosnian Serb forces devised and implemented a plan to transport all of the Bosnian Muslim women, children and elderly out of the enclave" (*Krstić* judgment at paragraph 52). However, no men arrived at the intended destination of Kladanj (*Krstić* judgment at paragraph 57).

26. Approximately 1,000 Bosnian Muslim men, who had been separated from the women, children and elderly transported out of Potočari, were taken to detention sites in Bratunac and subsequently joined by the Bosnian Muslim men captured from the column in the woods (*Krstić* judgment at paragraph 66). The Trial Chamber describes the fate of these men as follows:

> "Almost to a man, the thousands of Bosnian Muslim prisoners captured, following the take-over of Srebrenica, were executed. Some were killed individually or in small groups by the soldiers who captured them and some were killed in the places where they were temporarily detained. Most, however, were slaughtered in carefully orchestrated mass executions, commencing on 13 July 1995, in the region just north of Srebrenica. Prisoners not killed on 13 July 1995 were subsequently bussed to execution sites further north of Bratunac, within the zone of responsibility of the Zvornik Brigade. The large-scale executions in the north took place between 14 and 17 July 1995" (*Krstić* judgment at paragraph 67).

"Most of the mass executions followed a well-established pattern". The men were first detained and then transported to execution fields in isolated locations. They were unarmed and steps, such as blindfolding them or binding their wrists, were taken to "minimise resistance". On the execution fields, the men were "lined up and shot". Immediately afterwards, the bodies were buried with earth moving equipment, either on the site of the killing or nearby (*Krstić* judgment at paragraph 68). The Trial Chamber found that "following the take-over of Srebrenica in July 1995, thousands of Bosnian Muslim men from Srebrenica were killed in careful and methodical mass executions" by Bosnian Serb forces (*Krstić* judgment at paragraphs 79 and 84). "The total number is likely to be within the range of 7,000— 8,000 men" (*Krstić* judgment at paragraph 84).

27. According to forensic evidence, "in September and early October 1995, Bosnian Serb forces dug up many of the primary mass gravesites and reburied the bodies in still more remote locations". "The reburial evidence demonstrates a concerted campaign to conceal the bodies of the men in these primary gravesites, which was undoubtedly prompted by increasing international scrutiny of the events following the take-over of Srebrenica" (*Krstić* judgment at paragraph 78).

28. The impact of the Srebrenica events on members of "the Bosnian Muslim community of Srebrenica has been catastrophic" (*Krstić* judgment at paragraph 90). "In a patriarchal society, such as the one in which the Bosnian Muslims of Srebrenica lived, the elimination of virtually all of the men has made it almost impossible for the Bosnian Muslim women who survived the take-over of Srebrenica to successfully re-establish their lives" (*Krstić* judgment at paragraph 91). Many are unable to find employment. Other women who have been "forced to become the head of their households following the take-over of Srebrenica have great difficulties with the unfamiliar tasks of conducting official family business in the public sphere" (*id.*) Survivors are also impeded from psychologically recovering in part because "with few exceptions, the fate of the survivor's loved ones is not officially known: the majority of men of Srebrenica are still listed as missing". Psychologically this prevents survivors from moving forward with their lives in the absence of any closure, and it leaves former wives with an unclear marital status, which is particularly problematic for them as Muslim women. "The level of trauma experienced by the women and children who were transported out of Srebrenica" is "exceptionally high", in large part because "the women and men had been separated following the take-over of Srebrenica" (*Krstić* judgment at paragraph 93).

B. Statistical Data on the Missing Persons from Srebrenica in July 1995

1. International Committee of the Red Cross

29. Starting in January 1995, the ICRC began collecting tracing requests for persons who went missing during the armed conflict in Bosnia and Herzegovina. In order to be accepted by the ICRC, a tracing request must meet certain criteria, including that it can only be opened four months or more after the alleged disappearance. Starting in February 1996, the ICRC began collecting tracing requests related to persons who allegedly went missing during the fall of Srebrenica in July 1995. This campaign was systematically launched in Tuzla, where the majority of displaced persons from Srebrenica were living at that time. However, tracing requests for missing persons from Srebrenica (and elsewhere in Bosnia and Herzegovina) could also be opened at any other ICRC office. Each family was approached individually by the ICRC in order to ascertain whether they were still without any news about their missing relatives.

30. According to statistical data compiled by the ICRC in relation to the Srebrenica events of 1995, as of 18 November 2002, the "total number of persons for whom a tracing request was opened by the family" was 7,588. Of those, the "number of persons unaccounted for whose fate still has not been clarified" was 7,059 and the "number of persons unaccounted for whose fate has been clarified" was 529.

2. International Commission on Missing Persons

31. The International Commission on Missing Persons ("ICMP"), an organisation created in 1996 "to address the issue of persons missing as a consequence of the conflicts in the former Yugoslavia" and "to bring resolution to the families of the missing, regardless of religious, national or ethnic origin" (see paragraphs 120-123 below), "has a list of 7,345 named persons reported missing from Srebrenica in July 1995". The ICMP chairs the Expert Group on Missing Persons that is collaborating with other bodies and associations to attempt to produce a complete and accurate list of the missing persons from Srebrenica in July 1995. "From the research carried out so far it appears that the list will have between 7,800 and 8,000 named missing persons" (Statement by ICMP Chief of Staff Concerning Persons Reported Missing from Srebrenica in July 1995 of 6 September 2002, at www.ic-mp.org/icmp/home).

32. According to information compiled and scientific research conducted by the ICMP, as of 6 September 2002, "there are approximately 7,500 bags of human remains currently in storage, which have been exhumed from various gravesites in northeast Bosnia and Herzegovina" and which concern "those missing from Srebrenica in July 1995" (*id.*). "Almost 2,000 of these bags contain complete bodies, another 2,000 contain partial bodies of one individual, and the remaining 3,500 bags contain 'commingled remains' (human remains from a number of bodies where the grave has been disturbed and remains mixed)" (*id.*). Since its first DNA-based identification match report by the ICMP on 16 November 2001 (of a 15-year-old boy from Srebrenica), and up until 6 September 2002, "411 Srebrenica 1995 cases have been formally identified and those cases are closed. A further 349 cases have been matched by DNA and await formal identification" (*id.*) The ICMP's process to identify bodies exhumed from gravesites concerning persons missing from Srebrenica since July 1995 is ongoing. The authorities of the Republika Srpska neither participate in this identification process nor contribute funds toward it.

C. Facts of the individual applications

1. Case no. CH/01/8365 Ferida SELIMOVIĆ v. the Republika Srpska

33. The applicant's husband, Izet Selimović, disappeared on 12 July 1995 in the woods, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995[5]. On 5 February 2001, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

[5] As explained in paragraphs 125-126 below, the State Commission on Tracing Missing Persons was established on 24 March 1996. However, this State Commission formally assumed the archives, other documentation, and responsibilities of its predecessor, the State Commission on Exchange of Prisoners-of-

2. Case no. CH/01/8397 Šefika PALIĆ v. the Republika Srpska

34. The applicant's husband, Suno Palić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 April 1996. On 24 October 2000, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, on 4 April 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

3. Case no. CH/01/8398 Šefika PALIĆ v. the Republika Srpska

35. The applicant's son, Nurija Palić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 April 1996. On 22 March 2001, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995. Also, on 4 April 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

4. Case no. CH/01/8399 Mejrema JUNUZOVIĆ v. the Republika Srpska

36. The applicant's husband, Šaban Junuzović, disappeared during the fall of Srebrenica in July 1995. The applicant alleges that he was last seen in the UN Camp in Srebrenica. The applicant reported the disappearance of her husband to the State Commission on 21 April 1997. On 10 January 2001, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, in May 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 12 July 1995.

5. Case no. CH/01/8410 Mevlida SULEJMANOVIĆ v. the Republika Srpska

37. The applicant's son, Esad Sulejmanović, disappeared during the fall of Srebrenica on 12 July 1995 in the woods near Srebrenica. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 18 February 2000, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

6. Case no. CH/01/8411 Mevlida SULEJMANOVIĆ v. the Republika Srpska

38. The applicant's second son, Esnaf Sulejmanović, disappeared during the fall of Srebrenica on 12 July 1995 in the woods near Srebrenica. The applicant reported the disappearance of her second son to the State Commission on 8 December 1995. On 21 May 1999, the State Commission issued a certificate, registering the applicant's second son as a missing person since 12 July 1995.

7. Case no. CH/01/8412 Munira SULEJMANOVIĆ v. the Republika Srpska

39. The applicant's husband, Esnaf Sulejmanović (the same missing person as in the previous application), disappeared during the fall of Srebrenica in the woods near Srebrenica. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 21 May 1999, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

8. Case no. CH/01/8414 Hazreta DELIĆ v. the Republika Srpska

40. The applicant's husband, Hasib Delić, disappeared during the fall of Srebrenica on 11 July 1995 in the woods near Srebrenica. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 27 July 2001, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

War, which had been established on 23 July 1992. Therefore, for ease of reference, the Chamber will refer to both bodies as the State Commission, unless a distinction between the two is important.

9. Case no. CH/01/8428 Zilha FEJZIĆ v. the Republika Srpska

41. The applicant's husband, Smail Fejzić, disappeared during the fall of Srebrenica on 12 July 1995. The applicant alleges that her husband was sent to the UN Camp in Potočari. The applicant reported the disappearance of her husband to the State Commission on 4 April 1997. On 25 August 2000, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

10. Case no. CH/01/8484 Hafiza HRUSTIĆ and Adila HRUSTIĆ v. the Republika Srpska

42. The applicant Hafiza's husband, Omer Hrustić, disappeared during the fall of Srebrenica on 12 July 1995. The applicant alleges that she last saw him in the UN Camp in Potočari. The applicant reported the disappearance of her husband to the State Commission on 22 October 1995. On 19 November 2001, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, on 18 March 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

43. The applicant Hafiza's son, Semir Hrustić, disappeared during the fall of Srebrenica on 12 July 1995. The applicant alleges that he was last seen on the truck with other wounded persons transferred from the hospital to Bratunac. The applicant reported the disappearance of her son to the State Commission on 22 October 1995. On 19 November 2001, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995. Also, on 26 November 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 12 July 1995.

44. The applicant Adila's husband, Nedžib Hrustić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 19 November 2001, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, on 27 February 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 13 July 1995.

11. Case no. CH/01/8487 Nura OMIĆ v. the Republika Srpska

45. The applicant's husband, Ševko Omić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 19 November 2001, the State Commission issued a certificate, registering the applicant's husband as a missing person since 17 July 1995. Also, on 11 March 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

12. Case no. CH/01/8521 Enver HAMZIĆ v. the Republika Srpska

46. The applicant's brother, Rizo Hamzić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of his brother to the State Commission on 27 October 1997. On 27 October 1997, the State Commission issued a certificate, registering the applicant's brother as a missing person since 12 July 1995.

13. Case no. CH/02/8842 Hajro OKANOVIĆ v. the Republika Srpska

47. The applicant's son, Edin Okanović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of his son to the State Commission on 8 December 1995. On 12 November 2001, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

14. Case no. CH/02/8927 Rabija SMAJIĆ v. the Republika Srpska

48. The applicant's husband, Ahmo Smajić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 9 June 1998, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

15. Case no. CH/02/9357 Jusuf MALKIĆ v. the Republika Srpska

49. The applicant's son, Sabrija Malkić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of his son to the State Commission on 8 December 1995. On 20 February 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

16. Case no. CH/02/9375 Šuhra ALIĆ v. the Republika Srpska

50. The applicant's husband, Mustafa Alić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 5 September 1995. On 5 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

17. Case no. CH/02/9385 Raza JUSUFOVIĆ v. the Republika Srpska

51. The applicant's husband, Himzo Jusufović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 12 September 1996. On 31 January 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

18. Case no. CH/02/9390 Ahmija MUJIĆ v. the Republika Srpska

52. The applicant's husband, Osman Mujić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 5 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

19. Case no. CH/02/9403 Hasena AHMETAGIĆ v. the Republika Srpska

53. The applicant's son, Elvir Ahmetagić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 12 February 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

20. Case no. CH/02/9427 Fatija IBRAHIMOVIĆ v. the Republika Srpska

54. The applicant's husband, Džanan Ibrahimović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 9 January 1996. On 4 March 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

21. Case no. CH/02/9431 Rifet MUHIĆ v. the Republika Srpska

55. The applicant's brother, Resko Muhić, disappeared during the fall of Srebrenica. The applicant alleges that he was last seen in the UN Dutch Battalion Camp in Potočari. The applicant reported the disappearance of his brother to the State Commission on 24 October 1996. On 4 March 2002, the State Commission issued a certificate, registering the applicant's brother as a missing person since 12 July 1995.

22. Case no. CH/02/9433 Rešida OMEROVIĆ v. the Republika Srpska

56. The applicant's husband, Ibrahim Omerović, disappeared during the fall of Srebrenica. The applicant alleges that he was last seen in the village Kravice near Srebrenica. The applicant reported the disappearance of her husband to the State Commission on 24 October 1996. On 4 March 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

23. Case no. CH/02/9470 Timka MUJIĆ v. the Republika Srpska

57. The applicant's son, Muhamed Mujić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 18 February 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

24. Case no. CH/02/9484 Ifeta SELIMOVIĆ v. the Republika Srpska

58. The applicant's son, Ramiz Selimović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 7 March 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

25. Case no. CH/02/9485 Ifeta SELIMOVIĆ v. the Republika Srpska

59. The applicant's second son, Izet Selimović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her second son to the State Commission on 8 December 1995. On 18 February 2002, the State Commission issued a certificate, registering the applicant's second son as a missing person since 12 July 1995.

26. Case no. CH/02/9486 Ifeta SELIMOVIĆ v. the Republika Srpska

60. The applicant's third son, Idriz Selimović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her third son to the State Commission on 8 December 1995. On 7 March 2002, the State Commission issued a certificate, registering the applicant's third son as a missing person since 12 July 1995.

27. Case no. CH/02/9487 Ifeta SELIMOVIĆ v. the Republika Srpska

61. The applicant's husband, Rizvo Selimović, disappeared during the fall of Srebrenica on 12 July 1995. The applicant alleges that she last saw him in the UN Camp in Potočari. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 7 March 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

28. Case no. CH/02/9505 Hata AHMETOVIĆ v. the Republika Srpska

62. The applicant's son, Hajrulah Ahmetović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 4 March 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

29. Case no. CH/02/9506 Hata AHMETOVIĆ v. the Republika Srpska

63. The applicant's second son, Abdulah Ahmetović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her second son to the State Commission on 28 January 1996. On 4 March 2002, the State Commission issued a certificate, registering the applicant's second son as a missing person since 12 July 1995.

30. Case no. CH/02/9507 Hata AHMETOVIĆ v. the Republika Srpska

64. The applicant's third son, Mujo Ahmetović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her third son to the State Commission on 8 December 1995. On 4 March 2002, the State Commission issued a certificate, registering the applicant's third son as a missing person since 12 July 1995.

31. Case no. CH/02/9508 Hata AHMETOVIĆ v. the Republika Srpska

65. The applicant's husband, Avdo Ahmetović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 4 March 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

32. Case no. CH/02/9513 Hanifa SMAILOVIĆ v. the Republika Srpska

66. The applicant's husband, Bekto Smailović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 27 December 1996. On 20 June 1997, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

33. Case no. CH/02/9514 Amira GURDIĆ v. the Republika Srpska

67. The applicant's husband, Mesud Gurdić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 26 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

34. Case no. CH/02/9515 Tima GURDIĆ v. the Republika Srpska

68. The applicant's husband, Ahmo Gurdić, disappeared during the fall of Srebrenica on 11 July 1995, while heading toward Tuzla. The applicant alleges that she last saw him in the UN Camp in Potočari. The applicant reported the disappearance of her husband to the State Commission on 23 May 1997. On 26 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 11 July 1995.

35. Case no. CH/02/9528 Fatima RAMIĆ v. the Republika Srpska

69. The applicant's husband, Mustafa Ramić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 19 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, on 11 March 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

36. Case no. CH/02/9529 Fatima RAMIĆ v. the Republika Srpska

70. The applicant's son, Abid Ramić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 19 February 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995. Also, on

11 March 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

37. Case no. CH/02/9530 Fatima RAMIĆ v. the Republika Srpska

71. The applicant's second son, Sadet Ramić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her second son to the State Commission on 8 December 1995. On 19 February 2002, the State Commission issued a certificate, registering the applicant's second son as a missing person since 12 July 1995. Also, on 11 March 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

38. Case no. CH/02/9532 Enes ĐOZIĆ v. the Republika Srpska

72. The applicant's brother, Kiram Đozić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant alleges that he was last seen in the UN Camp in Potočari. The applicant reported the disappearance of his brother to the State Commission on 8 December 1995. On 1 October 1998, the State Commission issued a certificate, registering the applicant's brother as a missing person since 12 July 1995.

39. Case no. CH/02/9542 Enes ĐOZIĆ v. the Republika Srpska

73. The applicant's father, Abdulah Đozić, disappeared during the fall of Srebrenica on 12 July 1995. The applicant alleges that he was last seen in the UN Camp in Potočari. The applicant reported the disappearance of his father to the State Commission on 8 December 1995. On 1 October 1998, the State Commission issued a certificate, registering the applicant's father as a missing person since 12 July 1995.

40. Case no. CH/02/9546 Azem SMAJIĆ v. the Republika Srpska

74. The applicant's father, Alija Smajić, disappeared during the fall of Srebrenica on 12 July 1995. The applicant alleges that he was last seen in the UN Camp in Potočari. The applicant reported the disappearance of his father to the State Commission on 8 December 1995. On 7 February 2002, the State Commission issued a certificate, registering the applicant's father as a missing person since 12 July 1995.

41. Case no. CH/02/9547 Tahira SKELEDŽIĆ v. the Republika Srpska

75. The applicant's husband, Šahbaz Skeledžić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 31 July 1995. On 8 March 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

42. Case no. CH/02/9548 Tahira SKELEDŽIĆ v. the Republika Srpska

76. The applicant's son, Mirsad Skeledžić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her son to the State Commission on 8 December 1995. On 8 March 2002, the State Commission issued a certificate, registering the applicant's son as a missing person since 12 July 1995.

43. Case no. CH/02/9549 Tahira SKELEDŽIĆ v. the Republika Srpska

77. The applicant's second son, Suad Skeledžić, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her second son to the State Commission on 8 December 1995. On 8 March 2002, the State Commission issued a certificate, registering the applicant's second son as a missing person since 12 July 1995.

44. Case no. CH/02/9550 Hakija ČAKANOVIĆ v. the Republika Srpska

78. The applicant's father, Mehmedalija Čakanović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of his father to the State Commission on 27 July 1999. On 27 July 1999, the State Commission issued a certificate, registering the applicant's father as a missing person since 12 July 1995.

45. Case no. CH/02/9552 Sabra KABILOVIĆ v. the Republika Srpska

79. The applicant's husband, Rešid Kabilović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 26 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

46. Case no. CH/02/9553 Sabira JUSUFOVIĆ v. the Republika Srpska

80. The applicant's husband, Safet Jusufović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 14 March 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

47. Case no. CH/02/9594 Emina SALIHOVIĆ v. the Republika Srpska

81. The applicant's husband, Ibrahim Salihović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 26 September 1997, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, on 2 March 1996, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 14 July 1995.

48. Case no. CH/02/9595 Hamša ĆERIMOVIĆ v. the Republika Srpska

82. The applicant's husband, Zulfo Ćerimović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 5 January 1999. On 19 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995.

49. Case no. CH/02/9596 Aiša ADEMOVIĆ v. the Republika Srpska

83. The applicant's husband, Ragib Ademović, disappeared during the fall of Srebrenica on 12 July 1995, while heading toward Tuzla. The applicant reported the disappearance of her husband to the State Commission on 8 December 1995. On 19 February 2002, the State Commission issued a certificate, registering the applicant's husband as a missing person since 12 July 1995. Also, a tracing request was opened for him with the ICRC, registering him as a person whose whereabouts are unknown after 11 July 1995.

D. Summary of "Report about Case Srebrenica"

84. In September 2002,[6] the Documentation Centre of the Republika Srpska, Bureau of Government of the Republika Srpska for Relations with the ICTY, Banja Luka, published the "Report about Case Srebrenica" (the "RS Srebrenica Report"). As far as the Chamber is aware, this is the first official statement based upon an investigation by the authorities of the Republika Srpska about the Srebrenica events. The introduction states that "This report is the first in line until making the

[6] At the beginning of the Report a reference is made to "almost three years have passed since the end of the war in Bosnia", which calls into question the date of preparation of the Report (English, page 9).

final report referring case Srebrenica that has been in flow".[7] However, the respondent Party did not submit this Report to the Chamber as part of its observations in the Srebrenica cases. By summarising this Report below, the Chamber does not intend to accept or comment upon the accuracy of the statements contained therein. Rather, the Chamber considers the existence and content of the RS Srebrenica Report as facts relevant to the applicants' complaints.

85. The introduction to the RS Srebrenica Report commences as follows:

> "After conducted investigation in past several years and gathering information referred to case Srebrenica from side of agencies with jurisdictions and institutions, Bureau of Republic of Srpska for relations with International Tribunal for war crimes in The Hague presents the evidences and positions referred to case Srebrenica. The goal of this report is to present the whole truth about crimes committed in Srebrenica region regardless nationality of perpetuators [*sic*] of crimes and time when they were committed. …
>
> "Government of Republic of Srpska — presents the facts that are important in order to determine exactly what had happened in mentioned region. The whole truth about mentioned events has its unestimated significance for process of reconciliation…." (English, page 5).

The introduction explains that the "events in and around Srebrenica cannot be seen as selective and separated from corps of crimes that were committed in Bosnia and Herzegovina". Therefore, the Srebrenica events must be placed into the context of events occurring throughout the Srebrenica—Bratunac region, during the period of 1992 through 1995, by members of both the RBiH Army and the RS Army. Thus, the RS Srebrenica Report considers the events broadly in terms of time, history, geography, and perspective; as a result, it does not focus on the events at issue in the applications before the Chamber (English, page 5). "*About crimes that are being assumed that they had been committed since 11th July 1995 still does not exist the full information with names of victims, the way how they had suffer, the time when they had suffer as well as information about direct perpetrators of crime*. These information are exactly what Bureau of Government of Republic of Srpska for relation with International ad hoc Tribunal for War Crimes want to discover" (English, page 6 (emphasis added)).

86. The beginning of the RS Srebrenica Report elaborates upon the history of oppression of Serbs in the Srebrenica region by "Nazi collaborators" and Muslims, commencing during the Second World War (English, pages 11-12). In 1992, the Muslim National Council declared its goal to create an Islamic State within the territory of Bosnia and Herzegovina and "Bratunac was proclaimed 'Geographic center of Muslim for whole (former) Yugoslavia'" (English, page 13). By spring 1992, "mutual distrust and fear between Serbs and Muslims were mounting high in Srebrenica" (English, page 14). However, the "Muslim's military strategy for Srebrenica area was the total dependence on the Serbs' supplies and properties". Thus began a Muslim assault against Serb villages in the surrounding areas, which included thefts, destruction of property, physical attacks, and murders (English, page 15). "In this way, from May 1992 to January 1994, as many as 192 villages were robbed and burnt. During the period, 8,000 Serbian houses had been assaulted, and 5,400 houses were completely demolished into rubbles. The number of the killed were more than 1,000, including women, children, and the elderly" (English, page 15).

87. "By pursuing the savage policy of fighting, Muslim forces acquired as much as 95% of Srebrenica area by the end of December 1992". However, the area lacked food and it quickly consumed food acquired through raids on nearby Serb villages (English, page 18). Moreover, the geographic area remained encircled by Serb territory. In explaining the creation of Srebrenica as a "Safe Area", the RS Srebrenica Report explains: "What Muslim leaders came up with a device to prolong the life of Srebrenica was to use their own civilians and UN to their advantage. Having known that international organizations would bring relief supplies to the civilians, Muslim leaders have decided to keep civilians in the enclave in order that Muslim forces could obtain food and other

[7] The Chamber notes that since the RS Srebrenica Report has been published and produced in English and the national language, the Chamber is not translating it, but rather, quoting directly from the Report itself, as it is stated in the respective language.

supplies" (English, page 19). "A number of evidences … prove that Muslim forces considered civilians as a magnet to attract relief food from international organisations" (English, page 20).

88. The RS Srebrenica Report notes that the UN Security Council resolution establishing Srebrenica as a "Safe Area" allowed Bosnian forces to remain in the Safe Area along with civilians, and although the Safe Area was supposed to be demilitarised, "UNPROFOR were asked not to pursue the demilitarisation so actively" (English, page 21). "In this way, UN, which was supposed to be an impartial institution, allowed Muslim forces to stay with civilians, attack Serbs from the enclave and secure food under the protection of UNPROFOR" (English, page 21). According to the Report, "more than 500 Serbs were killed" in attacks conducted by Muslim forces from inside the Safe Area (English, page 22). Meanwhile, the RS Army merely attempted to protect the nearby Bosnian Serb population and its vital supply routes from attacks by Muslim forces because "territory wise" the "Safe Area" was not of much interest to it. In spring 1993, Karadžić and Milošević "were adamant that there was no intention to take Srebrenica" (English, page 23).

89. In its description of the fall of Srebrenica, commencing on 6 July 1995, the RS Srebrenica Report focuses on the chaotic actions of Muslim forces and their attacks against the Dutch UNPROFOR soldiers (English, pages 23-24). With respect to Serb actions during the fall:

> "Mladić organized the evacuation of people, and asked for the help of the three representatives to carry out the evacuation smoothly. What he repeatedly told them was to ask soldiers to give up weapons within 24 hours. He said that Muslim soldiers, including soldiers not in uniform and even war criminals, would be treated according to the Geneva Convention if they hand over their weapons. That never happened mostly because of the fact that the most of Muslim warriors carried on hands the blood of Serbian victims in period 1992—1995, so in fear of revenge and in hope that they would still remain unpunished, decided to make military brake to territory under control of so-called Army of Bosnia and Herzegovina towards Tuzla" (English, page 24).

90. "At the night of July 10, the Muslim soldiers who had decided not to surrender started fleeing". "On the night of July 11-12, between 10,000 and 15,000 men, who had converged on the area of Jaglici and Susnjari, went in the forests to reach Tuzla or Kladanj". "Although no confirmed figures are available, it is estimated that 10,000—15,000 Muslim soldiers had left Srebrenica through woods according to the Report of the Secretary-General [of the United Nations of 27 November 1995] and other accounts" (English, pages 24-25). Citing the Report of the Secretary-General of the United Nations pursuant to Security Council Resolution 1019 (1995) of 27 November 1995, it is noted that "approximately 25,000 out of 40,000 Muslims decided to surrender and gathered in Potočari", the majority of whom were women, children and elderly. Bosnian Serb forces "separated" out the group of "military capable men", who comprised only 2% to 3%, or 500 to 750 men, in order to capture Muslim soldiers as prisoners of war and as potential war criminals for crimes against Serbs in 1992 and 1993. These men were transferred to Bratunac (English, page 25). On 14 July 1995, the civilian men from that group, estimated at around 500, were transferred to Muslim territory in Kladanj. The remaining men, estimated at less than 250, became prisoners of war and were transferred to the Batković prison (English, page 26). Additionally, there were 88 wounded men, 65 who were transferred to Muslim territory on 17 and 18 July, and 23 who became prisoners of war (English, page 27).

91. With respect to the "alleged massacre" of Muslim soldiers who fled into the woods, the RS Srebrenica Report emphasises that "those soldiers were carrying weapons inspite of Mladić's repeated warning, and there were ferocious fighting between those Muslim soldiers and Bosnian Serb soldiers" (English, page 27). "Taking into consideration the huge loss of Bosnian Serb forces under the favorable conditions for them, it can be estimated that Muslim forces must have suffered the loss of nearly 2,000 soldiers from military perspectives. However, it must be noted that this combat might look mass killings to the eye of frightened Muslim soldiers although they carried weapons and shot at Bosnian Serb soldiers randomly" (English, page 28).

92. After refuting and questioning some evidence of mass killings of men who had been transferred to Kladanj by bus and then to Karakaj (English, pages 29-30), the RS Srebrenica Report admits that "considering that a number of Serbs were killed by Muslim neighbors in a very cruel way

in 1992 and 1993, there must have been summary executions for the purpose of personal revenge". "Regarding the spots where executions took place, most cases must have been limited to Potočari because a particular person would rarely see the right person among 15,000 fleeing Muslim soldiers in places other than Potočari" (English, page 30). However, "the existence of Mladić in Potočari can be considered to discourage Serbs to take their wild revenge" because Mladić exercised "harsh and strict" discipline for "unlawful behaviour of his soldiers". "Of course, however, Mladić, who failed to stop killings perfectly, would be responsible as a superior, and those Serbs who directly committed the crimes should be punished accordingly" (English, page 31).

93. With respect to mass graves, the RS Srebrenica Report notes that "mass graves does not always mean mass execution". Moreover, it is important to analyse the location of the mass graves to distinguish between men killed in combat and men killed after being captured (English, page 31). "It can be concluded that the mass grave in a open space along a road in combat areas were created for hygiene reasons for numerous soldiers killed in the combats. On the other hand, mass graves deep in forests are considered to be the ones which criminal wanted to hide. The exhumation site of ICTY is considered to be one of the examples of mass graves created for hygiene reasons" (English, page 32).

94. In responding to the lists of missing persons stating that "as many as 6,000— 8,000 Muslim men were executed by Bosnian Serb forces", the RS Srebrenica Report describes this figure as "evidently inflated" (English, page 32). The Report notes that given the large number of women in Muslim families, it can be assumed that several different women reported the same man as missing. In addition, the Muslim government sought "to manipulate the election in Srebrenica" and falsely registered some 3,500 Muslim names as voters. Many names, as many as 3,381, were listed as missing without designating a date of birth, which is suspect and indicates an attempt to manipulate the figures. Also, some Muslim soldiers sought to conceal their identity in order to avoid charges for war crimes: they gave false names to international organisations, but real names when they arrived in Muslim territories (pages 32-33). After generally challenging the number of missing persons for various reasons (invalid tracing requests, soldiers killed during combat, persons who died of physical conditions while fleeing, persons given asylum abroad, and men transferred to Muslim front lines immediately upon their arrival in Zenica or Tuzla), the Report concludes as follows: "As a consequence, the remaining figure in the missing list would be the number of Muslim soldiers who were executed by Bosnian Serb forces for personal revenge or for simple ignorance of the international law. It would probably stand less than 100" (English, page 34).

95. In the aftermath of the Srebrenica events and the armed conflict, the RS Srebrenica Report notes that in certain circles, the "suffering of Serbs remained covered". The "alleged massacre of Muslims gave a dreadful blow to Republic of Srpska. It lost political and military leaders as ICTY indicted Karadžić and Mladić, and had to start building the entity without the leadership" (English, page 36). The international community has taken advantage of this situation and the "Republic of Srpska has become a quasi-protectorate of some foreign country". Its domestic judicial system has been ignored and people are "exposed to the risk of a sudden arrest for crimes that they did not know" (English, page 36).

96. The RS Srebrenica Report closes with a statement on the "collective responsibility of Serbs", as follows:

> "Alleged Srebrenica massacre hit Yugoslavia hard as well as Republic of Srpska. As unconfirmed information on the massacre of Muslim soldiers in Serbrenica created a monstrous image of blood-thirsty Serbs as the collective body so firmly, almost everything has been looked at through the filter of this image. Thus, in almost every case, the Serbs are judged as an evil from the beginning. … This imprinting process of the formidable image might push Serbs onto an isolated corner of the world for an unexpectedly long period. Therefore, to clarify the alleged Srebrenica massacre is considered to be one of the most urgent tasks to save Serbs' fate" (English, page 37).

97. The attachments to the RS Srebrenica Report, which exist only in the English language version of the Report obtained by the Chamber, include some ten pages of excerpts from media reports about Srebrenica, most from 1995 and 1996 (English, pages 39-48). Next is a document

designated as "Facsimile of Top secret Bosnian Muslim Army document" which lists 107 men who "came to Žepa on 16 July 1995" (English, page 49). The third attachment is a list of 349 names which is described as "a part of the list of 3010 'missing civilians' from Srebrenica that were participating in the Bosnia's election and are on the OSCE voting lists" for the 1997 Bosnian elections (English, page 51). The fourth attachment provides a few examples of manipulations of the ICRC lists of missing persons. It claims that more than 1000 persons designated on the ICRC lists as missing persons have actually been "found", "what cause suspicion to ICRC list" (English, page 57). The fifth attachment claims to be summaries of "Testimonies of survivors of crimes committed by Muslim Jihad Warriors in Srebrenica and surrounding villages". These summaries are quite detailed and include names, dates, places, designations of crimes, suspects, and supporting evidence. It appears that all concern alleged crimes committed by Muslims against Serbs in the Srebrenica area in 1992-1993 (English, pages 59-75). Also included in the attachments are 55 pages of "Foto Documentations", which show pictures of, for example, two different gravestones for one deceased person in the Muslim Cemetery near Srebrenica; gravestones of deceased Muslim persons dated prior to July 1995 who are also designated as missing persons from Srebrenica on the ICRC lists; the small primary school in Karakaj where thousands of Muslims were allegedly executed and school records indicating the daily attendance of students during the period of June-July 1995 (English, pages 83-139).

IV. RELEVANT LEGAL FRAMEWORK

A. International law

1. Protocol No. 1 to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977

98. Protocol No. 1 to the Geneva Conventions was adopted by the United Nations on 8 June 1977. The Geneva Conventions and Protocols 1 and 2 thereto are listed in Annex I to the Constitution of Bosnia and Herzegovina as one of the "additional human rights agreements to be applied in Bosnia and Herzegovina".

99. Section III of Protocol No. 1 to the Geneva Conventions of 12 August 1949 concerns missing and dead persons. Section III states as follows:

> "*Article 32 – General principle*
>
> "In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organisations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.
>
> "*Article 33 – Missing persons*
>
> "1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.
>
> "2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:
>
> (a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;

(b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.

"3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

"4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

"*Article 34 – Remains of deceased*

"1. The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable consideration under the Conventions and this Protocol.

"2. As soon as circumstances and the relations between the adverse Parties permit, the High Contracting Parties in whose territories graves and, as the case may be, other locations of the remains of persons who have died as a result of hostilities or during occupation or in detention are situated, shall conclude agreements in order:

(a) to facilitate access to the gravesites by relatives of the deceased and by representatives of official graves registration services and to regulate the practical arrangements for such access;
(b) to protect and maintain such gravesites permanently;
(c) to facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.

"3. In the absence of the agreements provided for in paragraph 2(b) or (c) and if the home country of such deceased is not willing to arrange at its expense for the maintenance of such gravesites, the High Contracting Party in whose territory the gravesites are situated may offer to facilitate the return of the remains of the deceased to the home country. Where such an offer has not been accepted the High Contracting Party may, after the expiry of five years from the date of the offer and upon due notice to the home country, adopt the arrangements laid down in its own laws relating to cemeteries and graves.

"4. A High Contracting Party in whose territory the gravesites referred to in this Article are situated shall be permitted to exhume the remains only:

(a) in accordance with paragraphs 2(c) and 3, or
(b) where exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity, in which case the High Contracting Party shall at all times respect the remains, and shall give notice to the home

country of its intention to exhume the remains together with details of the intended place of reinterment."

2. United Nations Declaration on the Protection of All Persons from Enforced Disappearances of 18 December 1992

100. On 18 December 1992 in the 92nd plenary session, the General Assembly of the United Nations adopted the UN Declaration on the Protection of All Persons from Enforced Disappearances (A/RES/47/133).

101. The Preamble proclaims "the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States". It further provides, in pertinent part:

> "Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,
>
> "Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity, …."

102. Article 1 provides as follows:

> "1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
>
> "2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life."

103. Article 2 provides as follows:

> "1. No State shall practise, permit or tolerate enforced disappearances.
>
> "2. States shall act at the national and regional levels and in co-operation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance."

104. Article 7 provides as follows:

> "No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances."

105. Article 13 provides, in pertinent part, as follows:

> "1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the

right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. …

"4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardise an ongoing criminal investigation. …

"6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified."

3. Convention on the Prevention and Punishment of the Crime of Genocide of 1948

106. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations on 9 December 1948. The Republic of Bosnia and Herzegovina ratified the Genocide Convention on 29 December 1992. It is also listed in Annex I to the Constitution of Bosnia and Herzegovina as one of the "additional human rights agreements to be applied in Bosnia and Herzegovina".

107. The Genocide Convention provides, in relevant part, as follows:

"Article 1. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

"Article 2. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group.

"Article 3. The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.

"Article 4. Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

"Article 5. The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3. …"

4. Statute of the International Criminal Tribunal for the former Yugoslavia

108. The Statute of the ICTY provides for the concurrent jurisdiction of the ICTY and the national courts in Article 9 as follows:

> "1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991."

109. The Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution No. 808 (1993) was presented to the UN Security Council on 3 May 1993 (S/25704). In Section 64 it explains the principle of the concurrent jurisdiction of the ICTY and the national courts, as follows:

> "In establishing an international tribunal for the prosecution of persons responsible for serious violations committed in the territory of the former Yugoslavia since 1991, it was not the intention of the Security Council to preclude or prevent the exercise of jurisdiction by national courts with respect to such acts. Indeed national courts should be encouraged to exercise their jurisdiction in accordance with their relevant national laws and procedures."

B. Annexes to the General Framework Agreement for Peace in Bosnia and Herzegovina of 14 December 1995

1. Constitution of Bosnia and Herzegovina

110. The Constitution of Bosnia and Herzegovina, set out in Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina (the "General Framework Agreement") entered into force "upon signature of the General Framework Agreement", which occurred on 14 December 1995. Annex II to the Constitution of Bosnia and Herzegovina provides for transitional arrangements, including the continuation of laws. In Article 2 of Annex II, it provides as follows:

> "All laws, regulations, and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina."

2. Agreement on Refugees and Displaced Persons

111. The Agreement on Refugees and Displaced Persons, which is set out in Annex 7 to the General Framework Agreement and entered into force on 14 December 1995, provides in Article V:

> "The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for."

3. Agreement on the Military Aspects of the Peace Settlement

112. The Agreement on the Military Aspects of the Peace Settlement, which is set out in Annex 1A to the General Framework Agreement and entered into force on 14 December 1995, provides in Article IX(2):

> "In those cases where places of burial, whether individual or mass, are known as a matter of record, and graves are actually found to exist, each Party shall permit graves registration personnel of the other Parties to enter, within a mutually agreed period of time, for the limited purpose of proceeding to such graves, to recover and evacuate the bodies of deceased military and civilian personnel of that side, including deceased prisoners."

C. International Activities regarding Missing Persons

1. United Nations Special Process on Missing Persons on the Territory of the former Yugoslavia

113. Already in the spring of 1994, the United Nations Commission on Human Rights (the "UN Commission") had established a special process on missing persons on the territory of the former Yugoslavia and appointed an independent expert to clarify the fate and whereabouts of the more than 20,000 persons who had disappeared in the Republics of Croatia and Bosnia and Herzegovina, primarily as a result of ethnic cleansing operations (Report of the Independent Expert, UN Commission, 51st Session, U.N. Doc. E/CN.4/1995/37 (1995); Report of the Independent Expert, UN Commission, 52nd Session, U.N. Doc. E/CN.4/1996/36 (March 1996)). Recommendations were made by the Independent Expert that were not acted upon. Shortly thereafter, the United States Government took initiatives in line with these proposals (Report of the Independent Expert, UN Commission, 53rd Session, U.N. Doc. E/CN.4/1997/55 (15 January 1997)) (see paragraph 120 below).

2. ICRC Process for Tracing and Identifying Unaccounted for Persons

114. Under international humanitarian law, the ICRC is the principal agency authorised to collect information about missing persons, and all parties to armed conflicts are under an obligation to provide all necessary information at their disposal to trace missing persons (both combatants and civilians) and to satisfy the "right of family members to know the fate of their relatives" pursuant to Article 32 of Protocol No. 1 to the Geneva Conventions (see paragraph 99 above). This general obligation is also reflected in Article V of Annex 7 to the General Framework Agreement (see paragraph 111 above). In order to implement its responsibilities under the General Framework Agreement (*i.e.*, Article V of Annex 7 and Article IX of Annex 1A) and international humanitarian law, the State of Bosnia and Herzegovina and the Entities, as well as the ICRC, established a "Process for tracing persons unaccounted for in connection with the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly" (the "Process").

115. Under Section 1.1 of the general framework and terms of reference of this Process, "the parties shall take all necessary steps to enable families … to exercise their right to know the fate of persons unaccounted for, and to this end shall provide all relevant information through the tracing mechanisms of the ICRC and co-operate within a Working Group." The ICRC will chair the Working Group "comprising representatives of all the parties concerned in order to facilitate the gathering of information for all families not knowing the fate of missing relatives". Its members include three representatives each for the Republika Srpska, Bosniaks of the Federation of Bosnia and Herzegovina, and Croats of the Federation of Bosnia and Herzegovina, as well as a representative of Bosnia and Herzegovina, the High Representative, and several observers. For the Republika Srpska, the representatives are "a senior official of the Republika Srpska, a civilian adviser to the latter, a senior military commander of the Vojske Republike Srpske (VRS)" (Terms of reference of the Process). The ICRC established this Working Group on 30 March 1996. The Parties agreed to respect the Process at the session of the Working Group held on 7 May 1996. In Section 1.2 of the terms of reference of the Process, "the parties recognise that the success of any tracing effort made by ICRC and the Working Group depends entirely on the co-operation of the parties, in particular of the parties which were in control of the area where and when the person sought reportedly disappeared."

116. The Process is to be implemented by the Federation of Bosnia and Herzegovina, the Republika Srpska, and Bosnia and Herzegovina (Section 1.4.A of the terms of reference of the Process). Each party shall "identify spontaneously any dead person found in an area under its control, and notify those belonging to another party to the ICRC or the Working Group without delay" (*id.*). When approached with a request for information on the whereabouts or fate of an unaccounted for person, the parties "shall make any internal enquiries necessary to obtain the information requested" (*id.*). Each party shall "cooperate with the ICRC and the Working Group to elucidate the fate of persons unaccounted for" (*id.*). "Chaired by the ICRC the Working Group will be the forum through which the parties will provide all required information and take the necessary steps to trace persons unaccounted for and to inform their families accordingly" (Section 1.4.C of the terms of reference of the Process).

117. In accordance with the terms of reference, a copy of all tracing requests shall be provided to the Working Group (Section 2.2 of the terms of reference of the Process). Moreover, "with the aim of clarifying the fate of missing persons, the Members, and, if relevant, Observers of the Working Group

will: a) share all factual information relevant to the Process; b) organise, support and, if requested by the Working Group, participate in the implementation of tracing mechanisms at regional or local level" (*id.*). In addition, "should any Member or Observer of the Working Group obtain information on the identity of deceased persons exhumed from places of burial, whether individual or mass, or that might help determine the fate of missing persons, it will make such information available to the Working Group" (*id.* at Section 2.4(a)). "For unresolved cases [of persons unaccounted for], the State and Entity Members of the Working Group undertake to facilitate a rapid and fair settlement of the legal consequences of the situation for their families. To this end, they will encourage adoption of the necessary legislative, administrative and judicial measures" (Section 2.1 of the terms of reference of the Process). "No party may cease to fulfil its obligations aimed at informing families about the fate of relatives unaccounted for on the grounds that mortal remains have not been located or handed over" (*id.* at Section 2.4(b)).

3. Banja Luka and Sarajevo Agreements on the Joint Exhumation Process

118. On 25 June 1996 in Banja Luka and again on 4 September 1996 in Sarajevo, representatives of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Office of the High Representative, among others, met to discuss and agree upon measures concerning the tracing of unaccounted for persons and exhumations of mortal remains. At the Banja Luka meeting, the Parties agreed, *inter alia*, "to set priority sites and a preliminary timetable for the exhumation of mass graves for the purposes of identification at the same time". They also "agreed to nominate two forensic pathologists to a joint expert commission that will be tasked with finalising the sites and timetables of inter-Entity exhumations, and with implementing the agreed upon exhumations". "Recognising that the joint exhumation project had been stalled for several weeks," at the Sarajevo meeting, the Parties further agreed, *inter alia*, "to instruct their responsible officials to take the necessary steps to carry out the commitments concerning exhumations".

119. In this context, the parties established Rules for Exhumations and the Clearing of Unburied Mortal Remains. Together with the Banja Luka and Sarajevo Agreements, these Rules prescribe a process that has become known as the Joint Exhumation Process, whereby the competent authorities of the interested Party initiate and conduct the exhumation of a gravesite on the territory of the Party controlling that area. The Party controlling the area provides security for the exhumation team. For example, for gravesites of victims of the Srebrenica events, the competent authorities of the Federation of Bosnia and Herzegovina initiate and conduct the exhumation of the gravesite located on the territory of the Republika Srpska, with local police of the Republika Srpska providing security. Various international experts and authorities supervise and monitor the entire process. Up until the end of 2000, the OHR assisted and ensured that the competent national and international institutions co-operated with one another in the Joint Exhumation Process. Thereafter, commencing on 1 January 2001, the OHR formally assigned responsibility for co-ordination of the competent national and international institutions participating in the Joint Exhumation Process to the ICMP (see paragraph 122 below).

4. International Commission on Missing Persons

120. At the G-7 Summit in Lyon, France, the President of the United States announced "the formation of an international Blue Ribbon Commission on the Missing in the former Yugoslavia", with former Secretary of State Cyrus Vance as its chairman (White House press release of 29 June 1996). This Commission, which was later named the International Commission on Missing Persons ("ICMP"), was to work closely with representatives of the United Nations, the ICRC, the OHR, and other organisations "to secure the full cooperation of the parties to the Dayton Peace Agreement in locating the missing from the four-year conflict and to assist them in doing so" (*id.*)

> "The Commission will encourage public involvement in its activities and will take firm steps to see that the parties devote the attention and resources necessary to produce early, significant progress on missing person cases. It will also reinforce efforts to ensure that exhumations, when necessary to identify the fate of missing persons, are conducted under international supervision and in accordance with international standards. In addition, the Commission will facilitate the development of an antemortem database to support exhumation efforts" (*id.*)

121. The ICMP is funded exclusively by international funds: neither the State nor the Entities of Bosnia and Herzegovina provide any funding for the ICMP. According to its mission statement, the ICMP "works to bring resolution to the families of those missing from the conflicts in the former Yugoslavia through building: on the political will of regional governments to release information and their capacity to address the missing persons issue; an innovative and sustainable process for the exhumation and identification of mortal remains; civil society initiatives to address the missing persons issue".

122. As of 1 January 2001, the ICMP took over co-ordination of the Joint Exhumation Project from the OHR (see paragraph 119 above). Under the guidance and with the assistance of the ICMP, teams from the respective missing persons commissions of the Federation of Bosnia and Herzegovina and the Republika Srpska are "permitted into the territory of the other entity, its former enemy, to conduct humanitarian recovery and repatriation operations". The exhumation and examination process of human remains requires the methodical application of scientific and inter-disciplinary (*e.g.*, forensic anthropology, forensic pathology, forensic archaeology, forensic physiochemistry, and criminology) techniques. With respect to the Srebrenica events of July 1995, the ICMP is integrally involved in this entire process, and it collaborates with the competent local courts and missing person commissions.

123. The ICMP has accomplished its goal "to bring resolution to the families of the missing, regardless of religious, national or ethnic origin" in part by implementing a program to incorporate "the direct application of cutting-edge DNA-led identification methods to complement the on-going recovery of mortal remains in the region". "In order for DNA to assist in the identification process, DNA profiles from blood samples taken from family members with missing relatives must be compared to DNA profiles from exhumed bodies. A match between these two DNA profiles is compelling evidence of an individual's identity. Using DNA-led technologies for identification has been the key to speeding up and increasing accuracy of identification". As of 6 September 2002, the ICMP had collected blood samples from over 12,000 living family members of persons reported missing from Srebrenica in July 1995, and it has approximately 7,500 bags of human remains of the missing in storage from which it is extracting the necessary DNA profiles (see paragraph 32 above).

D. National Activities regarding Missing Persons

124. During the armed conflict in Bosnia and Herzegovina, various commissions existed or were established for the primary purpose of exchanging prisoners of war. One commission represented the interests of Bosnian Muslims, another represented the interests of Croats, and a third represented the interests of Serbs. After the armed conflict, these commissions also represented the interests of their respective ethnic/religious group with respect to the great problem of the missing persons (*see* Report of the Independent Expert, UN Commission, 53rd Session, U.N. Doc. E/CN.4/1997/55 (15 January 1997)). Under the General Framework Agreement, these commissions representing the three ethnic/religious groups were gradually transformed into institutions of the State of Bosnia and Herzegovina and its two Entities, as described below in relevant part.

1. State Commission on Tracing Missing Persons

125. On 16 July 1992, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War (Official Gazette of the Republic of Bosnia and Herzegovina—hereinafter "OG RBiH"—no. 10/92 of 23 July 1992). This Decision entered into force on 23 July 1992. Paragraph I of this Decision establishes "the State Commission on exchange of prisoners-of-war, persons deprived of liberty and the mortal remains of the killed, and for registering killed, wounded and missing persons on the territory of the Republic of Bosnia and Herzegovina". On 31 October 1992, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Amendments to the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War, which concerned, *inter alia*, the establishment of regional commissions (OG RBiH no. 20/92 of 9 November 1992). This Decision on Amendments entered into force on 9 November 1992.

126. On 15 March 1996, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Establishment of the State Commission on Tracing Missing Persons (OG RBiH no. 9/96 of 24 March 1996), which entered into force on 24 March 1996. Paragraph I of this Decision establishes the State Commission on tracing citizens of the Republic of Bosnia and Herzegovina who disappeared during the aggression on the Republic of Bosnia and Herzegovina (the "State Commission"). Paragraph II provides that the State Commission shall carry out the following duties: maintain records of citizens of the Republic of Bosnia and Herzegovina who went missing due to the hostilities in the former Yugoslavia; undertake direct activities to trace such persons and to establish the truth on their fate; undertake activities to register, trace, identify, and take-over the mortal remains of killed persons; provide information to authorised institutions; issue certificates to the families of the missing, detained, and killed; and co-operate with specialised national and international agencies and institutions that deal with the issue of missing, detained, and killed persons. Paragraph X states that the State Commission on Tracing Missing Persons shall assume the archives and other documentation of the State Commission and regional commissions described in the preceding paragraph. Paragraph XI renders the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War (OG RBiH nos. 10/92 and 20/92) ineffective upon the entry into force of this Decision. On 10 May 1996, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Amendments to the Decision on Establishment of the State Commission on Tracing Missing Persons (OG RBiH no. 17/96 of 31 May 1996). The amendments, which mostly concern the establishment of the Expert Team for Locating Mass Graves and Identification of Victims, entered into force on 31 May 1996.

2. Federal Commission for Missing Persons

127. On 3 July 1997, the Government of the Federation of Bosnia and Herzegovina enacted the Decree on Establishment of the Federal Commission for Missing Persons (Official Gazette of the Federation of Bosnia and Herzegovina—hereinafter "OG FBiH"—no. 15/97 of 14 July 1997). The Decree entered into force on 15 July 1997. Article I establishes the Federal Commission for persons who disappeared during the war in Bosnia and Herzegovina (the "Federal Commission") and also regulates the duties and responsibilities of the Federal Commission. Article II prescribes that the Federal Commission shall perform the following duties: registering citizens of Bosnia and Herzegovina who disappeared or were detained during the war activities on the territory of Bosnia and Herzegovina and neighbouring countries; undertaking direct activities to register, locate, identify and take over the mortal remains of the missing, *i.e.* killed persons; collecting information about mass and individual graves; locating and marking graves; participating in digging graves; informing the public about the results of research; issuing adequate certificates to the families of the missing persons; *etc.*,. Article IV stipulates that the Federal Commission shall collaborate with the respective commission for missing, detained and killed persons in the Republika Srpska to undertake certain measures to identify missing persons and to obtain adequate permissions from the respective commission of the Republika Srpska to dig and exhume mass and individual graves on the territory of Republika Srpska by the nearest competent court in the Federation of Bosnia and Herzegovina. Article X provides that on the date of entering into force of this Decree on the territory of Bosnia and Herzegovina, all the commissions, which have been performing the duties falling within the scope of responsibility of the Federal Commission, shall be dissolved. Significantly, the Decree contains no provision explicitly

assuming the archives or documentation or continuing the work commenced by the State Commission.

128. The Chamber notes that both the State Commission and the Federal Commission presently exist *de jure* because a decree enacted on the Federation level cannot over-ride a decision enacted by the Republic of Bosnia and Herzegovina, which was then taken over as law in Bosnia and Herzegovina pursuant to Article 2 of Annex II to the Constitution of Bosnia and Herzegovina (see paragraph 110 above). Mr. Amor Mašović is the President of the State Commission; he is also a co-President of the Federal Commission, along with his Croat colleague, Mr. Marko Jurišić. However, the State Commission does not receive any money from Bosnia and Herzegovina, and as a practical matter, most of the work presently conducted with respect to the registration, search, exhumation, and identification of missing persons of Bosniak or Croat origin is in fact conducted by the Federal Commission. None the less, the State Commission does continue to serve citizens of Bosniak origin in some capacities; for example, the State Commission, not the Federal Commission, registered the missing loved ones of the applicants and provided them with evidence of such registration.

3. Commission for Tracing Missing and Detained Persons of the Republika Srpska

129. According to the respondent Party, the Commission for Tracing Missing and Detained Persons of the Republika Srpska (the "RS Commission") operates on the basis of the Banja Luka Agreement of 25 June 1996 and its mandate follows from that Agreement.

130. On 20 November 1996, the Prime Minister of the Republika Srpska issued a procedural decision (no. 02-1315/96) by which he dismissed all the former members and president and appointed new members and president of the State Commission for Exchange of Prisoners-of-War and Missing Persons of the Republika Srpska (Official Gazette of the Republika Srpska— hereinafter "OG RS"— no. 26/96 of 29 November 1996). Mr. Jovo Rosić was thereby appointed as the President of the RS Commission. On 18 March 1998, the Prime Minister of the Republika Srpska issued a new decision by which he dismissed some members of the State Commission for Exchange of Prisoners-of-War and Missing Persons of the Republika Srpska (OG RS no. 12/98 of 23 April 1998). Mr. Jovo Rosić remains the president of the RS Commission.

131. On 30 January 1998, the Government of the Republika Srpska enacted the Regulation Book on compensation for special activities of the State Commission for the Exchange of Prisoners-of-War and Missing Persons of the Republika Srpska, *i.e.*, the RS Commission (OG RS no. 2/98 of 30 January 1998). The Regulation Book entered into force upon the approval of the RS Government to the regulation book, which occurred on 13 March 1998. Article 1 provides that the Regulation Book regulates the manner and amount of compensation for all special activities falling within the jurisdiction of the RS Commission. Article 4 defines such special activities as, *inter alia*, research and temporary burial of recovered remains on the territory of the former Yugoslavia; exhumation of remains from individual and mass graves on the territory of the former Yugoslavia; activities in the domain of forensic medicine and criminology; hand over and take over of the remains of deceased persons; identification of deceased persons and unidentified bodies; working with families during the identification process; other activities related to exhumation, identification, burial, *etc.*,.

4. Resolution on the persons unaccounted for in Bosnia and Herzegovina

132. On 24 October 2001, the House of Representatives of the Parliament of Bosnia and Herzegovina issued a Resolution on the persons unaccounted for in Bosnia and Herzegovina. In that Resolution, the House of Representatives "expresse[d] its great dissatisfaction with the fact that after almost six years after the end of the war in Bosnia and Herzegovina, the fate of 28,000 missing persons still has not been clarified. Therefore, the House of Representatives is of the opinion that the competent state and entity bodies are insufficiently engaged in intensification of activities aimed at solving this painful issue" (Resolution at paragraph 1). The House of Representatives requested the Presidency and Council of Ministers of Bosnia and Herzegovina to "engage themselves actively in elucidating the whereabouts of the missing persons, as well as to contribute to accelerated solution of the missing [persons] issue on the basis of intensive coordination with Entity governments, International Committee of the Red Cross, International Commission on Missing Persons, and other involved actors" (Resolution at paragraph 2). The House of Representatives further requested that

competent Entity bodies "provide full support to the delegations of Entity governments in the Working Group for Tracing the Missing Persons in its endeavours to clarify the destiny of the missing [persons], and to guarantee full access to all the sources of information and witnesses" (Resolution at paragraph 3). Lastly, the House of Representatives requested that the competent State and Entity bodies "ensure that the Working Group has all the necessary financial and other means for a more efficient implementation of this humanitarian activity in order to put an end to the suffering of the anguished families" (Resolution at paragraph 4).

E. Decisions of the High Representative

1. Decision on the location of a cemetery and a monument for the victims of Srebrenica of 25 October 2000

133. On 25 October 2000 the High Representative issued a Decision on the location of a cemetery and a monument for the victims of Srebrenica (OG RS no. 39/00 of 16 November 2000). This Decision provides in pertinent part as follows:

> "*Considering* that in July 1995 at Srebrenica in Bosnia and Herzegovina, several thousand Bosniac citizens were slaughtered without respect for their rights as human beings, and thereafter, and ever since, in total disregard for human dignity, the great majority of such citizens have been deprived of proper burial; …
>
> "*Out of respect further* for the solemn duty which falls upon the living to ensure the dignity and proper burial of the dead, and respecting the rights of the families of the deceased to bury their dead in accordance with their religious beliefs, a right which flows from Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
>
> "*Acknowledging* with deep regret that the bodies of approximately four thousand of those who met their deaths as aforesaid and who were left without proper burial have now been exhumed yet still await burial in a proper and final place of rest, and that the bodies of an unknown number of further victims of the slaughter at Srebrenica remain to be recovered and exhumed from places still unknown;
>
> "*Concluding* that further delay in determining the final resting place and a site for a memorial for those who perished in the aforesaid slaughter would be an affront to humanity;
>
> "*Conscious* of the importance of establishing such a cemetery and memorial as a means of bringing reconciliation to the peoples of Bosnia and Herzegovina, which reconciliation will in turn promote the return of displaced persons and refugees and permanent peace;
>
> "*Conscious further* that such reconciliation and permanent peace require and compel the making now of a Decision on the place of burial and memorial as aforesaid.
>
> "Having considered, noted and borne in mind all the matters aforesaid, I hereby issue the following:
>
> DECISION
>
> "1. The piece of land situated at Potočari in the municipality of Srebrenica which lies beside the main Srebrenica-Bratunac road (namely the cornfield opposite to the battery factory) is hereby designated for all time coming as a cemetery and solemn place for the erection of a memorial to those who met their deaths in the July 1995 slaughter at Srebrenica.
>
> "2. The said cemetery shall be and become the burial place for those who met their deaths as aforesaid and whose remains cannot be identified, and for those whose remains have been identified and whose relatives desire them to be buried therein.

"3. Until such time as the High Representative shall establish under the applicable local law such foundation or association as may be appropriate in order to administer in perpetuity such cemetery and memorial, the said piece of land shall be retained in solemn trust for the sole and exclusive purpose of such cemetery and memorial, and shall not be used for any other purpose whatsoever without the express permission of the High Representative.

"4. All arrangements for the erection of a memorial and for the burial of the deceased including arrangements as to the timing and precise location of each such burial within the said cemetery shall be entrusted to an advisory body to be appointed hereafter by the High Representative. ...

"9. This shall be the first of a series of Decisions by the High Representative regulating the arrangements necessary to establish the cemetery and memorial to those who were slaughtered at Srebrenica in July 1995. It shall come into effect forthwith and shall be published without delay in the Official Gazette of the Republika Srpska."

2. Decision establishing and registering the Foundation of the Srebrenica-Potočari Memorial and Cemetery of 10 May 2001

134. On 10 May 2001, the High Representative issued a Decision establishing and registering the Foundation of the Srebrenica-Potočari Memorial and Cemetery (Official Gazette of Bosnia and Herzegovina—hereinafter "OG BiH"—no. 12/01 of 26 May 2001; OG FBiH no. 23/01 of 1 June 2001; OG RS no. 24/01 of 5 June 2001). This Decision establishes the Foundation of the Srebrenica-Potočari Memorial and Cemetery, a legal person with its seat in Sarajevo, which "shall have as its objective the construction and maintenance of the Srebrenica-Potočari Memorial and Cemetery" (Paragraph 1). The Statute of the Foundation, which is incorporated by reference and annexed to the Decision (Paragraph 3), elaborates in its Article 4 on the objectives of the Foundation, as follows: to "receive and disburse funds for the Memorial and Cemetery"; to "construct and maintain the Memorial and Cemetery"; and to "conduct other related activities". Article 19 of the Statute further provides as follows:

> "The Foundation may engage in activities other than those specified in this Statute without amending its registration, provided that these activities are related to, and in support of, activities for which the Foundation has been registered and, in addition, are performed along with the latter activities, are lesser in scope, periodically performed or contribute to a more efficient use of resources available to the registered activities."

V. COMPLAINTS

135. The applicants are all immediate family members of Bosniak men presumed to be victims of the Srebrenica events occurring during the period of 10-19 July 1995. They allege, either directly or indirectly, that, as close family members, they are themselves victims of alleged or apparent human rights violations resulting from the lack of specific information on the fate and whereabouts of their loved ones last seen in Srebrenica in July 1995. They seek to know the truth. They request the authorities to bring the perpetrators to justice. Most also seek compensation for their suffering in an unspecified amount.

VI. SUBMISSIONS OF THE PARTIES

A. Observations of the Republika Srpska

136. On 26 August 2002, the Republika Srpska submitted its observations on the admissibility of the applications. Although the Chamber explicitly transmitted the applications with respect to admissibility and merits (see paragraph 5 above), the Republika Srpska offered no observations on the merits of the applications.

137. The Republika Srpska expressly "contests" all the facts presented in the applications. It contends that "the factual situation is incomplete, unclear, and self-contradictory" and that "crucial facts are missing in order to establish the status of the applicants' relatives". However, the Republika Srpska describes as "indisputable" "the fact that all the applicants addressed the State Commission on Missing Persons in order to find out about the fates of their loved ones".

138. With respect to admissibility, the Republika Srpska submits that the applications should be declared inadmissible in their entirety. Firstly, the Chamber should not even register the applications because, in accordance with Rule 46 of the Chamber's Rules of Procedure, the applications do not satisfy formal content requirements. According to the Republika Srpska, the applications contain no real "statement of the facts", but rather, only a "statement on the violations".

139. Secondly, the Republika Srpska argues that the applications are inadmissible because the applicants have failed to exhaust effective domestic remedies, namely, the remedy provided for in Annex 7 to the General Framework Agreement. Article V of Annex 7 states that the ICRC shall release information on the fate and whereabouts of "unaccounted for" persons and the Parties shall fully co-operate with the ICRC in such efforts. To comply with these obligations, the State of Bosnia and Herzegovina, its Entities, and the ICRC have established "a process for searching for persons who were reported missing in relation to the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly". However, the Republika Srpska highlights that "a Party must receive a request for information as a precondition for the Party to incur an obligation in that context". The Republika Srpska continues:

> "The respondent Party has never received the mentioned request by the applicants, so *ipso facto* it could not learn of them to comply with its obligation. On the contrary, the applicants requested the information from international organisations and the State Commission on Missing Persons of Bosnia and Herzegovina. The obligation to release information was thereby transferred to the State Commission, which never contacted the respective commission of the respondent Party."

For these reasons, the Republika Srpska also objects to the admissibility of the applications as incompatible *ratione personae* with the Agreement.

140. Thirdly, the Republika Srpska also argues that there is a critical distinction between the terms "disappeared persons" and "missing persons". In order to be "disappeared persons" protected by the United Nations Declaration on the Protection of Persons from Enforced Disappearance, the Republika Srpska contends that the persons must be "arrested, detained or abducted against their will". However, in these cases, the presumed victims of the Srebrenica events "decided to go into the woods" and then "went missing without a trace". Therefore, they are only "unaccounted for persons" or "missing persons"; they are not "disappeared persons" within the meaning of the mentioned UN Declaration. Accordingly, the Republika Srpska submits that the applications are incompatible *ratione materiae* with the Agreement.

141. Fourthly, the Republika Srpska submits that the applications are inadmissible *ratione temporis*.

142. Lastly, the Republika Srpska objects to the applicants' claims for compensation because they have failed to exhaust effective domestic remedies. They should have initiated civil proceedings for compensation pursuant to the Law on Contractual Obligations. The Republika Srpska also specifically objects to the Chamber's reasoning on this issue contained in the *Unković* decision (see paragraph 155 below).

B. Selected reply observations of the applicants

143. On 10 September 2002, the Chamber received substantially similar reply observations from the applicants Hamša Ćerimović (case no. CH/02/9595) and Aiša Ademović (case no. CH/02/9596). They explain that "during the fall of Srebrenica on 12 July 1995, the occupation conducted by the forces of the RS Army caused a retreat of military capable persons" from Srebrenica to free territory in Tuzla. Since then, the applicants claim that every trace of their respective husbands has been lost and they do not know anything about them.

144. On 10 September 2002 and 19 September 2002, the Chamber received substantially similar reply observations from the applicants Šefika Palić (cases nos. CH/01/8397 and CH/01/8398) and Nura Omić (case no. CH/01/8487). The applicants explain that they lived with their families in Kutlijska Rijeka and Budak-Potočari, respectively, in the outskirts of Srebrenica until 12 July 1995. On that day, the applicants, along with their children and extended family, travelled with "the women, children, elderly, and sick" to Potočari. After hearing "horrible news" about the fate of men from Srebrenica, the applicant Palić's husband, Suno, and under-aged son, Nurija, and the applicant Omić's husband, Ševko, joined other men from Srebrenica "to try to reach Tuzla through the woods". "The whole world is aware that the greatest number of men from Srebrenica headed into the woods to find salvation because they had no other choice". Although these men were unarmed (as Srebrenica was "a demilitarised zone"), the Serbs "set their ambushes on all sides, where they seized the column of men, taking them away, torturing them, and deliberately killing them". They allege that "the whole world is aware of these facts; they have been documented in various ways". Yet, they note, with irony, that the respondent Party, "which is responsible for the tragedy of so many individuals and their families, would like to say that there is nothing to judge because the crime 'happened in the woods'". "What difference does it make if a man is arrested, tortured and killed in the woods or in the centre of town?" Although this may make the fact more difficult to prove, according to the applicants, "enough is known already for a criminal trial". The applicants accuse the respondent Party of dealing with their applications "superficially" in an "attempt to neglect or minimise the crime they committed". They emphasise that eyewitnesses support their applications. According to the applicant Palić, an eyewitness, who knew her under-aged son well, saw him in the line of arrested men in Konjević Polje. Although the eyewitness did not also see her husband, the applicant Palić contends, "my son and my husband would not separate unless they were forced to separate, and in that sense, the respondent Party knows what happened and its information about that should be shared with the family". The applicant Omić also states that an eyewitness saw her husband as one of the prisoners captured from the column of men from Srebrenica. Both applicants emphasise that "even in the greatest human chaos, the ones who are arresting, torturing, or killing should be aware of that, and, if any justice is present, they should be held responsible for that." In response to the respondent Party's argument that the applicants failed to exhaust effective remedies, the applicants each state: "I am aware that nothing I have tried so far, either alone or organised with other women from Srebrenica, has given any result.... We have addressed everyone, including the authorities of the Republika Srpska, in various ways, but there have been no results.... It is time for justice to begin".

145. On 23 September 2002, the Chamber received reply observations from Raza Jusufović (case no. CH/02/9385). The applicant states that "the exhumations of mass graves, primary and secondary, serve as the evidence" that the relatives of the applicants were prisoners, captured and held by the RS Army. Moreover, the applicant alleges that she addressed the Working Group for Tracing Missing Persons, headed by the ICRC. That Working Group "submitted to the RS authorities the individual requests of each applicant; thus, the authorities were obliged to provide the answer. However, the RS authorities have not done so, from 1996 to date, *i.e.*, six years after receipt of the requests."

VII. OPINION OF THE CHAMBER

A. Scope of decision

146. As described more fully below, due to its jurisdiction under the Agreement, the Chamber may only consider violations or continuing violations of human rights occurring after 14 December 1995, the date when the Agreement entered into force. Thus, the Chamber is not competent to consider any possible violations of the human rights of the Bosniak men missing as a result of the Srebrenica events, as those violations necessarily would have occurred during the period of 10-19 July 1995. Consequently, in the context of the present applications, the Chamber is considering only whether or not the authorities of the Republika Srpska have violated the human rights of the family members of the missing persons of the Srebrenica events by failing to inform them, since 14 December 1995, about the fate and whereabouts of their missing loved ones.

B. Admissibility

147. Before considering the merits of these applications, the Chamber must decide whether to accept them, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement.

148. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted..." and "(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Exhaustion of effective remedies

149. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the European Convention (now Article 35(1) of the European Convention). The European Court of Human Rights (the "European Court") has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The European Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

a. With respect to the tracing mechanisms of Annex 7

150. The respondent Party argues that the applicants have failed to exhaust effective domestic remedies in two respects. Firstly, they have failed to utilise the remedies available in Annex 7 (the Agreement on Refugees and Displaced Persons) to the General Framework Agreement (see paragraph 139 above). Article V of Annex 7 provides as follows:

> "The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for."

151. The respondent Party acknowledges that in order to comply with these obligations, the State of Bosnia and Herzegovina, its Entities, and the ICRC have established "a process for searching for persons who were reported missing in relation to the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly". However, according to the respondent Party, as a precondition, each Party must individually receive a request for information in order for that Party to incur any obligation to provide information and cooperate with the ICRC with respect to an unaccounted for person. Although the applicants in the present cases undeniably requested information from the State Commission, and in some cases also from the ICRC, they did not request

information directly from the Commission for Tracing Missing and Detained Persons of the Republika Srpska; therefore, the respondent Party contends that they have not exhausted their effective remedies.

152. The Chamber recalls that under the *Process for tracing persons unaccounted for* (see paragraphs 114-117 above), as well as in Article V of Annex 7 quoted above, the State of Bosnia and Herzegovina and the Entities, including the Republika Srpska, agreed to cooperate in the effort to trace unaccounted for persons. The *Process for tracing persons unaccounted for* further clarifies that the Parties shall share information, and a copy of all tracing requests are provided to the Working Group, which has three representatives of the Republika Srpska (see paragraphs 115, 117 above). As can be seen above, all the applicants addressed the State Commission during the period between 31 July 1995 and 27 July 1999 and registered their loved ones as missing from Srebrenica during the period of 10-19 July 1995. Some have additionally registered their loved ones as unaccounted for persons with the ICRC (see paragraphs 29-30 above). The respondent Party admits as "indisputable" "the fact that all the applicants addressed the State Commission on Missing Persons in order to find out about the fates of their loved ones". Taking into account the respondent Party's obligation under Article V of Annex 7 to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for" and the fact that all tracing requests were provided to representatives of the Republika Srpska through the Working Group, the Chamber considers that the relevant authorities of the respondent Party were made aware of the applicants' requests for information about the fate and whereabouts of their loved ones missing from Srebrenica through the *Process for tracing persons unaccounted for*.

153. Considering that all the applicants have addressed the State Commission and registered their loved ones as missing from Srebrenica, the Chamber concludes that the applicants have exhausted the remedy provided for in Annex 7 for the purposes of Article VIII(2)(a) of the Agreement. Therefore, the Chamber rejects this ground for declaring the applications inadmissible.

b. With respect to the claims for compensation

154. Secondly, the respondent Party objects to the applicants' claims for compensation because they have failed to initiate civil proceedings for compensation pursuant to the Law on Contractual Obligations (see paragraph 142 above).

155. However, as the Chamber explained in *Unković v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2150, decision on review of 6 May 2002, paragraph 98, Decisions January—June 2002), since the applicants are claiming compensation for non-pecuniary damages before the Chamber as a remedy for the alleged violations of their human rights protected under the Agreement, rather than compensation for the loss of their missing loved ones, the respondent Party's argument that the applicants have failed to exhaust domestic remedies is ill-founded and based upon a misunderstanding of Article VIII(2)(a) of the Agreement. This provision requires an applicant to avail himself or herself of domestic remedies regarding the alleged violations, and not regarding compensation claimed before the Chamber as a remedy for those violations. The Chamber may therefore award compensation, if — having found a breach of the Agreement — it deems that compensation would provide a proper remedy for an established breach. In this respect it is irrelevant whether or not the applicant has submitted a similar claim for compensation to a competent domestic authority.

156. Therefore, the Chamber rejects this ground for declaring the applicants' claims for compensation inadmissible.

2. Compatibility *ratione personae*

157. Similar to its first argument with respect to exhaustion of domestic remedies, the respondent Party contends that the applications are incompatible *ratione personae* with the Agreement because the applicants failed to request information about the fate and whereabouts of their loved ones directly from the Commission for Tracing Missing and Detained Persons of the Republika Srpska. Rather, the applicants addressed their requests to the State Commission. As a result, the

respondent Party argues that any obligation to provide information to the applicants "was thereby transferred to the State Commission" (see paragraph 139 above).

158. However, for the reasons described above, taking into account the respondent Party's obligation under Article V of Annex 7 to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for" and the fact that all tracing requests were provided to representatives of the respondent Party through the Working Group, the Chamber has concluded that the relevant authorities of the respondent Party were made aware of the applicants' requests for information about the fate and whereabouts of their loved ones missing from Srebrenica through the *Process for tracing persons unaccounted for* (see paragraph 117 above). This conclusion applies equally to the admissibility criterion of compatibility *ratione personae* in the context of the present applications. Moreover, the Chamber notes that the respondent Party has not in any way explained its failure to respond to the additional tracing requests that were opened directly with the ICRC by at least ten of the applicants.

159. The Chamber further observes that the *Process for tracing persons unaccounted for*, which was established as a mechanism to implement the obligations provided for in Annex 7 to the General Framework Agreement, requires each party to "identify spontaneously any dead person found in an area under its control, and notify those belonging to another party to the ICRC or the Working Group without delay" (see paragraph 116 above). In the Srebrenica cases, the missing persons all disappeared from Srebrenica or the surrounding area, in the territory of the Republika Srpska. The missing persons disappeared during the time period of 10-19 July 1995, when the RS Army was conducting a military offensive against Srebrenica (see paragraphs 22-26 above). Forensic evidence has established that the vast majority of the missing persons were killed in the massacre and later buried somewhere on the territory of the Republika Srpska (see paragraphs 26-27 above). Accordingly, the *Process for tracing persons unaccounted for* instructs that the Republika Srpska has an obligation "spontaneously" to clarify the fate and whereabouts of persons missing from Srebrenica.

160. The Chamber finds that the applications raise claims under the Agreement in relation to whether the authorities of the Republika Srpska have treated the applicants in a manner compatible with their obligations under the Agreement in response to the applicants' requests for information about the fate and whereabouts of their missing loved ones from Srebrenica. Such claims fall within the responsibility of the respondent Party. Therefore, the applications, as directed against the Republika Srpska, are compatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

3. Compatibility *ratione materiae*

161. The respondent Party argues that the applications are incompatible *ratione materiae* with the Agreement because the presumed victims of the Srebrenica events are "missing persons" rather than "disappeared persons" (see paragraph 140 above). According to the respondent Party, the UN Declaration on the Protection of All Persons from Enforced Disappearance of 18 December 1992 protects "disappeared persons" from "enforced disappearances" in the sense that the persons must be "arrested, detained or abducted against their will" (see paragraph 101 above). However, in these cases, the presumed victims of the Srebrenica events "decided to go into the woods" and then "went missing without a trace"; therefore, they cannot be "disappeared persons" within the meaning of the mentioned UN Declaration.

162. The Chamber recalls that in *Unković v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2150, decision on review of 6 May 2002, Decisions January—June 2002), it recognised that family members of a missing person may have claims under Articles 3 and 8 of the European Convention due to the lack of official information on the fate and whereabouts of their loved one (*id.* at paragraphs 114-115 and 126). In recognising such claims, the Chamber relied, *inter alia*, upon its own case law and the case law of the European Court (*id.* at paragraphs 106-113 and 122-125). On the one hand, the focus of the Article 3 claim is on the "inhuman treatment" suffered by the family member as a result of the failure of the authorities to clarify the fate and whereabouts of the missing person (*see id.* at paragraphs 106-115; Eur. Court HR, *Cyprus v. Turkey*, judgment of 10 May 2001, Reports of Judgments and Decisions 2001-IV, paragraphs 121, 156-157). On the other hand, the

focus of the Article 8 claim is on whether such information exists within the possession or control of the respondent Party and the respondent Party arbitrarily and without justification refuses to disclose it to the family member, upon his or her properly submitted request (*Unković* at paragraphs 123-126).

163. The Chamber observes that the family members' claims under Articles 3 and 8 of the European Convention do not appear to require that the missing persons were the victims of "enforced disappearances" or otherwise "arrested, detained or abducted against their will", although in most of the cases applying these Articles that did occur. That is, the family members' claims under Articles 3 and 8 of the European Convention are not based upon the UN Declaration on the Protection of All Persons from Enforced Disappearance. In any event, according to the ICTY in the *Krstić* judgment, the Bosniak men who were executed in Srebrenica in July 1995 were first captured as prisoners and taken to detention sites in Bratunac. Approximately 1,000 of these men were separated from the women, children, and elderly who were transported out of Potočari. The remaining 6,000 to 7,000 men were captured from the column who were trying to escape through the woods to Tuzla (see paragraphs 24-26 above). Moreover, the applicants expressly allege that their husbands and sons were forcibly separated from them and held as captured prisoners prior to their executions (see paragraph 144 above).

164. Therefore, the Chamber finds that regardless of whether the alleged victims are classified as "missing persons" or "disappeared persons", the Srebrenica cases, insofar as they allege claims by family members seeking to know the fate and whereabouts of their loved ones who have been missing from Srebrenica since 10-19 July 1995, are compatible *ratione materiae* with the Agreement. The Chamber therefore rejects this ground for declaring the applications inadmissible.

4. Compatibility *ratione temporis*

165. The respondent Party also objects to the applications as incompatible *ratione temporis* with the Agreement.

166. In accordance with the Chamber's previous practice, claims on behalf of missing persons directly related to acts exclusively occurring prior to 14 December 1995 (and in the absence of a continuing violation) are inadmissible as outside the Chamber's competence *ratione temporis*. One leading case on this principle is *Matanović v. the Republika Srpska*, which involved the alleged unlawful detention of a Roman Catholic priest and his parents, commencing prior to 14 December 1995 and continuing thereafter. In describing its competence *ratione temporis*, the Chamber stated as follows:

> "In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively. Accordingly, the Chamber is not competent to consider events that took place prior to 14 December 1995, including the arrest and detention of the alleged victims up to 14 December 1995. However, in so far as it is claimed that the alleged victims have continued to be arbitrarily detained and thus deprived of their liberty after 14 December 1995, the subject matter is compatible with the Agreement and comes within the competence of the Chamber *ratione temporis*" (case no. CH/96/1, *Matanović*, decision on admissibility of 13 September 1996, at section IV, Decisions on Admissibility and Merits March 1996-December 1997).

167. Thus, the Chamber is not competent *ratione temporis* to consider whether events occurring before the entry into force of the Agreement on 14 December 1995 gave rise to violations of human rights. The Chamber may, however, consider relevant evidence of such events as contextual or background information to events occurring after 14 December 1995 (case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraphs 104-105, Decisions January–July 1999).

168. However, as the Chamber explained in *Unković v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2150, decision on review of 6 May 2002, paragraphs 84-90, Decisions January—June 2002), claims on behalf of family members seeking information about the fate and whereabouts of loved ones who have been missing since the armed conflict raise allegations of a continuing violation of the human rights of the family members by the respondent Party. Both Articles 3 and 8 of

the European Convention impose a positive obligation on the respondent Party "to investigate thoroughly into allegations of arbitrary deprivations of liberty even in cases where it cannot be established, although it is alleged, that the deprivation of liberty is attributable to the authorities" *(id.* at paragraph 88 (quoting *Demirović, Berbić, and Berbić v. Republika Srpska* (application no. 7/96, Report of the Ombudsperson of 30 September 1998)).

169. The Chamber recalls that all the applicants have obtained certificates from the State Commission registering their loved ones as missing from Srebrenica during the period of 10-19 July 1995. These certificates were all issued after 14 December 1995, when the Agreement entered into force. Based on the information available to the Chamber, it is undeniable that thousands of requests have been filed with the State Commission and the ICRC by family members (including the applicants) for information about the fate and whereabouts of presumed victims of the Srebrenica events. Yet, some seven years after the events in question, none of the applicants has been officially informed about the fate and whereabouts of their missing loved ones. Therefore, the allegations contained in the applications concern a continuing violation of the human rights of the applicants by the respondent Party, which commenced on 14 December 1995 and continues to the present date. As such, the applications fall within the Chamber's competence *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement, and they are admissible.

5. Conclusion as to admissibility

170. As explained above, the Chamber has rejected the respondent Party's objections to the applications based upon failure to exhaust domestic remedies, incompatibility *ratione personae*, incompatibility *ratione materiae*, and incompatibility *ratione temporis*. As no other grounds for declaring the applications inadmissible have been raised or appear from the applications, the Chamber declares the applications admissible in their entirety with respect to claims arising or continuing after 14 December 1995 under Articles 3, 8, and 13 of the European Convention, and discrimination in connection with these rights under II(2)(b) of the Agreement.

C. Merits

171. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the European Convention and the other international agreements listed in the Appendix to the Agreement.

172. As set forth above, the applicants all contend that the respondent Party has violated their human rights by failing to provide them with official information about the fate and whereabouts of their loved ones, who have been missing from Srebrenica since 10-19 July 1995. According to the applicants, this failure by the respondent Party is in breach of its obligations under the Agreement. The Chamber will consider each of the claims on the merits in the context of these allegations.

1. Article 8 of the European Convention (Right to Respect for Private and Family Life — *i.e.*, Right to Access to Information)

173. Article 8 of the European Convention provides, in relevant part, as follows:

> "Every one has the right to respect for his private and family life….
>
> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

174. In its previous case law, the Chamber has recognised the right of family members of missing persons to access to information about their missing loved ones. In *Unković v. the Federation of Bosnia and Herzegovina*, the Chamber considered "that information concerning the fate and whereabouts of a family member falls within the ambit of 'the right to respect for his private and family life', protected by Article 8 of the Convention. When such information exists within the possession or control of the respondent Party and the respondent Party arbitrarily and without justification refuses to disclose it to the family member, upon his or her request, properly submitted to a competent organ of the respondent Party or the [ICRC], then the respondent Party has failed to fulfil its positive obligation to secure the family member's right protected by Article 8" (case no. CH/99/2150, *Unković v. the Federation of Bosnia and Herzegovina,* decision on review of 6 May 2002, paragraph 126, Decisions January—June 2002; *accord* case no. CH/99/3196, *Palić v. the Republika Srpska*, decision on admissibility and merits of 9 December 2000, paragraphs 82-84, Decisions January—June 2001; *see also* Eur. Court HR, *Gaskin v. United Kingdom*, judgment of 7 July 1989, Series A no. 160; Eur. Court HR, *M.G. v. United Kingdom*, judgment of 24 September 2002).

175. Although the Chamber is not directly applying it in the present cases, the Chamber recalls that Protocol No. 1 to the Geneva Conventions is listed in Annex I to the Constitution of Bosnia and Herzegovina as one of the "additional human rights agreements to be applied in Bosnia and Herzegovina". Article 32 of Protocol No. 1 specifically provides that the activities of the Parties with respect to missing and dead persons "shall be prompted mainly by the right of families to know the fate of their relatives". In this context, paragraph 1 of Article 33 further provides that Parties "shall search for the persons who have been reported missing by an adverse Party" and "shall transmit all relevant information concerning such persons in order to facilitate such searches" (see paragraph 99 above). Thus, Protocol No. 1 to the Geneva Conventions reinforces, in the context of the aftermath of an armed conflict, the positive obligation arising under Article 8 of the European Convention for the Republika Srpska to search for and to share all relevant information with the families about their relatives who have been reported missing from Srebrenica since July 1995.

176. In each of the present applications, the applicant's loved one(s) disappeared from Srebrenica during the military offensive and mass deportation of Bosniaks in July 1995 by the RS Army. Each applicant has obtained a certificate from the State Commission registering his or her loved one, who was a member of his or her immediate family, as a missing person from Srebrenica during the period of 10-19 July 1995. Some applicants have also obtained a similar certificate from the ICRC. No applicant has received any information on the fate and whereabouts of his or her missing loved one.

177. As the Trial Chamber of the ICTY explained in the *Krstić* judgment, the RS Army separated the men of military capable age from the women, children, and elderly who were transported out of Potočari on 12 and 13 July 1995. These men were taken to detention sites in Bratunac. The RS Army also captured Bosniak men who were trying to escape through the woods to Tuzla and brought these men to detention sites in Bratunac as well (see paragraphs 24-26 above). Members of the RS Army removed and later burned the personal effects and identity cards of these captured Bosniak men (see paragraph 25 above). Then the men, "almost to a man", were killed in mass executions and their bodies buried in mass gravesites (see paragraph 26 above). Thereafter, members of the RS Army "dug up many of the primary mass gravesites and reburied the bodies in still more remote locations", demonstrating "a concerted campaign to conceal the bodies of the men in these primary gravesites" (see paragraph 27 above).

178. From these underlying facts the Chamber concludes that the authorities of the respondent Party had within their "possession or control" information about the Bosniak men from Srebrenica who were captured and then executed. Despite attempts by the RS Army to cover up or to destroy information about the Srebrenica events, there still must have been some information accessible after 14 December 1995 for the authorities of the Republika Srpska to draw upon to respond to the requests for information from the families of the missing Bosniak men from Srebrenica (*see, e.g.*, ICTY, *Prosecutor v. Dražen Erdemović* case no. IT-96-22-T, sentencing judgment of 29 November 1996; case no. IT-96-22-A, judgment of 7 October 1997; case no. IT-96-22-T*bis*, sentencing judgment II of 5 March 1998 (in which the accused, a member of the RS Army, admitted to having personally participated in the massacres at Srebrenica); ICTY, *Prosecutor v. Radovan Karadžlć and Ratko Mladić*, case nos. IT-95-5-R61 and IT-95-18-R61, review of indictments pursuant to Rule 61 of 11 July 1996

(publicly disclosing material supporting the indictments and issuing international arrest warrants for the two accused)). And in any event, the fact that members of the RS Army may have destroyed this evidence and information does not relieve the respondent Party of its positive obligations under Article 8 of the European Convention. Rather, it appears that the authorities of the Republika Srpska arbitrarily and without justification failed to take any action whatsoever to locate, discover, or disclose information sought by the applicants about their missing loved ones. There is no evidence, for example, that the authorities of the Republika Srpska have interviewed any of the members of the RS Army who were involved in the Srebrenica events, interviewed any other possible witnesses, disclosed any physical evidence still in its possession, or disclosed any information about the locations of the mass gravesites with a view to making the requested information available to the families of the victims of the Srebrenica events in July 1995. Such inaction or passivity is a breach of the Republika Srpska's responsibilities due under Annex 7 to the General Framework Agreement and the *Process for tracing persons unaccounted for*.

179. The Chamber further notes that the respondent Party has not conducted any meaningful investigation into the Srebrenica events. In making this statement, the Chamber is fully cognisant of the existence of the RS Srebrenica Report (summarised at paragraphs 84-97 above). However, although the RS Srebrenica Report says that it "present[s] the whole truth about crimes committed in Srebrenica region regardless [of] nationality of perpetuators [*sic*] of crimes and time when they were committed", in fact, a careful reading of the Report shows that it addresses two primary concerns of the authorities of the Republika Srpska. Firstly, the Report documents in detail the atrocities and crimes committed against civilian Serbs living in the vicinity of Srebrenica during the period of 1992 to 1995 by members of the RBiH Army. Secondly, the Report refutes evidence of wrongdoing against Bosniaks from Srebrenica by members of the RS Army. In this manner, the RS Srebrenica Report presents an exclusively one-sided view of the Srebrenica events, and it in no way clarifies the fate and whereabouts of the thousands of missing Bosniaks from Srebrenica. Rather, in the face of the *Krstić* judgment in which the ICTY found, after an extensive trial conducted in adversarial proceedings, that "thousands of Bosniak men from Srebrenica were killed in careful and methodical mass executions" by Bosnian Serb forces (see paragraph 26 above), the RS Srebrenica Report concludes that "the number of Muslim soldiers who were executed by Bosnian Serb forces for personal revenge or simple ignorance of the international law … would probably stand less than 100" (see paragraph 94 above). Therefore, the RS Srebrenica Report cannot be considered the result of an effective investigation into the Srebrenica events that satisfies the respondent Party's positive obligations owed to the family members of Bosniak men missing from Srebrenica since 10-19 July 1995.

180. In the context of the claims of an interference with the right to respect for private and family life, the Chamber takes particular note of the "catastrophic" impact of the Srebrenica events on the lives of the surviving family members of the missing persons, a group that includes the applicants in the present cases. Because the fate of their loved ones is still not officially known, many are unable to achieve any sense of closure, to recover psychologically, or to move forward with their lives (see paragraph 28 above). In light of the "exceptionally high" level of trauma caused in part by the lack of information concerning the fate of their loved ones, the respondent Party's failure to take any action aimed at making the requested information available to the families of the victims of the Srebrenica events of July 1995 is particularly egregious.

181. Therefore, the Chamber concludes that the respondent Party has breached its positive obligations to secure respect for the applicants' rights protected by Article 8 of the European Convention in that it has failed to make accessible and disclose information requested about the applicants' missing loved ones.

2. Article 3 of the European Convention (Prohibition of Inhuman or Degrading Treatment — *i.e.*, Right to Know the Truth)

182. Article 3 of the European Convention provides that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

183. One of the leading cases applying Article 3 of the European Convention to protect the family members of missing persons from inhuman treatment as a result of the failure of the authorities to provide information on the fate and whereabouts of their missing loved ones is, once again, *Cyprus v. Turkey* (Eur. Court HR, judgment of 10 May 2001, Reports of Judgments and Decisions 2001-IV, paragraphs 154-158). In the context of the Srebrenica cases, this case is particularly instructive. The case of *Cyprus v. Turkey* arose out of Turkish military operations in northern Cyprus in July and August 1974 and Turkey's continued occupation of that area. Nearly 1500 Greek-Cypriots remain missing twenty years after the cessation of hostilities. These missing persons were last seen alive in Turkish custody, but Turkey has never accounted for their whereabouts or fate. Among numerous complaints at issue in the case, the Court considered alleged violations of the rights of Greek-Cypriot missing persons and their relatives. The Court expressly limited "its inquiry to ascertaining the extent, if any, to which the authorities of the respondent State have clarified the fate or whereabouts of the missing persons" (*Cyprus v. Turkey* at paragraph 121).

184. When the European Court examined whether the relatives of the Greek-Cypriot missing persons suffered from a continuing and aggravated violation of Article 3 of the Convention, it observed as follows:

> "[T]he authorities of the respondent State have failed to undertake any investigation into the circumstances surrounding the disappearance of the missing persons. In the absence of any information about their fate, the relatives of persons who went missing during the events of July and August 1974 were condemned to live in a prolonged state of acute anxiety which cannot be said to have been erased with the passage of time. The Court does not consider, in the circumstances of this case, that the fact that certain relatives may not have actually witnessed the detention of family members or complained about such to the authorities of the respondent State deprives them of victim status under Article 3. It recalls that the military operation resulted in a considerable loss of life, large-scale arrests and detentions and enforced separation of families. The overall context must still be vivid in the minds of the relatives of persons whose fate has never been accounted for by the authorities. They endure the agony of not knowing whether family members were killed in the conflict or are still in detention or, if detained, have since died. The fact that a very substantial number of Greek-Cypriots had to seek refuge in the south coupled with the continuing division of Cyprus must be considered to constitute very serious obstacles to their quest for information. The provision of such information is the responsibility of the authorities of the respondent State. This responsibility has not been discharged. For the Court, the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3" (*Cyprus v. Turkey* at paragraph 157).

Thus, the European Court found that for the period under consideration (after 22 May 1994 as a result of application of the six-month rule), the relatives of the missing persons were victims of a continuing violation of Article 3 of the European Convention (*Cyprus v. Turkey* at paragraphs 104, 158).

185. In its previous case law, the Chamber has recognised the right of family members of missing persons to know the truth about the fate and whereabouts of their missing loved ones (case no. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraphs 101-119, Decisions January—June 2002; *see also* case no. CH/99/3196, *Palić*, decision on admissibility and merits of 9 December 2000, paragraphs 75-80, Decisions January—June 2001). In *Unković v. the Federation of Bosnia and Herzegovina*, the Chamber held that "the special factors considered with respect to the applicant family member claiming an Article 3 violation for inhuman treatment due to lack of official information on the whereabouts of a loved one are the following:

- primary consideration is the dimension and character of the emotional distress caused to the family member, distinct from that which would be inevitable for all relatives of victims of serious human rights violations;
- proximity of the family tie, with weight attached to parent-child relationships;
- particular circumstances of the relationship between the missing person and the family member;
- extent to which the family member witnessed the events resulting in the disappearance—however, the absence of this factor may not deprive the family member of victim status;
- overall context of the disappearance, *i.e.*, state of war, breadth of armed conflict, extent of loss of life;
- amount of anguish and stress caused to the family member as a result of the disappearance;
- involvement of the family member in attempts to obtain information about the missing person—however, the absence of complaints may not necessarily deprive the family member of victim status;
- persistence of the family member in making complaints, seeking information about the whereabouts of the missing person, and substantiating his or her complaints" (case no. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraph 114, Decisions January—June 2002).

186. Moreover, "the essential characteristic of the family member's claim under Article 3 is the reaction and attitude of the authorities when the disappearance is brought to their attention. In this respect, the special factors considered as to the respondent Party are the following:

- response, reactions, and attitude of the authorities to the complaints and inquiries for information about the fate of missing person—complacency, intimidation, and harassment by authorities may be considered aggravating circumstances;
- extent to which the authorities conducted a meaningful and full investigation into the disappearance;
- amount of credible information provided to the authorities to assist in their investigation;
- extent to which the authorities provided a credible, substantiated explanation for a missing person last seen in the custody of the authorities;
- duration of lack of information—a prolonged period of uncertainty for the family member may be an aggravating circumstance;
- involvement of the authorities in the disappearance" (case no. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraph 115, Decisions January—June 2002).

187. Applying the above factors to the applicants in the present Srebrenica cases, the Chamber observes that all the applicants are close family members (*i.e.*, mothers, fathers, wives, brothers, sisters, sons, or daughters) of the Bosniak men who have been missing from Srebrenica since 10-19 July 1995. The applicants registered all the missing persons with the State Commission, and some also with the ICRC. Many, if not all, of the applicants are themselves survivors of the Srebrenica events. In the words of the ICTY Trial Chamber:

> "The events of the nine days from July 10-19 1995 in Srebrenica defy description in their horror and their implications for humankind's capacity to revert to acts of brutality under the stresses of conflict. In little over one week, thousands of lives were extinguished, irreparably rent or simply wiped from the pages of history" (ICTY, case no. IT-98-33-T, *Prosecutor v. Radislav Krstić*, judgment of 2 August 2001, paragraph 2).

That the applicants have suffered as a result of the Srebrenica events and the resultant loss of their loved ones under such conditions is indisputable and apparent from the applications. Moreover, the ICTY Trial Chamber confirmed through expert and witness testimony the emotional scarring, extreme trauma, and immense suffering of the Srebrenica survivors (see paragraph 28 above). In particular, the Trial Chamber noted the psychological damage resulting from the fact that "the fate of the survivor's loved ones is not officially known: the majority of men of Srebrenica are still listed as missing" (see paragraph 28 above). Such emotional suffering, in the view of the Chamber, is clearly

of a dimension and character to constitute "inhuman treatment" within the meaning of Article 3 of the European Convention.

188. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the Republika Srpska have done almost nothing to clarify the fate and whereabouts of the presumed victims of the Srebrenica events or to take other action to relieve the suffering of their surviving family members or to contribute to the process of reconciliation in Bosnia and Herzegovina. According to the information submitted to the Chamber or released into the public domain, they have, for example:

- Not investigated the facts concerning the credible claim of mass killings of Bosniaks from Srebrenica in July 1995:
- Not undertaken any action to determine or to disclose the periods and places of detention of Bosniak prisoners captured from Srebrenica in July 1995;
- Not interviewed any of the participating officers, soldiers, or members of the RS Army to ascertain what happened and to publicly disclose this information;
- Not contacted the survivors, families of the missing persons, or other witnesses to take their statements;
- Not disclosed the locations of the mass gravesites (both primary and secondary);
- Not undertaken any investigation to locate unknown gravesites;
- Not undertaken any action to assist the actions of others (*e.g.*, the ICMP, the ICTY, the State Commission, the Federal Commission) in locating gravesites and identifying exhumed mortal remains;
- Not provided any financial support to any of the exhumation projects, identification projects, or memorial projects, such as the Srebrenica-Potočari Memorial and Cemetery;
- Not undertaken any prosecutions of the persons responsible for the mass killings of Bosniaks from Srebrenica in July 1995.

189. While the authorities of the respondent Party have released the RS Srebrenica Report, as explained above, this Report cannot be considered "a meaningful and full investigation into the disappearance[s]" of Bosniak men from Srebrenica during 10-19 July 1995. Nor can the Report be considered credible information offered to assist other interested parties or organisations in conducting such an investigation because it does not pertain to the Bosniak victims (see paragraphs 86-88, 97 above). It appears that the authorities have participated in the Working Group established under the *Process for tracing persons unaccounted for* (see paragraph 115 above). However, this participation has not produced any information for the applicants about Bosniak victims of the Srebrenica events of July 1995. Moreover, the Chamber must note that the authorities of the Republika Srpska were directly involved in the disappearances and in the destruction of evidence of those disappearances (see paragraphs 25-27 above). None the less, the applicants and other survivors of the Srebrenica events of July 1995 have waited for over seven years for clarification of the fate and whereabouts of their missing loved ones by the competent authorities. As no meaningful information has been forthcoming, the reaction of the authorities of the Republika Srpska can only be described as "complacency" or indifference, which aggravates an already tragic situation.

190. Although the Chamber is not directly applying it in the present cases, the Chamber recalls that the Republic of Bosnia and Herzegovina ratified the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 on 29 December 1992. The Genocide Convention is also listed in Annex I to the Constitution of Bosnia and Herzegovina as one of the "additional human rights agreements to be applied in Bosnia and Herzegovina". In Article 1 of the Genocide Convention, "the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish" (see paragraph 107 above for other relevant provisions). Thus, apart from its obligations under the European Convention, the Genocide Convention, which is applicable law in Bosnia and Herzegovina, further supports that the Republika Srpska has a positive obligation to investigate and to prosecute the alleged perpetrators of genocide committed against Bosniaks at Srebrenica. Moreover, the Chamber further recalls that the ICTY and the national courts "have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991" (see paragraph 108 above). As the Report of the Secretary-General to the

United Nations states, "indeed national courts should be encouraged to exercise their jurisdiction in accordance with their relevant national laws and procedures" (see paragraph 109 above). Accordingly, the fact that the ICTY is competent to investigate and to prosecute war crimes committed at Srebrenica in July 1995 does not relieve the Republika Srpska from its positive obligation to investigate and to prosecute the perpetrators of these crimes.

191. Taking all of the applicable factors into account, both with respect to the applicants and the respondent Party, the Chamber concludes that the respondent Party has violated the rights of the applicants to be free from "inhuman and degrading treatment", as guaranteed by Article 3 of the European Convention, in that it has failed to inform the applicants about the truth of the fate and whereabouts of their missing loved ones. The Chamber considers the failure of the respondent Party to in any way clarify the fate and whereabouts of the Bosniak men missing from Srebrenica during the period of 10-19 July 1995 through a meaningful and effective investigation and a full statement of disclosure of all relevant facts, made known to the public, a particularly egregious violation of the rights of the applicants protected under Article 3 of the European Convention.

3. Article 13 of the European Convention (Right to an Effective Remedy)

192. Article 13 of the European Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

193. Taking into consideration its conclusions that the respondent Party has violated the applicants' rights protected by Articles 8 and 3 of the European Convention, the Chamber decides that it is not necessary separately to examine the applications under Article 13 of the European Convention.

4. Discrimination in the enjoyment of Articles 8 and 3 of the European Convention

194. Article II(2)(b) of the Agreement provides, in pertinent part, as follows:

> "[T]he Human Rights Chamber shall consider, … alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ."

The European Convention is one of the international agreements listed in the Appendix to the Agreement.

195. In examining whether there has been discrimination contrary to the Agreement, the Chamber, applying the case law of the European Court and of other international human rights monitoring bodies, has consistently found it necessary to determine whether the applicant was treated differently than others in the same or a relevantly similar situation. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in Article II(2)(b) of the Agreement, such as religion and ethnic or national origin (*see, e.g.*, case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraphs120-121, Decisions January–July 1999; case no. CH/99/2177, *Islamic Community in Bosnia and Herzegovina*, decision on admissibility and merits of 11 January 2000, paragraph 102, Decisions January—June 2000).

196. The Chamber has already found that the Republika Srpska violated the rights of the applicants guaranteed by Articles 8 and 3 of the European Convention. Applying the above principles, in order to establish unlawful discrimination against the applicants in connection with the European Convention, the Chamber should find that: the authorities of the respondent Party failed to provide information to the applicants (including failing to conduct a meaningful and effective investigation), due to the ethnic or religious origin of the applicants, about the fate and whereabouts of their loved ones missing from Srebrenica since July 1995.

197. The Chamber has already determined that the authorities of the Republika Srpska have done almost nothing to clarify the fate and whereabouts of the alleged Bosniak victims of the Srebrenica events or to pursue prosecution of any responsible parties (see paragraph 188 above). They have released the RS Srebrenica Report, but this Report does not constitute a meaningful investigation into the massacre committed against the Bosniaks of Srebrenica in July 1995 (see paragraphs 189 above). To the contrary, the RS Srebrenica Report documents in detail the atrocities and crimes committed against civilian Serbs living in the vicinity of Srebrenica during the period of 1992 to 1995 by members of the RBiH Army and attempts to refute evidence of wrongdoing against Bosniaks from Srebrenica by members of the RS Army (see paragraphs 86-88, 97, 179 above). Such a Report cannot be considered to satisfy the obligations owed to the applicants under the European Convention.

198. The very existence of the RS Srebrenica Report indicates differential treatment toward the applicants because the Report establishes that the authorities of the Republika Srpska have conducted an investigation into crimes committed against civilian Serbs from the Srebrenica area and disclosed the results of that investigation to the public, while they have not conducted an equal investigation into crimes committed against Bosniaks from Srebrenica or disclosed any such information to the public (see paragraphs 178-179, 188-189 above). The Report shows that the authorities of the Republika Srpska have interviewed victims and witnesses of crimes committed against Serbs living in the vicinity of Srebrenica from 1992 to 1995. The Report, in essence, assembles evidence for an "ethnic cleansing" case in which the perpetrators are Muslims and the victims are Serbs. The Report states that it is intended for submission to the ICTY; thus, it seeks to trigger criminal prosecution and punishment of Muslims who have allegedly committed crimes against Serbs. In this respect, each identified "crime" includes the following detailed information: "designation of the crime", "brief description", "indications concerning perpetrators", and "evidence". It also documents the exhumation sites of the mortal remains of Serb victims. The Report further seeks to discredit or refute the evidence of the killings of Muslims from Srebrenica in July 1995 by the RS Army. To the extent that such killings of Muslims are conceded (*i.e.*, the Report states that "the number of Muslim soldiers who were executed by Bosnian Serb forces for personal revenge or for simple ignorance of the international law … would probably stand less than 100" (see paragraph 94 above), the Report indicates no further investigation into or documentation concerning these crimes committed by members of the RS Army. Thus, the RS Srebrenica Report in no way discloses to the public the role of the RS Army in the massacre at Srebrenica or the fate and whereabouts of the presumed victims of that massacre.

199. Throughout the RS Srebrenica Report the religious or national origin of the designated victims (*i.e.*, the Serbs) and the religious or national origin of the designated criminals or wrongdoers (*i.e.*, the Muslims or Bosniaks) is emphasised. Thus, it is apparent from the face of the Report that such differential treatment is based upon the religious or national origin of the applicants as Bosniaks.

200. The respondent Party offered no observations on the merits of the applications. Therefore, it also submitted no justification whatsoever for its differential treatment in its fulfilment of its obligations owed under the European Convention and the Agreement. Nor can the Chamber, on its own motion, envision any possible justification for such discrimination in the respondent Party's performance of its obligations due under the European Convention and the Agreement.

201. For these reasons, the Chamber concludes that the respondent Party has discriminated against the applicants due to their Bosniak origin in failing to fulfil its obligations due under the European Convention in relation to the applicants' rights under Articles 3 and 8 thereto.

5. Conclusion as to the merits

202. In summary, the Chamber concludes that the respondent Party's failure to make accessible and disclose information requested by the applicants about their missing loved ones constitutes a violation of its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the European Convention. In addition, the respondent Party's failure to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the massacre at Srebrenica in July 1995, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the European Convention. Lastly, the Chamber concludes that in failing to fulfil its obligations owed to the applicants under the European Convention, the respondent Party has discriminated against the applicants due to their Bosniak origin. In the context of the Srebrenica cases, these violations are particularly egregious since this event resulted in the largest and most horrific mass execution of civilians in Europe in the second half of the twentieth century. Moreover, the violations reflect a total indifference by the authorities of the Republika Srpska to the suffering of the Bosniak community.

VIII. REMEDIES

203. Under Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

204. The Chamber recalls that the applicants seek to know the truth about their missing loved ones, who may be presumed victims of the massacre at Srebrenica in July 1995. They request the authorities to bring the perpetrators to justice. Most also seek compensation for their suffering in an unspecified amount. However, in fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Chamber with broad remedial powers and the Chamber is not limited to the requests of the applicants.

A. Case-law and principles on reparations

205. Whilst the Chamber attempts to fashion a remedy for the egregious violations of the applicants' human rights, it recognises that it cannot order a perfect remedy which will re-establish the *status quo ante*— it cannot restore what was taken from the applicants in July 1995 at Srebrenica, and it cannot repair the suffering and torment caused to them by seven years of uncertainty about the fate and whereabouts of their missing loved ones. As the Inter-American Court of Human Rights (the "Inter-American Court") has said: "Every human act produces diverse consequences, some proximate and others remote. An old adage puts it as follows: *causa causae est causa causati*. Imagine the effect of a stone cast into a lake; it will cause concentric circles to ripple over the water, moving further and further away and becoming ever more imperceptible. Thus it is that all human actions cause remote and distant effects. To compel the perpetrator of an illicit act to erase all the consequences produced by his action is completely impossible, since that action caused effects that multiplied to a degree that cannot be measured" (Inter-Am. Court HR, *Aloeboetoe and Others v. Suriname*, judgment on reparations of 10 September 1993, Series C no. 15, paragraph 48 (1993)).

206. In weighing possible appropriate remedies in the present applications, the Chamber first reflects upon its case law and the case law of other international human rights bodies in cases involving similar violations of human rights. In *Palić v. the Republika Srpska*, involving the enforced disappearance of Colonel Avdo Palić, the Chamber found, *inter alia*, violations of Mrs. Palić's rights protected by Articles 3 and 8 of the European Convention because the Republika Srpska took no action to respond to her requests for information about the fate and whereabouts of her husband, who was forcibly taken away from the Žepa enclave by members of the RS Army on 27 July 1995 (case no. CH/99/3196, *Palić*, decision on admissibility and merits of 9 December 2000, paragraphs 75-84, Decisions January—June 2001). As a remedy, the Chamber ordered the Republika Srpska, *inter alia*, "to carry out immediately a full investigation capable of exploring all the facts regarding Colonel Palić's fate from the day when he was forcibly taken away with a view to bring[ing] the perpetrators to justice" and "to make all information and findings relating to the fate and

whereabouts of Colonel Palić known to Mrs. Palić" (*id.* at paragraph 89). The Chamber also ordered the payment of compensation to Mrs. Palić for her mental suffering (*id.* at paragraph 90).

207. In *Castillo Páez v. Peru*, the Inter-American Court considered the appropriate reparations for established violations of the rights to personal liberty, humane treatment, and life of the victim, who disappeared after being abducted and illegally detained by the police. The police also took efforts to hide him so that his whereabouts would not be discovered (Inter-Am. Court HR, judgment on reparations of 27 November 1998, Series C no. 43 (1998)). The Inter-American Court opined that "the anguish and uncertainty that the disappearance and lack of information about the victim caused to his next of kin constitute moral damages for them" (*id.* at paragraph 87). With respect to parents, in particular, "it can be presumed that the parents have suffered morally as a result of the cruel death of their offspring, for it is essentially human for all persons to feel pain at the torment of their child" (*id.* at paragraph 88). Also the sister of the victim "suffered painful psychological consequences as a result of her brother's disappearance and death, because he was her only brother and they lived under the same roof, and because she experienced, together with her parents, the uncertainty of the victim's whereabouts and was forced to move to Europe, where she has lived as a refugee in the Netherlands" (*id.* at paragraph 89). Consequently, the Inter-American Court ordered Peru, *inter alia*, to pay moral damages to the parents and sister of the applicant, to investigate the human rights violations and prosecute those responsible for them, and to pay a reasonable sum for the costs incurred in the proceedings (*id.* at paragraphs 90, 107, 112).

208. Similarly, in *Blake v. Guatemala*, another case involving an enforced disappearance and cover up of that disappearance by the authorities, the Inter-American Court specifically noted the "special gravity" of the violation, which generated in the parents and brothers of the disappeared person "suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate" (Inter-Am. Court HR, judgment on reparations of 22 January 1999, paragraphs 56-57, Series C no. 48 (1999)). As the Inter-American Court further explained, "the State has the duty to prevent and combat impunity, which the Court has defined as 'the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention'". Moreover, "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defencelessness of victims and their relatives" (*id.* at paragraph 64). Therefore, the State has a duty to investigate acts resulting in violations of human rights, to identify and punish those responsible, and to adopt internal legal measures necessary to ensure compliance with such obligations (*id.* at paragraph 65).

209. The case of *Aloeboetoe and Others v. Suriname* concerned events that occurred in 1987 when a group of soldiers attacked, abused, and beat with rifle-butts more than 20 unarmed male Maroons. After wounding the men, the soldiers detained them on the suspicion that they were members of the Jungle Commando, a subversive group. The men claimed they were merely civilians from various villages. Some of the men were later released and one escaped. Six were killed and the authorities provided no information on their whereabouts and failed to return their bodies for burial. Suriname accepted responsibility for the factual events, but disputed the reparations for those events (Inter-Am. Court HR, judgment on reparations of 10 September 1993, Series C no. 15, paragraph 42 (1993)). In deciding upon the appropriate reparations, the Inter-American Court noted that "in matters involving violations of the right to life, as in the instant case, reparation must of necessity be in the form of pecuniary compensation" (*id.* at paragraph 46). After a complicated discussion on who constituted the legal successors of the killed men and on substantiation of the various compensation claims, the Inter-American Court decided upon reparations including: pecuniary compensation to each beneficiary of the killed men; the creation of two trust funds for the beneficiaries — one on behalf of the minor children and the other on behalf of the adults — plus the establishment of a Foundation to serve as trustee and to ensure the beneficiaries the best returns on their compensation awards; and a one-time contribution by Suriname to the Foundation for its operating expenses (*id.* at paragraphs 98-107 and 116). It further reimbursed the expenses of the next of kin incurred in obtaining information about the killed men, searching for their bodies, and appealing to the authorities (*id.* at paragraph 79).

210. Finally, in *Barrios Altos v. Peru*, the Inter-American Court concluded that the State had violated the rights to life, to humane treatment, and to a fair trial and judicial protection of the applicants

following an incident when members of the Peruvian Army, acting on behalf of the "death squadron", indiscriminately killed 15 people and seriously injured an additional 4 as part of "their own anti-terrorist program". The State issued an acquiescence in which it officially recognised its international responsibility for the events. Based upon that acquiescence, the Inter-American Court established the violations and ordered Peru to "investigate the facts to determine the identity of those responsible for the human rights violations … and also publish the results of this investigation and punish those responsible". In addition, it ordered Peru to make reparations as established by mutual agreement between the State, the victims, their next of kin, and their legal representatives (Inter-Am. Court HR, *Barrios Altos v. Peru*, judgment of 14 May 2001, Series C no. 75 (2001)). In subsequent proceedings, the Inter-American Court reviewed that agreement. The agreement on reparations included economic indemnification to the victims; free health benefits (*e.g.*, out-patient consultation, medicine, specialised care, diagnostic procedures, hospitalisation, trauma rehabilitation, and mental health services); educational benefits (*e.g.*, scholarships and educational materials); a commitment to publish the judgment in the official gazette and to disseminate its content through other appropriate media; a pledge to publish "'a public expression of apology to the victims for the grave damages caused' and ratification of willingness to not allow this type of events to occur again"; and an agreement "to erect a memorial monument" (Inter-Am. Court HR, *Barrios Altos v. Peru*, judgment on reparations of 30 November 2001, paragraphs 41-44, Series C no. 87 (2001). The Inter-American Court confirmed that such agreement "is in conformity with the American Convention on Human Rights and it contributes to the attainment of its object and purpose". Therefore, the Inter-American Court found that the State must comply with the reparative measures it agreed to in the agreement on reparations (*id.* at paragraphs 46-47).

B. Reparations in the Srebrenica cases

211. In accordance with these guiding principles, the Chamber will order the Republika Srpska, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants, including information on whether any of the missing persons are still alive and held in detention and if so, the location of their detention, and whether any of the missing persons are known to have been killed in the Srebrenica events and if so, the location of their mortal remains. The Republika Srpska shall immediately release any such missing persons who are still alive and held in detention unlawfully. The Republika Srpska shall also, as a matter of urgency, disclose to the ICRC, the ICMP, and the State and Federal Commissions all information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the Srebrenica events not previously disclosed.

212. The Chamber will further order the Republika Srpska to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations, with a view to making known to the applicants, all other family members, and the public, the Republika Srpska's role in the facts surrounding the massacre at Srebrenica in July 1995, its subsequent efforts to cover up those facts, and the fate and whereabouts of the persons missing from Srebrenica since July 1995. Such investigation should also be conducted with a view to bringing the perpetrators of any crimes committed in connection with the missing persons from Srebrenica to justice before the competent domestic criminal courts or to extraditing persons wanted by the ICTY for prosecution for war crimes, genocide, or crimes against humanity in connection with the Srebrenica events. This investigation should include, among other necessary measures, an internal investigation of present and former members of the RS Army who may have relevant personal knowledge of the Srebrenica events or the location of any personal effects or burial sites of persons killed in connection with the Srebrenica events. The Republika Srpska shall disclose the results of this investigation to the Chamber, the ICRC, the ICMP, the State and Federal Commissions, and the ICTY, as well as to the OHR, the Organisation for Security and Co-operation in Europe (the "OSCE") Mission to Bosnia and Herzegovina, and the Office of the Council of Europe in Bosnia and Herzegovina, at the latest within six months after the delivery of this decision. The Republika Srpska shall further prepare an interim status report on the steps taken by it to comply with this order which shall be submitted to the Chamber within three months after the delivery of this decision.

213. Rule 62(3) of the Chamber's Rules of Procedure states that "the Parties to the Agreement may be requested to publish decisions of the Chamber in their Official Journals". Therefore, as a

form of reparation for social damage and to disseminate the information contained in this decision as widely as possible within the territory of the Republika Srpska, the Chamber will order the Republika Srpska to publish the text of this entire decision on admissibility and merits, together with any concurring or dissenting opinions, in full in Serbian in the Official Gazette of the Republika Srpska within two months from the date of delivery of the decision. For this purpose, the Chamber will make available to the Agent of the Republika Srpska an electronic copy of the decision in Serbian in Cyrillic characters.

214. The Chamber further finds it appropriate to make a collective compensation award to benefit all the family members of the persons missing from Srebrenica since July 1995. In this regard, the Chamber particularly highlights that in the present decision, it has found violations of the rights of the family members protected by Articles 8 and 3 of the European Convention, as well as discrimination against them, but it has not found any violations of the rights of the missing persons because such claims are outside the competence of the Chamber *ratione temporis* (see paragraphs 146, 165-169, 202). The Chamber understands that the primary goal of the present applications is the applicants' desire to know the fate and whereabouts of their missing loved ones. If it is determined that the missing persons were killed in the Srebrenica events, then the applicants would like to bury the remains of their loved ones in accordance with their traditions and beliefs.

215. The Chamber recalls that the High Representative established the Srebrenica-Potočari Memorial and Cemetery in his Decision of 25 October 2000 and he established and registered the Foundation of the Srebrenica-Potočari Memorial and Cemetery (the "Foundation") in his Decision of 10 May 2001 (see paragraphs 133-134 above). The purpose of the Srebrenica-Potočari Memorial and Cemetery is to erect a memorial and create a solemn burial place for those persons who died as a result of the Srebrenica events. The Foundation is charged with construction and maintenance of the Memorial and Cemetery, as well as fundraising. Its Executive Board is composed of high level representatives of the International and Bosnian communities.

216. The Foundation is presently in the midst of its fundraising drive to raise sufficient funds for the construction of the Srebrenica-Potočari Memorial and Cemetery. On 11 September 2002, it issued a press release expressing its appreciation to the Government of Bosnia and Herzegovina for its guaranteed contribution of 100,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") annually from the budget of the State of Bosnia and Herzegovina, to the Government of the United States for its contribution of $1 Million US Dollars, and to the Government of The Netherlands for its contribution of €1 Million Euros. On 29 November 2002, the Foundation issued another press release expressing its appreciation to the Governments of the United Kingdom, Turkey, the Czech Republic, and Croatia for their contributions. The Governments of the Una-Sana Canton and the Sarajevo Centre Municipality were also recognised for their contributions to the Foundation. The Republika Srpska has not to date made any financial contribution to the Foundation.

217. Taking into consideration the admirable efforts presently underway to construct a memorial and cemetery for the victims of the Srebrenica events, and the grievous nature of the human rights violations found by the Chamber in the cases before it, the Chamber finds it appropriate to order the Republika Srpska to make a lump sum contribution to the Foundation of the Srebrenica-Potočari Memorial and Cemetery for the collective benefit of all the applicants and the families of the victims of the Srebrenica events in the total amount of 4 Million Convertible Marks (4,000,000 KM), to be used in accordance with the Statute of the Foundation (see paragraph 134 above), and to be paid as follows. The Republika Srpska shall pay the Foundation 2 Million Convertible Marks (2,000,000 KM), at the latest six months after the delivery of the present decision. In addition, the Republika Srpska must guarantee, at the latest by six months after the delivery of the present decision, five-hundred thousand Convertible Marks (500,000 KM) annually from the budget of the Republika Srpska for the next four years for annual payments to the Foundation. The Republika Srpska shall make this lump sum contribution and guarantee to make the four annual payments to the Foundation at the latest by 7 September 2003, such annual payments to be made on or before 7 September 2004, 7 September 2005, 7 September 2006, and 7 September 2007, respectively. The Chamber will further order the Republika Srpska to pay simple interest at an annual rate of 10% (ten per cent) on the lump sum specified or any unpaid portion thereof after the expiry of six months from the date of delivery of this decision, *i.e.*, 7 September 2003, until the date of settlement in full. Simple interest

at an annual rate of 10% will also accrue on the annual payment if such sum is not paid by 7 September of the respective year until the date of settlement in full.

218. Although the Chamber recognises that the applicants have personally suffered pecuniary and non-pecuniary damages, the Chamber will not make any individual awards of compensation. The lump sum and annual payments specified in the preceding paragraph, which shall be used for the collective benefit of all the applicants, in combination with the other orders set forth herein, will, in the Chamber's view, provide the best form of reparation for the violations found of the applicants' rights guaranteed by Articles 3 and 8 of the European Convention to know the fate and whereabouts of their missing loved ones and discrimination in connection with these rights.

219. In light of the violations found in the present cases, the Chamber considers that a further appropriate remedy would be for the Republika Srpska to make a public acknowledgement of responsibility for the Srebrenica events and a public apology to the victims' relatives and the Bosniak community of Bosnia and Herzegovina as a whole. However, a public acknowledgement of responsibility and a public apology can only provide a real remedy for the applicants when the statements are honest, genuine, sincere, and self-initiated, *i.e.*, not compelled by a court order. Therefore, the Chamber will refrain from ordering the Republika Srpska to make such a public acknowledgement of responsibility or a public apology because, in the context of the Srebrenica cases, the Chamber finds such an order inopportune. The Chamber expresses the hope, however, that someday these statements will be forthcoming from the Republika Srpska on its own initiative.

IX. CONCLUSIONS

220. For the above reasons, the Chamber decides:

1. by 12 votes to 2, that the applicants' claims arising or continuing after 14 December 1995 under Articles 3, 8, and 13 of the European Convention on Human Rights and discrimination in connection with these rights under Article I(14) of the Human Rights Agreement are admissible;

2. unanimously, that any remaining portions of the applications are inadmissible;

3. by 12 votes to 2, that the failure of the Republika Srpska to make accessible and disclose information requested by the applicants about their missing loved ones violates its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the European Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. by 12 votes to 2, that the failure of the Republika Srpska to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the massacre at Srebrenica in July 1995, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the European Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it is unnecessary for the Chamber separately to examine the applications under Article 13 of the European Convention;

6. by 12 votes to 2, that the Republika Srpska discriminated against the applicants due to their Bosniak origin in their enjoyment of their rights guaranteed under Articles 3 and 8 of the European Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

7. unanimously, to order the Republika Srpska, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants, including information on whether any of the missing persons are still alive and held in detention and if so, the location of their detention, and whether any of the missing persons are known to have been killed in the Srebrenica events and if so, the location of their mortal remains. The Republika Srpska shall immediately release any such missing persons who are still alive and held in detention unlawfully. The Republika Srpska shall also, as a matter of urgency, disclose to the ICRC, the ICMP, and the State and Federal Commissions all

information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the Srebrenica events not previously disclosed;

8. unanimously, to order the Republika Srpska to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations; the Republika Srpska shall disclose the results of this investigation to the ICRC, the ICMP, the State and Federal Commissions, and the ICTY, as well as to the OHR, the OSCE Mission to Bosnia and Herzegovina, and the Office of the Council of Europe in Bosnia and Herzegovina, at the latest on 7 September 2003;

9. unanimously, to order the Republika Srpska to publish the text of this entire decision on admissibility and merits, together with any concurring or dissenting opinions, in full in Serbian in the Official Gazette of the Republika Srpska by 7 May 2003;

10. by 12 votes to 2, to order the Republika Srpska, for the collective benefit of all the applicants and the families of the victims of the Srebrenica events, to pay the lump sum amount of 2 Million Convertible Marks (2,000,000 KM), payable no later than 7 September 2003, to the Foundation of the Srebrenica-Potočari Memorial and Cemetery, and, in addition, to guarantee, at the latest by 7 September 2003, four further annual payments of five-hundred thousand Convertible Marks (500,000 KM), to be paid to the Foundation on 7 September 2004, 7 September 2005, 7 September 2006, and 7 September 2007, respectively, to be used in accordance with the Statute of the Foundation;

11. by 12 votes to 2, to order the Republika Srpska to pay simple interest at an annual rate of 10% (ten per cent) on the lump sum specified in conclusion 10 above or any unpaid portion thereof from 7 September 2003 until the date of settlement in full; and, in addition, to pay simple interest at an annual rate of 10% on the annual payments specified in conclusion 10 above if such payments are not paid by 7 September of the respective year until the date of settlement in full;

12. unanimously, to dismiss any remaining claims for compensation; and

13. unanimously, to order the Republika Srpska to submit to the Chamber an interim status report on the steps taken by it to comply with these orders by 7 June 2003 and, in addition, to submit to the Chamber a full report on the steps taken by it to comply with these orders by 7 September 2003.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex I Partly dissenting opinion of Mr. Miodrag Pajić
Annex II Dissenting opinion of Mr. Vitomir Popović
Annex III Partly concurring opinion of Mr. Mehmed Deković

ANNEX I

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Miodrag Pajić.

PARTLY DISSENTING OPINION OF MR. MIODRAG PAJIĆ

1. I cannot agree with all the conclusions and the reasoning in the admissibility and merits sections of this decision. I consider that the applications have serious deficiencies with respect to admissibility under Article VIII(2)(a) of the Human Rights Agreement.

2. The first instance judgment of the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia in case no. IT-98-33-T, *Prosecutor v. Radislav Krstić*, against which Counsel for the Defence filed an appeal challenging both factual and legal findings of the judgment, cannot serve as valid grounds for the factual argumentation of this decision.

3. Furthermore, it is a fact that these applicants have not sought necessary information from the competent bodies of the respondent Party, but instead, they addressed the "State Commission" of the Federation of Bosnia and Herzegovina. Accordingly, the respondent Party has never *prima facie* received the applicants' requests; thus, it could not have complied with its obligations in this regard. It is common knowledge, as explained in paragraph 124 of this decision, that "during the armed conflict in Bosnia and Herzegovina, various commissions existed or were established for the primary purpose of exchanging prisoners of war. One commission represented the interests of Bosnian Muslims, another represented the interests of Croats, and a third represented the interests of Serbs". Each one of these commissions had its separate archives, methods of operation, and sources of information for the purpose of disclosing the truth about missing persons. It is manifest that not even the minimum co-operation among the above-mentioned commissions exists and has never existed.

4. I hold that these underlying facts were not observed in the context of the general legal and political circumstances in Bosnia and Herzegovina to a sufficient extent. For example, with respect to this extremely delicate issue of crucial importance for the future of the people in Bosnia and Herzegovina, how can it be explained that only on 24 October 2001, the House of Representatives of the Parliament of Bosnia and Herzegovina passed the Resolution on the Persons Unaccounted for in Bosnia and Herzegovina. In that Resolution, the House of Representatives "expresse[d] its great dissatisfaction with the fact that after almost six years after the end of the war in Bosnia and Herzegovina, the fate of 28,000 missing persons still has not been clarified" (see paragraph 132 of the decision).

5. Accordingly, for the reasons of non-exhaustion of domestic legal remedies and incompatibility *ratione personae*, I dissent with respect to the admissibility of the applications as established in this decision.

(signed)
Miodrag Pajić

ANNEX II

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Vitomir Popović.

DISSENTING OPINION OF MR. VITOMIR POPOVIĆ

1. I have no doubt that people not only in the Srebrenica area, but also in other parts of the Republic of Bosnia and Herzegovina, as well as in other former Yugoslav republics, first of all Slovenia, and particularly Croatia, Kosovo, and Macedonia, were all subjected to some of the most severe human rights violations, as set forth in the European Convention on Human Rights and its Protocols, the Geneva Conventions, and other applicable instruments for the protection of human rights and fundamental freedoms, which constitute an integral part of the Constitution of Bosnia and Herzegovina (*i.e.* Annex 4 of the General Framework Agreement) and the Human Rights Agreement (*i.e.* Annex 6 of the General Framework Agreement). Furthermore, I have no doubt that not only killed and missing persons, but also members of their families who did not receive any information and who had no knowledge about the victims, as well as all other persons who were forced, in any way, to leave their ancestral homes, could be considered victims of human rights violations. Unfortunately, war, as a means of violently conducting politics, inherently entails the most severe violations of human rights and fundamental freedoms and obvious discrimination. It is certainly a particularly devastating fact that even today, more than 7 years after the conclusion of this bloody civil war in Bosnia and Herzegovina, many families have no opportunity to learn about the fate of their loved ones. However, the reasons why I dissent from the present decision are solely of a legal nature and based primarily on the procedural law included in the Chamber's Rules of Procedure and on the substantive law included in the European Convention on Human Rights. These reasons are as follows:

A. Exhaustion of domestic remedies

2. Before considering the merits of these applications, the Chamber must decide whether to accept them, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. This provision provides, *inter alia*, that "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted..." and "(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

3. In the present cases, the applicants have neither filed any requests nor sought any information from the Commission for Tracing Missing and Detained Persons of the Republika Srpska. Instead, they addressed the so-called State Commission for Tracing Missing Persons, which has, actually, never existed. Namely, it is common knowledge that the so-called State Commission was solely comprised of Bosniak representatives, while there also existed the Commission for Tracing Missing and Detained Persons of the Republika Srpska, which was established by the Government of the Republika Srpska and whose operation and mandate were based upon the Banja Luka Agreement of 25 June 1996, and also the Federal Commission for Missing Persons, established by the Decree of the Government of the Federation of Bosnia and Herzegovina on Missing Persons of 14 July 1997. Prior to that, during the war, each of the peoples had its own commission and the "State Commission for Tracing Missing Persons" was never established on the level of the "Dayton Bosnia and Herzegovina". This fact is explained in the Chamber's decision at paragraphs 125-131. However, in paragraph 169, the Chamber states, *inter alia*, that "based on the information available to the Chamber, it is undeniable that thousands of requests have been filed with the State Commission and ICRC by family members (including the applicants) for information about the fate and whereabouts of presumed victims of the Srebrenica events. Yet, some seven years after the events in question, none of the applicants has been officially informed about the fate and whereabouts of their missing loved ones. Therefore, the allegations contained in the applications concern a continuing violation of the human rights of the applicants by the respondent Party, which commenced on 14 December 1995 and continues to the present date. As such, the applications fall within the Chamber's

competence *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement, and they are admissible".

4. However, even if we take the position that the State Commission of the "Dayton Bosnia and Herzegovina" existed, then the State of Bosnia and Herzegovina, as a respondent Party, should bear the consequences and be held responsible for the possible lack of disclosure of information. Considering the fact that the applicants in the present cases have not addressed the Commission for Tracing Missing and Detained Persons of the Republika Srpska, or any other institution of the Republika Srpska, accordingly, within the meaning of Article VIII(2)(a) of the Agreement, they have not exhausted domestic remedies, nor have they met the procedural requirements prescribed for proceedings before the Chamber; therefore, their applications should be declared inadmissible.

5. Apart from the above-mentioned, the applicants also have not conducted any proceedings to obtain compensation before the competent bodies and courts of the respondent Party, pursuant to the national jurisdiction; thus, the Chamber should declare this part of the applicants' claims inadmissible due to non-exhaustion of domestic remedies, within the meaning of Article VIII(2)(a) of the Agreement.

B. Payment of Compensation

6. I also disagree with conclusion no. 10 which "order[s] the Republika Srpska, for the collective benefit of all the applicants and the families of the victims of the Srebrenica events, to pay the lump sum amount of 2 Million Convertible Marks (2,000,000 KM), payable no later than 7 September 2003, to the Foundation of the Srebrenica-Potočari Memorial and Cemetery, and, in addition, to guarantee, at the latest by 7 September 2003, four further annual payments of five-hundred thousand Convertible Marks (500,000 KM), to be paid to the Foundation on 7 September 2004, 7 September 2005, 7 September 2006, and 7 September 2007, respectively, to be used in accordance with the Statute of the Foundation". I disagree with this order because the basic claim of the applicants was to obtain information from the respondent Party about the fate and whereabouts of their loved ones missing from Srebrenica and to "bring the perpetrators to justice", and, in addition, a large number of them claimed compensation for their suffering, in an unspecified amount. In the present decision, the Chamber should have decided on the compensation claims raised in this fashion, and it should have awarded the applicants adequate amounts of compensation for their suffering, since that is what they precisely claimed. The applicants did not request to have these compensatory funds paid to the Foundation responsible for the construction and maintenance of the Srebrenica-Potočari Memorial and Cemetery. Acting in this manner, by stepping beyond the compensation claims raised, the Chamber also went beyond the scope of its established case law. It is a generally known fact that such similar foundations and associations are frequently subject to large-scale misuses of funds. For example, in my opinion, awarding certain amounts for the return of refugees and displaced persons, who are incapable of providing sufficient means even for their own bare existence and survival, would be more useful. Indeed, some of the members of the Chamber had the opportunity to personally familiarise themselves with this difficult situation.

(signed)
Vitomir Popović

ANNEX III

In accordance with the Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly concurring opinion of Mr. Mehmed Deković.

PARTLY CONCURRING OPINION OF MR. MEHMED DEKOVIĆ

1. In the remedies part of the decision (paragraph 217), the Chamber found it appropriate to order the Republika Srpska to make a lump sum contribution to the Foundation of the Srebrenica-Potočari Memorial and Cemetery in the total amount of 4 Million Convertible Marks for the collective benefit of all the applicants and the families of the victims of the Srebrenica events. The Republika Srpska shall pay the Foundation 2 Million Convertible Marks by 7 September 2003, and it shall pay the remaining amount to the Foundation in four annual payments of 500,000 Convertible Marks over the next four years (see paragraph 217 of the decision).

2. Although I voted in favour of conclusion no. 10, which orders the collective compensation award payable to the Foundation (see paragraph 220 of the decision), I disagree with the legal remedies provided. I would have structured the compensation award in another manner, and in this limited respect, I disagree with it. In order to prevent the loss of value over time, I think that conclusion no. 10 should be amended to state that the four annual payments should be connected to a "fixed currency", *e.g.* the EURO, and the equivalent amounts should be calculated in accordance with the rate of exchange applicable on the date of delivery of the present decision. I substantiate this proposal with a few relevant facts. Firstly, these cases involve extremely grievous human rights violations, explained in more detail in the decision; thus, the amount of the entire awarded lump sum does not require division of the amount over four years. This is particularly so because, according to official estimates, approximately 3,900,000 Convertible Marks are still needed to satisfy the overall budget for the construction of the Srebrenica-Potočari Memorial and Cemetery. Moreover, according to national and some international economic experts, the domestic currency is being artificially maintained; thereby, it is reasonable to expect that the Convertible Mark will lose value in the following four-year period, which will result in a loss of value of the awarded amounts.

3. However, the majority of the members of the Chamber had a different position in this respect because they believe that the domestic currency is fixed and that it will not lose value in the following four years. Still, bearing the hope and desire that the beliefs of my colleagues will come true, I consider any further comment superfluous.

(signed)
Mehmed Deković