



from Croatian territory, just because they were a minority religio-ethnic group. Defendant MPRI, a private military contractor subsequently acquired by Defendant L-3 Communications Inc., trained and equipped the Croatian military for Operation Storm and designed the Operation Storm battle plan. Operation Storm became the largest land offensive in Europe since World War II and resulted in the murder and inhumane treatment of thousands of ethnic Serbs, the forced displacement of approximately 200,000 ethnic Serbs from their ancestral homes in Croatian territory, and the pillaging and destruction of hundreds of millions of dollars worth of Serbian-owned property. The victims of Operation Storm and their heirs and next of kin herein claim that Defendants were complicit in genocide.

### **Parties**

2. Plaintiff **Milena Jovic** (“Jovic”) is a natural person, an alien, and now a resident of Serbia.

3. In August, 1995, Jovic, along with her husband and two children, a four year old son and a six year old daughter, resided near the center of the town of Knin in the Krajina region of Croatia. Early in the morning of Friday, August 4, 1995, at approximately 2 a.m., Operation Storm commenced with an intensive artillery bombardment of the Knin town center. Numerous artillery shells fired during the bombardment landed in close proximity to the Jovic residence causing Jovic and her family to flee their residence and to seek shelter in the basement of their mother-in-law’s home. Upon emerging from the basement shelter, Jovic and her family saw streams of their fellow Knin residents fleeing in panic from the bombardment.

4. Jovic and her family returned to their residence, quickly packed some belongings into a small trailer attached to their family automobile and fled from Knin. As they escaped, they saw dozens of bodies scattered throughout the streets and roads leading out of Knin and houses and buildings burning as a result of shelling with incendiary explosives. Jovic and her family also saw and heard artillery shelling and small arms fire directed at the columns of fleeing Knin residents.



EXITING FROM KRAJINA, A BUS IS DEMOLISHED BY AN ARTILLERY SHELL

5. While driving through the Lika area in the Krajina region, the Jovic's refugee column was shelled by artillery, and bombed and strafed by Croatian military aircraft. People were wounded and dying all around them.

6. Jovic and her family escaped the Krajina region by traveling through Bosnia into Serbia where they continue to reside. Jovic and her family lost all of their personal and real property during Operation Storm other than what they were able to pack in the small trailer attached to their automobile.

7. Plaintiff **Zivka Mijic** (“Mijic”) is a natural person, an alien, and a resident of the United States.

8. In August, 1995, Mijic, and her husband and three children, resided in the village of Titovi Karemice in the Krajina region of Croatia. Early in the morning of Friday, August 4, 1995, at approximately 2 a.m., Operation Storm commenced with an intensive artillery bombardment of Titovi Karemice. As a result of the bombardment of their village, Mijic and her family in panic fled from home and away from the Krajina region.

9. As Mijic and her family escaped from Titovi Karemice in a refugee column headed for Bosnia, they were repeatedly shelled by artillery and were also attacked by a Croatian military mechanized unit. A neighbor traveling with them was decapitated when struck by an artillery projectile during one of the shellings. The Mijic family witnessed this and many other attacks by Croatian forces resulting in refugees being wounded and killed in their exodus from the Krajina.

10. Mijic and her family fled initially to Bosnia and then to Kosovo where they resided in a refugee camp until hostilities began in Kosovo in 1999. They were granted residency in the United States in July 2000, and currently reside in the United States.

11. The Mijic's property in Titovi Karemice was stripped and damaged by Croatian military forces during Operation Storm. It remains abandoned and landmines surround the property making it unsafe to return.

12. Defendant **L-3 Communications, Inc.**, is a Delaware corporation with its principal place of business and company headquarters located at 600 Third Avenue, New York City, New York. L-3 is a prime defense contractor in Intelligence, Surveillance and Reconnaissance, secure communications, government services, training and simulation, and aircraft modernization and maintenance. The company's name is derived from its founders Frank Lanza, Robert LaPenta, and Lehman Brothers, who started the company in 1997.

13. L-3 acquired MPRI in June of 2000, for \$40 Million. L-3 owns 100% of MPRI and operates MPRI as one of its divisions. MPRI has no separate financial standing apart from L-3, and all of its finances are incorporated into L-3's financial statements for filing with the Securities and Exchange Commission.

14. Defendant **MPRI**, which stands for Military Professional Resources Inc., is a Delaware corporation with its headquarters at 1320 Braddock Place, Alexandria, Virginia. It is a private military contractor that provides a wide range of services to both public and private customers. MPRI was started in 1988 by a group of high-ranking American military officers who were abruptly facing military downsizing at the end of the Cold War. The former officers set up shop and began to solicit work from their old colleagues at the Defense Department.<sup>1</sup> All specific references in this Complaint to MPRI implicitly include L-3.

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<sup>1</sup> Quoted from Center for Public Integrity, Windfalls of War, at <http://projects.publicintegrity.org/wow/bio.aspx?act=pro&ddlC=39>

### Jurisdiction and Venue

15. This Court has jurisdiction over this matter under the Alien Tort Statute (“ATS”), 28 U.S.C. §1350: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”

16. ATS is a jurisdiction-conferring statute that also creates a limited number of causes of action based upon violation of rules of international law.<sup>2</sup> See *Estate of Marcos*, 25 F.3d 1467, 1474 (9<sup>th</sup> Cir. 1994); *Papa v. United States*, 281 F.3d 1004, 1013 (9<sup>th</sup> Cir. 2002). The leading case of *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), found that when ATS was enacted in 1789 there were at least three causes of action based directly on violations of international law, namely, violations of safe-conducts, infringements of the rights of ambassadors, and piracy. *Sosa*, 524 U.S. at 716. Congress intended ATS to “furnish jurisdiction for a relatively modest set of actions alleging violations of the law of nations.” *Id.* at 720. “Federal courts should not recognize private claims . . . for violations of any international law norm with less definite content and acceptance among civilized nations than the historical paradigms” of safe-conducts, rights of ambassadors, and piracy. *Id.* at 732. “Actionable violations of international law must be of a norm that is specific, universal, and obligatory.” *Sosa*, 524 U.S. at 732, quoting *In re Estate of Marcos Human Rights Litigation*, 25 F.3d 1467, 1475 (9<sup>th</sup> Cir. 1994).

17. One example of an important international norm with sufficient consensus and specificity that meets the *Sosa* criteria is referenced by the majority opinion in *Sosa* itself: “genocide by

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<sup>2</sup> This aspect of ATS is an issue “lying at the intersection of the judicial and legislative powers.” *Sosa*, 542 U.S. at 730.

private actors violates international law [citing *Kadic v. Karadzic*, 70 F.3d 232, 239-41 (9<sup>th</sup> Cir. 1995)]. *Sosa*, 524 U.S. at 733.

18. Genocide is indeed the most important and one of the most specifically defined violations of international law, whether perpetrated by governments or even private actors. If genocide does not fit the Supreme Court’s criteria for an ATS cause of action in *Sosa*, then nothing fits.

19. Despite some of the loose definitions of genocide given in the popular press and media, international law in fact defines it with great specificity. For example, the target groups against which genocide can be committed are “national, ethnical, racial, or religious.” Article II, *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277 (9 December 1948).<sup>3</sup> Political groups are not mentioned; it is not genocide to kill or destroy members of a political party. Another example of specificity is that the intent to destroy members of the target groups must be with *specific intent*—a narrow version of *mens rea*.

20. Plaintiffs allege that MPRI is liable for complicity in genocide.<sup>4</sup> This crime has the same specificity as genocide, the only difference being that genocide requires a specific intent to kill or

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<sup>3</sup> **Article II.** . . . [G]enocide 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.

<sup>4</sup> **Article III:** 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.

destroy the target groups whereas complicity in genocide requires knowledge that the perpetrator has that specific intent. This distinction is further elaborated in Count I of this Complaint, *infra*.

21. Defendant L-3 claimed in an unrelated case in which it was also a defendant that ATS does not apply to corporations. See *Wissam Abdullateff Sa'eed Al-Quraishi v. Adel Nakhla*, Civil No. PJM 08-1696 (D.C.Md. July 29, 2010). In denying L-3's Motion to Dismiss, the Court rejected the claim of corporate exceptionalism in a comprehensive five-page analysis. *Id.* at 67-72.

22. Even if ATS did not provide jurisdiction in this case, an American national or corporation can be sued by any person<sup>5</sup> harmed as a result of a non-frivolous violation of international law. For "International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677, 700 (1900). According to Secretary of State Legal Adviser Harold Koh, "under current practice, federal courts regularly incorporate norms of customary international law into federal law." Harold Hongju Koh, *Is International Law Really State Law?* 111 Harv. L. Rev. 1824, 1827 (1998). Genocide is an *a fortiori* candidate for incorporation.

23. This Court has personal jurisdiction over Defendant L-3 because L-3 maintains a division within this judicial district and conducts substantial business within this judicial district.

24. Venue is proper because L-3 resides in this district and MPRI can be found in this district. Additionally, numerous plaintiffs reside in this district.

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<sup>5</sup> Including aliens. "Alien citizens, by the policy and practice of the courts of this country, are ordinarily permitted to resort to the courts for the redress of wrongs and the protection of their rights." *Disconto Gesellschaft v. Umbreit*, 208 U.S. 570, 578 (1908).

### **Factual Allegations**

25. Unless otherwise indicated, the following paragraphs in this section are stated upon information and belief based upon published research, journals, books, encyclopedias, newspaper reports, photographs, interviews of eyewitnesses, publicly uttered statements, and testimony and expert reports from various trials before the International Criminal Tribunals for Former Yugoslavia sitting at The Hague.

26. Ethnic Serbians, the ancestors of the plaintiffs in this case, had settled in the border areas of Croatia in the mid-Sixteenth Century at the invitation of the Kingdom of Hungary which provided them with free land and guaranteed them freedom of religion. Hungary's purpose was to form a buffer zone between itself and the expanding Ottoman Empire. The astute scheme worked well. The Serbs successfully defended their homes against sporadic Turkish raids, and otherwise have lived peacefully without ever seeking territorial aggrandizement.

27. By 1995 the Serbian population of the Krajina area in Croatia had grown to about 200,000. All are nationals of Croatia.

28. Croatia became an independent state in 1991. Politicians and the media began calling for a pure ethnic state of Croatians that would require getting rid of Serbs and other minority groups living in Croatian territory. Although some 600,000 Serbs and Jews were murdered in the killing fields of Jasenovac during World War Two, many Serbs hid and fought back safely from the hills in Krajina. These remaining Serbs in Krajina became the focal point in Croatia's campaign for ethnic purity.

29. In 1994, when Defendant MPRI entered into negotiations with Croatia (to be amplified below), MPRI knew or reasonably should have known the open facts of the genocide at the Jasenovac Concentration Camp. MPRI knew or reasonably should have known of the intense hatred the Croats felt toward the Serbs. MPRI knew or reasonably should have known that the Croatian leaders with whom it was negotiating had been key figures in the Ustasha Party that fomented, organized and led the massacres at Jasenovac and other killing camps in Croatia during World War Two.

30. The Jasenovac Concentration Camp in Croatia during World War Two has been termed by historians as the “Auschwitz of the Balkans.” But the comparison is misleading. At Auschwitz, as is well known, unsuspecting victims were led naked into a shower; instead of water coming from the faucets there was emitted Zyklon-B, a poison gas that immediately killed them. By contrast at Jasenovac there was no money or equipment available to facilitate mass murder since all materiel and money were needed to support Croatia’s war against the Allies and especially the USSR. Yet there were over 600,000 Serbs and other minorities to be killed — equivalent to the crowds at nine Super Bowls. The result was that the victims were killed by hand — that is, by sticks, clubs, bats, knives, and ropes — methodically and with extreme pain. The methods of murder evinced a degree of hatred for the Serbs that strains against the boundaries of human imagination. Thus<sup>6</sup>:

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<sup>6</sup> See Ilija Ivanovic, *Witness to Jasenovac’s Hell* (2002); Barry M. Lituchy, *Jasenovac and the Holocaust in Yugoslavia* (2006); Vladimir Dedijer & Harvey L. Kendall, *The Yugoslav Auschwitz and the Vatican: The Croatian Massacre of the Serbs During World War II* (1992).

(a) Croatian civilians carrying butcher knives held contests of who could murder the most prisoners. One of the guards, Petar Brzica, won a prize by cutting the throats of 1,360 new arrivals at the camp in a single day;

(b) Serbian mothers holding infants in their arms were led into a fenced-in area of the camp. As Croatian citizens outside the fences watched, the gate was opened, letting in scores of starving police dogs who leaped at the babies, tearing them to pieces before turning upon their mothers;

(c) Croatian guards and hangers-on carrying clubs and bats led Serbian boys into the woods where they forced the boys to dig a pit. Then they bashed in the boys' heads and decapitated them. When the wind was blowing in the right direction, parents in the Jasenovac camp could hear the high-pitched screams of their children;

(d) Serbian women were gang-raped. When the last Croat in line had finished with a victim he gouged out her eyes so that his was the last face she would ever see;

(e) The only source of drinking water for the prisoners in the camp was the polluted Sava River. Serbian adults were tied in pairs back to back and their bellies were cut before being tossed into the river so that as they thrashed about in extreme pain their spewing intestines would add to the pollution;

(f) Small children on a daily "soup" of grasses, weeds, insects, and polluted river water, were speeded to painful death when caustic soda was mixed into their meal.

31. These and similar atrocities are difficult even to write about, yet for the same reason they were the subject of pervasive gossip. MPRI could not have been unaware of these horrific "folk

tales”—recounted not with shame but with admiration for the inventiveness of the killing methods—when MPRI negotiated its contract in 1994.

32. In that year of 1994, while Germany was denouncing the Holocaust and outlawing Nazi insignia and flags, Croatia did not undergo a similar political purge comparable to the de-Nazification of Germany. Instead, the biggest thugs of the Ustasha regime, with the loot they had amassed from the Serbs during the war stored in foreign banks, became the leading governmental officials in the new independent Croatia.

33. Croatia’s first President, Franjo Tudjman, in his book, *Wastelands of Historical Truth*, published in 1988 and widely disseminated throughout Croatia in the following years, wrote:

Genocidal violence is a natural phenomenon in keeping with the human-social and mythologically divine nature. Genocide is not only allowed but even recommended.<sup>7</sup>

34. One of the first Acts of the new Croatian Parliament was to reduce the legal status of the Serbs in Krajina from that of a “constituent nation” to that of a “national minority,” thus officially yet perhaps inadvertently labeling the Serbs in Krajina as a “national, ethnical, racial or religious group” within the definition of genocide in the Genocide Convention.<sup>8</sup>

35. The Serbs in Krajina were in a precarious position. They were separated from their Croatian co-citizens by an ethno-religious barrier and also separated from their ethno-religious

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<sup>7</sup> Gibbs, David, N. First Do No Harm: Humanitarian Intervention and the Destruction of Yugoslavia. Nashville: Vanderbilt University Press, 2009 at p. 67.

<sup>8</sup> Article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 12 January 1951 makes it a crime under international law to act “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”

counterparts in neighboring Serbia by the barrier of their Croatian citizenship. Thus if they were attacked by the Croats, they could not be assured of intervention on their behalf by Serbia.

36. The United Nations Security Council in 1991, alarmed by the increasing violence in Former Yugoslavia, passed Resolution 713 instituting a “complete embargo on all deliveries of weapons and military equipment to Yugoslavia.” The Resolution called “particular” attention to “the border areas of neighboring countries” thus signaling its concern for the residents of the Krajina area.

37. To deter violence in former Yugoslavia, the United Nations Security Council established a United Nations Protection Force (“UNPROFOR”), parts of which were deployed in United Nations Protected Areas (“UNPA’s”) in Croatia. Two of the four United Nations Protected Areas were designated for Krajina.

38. The concern thus evidenced by the Security Council for the Serbian inhabitants of Krajina is objective proof of the imminence of hostilities coming from Croatia. This fact was known or reasonably should have been known to MPRI.

39. Krajina in the 1990s consisted of villages and towns and a few cities populated mostly by Serbs. The two UNPROFOR forces occupied only small billeted areas in Krajina and did not “spread out” through the region. The Serbs had a small police force of their own. Except for the UNPROFOR troops themselves, Krajina had no targets of military significance.

40. By October 1994, the accelerating campaign in Croatia to kill or oust all the Serbs in that country had focused intently upon the 200,000 Serbs living in the Krajina region. There was pressure on the Croatian Army to get rid of these people. But the Army could not figure out any

way to do so. Objectively speaking it was virtually impossible to move or kill 200,000 people, for the following reasons.

41. First, the Croatian army was neither trained nor equipped to kill or expel 200,000 Serbian residents out of Krajina. Its leadership lacked experience in crowd control, much less in planning and conducting major military operations requiring high coordination between command, real-time intelligence gathering, and efficient logistical back-up. It was basically a rag-tag rifle-carrying infantry.

42. Second, even if the residents of Krajina could be chased out of their homeland, it would have to be accomplished with great speed. For if it took as much as ten days to expel the residents, Serbia might be able to mobilize its powerful army and send it across the border to halt the Croatian Army in its tracks and defeat them. The United Nations and world public opinion would view Serbia's Army as justifiably defending an innocent people. Thus the expulsion of the Krajina populace would have to be accomplished so quickly that world public opinion would not have time to absorb the news and react to it.

43. In any event, the people could not be moved by an Army going door-to-door. There would be panicked resistance. Soldiers would be met with knives and clubs; parents would protect their children at all costs in the face of gunfire. The streets would be jammed and the Army would lose any chance of amassing its forces.

44. The only option left for speedily expelling the people from Krajina was aerial bombardment. But airplanes could not be used for aerial bombardment because pictures of Croatian aircraft dropping bombs on residential civilians would invite forcible intervention from NATO and other countries. Thus the Croatian Army had to turn its offensive posture to artillery

shelling. An artillery shell seems to appear out of nowhere and suddenly lands and explodes without giving photographers any time to record the event.

45. Artillery fire was the indicated solution, but the Croatian Army did not have modern long-range artillery. Even if they could purchase mobile artillery units from abroad contrary to Security Council Resolution 713, the Croatian Army was lacking in experienced gunners who could target the shells. And even if the Army could hire experienced gunners, long-range targeting is dependent upon the use of satellite reconnaissance. The United States was the only country flying regular satellites and reconnaissance drones over Krajina. The pictorial and longitudinal information would be sent in electronically. The information would be transmitted to a de-coding computer next to the gunner in the artillery battery. The Croatian Army had no gunners who could deal with computerized target information, and even if they had, the United States could not officially allow Croatia access to the stream of information because doing so would violate Security Council Resolution 713.<sup>9</sup>

46. The alternative of simply shelling at random the population of Krajina was completely ruled out. For it was crucial that UNPROFOR troops, stationed in and around Krajina, not be killed or harmed. Otherwise overwhelming multinational intervention and retaliation by armed forces under the control of the United Nations could destroy Croatia. The following states had contributed troops to UNPROFOR and had a direct interest in their safety: Argentina,

Bangladesh, Belgium, Brazil, Canada, Colombia, Czech Republic, Denmark, Egypt, Finland,

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<sup>9</sup> “Croatian intelligence sources claim the US shares satellite information with the Croats, which the US strongly denies. US drone planes, low-level unpiloted reconnaissance aircraft, have been sighted and even shot down over Serb-held areas of Croatia and Bosnia. A US base for flying these planes was discovered by the Associated Press news agency in February this year on the Croatian island of Brac and when the Croats and Bosnians attacked the Serbs this year, they managed to by-pass all the main Serb defensive positions.” Charlotte Eagar, *Invisible US Army Defeats Serbs*, *The Observer* (Guardian Newspapers), Nov. 5, 1995.

France, Ghana, India, Indonesia, Ireland, Italy, Jordan, Kenya, Lithuania, Malaysia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Portugal, the Russian Federation, Slovak Republic, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, the United Kingdom and the United States.

47. In the early 1990s, the nation with the greatest interest and commitment to preventing major armed conflict among the Balkan states was the United States. Its foreign policy goal was to establish independent states in former Yugoslavia that were roughly equivalent militarily so that they would check and balance each other. The immediate problem was Croatia. Its army had little more in terms of equipment than hand-held guns. It had virtually no expertise in handling modern weapons such as computerized field artillery. Clearly the Croatian Armed Forces had to be built up to get it to the level of other Balkan states. Moreover, the army needed to have tanks, mobile artillery units, and heavy armored trucks, in order to be trained in their use and then integrate them into an effective fighting force. Thus importing war materiel into Croatia was crucial. But here the United States was checked by Resolution 713 in which the Security Council voted unanimously to place “general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia.”

48. In late 1994, the situation in Croatia could be summed up as follows. Croatia needed artillery units using “live” incoming reconnaissance data to target population centers in Krajina while avoiding UNPROFOR camps. Croatia had neither the artillery units nor the gunners who could fire them. The United States was blocked by the Security Council Resolution from sending heavy artillery batteries into Croatia. Yet unless the Serbian civilians in Krajina could be panic-

stricken into leaving by focused artillery shelling, there was no way to induce them to exit Croatian territory.

49. The solution to Croatia's problem came in the form of a mercenary organization with top-level ties to the United States Department of Defense. MPRI's introduction and implementation of the American "AirLand Battle Doctrine" was to become a necessary factor in enabling Croatia to commit genocide against the Serbs in Krajina.

50. In or about October 1994, the Croatian leadership, led by Minister of Defense Gojko Susak, sought help from this professional mercenary organization. They met with and negotiated an agreement with Defendant MPRI. Under the agreement, MPRI was to (a) teach and instill democratic values to the members of the Croatian armed services; (b) modernize the Croatian Army so that it would pass the test of admission to NATO; (c) procure through its contacts heavy military equipment including artillery batteries and import it into Croatia; (d) arrange for Croatia to receive real-time coded and pictorial information from US reconnaissance satellites over Krajina in order for the data to be used for accuracy targeting in artillery batteries. The contract would pay MPRI millions of dollars.<sup>10</sup>

51. It was evident that MPRI's acts, especially including equipping and training military forces, would run counter to UN Security Council Resolution 713. But because MPRI is not a state, it is not legally bound by U.N. resolutions. Thus MPRI could do things that the United States could not do, such as importing weapons into Croatia.

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<sup>10</sup> Parts (a) and (b) are admitted by MPRI; parts (c) and (d) are upon information and belief, and may not have been part of the written contract although they were part of the agreement. MPRI has steadfastly refused to show the contract to researchers and historians.

52. Some of the weapons were imported by cargo planes leased from the United States and flown into Bosnia. Croatia allowed Bosnia to use its airspace in return for a percentage of the cargo, which Croatia took not in cash but in armaments.

53. There can be no doubt that MPRI knew exactly what Croatia would do with the training and armaments that MPRI was going to provide. During the contract negotiations between MPRI and Croatia in October 1994, Minister Susak specifically told the MPRI representatives: “I want to drive the Serbs out of my country.”<sup>11</sup>

54. MPRI knew or should have known that it would take years before the Croatian army could pass the NATO test. (In fact it took fifteen years before the Croatian army passed that test.) In any event the AirLand Battle Doctrine had nothing to do with being admitted into NATO because it was a specific American doctrine that was largely unknown even to the existing members of NATO. Thus when the Croatian parliament enacted an appropriation of one billion dollars to the Croatian army, MPRI was put on notice that the huge budget was not for long-term NATO purposes but rather for the immediate short-term purpose that Defense Minister Susak had revealed during negotiations (see previous paragraph).

55. By calling the forthcoming genocidal attack on the civilians in Krajina “Operation Storm,” MPRI openly admitted that the attack was the progeny of the Operation Desert Storm of 1990. The senior staff of MPRI consisted of retired American officers who had participated in the creation and planning of Operation Desert Storm. Plaintiffs have been unable to find in the public record any objection by MPRI to the use of the term “Operation Storm” even though that term tended to incriminate MPRI in the genocide in Krajina. Indeed in subsequent years MPRI

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<sup>11</sup> Halberstam, David. War In A Time of Peace. New York: Touchstone, 2001 at p. 335.

would brag to prospective clients about its success in planning and facilitating Operation Storm with the pitch that if MPRI could do that, it could do anything. When asked by a reporter media to justify MPRI's actions, spokesperson Ed Soyster said, "We go someplace because we are... contracted by another government. We do it for the money, I'm not ashamed to say."<sup>12</sup>

56. With the availability of Croatia's billion dollar appropriation, MPRI immediately began purchasing war materiel from abroad and smuggling it in to Croatia. With the United States looking the other way, MPRI used its extensive contacts in the international arms business to procure heavy weapons, artillery batteries, and other materiel for the Croatian army. An important conduit for these clandestine purchases was Cypress International Inc., an established weapons and war-materiel supply firm of which MPRI President Vernon Lewis was an executive and Board Member.

57. The term "AirLand Battle" was coined by General Donn A. Starry in 1980. The U.S. Army at that time was changing the traditional concept of land warfare from a static battlefield where opposing armies meet each other across a front line, to the concept of an extended battlefield that involved "seeing deep" into the enemy's rear and concentrating combat power to attack the enemy's second echelon forces before they reached the battlefield. A corps commander, for example, now looked beyond the forward line of his own troops 150 kilometers into the enemy's rear where the enemy's more powerful second echelon was waiting to advance to the front line. To attack the second echelon so far away meant that the corps commander must take action 72 hours before the wristwatch time at the front line. Thus the U.S. Army had to

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<sup>12</sup> Esther Shrader, *US Companies Hired to Train Foreign Armies*, Los Angeles Times April 14, 2002. Harry "Ed" Soyster was the former Director of the Defense Intelligence Agency and former Commanding General of the United States Army Intelligence and Security Command (INSCOM).

wage a synchronized and fully integrated land and air force battle simultaneously against the enemy's first and second echelons.

58. The AirLand Battle Doctrine was called a "doctrine" rather than a plan because it revolutionized the way army commanders thought about their tasks. Previously the army had placed emphasis on the defense and on attrition warfare. But starting around 1980 with the advent of the AirLand Battle Doctrine, the U.S. Army's extended battlefield concept became much more offense-oriented.

59. Ten years later, in 1990, the AirLand Battle Doctrine with modifications for the terrain, became the famous "shock and awe" tactics of the successful Operation Desert Storm offensive against Iraq. Colonel Harry Summers, an army historian, wrote that AirLand Battle was the "operational blueprint for Operation Desert Storm."<sup>13</sup> Perhaps the most prominent American military strategist who modified the AirLand Battle Doctrine for use in Operation Desert Storm was General Carl Vuono, Chief of Staff of the U.S. Army and Commander of the U.S. Army Training and Doctrine Command.<sup>14</sup> In 1993 General Vuono retired from military service to join MPRI where since 1999 he has served as its President. His hands-on knowledge of AirLand Battle Doctrine was undoubtedly a selling point in MPRI'S negotiations with Croatia in 1994.

60. The modifications made to the AirLand Battle Doctrine for the swift victory of Operation Desert Storm took hold and became part of the evolving AirLand Battle Doctrine of the U.S. Army. The revised plan was utilized by Croatia against the civilian population of Krajina in 1995. The campaign was openly called "Operation Storm." (See paragraph 55, supra.)

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<sup>13</sup> Harry G. Summers, *On Strategy II: A Critical Analysis of the Gulf War* 159 (1992).

<sup>14</sup> General Vuono also reorganized AirLand Battle Doctrine into six major imperatives: doctrine, organization, training, leader development, materiel, and soldiers. See Benjamin King, *Victory Starts Here: A 35-Year History of the US Army Training and Doctrine Command*, at 10 (n.d.).

61. There were two important modifications Croatia made to the evolved AirLand Battle Doctrine, either with the help of MPRI or at MPRI's direction. For the first one, imagine a black-and-white map of Krajina where the civilian residential areas are colored white and the UNPROFOR troops are colored black. Under the laws of war, bombardment must be targeted at the smaller black areas—the military assets. It is a war crime to target civilians. Now imagine the *negative* of a photograph of the map. The film negative would reverse the colors. It was Croatia's purpose to target the larger black areas in the film negative and avoid the smaller white areas. Thus Croatia aimed its artillery at the civilian areas and avoided aiming at the UNPROFOR troops. With long-distance artillery, aiming of this precision could only be accomplished by the use of real-time satellite reconnaissance information fed into the artillery unit's computer. Every "hit" of a black area was a separate war crime which was never prosecuted.

62. The second modification was to delete the defensive instructions in the Operation Desert Storm plan. No defense was needed because the enemy targets consisted of unarmed infants, children, parents, grandparents, the elderly and the infirm. The plan was accordingly modified to exclude anticipation of enemy return fire or counterattack and instead proceed on the assumption of a wholly offensive campaign.

63. By October 1994, when MPRI entered into a contract with Croatia, the AirLand Battle Doctrine had been refined and detailed through its own natural field simulations as well as the Operation Desert Storm experience. A year later, the Croatian army field manual had adopted the principles of the AirLand Battle Doctrine. Thus at the end of Operation Storm (in August 1994)

Croatia was proclaiming the efficacy of the AirLand Battle Doctrine in its own official publication.

64. According to the October 1995 Croatian army field manual titled *Basics of Operations carried out by Croatian Army*, AirLand Battle is based on “undertaking or maintaining the initiative and imposing your will on the enemy in order to achieve the set objectives,” adding that “this is possible to achieve by rapid, unpredictable, powerful, confusing, effective and efficient conduct of combat operations, launching the strike along the unexpected direction and at such pace that prevents the possibility of an efficient counterattack.”

65. On July 31, 1995, four days prior to the launching of Operation Storm, a high-level meeting took place on the island of Brioni.<sup>15</sup> Croatian President Franjo Tudjman urged the Army leadership to carry out the forthcoming operation swiftly in order to inflict a decisive blow to the Serbs as early as possible, and avoid political damage.<sup>16</sup> *Also See* Expert Report of Reynaud

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<sup>15</sup> There is substantial hearsay evidence that General Carl Vuono represented MPRI at that meeting. Because Plaintiffs have not been able find corroboration, it is not alleged in this Complaint that General Vuono participated in the meeting in Brioni. However, internal MPRI documents acquired by Plaintiffs’ investigators do support this account by placing Carl Vuono in Croatia during this time period. According to a June 6, 1995 letter signed by Carl Vuono and addressed to General Janko Bobetko, the Chief of Staff of the Croatian Armed Forces:

I know we had tentatively planned to meet in June in Dubrovnik, but my responsibilities do not permit me to return to Croatia in June **so I am arranging a visit in July**. I have asked MG Griffiths to coordinate with your office on the timing for this visit. [emphasis added]<sup>15</sup>

The letter, attached hereto as “Exhibit 1”, also describes a four-day seminar to be given by MPRI in August 1995 for the benefit of Croatian military leaders. This period covered the operational time frame of Operation Storm.

<sup>16</sup> According to transcripts acquired by ICTY investigators of former Croatian President Franjo Tudjman, speaking at this Operation Storm planning session on Brioni Island in July of 1995:

***We have to inflict such blows that the Serbs will to all practical purposes disappear***, that is to say, the areas we do not take at once must capitulate within a few days. [emphasis added]

Theunens, *Trial of Ante Gotovina, International Criminal Tribunal for the Former Yugoslavia* transcript at Pt. 2, p. 68 (Dec. 2007).

66. On August 2, 1995, two days before Operation Storm was launched, General Zvonimir Cervenko, Chief of the General Staff, directly tasked MPRI in the execution of Operation Storm. The document orders the following:

Pursuant to my decision instructors-leaders, as well as employees of the Command Headquarters level MPRI-DTAP, shall be engaged to reinforce the Headquarters Operations Team when needed.<sup>17</sup>

Further specifications in the Order place top MPRI leaders high in the command-and-control structure of the Croatian army for Operation Storm. However, Plaintiffs have been unable to discover whether any MPRI personnel actually served in this capacity, and hence refrain from raising a reasonable speculation—that they did so serve—to the level of an allegation.<sup>18</sup>

67. The foregoing directive of AirLand Battle Doctrine was executed to the letter during Operation Storm. Shortly before dawn on August 4, 1995, while the Serbian population of

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English translation of Brioni meeting transcript found at:

[http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=ExhibitE&Query=Brioni&File=E%3A%5CLegal\\_Ref%5CBatchStore%5CExhibit%5CEnglish%5CExportedText%5C000002M%5C200015XE0V.txt&QField=DocumentId%5E2000226733&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fxl50y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS](http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=ExhibitE&Query=Brioni&File=E%3A%5CLegal_Ref%5CBatchStore%5CExhibit%5CEnglish%5CExportedText%5C000002M%5C200015XE0V.txt&QField=DocumentId%5E2000226733&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fxl50y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS)

<sup>17</sup> Order of the Chief of the Croatian Army General Staff, Zvonimir Cervenko, to Operational Commanders, dated 3 August 1995. DTAP is the public name for the MPRI-Croatia Contract; it stands for Democracy Transition Assistance Program. (Order and English translation attached hereto as “Exhibit 2”)

<sup>18</sup> The present Complaint does not specifically allege that MPRI personnel participated in the genocidal campaign of Operation Storm. It only alleges that MPRI provided the plan, weaponry, and reconnaissance satellite information, for use during Operation Storm.

Krajina was asleep, Croatian armed forces launched Operation Storm. Artillery fire bombarded civilian homes and apartments. The shelling was not observed; only the explosions gave proof. The shelling appeared random; suddenly a peaceful residential area blew up, then another miles away from it, and then a third miles away from the first two. The relentless artillery explosions panicked and terrorized the Serbs, driving them out of their homes and crowding them into the streets. Many ran to their cars and small trucks carrying children and household goods which they dumped into the vehicles. The missile explosions appeared to come out of nowhere with no notice and for that reason were more frightening than bombs dropped from airplanes. People were killed or seriously wounded or even died of heart attack from the bombardment.

68. The UNPROFOR troops in their two encampments were miraculously spared from artillery attack. But they were frozen in place; they dared not move to residential areas to protect the citizens because they could see, and were informed, that residential areas were being hit. They did not know at the time that artillery gunners were using real-time coded information from U.S. aerial reconnaissance satellites for precision aiming at non-military targets.

69. Then unexpectedly a second echelon of some 100,000 Croatian troops marched into Krajina in the North and in the South simultaneously. They too were not targeted by the artillery. As the civilian population rushed to exit the Krajina, the Croatian troops ransacked their houses and looted all valuables that had been left behind in the panic to escape. Serbian stragglers who had not escaped fast enough were shot on sight by the Croatian troops. Those who hunkered down in their homes were burned to death. If they ran out of the house ahead of the army's torches, they were executed.

70. The Croatian military tactics so far had succeeded in implementing the principle of the AirLand Battle Doctrine set forth previously in Paragraph 60: “rapid, unpredictable, powerful, confusing, effective and efficient conduct of combat operations.”

71. According to the Croatian Army field manual, artillery fire support is the “bedrock of the firing system in every operation.” The artillery fire during Operation Storm was the linchpin of the campaign.

72. An important principle of the AirLand Battle Doctrine is to disorient the enemy by the use of psychological techniques and tricks, known as “psy-ops” (psychological operations). Psy-ops was employed with brutal efficacy during Operation Storm. As acknowledged by Croatia a year *after* Operation Storm, rumors, misinformation, propaganda, spreading fear, and panic were carried out against the Serbs in Krajina by the Croatian Army’s Department for Political Affairs. See *Basics of Operations carried out by the Croatian Army*, Oct. 1995.

73. For a day or two prior to the launching of Operation Storm in August 1995, a Western-style psy-ops disinformation campaign was launched against the Serbian civilian population in Krajina. Authoritative commentators on television spread word that attack by Croatian armed forces was imminent. Their purpose was to instill fear and panic in the Serbian population. Propaganda was distributed by radio, television and other means informing the Serbs falsely that they were free to leave and that large convoys of Serbs were already leaving the area. At the same time, maps depicting “exclusive Croat” territory were shown to the Serb civilians and “exit routes” were made known. Deliberately contradictory advice was given. If an announcer on radio or television warned the population not to take the northern highway out of Krajina because it would be targeted by artillery shelling, those who took the southern highway were in fact hit by

shells and bombs. Insistent and contradictory rumors spread through the population as they fled with their belongings into the streets. Exit routes were randomly shelled, killing civilians on their way out of Krajina. No highway was safe. Croatia's demonstrable purpose was to rid the area of Serbs with indifference as to whether individuals were killed or lucky enough to leave their homes behind never to return.

74. Just as AirLand Battle Doctrine's progeny Operation Desert Storm had proven so remarkably effective in Iraq in 1990, so too its illegitimate progeny Operation Storm proved stunningly effective in Krajina in 1995. Operation Storm routed the Serbian population of the Krajina region in less than 72 hours, It was the largest and most efficient land offensive in Europe since World War II.

75. Afterwards, the Croatian government expressed its gratitude to MPRI for its help in training its military. MPRI was later hired to train the new Bosnian army after the Dayton Peace Accords ended the war in former Yugoslavia.

76. The intense hatred the Croats felt toward the Serbs is shown by the following excerpts from the indictment of Ante Gotovina in the International Criminal Tribunal for Former Yugoslavia at The Hague<sup>19</sup>: "Many Serb civilians who remained in the area rather than fleeing, including men not of military status and unarmed, elderly, women and invalids, were unlawfully killed during Operation Storm and the continuing related operations and/or actions, as evidence, in part, by mass grave excavations. Soldiers opened fire on groups of civilians. Individuals were

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<sup>19</sup> According to the Case Information Sheet, Ante Gotovina is described as the operational commander of the southern portion of the Krajina region during the military offensive known as "Operation Storm", and was indicted by the International Criminal Tribunal for the Former Yugoslavia for war crimes allegedly committed during the Operation. Please find the indictment at: <http://www.icty.org/x/cases/gotovina/ind/en/got-amdjoind070517e.pdf>

observed being shot at point-blank range and killed execution style, and many persons had to look on while family members were killed. Some persons were burned alive and others were dumped into wells. Other persons died as a result of multiple stab wounds. Persons mysteriously disappeared from their homes and neighborhoods. Some were later found dead and others were never found.”

77. The Gotovina indictment continues: “In the course of Operation Storm and the continuing related operations and/or actions, Croatian forces inflicted inhumane acts on Serb civilians and persons taking no part in hostilities, including persons placed hors de combat, causing not only mental abuse, humiliation and anguish (including threats to kill such persons or their families), but also severe physical injury, by shooting, beating, kicking and burning people, including extensive shelling of civilian areas and an aerial attack on fleeing civilians. Family members were often forced to watch while other family members were beaten and abused. Inhumane acts and cruel treatment were especially inflicted on the most vulnerable victims, including elderly women and civilians in hospitals.”

78. Whether MPRI personnel took part in the genocide is not known and is not alleged here. But what is known definitively is that MPRI provided the means that enabled the genocide to occur. And the well-known history of the Jasenovac massacres should have put MPRI personnel on notice that employing AirLand Battle Doctrine on a peaceful civilian population would most likely have as its aftermath the murderous “mopping up” operations of the Croatian army as described in the indictment quoted in the preceding two paragraphs.

79. During and immediately after Operation Storm, land mines were placed in the areas that had had high-density demographics. The result is that displaced Serbians are afraid to go back to

their old neighborhoods that are land-mined. The 1995 genocide is not over. The Statute of Limitations has not yet begun to run due to the presence of the deadly land mines.

80. Croatian forces destroyed approximately 25,000 Serbian homes, 13,000 Serbian businesses, 56 medical facilities, 78 Orthodox churches, 29 Serbian cultural museums, 181 Serbian Orthodox cemeteries, 352 small shops, all large state-owned factories in the Krajina area, 920 monuments, 211 cafes and restaurants and 410 craftsmen shops belonging to the Serbian population.

81. There were very few individual UNPROFOR casualties. The relentless shelling of Krajina during Operation Storm managed to avoid hitting the UNPROFOR units. This feat was accomplished by trained artillery gunners who were able to aim their weapons away from UNPROFOR areas using precise real-time coded information incoming from aerial reconnaissance satellites.

82. Today, the vast majority of Krajina refugees have not returned to Croatia. Tens of thousands of Serbians from the Krajina continue to live in refugee camps near Belgrade in Serbia. In addition, thousands of Serbian villages and hamlets remain in ruins and are presently uninhabitable. Live land mines still deter the rehabilitation of many areas of the Krajina.

83. Canadian UNPROFOR officer General Andrew Leslie testified at the ICTY trial of Croatian General Ante Gotovina that gunners under Gotovina's command intensively shelled Serbian towns, hitting mostly civilian targets during Operation Storm. UN forces in the Krajina would later estimate that more than 80% of civilian structures in Sector South had been completely destroyed or damaged so badly as to be uninhabitable. This near-total destruction of residential buildings served to further the goal of preventing the return of Krajina Serbs to

Croatia after the cessation of the genocide. The homes that were not demolished were immediately taken over by Croatian families.

84. Over the course of 15 years since the end of Operation Storm, MPRI and its officers and employees have consistently denied the company's involvement in training Croatia's armed forces prior to Storm, and in helping the Croatian General Staff plan and prepare the battle plan for Operation Storm. Additionally, MPRI and its officers and employees have effectively concealed any evidence of its involvement in these activities.

85. The details of MPRI's deep involvement in Operation Storm have only recently started to emerge with the series of war-crimes trials of Croatian military officers and politicians in the International Criminal Tribunal for the former Yugoslavia. Within the last few years, Croatian military officers, semi-official Croatian military journals and Croatian Ministry of Defense documents have implicated MPRI in the planning and preparation of Operation Storm.

86. On July 15 of 2009, General Slobodan Praljak, a former high ranking Croatian Military of Defense official and personal advisor to Franjo Tudjman, testified as follows during cross examination in his trial for war crimes: "So that's why we hired the organization MPRI in Croatian Army, with top American generals whom we paid and who helped us to prepare Flash"<sup>20</sup>

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<sup>20</sup> Operation Flash was an attack directed against the Krajina Serbs in the Western Slavonia region of the Krajina in May, 1995. The attack resulted in hundreds of Serbian civilian deaths, and over 30,000 Serbian refugees. Although Praljak's testimony implicates MPRI in the preparation of Operation Flash, plaintiffs have not yet discovered sufficient corroborating evidence to warrant the inclusion of Operation Flash among the specific allegations against MPRI in this Complaint.

and Storm. They proposed, and Franjo Tudjman appointed people, but they were not to blame if something didn't go well."<sup>21</sup>

87. A 2005 article in the semi-official Croatian military publication *Polemos* highlighted the presence of MPRI personnel in Croatian operations centers during Operation Storm, saying that MPRI "provided training in troops' combat training and they monitored the HV's [Croatian Army's] actions from the operations centers."<sup>22</sup>

88. While MPRI continues to deny its involvement in Operation Storm, privately MPRI has been quite willing to cite its role in Operation Storm to earn new business contracts. According to Defendant Ed Soyster, referring to allegations of MPRI's involvement, "But it's a great myth. It's good for our business."<sup>23</sup> Thus, the mercenaries at MPRI continue to try to have it both ways – on the one hand denying that they were responsible for Operation Storm and on the other hand using their success in that operation as evidence of how far they are willing to go to satisfy new clients.

### **Class Action Allegations**

89. Plaintiffs seek to certify this suit as a class action under Rule 23(b)(3), and/or 23(c)(4) on behalf of a class or subclasses consisting of all Serbs residing in the Krajina region of Croatia

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<sup>21</sup> Trial transcript, page 43098, July 15, 2009, *The Prosecutor v. Praljak* (IT-04-74). Slobodan Praljak is described in the indictment as a Senior Croatian Army officer, Assistant Minister of Defense and senior representative of the Croatian Ministry of Defense to the Herceg-Bosna/HVO government. He is also described as an advisor to President Franjo Tudjman.

<sup>22</sup> Marko Buklijaš, *Schooling of Officers at Petar Zrinski, The Officers' School of the Croatian Army's University*,

*From 1994-1996, Polemos*, at 85-103 (25 Nov. 2005).

<sup>23</sup> *Mercenary Inc.*, by Ken Silverstein, Source: *Washington Business Forward Magazine* (April, 2001).

immediately before and/or during the execution of Operation Storm by the Croatian military (the “Class”).

90. The exact number of the members of the Class (or subclasses) is not currently known, but is believed to be in the tens or hundreds of thousands. The members of the Class are so numerous that joinder of all Class members is impracticable.

91. There are questions of law or fact which are common to every member of the Class, including:

(a) Whether Croatia specifically intended to kill as many Serbs as possible in the Krajina area just because they were Serbs;

(b) Whether Croatia wanted to chase the rest of the Serbs out of the Krajina area forever;

(c) Whether MPRI knew that Croatia had the specific intent to kill as many Serbs in the Krajina area just because they were Serbs;

(d) Whether MPRI supplied the battle plan that made the rapid killing and expulsion of the Serbs possible;

(e) Whether MPRI procured from abroad the weapons, ammunition, artillery batteries, heavy military transport vehicles, and artillery batteries, that made the genocide possible;

(f) Whether MPRI arranged for aerial reconnaissance information from the satellites flying over Krajina to be transmitted to the artillery battalions so that the gunners could aim the shells away from the UNPROFOR troops;

(g) Whether it would have been possible for Croatia to kill and expel the Serbs from Krajina in a brief period of time such as 72 hours without the help and assistance of MPRI as indicated in the preceding sub-paragraphs.

92. Plaintiffs' claims are typical of the Class because the main injury suffered by everyone resulted from MPRI's complicity in genocide. Plaintiffs do not request compensation for their individual injuries or losses of property, because such specific damages should be assessed against the party that had the ability to control them, namely Croatia. Plaintiffs do not allege that MPRI had the specific intent to kill or harm anyone. But MPRI was knowingly the necessary and sufficient cause for making the genocide possible, and for that per capita compensation is appropriate.

### **Count I: Complicity in Genocide**

93. Plaintiffs seek restitution from MPRI for its complicity in the genocide of 1995 perpetrated by Croatia against Serbian residents of the Krajina area—some 200,000 unarmed civilians.

94. In order to establish complicity in genocide, it is first necessary to allege and show that the underlying crime of genocide occurred and, second, that it was perpetrated by Croatia in the Krajina in 1995.

95. The definition of genocide is word-for-word the same in the Genocide Convention, the statutes of the United States, the statutes of the International Criminal Tribunals for Former Yugoslavia and Rwanda, and the Rome Statute of the International Criminal Court:

[G]enocide 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;

96. Croatia targeted its Serbian minority citizens with artillery fire during Operation Storm. Its specific intent was not only to bring about the physical destruction of the group in the Krajina, but to kill as many members of the group as possible—just because they were Serbs. If expelling the Serbs from Krajina had been the only goal of the Croatian Armed Forces, why did they fire upon and shell the Serbs as they were exiting? If chasing out the Serbs was the goal of the Croatian Armed Forces, why did they not pick up the stragglers and transport them out of the Krajina instead of shooting them or burning them in their homes? The destruction of Serbian homes and the placement of land mines were specifically intended to destroy forever the community that the Serbs had built. There is no other label for what the Croats did than genocide.

97. MPRI is liable for complicity in genocide. Like virtually all crimes, a civil action in tort for compensation can be based upon a crime: the state's criminal interest is in deterrence; the victims' civil interest is in restitution.

98. Complicity in Genocide is a separate crime under conventional international law. In the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 UNTS 277 (1948), Article III provides:

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.

The statute of the International Criminal Tribunal for Former Yugoslavia repeats the format of the Genocide Convention. However, there is a variation in the statute of the International Criminal Tribunal for Rwanda. After repeating the five punishable acts (as quoted above) in Article 2, the ICTR statute has a new provision called “Individual Criminal Responsibility.” Article 6 ¶ 1 states:

A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

Since Article 6 ¶ 1 defines aiding and abetting in specific reference to complicity in genocide (one of the five crimes in listed in Article 2), it is clear that aiding and abetting is distinct from complicity. Thus it would be possible to be an aider and abettor of complicity itself. By contrast, Article 6 ¶ 1 of the ICTR statute provides a formula for the personal attribution of legal

responsibility for the underlying crime. Thus there is a clear difference in international conventional law between complicity in genocide and aiding and abetting.

99. In ratifying the Genocide Convention, the United States added a number of reservations. See U.S. Reservations and Understandings to the Geneva Convention, 28 ILM 782 (1989). None of these reservations or understandings touched upon Complicity in Genocide. To the same effect, the U.S. implementing legislation for the Genocide Convention is silent on Complicity in Genocide. The United States thus has raised no objection to the listing of Complicity in Genocide as a stand-alone crime in international law. The crime of Complicity in Genocide remains in the treaty as ratified by the United States. It is part of the supreme law of the land under Article VI of the Constitution.

100. If the present case relied solely upon the Genocide Convention as ratified by the United States and therefore as constituting the supreme law of the land, then a question might be raised as to whether the Convention is self-executing in the sense that a private right of action can be based upon it. Since there is nothing in the Convention itself or in the implementing legislation that addresses the question of self-execution, the Convention as a whole must be interpreted as to whether it is self-executing. An oft-cited district court opinion offers a functional analysis of self-execution of treaties. The relevant formula is as follows:

The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors: [1] the purposes of the treaty and the objectives of its creators, [2] the existence of domestic procedures and institutions appropriate for direct implementation, [3] the availability and feasibility of alternative enforcement methods, and [4] the immediate and long-range social consequences of self- or non-self-execution.

*Handel v. Artukovic*, 601 F. Supp. 1471 (D.C.Cal. 1985).

When the treaty to be interpreted involves genocide, all four factors point in the same direction. Genocide can be committed during a war or in peacetime. It can be committed by many persons or even just one person.<sup>24</sup> It can be committed entirely within a nation's borders or internationally. It is the single most universally condemned act in all of international law. Thus in applying the four factors there can be no doubt that [1] the purposes of the treaty and the objectives of its creators are aligned in the goal of deterring and punishing genocide by any judicial means, criminal or civil. [2] The courts of the United States are appropriate for dealing with liability for genocide, just as are the courts of nearly every country which recognize "universal jurisdiction" over genocide and crimes against humanity. [3] Whether alternative enforcement methods are available or feasible is not, in the particular case of genocide, an excuse for declining jurisdiction. [4] The immediate and long-range social consequences of self- or non-self-execution can only be favorable across the board for self-execution. There should be "no place to hide" for any person committing genocide. That person should not find asylum in the United States if prosecutors do not wish to prosecute (because of political considerations, for example). A private civil lawsuit against the alleged perpetrator might in some cases be welcomed by a prosecutor whose hands are tied politically. Therefore, as to all four contextual factors listed by the *Artukovic* court, the Genocide Convention as ratified by the United States should be held to be self-executing.

101. But even if the Genocide Convention were non-self-executing, Plaintiffs do not rely solely upon conventional international law for Count I. The prohibition of genocide is one of the clearest and most important rules of customary international law. At the International Military Tribunal at Nuremberg in 1947, *before* the Genocide Convention came into force, and before the

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<sup>24</sup> See *Prosecutor v. Nikola Jorgic*, Supreme Court, Federal Republic of Germany, 30 April 1999.

adoption of any other resolution or convention on genocide, the indicted defendants were alleged to have

conducted deliberate and systematic genocide; viz., the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy particular races and classes of people, and national, racial, or religious groups, particularly Jews, Poles, and Gypsies.

2 *Trial of the Major War Criminals Before the International Military Tribunal* 60 (1947)

(Indictment).

102. Inasmuch as the jurisdiction of the Nuremberg Military Tribunal was limited to acts in execution of, or connected with, World War II, the Tribunal refrained from inquiring whether genocide was committed prior to 1939. However, there was no question as to its criminality under customary international law of genocide after 1939. See *The Nurnberg Trial*, 6 F.R.D. 69, 131 (1946). Genocide today is regarded as a *jus cogens* norm of customary international law.<sup>25</sup>

103. Complicity in Genocide is a separate crime from Genocide under conventional and customary international law. In this respect it resembles the separate and distinct crime of Conspiracy in American criminal law. Both Complicity and Conspiracy are separate from aiding and abetting. Complicity is a completed crime even if the genocide is thwarted, whereas aiding and abetting can only be charged if the genocide occurs. Furthermore, aiding and abetting can be predicated upon an omission—for example, a bank guard who could have prevented the robbery without any danger to himself but instead just watched it happen could be charged with aiding and abetting the robbery by virtue of his inaction. However, a person who failed to act—and had

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<sup>25</sup> Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law* 757, 783 (2001) (a *jus cogens* norm is one from which no derogation is permitted).

no duty to act—cannot be charged with complicity in genocide. See Judgment, *Akayesu* (ICTR-96-4T0, at § 548, Trial Chamber I, Sept. 2, 1998).<sup>26</sup>

104. Although a person charged with genocide must be shown to have a specific intent to harm a national, ethnical, racial or religious group as such, this requirement does not apply to a person charged with complicity in genocide. If it did apply to such a person, then he would be a participant in the genocide and not merely complicit in it. Then there would be no separate crime of Complicity in Genocide—that crime would simply fold into the general crime of conspiracy. Yet there is a universally recognized distinction between committing genocide and being complicit in it. As previous examples have shown, a person can be complicit in a crime by selling weapons to the perpetrator even if he sincerely hoped that the perpetrator would not fire the weapons. Thus the seller may have had the specific intent to sell the arms at a profit without having a specific intent that anyone be killed.

105. International courts and tribunals have uniformly held that the requirement of *mens rea* is met if a person charged with complicity knew that the perpetrators had the specific intent to commit genocide. In other words, if a person provides the means to commit a crime while having knowledge that the means would most likely be used to commit the crime, then the complicity requirement of *mens rea* (or *scienter*) is satisfied. See *Krstic Case*, Judgment on Appeal, IT-98-33-A19, at 49-50 (April 2004).

106. Article 30 of the Rome Statute of the International Criminal Court defines “knowledge” as follows: “[K]nowledge’ means awareness that a circumstance exists or a consequence will

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<sup>26</sup> As one commentator concludes, “‘complicity’ is to nominate a crime in substance, while . . . ‘aiding and abetting’ is to prescribe a mode of attributing responsibility for the crime substantively nominated.” Chile Eboe-Osuji, ‘*Complicity in Genocide*’ versus ‘*Aiding and Abetting Genocide*’, 3 J. Int’l Criminal Justice 56 (2005).

occur in the ordinary course of events.”

107. In sum, MPRI is liable for complicity in genocide if it knew, or reasonably and commonsensically should have known, that the Croatian Armed Forces had the specific intent to commit genocide. With the details spelled out in this Complaint taken as a whole and considering their immense scale, there is no alternative explanation for the illation that MPRI knew its client Croatia was intent upon a campaign of genocide.

108. Without MPRI, the genocide could not have taken place, for reasons previously stated. MPRI provided the artillery and other material and provided a successful battle plan based on Operation Desert Storm that updated the AirLand Battle Doctrine. In short, MPRI’s role was both necessary and sufficient in enabling the genocide in Krajina.

109. By providing the means for committing genocide with knowledge that Croatia had the specific intent to commit it, MPRI’s liability for complicity in genocide is established.

### **CONCLUSION**

110. In light of the foregoing considerations, Plaintiffs request damages in a per capita lump sum of \$25,000. This sum represents the injuries across the board for which MPRI was the sine qua non cause.

111. Damages at \$25,000 per capita for 200,000 victims of Genocide amount to a total of \$5 Billion. The equivalent amount in today’s dollars, figured at 15 years at 5% interest compounded annually, is \$10.4 Billion.

WHEREFORE, Plaintiffs request this Court to award them damages against L-3 Communications Corp. in the amount of \$10.4 Billion, plus any other relief as the Court deems just and proper.

Respectfully submitted,

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