

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-05-88-T
Date: 10 June 2010
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. John Hocking

Judgement of: 10 June 2010

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVCANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC REDACTED

**JUDGEMENT
Volume I**

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A handwritten signature in black ink, appearing to be 'M. Gvero'.

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I. INTRODUCTION

1. This case relates to the tragic events which unfolded in July of 1995, in the wake of the fall of the Srebrenica and Žepa enclaves. The setting for the alleged crimes is thus both notorious and nefarious. In early July, these two United Nations protected areas, established as havens for civilians caught up in the calamity of war, were the subject of intense military assault by Bosnian Serb Forces¹. The United Nations protection forces in both places were disabled and rendered powerless. In Srebrenica, the terrified Bosnian Muslim population fled to the nearby town of Potočari. There, in the face of a catastrophic humanitarian situation, the women, children and the elderly were ultimately loaded onto packed buses and transported away from their homes in Eastern Bosnia. For a large proportion of the male population, who were separated, captured or had surrendered, a cataclysmic fate awaited them. Thousands of them were detained in horrific conditions and subsequently summarily executed. In Žepa, a series of military attacks also led to the removal of the entire Bosnian Muslim population by transport or by flight. The physical, emotional and sociological scars of these appalling acts remain and the intense legal, psychological and historical analysis of what happened continues, as it must.

2. While the crimes committed in and around Srebrenica in July 1995 form the basis for this case, this trial was ultimately about seven men —**Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Milić, Milan Gvero** and **Vinko Pandurević**— and their alleged individual criminal responsibility. In this context, the Trial Chamber had a defined and limited, though significant, role to play with respect to these events. Its sole function was to consider the evidence before it, with a view to a determination as to the criminal responsibility, if any, of these seven men accused of specific crimes as alleged by the Prosecution. This judgement sets out the results of the Trial Chamber's assessment of the evidence, its findings and the reasons for them, in this precise and defined context.

3. In 1995, each of the Accused occupied specific positions within the army or police. **Ljubiša Beara** was the Chief of Security of the VRS Main Staff and held the rank of Colonel. **Vujadin Popović** was the Chief of Security of the VRS Drina Corps and held the rank of Lieutenant-Colonel. **Drago Nikolić** was Chief of Security of the Zvornik Brigade of the VRS Drina Corps and held the rank of 2nd Lieutenant. **Ljubomir Borovčanin** was Deputy Commander of the Republika Srpska MUP Special Police Brigade. **Vinko Pandurević** was Commander of the Zvornik Brigade of the VRS Drina Corps and held the rank of Lieutenant Colonel. For their alleged acts and conduct, these five men - **Beara, Popović, Nikolić, Borovčanin** and **Pandurević** are accused of genocide

¹ For the definition of the term "Bosnian Serb Forces", see para. 102.

(count 1); conspiracy to commit genocide (count 2); extermination, a crime against humanity (count 3); murder, a crime against humanity and a violation of the laws or customs of war (counts 4 and 5); persecution, a crime against humanity (count 6); inhumane acts (forcible transfer), a crime against humanity (count 7) and deportation, a crime against humanity (count 8).

4. In 1995, **Radivoje Miletić** was the Chief of Operations and Training of the VRS Main Staff and held the rank of General. **Milan Gvero** was Assistant Commander for Morale, Legal and Religious Affairs of the VRS Main Staff and also held the rank of General. **Miletić** and **Gvero** are alleged to be responsible for murder, a crime against humanity and a violation of the laws or customs of war (counts 4 and 5); persecution, a crime against humanity (count 6); inhumane acts (forcible transfer), a crime against humanity (count 7) and deportation, a crime against humanity (count 8).

5. The Trial Chamber was presented with a vast amount of evidence as to what happened before, during and after the attacks on Srebrenica and Žepa in July 1995, and as to the participation and roles of the individual Accused. The Trial Chamber heard 315 witnesses; a total of 34,915 transcript pages records what was heard in court. Of the thousands of documents presented in this case, 5,383 exhibits totalling 87,392 pages were admitted into evidence.

6. This Judgement is divided into two Volumes. Volume I contains considerations regarding the evidence, the facts and legal findings. Volume II contains individual criminal responsibility, cumulative convictions, sentencing, Judge Kwon's dissenting and separate opinions, Judge Prost's separate opinion and annexes.

II. CONSIDERATIONS REGARDING THE EVIDENCE

A. General Evidentiary Principles

7. The Trial Chamber has received direct and circumstantial evidence, original and hearsay evidence, primary and secondary evidence, all in oral and documentary form, facts agreed upon by the Parties or adjudicated before this Tribunal, as well as written statements in lieu of oral testimony pursuant to Rules 92 *bis*, 92 *ter*, and 92 *quater* of the Rules of Procedure and Evidence of the Tribunal ("Rules").

8. The Trial Chamber has assessed all the evidence adduced at trial in light of the totality of the trial record and in accordance with the Statute and the Rules. As provided for in Rule 89(B), where no guidance was given by the Rules, the evidence was evaluated in the way that best favours a fair determination of the case and that is consistent with the spirit of the Statute and the general principles of law, including the principle of *in dubio pro reo*.²

9. Article 21(3) of the Statute requires that the Accused shall be presumed innocent until proved guilty. The Prosecution bears the burden of establishing each element of the crime and of the mode of liability alleged against the Accused, as well as any fact which is indispensable for conviction beyond a reasonable doubt.³ The Trial Chamber has determined whether the ultimate weight of the admitted evidence is sufficient to establish beyond reasonable doubt the elements of the crimes charged in the Indictment, and ultimately, the responsibility of the Accused. When the Prosecution relied upon proof of the state of mind of an Accused by inference, the Trial Chamber considered whether that inference was the only reasonable inference that could be made based on that evidence.⁴ Where it was not, it found that the Prosecution had not proved its case. The Trial Chamber notes that it has not always reiterated the phrase "beyond reasonable doubt" to its findings, notwithstanding the fact that this standard of proof was applied throughout the Judgement.

10. In its evaluation of *viva voce* witnesses, the Trial Chamber had regard to, *inter alia*, the demeanour, conduct, and character of witnesses, as well as to the passage of time since the events charged in the Indictment and its possible impact on the reliability of the evidence.

11. Hearsay evidence is admissible under the case law of the Tribunal. The weight to be attributed to that evidence depends upon the infinitely variable circumstances which surround

² According to the principle of *in dubio pro reo*, any doubt as to the evidence must be resolved in favour of the accused.

³ *Martić* Appeal Judgement, para. 55; *Ntagerura et al.* Appeal Judgement, paras. 174–175; *Halilović* Appeal Judgement, para. 125.

⁴ *Vasiljević* Appeal Judgement, para. 120.

hearsay evidence and as such, the Trial Chamber assessed hearsay evidence on a case-by-case basis.⁵

12. Circumstantial evidence is evidence of circumstances surrounding an event or an offence from which a fact at issue may be reasonably inferred.⁶ Circumstantial evidence may be necessary in order to establish an alleged fact, particularly in criminal trials such as those before this Tribunal, where there are often no eye-witnesses or conclusive documents relating to a particular alleged fact. While individual items of circumstantial evidence may, by themselves, be insufficient to establish a fact, their cumulative effect may have a decisive role.⁷ Circumstantial evidence was not considered to be of less probative value than direct evidence.⁸ As with direct evidence, where an inference is drawn from circumstantial evidence to establish a fact on which a conviction relies, that inference must be the only reasonable one that could be drawn from the evidence presented.⁹

13. With regard to all witnesses, the Trial Chamber has assessed the probability and the consistency of their evidence, as well as the circumstances of the case and corroboration from other evidence. In some cases, only one witness has testified on a particular event. Although the Appeals Chamber has held that the testimony of a single witness on a material fact does not, as a matter of law, require corroboration,¹⁰ in such situations, the Trial Chamber has carefully scrutinised the evidence before relying upon it to a decisive extent.

14. Where the authenticity of a document was challenged, the Trial Chamber considered various factors in assessing it, including the evidence relating to its source, chain of custody, evidence of handwriting experts, and other evidence relating to the document. The Trial Chamber did not consider unsigned, undated or unstamped documents to be necessarily void of authenticity.¹¹ Even when the Trial Chamber was satisfied with the authenticity of a particular document, it did not automatically accept the statements contained therein to be an accurate portrayal of the facts. The Trial Chamber evaluated this evidence within the context of the trial record as a whole.

15. The right of an accused to a reasoned opinion, as set forth in Article 23(2) of the Statute and Rule 98 *ter*(C), does not mean that the Trial Chamber is required to discuss every factual assertion

⁵ See *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 Feb 1999, para. 15.

⁶ *Čelebići* Appeal Judgement, para. 458.

⁷ *Orić* Trial Judgement, para. 21; *Brdanin* Trial Judgement, para. 35; *Prosecutor v. Martić*, IT-95-11-T, Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, 19 Jan 2006, Annex A, para. 10.

⁸ *Orić* Trial Judgement, para. 21; *Brdanin* Trial Judgement, para. 35.

⁹ *Stakić* Appeal Judgement, para. 219.

¹⁰ *Čelebići* Appeal Judgement, para. 506; *Aleksovski* Appeal Judgement, para. 62. Whether evidence admitted pursuant to Rule 92 *quater* of the Rules requires corroboration is discussed below at Chapter II, Section B.(e).

¹¹ Concerning the specific issue of the weight attributed to type-signed documents, in relation to the Accused *Miletić*, see *infra* para. 1638.

in the Indictment or to explain every detail of its assessment of the evidence presented to it.¹² The Trial Chamber notes that even where it has not specifically mentioned a particular piece of evidence in the Judgement, all relevant evidence has been considered.¹³

16. The Trial Chamber and the Parties conducted an on-site visit to various locations in eastern BiH between 2 and 7 October 2006. The purpose of this visit was to view some of the sites which are relevant to the case before the Trial Chamber.¹⁴ The Trial Chamber did not take or admit any evidence during the site visit.¹⁵

B. Specific Evidentiary Considerations

17. Article 21(4)(g) of the Statute provides that an accused shall not be compelled to testify. No adverse inferences were drawn against the Accused who exercised their right to remain silent.

(a) Testimony and Statements of Accused

(i) Preliminary Issues

a. Borovčanin Statement

18. On 25 October 2007, the Trial Chamber admitted into evidence the statement given by **Borovčanin** to the Prosecution in 2002 when he was a suspect ("Borovčanin Statement").¹⁶ The Trial Chamber found that the procedural safeguards contained in Rules 42 and 43 were afforded to **Borovčanin** during his interview with the Prosecution, and that the Borovčanin Statement could be used against him.¹⁷ The Trial Chamber, by majority, also admitted the Borovčanin Statement against the co-Accused, but for purposes other than proving their acts and conduct.¹⁸ On 14 December 2007, the Appeals Chamber reversed the Trial Chamber's finding regarding the limited use of the Borovčanin Statement against the co-Accused, and referred the matter back to the Trial Chamber.¹⁹ On 18 January 2008, the Trial Chamber assessed that evidence in line with the

¹² See *Kvočka et al.* Appeal Judgement, para. 23.

¹³ See *ibid.*; *Krajišnik* Appeal Judgement, para. 141.

¹⁴ T. 2425–2431 (16 Oct 2006).

¹⁵ See T. 2426 (16 Oct 2006).

¹⁶ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007 ("Borovčanin Statement Decision"); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002".

¹⁷ Borovčanin Statement Decision, paras. 29–39.

¹⁸ *Ibid.*, paras. 54–80.

¹⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.1, Decision on Appeals against Decision Admitting Material Related to Borovčanin's Questioning, 14 Dec 2008 (referring, *inter alia*, to *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 Nov 2007).

Appeals Chamber's findings, and ruled that the Borovčanin Statement could be used against the co-Accused for all purposes.²⁰

b. Evidence given by Pandurević

19. The Rules impose a burden on the parties, when cross-examining, to put their case to the witness.²¹ **Pandurević** argues that, based on Rule 90(H)(ii), the Prosecution was obliged to put all aspects of its case to him when he testified.²² He submits further that where the Prosecution failed to do so, no conclusion adverse to **Pandurević** can be drawn.²³ **Pandurević** also argues that the Prosecution should have cross-examined him on all aspects of his case. He submits that where there is evidence that conflicts with his case which the Prosecution did not put to him, no inference can be drawn from that evidence if it is adverse to him.²⁴

20. Given the complexity and voluminous nature of this case, the advanced stage of the proceedings when **Pandurević** testified, the fact that **Pandurević** was aware of the context of the Prosecution's questions and case as he had received sufficient notice of the charges against him and the material facts supporting them, and that he had been present during the trial proceedings,²⁵ the Trial Chamber considers that the Prosecution was not obliged to put every aspect of its case to **Pandurević** when cross-examining him.²⁶

21. Furthermore, the Prosecution was not obliged to cross-examine **Pandurević** on every aspect of his case.²⁷ The Trial Chamber stresses that it is not obliged, as suggested by **Pandurević**, to accept as credible those parts of **Pandurević**'s testimony which were not specifically challenged by the Prosecution in cross-examination.²⁸ As is the case for any witness, the Trial Chamber is required to determine the overall credibility of an accused testifying in his own trial and then assess the probative value of the accused's evidence in the context of the totality of the evidence.²⁹

²⁰ T. 19992–19993 (18 Jan 2008).

²¹ Rule 90 (H)(ii).

²² Pandurević Closing Arguments, T. 34883–34884 (15 Sept 2009).

²³ *Ibid.*

²⁴ Pandurević Closing Arguments, T. 34758–34764 (14 Sept 2009), T. 34883–34884 (15 Sept 2009). *See also* Prosecution Closing Arguments, T. 34840–34841 (15 Sept 2009).

²⁵ *See Krajišnik Appeal Judgement*, para. 370.

²⁶ *Krajišnik Appeal Judgement*, para. 368–370 (referring, *inter alia*, to *Browne v. Dunn*, (1893) 6 R. 1894, 67).

²⁷ *Ibid.*, para. 368.

²⁸ *See Krajišnik Appeal Judgement*, para. 371; *Nahimana et al. Appeal Judgement*, paras. 820, 824. The Appeals Chamber stated that “the fact that the Prosecutor did not cross-examine Witness Bemeriki on some aspects of her testimony, or that the Judges did not put questions to her on certain points cannot imply that the Trial Chamber should have accepted as credible certain aspects of her testimony.” *Ibid.*, para. 820.

²⁹ *See Karera Appeal Judgement*, paras. 19, 27–29,

(ii) Credibility of Pandurević

22. **Pandurević** gave extensive evidence over a period of 22 days and was tested in cross-examination by the Prosecution and four of his co-Accused.³⁰ The Trial Chamber has found many parts of his evidence credible and has relied upon it to establish facts or to raise reasonable doubt. These particular findings are outlined in the course of the Judgement.

23. However, the Trial Chamber has also found that in some instances, **Pandurević**, in an effort to shield himself from responsibility, has attempted to shift the timing of certain events or to deny particular facts. The Trial Chamber has taken these instances into consideration in making specific findings on the issues to which they relate and in assessing **Pandurević**'s overall credibility. The Trial Chamber, however, has drawn no other inferences as to **Pandurević**'s criminal responsibility from these instances where his evidence was not accepted or was found to lack credibility.

(iii) Statements made by Accused pursuant to Rule 84 bis

24. **Gvero** and **Nikolić** gave statements pursuant to Rule 84 bis. **Gvero** made a statement at the start and at the conclusion of his case.³¹ **Nikolić** gave a statement at the conclusion of his case.³²

25. The purpose of Rule 84 bis is to give an accused the opportunity to be heard by the Trial Chamber without having to appear as a witness.³³ A statement by the Accused under Rule 84 bis is a supplementary right, which can be exercised if the Accused so wishes, notwithstanding other rights under the Statute and the Rules.³⁴ The probative value of statements given under Rule 84 bis is decided by the Trial Chamber.³⁵ This Trial Chamber has considered these statements as submissions.

(b) Evidence of Persons Convicted by the Tribunal and Accomplice Evidence

26. The Trial Chamber heard from several witnesses who can be categorised as "accomplice witnesses" in so far as they were involved in the criminal events which underpin this Indictment.

³⁰ T. 30661 (27 Jan 2009)–32469 (3 Mar 2009). **Pandurević** was cross-examined by **Popović**, **Nikolić**, **Beara**, and **Borovčanin**.

³¹ Gvero Opening Statement, T. 610–617 (23 Aug 2006); Gvero Statement, T. 34899–34911 (15 Sept 2009). See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.15, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision regarding Supplement to the Accused Prlić's Rule 84 bis Statement, 20 Apr 2009, paras. 16–17.

³² Nikolić Statement, T. 34896–34899 (15 Sept 2009). See *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.15, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision regarding Supplement to the Accused Prlić's Rule 84 bis Statement, 20 Apr 2009, paras. 16–17.

³³ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.15, Decision on Jadranko Prlić's Interlocutory Appeal against the Decision regarding Supplement to the Accused Prlić's Rule 84 bis Statement, 20 Apr 2009, para. 13 (referring to the Trial Chamber's finding and leaving it unturned).

³⁴ *Ibid.*

³⁵ See also *Ibid.*, para. 28.

While some have been prosecuted for their participation, others have not. With all such witnesses the Trial Chamber has examined their evidence with great caution.³⁶ The evidence of these witnesses is considered throughout the judgement as and when relevant. However, there are particular accomplice witnesses whose testimony is of special significance and whose credibility has been vociferously challenged by the Accused. As a result, in this section, the Trial Chamber will provide a general assessment as to the credibility of these particular witnesses.

27. However, there should be no misinterpretation of the Trial Chamber's intent or analytical approach on credibility. In a trial of this complexity, with the number of factual issues and the extensive testimony of some witnesses, it is impossible to rest any determination on an assessment of the overall credibility of any particular witness. A witness may be generally credible and reliable and yet provide inaccurate or untruthful evidence on a particular point. Similarly, a witness may be assessed to be generally less than candid or truthful and yet still provide honest and reliable testimony on specific issues. It may be as well that the evidence of a witness is corroborated on specific points. Thus, in addition to its general determinations on credibility, the Trial Chamber has also assessed the evidence of these witnesses in the course of the Judgement on points of particular importance in the case.

a. [REDACTED]

28. [REDACTED]³⁷

29. [REDACTED]^{38 39}

30. [REDACTED]^{40 41 42 43}

³⁶ In relation to the evidence of these witnesses, the Trial Chamber was guided by the Appeals Chamber in *Krajišnik* which held that "[...] it is well established in the jurisprudence of both *ad hoc* Tribunals that nothing prohibits a Trial Chamber from relying on evidence given by a convicted person, including evidence of a partner in crime of the person being tried before the Trial Chamber. Indeed, accomplice evidence, and, more broadly, evidence of witnesses who might have motives or incentives to implicate the accused is not *per se* unreliable, especially where such a witness may be thoroughly cross-examined; therefore, reliance upon this evidence does not, as such, constitute a legal error. However, 'considering that accomplice witnesses may have motives or incentives to implicate the accused person before the Tribunal, a Chamber, when weighing the probative value of such evidence, is bound to carefully consider the totality of the circumstances in which it was tendered.' As a corollary, a Trial Chamber should at least briefly explain why it accepted the evidence of witnesses who may have had motives or incentives to implicate the accused; in this way, a Trial Chamber shows its cautious assessment of this evidence." *Krajišnik* Appeal Judgement, para. 146 (footnotes omitted).

³⁷ [REDACTED]

³⁸ [REDACTED]

³⁹ [REDACTED]

⁴⁰ [REDACTED]

⁴¹ [REDACTED]

31. [REDACTED]
32. [REDACTED]^{44 45 46}
33. [REDACTED]^{47 48}
34. [REDACTED]^{49 50 51}
35. [REDACTED]
36. [REDACTED]^{52 53}
37. [REDACTED]^{54 55}
38. [REDACTED]⁵⁶
39. [REDACTED]^{57 58}
40. [REDACTED]⁵⁹
41. [REDACTED]^{60 61 62 63}

-
- 42 [REDACTED]
 - 43 [REDACTED]
 - 44 [REDACTED]
 - 45 [REDACTED]
 - 46 [REDACTED]
 - 47 [REDACTED]
 - 48 [REDACTED]
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 - 55 [REDACTED]
 - 56 [REDACTED]
 - 57 [REDACTED]
 - 58 [REDACTED]
 - 59 [REDACTED]
 - 60 [REDACTED]
 - 61 [REDACTED]

42. [REDACTED]

43. [REDACTED]

44. [REDACTED]^{64 65}

45. [REDACTED]⁶⁶

46. [REDACTED]

47. [REDACTED]

b. Momir Nikolić

48. Momir Nikolić pled guilty to persecution as a crime against humanity for his involvement in the events after the fall of Srebrenica on 7 May 2003. He received a sentence of 27 years,⁶⁷ which was subsequently reduced on appeal to 20 years.⁶⁸

49. During the course of his plea negotiations Momir Nikolić provided false information to the Prosecution in his efforts to secure a plea agreement.⁶⁹ While the evidence was essentially self-incriminatory and he quickly recanted, it is clearly an incident which raises concerns as to credibility. Momir Nikolić appeared as a Chamber witness in this case after the Prosecution withdrew him as a witness indicating he had become adverse to its case and acknowledging concerns about his credibility.⁷⁰ The Prosecution in its Final Brief submits that his evidence should be relied on only where it is corroborated.⁷¹ Various Accused have made submissions challenging the credibility of Momir Nikolić generally and with respect to specific aspects of his testimony. They have pointed, *inter alia*, to his false statement to the Prosecution in plea negotiations and purported examples of denial of responsibility and lack of candour in his evidence in support of

⁶² [REDACTED]

⁶³ [REDACTED]

⁶⁴ [REDACTED]

⁶⁵ [REDACTED]

⁶⁶ [REDACTED]

⁶⁷ *Nikolić Sentencing Judgement*.

⁶⁸ *Nikolić Sentencing Appeal Judgement*.

⁶⁹ Momir Nikolić, T. 33090–33098 (23 Apr 2009); Ex. P04485, “Tab B to the ‘Joint motion for consideration of plea agreement between Momir Nikolić and the Office of the Prosecutor’ signed by Mr. Momir Nikolić, his counsel Veselin Londrović, co-counsel Stefan Kirsch and the OTP STA Peter McCloskey, 6 May 2003”.

⁷⁰ See T. 17398–17399 (2 Nov 2007) (Prosecution withdrawing Momir Nikolić as a witness); Order to Summon Momir Nikolić, 10 March 2009.

⁷¹ Prosecution Final Brief, para. 502.

their claims.⁷² Other Chambers, both Trial and Appellate, have also had occasion to assess and comment on the credibility of Momir Nikolić with mixed results.⁷³

50. While having noted the submissions made and the views expressed by other Chambers, in terms of Momir Nikolić's testimony in this case, it is the responsibility of this Trial Chamber to make its own individual assessment and determination as to his credibility and the weight to be attributed to his evidence. In so doing, the Trial Chamber has carefully considered his evidence in the totality of the circumstances in which it was given.

51. The Trial Chamber begins by noting that Momir Nikolić appeared before this Chamber having acknowledged his guilt in a criminal process and having been sentenced to incarceration.⁷⁴ This evidences at least a partial acknowledgment of his own culpability. Nonetheless, before this Trial Chamber Momir Nikolić submitted a supplementary statement in response to a Chamber request in which, *inter alia*, he attempted to qualify the nature of his participation in events and his overall level of responsibility.⁷⁵ Similarly, during the course of his testimony, there were several

⁷² See, e.g., Popović Final Brief, paras. 289–305 (submitting that the evidence provided by Momir Nikolić is “less than credible” and referring to specific aspects of his testimony); Beara Final Brief, paras. 121–123 (questioning Momir Nikolić's credibility and stating, *inter alia*, that “[i]n order to reach a plea agreement Momir Nikolić even placed himself at the imagined meeting between Deronjić and Beara even though Mr. Deronjić who was the writer of this tale did not envision a role for Mr. Nikolić”), paras. 156–166 (referring to specific aspects of Momir Nikolić's testimony); Nikolić Final Brief, paras. 47–48 (submitting that “the fact that [Momir Nikolić] was withdrawn by the Prosecution and the reasons for his withdrawal, are revealing” and referring to the fact that the Prosecution “considered him to be adverse and not credible”), paras. 589–646 (“The Lack of Credibility of Momir Nikolić”, where reference is made to specific aspects of his testimony); Borovčanin Final Brief, paras. 72, 92–102 (referring to specific aspects of Momir Nikolić's testimony including the evacuation in Potočari during 12 and 13 July, in relation to which Borovčanin submits, in para. 97, that “Momir Nikolić has, of course, minimised his own role in and authority over the evacuation process, re-characterising his ‘co-ordination’ of various units as mere assistance. This re-characterisation is motivated by evident self-interest for a reduction in sentence, and is belied by the evidence of international witnesses in Potočari”), paras. 196–203 (referring to Momir Nikolić's confession, in 2003, that he had ordered the executions at Kravica Warehouse, which he later recanted. Borovčanin submits that “[f]alsely confessing to such a massive crime in order to secure a better deal for himself makes no sense” and further argues that the confession is supported by “overwhelming circumstantial evidence” that Momir Nikolić was involved in the Kravica Warehouse executions); Miletić Final Brief, paras. 229, 420 (submitting that the credibility of Momir Nikolić's testimony is limited and referring to specific aspects of his testimony); Pandurević Final Brief, para. 540 (submitting that Momir Nikolić is a “witness with serious credibility problems. So much so, that the prosecution abandoned him as being incapable of belief.”).

⁷³ The Trial Chamber which sentenced Momir Nikolić was strongly critical of him, finding that his testimony was evasive in several instances and that he was not fully forthcoming. *Nikolić Sentencing Judgement*, para. 156. However the Appeals Chamber which reviewed these comments in the context of assessing mitigation through cooperation found that the Trial Chamber had failed to provide a reasoned basis for its conclusions in this respect and had thus committed an error. *Nikolić Sentencing Appeal Judgement*, paras. 98–103. In the trial of *Blagojević and Jokić*, Momir Nikolić testified after entering into a plea agreement but prior to sentencing. In these circumstances and given that he was an accomplice, the Trial Chamber exercised caution in assessing his evidence, accepting it in some instances and rejecting it in others. See *Blagojević and Jokić Trial Judgement*, paras. 212, 262 (where the Trial Chamber accepts Momir Nikolić's evidence because of its self-incriminatory nature), para. 472 (where the Trial Chamber does not accept uncorroborated evidence by Momir Nikolić on matters that bear directly on Blagojević's knowledge). See also *Blagojević and Jokić Appeal Judgement*, paras. 80–83 (holding that it was not unreasonable for the Trial Chamber to accept certain parts of Momir Nikolić's evidence, and to reject others).

⁷⁴ The Trial Chamber notes that the situation is distinct from his testimony in *Blagojević and Jokić* wherein he had entered a plea of guilty but had yet to be sentenced.

⁷⁵ Ex. C00002, “Supplementary Statement by Momir Nikolić, 16 April 2009”.

instances where Momir Nikolić attempted to downplay his role and responsibility, even on one occasion denying action on his part which is established by other evidence before the Trial Chamber.⁷⁶ These considerations, as well as his false statement to the Prosecution during plea negotiations, have led the Trial Chamber to adopt a very cautious and careful approach when considering the evidence of Momir Nikolić.

52. At the same time however, the supplementary statement submitted and the instances where he qualified his role are not related to any of the critical aspects of his evidence and are not of relevance to this case. In fact, his description of those events has remained quite consistent since the time of his plea in May 2003. In this case, he adhered to the key portions of his testimony despite extensive cross-examination and challenge.⁷⁷ Further and importantly, in some parts, the evidence which he gave was as incriminatory of him as it was of others.⁷⁸ Given his reluctance to openly acknowledge full responsibility, this adds to the credibility of those parts of his evidence.

53. The Trial Chamber also had the benefit of seeing and hearing Momir Nikolić, assessing his demeanour and the nature of his responses to questions from the Chamber and during cross-examination. Having considered all of these factors cumulatively, the Trial Chamber is of the view that his evidence has probative value and merits consideration where relevant; however it has exercised caution in attributing weight to it. In particular, on issues of significance it has considered his credibility on each point individually, taking into account various factors including the specific context and nature of the evidence and whether there is any corroboration. Given the number and variety of circumstances which affect the credibility of Momir Nikolić's evidence, the Trial Chamber considers this to be the most prudent approach to his evidence, and the results and reasons for its conclusion on credibility are therefore to be found in the course of the judgement.

⁷⁶ See Momir Nikolić, T. 32925–32930 (21 Apr 2009), T. 33012, 33028–33029, 33035–33039 (22 Apr 2009), T. 33170 (24 Apr 2009). On one occasion during his testimony, Momir Nikolić was questioned by **Popović** about handwritten annotations concerning POWs visible on Ex. 1D00382, "Order for active Combat operations from Command of the Drina Corps signed by Major General Milenko Živanović, 2 July 1995", para. 10. According to the testimony of Dragoslav Trišić, these annotations were made by Momir Nikolić. Dragoslav Trišić, T. 27059–27104 (20 Oct 2008), 27107–27109 (21 Oct 2008). Momir Nikolić denied this, claiming that he had never seen this order before, and added that he was not even in a position to change the content of an order signed by Živanović. Momir Nikolić, T. 33078–33080 (23 Apr 2009). During cross-examination by **Beara**, when shown the hard copy of the original document contained in Ex. 1D00382, Momir Nikolić reiterated that it was not his handwriting. When shown a related document, Ex. P03025, "Order for active combat operations from Command of the Bratunac Brigade to Commands of the 1st, 2nd, 3rd and 4th Battalions signed by Blagojević, 5 July 1995", also bearing some handwritten notes, Momir Nikolić testified that these annotations also did not belong to him. *Ibid.*, T. 33199–33200 (24 Apr 2009).

⁷⁷ See, e.g., Momir Nikolić, T. 32937–32939, 32944, 32960–32962 (21 Apr 2009), T. 33178–33180 (24 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", para. 10.

⁷⁸ See, e.g., Momir Nikolić, T. 32904–32905, 32918, 32920–32922, 32937–32939 (21 Apr 2009).

(c) Identification Evidence

54. In the course of these proceedings, issues have arisen as to the identification of the Accused and their subordinates—both visually and orally—at different places and times and in different images and recordings. Like all elements of a crime, the identification of the Accused must be proved by the Prosecution beyond reasonable doubt. Where questions relating to the identity of the Accused arise, they must be determined in light of all the relevant available evidence:

Even though each visual identification and each other relevant piece of evidence, viewed in isolation, may not be sufficient to satisfy the obligation of proof on the Prosecution, it is the cumulative effect of the evidence, *i.e.* the totality of the evidence bearing on the identification of an Accused, which must be weighed to determine whether the Prosecution has proved beyond reasonable doubt that each Accused is a perpetrator as alleged.⁷⁹

55. The Trial Chamber recognises that identification evidence can be particularly liable to error and that, even where a witness appears to be honest, the Trial Chamber must be convinced that his or her evidence is objectively reliable before it will be sufficient to establish a positive identification.⁸⁰ In assessing identification evidence, the Trial Chamber has taken into account a number of relevant factors, including: the circumstances in which each witness claimed to have observed the Accused; the length of the observation; the familiarity of the witness with the Accused prior to the identification; and the description given by the witness of his or her identification of the Accused.⁸¹

(d) Alibi Evidence

56. Some of the Accused in these proceedings have relied on evidence of an alibi in the presentation of their case.⁸² The Trial Chamber recognises that an alibi is not strictly a “defence”⁸³ and that, beyond producing evidence likely to raise a reasonable doubt in the Prosecution’s case, an accused bears no burden of proof in relation to establishing an alibi.⁸⁴

57. Where alibi evidence has been raised by an Accused, the onus remains on the Prosecution to eliminate any reasonable possibility that the alibi is true.⁸⁵ The Prosecution must establish beyond reasonable doubt that, despite the alibi evidence, the facts alleged in the Indictment are nevertheless

⁷⁹ *Limaj et al.* Trial Judgement, para. 20, *Limaj et al.* Appeals Judgement, para. 153.

⁸⁰ *Kunarac* Trial Judgement, para. 561; *Vasiljević* Trial Judgement, para. 16.

⁸¹ *See Vasiljević* Trial Judgement, para. 16.

⁸² *Popović* Final Brief, paras. 483–528; *Beara* Final Brief, paras. 105–257.

⁸³ *Zigiranyirazo* Appeal Judgement, para. 17; *Čelebići* Appeal Judgement, para. 581; *See Lukić and Lukić* Trial Judgement, para. 23.

⁸⁴ *Musema* Appeal Judgement, para. 202.

⁸⁵ *Vasiljević* Trial Judgement, para. 15; *Limaj et al.* Appeal Judgement, para. 64.

true.⁸⁶ If, even in light of the evidence adduced by the Prosecution, the alibi remains “reasonably possibly true”, then the alibi “defence” must be successful.⁸⁷

58. In assessing whether the alibis pleaded by the Accused in this case were “reasonably possibly true”, the Trial Chamber has taken into account the cumulative effect of all relevant evidence adduced by both the Prosecution and the Defence. As with all issues bearing on the identity of an accused, it is the “totality” of the relevant evidence⁸⁸—including considerations of the honesty and reliability of witnesses and the quality of any identifications—which must be weighed when determining whether the Prosecution has eliminated any reasonable possibility that the alibi is true.

(e) Evidence pursuant to Rule 92 bis, ter, quater

59. Throughout the trial, both Parties have made extensive use of the possibility to tender written statements into evidence pursuant to Rule 92 bis, including the former Rule 92 bis(D), 92 ter, and 92 quater.⁸⁹

60. With regard to Rule 92 bis and 92 quater statements, the Trial Chamber recalls the *Galić* Appeals Chamber which held that “where the witness who made the statement is not called to give the accused an adequate and proper opportunity to challenge the statement and to question that witness, the evidence which the statement contains may lead to a conviction only if there is other

⁸⁶ *Vasiljević* Trial Judgement, para. 15; *Čelebići* Appeal Judgement, para. 581; *Musema* Appeal Judgement, paras. 200, 202; *Limaj et al.* Appeal Judgement, para. 64; *Niyitegeka* Appeal Judgement, para. 60.

⁸⁷ *Nahimana et al.* Appeal Judgement, para. 414; *Niyitegeka* Appeal Judgement, para. 61; *Musema* Appeal Judgement, paras. 205–206.

⁸⁸ See *Limaj et al.* Trial Judgement, para. 20.

⁸⁹ The Trial Chamber notes that Rules 92 ter and quater were introduced into the Rules on 13 September 2006, after the commencement of trial and after the first decision on the admission of written evidence in this case had been issued. See Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony pursuant to Rule 92 bis, 12 Sept 2006; Decision on Defence Motion for Certification to Appeal Decision Admitting Written Evidence pursuant to Rule 92 bis, 19 Oct 2006; Order Modifying 12 September 2006 Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony Pursuant to Rule 92 bis, 19 Oct 2006; Decision on Confidential Prosecution’s Motion for Leave to Convert two 92 bis Witnesses to Rule 92 ter, 13 Dec 2006; Decision on Confidential Prosecution’s Motion for Leave to Amend Witness List by Adding Eight Intercept Operators as 92 ter Witnesses and for Protective Measures, confidential, 17 Jan 2007; Decision on Motion to Convert *Viva Voce* Witnesses to Rule 92 ter Witnesses, 31 May 2007; Decision on Prosecution’s Motion to Add 18 Witnesses to its 65 ter List and Admit their Witness Statements Pursuant to Rule 92 bis, 29 Jan 2008; Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 quater, 21 Apr 2008; Decision on Nikolić and Beara Motions for Certification of the Rule 92 quater Decision, 19 May 2008; Decision on Beara’s and Nikolić’s Interlocutory Appeals against Trial Chamber’s Decision of 21 April 2008 Admitting 92 quater evidence, confidential, 18 Aug 2008; Decision on Beara’s Requests for Admission of Written Evidence in lieu of *Viva Voce* Testimony, 10 July 2008; Decision on Nikolić’s Motion Pursuant to Rule 92 bis, 28 July 2008; Decision on Borovčanin’s Motion for Admission of Written Evidence Pursuant to Rule 92 bis, 22 Sept 2008; Decision on Pandurević’s Motion for Admission of Written Evidence Pursuant to Rules 92 bis and 92 ter, 17 Dec 2008; Redacted Version of Decision on Motion on Behalf of Drago Nikolić Seeking Admission of Evidence Pursuant to Rule 92 quater, filed confidentially on 18 Dec 2008, 19 Feb 2009; Decision on Gvero’s Motion for the Admission of Evidence Pursuant to Rule 92 quater, 3 Feb 2009; Decision on General Miletić’s Motion to Admit a Written Statement Pursuant to Rule 92 bis, 9 June 2009.

evidence which corroborates the statement.”⁹⁰ Evidence which has not been cross-examined and goes to the acts and conduct of the Accused or is pivotal to the Prosecution case cannot be used as the sole basis by which to establish a conviction.⁹¹ When evaluating and weighing evidence admitted pursuant to Rule 92 *quater*, the Trial Chamber considered the impact of, in particular, the absence of the opportunity to cross-examine in the current trial.⁹²

(i) Use of Rule 92 *bis* Statements

61. The Appeals Chamber found that Rule 92 *bis* is not inconsistent with Article 21(4)(e) of the Statute which provides:

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

[...] to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him [...]⁹³

62. The Appeals Chamber noted in support of this finding the jurisprudence of the ECtHR in relation to similar protections found in the ECHR.⁹⁴ The ECtHR has found the admission of untested written statements consistent with those rights.⁹⁵ Explicitly, the case law of the ECtHR recognises the principle that a conviction based solely, or in a decisive manner, on witness evidence which the accused has had no opportunity to examine is incompatible with the fair trial rights enshrined in the Convention.⁹⁶ The Appeals Chamber applied a similar limitation with respect to 92 *bis* statements with reference to Article 21(4)(e) of the Statute finding that where evidence pivotal to an accused’s responsibility for particular crimes was based on a 92 *bis* statement, untested by

⁹⁰ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June 2002, fn. 34, referring to, for instance, *Solakov v. FYROM*, Judgement of 31 Oct 2001, para. 57: “In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial”. See also *Blagojević and Jokić* Appeal Judgement, paras. 316, 318.

⁹¹ *Prosecutor v. Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, 14 Sept 2006, para. 20 ; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 Nov 2007, para. 53.

⁹² See *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June 2002, fn. 34, referring to judgements of the European Court for Human Rights. See also, e.g., *Prosecutor v. Milošević*, Case No. IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92 *bis*, 21 Mar 2002, para. 7; *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals Against Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence, 23 Nov 2007, in particular, paras. 50–61.

⁹³ *Prosecutor v. Stanislav Galić*, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June 2002, fn. 34.

⁹⁴ ECHR, Art. 6(3)(d)

⁹⁵ *Isgro v. Italy*, Judgement, 19 Feb 1991.

⁹⁶ *Bocos-Cuesta v. The Netherlands*, Judgement, 10 Feb 2006, paras. 67–70; *Solakov v. FYOM*, Judgement, 31 Jan 2002, para. 57; *Lucà v. Italy*, Judgement, 27 Feb 2001, paras. 38–40; *Isgro v. Italy*, Judgement, 19 Feb 1991, para. 34.

cross-examination, the convictions for the crimes could not stand⁹⁷ unless the evidence had been corroborated.⁹⁸

63. The Trial Chamber, by majority, Judge Kwon dissenting,⁹⁹ finds that the application of this jurisprudence must be carefully considered in the context of the particular crimes for which this Tribunal has jurisdiction and the nature of the allegations in the specific case. Persons tried before this Tribunal are accused of, and ultimately acquitted of or convicted for, crimes against humanity, war crimes or genocide. As in this instance, in many cases before this Tribunal, the underlying acts which form the basis for a count in an indictment are multiple in nature, often with several layers, such that a finding with respect to one act will not form the basis for conviction of the Accused. Viewed in that context, situations where evidence adduced pursuant to Rule 92 *bis* constitutes the sole or decisive basis for a conviction for these crimes will be rare before this Tribunal, particularly as Rule 92 *bis* precludes the introduction of statements which go to the acts and conduct of an accused.

(f) Intercepted Communications

64. On 7 December 2007, the Trial Chamber admitted 213 individual intercepts.¹⁰⁰ The Trial Chamber was satisfied that the Prosecution had demonstrated that the intercepts fulfilled the Rule 89(C) relevance requirement.¹⁰¹ The Trial Chamber then examined whether, “based on the totality of the evidence, a reasonable trier of fact could find the intercepts to be what the Prosecution purports them to be—a contemporaneous record of intercepted VRS communications.”¹⁰² The Trial Chamber considered the testimony of several witnesses relating to the intercepts, such as intercept operators, an expert in radio relay communications,¹⁰³ and a Prosecution analyst.¹⁰⁴ It considered all challenges made by the Defence, including the theory that the intercepts had been fabricated, evidence relating to the chain of custody, and the general lack of audio recordings. In sum, the Trial Chamber concluded that the Prosecution had established that the intercepts as a whole were *prima*

⁹⁷ See *Martić* Appeal Judgement, para. 193, fn. 486; *Prlić*, Decision on Appeals against Decision Admitting Transcript of Jandranko Prlić’s questioning into Evidence, 23 Nov 2007, para. 53.

⁹⁸ *Prosecutor v. Stanislav Galić*, Decision on Interlocutory Appeal Concerning Rule 92 *bis*(C), 7 June 2002, fn. 34.

⁹⁹ See Judge Kwon’s Dissenting Opinion, *infra*, paras. 40-46.

¹⁰⁰ Decision on Admissibility of Intercepted Communications, 7 Dec 2007 (“Intercept Decision”), paras. 3, 79. Accompanying documentation in the form of photocopies of the relevant portions of the original BCS handwritten notebooks, English translations thereof, printouts of the original BCS computer transcriptions from the handwritten notebooks, and English translations of the transcriptions, as well as, in some instances, audiotape recordings of the intercepts, were also admitted. *Ibid.*

¹⁰¹ Intercept Decision, para. 29.

¹⁰² *Ibid.*, para. 37.

¹⁰³ See Đuro Rodić, T. 12059–12130 (24 May 2007), T. 12452–12525 (12 June 2007); Ex. 1D00321, “Analysis of Interception”; Ex. 1D00322 (confidential); Ex. 1D00323, “Annex II”.

¹⁰⁴ See Stefanie Frease, T. 6084–6113 (19 Jan 2007), T. 6357–6415 (25 Jan 2007), T. 7756–7810 (26 Feb 2007), T. 7817–7895 (27 Feb 2007), T. 8047–8056 (1 Mar 2007), T. 8058–8165 (2 Mar 2007), T. 8168–8251 (5 Mar 2007), T. 8252–8309 (6 Mar 2007).

facie relevant and probative.¹⁰⁵ It reserved its position on making a final determination on the relevance and probative value of each individual intercept until the conclusion of the case.¹⁰⁶

65. The Trial Chamber remains satisfied, particularly in light of the evidence given by the intercept operators, that the intercepts are a contemporaneous record of intercepted VRS communications. It is satisfied that there is no deficiency in the chain of custody of the intercept materials, and finds there is no evidence in support of the Defence allegation that the intercepts were either fabricated or tampered with. The Trial Chamber finds that the evidence of Defence Expert Đuro Rodić failed to raise a reasonable doubt in this respect.¹⁰⁷

66. In sum, the Trial Chamber has found the intercepts to be overall probative and reliable. In cases of specific challenges to certain intercepts, the Trial Chamber has addressed those challenges individually.

(g) Statements of Individuals Admitted Only for Credibility Purposes Not for the Truth of its Contents

67. The Trial Chamber has admitted into evidence a number of prior statements of witnesses solely for the purpose of evaluating their *viva voce* evidence or, where challenged, to assess their credibility.¹⁰⁸ Such evidence has strictly been used for the purpose for which it was admitted. Similarly, statements, of persons who were never called as witnesses, which were put to a witness to challenge credibility, were used by the Trial Chamber solely for this purpose of assessing credibility and not for the truth of their content.¹⁰⁹

(h) Agreed Facts, Adjudicated Facts and Stipulations

(i) Agreed Facts and Stipulations

68. While the Trial Chamber made efforts, pursuant to Rule 65 *ter*(H), to facilitate agreement between the Parties upon material facts relating to the Indictment, no such agreement was reached

¹⁰⁵ Intercept Decision, paras. 38–78.

¹⁰⁶ *Ibid.*, paras. 74–78.

¹⁰⁷ See Intercept Decision, para. 65.

¹⁰⁸ See, e.g., T. 8036 (1 Mar 2007); T. 21193 (7 Feb 2008) (concerning Ex. 1D00432, Ex. 1D00383, and Ex. 1D00438); Decision on Defence Motion for Certification to Appeal Decision Admitting PW-104 Interview Statements, 25 Apr 2007.

¹⁰⁹ See e.g., Decision on Defence Motion for Removal from Evidence of Momir Nikolić's Statement of Facts, 6 Feb 2008, paras. 19–22. The Trial Chamber notes that in this specific case, Momir Nikolić was later called as a Chamber witness.

during the pre-trial phase.¹¹⁰ A number of “Stipulations” between the Parties were filed and admitted into the record during the course of trial.¹¹¹ The Trial Chamber has treated such stipulations as agreed facts. The Trial Chamber recalls that it is not bound by any agreements reached between the parties,¹¹² and that it is not obliged to make explicit findings on facts agreed upon by the parties or on undisputed facts; the reference to such facts is by itself indicative that it accepts those facts as true.

(ii) Judicial Notice of Adjudicated Facts

69. The Trial Chamber took judicial notice of hundreds of adjudicated facts from the *Krstić*, *Blagojević*, *Krajišnik*, and *Orić* cases pursuant to Rule 94(B).¹¹³

70. The Trial Chamber recalls its Prosecution Adjudicated Facts Decision, wherein it had set out the Appeals Chamber finding in the *Slobodan Milošević* case that “by taking judicial notice of an adjudicated fact, a Chamber establishes a well-founded presumption for the accuracy of this fact, which therefore does not have to be proved again at trial, but which, subject to that presumption, may be challenged at that trial.”¹¹⁴

71. Like all rebuttable evidence, judicially noticed adjudicated facts remain subject to challenge by the non-moving party during the course of trial. During its final deliberations, the Trial Chamber has therefore assessed the weight of the relevant facts, taking into consideration the totality of the trial record and, most particularly, any evidence submitted by the non-moving party to rebut the adjudicated fact.¹¹⁵

¹¹⁰ Rule 65 *ter* (H) provides: “The pre-trial Judge shall record the points of agreement and disagreement on matters of law and fact. In this connection, he or she may order the parties to file written submissions with either the pre-trial Judge or the Trial Chamber.”

¹¹¹ See Annex II (Procedural History), Section B.7.

¹¹² See *Babić* Sentencing Appeal Judgement, para. 18.

¹¹³ Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 Sept 2006 (“Prosecution Adjudicated Facts Decision”); Decision on Popović Motion for Judicial Notice of Adjudicated Facts with Annex, 2 June 2008.

¹¹⁴ Prosecution Adjudicated Facts Decision, para. 20; *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 Oct 2003, p. 4. This holding was reaffirmed by the Appeals Chamber in the *Karemera* case: “In the case of judicial notice under Rule 94(B), the effect is only to relieve the Prosecution of its initial burden to produce evidence on the point; the defence may then put the point into question by introducing reliable and credible evidence to the contrary.” *Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, para. 42.

¹¹⁵ *Prosecutor v. Krajišnik*, Case No. IT-00-39-T, Decision on Third and Fourth Prosecution Motions for Judicial Notice of Adjudicated Facts, 24 Mar 2005, para. 17; see also *Prosecutor v. Prlić et al.*, Case No. IT-04-74-PT, Decision on Motion for Judicial Notice of Adjudicated Facts Pursuant to Rule 94(B), 14 Mar 2006, para. 11 (“Adjudicated facts that are judicially noticed by way of Rule 94(B) of the Rules remain to be assessed by the Trial Chamber to determine what conclusions, if any, can be drawn from them, which will require their consideration together with all of the evidence brought at trial.”).

(i) Aerial Images

72. In order to establish the alleged burial and reburial operation, the Prosecution submitted aerial images showing disturbances in the earth after the alleged murders were committed that were provided to it by the United States Government.

73. **Beara** argues that the aerial images tendered by the Prosecution are not reliable.¹¹⁶ Richard Butler testified that he did not believe the aerial images could be altered by anyone,¹¹⁷ whereas Jean-René Ruez, the Prosecution witness through whom the aerial images were tendered, explained why he had added and removed dates on certain aerial images.¹¹⁸ Only **Beara** raised an objection to the admissibility or reliability of the aerial images.¹¹⁹ On 7 February 2008, the Trial Chamber held that sufficient evidence had been adduced regarding the relevance and the probative value of all aerial images tendered by the Prosecution, and admitted them into evidence without prejudice to the weight that would be attached to them at the end of this case.¹²⁰

74. In his Final Brief, **Popović** argues that the disturbance of the earth, shown on certain aerials, cannot be properly linked to the alleged crimes due to lack of comparative aerial imagery.¹²¹ He further argues that “for some images we do not have any link which connects it with the particular place where the grave is located, and this is because none of the images have site code or coordinates.”¹²²

75. The Trial Chamber does not find that the weight of the aerial images is adversely affected by Ruez’s explanation that for the purposes of this case, he had erased certain dates, marked by the United States Government in white, and replaced them by dates marked with a colour pen. The Trial Chamber is of the view that **Popović**’s argument that insufficient images were tendered to rely on the description of those images given by the United States Government is without merit. Lastly, particularly in light of the extensive evidence given by Ruez, Dean Manning, and Richard Butler, the Trial Chamber has found the aerial images to be authentic and reliable, and has accorded them due weight.

¹¹⁶ See, e.g., T. 21171–21172 (6 Feb 2008).

¹¹⁷ Richard Butler, T. 20182 (22 Jan 2008).

¹¹⁸ Jean-René Ruez, T. 1654–1655 (14 Sept 2006).

¹¹⁹ T. 21175–21176 (6 Feb 2008).

¹²⁰ T. 21187–21188 (7 Feb 2008).

¹²¹ Popović Final Brief, paras 737–742.

¹²² *Ibid.*, para. 741.

(j) The Zvornik Brigade Notebook

76. The Zvornik Brigade Notebook¹²³ was used by the Brigade's Duty Officer to record information and messages, official or personal, that he received from the superior command, the subordinate units, and the Chief of Staff.¹²⁴ The Zvornik Brigade Notebook was a contemporaneous document of the Brigade.¹²⁵

77. The Prosecution has argued that, for various reasons, the Zvornik Brigade Notebook is both authentic and reliable.¹²⁶ The Prosecution submits that the Zvornik Brigade Notebook was not altered or tampered with, and that it reflects the entries made in 1995, in spite of certain additions made to it later and challenges to its chain of custody.¹²⁷ It submits that former Duty Officers Milanko Jovičić, Sreten Milošević, Ljubo Bojanović, and Milan Marić recognised their handwriting in the Zvornik Brigade Notebook and confirmed the accuracy of their relevant entries.¹²⁸ Kathryn Barr, the Prosecution handwriting expert, confirms this as does Ljubomir Gogić, the defence handwriting expert.¹²⁹ In addition, a number of witnesses, including **Pandurević**, PW-168, Miodrag Dragutinović, Zoran Aćimović, Mihajlo Galić, and PW-140 gave evidence concerning the daily use of the Zvornik Brigade Notebook, corroborating its content and demonstrating its reliability.¹³⁰ Likewise, several intercepts and Zvornik Brigade Combat Reports support the reliability and accuracy of the Zvornik Brigade Notebook.¹³¹ Some Defence Counsel even relied on the Zvornik Brigade Notebook during their examination of witnesses.¹³²

78. **Beara** challenges the authenticity and reliability of the Zvornik Brigade Notebook.¹³³ **Beara** argues that certain of its pages are missing, it was in the possession of someone who had a motive to alter the entries, and several of its entries were made by unknown persons.¹³⁴ According to **Beara**, the lack of a proper chain of custody, and the undisputed alterations and additions made to it after the fact, rendered the Zvornik Brigade Notebook unreliable.¹³⁵ Further, those entries referring to him were inconsistent, incomplete, uncorroborated, and should not be considered.¹³⁶

¹²³ Ex. P00377, "Zvornik Brigade Duty Officers Notebook 29 May-27 July 1995".

¹²⁴ Miodrag Dragutinović, T. 12623–12624 (14 June 2007).

¹²⁵ *Ibid.*, T. 12624 (14 June 2007).

¹²⁶ Prosecution Final Brief, paras. 1183–1195.

¹²⁷ Prosecution Final Brief, para. 1184.

¹²⁸ *Ibid.*, para. 1185.

¹²⁹ *Ibid.*, para. 1186.

¹³⁰ *Ibid.*, paras. 1191–1193.

¹³¹ *Ibid.*, para. 1191.

¹³² *Ibid.*, para. 1194.

¹³³ Beara Final Brief, paras. 339–354.

¹³⁴ *Ibid.*, paras. 339–354.

¹³⁵ Beara Final Brief, paras. 339–340, 353–354.

¹³⁶ *Ibid.*, para. 354.

79. Turning to Prosecution handwriting expert Kathryn Barr, Beara submits that she found strong but not conclusive evidence that Dragan Jokić wrote most of the entries from 14 to 15 July 1995, from pages 126 to 135 of the Zvornik Brigade Notebook.¹³⁷ Even after additional review, **Beara** submits that Barr did not give adequate consideration to the features that she noted differed between the specimen and the text in question, and in so doing, she erred when giving her opinion.¹³⁸ Absent a concrete opinion, **Beara** argues it cannot be ruled out that another person with a similar style of writing was responsible for that text.¹³⁹ **Beara** further submits that according to Defence handwriting expert Ljubomir Gogić, most of the relevant text was written by three authors, and several specific entries were written by unknown ones.¹⁴⁰ In particular, he found that several of the entries related to **Beara** were written by an unknown author and made separately or asynchronously.¹⁴¹ Unlike Barr, Gogić analysed the absorptive and luminescent characteristics of the relevant pages in order to detect any alterations and impressions.¹⁴² He found that certain alterations were made in ink with absorptive and luminescent characteristics identical to the content preceding the alterations, and therefore he could not conclude when those alterations were made.¹⁴³ **Beara** points out that Barr herself agreed that entries relevant to him may have been added at a later date.¹⁴⁴

80. **Popović** argues that the Zvornik Brigade Notebook is not credible, in the light of issues of its chain of custody.¹⁴⁵ Further, he submits, it is unclear who the duty officer was making the entries on 16 July 1995, and when the entries were made.¹⁴⁶ Prosecution handwriting expert Barr was unable to confirm that the entry for that day was Trbić's.¹⁴⁷ Similarly, according to **Pandurević** there are many unexplained entries in the Zvornik Brigade Notebook from which the Prosecution has made unfounded inferences.¹⁴⁸

¹³⁷ Beara Final Brief, para. 342. These are pages ERN 02935744–02935753.

¹³⁸ *Ibid.*, para. 345.

¹³⁹ *Ibid.*, paras. 345–346. Barr had no opinion on how many other individuals wrote on the pages she analysed, and she did not know by whom or when those entries were made or whether entries were added at a later stage. *Ibid.*, para. 343.

¹⁴⁰ Beara Final Brief, para. 347.

¹⁴¹ *Ibid.* para. 348–349. Gogić explained that asynchronously means that the previous position of the hand of the writer has to be repositioned for the next separate writing. *Ibid.*, para. 349. See also Ljubomir Gogić, T. 25574, 25579–25581 (10 Sept 2008). Ex. 2D00582, “Analysis of Handwriting on Photocopied Pages of ‘Duty Operations Log’, and ‘Kitovnice IKM Duty Operation log’ and ‘Auxiliary book’”, pp. 8–9.

¹⁴² *Ibid.*, para. 351.

¹⁴³ Beara Final Brief, para. 351. Gogić reached the same conclusion for the asynchronously-made entries he indicated. *Ibid.* See Ex. 2D00582, “Analysis of Handwriting on Photocopied Pages of ‘Duty Operations Log’, and ‘Kitovnice IKM Duty Operation log’ and ‘Auxiliary book’”, pp. 5–6.

¹⁴⁴ *Ibid.*, paras. 351–352.

¹⁴⁵ Popović Final Brief, para. 564.

¹⁴⁶ *Ibid.*, paras. 563–566.

¹⁴⁷ *Ibid.*, para. 563.

¹⁴⁸ Pandurević Final Brief, paras. 13–16.

81. **Nikolić** submits that there are grave issues of chain of custody with regard to the Zvornik Brigade Notebook and the alterations and additions made to it, rendering it unreliable.¹⁴⁹

82. The Zvornik Brigade Notebook was submitted to serious scrutiny by the parties, and numerous witnesses were cross-examined on the accuracy of its contents and confirmed and explained various entries in it.¹⁵⁰ Documentary evidence also corroborates this.¹⁵¹ In addition, Barr confirmed that several entries were attributable to members of the Zvornik Brigade, thereby supporting the authenticity of the document.¹⁵² The Trial Chamber finds that the Zvornik Brigade Notebook is generally consistent with other evidence adduced at trial. The Trial Chamber has assessed these challenges as to authenticity and reliability of the Zvornik Brigade Notebook based on the chain of custody and the subsequent alterations and additions. In doing so, it has taken into consideration the explanations provided by witnesses regarding custody and alterations,¹⁵³ and the evidence of the handwriting experts where relevant.¹⁵⁴ The Trial Chamber finds that neither the circumstances surrounding the chain of custody nor the alterations and additions affect the reliability of the document. In addition, the Trial Chamber finds that the unexplained or unknown entries in the Zvornik Brigade Notebook in no way undermine its authenticity, particularly given

¹⁴⁹ Nikolić Final Brief, paras. 440, 456–461, 468–472.

¹⁵⁰ Milanko Jovičić, T. 11487–11488 (14 May 2007); Sreten Milošević, T. 33967–33969, 34004, 34006–34007, 34009 (15 July 2009); Ljubo Bojanović, Ex. P03135a, “confidential – 92 *quater* transcript”, BT. 11760 (8 July 2004); Milan Marić, Ex. P03138, “92 *quater* transcript”, BT. 11617–11620 (7 July 2004); Vinko Pandurević, T. 31083 (9 Feb 2009), T. 31864–31865 (20 Feb 2009), T. 32241–32242 (27 Feb 2009); PW-168, T. 15826 (closed session) (26 Sept 2007), T. 16842–16843 (closed session) (25 Oct 2007), T. 16981 (closed session), T. 16995–16996 (closed session) (26 Oct 2007), T. 17023–17024 (closed session) (29 Oct 2007); Miodrag Dragutinović, T. 12830–12831 (19 June 2007); Zoran Aćimović, T. 22054–22055 (10 June 2008); Mihajlo Galić, T. 10658 (27 Apr 2007); PW-104, T. 7938–7939 (private session) (28 Feb 2007).

¹⁵¹ Ex. P01161a, “Intercept 14 July 1995, at 20:38 hours”; Ex. P01164a, “Intercept 14 July 1995, at 21:02 hours”; Ex. P01176a, “Intercept 15 July 1995, at 09:39 hours”; Ex. P01204a, “Intercept 16 July 1995, at 22:33 hours”; Ex. P01206a, “Intercept 17 July 1995, at 06:15 hours”; Ex. P01208a, “Intercept 17 July 1995, at 08:59 hours, respectively”; Ex. P00322, “1st Zvornik Infantry Brigade Daily Situation report No. 06/215 to the Drina Corps Command, signed by Pandurević, 12 July 1995”; Ex. 7DP00325, “Zvornik Brigade Daily Combat Report 06-216, to the Drina Corps Command, signed by Pandurević, 13 July 1995”; Ex. 7DP00326, “Zvornik Brigade Daily Combat Report 06-216, to the Drina Corps Command, signed by Obrenović, 14 July 1995”; Ex. 5DP00327, “Zvornik Brigade Interim Report No. 06-216/2, to the Drina Corps Command, signed by Obrenović, 14 July 1995”; Ex. 5DP00328, “Zvornik Brigade Daily Combat Report 06-217, to the Drina Corps Command, signed by Pandurević, 15 July 1995”.

¹⁵² Kathryn Barr, T. 13181–13182, 13185–13187, 13208, 13219, 13241–13244, 13259 (25 June 2007), T. 13275 (26 June 2007) (referring to entries made by Jokić, Štrbac, and Nikolić); Ex. P00377, “Zvornik Brigade Duty Officers Notebook 29 May–27 July 1995”; Ex. P02846, “Handwriting Analysis Report titled, Dragan Jokić, 16 July 2003”, para. 5.3; Ex. P02847, “Handwriting Analysis Report titled, Dragan Jokić, 22 August 2003”, paras. 1, 6; Ex. P02848, “Handwriting Analysis Report titled, Dragan Jokić, 27 January 2004”, paras. 2.4–2.5. Ex. P02844, “Handwriting Report titled Milord Trbić, 10 January 2007”; Ex. P02845, “Prosecution handwriting expert Kathryn Barr’s report, 29 June 2006”; Handwriting report titled Milorad Trbić, Drago Nikolić and Ljubislav Štrbac, 29 June 2006”. See, e.g., Kathryn Barr, T. 13184–13186 (25 June 2007); Ex. 2D00582, “Analysis of Handwriting on Photocopied Pages of ‘Duty Operations Log’, and ‘Kitovnice IKM Duty Operation log’ and ‘Auxiliary book’”, pp. 6–7. See also Ljubomir Gogić, T. 25599–25605 (11 Sept 2008).

¹⁵³ [REDACTED]

¹⁵⁴ Ljubomir Gogić, T. 25579–25580 (10 Sept 2008), T. 25592–25594, 25597–25598, 25601 (private session), T. 25605–25606 (11 Sept 2008). See also Kathryn Barr, T. 13181–13182, 13186–13187, 13200, 13208–13209, 13211–13212, 13250–13251, 13257 (25 June 2007); Ex. P02846, “Handwriting Analysis Report titled Dragan

the nature and the circumstances in which it was created. Based on the totality of the evidence before it, the Trial Chamber is satisfied that the Zvornik Brigade Notebook is accurate, authentic, and reliable. The Trial Chamber is further satisfied that the Zvornik Brigade Notebook is a contemporaneous document of the Zvornik Brigade.¹⁵⁵

(k) The Zvornik Brigade IKM Kitovnice Logbook

83. The Zvornik Brigade IKM Kitovnice Logbook was kept to record all the activities reported or notified by the Duty Officer at the forward command post, the situation at the separation line, and, in general, the situation on the ground.¹⁵⁶

84. **Nikolić** challenges the reliability of the Zvornik Brigade IKM Kitovnice Logbook, specifically the entries for the period from 13 to 22 July 1995.¹⁵⁷ He argues that there are serious issues with its chain of custody and evidence of tampering such that it has no probative value and should not be used to corroborate the testimony of Mihajlo Galić and PW-168.¹⁵⁸ On the face of it, it appears that only two officers made entries in the Zvornik Brigade IKM Kitovnice Logbook from 13 July to 22 July: Mihajlo Galić and an unknown officer.¹⁵⁹ **Nikolić** submits, amongst others, that entries for 12 July appear to have been made by two different persons, suggesting that pages had been removed in between.¹⁶⁰ **Nikolić** argues that his own entries for 13 July, made when he was IKM Duty Officer, were on these missing pages.¹⁶¹ **Nikolić** also submits that Galić made entries containing information which would “normally” not have been forwarded to the IKM or have been accessible to the IKM Duty Officer.¹⁶² The entries made by Galić between 13 and 15 July seem to have been drawn from combat reports of the Zvornik Brigade, whereas the opposite was the norm.¹⁶³ Further, **Nikolić** argues that the “format of the IKM logbook” was also “changed” between 13 and 22 July, which is a further indication that the Zvornik Brigade IKM Kitovnice Logbook was tampered with.¹⁶⁴ Lastly, he argues that although the Zvornik Brigade IKM Kitovnice Logbook appears to be coming apart, it is “perfect, in that not a single page is missing”, which is unusual in

Jokić, 16 July 2003”, para. 5.3; Ex. P02847, “Handwriting Analysis Report titled Dragan Jokić, 22 Aug 2003”; Ex. P02848, “Handwriting analysis report titled Dragan Jokić, 27 Jan 2004”.

¹⁵⁵ The Trial Chamber in assessing it as such takes into account the identified subsequent alterations and additions.

¹⁵⁶ Nebojša Jeremić, T. 10500 (25 Apr 2007); Dragan Stojkić, T. 21993 (9 June 2008); Ex. P00347, “Zvornik Brigade Forward Command Post (IKM) Operations Duty Officer Logbook, for period 7 July 1995 through 5 October 1995”.

¹⁵⁷ Nikolić Final Brief, para. 681.

¹⁵⁸ *Ibid.*, paras. 680–697; Nikolić Closing Arguments, T. 34503, (9 Sept 2009).

¹⁵⁹ Nikolić Final Brief, paras. 686–687.

¹⁶⁰ *Ibid.*, para. 690.

¹⁶¹ *Ibid.*, para. 690.

¹⁶² *Ibid.*, para. 693.

¹⁶³ *Ibid.*, para. 693.

¹⁶⁴ Nikolić Final Brief, paras. 688–689.

that pages are missing in other similar Zvornik Brigade books.¹⁶⁵ There is also a certification, a stamp, and a signature though no date.¹⁶⁶ According to **Nikolić**, this indicates it was tampered with.¹⁶⁷

85. The Trial Chamber has considered **Nikolić**'s submissions carefully. It has also considered the corroborative evidence before it, in particular Mihajlo Galić's testimony, wherein he recognised his own handwriting and signature in the Zvornik Brigade IKM Kitovnice Logbook. The Trial Chamber finds his evidence credible.¹⁶⁸ The Trial Chamber notes that Galić's entries cover a substantial part of the entries in the relevant period. The Trial Chamber considers **Nikolić**'s submissions as to alterations and missing pages to be entirely speculative and without any evidentiary support. Further his submissions on the point are contradictory—the Zvornik Brigade IKM Kitovnice Logbook according to **Nikolić** has pages missing, but it is also too complete for it to be authentic.¹⁶⁹ Similarly, the Trial Chamber finds that neither the information contained in the Logbook, nor the format used, provide any evidence of tampering, contrary to **Nikolić**'s submission.¹⁷⁰ The Trial Chamber has examined the content of the Zvornik Brigade IKM Kitovnice Logbook carefully, in the light of all the evidence before it, and is satisfied that the Zvornik Brigade IKM Kitovnice Logbook is accurate, authentic, and reliable.

¹⁶⁵ Nikolić Final Brief, para. 694.

¹⁶⁶ *Ibid.*, para. 695.

¹⁶⁷ *Ibid.*, para. 695–697; Nikolić Closing Arguments, T. 34503 (9 Sept 2009).

¹⁶⁸ Mihajlo Galić, T. 10500–10501 (25 April 2007).

¹⁶⁹ *See supra*, para. 84.

¹⁷⁰ *See supra*, para. 84.

III. THE FACTS

A. Background (1991–1994)

1. Political Situation in Bosnia and Herzegovina in 1991–1992

86. The present case relates to events alleged to have occurred in 1995, in Srebrenica and Žepa in the Podrinje region, in eastern Bosnia and Herzegovina (“BiH”).¹⁷¹

87. In 1991, the municipality of Srebrenica had 37,000 inhabitants, of whom about three quarters were Muslim and one quarter Serb.¹⁷² The town of Srebrenica had a population of approximately 3,500 inhabitants with the same ethnic composition.¹⁷³ Žepa was a village, with a population of less than 3,000,¹⁷⁴ of whom the majority were Bosnian Muslim.¹⁷⁵ The Drina River marked the eastern border of the region with Serbia.¹⁷⁶

88. On 15 October 1991, BiH began its journey to independence with a parliamentary declaration of sovereignty,¹⁷⁷ which was followed, on 3 March 1992, by a declaration of independence.¹⁷⁸ The Assembly of the Serbian People in BiH¹⁷⁹ did not favour this development and as a reaction, on 27 March 1992 it unanimously proclaimed the Serbian Republic of BiH (later “Republika Srpska”).¹⁸⁰ A struggle for territorial control ensued among the three major groups: Bosnian Muslims, Bosnian Serbs and Bosnian Croats. In the eastern part of BiH, the conflict was particularly fierce between the Bosnian Serbs and the Bosnian Muslims.¹⁸¹ The international community came up with a proposal for negotiation, suggesting a “cantonalised” BiH “based on national principles and taking into account economic, geographic and other criteria”.¹⁸² These

¹⁷¹ Prosecution Adjudicated Facts Decision, Annex, Fact 9; Ex. 7DP02109, “Map of the Drina Corps Area of Responsibility”.

¹⁷² Prosecution Adjudicated Facts Decision, Annex, Fact 12; Popović Adjudicated Facts Decision, Annex, Fact 19.

¹⁷³ Popović Adjudicated Facts Decision, Annex, Fact 19.

¹⁷⁴ Ex. P02502, “UNPROFOR weekly situation report, 15 July 1995”, p. 3.

¹⁷⁵ Esma Palić, T. 6909, 6928 (6 Feb 2007).

¹⁷⁶ Ex. P02502, “UNPROFOR weekly situation report, 15 July 1995”, p. 3; Ex. 7D00064, “Map of Zvornik”.

¹⁷⁷ Prosecution Adjudicated Facts Decision, Annex, Fact 7.

¹⁷⁸ Popović Adjudicated Facts Decision, Annex, Fact 18.

¹⁷⁹ The Assembly of the Serbian People in BiH was established on 24 October 1991. Popović Adjudicated Facts Decision, Annex, Fact 10.

¹⁸⁰ Popović Adjudicated Facts Decision, Annex, Fact 18. For ease of reference, the Trial Chamber will use “Republika Srpska” (“RS”) throughout the Judgement.

¹⁸¹ Momčilo Krajišnik, T. 21582 (2 June 2008); Prosecution Adjudicated Facts Decision, Annex, Fact 8; Popović Adjudicated Facts Decision, Annex, Fact 20.

¹⁸² Exs. P03324, 1D01156, “Statement of principles for new constitutional arrangements for BiH, Sarajevo 18 March 1992”, Section A.

principles were presented by the EU negotiator Cutileiro—the so-called Cutileiro plan—at the opening of the Lisbon conference on BiH, in early May 1992.¹⁸³

2. “Strategic Objectives”

89. Following the break down of the Lisbon conference, the Bosnian Serb delegation elaborated the six “Strategic Objectives” for the Serbian people in BiH.¹⁸⁴ These objectives were discussed in open session at the 16th session of the Assembly of the Serbian People in BiH, held on 12 May 1992, in Banja Luka.¹⁸⁵ The first objective was the “demarcation of the state as separate from the other two national communities”.¹⁸⁶ The third related to the areas of Srebrenica and Žepa and was to “[e]stablish a corridor in the Drina river valley, that is, eliminate the Drina as a border separating Serbian States”.¹⁸⁷

3. Establishment of the VRS

90. On 12 May 1992, the Army of RS (“VRS”) was formed.¹⁸⁸ Radovan Karadžić, the President of RS, became the Supreme Commander of the VRS; General Ratko Mladić became the Commander of the VRS Main Staff.¹⁸⁹ The VRS enjoyed military superiority, while the Army of BiH (“ABiH”) adopted a type of guerrilla warfare, which towards the end of 1992 was quite successful.¹⁹⁰

4. Operational Directive 4

91. On 19 November 1992, Mladić issued Operational Directive 4.¹⁹¹ Operational Directive 4 stated that enemy forces were still carrying out intensive combat operations and were planning to

¹⁸³ Momčilo Krajišnik, T. 21583, 21587–21588 (2 June 2008). See Exs. P03324, 1D01156, “Statement of principles for new constitutional arrangements for BiH, Sarajevo 18 March 1992”, Section E: “A working group will be established in order to define the territory of the constituent units based on national principles and taking into account economic, geographical and other criteria. A map based on the national absolute or relative majority in each municipality will be the basis of work in the working group [...]” A map was also produced by representatives of the international community led by Cutileiro at the meeting in Lisbon in early May. Momčilo Krajišnik, T. 21586 (2 June 2008); Ex. 1D01160, “Cutileiro Map”.

¹⁸⁴ Momčilo Krajišnik, T. 21583, 21598 (2 June 2008); Ex. P02755, “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina, 12 May 1992, published in the Official Gazette of Republika Srpska, Vol. II, no. 22, Article 386, 26 November 1993”.

¹⁸⁵ Ex. P00025, “Minutes of the 16th Session of the Assembly of the Serbian People in BiH”. The 16th Session was chaired by Krajišnik and the Strategic Objectives were outlined by Karadžić. *Ibid.*, pp. 13–15. Also Mladić was present at the 16th Session and he spoke about the need to work on both the military and the political levels in order to achieve the Strategic Objectives. *Ibid.*, p. 40.

¹⁸⁶ Ex. P02755, “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina, 12 May 1992, published in the Official Gazette of Republika Srpska, Vol. II, no. 22, Article 386, 26 November 1993”.

¹⁸⁷ *Ibid.*

¹⁸⁸ Manojlo Milovanović, T. 12319 (31 May 2007).

¹⁸⁹ See *infra*, para. 104.

¹⁹⁰ Popović Adjudicated Facts Decision, Annex, Fact 21.

¹⁹¹ Ex. P00029, “VRS Main Staff Order 02/5-210, Operational Directive 4, 19 November 1992”.

start a stronger offensive in the spring “with the ultimate goal of annihilating the Serbs”.¹⁹² It instructed the VRS corps to “stabilise the defence on the lines reached, cleanse the free territory of Republika Srpska of the remaining enemy groups and paramilitary formations [...], recover the lost territories in Herzegovina and open a corridor through Herzegovina”.¹⁹³ The Drina Corps was specifically tasked to use its main forces to defend Višegrad, while “the rest of its forces in the wider Podrinje region shall exhaust the enemy, inflict the heaviest possible losses on him and force him to leave the Birač, Žepa, and Goražde areas together with the Muslim population. First offer the able-bodied and armed men to surrender, and if they refuse, destroy them.”¹⁹⁴

5. Creation of “Safe Areas”

92. By January 1993, the Srebrenica enclave had further expanded to the north-west.¹⁹⁵ Over the following months, fighting intensified.¹⁹⁶ Attacks coming from both sides were aimed at taking control, primarily, of areas in the proximity of the main road cutting across the region from north-west to south-east, the Bratunac-Konjević Polje Road.¹⁹⁷ Bosnian Muslim residents of outlying areas converged on Srebrenica town.¹⁹⁸ By spring 1993, the population of Srebrenica town had increased tremendously to reach 50,000 to 60,000 inhabitants.¹⁹⁹ Also in Žepa, a census conducted in 1993 revealed that the population grew to about 10,000, after Bosnian Muslims from other areas flooded in.²⁰⁰ The humanitarian situation in Srebrenica was desperate.²⁰¹ In March and April 1993, UNHCR evacuated between 8,000 and 9,000 Bosnian Muslims from Srebrenica, even though the Bosnian Muslim government in Sarajevo objected to the evacuations asserting that they contributed to “ethnic cleansing”.²⁰²

¹⁹² Ex. P00029, “VRS Main Staff Order 02/5-210, Operational Directive 4, 19 November 1992”, pp. 1–2.

¹⁹³ *Ibid.*, p. 3.

¹⁹⁴ *Ibid.*, p. 5. These instructions are related to a task set out in the previous Operational Directive 3, of 3 August 1992, which is listed in Directive 4 as not having been carried out: “[t]he enemy groups in the wider area of Goražde, Žepa, Srebrenica and Cerska have not been totally routed.” *Ibid.*, p. 3. Prosecution Adjudicated Facts Decision, Annex, Fact 19.

¹⁹⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 20.

¹⁹⁶ *Ibid.*, Fact 21.

¹⁹⁷ *Ibid.*; Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

¹⁹⁸ Prosecution Adjudicated Facts Decision, Annex, Fact 22.

¹⁹⁹ *Ibid.*

²⁰⁰ Ex. P02502, “UNPROFOR Weekly situation report, 15 July 1995”, p. 3. Ex. 6D00027, “Intelligence and Security Information Form, Command of the Rogatica Brigade, 13 December 1993”, p. 1. This information report lists figures ranging from 10,000 to 16,000 people and states that the official figure was 16,000, which was used by humanitarian organisations such as the UNHCR and ICRC, while UNPROFOR representatives put the number at about 10,000. The document further states that the number of people had been “deliberately inflated with the ultimate aim of stockpiling the surplus of food.” *Ibid.* Hamdija Torlak, T. 9717–9718 (29 Mar 2007), T. 9844 (2 Apr 2007). Hamdija Torlak referred to figures of approximately 9,000 people. *Ibid.*

²⁰¹ PW-155, T. 6825–6826 (5 Feb 2007); PW-118, T. 3477 (2 Nov 2006). *See also* Popović Adjudicated Facts Decision, Annex, Facts 23–24.

²⁰² Prosecution Adjudicated Facts Decision, Annex, Fact 26.

93. In March 1993, General Philippe Morillon, Commander of UNPROFOR in BiH, held a public gathering in Srebrenica and informed the panicked residents that the town was under the protection of the UN.²⁰³ Following Morillon's statement and in response to the "rapid deterioration of the situation in Srebrenica and its surrounding areas", the UN Security Council passed Resolution 819 on 16 April 1993, declaring Srebrenica a "safe area" and calling for "the immediate cessation of armed attacks by Bosnian Serb paramilitary units against Srebrenica and their immediate withdrawal from the areas surrounding Srebrenica".²⁰⁴ The Security Council also called for urgent steps to be taken to increase the presence of UNPROFOR in Srebrenica and the surrounding areas.²⁰⁵

94. Pursuant to the Security Council Resolution, UNPROFOR negotiated a cease-fire agreement between the ABiH and the VRS, which was signed on 18 April 1993.²⁰⁶ It called for the Srebrenica enclave to be disarmed under the supervision of UNPROFOR.²⁰⁷ On the same day, the first UNPROFOR troops arrived in Srebrenica.²⁰⁸

95. On 6 May 1993, Žepa and Goražde were also declared protected areas by the UN Security Council, with Resolution 824.²⁰⁹ UNPROFOR set up a presence in Žepa, represented by a Ukrainian Company of about 80 soldiers ("UKRCoy").²¹⁰ UKRCoy established its base in the centre of Žepa and checkpoints at all access points.²¹¹ The main checkpoint at the south entrance to Žepa was set up at Bokšanica in the direction of Rogatica.²¹²

6. Agreements on Demilitarisation and Cessation of Hostilities

96. On 8 May 1993, an agreement on the demilitarisation of Srebrenica and Žepa was concluded between the VRS and the ABiH, in the presence of UNPROFOR.²¹³ According to this agreement, "every military or paramilitary unit will have either to withdraw from the demilitarized zone or submit/hand over their weapons [...] to UNPROFOR".²¹⁴ The demilitarisation of Srebrenica had to

²⁰³ Prosecution Adjudicated Facts Decision, Annex, Fact 24; PW-106, T. 3930–3931, 3933 (15 Nov 2006), T. 4003 (16 Nov 2006).

²⁰⁴ Prosecution Adjudicated Facts Decision, Annex, Facts 29 and 30.

²⁰⁵ *Ibid.*, Fact 33.

²⁰⁶ *Ibid.*, Fact 34.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*, Fact 36.

²⁰⁹ *Ibid.*, Fact 29.

²¹⁰ Meho Džebo, Ex. P02486, "confidential - 92 *ter* statement" (23 Mar 2007), p. 2; PW-155, T. 6828–6829 (5 Feb 2007). Louis Fortin, T. 18267 (27 Nov 2007); Hamdija Torlak, T. 9718–9719 (29 Mar 2007).

²¹¹ Hamdija Torlak, T. 9718–9719 (29 Mar 2007).

²¹² Ex. PIC00082, "Map of Žepa and surrounding area (Brezova Ravan and Bokšanica), marked by witness Hamdija Torlak"; Hamdija Torlak, T. 9741–9743 (30 Mar 2007); Spiro Pereula, T. 24170–24171 (28 July 2008).

²¹³ Exs. 5D00502, 6D00031, "Agreement on the demilitarization of Srebrenica and Žepa between VRS and ABiH, 8 May 1993".

²¹⁴ *Ibid.*, p. 2.

be completed and announced by 10 May, and the demilitarisation of Žepa by 12 May, 1993.²¹⁵ The parties further agreed that once the demilitarisation had been declared completed, “all heavy weapons and units that constitute a menace to the demilitarized zones [...] will be withdrawn. Heavy weapons and tanks will be concentrated in limited areas that will be monitored by UNPROFOR and in principle out of range of the demilitarized zone”.²¹⁶

97. General Halilović, Chief of Staff of the Supreme Command of the ABiH, ordered the 28th Division of the ABiH in Srebrenica to pull all armed personnel and military equipment out of the newly established demilitarised zone. He also said that no functioning weapons and ammunition should be handed over to UNPROFOR. Accordingly, only old and dysfunctional weapons were handed over and anything that was still in working order was retained.²¹⁷ Most of the weapons in Žepa were handed over to UNPROFOR; there is, however, evidence indicating that some individually owned weapons—light infantry weapons, hunting rifles, carbines, and odd automatic rifles—remained in the hands of its inhabitants.²¹⁸

98. A period of relative stability followed the establishment of the “safe areas” with the shelling subsiding²¹⁹ and the humanitarian situation improving.²²⁰ Nevertheless, the prevailing conditions for the inhabitants were far from being ideal.²²¹ Both sides violated the “safe area” agreement.²²² Neither Žepa nor Srebrenica was ever fully demilitarized; goods and weapons were moved between the enclaves.²²³ Bosnian Muslim helicopters flew in violation of the no-fly zone;²²⁴ the ABiH opened fire toward VRS lines and moved through the “safe area”; the 28th Division was continuously arming itself; and at least some humanitarian aid coming into the enclave was appropriated by the ABiH.²²⁵ In Srebrenica, the 28th Division of the ABiH carried out reconnaissance and sabotage activities against VRS forces deployed in that area.²²⁶ In Žepa, the ABiH formed the 1st Žepa Brigade (“Žepa Brigade”) on 27 January 1994, from units of the 1st and

²¹⁵ Exs. 5D00502, 6D00031, “Agreement on the demilitarization of Srebrenica and Žepa between VRS and ABiH, 8 May 1993”, p. 2.

²¹⁶ *Ibid.*, p. 3.

²¹⁷ Prosecution Adjudicated Facts Decision, Annex, Fact 49. PW-169, however, stated that when the demilitarisation of Srebrenica was proclaimed “everybody surrendered their weapons”. PW-169, T. 17345 (1 Nov 2007).

²¹⁸ Hamdija Torlak, T. 9721–9722 (30 Mar 2007), T. 9819 (2 Apr 2007).

²¹⁹ *Ibid.*, T. 9833–9834 (2 Apr 2007).

²²⁰ Meho Džebo, Ex. P02486, “confidential - 92 *ter* statement” (23 Mar 2007), p. 2.

²²¹ Prosecution Adjudicated Facts Decision, Annex, Fact 51; Meho Džebo, Ex. P02486, “confidential - 92 *ter* statement” (23 Mar 2007), p. 2.

²²² Prosecution Adjudicated Facts Decision, Annex, Fact 47.

²²³ Ex. P02502, “UNPROFOR Weekly situation report, 15 July 1995”, p. 3. *See also* Meho Džebo, T. 9599 (28 Mar 2007); Hamdija Torlak, T. 9819 (2 April 2007).

²²⁴ Ex. 5D01049, “Drina Corps report on helicopter flights during the night of 6/7 February 1995 to the VRS Main Staff, 7 February 1995”; Prosecution Adjudicated Facts Decision, Annex, Fact 50.

²²⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 50.

²²⁶ *Ibid.*, Fact 46.

2nd Žepa Detachments.²²⁷ The Žepa Brigade was commanded by Colonel Avdo Palić.²²⁸ On the other side, the VRS was organised on a geographic basis and Srebrenica fell within the domain of the Drina Corps; between 1,000 and 2,000 VRS soldiers were deployed around the Srebrenica enclave.²²⁹

99. Towards the end of July 1994, the VRS Main Staff communicated to its corps that the Ceasefire Agreement of 18 April 1993 was “null and void”.²³⁰ It explained the reasons to be that the ABiH and UNPROFOR had not fulfilled the Agreement on Demilitarisation since the ABiH continued “to move around armed and to open fire from infantry weapons and mortars” against the VRS and the population.²³¹ The Drina Corps was ordered to reduce the enclaves to the area listed in the agreement—Srebrenica (town) and Žepa (town and 3 km area)—and to “prevent at any cost” the communication and departure of Muslims between Srebrenica and Žepa and Srebrenica and Tuzla.²³²

100. On 31 December 1994, another agreement on cessation of hostilities was signed between the VRS and the ABiH.²³³

101. The situation in Srebrenica and Žepa did not undergo any substantial change over the following months. A *status quo* lasted until the period immediately preceding the attack on Srebrenica.²³⁴

²²⁷ Ex. 6D00083, “Document from Žepa Brigade to the ABiH 1st Corps, 2 February 1994”, pp. 3-4.

²²⁸ *Ibid.*, p. 4.

²²⁹ Prosecution Adjudicated Facts Decision, Annex, Fact 44. *See also* Ex. P03177, “Report from the Bratunac Brigade signed by Ognjenović, 4 July 1994”. Ognjenović, at the time Commander of the Bratunac Brigade, in line with the tasks set forth in Directive 4 stated that: “We have won the war in Podrinje, but we have not beaten the Muslims completely, which is what we must do in the next period. We must attain our final goal – an entirely Serbian Podrinje. The enclaves of Srebrenica, Žepa and Goražde must be defeated militarily. We must continue to arm, train, discipline and prepare the RS Army for the execution of this crucial task – the expulsion of Muslims from the Srebrenica enclave. There will be no retreat when it comes to the Srebrenica enclave. We must advance. The enemy’s life has to be made unbearable and their temporary stay in the enclave impossible so that they leave *en masse* as soon as possible, realising that they cannot survive here.” *Ibid.*, pp. 2-3.

²³⁰ Ex. 5DP02749, “VRS Main Staff order to the Drina, Herzegovina and Sarajevo-Romanija Corps, signed by Mladić, 22 July 1994”, p. 1. *See also* Ex. P02667, “Drina Corps Order, signed by Živanović, 24 July 1994”.

²³¹ *Ibid.*

²³² *Ibid.*

²³³ Ex. 5D01292, “VRS Main Staff Order on fulfilment of the Agreement on the Complete Cessation of Hostilities, 31 December 1994, with Annex”.

²³⁴ *See infra*, Chapter III, Sections C and D.

B. Military and Civilian Structures

102. In times of either an imminent threat of war or a state of war, the police forces of RS under the Ministry of the Interior (“MUP”) (“MUP Forces”) were part of the Armed Forces by law. Consequently, the Armed Forces in 1995 consisted of two components, the Army of the Republika Srpska (“VRS”) and the MUP Forces (“together Bosnian Serb Forces”).²³⁵ During the period of 1992 to 1995, the Supreme Commander of the Bosnian Serb Forces was Radovan Karadžić, the President of RS.²³⁶ Karadžić headed the “Supreme Command” which was a political body composed of the President of the Republic, the Vice-Presidents, the President of the Parliament, the Prime Minister, the Minister of Defence and the Minister of Interior.²³⁷ The Supreme Commander issued directives, reflecting the political strategic objectives and defining the activities of the Bosnian Serb Forces in the long term.²³⁸

1. The Army of Republika Srpska (VRS)

103. The VRS was formed out of Yugoslav National Army (“JNA”) components and consisted of six geographically-based Corps’: the 1st Krajina Corps, the 2nd Krajina Corps, the East Bosnia Corps, the Sarajevo-Romanija Corps, the Herzegovina Corps and the one relevant for this Judgement—the Drina Corps.²³⁹ Command and control over these Corps was exercised by the Main

²³⁵ Ex. P00422, “RS Official Gazette, Vol III, Special Edition No. 1, 29 Nov 1994”, p. 3 (pursuant to Art. 2 of the “Law on the Implementation of the Law on Defence in Case of an Imminent Threat of War or a State of War”, the armed forces of RS shall consist of the VRS and the MUP forces), p. 9 (pursuant to Art. 4 of the “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War”, the MUP shall be considered a part of the Armed Forces of RS, and its forces shall be under the command of the President of RS as the commander-in-chief); Ex. 4D00092, “Diagram - Structure of Armed Forces of RS”.

²³⁶ Manojlo Milovanović, T. 12177 (29 May 2007); Richard Butler, T. 19601 (14 Jan 2008); Ex. 7DP00703, “RS Law on the Army in the Gazette of the Serbian people in BH, 1 June 1992”, Art. 174.

²³⁷ Manojlo Milovanović, T. 12174, 12177–12178 (29 May 2007). As Minister of Interior Tomo Kovač was part of the Supreme Command. Petar Skrbic, T. 15545 (18 Sept 2007). While none of the members of the Main Staff was part of the Supreme Command, Mladić or another member of the Main Staff would be invited to follow some of the sessions of the Supreme Command. Manojlo Milovanović, T. 12177–12178 (29 May 2007).

²³⁸ Manojlo Milovanović, T. 12192–12193 (29 May 2007). *See infra*, para. 115.

²³⁹ Ex. P02764, “Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006”, para. 1.0; Manojlo Milovanović, T. 12319 (31 May 2007); Prosecution Adjudicated Facts Decision, Fact 75 (The Drina Corps was formed in November 1992, with the specific objective of “improving” the situation of Bosnian Serb people living in the Middle Podrinje region, of which Srebrenica was an important part).

Staff.²⁴⁰ Many JNA laws dealing with the organisation of the army were taken over by the VRS.²⁴¹ The VRS was governed by the principle of single command.²⁴²

(a) The Main Staff

104. The Main Staff was the highest operative body of the VRS and General Ratko Mladić was the Commander.²⁴³ It operated under the direction of Radovan Karadžić, the Supreme Commander, and in cooperation with both the Ministry of Defence and the MUP.²⁴⁴ Mladić was directly subordinated to Karadžić.²⁴⁵ The Main Staff's Headquarters was located at Crna Rijeka, while the logistical (rear) command post was at Han Pijesak.²⁴⁶

²⁴⁰ Prosecution Adjudicated Facts Decision, Fact 84; Ex. P02764, "Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006", para. 1.0.

²⁴¹ Manojlo Milovanović, T. 12162 (29 May 2007); Petar Skrbić, T. 15494 (17 Sept 2007); PW-168, T. 15747 (closed session) (25 Sept 2007). *See also* Vinko Pandurević, T. 30717–30718 (27 Jan 2009); Richard Butler, T. 20765–20766 (31 Jan 2008); Ex. P00694, "JNA Brigade Rules for Infantry, Motorised, Mountain, Alpine, Marine, and Light Brigades from the Federal Secretariat for National Defence 1984"; Ex. 5DP00699 "JNA Manual for the Work of Commands and Staffs, 1983".

²⁴² Petar Skrbić, T. 15494 (17 Sept 2007). Pursuant to Art. 173 of the Law on the VRS, "[c]ommand in the Army shall be founded on principles of a unified command regarding the use of forces and means, single authority, obligations to enforce decisions, command and orders issued by superior officers". Ex. 7DP00703, "RS Law on the Army in the Gazette of the Serbian people in BH, 1 June 1992"; Richard Butler, T. 20659–20660 (29 Jan 2008). This principle was illustrated by Mirko Trivić as follows: an assistant commander for logistics from the Corps could ask an assistant commander for logistics in the Brigade that a certain assignment be performed, but the Assistant Commander in the Brigade was required to tell the Assistant Commander from the Corps that he has to consult with his Brigade Commander, or the acting Chief of Staff in his absence, because he could not engage units from the logistics support without the Brigade Commander's knowledge. Mirko Trivić, T. 12007–12008 (23 May 2007). *But see* Milovanović, T. 12328–12329 (31 May 2007) (testifying about two occasions where a Main Staff officer issued orders directly to the Brigade Commanders without informing the Corps Commander); and PW-168, T. 16612–16614 (closed session) (19 Oct 2007); T. 16146–16147 (closed session) (10 Oct 2007); T. 16072–16074 (closed session) (9 Oct 2007) (testifying that practically speaking however, if a high ranking officer from the Superior Command would visit the troops, he could, without reference to the Brigade Commander, directly issue orders to brigade units (meaning individuals), and those orders would be obeyed. Normally, the higher ranking officer would inform the Brigade Commander or the Chief of Staff of his orders. If the Main Staff Commander issued an order directly to a brigade commander, the brigade would execute such order despite the fact that theoretically, every order of the Main Staff Commander should be issued through the Drina Corps Commander.

²⁴³ Ex. P02764, "Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006", para. 2.0.

²⁴⁴ Manojlo Milovanović, T. 12325–12326 (31 May 2007); Ex. P02764, "Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006", para. 2.0; Prosecution Adjudicated Facts Decision, Annex, Fact 86. Manojlo Milovanović, who was the Chief of Staff in the Main Staff in July 1995, testified that he would receive direct orders from Karadžić. He stated further that it was his legal obligation to execute the orders of Mladić and only exceptionally, in emergencies, to execute directly the orders of his "superior commander", who was his second higher superior. Whenever Milovanović received such direct order, he was duty-bound to return to Mladić, who would tell him whether to do it, and in this case how, or not to do it. Milovanović warned Karadžić that this was a duplication of command and would cause delays because instead of 24 hours, an order took 48 hours to be executed. Manojlo Milovanović, T. 12178–12179 (29 May 2007).

²⁴⁵ Manojlo Milovanović, T. 12178 (29 May 2007).

²⁴⁶ Nedeljko Trkulja, T. 15082 (10 Sept 2007), Petar Skrbić, T. 15468 (17 Sept 2007). For communication purposes, the code name of the Main Staff Command was "Panorama". When "Panorama" was used next to "01" it referred to the Commander of the Main Staff. Vinko Pandurević, T. 31013 (2 Feb 2009). For a description of the offices in

(i) The Command

105. The Command of the Main Staff had at its head the Commander, the Office of the Commander, and the Department for Relations with Foreign Forces, including UNPROFOR, which was linked with the Office of the Commander and directly subordinated to Mladić.²⁴⁷ The Main Staff Command was further composed of a number of different command organs; each organised to provide the necessary technical expertise to the Commander of the Main Staff.²⁴⁸ It consisted of the Staff Sector; the Sector for Morale, Legal and Religious Affairs; the Sector for Intelligence and Security; the Sector for Logistics (Rear); and the Sector for Mobilisation and Personnel Affairs.²⁴⁹ The Staff Sector was headed by Gen. Manojlo Milovanović as the Chief of Staff, who also functioned as the Deputy Commander as necessary, and reported directly to Mladić. The other Sectors were headed by assistant commanders who also reported directly to Mladić: Gen. **Milan Gvero** was the Assistant Commander for Morale, Legal and Religious Affairs; Gen. Zdravko Tolimir was the Assistant Commander for Intelligence and Security; Gen. Petar Skrbić was the Assistant Commander for Organisation, Mobilisation and Personnel Affairs; and Gen. Đorđe Đukić was the Assistant Commander for Logistics.²⁵⁰ The Chief of Staff and the Assistant Commanders provided advice to Mladić on how to implement the Supreme Command's strategic objectives and the planning and execution of the required combat operations.²⁵¹

106. The Chief of Staff was at the same level as the Assistant Commanders, but was considered to be the first among equals²⁵² since, in the Commander's absence, the Chief of Staff assumed command at the Command Post and could issue orders to the Assistant Commanders who then

Crna Rijeka, *see* Ex. P02828, "Sketch of the office locations at Main Staff Headquarters"; Manojlo Milovanović, T. 12209–12213 (30 May 2007).

²⁴⁷ Petar Skrbić, T. 15539–15540 (18 Sept 2007); Ljubomir Obradović, T. 28212, 28258 (14 Nov 2008). The Department for Relations with Foreign Forces was headed by Col. Miloš Đurđić, who was also the secretary or aide de camp of the Commander. Slavko Kralj, T. 29256 (4 Dec 2008); Ljubomir Obradović, T. 28258 (14 Nov 2008); Petar Skrbić, T. 15540, 15542 (18 Sept 2007).

²⁴⁸ Ex. P02764, "Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006", para. 2.6.

²⁴⁹ Furthermore, there was the Administration for Air Force and Anti-Aircraft Defence, and the Administration for Planning, Development and Finance. Ex. P00692, "Main Staff Structure"; Petar Skrbić, T. 15498–15500 (17 Sept 2007); Bogdan Sladojević, T. 14359–14360 (27 Aug 2007); Ex. P02764, "Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006", para. 2.6.

²⁵⁰ Manojlo Milovanović, T. 12146, 12152–12153 (29 May 2007); Slobodan Kosovac, T. 29997 (12 Jan 2009); Petar Skrbić, T. 15467–15469 (17 Sept 2007). With regard to the other two remaining sectors, Gen. Jovo Marić was the Assistant Commander for the Air Force and Anti-Aircraft Defence; and Gen. Stevo Tomić the Assistant Commander for Finances. Manojlo Milovanović, T. 12153–12154 (29 May 2007). In the Sector for Logistics, Colonel Zeljko Kerkez was the Chief of the Sub-Department for Traffic and Transportation. Zeljko Kerkez, T. 24066, 24068 (25 July 2008). The Sub-Department for Traffic and Transportation was tasked with planning, organising, and carrying out all the transports of material, technical resource and manpower, and the movement of personnel from units at corps level. *Ibid.*, T. 24068–24069 (25 July 2008).

²⁵¹ Ljubomir Obradović, T. 28295 (17 Nov 2008); Manojlo Milovanović, T. 12249 (30 May 2007); Ex. P02764, "Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006", para. 2.3.

²⁵² Petar Skrbić, T. 15501–15502 (17 Sept 2007); Manojlo Milovanović, T. 12307 (31 May 2007).

reported to him.²⁵³ When both Mladić and Milovanović were absent from the Command Post, one of the Assistant Commanders stood in for the Commander, usually the most Senior General who was present.²⁵⁴ However, the command of the VRS always remained with Mladić so long as he was in the territory of RS. A person standing in for the Commander only had the powers relative to the organizational work at the Command Post.²⁵⁵

107. There was no interference with competencies and duties amongst the Assistant Commanders.²⁵⁶ The Assistant Commanders could issue executive orders within the purview of their respective Sectors, such as order a unit to process information. However, they were not able to issue combat orders to subordinate units, unless Mladić as the Commander, had authorised an assistant commander to command the troops.²⁵⁷

108. As the Assistant Commander for Morale, Legal and Religious Affairs, **Gvero** was responsible for building up and monitoring the state of morale of the VRS troops;²⁵⁸ and for managing the dissemination of information and propaganda for the troops in support of the aims of the war.²⁵⁹ With regard to the legal affairs, **Gvero** monitored the work of military courts together with the Ministry of Defence.²⁶⁰ He also dealt with deficiencies in the army that were not subject to prosecution, such as violations of discipline amongst the units reflecting their state of morale.²⁶¹

109. The Sector for Mobilisation and Personnel Affairs was in charge of the mobilisation of people and material as required by the VRS.²⁶² The responsibility of the Sector for Logistics was to procure all equipment and material necessary for the war, such as munitions and weapons, fuel, food, clothing and footwear. It was however the responsibility of the Chief of Staff to decide about the distribution of the material to the units.²⁶³

²⁵³ Manojlo Milovanović, T. 12159 (29 May 2007), T. 12307 (31 May 2007).

²⁵⁴ *Ibid.*, T. 12305 (31 May 2007); Ljubomir Obradović, T. 28368–28369 (18 Nov 2008) (19 Nov 2008). *See also* Ex. 7DP00417, “Provisional Service Regulations of the VRS, August 1992”, Art. 17 (stating that “[m]embers of the Army shall carry out the orders of the most senior officer present when the superior officer is absent”); Richard Butler, T. 20826 (31 Jan 2008) (also stating that the Provisional Service Regulations were in force in 1995).

²⁵⁵ Ljubomir Obradović, T. 28455 (19 Nov 2008).

²⁵⁶ Petar Skrbić, T. 15541 (18 Sept 2007). According to the Rules of Service and the doctrine of the VRS, it was also not possible for one assistant commander to take over the functions of another assistant commander. Manojlo Milovanović, T. 12245 (30 May 2007).

²⁵⁷ Manojlo Milovanović, T. 12242–12243 (30 May 2007), T. 12304–12305 (31 May 2007), T. 12371–12372 (1 June 2007).

²⁵⁸ *Ibid.*, T. 12242, 12245–12246 (30 May 2007); Novica Simić, T. 28593 (21 Nov 2008). Organising celebrations and ceremonies was part of boosting the morale. Manojlo Milovanović, T. 12246–12247 (30 May 2007).

²⁵⁹ Petar Skrbić, T. 15567–15571 (18 Sept 2007); Ex. P02764, “Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006”, paras. 2.10, 2.11; Slobodan Kosovac, T. 30388–30389 (20 Jan 2009).

²⁶⁰ Manojlo Milovanović, T. 12246–12247 (30 May 2007).

²⁶¹ *Ibid.*

a. The Staff Sector

110. The Staff Sector was an organisational unit within the Main Staff headed by Milovanović as the Chief of Staff. It consisted of branch organs – including infantry units, armoured and mechanised units, engineer units;²⁶⁴ and the Administration for Operations and Training headed by Gen. **Radivoje Miletić**.²⁶⁵ The Administration for Operations and Training was divided into three departments: the Department for Operations, the Department for Training, and the Operations Centre.²⁶⁶ **Miletić**'s immediate superior was Milovanović.²⁶⁷

111. The Staff Sector's task was planning and monitoring combat operations. One of the Chief of Staff's functions was to propose, in consultation with his assistants, to the Commander how to use the VRS units in combat.²⁶⁸ The Chief of Staff's routine daily tasks included receiving reports from the corps; processing them; briefing and advising the Main Staff Commander; and providing daily (also called "regular") combat reports to the Supreme Command.²⁶⁹

112. **Miletić**, as the Chief of Operations and Training, was tasked with translating Mladić's decisions into orders or other documents; sending them to the Corps; monitoring the execution of the Commander's orders; and keeping the Commander informed about the implementation of his orders and whether it was going according to plan or not, also by transmitting reports from the Corps to the Commander.²⁷⁰ The Department for Operations coordinated the work on the planning of combat activities, the work of other organs, and drew up the combat documents. The documents that were drawn up by the Department for Operations were delivered to the Chief of Staff for his inspection; then, he would take them to the Commander for his approval and signature. The Administration for Operations and Training planned operations at the strategic level, i.e., those operations encompassing the entire army or the forces of two or more corps; whereas, the corps commands planned the activities at the operative level. The Administration for Operations and Training had also a role in the process of approval by the Commander of a Corps operation. If

²⁶² Petar Skrbić, T. 15467–15468 (17 Sept 2007).

²⁶³ Manojlo Milovanović, T. 12162–12164 (29 May 2007).

²⁶⁴ Petar Skrbić, T. 15502–15503 (17 Sept 2007). *See also* Ex. P00692 "Main Staff Structure".

²⁶⁵ Petar Skrbić, T. 15502 (17 Sept 2007); Ljubomir Obradović, T. 28202–28203, 28205 (13 Nov 2008); T. 28212 (14 Nov 2008); Bogdan Sladojević, T. 14359 (27 Aug 2007). **Miletić** took over the position of chief of operations and training in July 1993 and was promoted to the rank of General on 28 June 1995. Manojlo Milovanović, T. 12158–12159 (29 May 2007).

²⁶⁶ Petar Skrbić, T. 15502 (17 Sept 2007); Ljubomir Obradović, T. 28210–28211 (14 Nov 2008). The Chief of the Department for Operations was Ljubomir Obradović; the Chief of the Department for Training was Krsto Đerić. *Ibid.*, T. 28210 (14 Nov 2008).

²⁶⁷ Mirko Trivić, T. 11936 (22 May 2007).

²⁶⁸ Manojlo Milovanović, T. 12155 (29 May 2007). The system of the work of the Staff was by way of collegiums, by everyday meetings. Usually all the Assistants prepared proposals pertaining to their respective areas and Milovanović prepared proposals for the combat use of the units. *Ibid.*

²⁶⁹ *Ibid.*, 12174–12175 (29 May 2007).

²⁷⁰ *Ibid.*, T. 12159–12161 (29 May 2007).

documents were submitted in time, it would review the orders prepared by the Corps and advice the Commander through the Chief of Staff.²⁷¹

b. Reporting and Decision-Making Process

113. The decision-making process at the Main Staff Command in terms of planning and carrying out combat operations was based on reports received by the Main Staff from the subordinate units. Every day, the Battalion Commanders sent reports to the Brigade Commanders around 3 p.m. The Brigade Commanders studied the reports and drafted their own combat reports to be sent to the Corps Commanders, who again studied all the reports and drafted reports to be sent to the Main Staff before 8 p.m. When all the combat reports arrived from all the different corps, Milovanović or, if he was absent, **Miletić**, would receive them. **Miletić** would study all the reports and identify things relevant to each sector.²⁷² Every morning at 7 a.m., Mladić, the Assistant Commanders, and regularly **Miletić**—the Chief of Operations and Training, the Chief of Intelligence, and **Beara**—the Chief of Security, would meet. Usually Mladić would call the meeting and he would give the floor to either Milovanović or **Miletić**, who would inform all present about the problems in the theatre of war.²⁷³ The Assistant Commanders and Chiefs of Administrations would study the details brought to their attention and provide proposals to Mladić based on their expertise.²⁷⁴

114. The decision-making process as described reflected the so-called “full method” that was applied when sufficient time was available for the Commander and the inner circle of the Command to acquaint themselves with the situation and make the necessary assessments. The other two methods applied were the “shortened method” where the decision-making process was abbreviated though all the Command Organs were involved; and the “method without consultation of organs” that was applied when the situation was urgent and no time was available.²⁷⁵

²⁷¹ Ljubomir Obradović, T. 28287, 28295–28296 (17 Nov 2008).

²⁷² Manojlo Milovanović, T. 12187–12188 (29 May 2007). According to Milovanović, when he was absent, **Miletić**’s function was to advise Mladić directly regarding these reports. *Ibid.*, T. 12311 (31 May 2007). **Miletić** would also inform the Supreme Command of any relevant combat news. *Ibid.*, T. 12182, 12185 (29 May 2007).

²⁷³ *Ibid.*, T. 12188–12189 (29 May 2007). If Mladić and Milovanović were absent, the most Senior General would chair the meeting, while **Miletić** would remain the one explaining the situation. *Ibid.*

²⁷⁴ *Ibid.*, T. 12189 (29 May 2007).

²⁷⁵ Ljubomir Obradović, T. 28465–28466 (19 Nov 2008); Slobodan Kosovac, T. 30050–30051 (13 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, p. 51; Ex. 5DP00699, “JNA Manual for the Work of Commands and Staffs, 1983”, pp. 55–56. See also Richard Butler, T. 19685–19691 (15 Jan 2008), referring to Ex. P00414, “Analysis of the combat readiness and activities of the VRS in 1992, Han Pijesak, April 1993”, p. 8.

c. Directives

115. Directives were general documents setting up objectives to be achieved, in contrast to orders that would specify concrete tasks.²⁷⁶ Directives could be issued by the Supreme Commander or the Main Staff Commander.²⁷⁷ The directives issued by the Supreme Commander were political, war policy documents defining the activities of the Armed Forces in the long term.²⁷⁸ As the Supreme Command was not technically equipped to handle military issues, the majority of these directives would be drafted by the Main Staff based on guidelines from the Supreme Commander and then sent to the Supreme Command for review.²⁷⁹ The Main Staff would implement the changes and corrections and then produce a final version that would be returned to the Supreme Commander for signature.²⁸⁰ Once the Supreme Commander signed off on the directive, the Main Staff Command would issue the order for execution to the Corps Command.²⁸¹

116. Most directives were drafted using the so-called “full” or “complete” method, involving the work of all of the command organs in the Main Staff.²⁸² Each command organ would draw up the elements pertaining to its own respective sector.²⁸³ The Administration for Operations and Training then merged all of the elements that had been drafted by the other command organs and approved by the Main Staff Commander and incorporated these elements together in a single document called a “directive”.²⁸⁴ In 1995, **Miletić**, as the Chief of Operations and Training, would draw up the merged document, *i.e.*, the directive.²⁸⁵

d. Inspections

117. At the level of the Main Staff, the VRS had *ad hoc* teams which were sent to the units in order to establish the level of the combat readiness and the situation on the front lines. Corps commands adopted and used the same system with regard to the lower units. The officers who inspected the commands and units had their team leaders. A team from the Main Staff inspecting

²⁷⁶ Slobodan Kosovac, T. 30055, 30461 (13 Jan 2009).

²⁷⁷ Novica Simić, T. 28659 (21 Nov 2008).

²⁷⁸ Manojlo Milovanović, T. 12192 (29 May 2007).

²⁷⁹ *Ibid.*, T. 12193 (29 May 2007).

²⁸⁰ *Ibid.*, T. 12193 (29 May 2007).

²⁸¹ *Ibid.*, T. 12194 (29 May 2007).

²⁸² Ljubomir Obradović, T. 28304 (17 Nov 2008), T. 28472–28473 (19 Nov 2008). *See also infra*, para. 1646. Ex. 5DP00699, “JNA Manual for the Work of Command and Staffs, 1983”, pp. 52–62, described the three methods of decision-making, *i.e.* the full-method, the abridged method, and decisions by the Commander without previous consultations within the Command. This document was still applied in the VRS. Ljubomir Obradović, T. 28465 (19 Nov 2008). On the different methods *see also Ibid.*, T. 28465–28466 (19 Nov 2008); Dragiša Masal, T. 29072 (1 Dec 2008).

²⁸³ Ljubomir Obradović, T. 28472 (19 Nov 2008).

²⁸⁴ *Ibid.*, T. 28305 (17 Nov 2008), T. 28475 (19 Nov 2008); Novica Simić, T. 28510–28512 (19 Nov 2008).

²⁸⁵ Ljubomir Obradović, T. 28474 (19 Nov 2008).

the Corps would be led by a member of the Main Staff Command. The Commander of the Main Staff, or the Corps Commander if the team was sent from the Corps, could authorise the team leader or one of the officers to influence the situation in the lower units on the spot, and they did so, regularly.²⁸⁶ This “influence” could also be “in the command sense”, as the team would inspect the units not only to establish the situation, but also “to remove deficiencies”, and for this, the officers in charge would have to be able to issue orders. The kind of order would depend on the assignment the inspecting team had received. If an assistant commander received an assignment to address the situation, then he must have had the powers to issue orders. However, he would pass his orders through the unit commander.²⁸⁷

118. There were announced and unannounced controls and inspections of subordinate units by the Main Staff and the Corps. Unannounced controls by the Main Staff were made by Mladić or Milovanović, upon Mladić’s orders. If any other officers came to inspect units, their visits would be announced. Inspections by chiefs of sectors had to be approved by Mladić.²⁸⁸

e. The Sector for Intelligence and Security

119. The Sector for Intelligence and Security, headed by General Tolimir, the Assistant Commander for Intelligence and Security, was divided into two Administrations: the Administration for Intelligence and the Administration for Security. Col. Petar Salapura, the Chief of Intelligence and Col. **Ljubiša Beara**, the Chief of Security were both directly subordinated to Tolimir.²⁸⁹

i. Functions of the Security Organ

120. This section also describes the special function of the Security Organ generally in the VRS, which is not only relevant for the Main Staff but also for the functioning of the Security Organ at the Corps and Brigade level. The function of the Security Organ generally in the VRS was the detection and prevention of enemy activities directed against the VRS, which included discovering,

²⁸⁶ Manojlo Milovanović, T. 12327–12328 (31 May 2007).

²⁸⁷ *Ibid.*, T. 12349–12351 (31 May 2007). As an example, Milovanović described that he would not just inspect the Zvornik Brigade and move a battalion; he would contact **Pandurević**, the Commander, and tell him what needed to be done, and **Pandurević** would be the one issuing the order. *Ibid.*, T. 12351 (31 May 2007). In general, the Brigade Commander was required to inform immediately the Corps Commander of an inspection visit. *Ibid.*, T. 12334–12335 (31 May 2007).

²⁸⁸ Manojlo Milovanović, T. 12333–12334 (31 May 2007). Milovanović frequently passed through Zvornik and stopped by the Command of the Zvornik Brigade. On such occasions, when practically in the absence of anybody else from the Command of the Drina Corps, the Brigade Commander would report to Milovanović, upon his request, about the situation within the Brigade. *Ibid.*, T. 12335 (31 May 2007).

²⁸⁹ *Ibid.*, T. 12153 (29 May 2007); Ljubomir Obradović, T. 28249 (14 Nov 2008). One of the officers serving in the Intelligence Branch was Col. Radoslav Janković. Ex. P00692, “Main Staff Structure”.

documenting, and preventing enemy intelligence activity.²⁹⁰ Enemy activities could come from outside or from within the VRS.²⁹¹ The Security Organ's task of counter-intelligence, which constituted around 80% of its tasks, was preventing information about the VRS from getting into the hands of the enemy.²⁹² At the Main Staff level, the Security Organ's responsibility for counter-intelligence included the Security Administration drafting plans of counter-intelligence protection of the units, organs and institutions of the VRS.²⁹³

121. Because of the unity of command, the Security Organs in the VRS were directly subordinated to the Commander of the unit they formed part of.²⁹⁴ However, a security organ performed the counter-intelligence tasks without receiving specific orders.²⁹⁵ These tasks were part of the Security Organ's professional competence; because of the highly technical and independent nature of such tasks, the Security Organ required specialised support from superior security units.²⁹⁶ This resulted in the Security Organ Officers—in the corps and brigades—having two parallel chains of instructions: the regular command chain and the professional support chain, which did not supersede the regular command chain.²⁹⁷

122. Along the professional or specialty line, the Security Organs—at the Brigades and lower levels—were directly subordinated to the Security Chiefs in the Corps, which were directly subordinated to the Security Administration. Although operating to some extent autonomously, the Security Organ was required to regularly report to the Superior Security Officer. The Superior Security Officer had to have full insight into the Subordinate Security Organ's work, in order to

²⁹⁰ Peter Vuga, T. 23052 (30 June 2008); Ex. P00407, "Rules of Service of Security Organs in the Armed Forces SFRY 1984", p. 7; Milomir Savčić, T. 15240–15241; 15270–15271 (12 Sept 2007).

²⁹¹ Peter Vuga, T. 23052–23053 (30 June 2008); Ex. P00407, "Rules of Service of Security Organs in the Armed Forces SFRY 1984", p. 7.

²⁹² Counter-intelligence is different from intelligence, which is the acquisition of information about the enemy. Counter-intelligence assessment was performed exclusively by the Security Organs. Counter-intelligence assessment was a continuous evaluation of the threat level, based on all available information. The assessment was distributed across multiple levels. Peter Vuga, T. 23106–23108 (1 July 2008); Ex. 3D00275, "Directions on the Methods and Means of work of the JNA Security Organs from the Federal Secretariat for National Defence dated 1986", paras. 10–11, 13; Ex. P02741, "Instruction on Command and Control over the Security and Intelligence Organs of the VRS from the Main Staff of the VRS, signed by Ratko Mladić, dated 24 October 1994", para. 1. While the main task of the Security Organ was counter-intelligence, it was also tasked with "operations that precede the initiation of criminal proceedings and the criminal proceedings themselves, in accordance with the provisions of the federal laws that regulate criminal procedure and the jurisdiction of military courts." Ex. P00407, "Rules of Service of Security Organs in the Armed Forces SFRY 1984", para. 7(e). The federal law regulating criminal procedure is the Decree on Law of Courts Martial, and it designates the Security Organ and the Military Police as the court's investigatory bodies. Ex. 4DP00420, "RS Official Gazette no. 27: Decree on Law of Courts martial", Art. 56.

²⁹³ Milomir Savčić, T. 15241 (12 Sept 2007).

²⁹⁴ Richard Butler, T. 19634–19635 (14 Jan 2008); Ex. P00407, "Rules of Service of Security Organs in the Armed Forces SFRY 1984", para. 16.

²⁹⁵ Peter Vuga, T. 23055–23056 (30 June 2008); Ex. P00407, "Rules of Service of Security Organs in the Armed Forces SFRY 1984", pp. 7–9.

²⁹⁶ Richard Butler, T. 19635–19636 (14 Jan 2008). *See also* Ex. P00407, "Rules of Service of Security Organs in the Armed Forces SFRY 1984", para. 18.

²⁹⁷ Richard Butler, T. 19636 (14 Jan 2008).

provide guidance and evaluate whether the Subordinate Security Organ was working properly or overstepping its authority.²⁹⁸

123. In the regular chain of command, the Security Organs reported to the Commanders of the units they formed part of; for example, the Security Organ in the Drina Corps would report to the Drina Corps Commander and the Security Organ in the Zvornik Brigade would report to the Zvornik Brigade Commander.

124. With regard to counter-intelligence work, the Security Organs received instructions on how to carry out the tasks, by the Superior Security Organs. The commanders of the units they formed part of knew about these instructions in order for the complete assignments to be executed.²⁹⁹ The professional support chain also gave guidance to the unit commanders on certain procedures or threats the units might have been subject to.³⁰⁰ The military regulations recognised these distinct chains that were also subject of instructions issued by Mladić.³⁰¹

125. At the Main Staff, the Security Organ headed by **Beara** had a military police department which was engaged in professional matters of military policing. It was responsible for drafting plans and programs, combat training and equipment for military police units.³⁰² The Security Administration's role was purely professional, which meant that it did not have a command function towards the Military Police. It would make proposals to the Commander of the Main Staff as to the use of the Military Police.³⁰³

126. With regard to POWs, the military regulations did not state that POWs would fall within the professional competence of the Security Organ. The Security Organ would however use POWs as source of information.³⁰⁴

²⁹⁸ Peter Vuga, T. 23109 (1 July 2008).

²⁹⁹ Spiro Pereula, T. 24154–24155 (28 July 2008).

³⁰⁰ Richard Butler, T. 19636 (14 Jan 2008).

³⁰¹ *Ibid.*, T. 19636 (14 Jan 2008); Petar Vuga, T. 23094–23095 (1 July 2008); Ex. P02741, "VRS Main Staff instructions on command and control over security and intelligence organs, signed by Mladić, 24 October 1994", para. 2 ("The security and intelligence organs are directly commanded by the commander of the unit or institution of which they form part, but with regard to professional activities they are controlled centrally by the security and intelligence organs of the superior command. This indicates their full independence in the implementation of intelligence and counter-intelligence tasks and operative combinations [...]"). Equally, these instructions provided that "[m]onitoring the professionalism, legality and correctness of the work of the security and intelligence organs shall be carried out exclusively by the first superior organs for security and intelligence affairs, except in that part of their engagement relating to command and staff affairs." *Ibid.* para. 7.

³⁰² Milomir Savčić, T. 15241, 15271–15272 (12 Sept 2007).

³⁰³ *Ibid.*, T. 15271–15272 (12 Sept 2007).

³⁰⁴ Peter Vuga, T. 23081–23083 (30 June 2008); Ex. 3D00275, "Directions on the Methods and Means of work of the JNA Security Organs from the Federal Secretariat for National Defence dated 1986", para. 134. Vuga explained that in the Rules, POWs would not fall within the competence of the Security Organs because they were disarmed enemy soldiers and therefore not actors in any security-related threats that were of interest for the Security Organs. Further, providing security of POWs, including transport and detaining them in POW camps, would not require

ii. The 10th Sabotage Detachment

127. The 10th Sabotage Detachment was a special unit of the Main Staff, directly subordinated to the Administration for Intelligence headed by Col. Petar Salapura, the Chief of Intelligence in the Main Staff. It comprised between 50 and 60 men with two separate platoons: one in Vlasenica and one in Bijeljina.³⁰⁵ The soldiers in the 10th Sabotage Detachment were trained for sabotage activities.³⁰⁶ In July 1995, uniforms of the 10th Sabotage Detachment included a black overall with a removable insignia of the 10th Sabotage Detachment; a regular two-piece camouflage uniform of the VRS with a removable insignia of the 10th Sabotage Detachment; a uniform of the US Army, and a uniform of the ABiH and the HVO.³⁰⁷

iii. The Military Police

128. Generally, the Military Police was under the command and control of the commander of the unit the Military Police formed part of.³⁰⁸ At the corps level, the Military Police was commanded by the Corps Commander and at the brigade level the Military Police was commanded by the Brigade Commander. At the Main Staff level, the Military Police was part of an elite unit, the 65th Protection Regiment, which was directly subordinated to Mladić.³⁰⁹

129. The tasks of the Military Police included providing security for facilities, roads, and commanders through patrolling and escort services; and to fight infiltrated sabotage and terrorist groups.³¹⁰ The military regulations provided that with regard to escort services, the Military Police escorted POWs from the location of their temporary detention to POW camps.³¹¹

such a degree of professionalism or expertise calling for the involvement of the Security Organ. Peter Vuga, T. 23081–23082 (30 June 2008). *See however* PW-168, T. 16228–16229 (closed session) (11 Oct 2007), who testified that it was customary that the Security Organs and the Military Police would be dealing with POWs, as reflected in Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, dated 02 July 1995”, p. 7 (“[s]ecurity organs and military police will indicate the areas for gathering and securing prisoners of war and war booty”).

³⁰⁵ Dražen Erdemović, T. 10931–10934 (4 May 2007); Manojlo Milovanović, T. 12165–12166 (29 May 2007). 2nd Lieutenant Milorad Pelemiš was the Commander of the 10th Sabotage Detachment. Dražen Erdemović, T. 10935 (4 May 2007); Ex. P02869, “10th Sabotage Detachment order No. 123-2/95, signed by Franc Kos, 10 July 1995”.

³⁰⁶ Dražen Erdemović, T. 10935 (4 May 2007). Sabotage activities included “going behind enemy lines, destroying hangars holding ammunition, setting explosives to blow up large-caliber weapons, destroying bridges.” *Ibid.*

³⁰⁷ *Ibid.*, T. 10939 (4 May 2007).

³⁰⁸ Ex. P00707, “Service Regulations of the SFRY Armed Forces Military Police, 1985”, para. 12.

³⁰⁹ *See infra*, paras. 131–133.

³¹⁰ Mikajlo Mitrović, T. 25054 (2 Sept 2008).

³¹¹ *Ibid.*, T. 25055 (2 Sept 2008); Ex. P00707, “Service Regulations of the SFRY Armed Forces Military Police 1985”, paras. 55, 57. *See also* Richard Butler, T. 19637 (14 Jan 2008), T. 20343–20344 (24 Jan 2008) (stating that the POWs are given into the care of the military police to safeguard them until they are turned over to those who are responsible for their long-term detention); Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 7 (“[s]ecurity organs and military police will indicate the areas for gathering and securing prisoners of war and war booty”).

130. While the Commander of the unit the Military Police formed part of, commanded the Military Police, it was the Security Organ that exercised “professional” or “specialist” control over the Military Police.³¹² Based on its professional knowledge, the Security Organ proposed to the commander of the unit, which the Security Organ and the Military Police formed part of, how to use the Military Police and assisted the Military Police Commander by giving professional guidance in the execution of the orders issued by the unit commander.³¹³

(ii) The 65th Protection Regiment

131. The 65th Protection Regiment (“Protection Regiment”), a motorised regiment, was an elite unit of the VRS.³¹⁴ It provided security to the Main Staff, but was also used as a reserve force for the Main Staff, for intervention purposes.³¹⁵ The Commander of the Protection Regiment, Colonel Milomir Savčić, was directly subordinated to Mladić as Commander of the Main Staff or, “when engaged in defence of the Main Staff”, to the most Senior General in the Main Staff.³¹⁶

132. In July 1995, the Protection Regiment had the following units: a military police battalion; a motorised combat battalion; a sabotage unit linked up with the 10th Sabotage Detachment of the Main Staff; an artillery rocket battalion of anti-aircraft defence, a tank company, a logistical company, a mortar company, and a transport company.³¹⁷

133. The unit mostly relevant to this Judgement is the Military Police Battalion, which had its headquarters in Nova Kasaba, on the Milići-Konjević Polje road. The Commander of the Military Police Battalion was Zoran Malinić.³¹⁸ When it came to the disposition of the Military Police Battalion, Mladić would issue orders to Savčić as Commander of the Protection Regiment who, in turn, would issue orders to Malinić.³¹⁹ Exercising its professional competence, it was the Administration for Security of the Main Staff, headed by **Beara**, that would make proposals to Mladić as to the use of the Military Police Battalion.³²⁰

³¹² Mikajlo Mitrović, T. 25051–25052 (2 Sept 2008); Peter Vuga, T. 23058–23059 (30 June 2008); Ex. P00407, “Rules of Service of Security Organs in the Armed Forces SFRY 1984”, para. 23; Ex. P00707, “Service Regulations of the SFRY Armed Forces Military Police, 1985”, para. 13 (stating that “[w]ith respect to specialty, the officer in charge of the security body of the unit or institution within whose establishment the military police unit is placed or to which it is attached controls the military police”).

³¹³ Peter Vuga, T. 23058–23060 (30 June 2008); Ex. P00407, “Rules of Service of Security Organs in the Armed Forces SFRY 1984”, para. 23; Ex. P00707, “Service Regulations of the SFRY Armed Forces Military Police, 1985”, para. 13.

³¹⁴ Manojlo Milovanović, T. 12164 (29 May 2007).

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*, T. 12165 (29 May 2007).

³¹⁷ *Ibid.*, T. 12164 (29 May 2007); Milomir Savčić, T. 15234–15235 (12 Sept 2007).

³¹⁸ Milomir Savčić, T. 15235–15237 (12 Sept 2007).

³¹⁹ *Ibid.*, T. 15239–15240 (12 Sept 2007).

³²⁰ *Ibid.*, T. 15240 (12 Sept 2007).

(b) The Drina Corps

134. The Drina Corps headquarters was established first in Han Pijesak and was later moved to Vlasenica, where it was located during July 1995.³²¹ The Drina Corps IKM in July 1995 was established initially at Pribićevec and later moved to Krivače, which was located between Han Pijesak and Žepa.³²²

135. The Drina Corps was composed of the following subordinate Brigades: 1st Zvornik Infantry Brigade (“Zvornik Brigade”); 1st Bratunac Light Infantry Brigade (“Bratunac Brigade”); 1st Vlasenica Light Infantry Brigade (“Vlasenica Brigade”); 2nd Romanija Motorised Brigade (“2nd Romanija Brigade”); 1st Birač Infantry Brigade (“Birač Brigade”)³²³; 1st Milići Light Infantry Brigade (“Milići Brigade”); 1st Podrinje Light Infantry Brigade (“Rogatica Brigade”); 5th Podrinje Light Infantry Brigade (“5th Podrinje Brigade”)³²⁴; and 1st Skelani Separate Infantry Battalion (“Skelani Battalion”). These Brigades had combat capabilities and were supported by the 5th Mixed Artillery Regiment (“Mixed Artillery Regiment”), the 5th Engineers Battalion (“Engineers Battalion”)³²⁵, the 5th Communications Battalion (“Communications Battalion”) and the 5th Military Police Battalion (“Military Police Battalion”)^{326 327}.

³²¹ Prosecution Adjudicated Facts Decision, Fact 77; PW-109, T. 14598 (private session) (31 Aug 2007); Milenko Jevđević, T. 29802 (16 Dec 2008) For communication purposes, the code name of the Drina Corps Command was “Zlatar”. Prosecution Adjudicated Facts Decision, Fact 87; Vinko Pandurević, T. 31045 (3 Feb 2009).

³²² Milenko Jevđević, T. 29517 (10 Dec 2008), T. 29525 (11 Dec 2008), T. 29595 (12 Dec 2008) (describing his arrival at the Pribićevec IKM on 5 July, setting up a mobile communications centre and establishing communications with the Drina Corps Command in Vlasenica); Vinko Pandurević, T. 30943 (30 Jan 2009) (referring to the IKM at Krivače on 15 July).

³²³ Also called Sekovići Brigade. Ex. 7DP02109, “Map of the Drina Corps Area of Responsibility”.

³²⁴ Also called Višegrad Brigade. *Ibid.*

³²⁵ Ex. 1D00379, “Overview of Existing Number of Troops for Drina Corps in July 1995”, shows that in July 1995, the 5th Engineering Battalion had 134 men, including 111 soldiers, all of them reservists. The Battalion consisted of four companies and one platoon: the Pioneers Company, the Road and Bridge Company, the Engineering Company, the Pontoon Company, and the Logistics Platoon. Mile Simanić, T. 14675–14677 (3 Sept 2007), referring to Ex. P02672, “5th Engineering Battalion Regular Combat Report to the Drina Corps Command, 14 July 1995”, pp. 1–2. In July 1995, one part of the Fifth Engineering Battalion was stationed in Konjević Polje, billeted in several private houses that had been damaged, and in part of a school. Mile Simanić, T. 14625–14626 (3 Sept 2007).

³²⁶ The Military Police Battalion consisted of around 40 men. Gordan Bjelanović, T. 22063–22064 (10 June 2008); PW-172, T. 32568 (private session) (10 Mar 2009).

³²⁷ Prosecution Adjudicated Facts Decision, Fact 83. The Zvornik Brigade was commanded by Lieutenant Colonel **Vinko Pandurević**, the Bratunac Brigade by Colonel Vidoje Blagojević, the Vlasenica Brigade by Major Mile Kosorić, the 2nd Romanija Brigade by Colonel Mirko Trivić, the Birač Brigade by Colonel Svetozar Andrić, the Milići Brigade by Captain First Class Milomir Nastić, the Rogatica Brigade by Lieutenant Colonel Rajko Kušić, the 5th Podrinje Brigade by Lieutenant Colonel Radomir Furtula, and the Skelani Battalion by Captain First Class Bogdan Radetić. The Mixed Artillery Regiment was commanded by Colonel Dragoljub Borovina, the Engineers Battalion by Captain First Class Milenko Avramović, the Communications Battalion by Major Milenko Jevđević, and the Military Police Battalion by Lieutenant Ratko Vujović. Ex. 1D00379, “Overview of Existing Number of Troops for the Drina Corps in July 1995”. See also Mirko Trivić, T. 11795, 11803 (18 May 2007), T. 11976 (23 May 2007); Milenko Lazić, T. 21806 (5 June 2008); Vinko Pandurević, T. 30881 (30 Jan 2009), T. 31187 (10 Feb 2009), T. 32193 (26 Feb. 2009); Mile Simanić, T. 14622 (3 Sept 2007); Milenko Jevđević, T. 29480 (10 Dec 2008), T. 29921 (17 Dec 2008); Richard Butler, T. 19763 (16 Jan 2008); Ex. P00686, “Srebrenica Military Narrative (Revised) – Operation “Krivaja 95”, R. Butler, 1 November 2002”, pp. 18–24. The 5th Mixed Artillery

(i) The Command

136. Major General Milenko Živanović assumed the role of the Drina Corps Commander and served in that capacity until he handed over the command on 13 July 1995 to Major General Radislav Krstić, who had served as the Chief of Staff of the Drina Corps.³²⁸

137. Directly subordinated to the Corps Commander were the Department for Security, commanded by Lieutenant Colonel **Vujadin Popović**;³²⁹ the Department for Logistics,³³⁰ and the Department for Morale, Legal and Religious Affairs.³³¹

138. The Staff, directly subordinated to the Chief of Staff, consisted of the Department for Operations and Training;³³² the Department for Reinforcement and Personnel Matters;³³³ and the Department for Intelligence.³³⁴ Directly subordinated to the Chief of Staff was also the Chief of Communications.³³⁵

(ii) The Security Organ

139. In the Drina Corps, the Security and Intelligence Organs were not part of one department. They worked separately from each other, but exchanged information that was of interest to either.³³⁶

Regiment was stationed in Vlasenica. Milenko Lazić, T. 21806–21807 (5 June 2008). For the Drina Corps' and Brigade's areas of responsibility, *see* Ex. 7DP02109, "Map 4 from Map Book: Drina Corps Area of Responsibility". Mirko Trivić, the Commander of the 2nd Romanija Brigade explained that "zone of responsibility" could be interpreted as synonymous to the area of combat activities, and it covers an area where units are deployed. Mirko Trivić, T. 11941 (22 May 2007).

³²⁸ Ex. P00118, "Document from Drina Corps Command - Handover of Corps Commander duties signed by Lieutenant Colonel Radenko Jovičić dated 13 July 1995"; Prosecution Adjudicated Facts Decision, Facts 78, 80.

³²⁹ Svetozar Kosorić, T. 33786 (30 June 2009); Gordan Bjelanović, T. 22065 (10 June 2008); PW-168, T. 15768 (closed session) (25 Sept 2007); Milorad Birčaković, T. 11012 (7 May 2007). Gordan Bjelanović, a member of the Military Police Battalion of the Drina Corps, testified that colleagues of **Popović**, who were themselves officers, would address **Popović** by "Pop". Gordan Bjelanović, T. 22071 (10 June 2008). Bjelanović further testified that **Popović** had a Golf car, which belonged to the security organ. It was driven by a driver called Dušan Vučetić and, according to Bjelanović, was also used to drive other individuals around. Gordan Bjelanović, T. 22071–22072 (10 June 2008).

³³⁰ Prosecution Adjudicated Facts Decision, Fact 80; Božo Momčilović, T. 14071–14072 (22 Aug 2007). The Department for Logistics was commanded by Colonel Lazar Aćamović. Colonel Rajko Krsmanović was the Chief of the Transportation Service in the Department for Logistics. Zeljko Kerkez, T. 24088 (25 July 2008); Dragoslav Trišić, T. 27066 (20 Oct 2008).

³³¹ Prosecution Adjudicated Facts Decision, Fact 80. The Department for Morale, Legal and Religious Affairs was commanded by Col. Slobodan Cerović. *Ibid.*

³³² Milenko Lazić, T. 21753 (4 June 2008). The Department for Operations and Training was headed by Col. Milenko Lazić, the Chief of Operations and Training, who was as well Deputy Chief of Staff. *Ibid.*

³³³ Ex. P00685, "Srebrenica Military Narrative – Operation 'Krivaja 95'", R. Butler, 15 May 2000", p. 108.

³³⁴ Svetozar Kosorić, T. 33760 (30 June 2009). The Department of Intelligence was headed by Svetozar Kosorić. Pavle Golić was an officer of the Department of Intelligence and was subordinate to Kosorić. Richard Butler, T. 20082–20083 (21 Jan 2008); Ex. P00685, "Srebrenica Military Narrative – Operation 'Krivaja 95'", R. Butler, 15 May 2000", p. 108.

³³⁵ Nedo Blagojević, T. 22264 (17 June 2008).

³³⁶ Svetozar Kosorić, T. 33786 (30 June 2009).

Popović was the sole officer within the Security Organ of the Drina Corps.³³⁷ In the professional chain of command, **Popović** was subordinate to **Beara**, the Chief of Security of the Main Staff. **Popović** was the superior to the Security Organs of the Drina Corps Brigades, including **Drago Nikolić**, the Chief of Security in the Zvornik Brigade, and Momir Nikolić, the Chief of Security and Intelligence in the Bratunac Brigade.³³⁸ The tasks of the Security Organ at the Corps level were the same as those set out above.³³⁹

(iii) The Military Police

140. The Military Police Battalion of the Drina Corps, commanded by Lieutenant Ratko Vujović, was directly subordinated to the Corps Commander, while **Popović**, the Chief of Security, was superior to the Military Police in the professional or technical sense as described above.³⁴⁰

141. The Military Police of the Drina Corps wore the same uniform as other members of the VRS; however, the Military Police wore different insignia on the left shoulder of the uniform, which read “5th Battalion of the Military Police” with “Military Police of the Drina Corps” and a coat of arms underneath it.³⁴¹

(c) The Zvornik Brigade

142. The 1st Zvornik Infantry Brigade (“Zvornik Brigade”) had its headquarters in the so-called Standard Barracks in Karakaj, around two kilometres north of Zvornik, on the Konjević Polje-Zvornik-Bijeljina Road.³⁴² In July 1995, one IKM was located in the village of Kitovnice, in the

³³⁷ Richard Butler, T. 20081 (21 Jan 2008); Ex. P00685, “Srebrenica Military Narrative – Operation ‘Krivaja 95’”, R. Butler, 15 May 2000”, p. 108.

³³⁸ Svetozar Kosorić, T. 33760 (30 June 2009); Richard Butler, T. 19646–19647 (14 Jan 2008).

³³⁹ See *supra*, paras. 120–126.

³⁴⁰ Milenko Lazić, T. 21742 (4 June 2008). See *supra*, para. 130.

³⁴¹ Gordan Bjelanović, T. 22061–22062 (10 June 2008). According to Bjelanović, the only circumstance in which a member of the Military Police Battalion would wear a white belt was when manning checkpoints. *Ibid.*

³⁴² Miodrag Dragutinović, T. 12724 (15 June 2007); Milorad Birčaković, T. 11011 (7 May 2007). The “1st Light Infantry Zvornik Brigade” was established in June 1992. In 1993, the Brigade was renamed the “1st Zvornik Infantry Brigade”, a name it held until beginning of 1996 when it was reformed into the 303rd Motorised Brigade. PW-168, T. 16057–16059 (closed session) (9 Oct 2007). As to the layout of the Zvornik Brigade headquarters in July 1995, see Ex. P02913, “Schematics of the Zvornik Brigade Headquarters”; Ex. 3DIC00254, “Floor Plan of Zvornik Brigade Headquarters marked by Sreten Milošević” (indicating on the 1st floor as nr. 1 the duty officer room; as nr. 2 the office of the Assistant Commander for Logistics; as nr. 3 the office of the Brigade Commander; as nr. 4 the office of the Chief of Staff; as nr. 5 the office of the Chief of Security; as nr. 6 the side of the Zvornik-Bijeljina Road; and as nr. 7 the side of the Drina River. Sreten Milošević, T. 33964–33966 (15 July 2009). Fuel for the use of the Brigade was stored at a gas station in Karakaj, a few hundreds meters from the Brigade Command. Vinko Pandurević, T. 31209 (10 Feb. 2009). The Brigade also had a casern in Karakaj and barracks in Kozluk. PW-168, T. 16138 (10 Oct 2007) (closed session). Combat or defence actions were never commanded from the Standard Barracks, but from the IKM or another position closer to the front line. *Ibid.* For communication purposes, the code name of the Zvornik Brigade Command was “Palma”. Prosecution Adjudicated Facts Decision, Fact 87.

hamlet of Delići ("Kitovnice IKM"), 15 kilometres from the Standard Barracks, in the direction of the village of Orahovac.³⁴³

143. The Zvornik Brigade's strength in 1995 was in excess of 5.000 men.³⁴⁴ According to the establishment structure, the Zvornik Brigade consisted of eight infantry battalions.³⁴⁵ In 1994, the Drina Corps re-subordinated the 8th Battalion of the Zvornik Brigade to the Bratunac Brigade, and it became the 4th Battalion of the Bratunac Brigade. However, around 20 July 1995, this battalion was re-subordinated to the Zvornik Brigade again, when it was renamed as originally, the 8th Battalion.³⁴⁶

144. The 1st Battalion of the Zvornik Brigade, also called Lokanj-Pilica Battalion,³⁴⁷ was located in Lokanj, the neighbouring village of Pilica, and was commanded by Lieutenant Milan Stanojević; the 2nd Battalion, located in the village of Malešić, which was approximately 14 kilometres away from Ročević, was commanded by Srećko Ačimović; the 3rd Battalion, located in Boškovići, was commanded by Captain Branko Studen; the 4th Battalion, located in Rebići, was commanded by 2nd Lieutenant Pero Vidaković, with Lazar Ristić as the Deputy Commander; the 5th Battalion, located in Kiseljak, was commanded by 2nd Lieutenant Vladen Matić; the 6th Battalion, located in Petkovci, was commanded by Captain 1st Class Ostoja Stanišić, with Marko Milošević as the Deputy Commander; the 7th Battalion, located in Memići, was commanded by 2nd Lieutenant Drago Beatović; and the 8th Battalion was commanded by Captain 1st Class Radika Petrović, with Boško Petrović as the Deputy Commander.³⁴⁸ All Battalion Commanders reported and were subordinated directly to the Brigade Commander.³⁴⁹

145. In addition to the eight infantry battalions, there was a so-called "R" Battalion. Its members were deployed in factories and schools and were only mobilised in urgent situations, when there

³⁴³ Milorad Birčaković, T. 11013 (7 May 2007); Lazar Ristić, T. 10167 (17 Apr 2007), marking Ex. 3DIC00087, "Map 3D94 marked by the witness" (showing the location of the Kitovnice IKM). The Kitovnice IKM consisted of a small prefabricated building with two or three rooms which housed the communications centre; a container next to the building which housed the security and the signals men; and north, some 300 metres away from the object, there was an observation point, made of wood and earth and connected with the prefabricated building. The Zvornik Brigade had three locations for IKMs during the war. Vinko Pandurević, T. 30967–30968 (2 Feb. 2009).

³⁴⁴ Miodrag Dragutinović, T. 12636 (14 June 2007); Ex. 7DP00382, "Zvornik Brigade Report 05/283-03, 20 July 1995". In 1995, the Zvornik Brigade had a dire lack of trained senior officers. While consisting of 5.000 soldiers, it never had more than 12 professional officers amongst its ranks. PW-168, T. 15742 (closed session) (25 Sept 2007).

³⁴⁵ Ex. 7D00622, "Diagram of Zvornik Brigade Structure".

³⁴⁶ PW-168, T. 16441–16442 (16 Oct 2007), T. 16502 (17 Oct 2007) (closed session).

³⁴⁷ The 1st Battalion had a work platoon ("1st Battalion Workers Platoon") at Branjevo Military Farm, which prepared food for the soldiers and occasionally travelled to the front line to dig trenches. The work platoon was commanded by Captain Radivoje Lakić. Jevto Bogdanović, T. 11314–11316, 11343 (10 May 2007).

³⁴⁸ Radivoje Lakić, T. 10265, 10273 (19 Apr 2007); Slavko Perić, T. 11368 (11 May 2007); Srećko Ačimović, T. 12931 (20 June 2007); Lazar Ristić, T. 10131 (17 Apr 2007); Ostoja Stanišić, T. 11593–11595, 11603 (16 May 2007); PW-168, T. 16132 (closed session) (10 Oct 2007); T. 16441 (16 Oct 2007) (closed session); Ex. P00686, "Srebrenica Military Narrative (Revised) – Operation "Krivaja 95", R. Butler, 1 November 2002", pp. 20–21.

³⁴⁹ Miodrag Dragutinović, T. 12567–12568 (13 June 2007).

was a special need. The Battalion numbered less than 250 men, which was much less than the other Battalions.³⁵⁰

146. In addition to the infantry battalions, the Zvornik Brigade also had an engineering company, a military police company, a signals company, a mixed artillery division, a light artillery division of anti-aircraft defence, a rear battalion, and a manoeuvre battalion also known as the “Podrinje Detachment” or the “Drina Wolves” (as referred to in this Judgement).³⁵¹

(i) The Command

147. In 1995, **Vinko Pandurević** was the Commander of the Zvornik Brigade. Dragan Obrenović was the Chief of Staff and Deputy Commander; he was subordinated and reported directly to **Pandurević**.³⁵²

148. Directly subordinated to **Pandurević** as the Brigade Commander were also Captain Sreten Milošević, the Assistant Commander for Logistics³⁵³; Major Nenad Simić, the Assistant Commander for Morale, Religious and Legal Affairs; and **Drago Nikolić**, the Assistant Commander for Security, with the position sometimes referred to as Chief of Security.³⁵⁴

149. The Commander, the Chief of Staff, and the three Assistant Commanders constituted the inner command that was hierarchically above the rest of the Staff officers and was in charge of planning the activities of the Brigade.³⁵⁵

³⁵⁰ PW-168, T. 16105–16107 (9 Oct 2007) (closed session) In July 1995, pursuant to an order of **Pandurević**, the “R” Battalion took up positions close to Orahovac, from the village of Planinčić up to Crni Vrh. *Ibid.*, T. 16106–16107 (9 Oct 2007) (closed session). See also Ex. 7D00622, “Diagram of Zvornik Brigade Structure”.

³⁵¹ PW-168, T. 16130 (10 Oct 2007) (closed session); Ex. 7D00622, “Diagram of Zvornik Brigade Structure”.

³⁵² Miodrag Dragutinović, T. 12562 (13 June 2007); T. 12633–12634 (14 June 2007); Milan Marić, Ex. P03138, “92 quater transcript”, BT. 11549 (6 July 2004). Both **Pandurević** and Obrenović had assumed their respective positions in the Brigade in December 1992. Miodrag Dragutinović, T. 12562 (13 June 2007), T. 12633–12634 (14 June 2007).

³⁵³ In his capacity as Assistant Commander for Logistics, Milošević’s duties were to provide supplies for the life and work of the Zvornik Brigade such as food, clothing, and fuel. Krstić, the Chief of the Technical Service, Boško Nikolić, who was in charge of quartermaster, and Radisav Pantić, who was the Chief of Traffic and Transportation, were members of the Logistics Organ and directly under Milošević’s command. Transportation was dealt with by a logistics battalion Milošević was not in command of, but had a functional relationship with, based on his professional competence. Sreten Milošević, T. 33958–33959, T. 33961, 33996 (15 July 2009). See also Zeljko Kerkez, T. 24102 (25 July 2008).

³⁵⁴ Sreten Milošević, T. 33959–33960 (15 July 2009); Milan Marić, Ex. P03138, “92 quater transcript”, BT. 11549 (6 July 2004); Miodrag Dragutinović, T. 12562 (13 June 2007); Ljubo Bojanović, Ex. P03135a, “confidential – 92 quater transcript”, BT. 11675 (8 July 2004); Vinko Pandurević, T. 30781–30782 (28 Jan 2009) (stating that **Drago Nikolić** as Assistant Commander for Security, was his subordinate), T. 30832 (29 Jan 2009). **Nikolić**’s post was titled “Chief of Security”; Ex. P00686, “Srebrenica Military Narrative (Revised) – Operation “Krivaja 95”, R. Butler, 1 November 2002”, p. 20. See also Ex. 7D00622, “Diagram of Zvornik Brigade Structure”;

³⁵⁵ Ljubo Bojanović, Ex. P03135a, “confidential – 92 quater transcript”, BT. 11674–11675 (8 July 2004); Milan Marić, Ex. P03138, “92 quater transcript”, BT. 11549–11550 (6 July 2004).

150. According to the principle of unity of command, the Brigade Commander was commanding the units in his Brigade and those attached to it.³⁵⁶ The Brigade Commander was responsible for the condition of his units, such as its security, morale, combat readiness, training and proper performance of tasks.³⁵⁷ He took the decisions, assigned tasks to the units, and monitored their fulfilment.³⁵⁸ He was also responsible for implementing the tasks given to him by the Superior Command and ensuring order in the Brigade, and that the international rules on warfare were respected.³⁵⁹

151. The Brigade Commander also defined the duties of the Chief of Staff. The Chief of Staff could assign tasks in the spirit of the Commander's orders; he could not issue orders independently. Having given tasks to subordinate units, he controlled the work of these units. The Chief of Staff could propose to the Commander the use of units and once the Commander issued a decision, the Chief of Staff would formulate the decision into a combat order and would, together with the Staff, draft all the combat documents defining the details of the order.³⁶⁰

152. The Staff of the Zvornik Brigade, which accounted for roughly 50 or 60 percent of the Brigade Command, consisted of an organ for operations and training, an intelligence organ, an organ for recruitment and personnel, organs for combat arms, including the Chief of Engineering, and the office.³⁶¹ Obrenović as the Chief of Staff headed the Organs of the Staff. Members of the Staff directly subordinated to the Chief of Staff were Duško Vukotić, the Chief of Intelligence; Major Miodrag Dragutinović, the Chief of Operations and Training³⁶²; Mihajlo Galić, the Chief for Personnel Affairs; Dragan Jokić, the Chief of Engineering; and Milosav Petrović, the Chief of Communications.³⁶³

³⁵⁶ Ex. P00694, "JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984", para. 115; PW-168, T. 15746, 15749 (closed session) (25 Sept 2007).

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

³⁵⁹ PW-168, T. 15747 (closed session) (25 Sept 2007).

³⁶⁰ *Ibid.*, T. 16156–16157 (10 Oct 2007) (closed session).

³⁶¹ *Ibid.*, T. 15749–15750 (closed session) (25 Sept 2007); Ex. P00694, "JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984", para. 116.

³⁶² In addition to the Chief of Operations and Training, several clerks worked in the Department for Operations and Training in the Zvornik Brigade. Following instructions from the Chief of Staff, the Department for Operations and Training would take part in the planning, organisation, and documentation for combat operations, and preparations of analyses and reports based on these documents. Milan Marić, Ex. P03138, "92 *quater* transcript", BT. 11551 (6 July 2004). For the functions of the operations and training organ, *see also* Ex. P00694, "JNA Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigades) 1984", para. 117.

³⁶³ Mihajlo Galić, T. 10573 (26 Apr 2007); Milan Marić, Ex. P03138, "92 *quater* transcript", BT. 11550–11551 (6 July 2004); Ljubo Bojanović, Ex. P03135a, "confidential – 92 *quater* transcript", BT. 11675–11676 (8 July 2004); Zoran Aćimović, T. 22026–22027 (9 Jun 2008). There was also a chief of artillery, a chief of anti-aircraft and a signals chief. Ex. 7D00622, "Diagram of Zvornik Brigade Structure".

(ii) The Security Organ

153. In July 1995, “security” and “intelligence” were two separate organs in the Zvornik Brigade.³⁶⁴ Following the “professional” or “specialty” competency of the Security Organs, **Drago Nikolić**, as Chief of Security in the Zvornik Brigade, was in charge of counter-intelligence, i.e., preventing the enemy from obtaining information about the Brigade.³⁶⁵ Both the Chief of Security and the Chief of Intelligence could interrogate enemy prisoners in order to acquire information.³⁶⁶

154. **Nikolić** was assisted by Lieutenant Milorad Trbić.³⁶⁷ **Nikolić**’s tasks as Security Organ of the Brigade were: as Command Organ of the Brigade he was in charge of staff security tasks, specialist’s control of the Military Police, and criminal proceedings³⁶⁸; while his second field of tasks, related to his specialty, was counter-intelligence.³⁶⁹

155. **Nikolić** was subject to two lines of subordination: the “specialty” or “professional” line, and the “subordination line”. With regard to professional or counter-intelligence activities, security and intelligence organs were controlled centrally by the Security and Intelligence Organs of the Superior Command. This meant that along the professional line, **Nikolić** was subordinated to and controlled by **Popović** as the Assistant Commander for Security of the Drina Corps.³⁷⁰ Along the subordination line within the Brigade, however, **Nikolić** was subordinated to the Brigade Commander. Thus, **Nikolić** had to keep **Pandurević** informed, to the extent necessary for the Brigade’s security, about assessments, conclusions and proposals that had been formulated through the counter-intelligence work.³⁷¹ Nevertheless, in order to ensure any required secrecy with regard

³⁶⁴ PW-168, T. 15754–15755 (closed session) (25 Sept 2007). At the beginning of 1995, the then-Commander of the Drina Corps General Živanović issued an order called “Changes in the Authorisation of VRS Security and Intelligence Support Delivery,” dividing the security and intelligence tasks between security and intelligence organs in regular infantry brigades. The order also recognised that “security organs and intelligent organs shall exchange information of importance on a daily basis.” Ex. P03031, “Order from the Drina Corps Command, 29 January 1995”, p. 2.

³⁶⁵ Ex. P00694, “Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigade) from the Federal Secretariat for National Defence 1984”, paras. 208–209, 225; Vinko Pandurević, T. 31622–31623 (17 Feb 2009).

³⁶⁶ PW-168, T. 16224 (closed session) (11 Oct 2007), T. 17045 (closed session) (29 Oct 2007).

³⁶⁷ Milorad Birčaković, T. 11012 (7 May 2007) (stating that Trbić was Deputy Chief of Security).

³⁶⁸ Nebojša Jeremić, T. 10418, T. 10420–10421, T. 10447 (24 Apr 2007), T. 10481 (25 Apr 2007). *See also infra*, paras. 160–161 with regard to the Crime Prevention Service.

³⁶⁹ Petar Vuga, T. 23284 (4 July 2008).

³⁷⁰ Ex. P02741, “Instruction on command and control over Security and Intelligence Organs of the VRS from the Main Staff, signed by Ratko Mladić, 24 October 1994”, para. 2. PW-168, T. 15758, 15767–15768 (closed session) (25 Sept 2007), T. 16213–16215 (closed session) (11 Oct 2007). The centralized control regarding security and intelligence meant that in one place, almost simultaneously, all available information about threats flowed in; it was processed with the maximum level of experience, expertise and feedback; and then it was distributed to the all relevant security organs. Petar Vuga, T. 23095 (1 July 2008).

³⁷¹ Petar Vuga, T. 23095 (1 July 2008); Ex. P02741, “VRS Main Staff Instruction on Command and Control over the Security and Intelligence Organs, signed by Ratko Mladić, 24 October 1994”, para. 3; Ex. P00407, “Rules of Service of Security Organs in the Armed Forces SFRY 1984”, para. 12; PW-168, T. 15768 (closed session) (25 Sept 2007). According to Vuga, the security organ could also not operate completely independently. The unit

to counter-intelligence, the Brigade Commander would not need to be informed of specialised instructions or activities of the Security Organ concerning counter-intelligence.³⁷²

156. The Chief of Security's role with regard to the Military Police was, first, to advise the Brigade Commander on the best use of the Military Police, and second, to implement the plans for the Military Police that the Brigade Commander ultimately decided were appropriate, by acting under the Brigade Commander's derived authority and developing "concrete and specific tasks" for the Military Police.³⁷³ In this context, the Chief of Security could issue instructions directly to the Military Police and its commander in the spirit of the Brigade Commander's order, without seeking the Brigade Commander's approval for each of his instructions. Also with regard to smaller tasks that did not require greater troops, including the urgent arrest of a person, the Chief of Security could use the Military Police without the approval of the Commander.³⁷⁴

157. However, due to its considerable size, the Zvornik Brigade was not organised according to the establishment structure.³⁷⁵ In an order dated 21 March 1994, **Pandurević** reformed the organisation of the Brigade in an effort to reduce the Brigade to the lowest number of organisation units and to reduce the number of direct links between the units and the Brigade Commander.³⁷⁶ Thus, the Brigade was reformed so that units were attached to the Staff, which meant that the Military Police Company, as well as the Signals Company, the Engineering Company, and the Reconnaissance Platoon, were not under the Brigade Commander's direct command, but reported

commander had to give approval for some parts of the security organ's work. For example, the security organ was only allowed to apply its own independent methods if they were not infringing on human rights and freedoms. Peter Vuga, T. 23076–23077 (30 June 2008).

³⁷² Richard Butler, T. 19644 (14 Jan 2008), T. 20050–20051 (21 Jan 2008), T. 20345–20346 (24 Jan 2008) (testifying that information the Assistant Commander for Security could withhold from his commander included investigations into members of the unit, as well as the brigade commander himself). *See also* Vinko Pandurević, T. 30781–30782 (28 Jan 2009) (stating that **Nikolić**, as Assistant Commander for Security, was his subordinate, but only to 20% as 80% of **Nikolić**'s work was counter-intelligence and **Pandurević** did not have to have knowledge of this work). Dealing with POWs and using the military police in this regard would not require secrecy from the commander. PW-168, T. 15763 (closed session) (25 Sept 2007); Richard Butler, T. 19645 (14 Jan 2008).

³⁷³ Miodrag Dragutinović, T. 12777 (18 June 2007); Richard Butler, T. 19637–19640 (14 Jan 2008); Ex. P00707, "Service Regulations of the SFRY Armed Forces Military Police, 1985", para. 13. According to the Regulations, the Assistant Commander for Security would be responsible for the combat readiness of the Military Police. He would not determine how combat activities were to be performed; rather, the Military Police unit would be attached to an infantry formation and the "combat commander" would task the Military Police. Richard Butler, T. 20335–20336 (24 Jan 2008).

³⁷⁴ PW-168, T. 15763 (closed session) (25 Sept 2007), T. 16704–16707 (closed session) (22 Oct 2007).

³⁷⁵ Vinko Pandurević, T. 30761 (28 Jan 2009); *see* Ex. 7D00324, "Order from the Drina Corps Command to the 1st Zvornik Infantry Brigade signed Lt. Col. Radenko J., 20 September 1995" (noting that the Zvornik Brigade should have four infantry battalions instead of seven). **Pandurević** testified that at various points in time, the Zvornik Brigade had as many as 6,000 men and, due to its size and equipment, could have been an infantry brigade or even a motorised brigade. There were supposed to be two Zvornik Brigades, but the 2nd Zvornik Infantry Brigade was never established. Thus, the Zvornik Brigade did not match the "ideal" structure of the 1984 JNA brigade rules Vinko Pandurević, T. 30759, 30762 (28 Jan 2009). *See also* Ex. 7D00539, "Organisation of Infantry Brigade Scheme".

³⁷⁶ Vinko Pandurević, T. 30764–30765 (28 Jan 2009); Ex. 7D00806, "Order from the Zvornik Brigade Command signed by Major Vinko Pandurević, 21 March 1994".

directly to the Chief of Staff and the respective assistant commanders or chiefs. Yet, **Pandurević** was still in command of these units, but through the intermediary of the Chief of Staff and the assistant commanders or chiefs, who would report to him. He was still consulted on all particular tasks, including the use of the Military Police in combat, which he had to approve.³⁷⁷

(iii) The Military Police

158. The Military Police Company of the Zvornik Brigade was based at the Standard Barracks and consisted of approximately 110 soldiers organised in three platoons.³⁷⁸ The Commander of the Military Police Company was Lieutenant Miomir Jasikovac.³⁷⁹ While **Pandurević** as the Brigade Commander was in command of the Military Police, Jasikovac reported directly to the Chief of Staff and **Nikolić** as Chief of Security.³⁸⁰

159. The Trial Chamber also heard evidence that **Nikolić** gave directions and direct orders to the Zvornik Brigade Military Police Company. Nebojša Jeremić saw Military Police Company Commander Miomir Jasikovac in **Nikolić**'s office "every day", receiving instructions for his work.³⁸¹ **Nikolić** lined up the Military Policemen as a matter of standard routine and members of the Military Police perceived **Nikolić** to be their "commander", and superior to Jasikovac.³⁸²

160. Within the Military Police Company of the Zvornik Brigade, there was a crime prevention service based at the Standard Barracks.³⁸³ The Crime Prevention Service dealt with any criminal acts by members of the Brigade for purposes of investigation.³⁸⁴ It was **Nikolić** who would order the Crime Prevention Service to initiate an investigation.³⁸⁵ Following daily briefings with the Brigade Commander, **Nikolić**, or Trbić in his absence, would provide instructions to the members

³⁷⁷ Vinko Pandurević, T. 30764–20766 (28 Jan 2009), T. 31685 (18 Feb 2009). *See also* Miodrag Dragutinović, T. 12568–12570 (13 June 2007), T. 12595–12596 (14 June 2007), T. 12777 (18 June 2007) (testifying that in July 1995, an accelerated reporting procedure was used in the Zvornik Brigade. The services within the Staff would report directly to "their respective Chiefs", and the Chief of Staff would directly assign concrete tasks to units. In peacetime, the respective Chiefs would propose a task to the Commander, who would then issue a decision and communicate it through the Chief of Staff to the units concerned. In July 1995, the Commander of the Military Police did not report to the Brigade Commander, but to the Chief of Security. The Commander of the Military Police should have reported to the Chief of Staff, but because of the efficiency of command and more effective control, they curtailed the procedure at that time so that the Commander of the Military Police could and would directly report to the Chief of Security. The order engaging a military police unit would come from either the Zvornik Brigade Commander or the Chief of Staff, "if the police units participated in an operation within the framework of the Brigade Command.").

³⁷⁸ PW-168, T. 15759 (closed session) (25 Sept 2007).

³⁷⁹ Nebojša Jeremić, T. 10418 (24 Apr 2007); PW-168, T. 16239 (11 Oct 2007) (closed session).

³⁸⁰ Nebojša Jeremić, T. 10418, 10447 (24 Apr 2007); Vinko Pandurević, T. 30764–30766 (28 Jan 2009), T. 31685 (18 Feb 2009); Ex. P00707, "Service Regulations of the SFRY Armed Forces Military Police, 1985", para. 12.

³⁸¹ Nebojša Jeremić, T. 10422–10443 (24 Apr 2007)

³⁸² PW-142, T. 6441, 6492 (private session) (29 Jan 2007).

³⁸³ Nebojša Jeremić, T. 10417–10418 (24 Apr 2007). The Chief of the Crime Prevention Service was Goran Bogdanović. *Ibid.*, T. 10434 (24 Apr 2007).

³⁸⁴ Nebojša Jeremić, T. 10418–10419 (24 Apr 2007).

³⁸⁵ *Ibid.*, T. 10421 (24 Apr 2007).

of the Crime Prevention Service. They would report to **Nikolić** on the progress, who in turn would report to the Brigade Commander.³⁸⁶

161. The members of the Crime Prevention Service gathered documentation that had to accompany criminal reports, such as statements from soldiers of the Zvornik Brigade and witnesses.³⁸⁷ If the criminal act in question was more serious, such as murder, the members of the Service worked in cooperation with the civilian police.³⁸⁸ The Crime Prevention Service would then send all the documentation to the Military Prosecutor's Office in Bijeljina, together with a criminal report.³⁸⁹

(iv) The Engineering Company

162. The Engineering Company of the Zvornik Brigade consisted of three platoons—a pioneer platoon, a platoon for roads and bridges and a platoon for engineering works.³⁹⁰ The Commander was Dragan Jevtić, and his deputy was Slavko Bogičević.³⁹¹

163. The Chief of Engineering in the Staff was not the Commander of the Engineering Company, but had a “functional relationship” with the Engineering Company in the context of his “professional” or “specialty” competency.³⁹² Like **Nikolić** with regard to the Military Police, Dragan Jokić, as the Chief of Engineering, would provide expert advice to the Brigade Commander as to the use of the Engineering Company. Following the Commander's decisions on the employment of the Engineering Company, Jokić could issue orders directly to the Engineering Company and its Commander in the spirit of the Brigade Commander's orders.³⁹³ In July 1995, Jevtić was reporting directly to Jokić.³⁹⁴

164. The Engineering Company had its own equipment and in July 1995, the platoon for roads and bridges had two or three trucks, a 75 bulldozer and a Skip, which was a small, wheeled,

³⁸⁶ Nebojša Jeremić, T. 10421–10422, 10442, 10444, 10449 (24 Apr 2007). Jeremić testified that **Nikolić** was his immediate superior within the Crime Prevention Service. As regards combat issues in the sphere of military police and military affairs, Jeremić's superior was the Commander of the Military Police Company, Miomir Jasikovac. *Ibid.*, T. 10447–10448 (24 April 2007).

³⁸⁷ *Ibid.*, T. 10419–10420 (24 Apr 2007).

³⁸⁸ *Ibid.*, T. 10420 (24 Apr 2007).

³⁸⁹ *Ibid.*, T. 10420, 10444–10445 (24 Apr 2007).

³⁹⁰ Damjan Lazarević, T. 14436 (29 Aug 2007); Ljubo Bojanović, Ex. P03135a, “confidential – 92 *quater* transcript, BT. 11679–11680 (8 July 2004).

³⁹¹ Damjan Lazarević, T. 14434–14435 (29 Aug 2007).

³⁹² PW-168, T. 16159–16160 (10 Oct 2007) (closed session).

³⁹³ *Ibid.*, T. 15757 (closed session) (25 Sept 2007), T. 16159 (closed session) (10 Oct 20047). Members of the Engineering Company received instructions from Jokić, either directly or through Jevtić. Ostoja Stanojević, Ex. P02260, “92 *ter* transcript”, BT. 5676–5677 (4 Dec 2003); Damjan Lazarević, T. 14434 (29 Aug 2007).

³⁹⁴ Damjan Lazarević, T. 14434 (29 Aug 2007).

building machine, like a tractor with a small loading bucket in front and a backhoe in the rear.³⁹⁵ Since the Engineering Company did not own larger machinery, when the need arose, it requisitioned large machinery from various civilian construction companies.³⁹⁶

(v) The Podrinje Detachment a.k.a. Drina Wolves³⁹⁷

165. The Drina Wolves were an independent manoeuvre unit used for combat and directly subordinated to the Zvornik Brigade Commander.³⁹⁸ In July 1995, the Drina Wolves had around 360 men, commanded by Captain First Class Milan Jolović known by the nickname “Legenda”.³⁹⁹

166. In July 1995, one part of the Drina Wolves was engaged in operation “*Krivaja-95*” as a component of Tactical Group 1 commanded by **Pandurević**; while another part was engaged in the Sarajevo theatre of war.⁴⁰⁰

(vi) The Duty Operations Officer and the Reporting Process

167. The Zvornik Brigade had a duty operations officer (“duty officer”) at the Standard Barracks and one at the IKM.⁴⁰¹ The duty officer was a higher-ranking officer who was performing a daily obligation that “lasted around the clock”.⁴⁰² He was subordinated to the Brigade Commander.⁴⁰³ At the Standard Barracks, there was also an assistant duty officer, while there was none at the IKM.⁴⁰⁴ By regulation, the duty officer at the IKM could not leave the IKM without having a substitute, or permission from his superior officer.⁴⁰⁵ As a general rule, the service of the duty officer lasted 24 hours, starting between 7:00 and 8:00 a.m., while the service of the assistant duty officer lasted from midnight to 5:00 a.m.⁴⁰⁶

³⁹⁵ Damjan Lazarević, T. 14436–14438 (29 Aug 2007). The Skip could not be used in any major construction works. *Ibid.*, T. 14437 (29 Aug 2007).

³⁹⁶ *Ibid.*, T. 14438 (29 Aug 2007).

³⁹⁷ Also called Manoeuvre Battalion or “POSS”, which was standing for “Podrinje Detachment of Special Forces”. PW-168, T. 15808 (closed session) (26 Sept 2007), T. 16414-16415 (closed session) (16 Oct 2007).

³⁹⁸ Miodrag Dragutinović, T. 12567–12568 (13 June 2007); T. 12673-12674 (15 June 2007). It consisted of two infantry companies, a mixed mortar company for support, a logistics platoon, a signals section, and an armoured company. PW-168, T. 15807–15808 (26 Sept 2007).

³⁹⁹ Miodrag Dragutinović, T. 12673 (15 June 2007); Vinko Pandurević, T. 30848 (29 Jan 2009).

⁴⁰⁰ Miodrag Dragutinović, T. 12673–12674 (15 June 2007); PW-168, T. 15807–15808 (26 Sept 2007).

⁴⁰¹ Vinko Pandurević, T. 32396 (3 Mar 2009). The duty of the duty officer at the IKM depended on the seriousness of the combat situation at the front-line; the duty officer had a direct ability to observe the front, to receive information from forward units, and to communicate with the duty officer at the Standard Barracks. Vinko Pandurević, T. 32396–32397 (3 Mar 2009).

⁴⁰² Miodrag Dragutinović, T. 12620–12621 (14 June 2007).

⁴⁰³ *Ibid.*, T. 12762 (18 June 2007). *See also* Ex. 7D00442, “Instructions on Zvornik Brigade Duty Operations Officer”, p. 4 (stating that the duty officer is subordinated to the Brigade Commander).

⁴⁰⁴ Vinko Pandurević, T. 32396 (3 Mar 2009). The assistant would be of a lower rank. Miodrag Dragutinović, T. 12620–12621 (14 June 2007).

⁴⁰⁵ Vinko Pandurević, T. 32397 (3 Mar 2009).

⁴⁰⁶ Sreten Milošević, T. 33963 (15 July 2009).

168. The Brigade Commander would define the operations duty shift by an order.⁴⁰⁷ Based on the list that the Staff drafted, the Brigade Commander would decide who would be on the list of duty officers.⁴⁰⁸ This decision would be implemented by the Chief of Operations and Training, who created a daily, weekly or monthly schedule based on the Brigade Commander's decision.⁴⁰⁹

169. During his duty, the duty officer had to keep abreast of all important events in the Brigade and monitor compliance with tasks.⁴¹⁰ The duty officer was the focal point for any information on enemy activities. Extraordinary events were reported by the Security Organ. Battalion commanders only needed to report when changes of the situation on the ground so required.⁴¹¹

170. The duty officer kept a "notebook" in which he recorded all incoming information during his duty, even of a personal nature.⁴¹² There also existed a "logbook" which was derived substantially from the information in the Notebook, but would omit personal items and information unrelated to the functioning of the Brigade.⁴¹³ The Logbook was written up every day at the end of a duty period and formed the basis of the morning briefings with the Commander.⁴¹⁴ In addition to the Notebook and the Logbook, there was a so-called "war diary", which was kept in the Operations Department, and which contained only the most important information relative to the functioning of the Brigade and combat operations. It was not kept daily and sometimes was only updated retroactively.⁴¹⁵ Of the three documents, the Notebook was the most contemporaneous.⁴¹⁶

171. The duty officer at the Standard Barracks was obliged to submit daily (regular) written combat reports to the Drina Corps Command at least twice within 24 hours, and also oral reports, with a frequency that varied depending on the period, sometimes every two hours.⁴¹⁷ One of the Staff Office typists would type the daily written combat report composed by the duty officer, which the duty officer would subsequently take to the teleprinter station in the encryption room.⁴¹⁸ The

⁴⁰⁷ PW-168, T. 16165 (closed session) (10 Oct 2007). See Ex. 7D00442, "Instructions on Zvornik Brigade Duty Operations Officer".

⁴⁰⁸ PW-168, T. 16165 (closed session) (10 Oct 2007).

⁴⁰⁹ *Ibid.* The Operations Department published a duty roster seven days in advance. Miodrag Dragutinović, T. 12620–12621 (14 June 2007).

⁴¹⁰ Miodrag Dragutinović, T. 12622–12623 (14 June 2007). With regard to the functions of the duty officer see also Ex. 5DP00699, "JNA Manual for the Work of Commands and Staffs, 1983", Articles 65 and 66.

⁴¹¹ Miodrag Dragutinović, T. 12763–12766 (18 June 2007).

⁴¹² *Ibid.*, T. 12623–12624 (14 June 2007). See Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995".

⁴¹³ Miodrag Dragutinović, T. 12624 (14 June 2007). See Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995–3 January 1996".

⁴¹⁴ Miodrag Dragutinović, T. 12624 (14 June 2007).

⁴¹⁵ *Ibid.*, T. 12624–12625 (14 June 2007). See Ex. 7DP00384, "Zvornik Brigade War Diary, 12 May to 15 October 1995".

⁴¹⁶ Miodrag Dragutinović, T. 12626 (14 June 2007).

⁴¹⁷ PW-168, T. 16165–16166 (closed session) (10 Oct 2007); Miodrag Dragutinović, T. 12627, 12629 (14 June 2007); Ex. 7D00442, "Instructions on Zvornik Brigade Duty Operations Officer", point 14.

⁴¹⁸ PW-168, T. 16167 (closed session) (10 Oct 2007).

encryption person on duty would encrypt it and send it to the Superior Command using a protected communication.⁴¹⁹ Once they had been sent, a copy of the combat reports would be kept at the Brigade command.⁴²⁰

172. Such daily combat reports of the duty officer, compiled mostly from information received from the battalion commanders or the battalion duty officers, would be typed in the name of either **Pandurević** or Obrenović, whoever was in command at that time.⁴²¹ For a certain period of time, it was obligatory for either **Pandurević** or Obrenović to sign the daily (regular) written combat reports, but as they were usually not at the headquarters, the procedure was later changed such that the duty officer could sign and send them off.⁴²²

173. In contrast to the daily combat reports, there were also interim combat reports that were only issued if necessary for extraordinary reasons. These interim combat reports dealing with events “out of the ordinary” would usually be sent by **Pandurević**, or sometimes by Obrenović.⁴²³

2. The Civilian Police (MUP Forces)

174. In July 1995, the MUP did not have a minister and was headed by Deputy Minister Tomislav Kovač.⁴²⁴ It consisted of a Public Security Department and a State Security Department. The MUP also had units as a component of the Bosnian Serb Forces for participation in combat activities, i.e. a special police brigade (“SBP”), directly subordinate to the Office of the Minister, and special police units (“PJPs”) organised at regional level.⁴²⁵

⁴¹⁹ PW-168, T. 16167 (closed session) (10 Oct 2007).

⁴²⁰ *Ibid.*, T. 16169 (closed session) (10 Oct 2007).

⁴²¹ *Ibid.*, T. 16168 (closed session) (10 Oct 2007).

⁴²² *Ibid.*, T. 16167 (closed session) (10 Oct 2007). The encryption officer would only transmit the typewritten signature, not the handwritten signature or handwritten notes. The handwritten signature would therefore not be seen by the receiver of the document; he would only see the typewritten signature. If “SR” was put under the typewritten signature it would mean that the person had signed the document personally. *Ibid.*, T. 17178 (closed session) (30 Oct 2007).

⁴²³ *Ibid.*, T. 16168–16169 (closed session) (10 Oct 2007).

⁴²⁴ Ex. 4D00140, “Information from RS MUP Deputy Minister to Police Administration Bijeljina, MUP Police Forces Command, 19 June 1995, signed by Tomislav Kovač”; Ex. 4D00119, “Memorandum to President of the RS by MUP Deputy Minister Tomislav Kovač”; Ex. P02852, “Transcript of OTP Interview of Ljubomir Borovčanin, 20 February 2002”, p. 15–16 (stating that there was no minister at the time and Kovač was the “Staff Commander”). See also Ex. P00094, “Dispatch with RS Ministerial Order to MUP units, 10 July, 1995” (sent from the office of the Minister, signed by Tomislav Kovač as “Headquarters Commander”); Ex. 1D4D00394, “MUP Order of 13 July 1995, signed by Deputy Minister Tomislav Kovač”.

⁴²⁵ Mladen Bajagić, T. 26729–26731 (7 Oct 2008); Ex. 4D00212, “RS Official Gazette No. 6/94 - Law on Internal Affairs, revised text, 25 March 1994”, Articles 14, 18, 21, 24; Ex. 4D00448, “Structure of MUP in July 1995 – Diagram No. 1a of Bajagić Expert Report”; Ex. 4D00459, “Diagram – Police Forces Staff”. The PJP commander was attached to the Police Directorate which was part of the Public Security Department. Mladen Bajagić, T. 26737–26738 (7 Oct 2008); Ex. 4D00451, “Structure of Public Security Department – Diagram No. 1a of Bajagić Expert Report”. The PJPs and the SBP often went into the field together; and while they were in the field, their tasks were almost the same. These joint combat groups were commanded by a member of the SBP. Dobrisav Stanojević, T. 12868, 12904 (19 June 2007).

175. While the SBP was a separately established combat unit, the PJPs consisted of regular police officers who were organised in the PJPs for the purposes of combat missions.⁴²⁶ The PJPs were part of public security centres (“CJBs”) at a regional level and replenished with policemen from local public security stations (“SJBs”).⁴²⁷ The regular police stations were set up as internal organisational units within the SJBs.⁴²⁸ The CJBs were part of the Public Security Department of the MUP,⁴²⁹ whereas the SBP belonged to the Office of the Minister.⁴³⁰ While SBP and PJPs would cooperate, they did not have a hierarchical relationship.⁴³¹ In a state of war, the MUP would control both the SBP and the PJPs through a ministerial police forces staff.⁴³²

(a) The Special Police Brigade (SBP)

176. During the war, the SBP functioned as a combat unit.⁴³³ The headquarters of the SBP was in Janja.⁴³⁴ In July 1995, Goran Sarić was the Commander and **Borovčanin** was the Deputy

⁴²⁶ Dragan Nesković, T. 27465 (28 Oct 2008); PW-160, T. 8571–8572 (9 Mar 2007).

⁴²⁷ Dragan Nesković, T. 27450–27451 (28 Oct 2008).

⁴²⁸ Mladen Bajagić, T. 26699 (6 Oct 2008); Ex. 4D00172, “Official Gazette of Serb people in BiH No. 4, 23 March 1992 – Law on Internal Affairs”, Art. 30.

⁴²⁹ Ex. 4D00144, “Rules on Internal Organisation of MUP, April 1994”; Art. 6. The PJP commander was attached to the Police Directorate, which was part of the Public Security Department. Mladen Bajagić, T. 26737–26738 (7 Oct 2008); Ex. 4D00451, “Structure of Public Security Department – Diagram No. 1a of Bajagić Expert Report”.

⁴³⁰ Ex. 4D00144, “Rules on Internal Organisation of MUP, April 1994”, Art. 2; Mladen Bajagić, T. 26699 (6 Oct 2008).

⁴³¹ Mladen Bajagić, T. 26798 (8 Oct 2008); Ex. 4D00459, “Diagram – Police Forces Staff”.

⁴³² Ex. P00422, “RS Official Gazette, Vol III, Special Edition No. 1, 29 Nov 1994”, p. 12 (pursuant to Art. 13 of the “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War”, the Minister of the Interior shall give orders to police units through the Ministry Police Forces Command Staff); Ex. 4D00144, “Rules on Internal Organisation of MUP, April 1994”, Art. 57 (stating: “In case a state of war is declared, one establishes a Staff of the Ministry, and the Minister manages [...] the Staff. The Staff [...] is comprised of the Minister, Deputy Minister, respective Heads of the Public Security Department and the State Security Department, Commander of the Special Police Brigade, Brigade Command, and the Commander of the Separate Police Units/PJP/ Police forces [...] are members of the Special Police Brigade and members of the active and reserve police structure.”); Mladen Bajagić, T. 26800–26801 (8 Oct 2008); Ex. 4D00459, “Diagram – Police Forces Staff”. In 1995, there was also a Police Forces Staff in Zvornik that monitored the situation in that sector. The head of the Police Forces Staff was Dragomir Vasić. Although the Staff was originally located at the Zvornik CJB, sometime around the fall of Srebrenica it was transferred to the police station in Bratunac. During this period, Dragomir Vasić shared an office with Miodrag Josipović, the Chief of the Bratunac SJB. Dragan Nesković, T. 27418 (27 Oct 2008), T. 27445–27446, 27489 (28 Oct 2008); Nenad Filipović, T. 26981 (10 Oct 2008); Slaviša Simić, T. 27491–27493 (28 Oct 2008); Ex. 4D00244, “RS MUP CJB Zvornik – Report on Police Forces Staff meeting, signed by Centre Chief Dragomir Vasić, 21 March 1995”.

⁴³³ PW-160, T. 8571 (9 Mar 2007); Mladen Bajagić, T. 26746–26747 (7 Oct 2008), also referring to Ex. 4D00192, “Rulebook on Internal Organisation of MUP in circumstances of immediate threat of war and state of war, September 1992”, Art. 23. For a comprehensive list of the SBP’s tasks, see also Ex. 4D00144, “Rules on Internal Organisation of MUP, April 1994”, Art. 2 for the SBP (stating that the SBP “shall carry out special tasks and assignments, such as: participation in combat operations; neutralising sabotage and terrorist groups and individuals; major restoration of public law and order; conduct defensive preparation of the wartime’s strength of the Brigade; conduct the professional training of members of the Brigade; [...] perform other tasks and assignments ordered by the Minister”).

⁴³⁴ PW-160, T. 8570–8571 (9 March 2007). Janja is a village 12 kilometres from Bijeljina. *Ibid.*, T. 8571 (9 March 2007).

Commander of the SBP.⁴³⁵ As Deputy Commander of the SBP, **Borovčanin** could not issue orders to PJP members.⁴³⁶

177. In July 1995, the Special Police Brigade was structured into a number of detachments deployed throughout the RS, as well as a unit of police dogs.⁴³⁷ Each detachment covered a specific territory; however, when needed, a detachment was sent to other zones throughout BiH under the command of the VRS operating in that area.⁴³⁸ The locations of the detachments coincided with the headquarters of the CJBs.⁴³⁹

(b) The 2nd Šekovići Detachment

178. One of the SBP's detachments was the 2nd Šekovići Detachment.⁴⁴⁰ In July, the Detachment was commanded by Rade Čturić nicknamed "Oficir".⁴⁴¹ Čturić's immediate superiors were Sarić and **Borovčanin**.⁴⁴²

179. The Detachment had three infantry platoons, as well as a logistics platoon, each of the platoons having around 20 to 30 men.⁴⁴³ The Detachment had mortar support, one Praga, two T-55 tanks and a three-barrelled armoured vehicle also known as BOV.⁴⁴⁴ Members of the Detachment were provided with hand grenades and a M-84 machine-gun.⁴⁴⁵ The uniform of the Detachment was either camouflage overalls or a two piece olive drab camouflage uniform featuring a patch over the

⁴³⁵ Mendeljev Đurić, T. 10797 (1 May 2007); Dragan Nesković, T. 27437 (28 October 2008). In July 1995, Sarić reported to Tomislav Kovač. PW-160, T. 8572, 8574 (9 Mar 2007).

⁴³⁶ Dragan Nesković, T. 27437 (28 Oct 2008). Nesković, a PJP member of the Bratunac SJB, testified that if **Borovčanin** asked for assistance of some kind, such as if he wanted to phone from the premises or send a telegram, Nesković would have assisted, but it would have had to be recorded. *Ibid.*, T. 27437–27438 (28 Oct 2008).

⁴³⁷ PW-160, T. 8570 (9 Mar 2007); Mendeljev Đurić, T. 10797–10798 (1 May 2007). Mladen Bajagić, T. 26750–26751 (7 Oct 2008) (stating that the number of detachments increased from seven to nine detachments). Detachments were located in Bijeljina, Jahorina, Šekovići, Doboj, Banja Luka, and Prijedor. PW-160, T. 8570 (9 March 2007); Mendeljev Đurić, T. 10798 (1 May 2007); Ex. 4D00144, "Rules on Internal Organisation of MUP, April 1994", Art. 2. For the structure of the SBP detachments, see Ex. 4D00455, "Diagram No. 5 of the Bajagić Expert Report – Structure of Special Police Detachment as in July 1995".

⁴³⁸ Mendeljev Đurić, T. 10798 (1 May 2007); T.10906 –10907 (3 May 2007).

⁴³⁹ Mladen Bajagić, T. 26749 (7 Oct 2008); Ex. 4D00499, "Expert Report by Mladen Bajagić – RS MUP Organisation and Jurisdiction (1992-1995)", para. 130.

⁴⁴⁰ Predrag Čelić, T. 13458 (28 June 2007).

⁴⁴¹ Predrag Čelić, T. 13458–13459 (28 June 2007); Milenko Pepić, T. 13539 (9 July 2007). Čturić took over command from Miloš Stupar in mid-June 1995. Predrag Čelić, T. 13459 (28 June 2007); Milenko Pepić, T. 13539 (9 July 2007).

⁴⁴² Predrag Čelić, T. 13459, 13462–13463 (28 June 2007); Milenko Pepić, T. 13539 (9 July 2007).

⁴⁴³ Predrag Čelić, T. 13459–13460, 13494 (28 June 2007); Milenko Pepić, T. 13540, 13581–13582 (9 July 2007). The commander of the 1st Platoon was Marko Aleksić. The commander of the 2nd Platoon had been wounded in Sarajevo; in his place, the 2nd Platoon received orders from Detachment Commander Čturić. The commander of the 3rd Platoon, also known as the "Skelani" Platoon, was Milenko Trifunović nicknamed "Čop". Predrag Čelić, T. 13459–13461 (28 June 2007); Milenko Pepić, T. 13540–13541 (9 July 2007).

⁴⁴⁴ Predrag Čelić, T. 13461 (28 June 2007).

⁴⁴⁵ *Ibid.*, T. 13461–13462, 13501–13502 (28 June 2007); Milenko Pepić, T. 13542 (9 July 2007).

left shoulder with the words “Special Brigade – The Police”, with a number in the middle and a flag with a coat of arms featuring a two-headed eagle.⁴⁴⁶

(c) The Jahorina Recruits

180. The training centre at Mount Jahorina (“Jahorina Training Facility”) hosted trainee policemen, recruits who were completing military service with the MUP, and deserters who had been captured and deployed there for training (“Jahorina Recruits”).⁴⁴⁷ The training was provided by MUP inspectors and instructors of the SBP.⁴⁴⁸ Duško Jević, nicknamed “Stalin”, was the Assistant Commander for operational and training tasks in the SBP and the head of the Jahorina Training Facility.⁴⁴⁹ He reported to the SBP Commander Šarić, and in his absence, to **Borovčanin**.⁴⁵⁰

181. The Jahorina Recruits formed two companies commanded by regular SBP members; the 1st Company was commanded by Mendeljev Đurić called “Mane”, and the 2nd Company was commanded by Neđo Ikonić.⁴⁵¹ Duško Jević was their immediate superior.⁴⁵² Each of the companies consisted of around 100 men.⁴⁵³ The recruits were issued two-piece camouflage uniforms without any insignia, an automatic rifle and a light blue bullet proof vest.⁴⁵⁴ They did not have any armoured vehicles or tanks.⁴⁵⁵

⁴⁴⁶ Predrag Čelić, T. 13462, 13501 (28 June 2007); Milenko Pepić, T. 13541–13542 (9 July 2007). Their belts were not white. Predrag Čelić, T. 13501 (28 June 2007).

⁴⁴⁷ Milan Stojcinović, T. 27598–27599, 27602 (30 Oct 2008), referring to Ex. 4D00094, “Report on the Work of MUP for the year of 1995”, p. 2; PW-160, T. 8571 (9 Mar 2007), T. 8647 (private session) (12 Mar 2007); PW-100, T. 14789 (5 Sept 2007). The training facility was located at the Jahorina Hotel. PW-160, T. 8568 (9 Mar 2007). PW-100, a Jahorina Recruit, received training in fitness, weapons, mines, shooting, hostage situations and rocket propelled grenades. PW-100, 14797–14798 (5 Sept 2007). The Trial Chamber notes **Borovčanin**’s submission that the Jahorina Training Facility was part of MUP, but not part of the SBP and that the “only connection between the [SBP] and the MUP training centre at Jahorina, was that some of its instructors happened to be [SBP] members. Borovčanin Final Brief, para. 28. See *infra*, para. 1567, fn. 4867, where the Trial Chamber is addressing this submission.

⁴⁴⁸ Mendeljev Đurić, T. 10843–10844 (2 May 2007); PW-160, T. 8647 (private session) (12 March 2007).

⁴⁴⁹ Milan Stojcinović, T. 27573–27574 (29 Oct 2008); PW-100, T. 14789, 14799–14800 (5 Sept 2007); PW-160, T. 8569 (private session) (9 Mar 2007), T. 8647 (private session) (12 Mar 2007).

⁴⁵⁰ PW-160, T. 8569 (private session) (9 March 2007).

⁴⁵¹ PW-100, T. 14791–14792 (5 Sept 2007); Mendeljev Đurić, T. 10792, 10796–10797 (1 May 2007). Each Company was subdivided into three or four platoons which were lead by regular SBP members. PW-100, T. 14792, 14794, 14797 (5 Sept 2007); PW-160, T. 8572 (9 Mar 2007).

⁴⁵² Mendeljev Đurić, T. 10797 (1 May 2007).

⁴⁵³ PW-160, T. 8572–8573 (9 Mar 2007).

⁴⁵⁴ PW-100, T. 14790 (5 Sept 2007); PW-160, T. 8577–8578 (9 Mar 2007). The uniforms worn by the Jahorina Recruits were different versions of the camouflage uniforms worn by members of the regular units of the SBP and were not in the same colour. *Ibid.*, T. 8577 (9 Mar 2007); Mendeljev Đurić, T. 10847 (2 May 2007).

⁴⁵⁵ PW-160, T. 8578 (9 Mar 2007).

(d) The Special Police Units (PJPs) of the Zvornik Public Security Centre (CJB)

182. In the Drina region, the PJPs were organised in the CJB, which was located in Zvornik and headed by Dragomir Vasić.⁴⁵⁶ The Deputy Chief of the Zvornik CJB was Mane Đurić.⁴⁵⁷ The SJBs subordinated to the Zvornik CJB were located in Zvornik, Bratunac, Skelani, Milići, Vlasenica, and Sekovići.⁴⁵⁸ The Zvornik CJB had six PJP companies; all companies included policemen from all SJBs within the CJB.⁴⁵⁹ The Commander of the 1st PJP Company of the Zvornik CJB was Radomir Pantić.⁴⁶⁰

183. When performing their regular police duties, PJP members wore a blue camouflage police uniform with a patch on the left shoulder which said "policija".⁴⁶¹ However, when participating in combat as PJP members, they wore an olive green/grey camouflage uniform with police insignia.⁴⁶² In combat, automatic weapons were carried and not the pistols for day-to-day duties.⁴⁶³ Company commanders, deputy commanders and platoon commanders of the PJP companies would be provided with Motorola radios.⁴⁶⁴ The PJP companies did not have armoured vehicles, artillery units or mortar squads.⁴⁶⁵ They did not have a medical team or logistics platoon; the VRS was tasked with providing food and ammunition.⁴⁶⁶ When requiring transport for missions in the field, the PJP companies would not use the regular police cars, but buses.⁴⁶⁷

⁴⁵⁶ Dragan Nesković, T. 27415 (27 Oct 2008), T. 27451 (28 Oct 2008).

⁴⁵⁷ Slaviša Simić, T. 27493 (28 Oct 2008). The Trial Chamber notes that Mane Đurić has to be distinguished from Mendeljev Đurić called "Mane", who commanded one company of the Jahorina Recruits. *See supra*, para. 181.

⁴⁵⁸ Ex. 4D00144, "Rules on Internal Organisation of MUP, April 1994", Art. 9; Dragan Nesković, T. 27451 (28 Oct 2008). In July 1995, the Chief of the Bratunac SJB was Miodrag Josipović, whereas the Commander was Slavoljub Mladenović. PW-170, T. 17873 (closed session) (19 Nov 2007); Slaviša Simić, T. 27489 (28 Oct 2008).

⁴⁵⁹ Dobrisav Stanojević, T. 12867, 12903 (19 June 2007); Nenad Filipović, T. 26981-26982 (10 Oct 2008); Zarko Zarić, T. 26910 (9 Oct 2008).

⁴⁶⁰ Zarko Zarić, T. 26908 (9 Oct 2008). The deputy was Radoslav Stuparević. The 1st PJP Company was comprised of about sixty people divided in three platoons. *Ibid*; Dobrisav Stanojević, T. 12867, 12904 (19 June 2007).

⁴⁶¹ Dragan Nesković, T. 27413 (27 Oct 2008); Slaviša Simić, T. 27488-27489 (28 Oct 2008); Nenad Filipović, T. 26980, 27010-27011 (10 Oct 2008); Zarko Zarić, T. 26909-26910 (9 Oct 2008). Most of the cars the Bratunac police station had were Volkswagen Golfs. Dragan Nesković, T. 27467-27468 (28 Oct 2008). Two of the cars were painted in a police colour, white and blue, one car was dark red and the other car was a dark blue or indigo colour. They had two-way radios in them. *Ibid.*, T. 27467-27468, 27470 (28 Oct 2008).

⁴⁶² Zarko Zarić, T. 26910 (9 Oct 2008); Dobrisav Stanojević, T. 12868-12869 (19 June 2007); Nenad Filipović, T. 26982-26983 (10 Oct 2008).

⁴⁶³ Nenad Filipović, T. 26983 (10 Oct 2008); Zoran Janković, T. 27350 (23 Oct 2008).

⁴⁶⁴ Nenad Filipović, T. 26983, 26992 (10 Oct 2008); Zoran Janković, T. 27350-27351 (23 Oct 2008).

⁴⁶⁵ Nenad Filipović, T. 26984 (10 Oct 2008).

⁴⁶⁶ *Ibid.*, T. 26983-26984 (10 Oct 2008); Zoran Janković, T. 27351 (23 Oct 2008); Ex. P00422, "RS Official Gazette, Vol III, Special Edition No. 1, 29 Nov 1994", p. 12 (pursuant to Art. 14 of the "Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War", in the zone in which the police units are carrying out combat operations, the commander to whom a police unit has been re-subordinated shall provide logistic support for the police unit in the same way as to the other units of the VRS).

⁴⁶⁷ Nenad Filipović, T. 26984 (10 Oct 2008); Zoran Janković, T. 27351-27352 (23 Oct 2008).

(e) Re-subordination of MUP Units to VRS

184. Article 14 of the “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War” provided for MUP Forces assigned to combat operations by an order of the Supreme Commander of the Bosnian Serb Forces, to be re-subordinated to the commander of the VRS unit in whose area of responsibility they were performing combat tasks.⁴⁶⁸ It further regulated that the MUP forces however “shall be under the direct command of a commander who is a member of the [MUP]. During the time they are re-subordinated to the [VRS], they shall retain their organisation and may not be split up or separated”.⁴⁶⁹ It was regulated for each specific activity, like for example combat or scouring the terrain, whether MUP units were subordinated to VRS units or not.⁴⁷⁰

185. By ministerial order of 10 July 1995, **Borovčanin** was appointed Commander of a MUP unit comprised of: the 2nd Šekovići Detachment; the 1st PJP Company from Zvornik; a mixed company of joined MUP forces from RS and the Republic of Serbian Krajina; and a company of Jahorina Recruits.⁴⁷¹ The MUP unit was ordered to go to the “Srebrenica sector” on 11 July where **Borovčanin**, the unit Commander, had to report to Krstić.⁴⁷²

3. The Civilian Protection

186. The Civilian Protection was set up by the RS Government for the purpose of civilian defence.⁴⁷³ It was composed of several “general-purpose” and “special-purpose” units, including a working platoon for work obligations which was engaged all the time.⁴⁷⁴ The Civilian Protection

⁴⁶⁸ Ex. P00422, “RS Official Gazette, Vol III, Special Edition No. 1, 29 Nov 1994”, p. 12. *See* Milomir Savčić, T. 15287–15288 (12 Sept 2007); Dobrisav Stanojević, T. 12873 (19 June 2007); Ex. P00008, “RS Presidential Order, 22 April 1995”.

⁴⁶⁹ Ex. P00422, “RS Official Gazette, Vol III, Special Edition No. 1, 29 Nov 1994”, p. 12. *See also* Ex. P00008, “RS Presidential Order, 22 April 1995”.

⁴⁷⁰ PW-168, T. 16152–16153 (10 Oct 2007) (closed session). Dobrisav Stanojević explained the notion of “re-subordination” by saying that while the VRS conducted combat operations, the PJP was an “attachment” which was occasionally engaged as required. Dobrisav Stanojević, T. 12873 (19 June 2007).

⁴⁷¹ Ex. P00094, “Dispatch with RS Ministerial Order to MUP units, 10 July 1995”, (stating in its relevant parts: “1) Single out part of the RS MUP forces participating in combat operations on the Sarajevo front, and send them as an independent unit to the Srebrenica sector in the course of tomorrow, 11 July 1995. 2) The unit will comprise the following: 2nd Special Police Detachment from Šekovići, 1st company of the PJP /special police unit/ of the Zvornik CJB, mixed company of joint MUP forces of the RS /Republic of Serbian Krajina/, Serbia and Republika Srpska and a company from the Jahorina training centre. 3) I hereby appoint Ljubiša Borovčanin, Deputy Commander of the Special Police Brigade, to the position of MUP unit commander.”).

⁴⁷² Ex. P00094, “Dispatch with RS Ministerial Order to MUP units, 10 July 1995”.

⁴⁷³ PW-170, Ex. P02960, “confidential – 92 ter transcript”, BT. 7863, 7895 (20 Apr 2004).

⁴⁷⁴ *Ibid.*, BT. 7862 (20 Apr 2004).

was organised on a national, regional and municipal level.⁴⁷⁵ It mainly consisted of people who were not fit for military service, but were still able to work.⁴⁷⁶

187. At the municipal level, the Civilian Protection Staff was headed by the President of the Executive Board and included a Chief of Staff from the Ministry of Defence, a member of the police and one of the army, and several members designated to handle specific purposes such as first aid, fire-fighting, policing, and “*asanacija*” or sanitisation.⁴⁷⁷

188. In Bratunac, there were two units in charge of *asanacija* or sanitisation. There was a work obligation unit (“Work Obligation Unit”) which was attached to the municipality and was engaged all the time. It was also deployed to help enterprises such as the Red Cross, to assist in loading and unloading humanitarian aid.⁴⁷⁸ In addition, there was an *asanacija* or sanitisation platoon (“*Asanacija* Unit”) which was engaged in sanitisation of the environment from time to time.⁴⁷⁹ It was attached to the *Rad* utilities communal enterprise, and was headed by Dragan Mirković, the director of the enterprise, who was also member of the Civilian Protection Staff.⁴⁸⁰ There were around 20 men in the Work Obligation Unit and ten to 15 men in the *Asanacija* Unit.⁴⁸¹

189. The equipment at the disposal of the Work Obligation Unit was limited and included a tractor, a Lada vehicle, a funeral hearse and various power tools.⁴⁸² The *Asanacija* Unit had at its disposal a tractor, a FAP, a Skip and a refuse disposal vehicle.⁴⁸³ In cases where vehicles or equipment belonging to a state-owned enterprise were needed, they could be mobilised by the Ministry of Defence.⁴⁸⁴ In this way, use was made of a ULT owned by a company called Gradina.⁴⁸⁵

190. Executive orders of civilian protection would be issued by the Executive Board.⁴⁸⁶ Units of the Civilian Protection could be assigned to assist the VRS if it so requested, but it always required

⁴⁷⁵ PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7863 (20 Apr 2004).

⁴⁷⁶ *Ibid.*, BT. 7934 (20 Apr 2004); PW-170, T. 17914 (closed session) (19 Nov 2007). A few members who were partially fit had weapons. PW-170, T. 17914 (closed session) (19 Nov 2007).

⁴⁷⁷ PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7863–7864, 7895–7897 (20 Apr 2004). In a military context, “*asanacija*” or sanitisation of the terrain involved the removal and transportation of wounded and killed from the battlefield and the burial of killed. *Ibid.*, BT. 7864–7865 (20 April 2004); Ostojica Stanisic, T. 11733–11734 (17 May 2007).

⁴⁷⁸ PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7864–7865 (20 Apr 2004).

⁴⁷⁹ *Ibid.*, BT. 7864–7866 (20 Apr 2004).

⁴⁸⁰ *Ibid.*, BT. 7864–7866 (20 Apr 2004). Public-utilities companies such as Rad existed in all towns in BiH. PW-161, T. 9541 (private session) (27 Mar 2007).

⁴⁸¹ PW-170, T. 17913–17914 (closed session) (19 Nov 2007).

⁴⁸² PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7866 (20 Apr 2004).

⁴⁸³ *Ibid.*

⁴⁸⁴ *Ibid.*, BT. 7867 (20 Apr 2004).

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Ibid.*, BT. 7875 (20 Apr 2004).

an order of the Executive Board.⁴⁸⁷ The Civilian Protection and the VRS acted together and coordinated their actions, but each had its own chain of command.⁴⁸⁸

C. Lead up to the Military Attack on Srebrenica and Žepa (January to July 1995)

1. Relation between UNPROFOR and the Parties to the Conflict

191. In January 1995, an UNPROFOR battalion from The Netherlands (“DutchBat”), commanded by Lieutenant Colonel Thomas Karremans, rotated into the Srebrenica enclave.⁴⁸⁹ DutchBat had a small command centre in Srebrenica town (“Bravo Company compound”) and a larger compound (“Charlie Company”), about five kilometres north of Srebrenica town in Potočari, where headquarters was based.⁴⁹⁰ Thirteen observation posts (“OPs”) marked the perimeter of the enclave.⁴⁹¹ United Nations Military Observers (“UNMO”) were also deployed in the Srebrenica enclave, tasked with monitoring violations of the ceasefire agreement.⁴⁹² The UNMO office was located in the postal (“PTT”) building near the hospital in Srebrenica town.⁴⁹³

192. Pieter Boering, representing DutchBat, held weekly meetings with the ABiH 28th Division, most often in the PTT building in Srebrenica town.⁴⁹⁴ Until early or mid February 1995, the designated liaison was Naser Orić, Commander of the 28th Division of the ABiH, who was subsequently replaced by Ramiz Bećirović, Chief of Staff of the 28th Division.⁴⁹⁵ The issues discussed at the meetings included disarmament, smuggling, civilians leaving the enclave, and maintenance of the arms depot in Srebrenica.⁴⁹⁶ The relationship between ABiH and UNPROFOR had its difficulties. For example, the ABiH prevented DutchBat from accessing an area under its control in the western part of the Srebrenica enclave, known as the “Bandera Triangle”.⁴⁹⁷ In

⁴⁸⁷ PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7888, 7890 (20 Apr 2004).

⁴⁸⁸ *Ibid.*, BT. 7891 (20 Apr 2004).

⁴⁸⁹ Prosecution Adjudicated Facts Decision, Annex, Fact 42; Robert Franken, T. 2435–2436 (16 Oct 2006).

⁴⁹⁰ Prosecution Adjudicated Facts Decision, Annex, Fact 39; Rupert Smith, T. 17479–17480 (5 Nov 2007); Leendert van Duijn, T. 2260 (27 Sept 2006); Pieter Boering, T. 1870 (19 Sept 2006).

⁴⁹¹ Prosecution Adjudicated Facts Decision, Annex, Fact 40.

⁴⁹² Joseph Kingori, T. 19156 (12 Dec 2007).

⁴⁹³ *Ibid.*, T. 19156 (12 Dec 2007), T. 19417 (11 Jan 2008). A small ABiH communications centre was located in the same building. *Ibid.*, T. 19161 (12 Dec 2007), T. 19186 (13 Dec 2007); Pieter Boering, T. 2029 (22 Sept 2006), T. 2179 (26 Sept 2006).

⁴⁹⁴ Pieter Boering, T. 1881 (19 Sept 2006), T. 2029 (22 Sept 2006).

⁴⁹⁵ *Ibid.*, T. 1880–1881 (19 Sept 2006); Robert Franken, T. 2437 (16 Oct 2006), T. 2594 (17 Oct 2006). *See also* Joseph Kingori, T. 19160 (12 Dec 2007).

⁴⁹⁶ Pieter Boering, T. 1882 (19 Sept 2006).

⁴⁹⁷ *Ibid.*, T. 1885 (19 Sept 2006); Robert Franken, T. 2441–2442 (16 Oct 2006), T. 2601–2604 (17 Oct 2006).

February 1995, a number of DutchBat soldiers were taken hostage by the ABiH after trying to patrol this area.⁴⁹⁸

193. Boering also met regularly with the VRS.⁴⁹⁹ The primary contact for DutchBat was Momir Nikolić, Chief of Security and Intelligence in the Bratunac Brigade.⁵⁰⁰ Most of these meetings took place near DutchBat OP Papa, close to Žuti Most (“Yellow Bridge”), which was located at the northern border of the enclave between Potočari and Bratunac.⁵⁰¹ The issues discussed at the meetings included difficulties with convoys and supplies.⁵⁰² In an introductory meeting held in January 1995 between DutchBat and the VRS, Drina Corps Commander Živanović stated that the most important issue for the VRS was that the enclave be demilitarised or it would forfeit its right to exist.⁵⁰³

194. On 31 December 1994, a new Agreement on Cessation of Hostilities was signed between the VRS and the ABiH.⁵⁰⁴ The agreement set out the principles of free movement for UNPROFOR and other international organisations, particularly the UNHCR.⁵⁰⁵ The practical details of these principles were further negotiated between UNPROFOR and the VRS, resulting in the Agreement on the Principles of Freedom of Movement on 31 January 1995.⁵⁰⁶

195. The implementation of the 31 January Agreement between the VRS and UNPROFOR did not satisfy either party. On 12 February, the VRS Main Staff informed its corps of the agreement and stated that UNPROFOR attempted to avoid complying with the obligations set forth in the agreement.⁵⁰⁷ It emphasised the applicable procedures, including prior approval of UNPROFOR convoys and detailed checks of convoys.⁵⁰⁸ UNPROFOR was also dissatisfied with the

⁴⁹⁸ Robert Franken, T. 2601–2602 (17 Oct 2006); Pieter Boering, T. 1884–1885 (19 Sept 2006); Eelco Koster, T. 31183119 (27 Oct 2006). This was near either OP Bravo or OP Charlie. Pieter Boering tried to arrange their release, but was also taken hostage for three days. Pieter Boering, T. 1884–1885 (19 Sept 2006).

⁴⁹⁹ Pieter Boering, T. 1874 (19 Sept 2006).

⁵⁰⁰ *Ibid.*, T. 1869, 1873–1874 (19 Sept 2006).

⁵⁰¹ *Ibid.*, T. 1874–1875 (19 Sept 2006); Joseph Kingori, T. 19167–19168 (13 Dec 2007); Robert Franken, T. 2588 (17 Oct 2006).

⁵⁰² Pieter Boering, T. 1875 (19 Sept 2006).

⁵⁰³ *Ibid.*, T. 1869, 1907–1908 (19 Sept 2006). The Prosecution showed Boering his 1998 statement to Prosecution Investigators: “General Živanović delivered a long speech during the reception, explaining that he had a house inside the enclave and that he would like to return there. He also said that the enclave had to be demilitarized by DutchBat, otherwise it would be razed to the ground.” Boering affirmed his earlier statement. *Ibid.*

⁵⁰⁴ Ex. 5D01292, “VRS Main Staff Order on fulfilment of the Agreement on the Complete Cessation of Hostilities signed on 31 December 1994 with Annex”, pp. 6–7. *See supra*, para. 100.

⁵⁰⁵ *Ibid.*, para. 5.

⁵⁰⁶ Ex. 5D01404, “Principles for Freedom of Movement signed by Brinkman and Tolimir, 31 January 1995”. The principles of free movement set forth in the agreement were to come into effect on 1 February 1995 and specifically referred to “UNPROFOR movements on Serb held territory”. *Ibid.*

⁵⁰⁷ Ex. 5D00725, “VRS Main Staff Document to the Corps concerning UNPROFOR movement in the territory of Republika Srpska, signed by Zdravko Tolimir, 12 February 1995”.

⁵⁰⁸ *Ibid.* The Drina Corps forwarded the instructions to the brigades. Ex. 5D00849, “Drina Corps document to the Brigades, signed by Militun Skočajić, 13 February 1995”. *See also* Ex. 5D00850, “Movement of UNPROFOR across the territory of the Republika Srpska from Birač Brigade, signed by Svetozar Andrić, 15 Feb 1995”.

implementation of the agreement and complained in writing to the VRS that it was resulting in “strict restrictions of the rules governing the freedom of movement” and creating “a highly negative effect” on the execution of UNPROFOR’s mission.⁵⁰⁹

196. An UNPROFOR report to the UN Headquarters in New York covering the first two months of 1995 reveals that UNPROFOR was also frustrated with the behaviour of the Bosnian Government and the ABiH, which it considered to be acting with increasing intransigence towards the peace process despite their acceptance of the Agreement on Cessation of Hostilities of 31 December 1994.⁵¹⁰ The ABiH had imposed restrictions on UNPROFOR’s movements, particularly west of the Srebrenica enclave and the area around Tuzla Air Base, and an unprecedented number of ABiH fuel and supply convoys had been observed in the region.⁵¹¹ Judging from the build-up of troops and logistics, UNPROFOR assessed that the ABiH was preparing an offensive.⁵¹² UNPROFOR also considered the actions of the Bosnian Muslims to be “designed in part to convince the international community that the [Agreement on Cessation of Hostilities of 31 December 1994 was] not working, with the aim of discrediting Bosnian Serbs”.⁵¹³ The same report also observed that the “Serb restrictions, on the other hand, have eased considerably, although tight controls are still imposed on fuel deliveries to the enclaves. It must, however, be kept in mind that UNPROFOR has no access to Serb-controlled areas.”⁵¹⁴

197. During the spring of 1995, there was constant fighting between the VRS and the ABiH, including in the area of the eastern enclaves.⁵¹⁵ Also the relationship between DutchBat and the

⁵⁰⁹ Ex. 5D01305, “UNPROFOR letter to Milovanović, signed by C.H. Nicolai, 2 March 1995”.

⁵¹⁰ Ex. 5D00729, “Outgoing Cable from Akashi to Annan, 1 March 1995”, p. 1.

⁵¹¹ *Ibid.*, pp. 1–4. Butler testified that the ABiH used the ceasefire to arm itself and that the VRS was well aware of this fact. Richard Butler, T. 20529 (28 Jan 2008). Smith testified that in the spring of 1995, it became clear to him that the Cessation of Hostilities Agreement would break down because the ABiH was gaining strength, had numerical superiority in the area to which it had been forced back, was receiving weapons, and would be seeking to change the situation to its advantage through armed force. Rupert Smith, T. 17471 (5 Nov 2007).

⁵¹² Ex. 5D00729, “Outgoing Cable from Akashi to Annan, 1 March 1995”, p. 4.

⁵¹³ *Ibid.*

⁵¹⁴ *Ibid.*, p. 5.

⁵¹⁵ Paul Groenewegen, Ex. P02196, “92 *ter* statement”, BT. 1016 (10 July 2003); Ex. 5D01054, “Drina Corps regular combat report, signed by Milenko Živanović, 27 February 1995” (mentioning an attack by the ABiH from Srebrenica on the Rovni-Poljanci sector and firing from Goražde on the Kamenjača sector); Ex. 5D00728, “Report on the implementation of the Cessation of Hostilities Agreement during March 1995”, pp. 2–3 (reporting an upsurge in military activity, including the launching of two offensives by the ABiH in Tuzla and Travnik, and the shelling by the VRS in Tuzla, Goražde, and Mostar). There was VRS intelligence to the effect that the ABiH was planning an operation to connect the forces from Kladanj to the Srebrenica and Žepa enclaves, and to conduct other attacks. Ex. 5D01064, “Drina Corps Command document from Intelligence Department, signed by Pavle Golić, 11 April 1995”; Ex. 5D01065, “Drina Corps intelligence report, signed by Pavle Golić, 13 April 1995” (mentioning persistent ABiH defence in Majevisa area; intensification of ABiH forces’ groupings and reconnaissance from Kladanj, Živinice, and Kalesija towards Han Pijesak, Vlasenica and Šekovići; and offensive operations by the ABiH in Barbanovac, Komar and on the Serići-Blanića axis). According to DutchBat, the ABiH would at times position themselves near the OPs and from this position fire on the VRS, in an effort to draw fire from the VRS on the OPs. Robert Franken, T. 2626–2627 (18 Oct 2006); Eelco Koster, T. 3119 (17 Oct 2006). According to Egbers, on other occasions, the ABiH would fire at DutchBat from positions near the borders of the enclave so that DutchBat would think the VRS was firing at them and return fire on the VRS. Vincent Egbers, T. 2862 (28 Oct

ABiH 28th Division had grown more tense.⁵¹⁶ Srebrenica had not been demilitarised, and DutchBat did not search houses for weapons, but only confiscated weapons if armed Bosnian Muslims were encountered on patrol.⁵¹⁷ An active black market of goods operated in the Srebrenica enclave, although DutchBat did not know from where the goods originated.⁵¹⁸ In March, food items, oil, and fuel were “allotted from a consignment of humanitarian aid” to the ABiH “through UNHCR”.⁵¹⁹ “This was the only source of supply” for the ABiH in Srebrenica.⁵²⁰ The VRS possessed intelligence that the 28th Division tried to keep the civilian population in the Srebrenica enclave by force and prevented them from fleeing.⁵²¹

198. On 5 March 1995, a meeting took place between General Rupert Smith, Commander of UNPROFOR Bosnia-Herzegovina,⁵²² and General Ratko Mladić, General Zdravko Tolimir, and Nikola Koljević, Vice-President of RS.⁵²³ Koljević and Mladić expected that the BiH would re-engage in war⁵²⁴ and opined that the UN was contributing to the problem because UNPROFOR was supplying the enclaves and permitting the ABiH to conduct operations against the Bosnian Serbs.⁵²⁵ Mladić also discussed the effect of international sanctions on the Bosnian Serbs and threatened a blockade of all the enclaves if sanctions were not lifted.⁵²⁶ After visiting Srebrenica, Smith met with

2006). See also Prosecution Adjudicated Facts Decision, Annex, Fact 41. (“Most of the time, groups of Bosnian Serb and Bosnian Muslim soldiers also maintained shadow positions near these outposts.”)

⁵¹⁶ Vincent Egbers, T. 2859–2860 (20 Oct 2006).

⁵¹⁷ Pieter Boering, T. 1909–1910 (19 Sept 2006). See also Cornelis Nicolai, T. 18559 (30 Nov 2007); Eelco Koster, T. 3067 (26 Oct 2006).

⁵¹⁸ Johannes Rutten, T. 5234 (7 Dec 2006), T. 4869 (30 Nov 2006); Pieter Boering, T. 1891, 1910–1911 (19 Sept 2006), T. 2032–2033 (22 Sept 2006); Vincent Egbers, T. 2874 (20 Oct 2006).

⁵¹⁹ Ex. 5D01360, “BiH MOD, Srebrenica municipality document on registration of donations to the BH Army, signed by Hasanović, 31 March 1995”, p. 1. It concerned 18,000 kg of flour; 6,000 kg of beans; 450 kg of table salt; 470 kg of sugar; 1,200 litres of cooking oil; 9,900 cans of food; 750 kg powdered milk; 100 kg of washing powder; 70 litres of fuel.

⁵²⁰ Ex. 5D01360, “BiH MOD, Srebrenica municipality document on donations to the ABiH, signed by Hasanović, 31 March 1995”, p. 1.

⁵²¹ PW-168, T. 16409 (closed session) (16 Oct 2007). See also Exs. 5D00509, 1D00495, “Interim report on meeting with Ken Biser sent by the 2nd Corps Command of the BiH Army in Tuzla to Rasim Delić, signed by Sead Delić, 9 Dec 1994”, p. 3; Ex. 6D00097, “Order from the ABiH Srebrenica 8th Operations Group Security Organ, signed by Nedžad Bektić, 30 January 1995” (stating that measures should be taken to prevent people from illegally leaving the area of responsibility of the 28th Division and that these people should be treated as deserters); Ex. 5D00244, “ABiH 28th Division Order to Žepa Brigade signed by Ramiz Bećirović, 27 May 1995” (ordering that commands of all units of the 28th Division take all measures necessary to stop army members and civilians from leaving Srebrenica and Žepa); Exs. 1D00628, 5D00496, “Request for ensuring conditions in the Srebrenica demilitarized zone sent by the 2nd Corps Command of the ABiH Army to Rasim Delić, signed by Hazim Sadić, 5 July 1993” (stating that under no circumstances was a single inhabitant to be allowed to move away from the demilitarised zone); Robert Franken, T. 2550, 2583 (17 Oct 2006); Eelco Koster, T. 3059 (26 Oct 2006); Ex. 1D00035, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation of Srebrenica, 12 July 1995”, para. 5. Also in Žepa, the ABiH tried to prevent civilians from leaving the enclave. See *infra*, para. 667.

⁵²² Rupert Smith, T. 17464–17465 (5 Nov 2007). Smith was the Commander of UNPROFOR Bosnia-Herzegovina from January through August 1995. *Ibid.*

⁵²³ Ex. P02933, “Notes from the meeting between Smith, Mladić and Tolimir, 5 March 1995”; Rupert Smith, T. 17474–17477 (5 Nov 2007).

⁵²⁴ Rupert Smith, T. 17474 (5 Nov 2007).

⁵²⁵ *Ibid.*, Ex. P02933, “Notes from the meeting between Smith, Mladić and Tolimir, 5 March 1995”.

⁵²⁶ Rupert Smith, T. 17478 (5 Nov 2007); Ex. P02933, “Notes from the meeting between Smith, Mladić and Tolimir, 5 March 1995”, para. 4. The Notes state that “Mladić continued to demand reciprocity in the delivery of aid and

Mladić in Vlasenica on 7 March.⁵²⁷ Mladić told Smith “these enclaves are a great nuisance in my rear” and that he [Mladić] was “going to prevent them from being a problem”.⁵²⁸ On the issue of the movement of aid and supplies to the enclaves, Mladić did not mention sanctions or conditions for permitting passage of aid.⁵²⁹ Smith registered his own concerns over the shortages of the NGOs’ medical supplies in Srebrenica and the general supply shortages of DutchBat. Mladić then reported that he had cleared food and medicine convoys to the Srebrenica and Žepa enclaves over the last 24 hours.⁵³⁰ Mladić questioned Smith about the military situation in Srebrenica and Smith replied that he had not seen any weapons within the town.⁵³¹ Mladić stated that he expected an attack by the ABiH and that the UN had allowed the safe area to expand so that it was overlooking the strategic east-west road between the Srebrenica and Žepa enclaves, which was advantageous to the ABiH.⁵³² Mladić further stated that the safe areas were supposed to be smaller.⁵³³ Mladić explained that these concerns had led him to restrict the amount of food, medicine, and fuel destined for the enclaves.⁵³⁴ Smith reiterated that although he understood the military reasons for such action, it would be interpreted as an attack on the safe areas which would be condemned by the international community.⁵³⁵

2. Directive 7 and 7/1

199. In March 1995, Karadžić issued Supreme Command Directive 7,⁵³⁶ which was drafted by **Miletić**.⁵³⁷ Supreme Command directives were political policy documents for the VRS and set out the RS’ long-term aspirations.⁵³⁸ Directive 7 outlines the Supreme Command’s views concerning the international political situation following the Agreement on Cessation of Hostilities of 31 December 1994, and states that the agreement had “created conditions for the military

supplies; for every convoy to the enclaves, one should go to the Bosnian Serbs. He also proposed that UNPROFOR purchase supplies from areas under Bosnian Serb control.” *Ibid.*

⁵²⁷ Ex. P02933, “Notes from the meeting between Smith, Mladić and Tolimir, 5 March 1995”, para. 7; Ex. P02934, “Notes from the meeting between Smith and Mladić, 7 March 1995”; Rupert Smith, T. 17479 (5 Nov 2007). One or two supply vehicles also entered the enclave with Smith. *Ibid.*

⁵²⁸ Rupert Smith, T. 17482 (5 Nov 2007).

⁵²⁹ Ex. P02934, “Notes from the meeting between Smith and Mladić, 7 March 1995”, para. 2.

⁵³⁰ *Ibid.*, para. 4. Mladić’s words to Smith at this meeting confirmed to Smith that Mladić and his headquarters were “very much in charge” of restrictions and approval of re-supplies into the enclaves. Rupert Smith, T. 17482–17483 (5 Nov 2007).

⁵³¹ Ex. P02934, “Notes from the meeting between Smith and Mladić, 7 March 1995”, para. 5.

⁵³² Rupert Smith, T. 17483–17484 (5 Nov 2007); Ex. P02934, “Notes of meeting between Smith and Mladić, 7 March 1995”, para. 5.

⁵³³ *Ibid.*

⁵³⁴ *Ibid.*

⁵³⁵ *Ibid.*

⁵³⁶ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”. See also Prosecution Adjudicated Facts Decision, Annex, Fact 60.

⁵³⁷ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 15. See also Manojlo Milovanović, T. 12274–12275 (30 May 2007). See also *infra*, para. 1649.

⁵³⁸ Manojlo Milovanović, T. 12192 (29 May 2007), T. 12348 (31 May 2007); Milenko Lazić, T. 21762 (4 June 2008); Mirko Trivić, T. 11917–11918 (22 May 2007).

strengthening and arming of Muslims and Croats”, as well as for “the survival of the Muslim enclaves (Cazin Krajina, Goražde, Žepa, Srebrenica, and Sarajevo)”.⁵³⁹ It further sets out the tasks for the VRS, which included repelling all attacks on RS territory and carrying out combat operations to inflict on the enemy “as many losses as possible both in personnel and equipment”.⁵⁴⁰ In the event the ceasefire were to collapse and the war resume, the VRS strategic objectives were to “advance deeply into enemy territory, crush and destroy his forces, inflict as much damage on its troops, equipment and material as possible, and thus, by force of arms, impose the final outcome of the war on the enemy, forcing the world into recognising the actual situation on the ground and ending the war” and “to improve the operational and strategic position of the VRS”.⁵⁴¹ Against this backdrop, the Directive specifies the assignments for the respective VRS corps.⁵⁴² The Drina Corps’ assignment was:

Enemy breakthroughs along selected operative-tactical lines should be prevented by extremely persistent and active defence in cooperation with part of the forces of the [Sarajevo-Romanija Corps] on the N/W part of the warfront and around the enclaves. As many enemy forces as possible should be tied down by diversionary and active combat operations on the N/W part of the front, using operational and tactical camouflage measures, while in the direction of Srebrenica and Žepa enclaves complete physical separation of Srebrenica from Žepa should be carried out as soon as possible, preventing even communication between individuals in the two enclaves. By planned and well-thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for inhabitants of Srebrenica and Žepa.⁵⁴³

[...]

In case the UNPROFOR forces leave Žepa and Srebrenica, the [Drina Corps] command shall plan an operation named *Jadar* with the task of breaking up and destroying the Muslim forces in these enclaves and definitively liberating the Drina valley region.⁵⁴⁴

The Directive further addresses the importance of unity between the Serbian political and military leadership and emphasises more “aggressive propaganda” in order to “create a free and unified Serbian state in the former Yugoslavia”.⁵⁴⁵ It specifies that

[t]he relevant State and military organs responsible for the work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.⁵⁴⁶

⁵³⁹ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 2.

⁵⁴⁰ *Ibid.*, p. 7.

⁵⁴¹ *Ibid.*, pp. 7–8.

⁵⁴² *Ibid.*, pp. 8–14.

⁵⁴³ *Ibid.*, p. 10. See also Prosecution Adjudicated Facts Decision, Annex, Facts 61–62.

⁵⁴⁴ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 11.

⁵⁴⁵ *Ibid.*, p. 14.

⁵⁴⁶ *Ibid.*, p. 14.

200. Directive 7 was qualified as a state secret.⁵⁴⁷ According to VRS rules, such documents were to be kept in a special safe.⁵⁴⁸ Directive 7 was kept in **Miletić's** "strong box" at the Main Staff.⁵⁴⁹ Pursuant to the decision of the Supreme Commander,⁵⁵⁰ the Directive was forwarded to the corps by the Chief of Staff of the Main Staff, Manojlo Milovanović, by letter dated 17 March 1995.⁵⁵¹

201. On 20 March 1995, the Drina Corps brigades received the Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Živanović,⁵⁵² informing the brigade commands⁵⁵³ about the upcoming tasks, strategic objectives, and long-term goals that were included and described in Directive 7.⁵⁵⁴ It was effectively the Drina Corps taking Directive 7 and adapting it to its own operations.⁵⁵⁵ In its introductory part, the order reiterates the wording that appears in Directive 7: "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 and Žepa."⁵⁵⁶ The order refers to liberating the Drina Valley region and tasks the Drina Corps to carry out "complete physical separation of Srebrenica from Žepa [...] as soon as possible, preventing even communication between individuals in the two enclaves".⁵⁵⁷

⁵⁴⁷ *Ibid.*, p. 2.

⁵⁴⁸ Ex. 5D01194, "Rules on Official Correspondence and Office Activities in Yugoslav Army, 1994", Rule 48. On special measures with regard to (state) secret documents, *see also* Dragisa Masal, T. 29055 (1 Dec 2008).

⁵⁴⁹ Ljubomir Obradović, T. 28343 (17 Nov 2008).

⁵⁵⁰ Slobodan Kosovac, T. 30105 (14 Jan 2009). *See also* Manojlo Milovanović, T. 12194 (29 May 2007).

⁵⁵¹ *See, e.g.*, Ex. P00005, "RS Supreme Command Directive 7, 8 March 1995", p. 1 (which is the letter forwarding the Directive to the Krajina Corps); Ex. 5D01326, "Letter forwarding Directive 7 to the Herzegovina Corps, signed by Milovanović, 17 March 1995"; Ex. 5D01327, "Letter forwarding Directive 7 to the Sarajevo-Romanija Corps, signed by Milovanović, 17 March 1995". Directive 7 was addressed to all the Corps, the Air Force and Air Defence, and Centre of Military Schools of the VRS. Ex. P00005, "RS Supreme Command Directive 7, 8 March 1995", p. 2.

⁵⁵² Ex. P00203, "Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995"; Milenko Lazić, T. 21818–21822 (5 June 2008). As Directive 7 was distributed to the corps commands, brigade commands did not receive Directive 7 directly. Milenko Lazić, T. 21763, 21781 (4 June 2008); Mirko Trivić, T. 11916–11917 (22 May 2007); Ex. P00107, "Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995".

⁵⁵³ Milenko Lazić, T. 21819 (5 June 2008).

⁵⁵⁴ *Ibid.*, T. 21818–21822 (5 June 2008).

⁵⁵⁵ Vinko Pandurević, T. 31430–31431 (13 Feb 2009).

⁵⁵⁶ Ex. P00203, "Drina Corps Order for defence and active combat operations, Operative No.7, signed by Milenko Živanović, 20 March 1995", p. 6. Lazić agreed that the language in Ex. P00203 is very similar to that used in the 4 July 1994 Bratunac Brigade report signed by Commander Ognjenović (Ex. P03177), which reads in part: "there will be no retreat when it comes to the Srebrenica enclave, we must advance. The enemy's life has to be made unbearable and their temporary stay in the enclave impossible so that they leave the enclave *en masse* as soon as possible, realising that they cannot survive there". Milenko Lazić, T. 21852 (5 June 2008); Ex. P03177, "Report from the Bratunac Brigade Command, signed by Ognjenović, 4 July 1994", p. 3.

⁵⁵⁷ Ex. P00203, "Drina Corps Order for defence and active combat operations, Operative No.7, signed by Milenko Živanović, 20 March 1995", p. 6. Lazić testified that liberating Srebrenica and the upper and middle Podrinje regions had been an objective of the Bosnian Serb government and military for more than two years before the drafting of Ex. P00203 and Directive 7. Milenko Lazić, T. 21825 (5 June 2008). When asked if liberating the region meant forcing the Muslim population out, Lazić responded "[t]he operation wasn't planned quite that way. If one looks at the order to carry out that task [*Krivaja-95*], one can see that the goal was not to force the Muslim population to move. The goal was to separate the enclaves. As to what the operation subsequently turned into, I wouldn't know since I didn't participate in it." *Ibid.*, T. 21825–21826 (5 June 2008).

202. On 31 March 1995, Mladić issued VRS Main Staff Operative Directive 7/1, which was drafted by **Miletić**.⁵⁵⁸ Main Staff Directive 7/1 describes the ABiH's violations of the Agreement of Cessation of Hostilities of 31 December 1994 and proclaims that the international community had found itself "in a dead-end street, without definite ideas or practical solutions for stopping the war".⁵⁵⁹ While Directive 7/1 cites attempts to continue the negotiating process,⁵⁶⁰ it also lays out Operation *Sadejstvo-95*, which contained the objective of "inflicting the heaviest possible losses on the enemy, restoring the reputation of the VRS among the people in the world, and forcing the enemy to negotiate and end the war at the achieved lines through successful actions by VRS forces along chosen axes".⁵⁶¹ VRS forces are ordered to contribute to *Sadejstvo-95* through, *inter alia*, planned combat, battles, and operations in accordance with Directive 7 in the area around the Srebrenica and Žepa enclaves.⁵⁶² The Drina Corps is specifically ordered to "[p]revent an enemy breakthrough along selected operative tactical axes with persistent defence and active combat actions on the north-west part of the front and around the enclaves, and tie down as many enemy troops as possible through diversionary actions and operative tactical camouflage measures".⁵⁶³

203. Directive 7/1 was addressed to the corps commands, including the Drina Corps.⁵⁶⁴ It does not include the passage in Directive 7 ordering creation of "an unbearable situation of total insecurity with no hope of survival or life for the inhabitants of Srebrenica and Žepa".⁵⁶⁵

3. Build-up to Military Offensive

204. Starting mid-April 1995, the ABiH, in preparation for an operation to link the Srebrenica and Žepa enclaves, flew commanders into the Srebrenica enclave by helicopter and smuggled in

⁵⁵⁸ Ex. 5D00361, "VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995".

⁵⁵⁹ *Ibid.*, pp. 1–2.

⁵⁶⁰ *Ibid.*, p. 2.

⁵⁶¹ *Ibid.*, pp. 3–4.

⁵⁶² *Ibid.*

⁵⁶³ *Ibid.*, p. 5. The Directive further states the Drina Corps tasks to be "[i]n cooperation with the IBK [East Bosnia Corps], complete tasks from Operation *Spreča 95* as soon as possible and break through in the first phase of the operation to the Vis-Kalesija line, then regroup forces and in the second and third phases of the operation, in cooperation with the forces of IBK, 1st KK [Krajina Corps], Air Force and PVO [Anti-Aircraft Defence], by an appropriate manoeuvre, infiltrating strong groups into the enemy rear and introducing strong armoured mechanised forces, execute an attack in the general direction Kalesija-Dubrava-Tuzla, reaching as soon as possible the Šerići village-Živinice-Jasičak-Ravno hill line, thereby cutting off forces of the 2nd Corps of the so-called BH Army south of that line." *Ibid.*, p. 5. Milovanović agreed that paragraph 5.3 of Main Staff Directive 7/1, which addresses the tasks of the Drina Corps, does not adopt the tasks of the Drina Corps in the way they were defined by the Supreme Command and added that Mladić "changed the decision of the Supreme Commander" in the directive. Mladić does not order "incursion of the Serbian army into the enclaves", but rather "want[ed] to isolate the 2nd Corps [of the ABiH]". Manojlo Milovanović, T. 12277 (30 May 2007). For Savčić, it was apparent "on the face of it" that Main Staff Directive 7/1 "d[id] not adopt the tasks of the Drina Corps in the way they were defined by the Supreme Command [in Directive 7]". Mladić, the commander of the Drina Corps, did not order "incursion of the Serbian army into the enclaves", but rather "to isolate the 2nd Corps [of the ABiH]". Milomir Savčić, T. 15321–15322 (13 Sept 2007).

⁵⁶⁴ Ex. 5D00361, "VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995", p. 1.

uniforms, ammunition, grenade launchers, rockets, and other weapons.⁵⁶⁶ The ABiH also carried out nightly raids against Serb military positions and surrounding Serbian villages.⁵⁶⁷ The VRS complained to DutchBat about these incidents, however, according to DutchBat, they could not investigate them due to the restrictions on their movement and fuel re-supply by the VRS.⁵⁶⁸ UNPROFOR raised complaints about the situation with the ABiH and the VRS.⁵⁶⁹

205. In May, large quantities of food were obtained by the ABiH, after being “separated out of the humanitarian aid contingent which arrived in the area through UNHCR, while some of the food was obtained from the Dutch Battalion”.⁵⁷⁰ This practice was known to the VRS Main Staff.⁵⁷¹

206. On 15 May 1995, Krstić, the Drina Corps Deputy Commander, ordered the creation of “conditions for continuation of the attack towards Žepa [...] [and] Srebrenica” and the VRS forces around Srebrenica enclave to defend their positions because the ABiH was “carrying out intensive preparations for offensive operations from [...] [*inter alia*] the Srebrenica and Žepa enclaves with the basic goal to cut the RS territory, to connect the non-enclaves with the central part [...], and

⁵⁶⁵ Ex. 5D00361, “VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995”.

⁵⁶⁶ Ex. 4D00013, “Interim report by ABiH General Staff, 13 July 1995” (stating that 17 helicopter flights had been carried out to Srebrenica and Žepa and specifying what equipment and material were delivered; it further lists among actions taken: “In preparations for a future operations to link up the enclaves, we brought in and took back four brigade commanders, two brigade chiefs of staff, and the 26th Division Chief of Staff.”); Pieter Boering, T. 1910–1911 (19 Sept 2006), T. 2038 (22 Sept 2006) (testifying that from mid-April helicopters were used in Srebrenica and that he personally knew of five instances in which this happened); Prosecution Adjudicated Facts Decision, Annex, Fact 50. ABiH documentation confirms military equipment, uniforms, boots, and ammunition were brought into the enclaves. Ex. 4D00011, “Analysis and chronology of events in Srebrenica”, pp. 3, 10–11; Ex. 4D5D00011, “ABiH Document re distribution of equipment to units in Srebrenica and Žepa, signed by Hadžihasanović, 21 April 1995”; Ex. 6D00067, “ABiH document re distribution of equipment to units in Srebrenica and Žepa, signed by Hadžihasanović, 27 April 1995”; Ex. 5D00265, “ABiH Report on delivery of lethal assets and material and technical equipment to the Žepa and Srebrenica enclaves, signed by Hadžihasanović, 28 May 1996”; Ex. 4D00005, “Document from the Assembly of BiH, signed by Delić, 30 July 1996”, pp. 3–4; Ex. 1D00464, “Interim report from the BiH Army General Staff to the 1st Corps Command, signed by Rasim Delić, 13 July 1995”. According to Torlak, UNPROFOR was aware or ought to have been aware that the ABiH was arming itself. Hamdija Torlak, T. 9828–9829 (2 Apr 2007).

⁵⁶⁷ Robert Franken, T. 2579 (17 Oct 2006); Pieter Boering, T. 2110 (25 Sept 2006); Hamdija Torlak, T. 9722–9723, 9784 (30 Mar 2007); Ex. 4D00129, “Document from UNPROFOR Headquarter Sarajevo Office of the Chief Staff to Mladić, signed by Nicolai, 26 June 1995”. See also Ex. 5D01079, “Drina Corps interim combat report to the VRS Main staff, signed Damir Pajić, 27 May 1995”; Ex. 5D00003, “ABiH 28th Division situation report, signed by Bećirević, 30 July 1995”.

⁵⁶⁸ Pieter Boering, T. 2112–2113 (25 Sept 2006); Cornelis Nicolai, T. 18531, 18560–18561 (30 Nov 2007).

⁵⁶⁹ Ex. 4D00128, “Document from UNPROFOR Headquarters Sarajevo to General Delić, signed by C.H. Nicolai, 26 June 1995”; Ex. P02939, “Letter from Rupert Smith to Mladić, 26 June 1995”.

⁵⁷⁰ Ex. 5D00955, “BiH Ministry of Defence document to the Tuzla Defence Secretariat, signed by Suljo Hasanović, 5 June 1995”. The foodstuffs included 25,900 kg of flour; 596 kg of sugar; 1,423 litres of cooking oil; 619 kg of salt; 5,000 kg of beans; 17,020 of cold cuts; 100 kg of powder milk; 62 kg of juice; 7,780 tins of fish; 117 pieces of breaded fish; 480 kg of ground meat; 18.60 kg of beef; 125 fillets of fish; 120 kg of cauliflower; 90 kg of kale; 150 kg of carrots; 240 kg of green beans; 171 litres of heating oil; 1 litre of motor oil. See also Joseph Kingori, T. 19481 (11 Jan 2008) (confirming that, with UNHCR’s knowledge, the ABiH received a small percentage of the humanitarian aid that came in); Robert Franken, T. 2537–2538 (17 Oct 2006) (testifying DutchBat was aware that the ABiH took goods from the humanitarian aid contingent).

⁵⁷¹ Slavko Kralj, T. 29309–29311 (5 Dec 2008).

access the Drina River”.⁵⁷² The next day, Krstić issued another order amending the order of the previous day and putting the planned offensive operations on hold until the forces were “sufficiently reinforced”.⁵⁷³ The Drina Corps reported to the VRS Main Staff that it was “unable to implement [the Main Staff] order to fully close off the enclaves and carry out attacks against them” due to a lack of forces but that it was continuing preparations in accordance with the order.⁵⁷⁴ The Main Staff report to the President of RS states that “preparations [were] continuing for stabilising the defence around the enclaves of Srebrenica and Žepa”.⁵⁷⁵

207. On 25 May 1995, NATO bombed VRS positions in Pale.⁵⁷⁶ In response, the VRS shelled various targets in BiH.⁵⁷⁷ The Srebrenica enclave was shelled by the Bratunac Brigade on orders from the Drina Corps.⁵⁷⁸ Four shells were fired “on the town of Srebrenica”.⁵⁷⁹ The Trial Chamber finds that this VRS attack constituted an indiscriminate attack on civilians. The Prosecution submits that due to this attack, in Bučinovići village a nine year old girl was killed and her sister seriously injured.⁵⁸⁰ The Trial Chamber however has no conclusive evidence to support that the girl’s killing and her sister’s injury were the result of the shells fired on Srebrenica by the Bratunac Brigade.

208. At the end of May 1995, Živanović, the Drina Corps Commander, ordered the Zvornik, Bratunac, and Skelani Brigades to prevent the ABiH from entering the area of Zeleni Jadar “after the UNPROFOR leaves their outpost at Zeleni Jadar”.⁵⁸¹ On 2 June 1995, Živanović issued a further order to the Command of the Bratunac Brigade and the Commander of the Drina Wolves⁵⁸²

⁵⁷² Ex. P00204, “Drina Corps Order, type-signed Krstić, 15 May 1995”, pp. 1–2. This order was issued to the Rogatica Brigade, the 65th Protection Regiment, the Romanija Brigade, the Vlasenica Brigade, the Milići Brigade, the Skelani Battalion, the Bratunac Brigade, the Birač Brigade, and the Zvornik CBS. *Ibid.*, p.1.

⁵⁷³ Ex. P00205, “Drina Corps order, in addition to previous order No. 04/112-14, type-signed Krstić, 16 May 1995”, p. 1.

⁵⁷⁴ Ex. P02892, “Drina Corps Daily Combat Report, signed by Krstić, 16 May 1995”, p. 1.

⁵⁷⁵ Ex. P02896, “Main Staff report to the President, type-signed Miletić, 16 May 1995”, p. 3.

⁵⁷⁶ Ex. P03970, “Netherlands Institute for War Documentation Report on the Fall of Srebrenica from 25 May 1995 to 6 July 1995”, p. 2; Ex. P03370, “Drina Corps Order, signed by Milenko Živanović, 25 May 1995”, p. 1 (stating that NATO attacked at 4 p.m.); Ex. P03788, “Drina Corps Order, signed by Milenko Živanović, 25 May 1995”, p. 1.

⁵⁷⁷ Ex. P03970, “Netherlands Institute for War Documentation Report on the Fall of Srebrenica from 25 May 1995 to 6 July 1995”, p. 2; Ex. 5D01077, “Drina Corps Order, signed by Milenko Živanović, 25 May 1995”, p. 1 (stating that the VRS responded to the NATO attack by “conducting operations against selected targets”). *See also* Ex. 3D5D01161, “VRS Main Staff situation report, signed by Milovanović, 25 May 1995”, p. 4. According to Gavrić, the Bratunac Brigade fired on Srebrenica as a result of firing on their positions from the area of Budak, including by an enemy tank. The orders were to destroy that tank. Mićo Gavrić, T. 26507–26508 (1 Oct 2008). Considering the totality of evidence before it, the Trial Chamber does not find Gavrić credible on this part of his testimony.

⁵⁷⁸ Ex. P03359, “Interim combat report from the Bratunac Brigade to the Drina Corps, signed by Vidoje Blagojević, 25 May 1995”; Ex. P03358, “Document from the Bratunac Brigade, signed by Mićo Gavrić, 25 May 1995”.

⁵⁷⁹ Ex. P03359, “Interim combat report from the Bratunac Brigade to the Drina Corps, signed by Vidoje Blagojević, 25 May 1995” (stating that four shells were fired at Srebrenica from Mićo Gavrić’s position).

⁵⁸⁰ Indictment, para. 52.

⁵⁸¹ Ex. P04097, “Drina Corps order on taking control of the area of Zeleni Jadar, signed by Milenko Živanović, 29 May 1995”, p.1.

⁵⁸² The Drina Wolves were also known as the Podrinje Detachment or the Manoeuvre Battalion. *See supra*, para. 146.

entitled “Restoration of the control over the facilities at the Zeleni Jadar asphalt road”.⁵⁸³ Control of the area of Zeleni Jadar, particularly the road, was of strategic importance.⁵⁸⁴ On 3 June 1995, the VRS advanced and took by force the DutchBat OP Echo at Zeleni Jadar, which was located in the south of the Srebrenica enclave.⁵⁸⁵ According to the Drina Corps combat report to the Main Staff that day, “the inhabitants of Zeleni Jadar moved out in panic” and people from the larger area of Zeleni Jadar were seen moving towards Srebrenica following withdrawal of UNPROFOR.⁵⁸⁶ Consequently, two new DutchBat OPs were set up, Sierra and Uniform.⁵⁸⁷ The DutchBat Commander assessed the situation in the Srebrenica enclave as “very critical”.⁵⁸⁸

209. From the end of May or the beginning of June 1995, the number of Bosnian Muslims carrying weapons increased.⁵⁸⁹ DutchBat observed that the ABiH had new uniforms and better weapons⁵⁹⁰ but “sort of turned a blind eye and allowed for it, if Muslim fighters, armed Muslim fighters walked around with Kalashnikovs”.⁵⁹¹ Around the end of May and in June, the ABiH carried out several attacks and sabotage operations.⁵⁹² There was also a build-up of VRS forces, especially in the southern part of the Srebrenica enclave.⁵⁹³

⁵⁸³ Ex. P02894, “Drina Corps Order to the Bratunac Brigade re restoration of control over the Zeleni Jadar area, signed by Milenko Živanović, 2 June 1995”.

⁵⁸⁴ Ex. P00686, “Srebrenica Military Narrative (Revised) – Operation “Krivaja 95”, R. Butler, 1 November 2002”, para. 1.38; Richard Butler, T. 19766 (16 Jan 2008); Ex. P04535, “Footage of St. Peter’s Day on 12 July 1995”, p. 7 of transcript; Milenko Jevđević, T. 29730–29731 (15 Dec 2008). *See also* Robert Franken, T. 2454–2455 (16 Oct 2006).

⁵⁸⁵ Robert Franken, T. 2452–2456 (16 Oct 2006); Milenko Jevđević, T. 29498 (10 Dec 2008), T. 29734 (15 Dec 2008); Ex. P02894, “Drina Corps Order to the Bratunac Brigade re restoration of control over the Zeleni Jadar area, signed by Milenko Živanović, 2 June 1995”; Ex. 5D01083, “Drina Corps regular combat report to the Main Staff, signed by Milenko Jevđević, 3 June 1995”; Ex. P00534, “Report based on the debriefing on Srebrenica, 4 October 1995”, para. 2.47; Ex. P00528, “UN Report on Srebrenica, 15 November 1999”, p. 51; Ex. P04535, “Footage of St. Peter’s Day on 12 July 1995”, p. 7 of the transcript (containing a speech by Živanović in which the attack on OP Echo is discussed in the context of preparation on the attack on Srebrenica. It was “tested what the expulsion of UNPROFOR with weapons looks like.”). *See also* Ex. PIC00197, “Map entitled ‘Deployment of our enemy and UNPROFOR Forces in the Srebrenica and Žepa enclaves’, marked by the witness”; Richard Butler, T. 19766–19767 (16 Jan 2008); Ex. P02714, “VRS Main Staff document to Command Military Post 7111 and VP 7102 signed by Miletić, 2 June 1995”, p. 3.

⁵⁸⁶ Ex. 5D01083, “Drina Corps regular combat report, signed by Milenko Jevđević, 3 June 1995”, p. 1.

⁵⁸⁷ Robert Franken, T. 2454 (16 Oct 2006); Ex. P00534, “Dutch Ministry of Defence, Debriefing on Srebrenica”, para. 2.47; Ex. P00528, “UN Secretary General’s Report on Srebrenica, 15 November 1999”, p. 51, para. 223.

⁵⁸⁸ Robert Franken, T. 2455 (16 Oct 2006).

⁵⁸⁹ Pieter Boering, T. 2170 (26 Sept 2006); Eelco Koster, T. 3058–3059 (26 Oct 2006); Robert Franken, T. 2537 (17 Oct 2006).

⁵⁹⁰ Robert Franken, T. 2438 (16 Oct 2006), T. 2537 (17 Oct 2006); Pieter Boering, T. 2038–2039, 2066–2067 (22 Sept 2006) (Boering testified he only saw new uniforms and some small arms, but no new Kalashnikovs); Vincent Egbers, T. 2862 (20 Oct 2006). *See also* PW-114, Ex. P02188, “92 *ter* statement”, KT. 1491 (28 Mar 2000); Joseph Kingori, T. 19374 (10 Jan 2008); Prosecution Adjudicated Facts Decision, Annex, Fact 50.

⁵⁹¹ Pieter Boering, T. 2116 (25 Sept 2006).

⁵⁹² Ex. 1D01008, “Copy of ABiH 28th Division Order on intensification of all activities, signed by Ramiz Bečirović, 22 May 1995”; Ex. 5D01079, “Drina Corps interim combat report to the VRS Main staff, signed by Damir Pajić, 27 May 1995” (reporting that on 27 May 1995, five members of the Milići Brigade were killed in an ambush); Ex. 1D01007, “ABiH 28th Division Order on measures to prepare sabotage actions, signed by Ramiz Bečirović, 5 June 1995”; Ex. 1D01009, “ABiH 28th Division Order on taking measures to prepare the groundwork for sabotage actions, signed by Mladen Marinković, 14 June 1995” (stating that sabotage measures should be implemented “to destabilise the aggressor’s troops and erode their morale”); Ex. 1D00742, “Report by ABiH 28th

210. According to DutchBat officers, from about May continuing until the attack in July, there was increasing shelling and sniping into the enclaves.⁵⁹⁴ The ABiH was targeted by the shelling and shooting.⁵⁹⁵ There is evidence that sometimes the civilian population was also randomly targeted and incurred casualties.⁵⁹⁶ On a number of occasions in June and July, DutchBat witnessed from their compound in Potočari, coming from the direction of Bratunac, the shelling of houses inhabited by Bosnian Muslims, resulting in the inhabitants leaving their houses.⁵⁹⁷ Momir Nikolić called the sniping of civilians “one of the segments which was conducive to the creation of a difficult life for people living in the enclave, by preventing them from doing their everyday works and duties”.⁵⁹⁸ DutchBat patrols were also targeted as they left the compound, which had a negative impact on DutchBat’s movements.⁵⁹⁹ The units involved in the sniping included the Bratunac Brigade, as well as the Skelani Battalion and the Milići Brigade.⁶⁰⁰ On 26 June 1995, Smith urged Mladić by letter to respect the safe areas and the safety of UNPROFOR troops. He informed Mladić that he received “[o]n an almost daily basis [...] reports of shelling of the populated areas of [...] Srebrenica”.⁶⁰¹ Smith also reported there were increasing reports of direct targeting of UNPROFOR locations and vehicles.⁶⁰²

Division to 2nd Corps Command in Tuzla, type-signed Ramiz Bećirović, 30 June 1995” (stating that the 28th Division located in the enclaves had intensified its activities).

⁵⁹³ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2169–2170 (5 Apr 2000); Cornelis Nicolai, T. 18460 (29 Nov 2007).

⁵⁹⁴ Robert Franken, T. 2440–2441 (16 Oct 2006); Pieter Boering, T. 1895, 1897–1898 (19 Sept 2006). Momir Nikolić testified that the ABiH was also involved in sniping from the demilitarized zone “[a]round the clock”, “killing the soldiers there as well as the civilians who happened to be in the proximity of the lines because they had property there.” Momir Nikolić, T. 33063 (23 Apr 2009).

⁵⁹⁵ Cornelis Nicolai, T. 18461 (29 Nov 2007).

⁵⁹⁶ *Ibid.*, T. 18461 (29 Nov 2007) (testifying that in June 1995, DutchBat observed shelling aimed randomly at civilians); Robert Franken, T. 2441 (16 Oct 2006) (testifying that several times members of the civilian population were wounded during shelling and shooting incidents); Momir Nikolić, T. 32965–32966 (21 Apr 2009) (testifying that sniping of civilians occurred); Joseph Kingori, T. 19366–19369 (10 Jan 2008) (testifying that farmers were targeted), T. 19475 (11 Jan 2008) (testifying that civilians in the enclave were targeted by the shelling); PW-106, T. 3939–3940 (15 Nov 2006); Pieter Boering, T. 1895–1896 (19 Sept 2006) (testifying that in June and July, DutchBat witnessed from the Potočari compound the shelling from Bratunac of houses inhabited by Bosnian Muslims). *See also* Ex. 4D00134, “Monthly Report from ABiH 28th Division, type-signed Nedžad Bektić, 23 June 1995” (reporting that on 10 June 1995, a civilian was wounded by VRS sniper fire); Ex. P04109, “Report from the Intelligence Sector of the ABiH 28th Division, type-signed Ekrem Salihović, 3 July 1995” (reporting on “particularly fierce sniper fire” from the direction of the Buljim, Zeleni Jadar and Zalazje area and that one woman was killed by a sniper bullet on 2 July 1995).

⁵⁹⁷ Pieter Boering, T. 1895–1896 (19 Sept 2006). Boering testified he also heard similar occurrences took place further down south but he did not witness this himself. *Ibid.*

⁵⁹⁸ Momir Nikolić, T. 32966 (21 Apr 2009). Milenko Jevđević, Commander of the Signals Battalion in the Drina Corps, testified the Drina Corps had no sniper rifles in their stocks and that he never saw any sniper rifle at the various front lines in the area of responsibility of the Drina Corps. Milenko Jevđević, T. 29490–29491 (10 Dec 2008), T. 29738 (15 Dec 2008). With regard to reports about sniper shots being fired, Jevđević concluded that, in fact, this concerned bullets from a light machine-gun or a semi-automatic rifle. *Ibid.* Jevđević maintained his position during extensive cross-examination by the OTP *Ibid.*, T. 29739–29753 (15 Dec 2008). The Trial Chamber finds Jevđević not credible with regard to this part of his testimony.

⁵⁹⁹ Robert Franken, T. 2441 (16 Oct 2006); Pieter Boering, T. 1896–1897 (19 Sept 2006), T. 2236 (27 Sept 2006).

⁶⁰⁰ Momir Nikolić, T. 32965 (21 Apr 2009).

⁶⁰¹ Ex. P02939, “Letter from Rupert Smith to Mladić, 26 June 1995”; Rupert Smith, T. 17507 (5 Nov 2007).

⁶⁰² *Ibid.*

211. Early in the morning of 26 June 1995, Bosnian Muslims attacked the Bosnian Serb village of Višnjica near Srebrenica, burning houses and killing several people.⁶⁰³ The same day, the ABiH carried out several other attacks, including in Crna Rijeka.⁶⁰⁴

212. On one occasion in the weeks preceding the military attack on Srebrenica, VRS soldiers—including members of the 10th Sabotage Detachment and Bratunac Brigade—infiltrated Srebrenica through an old mine-tunnel.⁶⁰⁵ The purpose of the infiltration was “to try to create mutiny and insurgency” in the ranks of the ABiH so that they “surrender and stop fighting for Srebrenica”.⁶⁰⁶ As they left the tunnel they reached an elevation, from where they launched a “couple” of projectiles from hand-held launchers.⁶⁰⁷ The VRS soldiers also fired where they believed the command of Naser Orić was located.⁶⁰⁸ After the attack, the men pulled back out through the tunnel and returned to Bratunac.⁶⁰⁹ According to a DutchBat report, two civilians were injured and one killed as a result of this incursion.⁶¹⁰

213. Just before the attack on Srebrenica the total number of inhabitants of the Srebrenica enclave had increased from 36,000 at the beginning of the year to 42,000 persons, out of which approximately 85% were displaced persons.⁶¹¹

4. Regulation of Convoys in the RS

(a) Procedures in 1993 and 1994

214. At the beginning of April 1993, the VRS Main Staff established procedures regulating the passage of UNPROFOR convoys and humanitarian convoys (other than UNPROFOR) via the territory of RS according to which convoys could only be allowed passage with permission in

⁶⁰³ Prosecution Adjudicated Facts Decision, Annex, Fact 67; Ex. 6D00179, “ABiH 2nd Corps Document on information obtained by radio reconnaissance- Tuzla, signed by Esad Hadžić, 27 June 1995”. See also Ex. 1D00742, “Report by 28th Division of the ABiH to 2nd Corps Command in Tuzla, type-signed Ramiz Bećirović, 30 June 1995” (describing the attack on 26 June as well as others on 23 June); Ex. 5D01100, “Drina Corps regular combat report, signed by Krstić, 26 June 1995”.

⁶⁰⁴ Ex. 1D00742, “Report by 28th Division of the ABiH to 2nd Corps Command in Tuzla, type-signed Ramiz Bećirović, 30 June 1995”, pp. 1–2. On 26 June, ABiH forces attacked the Command Post of the Main Staff, resulting in seven soldiers killed and several wounded. Milomar Savčić, T. 15243–15244 (12 Sept 2007).

⁶⁰⁵ Drazen Erdemović, T. 10935–10936 (4 May 2007); Momir Nikolić, T. 32975–32977 (22 Apr 2009); Joseph Kingori, T. 19476 (11 Jan 2008); Ex. 5D00541, “HQ DutchBat Report, 24 June 1995”.

⁶⁰⁶ Drazen Erdemović, T. 10937 (4 May 2007).

⁶⁰⁷ *Ibid.*; Momir Nikolić, T. 32976 (22 Apr 2009). See also Ex. 5D00541, “HQ DutchBat Report, 24 June 1995”, p. 2.

⁶⁰⁸ Drazen Erdemović, T. 10937 (4 May 2007).

⁶⁰⁹ *Ibid.*, T. 10937 (4 May 2007). See also Ex. 5D00541, “HQ DutchBat Report, 24 June 1995”, p. 2.

⁶¹⁰ Ex. 5D00541, “HQ DutchBat Report, 24 June 1995”, p. 2. See also Momir Nikolić, T. 32976 (22 Apr 2009) (testifying that according to DutchBat reports civilians were killed during the incident, which he believed to number between four and seven).

⁶¹¹ Ex. P00493, “UNMO report regarding the food situation in Srebrenica, 8 July 1995”, p. 1. See also Ex. 5D00040, “UNPF Policy and Information for the Security Council, 11 July 1995”, para. 2(b); Ex. 4D00127, “Breakdown of inhabitants and households, local and displaced persons, Srebrenica Municipality, Civilian Protection Municipal Staff, 11 January 1995”.

writing from the VRS Main Staff.⁶¹² Convoys without written approval and convoys that arrived ahead of schedule would not be able to enter the territory of RS under any circumstance.⁶¹³ The intended supply routes for Srebrenica and Žepa were indicated and the corps were ordered to erect checkpoints, to carry out inspections of convoys, and to ensure the unhindered movement of authorised convoys.⁶¹⁴ No equipment and ammunition were allowed to enter the enclaves, though food and medication approved by the VRS Main Staff were permitted.⁶¹⁵ UNPROFOR movements to and from the enclaves were prohibited absent VRS Main Staff authorisation.⁶¹⁶

215. Subsequently, the procedures for convoy approvals were amended at least once. Civilian authorities, including the Ministry of Defence, the MUP, and the Coordinating Body for Humanitarian Aid, became involved in the approval of humanitarian convoys.⁶¹⁷ The VRS Main Staff continued to notify its subordinate units in writing of all approved convoy approvals, and without such a notification convoys were not allowed passage.⁶¹⁸ Furthermore, from August 1994, pursuant to an order from Milovanović, the VRS had the obligation to check all convoys crossing lines of separation, with a view to preventing any unauthorised movement, checking that they carried authorised goods, and stopping convoys when their crossing had not been previously announced to the Main Staff.⁶¹⁹ Those trying to cross the line “illegally” were to be arrested and

⁶¹² Ex. 5D00768, “VRS Main Staff Order on the movement of Humanitarian aid convoys and UNPROFOR within the RS, signed by Milovanović, 2 April 1993”. See also Ex. 5D00378, “VRS Main Staff document regulating the passage of UNPROFOR convoys, 3 April 1993”; Ex. 5D00771, “VRS Main Staff Order to control humanitarian and UNPROFOR convoys, signed by Milovanović, 9 April 1993”; Ex. 5D00769, “VRS Main Staff Document to the Corps re control of movement of humanitarian aid convoys, signed by Manojlo Milovanović, 3 April 1993”.

⁶¹³ Ex. 5D00378, “VRS Main Staff document regulating the passage of UNPROFOR convoys, 3 April 1993”; Manojlo Milovanović, T. 12281–12282 (30 May 2007).

⁶¹⁴ Ex. 5DP02749, “VRS Main Staff order to the Drina, Herzegovina and Sarajevo-Romanija Corps, signed by Mladić, 22 July 1994”; Prosecution Adjudicated Facts Decision, Annex, Fact 48. See also Ex. 5D00378, “VRS Main Staff document regulating the passage of UNPROFOR convoys, 3 April 1993”.

⁶¹⁵ Ex. 5DP02749, “VRS Main Staff order to the Drina, Herzegovina and Sarajevo-Romanija Corps, signed by Mladić, 22 July 1994”; Prosecution Adjudicated Facts Decision, Annex, Fact 48.

⁶¹⁶ Ex. 5DP02749, “VRS Main Staff order to the Drina, Herzegovina and Sarajevo-Romanija Corps, signed by Mladić, 22 July 1994”.

⁶¹⁷ See Ex. 5D01285, “VRS Main Staff Order on movement of humanitarian aid convoys through RS, signed by Milovanović, 1 August 1993”, paras. 1–3; Ex. 5D00806, “VRS Main Staff Order ensuring the functioning of humanitarian aid, signed by Milovanović, 30 December 1993”; Ex. 5D01218, “Document from the President of RS to the VRS Main Staff, the VRS Main Staff Commander and Chief of Staff, signed by Karadžić, 24 April 1994”, para. 3; Ex. 5D00605, “VRS Main Staff order regarding movement of humanitarian aid, signed by Milovanović, 31 August 1994”; Slavko Kralj, T. 29233–29234 (3 Dec 2008); Ex. 5D00785, “VRS Main Staff Document providing guidelines regarding humanitarian aid convoys, signed by Manojlo Milovanović, 6 August 1993”.

⁶¹⁸ Ex. 5D00605, “VRS Main Staff order regarding movement of humanitarian aid, signed by Milovanović, 31 August 1994”, p. 2.

⁶¹⁹ *Ibid.* See also Ex. 5D01269, “Summary of Intercepted Conversation between Milovanović and UN General Van Baal, 19 August 1994, 23:40 hours”; Ex. 5D01271, “Summary of Intercepted Conversation between Milovanović and UN General Brinkman, 31 August 1994, 22:18 hours”; Ex. 5D01273, “Summary of Intercepted Conversation between Mladić and UN General Brinkman, 5 October 1994, 00:05 hours”. The intercepted conversations show that some fuel convoys had been denied passage by the VRS Main Staff in/around August and October 1994. In Ex. 5D01269, Milovanović stated that convoys were denied passage because the VRS Main Staff believed that UNPROFOR was bringing abnormal quantities of fuel into the protected enclaves. Milovanović also inquired why UNPROFOR was bringing heavy weapons into the enclaves to which General van Baal responded that, according

their equipment confiscated.⁶²⁰ The order also drew the corps' attention to the fact that problems had arisen in the approval procedure and that announcements were not being duly communicated to the VRS Main Staff from the "approval-issuing organs".⁶²¹

(b) Regulation of UNPROFOR Convoys in 1995

216. In 1995, requests for the passage of UNPROFOR convoys were sent to the VRS.⁶²² These were then normally decided by Mladić or Milovanović.⁶²³ UNPROFOR announced a convoy to the VRS Main Staff via fax at the office in Pale, 48 hours in advance, in both English and Serbian.⁶²⁴ Each day about 20 to 30 requests were received.⁶²⁵ Upon receipt, the documents were sorted by either Colonel Miloš Đurđić or Major Slavko Kralj, depending on who was present, who often wrote their comments or suggestions on the document.⁶²⁶ The request was then submitted to Milovanović or Mladić, who marked "yes" or "no" at the top of the page of the original document together with their initials indicating approval or denial.⁶²⁷ Tolimir, **Miletić**, **Gvero**, and Đurđić at times also initialled requests.⁶²⁸ When parts of a request were not approved, these portions were underlined and it was recorded on the request that it had been approved except for the underlined parts. UNPROFOR was, at times, asked to clarify the part not approved. On the basis of an approved request, a new document—a notification—was drafted and logged at Đurđić's office and subsequently forwarded for signature, most often to Milovanović.⁶²⁹ Mladić, Tolimir, and **Miletić** also signed these documents.⁶³⁰ The document was then forwarded to UNPROFOR.⁶³¹

to the regulations of the heavy weapons agreement, the Milan rocket system did not fall into the category of heavy weapons.

⁶²⁰ Ex. 5D00605, "VRS Main Staff order regarding movement of humanitarian aid, signed by Milovanović, 31 August 1994", p. 2.

⁶²¹ *Ibid.*, p. 1.

⁶²² Slavko Kralj, T. 29258 (4 Dec 2008).

⁶²³ *Ibid.*, T. 29258–29260, 29281, 29294–29295 (4 Dec 2008); Ljubomir Obradović, T. 28255, 28263–28264 (14 Nov 2008).

⁶²⁴ Slavko Kralj, T. 29258, 29287 (4 Dec 2008); Ljubomir Obradović, T. 28263 (14 Nov 2008). Nicolai testified UNPROFOR faxed its requests to the UNMO post in Pale, which would forward the message to the VRS authorities. Cornelis Nicolai, T. 18451 (29 Nov 2007). Koster testified requests for re-supply of DutchBat were sent to the "higher echelon at the north-east command" through which it reached the "Bosnian Serb headquarters in Pale". Eelco Koster, T. 3033 (26 Oct 2006).

⁶²⁵ Slavko Kralj, T. 29273, 29287 (4 Dec 2008).

⁶²⁶ *Ibid.*, T. 29258 (4 Dec 2008); Ljubomir Obradović, T. 28409, 28431 (18 Nov 2008).

⁶²⁷ Slavko Kralj, T. 29259, 29273 (4 Dec 2008), T. 29320 (5 Dec 2008); Ljubomir Obradović, T. 28263–28264 (14 Nov 2008), T. 28409 (18 Nov 2008).

⁶²⁸ Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", para. 3(b) and Appendix, Tables 1, 3; Ex. P03999, "VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 22 February 1995"; Ex. P04040, "VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 21 April 1995". *See also infra*, paras. 1656–1657, 1762.

⁶²⁹ Slavko Kralj, T. 29259, 29276 (4 Dec 2008); Ljubomir Obradović, T. 28409–28410 (18 Nov 2008). *See also* Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", para. 3(a) and Appendix, Table 3.

⁶³⁰ Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", para. 3(a) and Appendix, Tables 1, 3; Slavko Kralj, T. 29259–29261 (4 Dec 2008); Ljubomir Obradović, T. 28464–28465 (19 Nov 2008).

⁶³¹ Slavko Kralj, T. 29259 (4 Dec 2008).

217. In addition to notifications to UNPROFOR, the Main Staff, following the regular chain of command, notified the relevant subordinate units in writing of decisions concerning approved UNPROFOR convoy requests.⁶³² Without such a notification, a convoy was not allowed to pass.⁶³³ The notifications contained information on the convoy approved—such as date of travel, composition and cargo, and convoy number—and instructions to the subordinate units, for example, to carry out detailed searches of the vehicles to prevent passage of unapproved goods.⁶³⁴ In the absence of Milovanović, **Miletić** (type-)signed the notifications.⁶³⁵

218. Between 1 January and 28 April 1995, at least 977 UNPROFOR convoy requests were approved and 438 requests were refused.⁶³⁶ For the period of April through July 1995, little evidence has been adduced regarding convoy requests, responses, and notifications. The Trial Chamber in fact only has information that after 28 April 1995, the Main Staff notified its subordinate units that it had approved 21 UNPROFOR convoys and refused four UNPROFOR convoys.⁶³⁷ This, however, cannot be taken to reflect the complete record for that period.

⁶³² Slavko Kralj, T. 29259–29260, 29285, 29299–29300 (4 Dec 2008); Ljubomir Obradović, T. 28409–28410 (18 Nov 2008).

⁶³³ See *supra*, paras. 214–215.

⁶³⁴ See, e.g., Ex. P02554, “VRS Main Staff Notification of UNPROFOR convoys to the Sarajevo-Romanija Corps and the Drina Corps, signed by Miletić, 1 July 1995”, pp. 2–3; Ex. P02497, “VRS Main Staff notification of UNPROFOR convoys for Žepa, Goražde, and Srebrenica addressed to various brigades, signed by Miletić, 18 June 1995”. The Trial Chamber has heard conflicting evidence whether notifications to subordinate units constituted orders. The Trial Chamber, however, considers the nomenclature of notifications not relevant. The Trial Chamber is satisfied that the notifications were mandatory in nature and considers it inconceivable that subordinate units would not comply, including based on the fact they were generally signed by Milovanović or Mladić. Cf. Mirko Trivić, T. 12043–12044 (23 May 2007).

⁶³⁵ Slobodan Kosovac, T. 30190 (15 Jan 2009), T. 30480–300481 (21 Jan 2009); Slavko Kralj, T. 29272 (4 Dec 2008). See also Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, Appendix, Table 3, according to which these notifications were occasionally also (type) signed by Đurđić and Pandžić.

⁶³⁶ Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, para. 3(b) and Appendix, Table 2. The Trial Chamber furthermore has several notifications concerning UNPROFOR convoys in evidence from 1 January to 28 April 1995 that are not included in the Stipulations concerning convoy-related documents. Ex. P04065, “VRS Main Staff notification to UNPROFOR Command, signed by Mladić, 7 January 1995” (1 helicopter mission approval); Ex. P04001, “From the VRS Main Staff to the UNPROFOR Command regarding convoys, signed by Milovanović, 25 February 1995” (1 partial approval, 10 approvals); Ex. 5D00620, “VRS Main Staff UNPROFOR convoy notification to the Drina Corps, signed by Milovanović, 6 March 1995” (12 approvals); Ex. P02687, “Document from the VRS Main Staff, signed by Milovanović, 7 April 1995” (12 refusals); Ex. P02651a, “VRS Main Staff document to Military Post 7111, signed by Miletić, 14 April 1995” (4 approvals, 13 refusals); Ex. P03989, “VRS Main Staff document to commands of the military posts 7111 and 7598 signed by Miletić, 18 April 1995” (7 approvals, 1 partial approval, 11 refusals).

⁶³⁷ See Ex. P02497, “VRS Main Staff notification of UNPROFOR convoys for Žepa, Goražde, and Srebrenica addressed to various brigades, signed by Miletić, 18 June 1995” (3 approvals); Ex. P02554, “VRS Main Notification of UNPROFOR convoys to the Sarajevo-Romanija Corps and the Drina Corps, signed by Miletić, 1 July 1995” (6 approvals, of which 2 conditionally, 3 refusals); Ex. P02556, “VRS Main Staff Notification re UNPROFOR convoys to the Drina Corps, signed by Miletić, 3 July 1995” (1 convoy departure from Srebrenica approved, 1 convoy return to Srebrenica refused); Ex. P02558, “VRS Main Staff notification re UNPROFOR convoys to Military Posts 7598 and 7111, signed by Miletić, 5 July 1995” (2 approvals, 1 partial approval, 1 departure approved whereas return to Srebrenica denied); Ex. P02565, “VRS Main Staff notification re UNPROFOR convoys to Military Post 7111, signed by Miletić, 12 July 1995” (1 approval); Ex. P02586, “VRS Main Staff notification to Military Post 7111 re approved movement of UNPROFOR staff, signed by Miletić, 27 July 1995” (1 approval). See further Ex. 5D01115, “Drina Corps notification re UNPROFOR convoy to the Romanija Brigade and the Rogatica Brigade, signed by Krstić, 20 July 1995” (1 approval); Ex. 5D01117, “Drina

(c) Regulation of Humanitarian Convoys in 1995

219. As explained, from the initial establishment of procedures for passage of convoys, different procedures applied to humanitarian convoys (other than UNPROFOR).⁶³⁸

220. The procedure for approving humanitarian convoys was changed on 14 March 1995, when Karadžić ordered the formation of a State Committee for Cooperation with the United Nations and International Humanitarian Organisations.⁶³⁹ The Committee had its seat in Pale.⁶⁴⁰ Nikola Koljević, Vice-President of the Republika Srpska, was appointed president of the Committee.⁶⁴¹ Colonel Đurđić from the Main Staff was a member of the Committee and in charge of coordinating the Committee's relations with the Ministry of Defence and the VRS Main Staff.⁶⁴² One of the working bodies of the Committee was the Coordinating Body for Humanitarian Operations.⁶⁴³ According to the order establishing the Committee, permits for the movement of convoys and employees of the UN and humanitarian organisations on the territory of RS were to be issued by the Coordinating Body pursuant to Committee decisions.⁶⁴⁴

221. The Trial Chamber lacks the evidence necessary to fully understand and form a clear picture of the humanitarian convoy approval process as a whole. Consequently, only limited conclusions

Corps notification re authorized movement of an UNPROFOR team sent to Romanija Brigade and Rogatica Brigade, signed by Krstić, 25 July 1995" (1 approval); Ex. 5D01118, "Drina Corps Notification re authorized movement of an UNPROFOR team sent to Romanija Brigade and Rogatica Brigade, signed by Krstić, 25 July 1995" (2 approvals); Ex. 5D01120, "Drina Corps Notification re authorized movement UNPROFOR team to Romanija Brigade and Rogatica Brigade, signed by Krstić, 27 July 1995" (1 approval). According to Kosovac, the Drina Corps notifications were the continuation of the approval of convoys provided by the Main Staff. Slobodan Kosovac, T. 30177–30178 (15 Jan 2009).

⁶³⁸ See *supra*, paras. 214–215.

⁶³⁹ Ex. 6D00007, "Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995". See also Manojlo Milovanović, T. 12278 (30 May 2007), T. 11289–12290 (31 May 2007) (testifying "Directive number 7, as far as I can remember, was issued on the 8th of March, and this decision was passed on the 11th of March, as far as I could see at the bottom, and it was published on the Official Gazette on the 14th of March, which means that it was indeed published after the publication of directive number 7.").

⁶⁴⁰ Slavko Kralj, T. 29295 (4 Dec 2008).

⁶⁴¹ Ex. 6D00007, "Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995", p. 3, Art. 1 (of the Decision on the Appointment of the President, Deputy President, and members of the State Committee for Cooperation with the UN and international humanitarian organisations); Slavko Kralj, T. 29295 (4 Dec 2008). See also Manojlo Milovanović, T. 12278 (30 May 2007) (testifying he believed that the committee also comprised one or two officers who conveyed the decisions of the committee to the Main Staff so that any combat activities could have been suspended on routes through which humanitarian aid was supplied or was to be supplied).

⁶⁴² Ex. 6D00007, "Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995", p. 3, Art. 2(7) (of the Decision on the Appointment of the President, Deputy President, and members of the State Committee for Cooperation with the UN and international humanitarian organisations); Slavko Kralj, T. 29234 (3 Dec 2008), T. 29295 (4 Dec 2008). Đurđić's immediate supervisor was Mladić, who later transferred part of the authorities concerning humanitarian activities to the Chief of Staff. *Ibid.*, T. 29265 (4 Dec 2008).

⁶⁴³ Ex. 6D00007, "Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995", p. 2, Art. 5(1).

can be reached. Based on the evidence before it, the Trial Chamber finds that following the establishment of the State Committee, requests for humanitarian aid convoys had to be directed to the Committee for its consideration.⁶⁴⁵ The Committee reached its views on the requests and the Coordinating Body issued “permits” to the relevant requesting organization accordingly.⁶⁴⁶ The Coordinating Body also sent the convoy requests to the VRS Main Staff, accompanied by the Committee’s views.⁶⁴⁷ Colonel Đurđić communicated the Committee’s views to either Mladić or Milovanović, who in most cases approved.⁶⁴⁸

222. Subsequent to Milovanović’s or Mladić’s approval, the Main Staff sent a notification to the relevant subordinate units providing them detailed information on approved convoys, as it did for UNPROFOR convoys.⁶⁴⁹ Without such a notification from the Main Staff, a convoy was not allowed to pass.⁶⁵⁰ The humanitarian aid convoy notifications to subordinate units generally included a reference to the Coordinating Body and stated that the Main Staff “approved”, “consented to”, “concurred”, or “agreed” with the Coordinating Body’s “request”, “approval”, or “authorisation”.⁶⁵¹ These notifications were mainly signed by Milovanović or Miletic.⁶⁵²

⁶⁴⁴ *Ibid.*, Art. 6.

⁶⁴⁵ Cf. Slavko Kralj, T. 29233–29234 (3 Dec 2008), T. 29295–29297 (4 Dec 2008); Manojlo Milovanović, T. 12278 (30 May 2007), T. 12289 (31 May 2007). *See also* Ex. 5D01284, “Intercepted conversation involving Đurđić concerning Coordinating Body and notifications”, pp. 1–2.

⁶⁴⁶ Ex. 6D00007, “Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995”, p. 2, Art. 6.

⁶⁴⁷ Slavko Kralj, T. 29296 (4 Dec 2008). The Trial Chamber also notes the notifications from the Main Staff to its subordinate units, which refer to the views of the Coordinating Body and include details of the approved and denied items / convoys.

⁶⁴⁸ Slavko Kralj, T. 29299 (4 Dec 2008).

⁶⁴⁹ *Ibid.*, T. 29260, 29285, 293299–29300 (4 Dec 2008); Ljubomir Obradović, T. 28410 (18 Nov 2008). The Coordinating Body did not send its directions or decisions directly to the corps and brigades. Slavko Kralj, T. 29294–29302 (4 Dec 2008).

⁶⁵⁰ *See supra*, paras. 214–215.

⁶⁵¹ *See, e.g.*, Ex. P02678, “VRS Main Staff document to the Drina, Sarajevo Romanija and East Bosnia Corps, signed by Manojlo Milovanović, 2 April 1995”; Ex. P02652b, “VRS Main Staff notification of humanitarian convoys to Command Military Post 7111 and VP 7102, signed by Miletic, 14 April 1995”; Ex. 5D00903, “VRS Main Staff document, concerning humanitarian convoys, type-signed Milovanović, 12 May 1995”; Ex. 5D00856, “VRS Main Staff Document to the military posts 7102, 7111, 7161, 7001 regarding humanitarian aid convoys, type-signed Milovanović, 12 May 1995”; Ex. 5D00905, “VRS Main Staff notification to Drina Corps and East Bosnia Corps regarding humanitarian aid convoys, type-signed Milovanović, 19 May 1995”; Ex. P02714, “VRS Main Staff notification concerning UNHCR convoys, type-signed Miletic, 2 June 1995”; Ex. 5D01429, “VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletic, 12 June 1995”; Ex. P02717, “VRS Main Staff notification to Drina Corps concerning humanitarian convoys, type-signed Miletic, 12 June 1995”. Notifications occasionally also indicated that certain items were not approved. *See* Ex. P02689, “VRS Main Staff document to the Drina Corps, signed by Milovanović, 7 April 1995”, p.2 (“We did not approve [...] [m]aterial for the Swedish construction project” and “beef, salt, oil and clapboards for the [Srebrenica] enclave”); Ex. P04062, “VRS Main Staff Notification to the Drina Corps on authorization of humanitarian aid convoys, signed by Miletic, 30 June 1995” (“[w]e did not approve one more truck within this convoy with school supplies”); Ex. 5D01429, “VRS Main Staff – Information sent to the command of the Drina Corps and East Bosnia Corps, signed by Miletic, 12 June 1995”, p. 2 (“[w]e did not authorise one truck with school supplies for Srebrenica on 13 June 1995”); Ex. P02714, “VRS Main Staff notification concerning UNHCR convoys, type-signed Miletic, 2 June 1995”, pp. 1–2 (“[w]e did not approve one truck with school supplies [For

223. The Trial Chamber has heard evidence that following the establishment of the State Committee, the VRS no longer had an input on the procedure for approval of humanitarian convoys but merely became the “executors [*sic*] of the committee’s decisions”.⁶⁵³ Based on the totality of the documentary and witness evidence adduced, the Trial Chamber, however, reaches a different conclusion. The Trial Chamber finds that even after the establishment of the State Committee, the Main Staff still had a substantive role in the process by which requests for humanitarian convoys were considered and approved or refused. In reaching this finding, the Trial Chamber notes the procedure itself, whereby the documents from the Committee and the convoy request were submitted to Milanović or Mladić—the highest echelon of the Main Staff—for approval. This clearly evidences a substantive role for the VRS. In addition, the Defence expert witness testified that according to the system in the RS, the VRS could always make a military assessment and “if there were any problems, it would intervene with the coordinating body”.⁶⁵⁴ Furthermore, the Trial Chamber has in evidence a 13 June 1995 order from Karadžić to the Main Staff stating that “A positive opinion should be immediately given for all notifications that arrived through the [Coordinating Body], referring to the weekly plan of deliveries of UNHCR from 10 to 17 June, that have already been examined by the Committee.”⁶⁵⁵ If the Main Staff had no input on the approval of convoys, there would have been no need for such an order. Finally, the Trial Chamber notes that the Main Staff notifications to subordinate units are framed in a language that signifies a decision-making role by the Main Staff in the process.⁶⁵⁶

224. The Trial Chamber has evidence of nine notifications, sent by the Main Staff to its subordinate units after 28 April, concerning humanitarian convoys, other than UNPROFOR, in which it referred to the Coordinating Body.⁶⁵⁷ It also sent two notifications of humanitarian convoys in which it did not make a reference to the Coordinating Body.⁶⁵⁸

Srebrenica], “[w]e did not approve 60 litres of oil for saws [for Žepa]”, “[w]e did not approve the Swedish construction project for Srebrenica”). The Trial Chamber notes that although at first sight, these documents may suggest that it was the decision of the Main Staff to refuse the items, the Trial Chamber has also seen evidence that on another occasion the refusal merely reflected the views of the State Committee. It has therefore not been established who made the final decision to refuse such items. *See* Ex. 5D00905, “VRS Main Staff notification to Drina Corps and East Bosnia Corps regarding humanitarian aid convoys, signed by Milovanović, 19 May 1995”, p. 2 (“[w]e have not approved the transport of a satellite telex with accompanying equipment to Srebrenica on 24 May”); Ex. 5D01308, “Fax from the VRS Coordinating Body for Humanitarian Aid re convoys, 17 May 1995”, p. 1 (listing approved convoys but specifying that a satellite telex for UNHCR is not approved); *see also ibid.*, pp. 2, 8.

⁶⁵² Slobodan Kosovac, T. 30189–30190 (15 Jan 2009), T. 30480–300481 (21 Jan 2009); Slavko Kralj, T. 29272 (4 Dec 2008).

⁶⁵³ Manojlo Milovanović, T. 12278 (30 May 2007), T. 12289–12290 (31 May 2007).

⁶⁵⁴ Slobodan Kosovac, T. 30418 (20 Jan 2009).

⁶⁵⁵ Ex. P03051, “Order from RS President to Supreme Headquarters of the VRS, signed by Karadžić, 13 June 1995”, p. 1.

⁶⁵⁶ *See supra*, para. 222.

⁶⁵⁷ Ex. 5D00856, “VRS Main Staff Document to military posts 7102, 7111, 7161, 7001 regarding humanitarian convoys, type-signed Milovanović, 12 May 1995” (approval of convoys for 13 May and 15–16, 18 May, refusal of

(d) Regulation of Medical Convoys in 1995

225. Approvals for movement to and from the enclaves for medical evacuation—by road or helicopter—were issued by Mladić or Milovanović.⁶⁵⁹ Requests for medical evacuation specified the nature of the injury and the urgency of the evacuation and would always be given priority.⁶⁶⁰ According to Kralj, the VRS considered that there was abuse of the medical evacuations by helicopter; and therefore these were carefully scrutinised.⁶⁶¹ The Main Staff sent notifications to UNPROFOR and its subordinate units concerning approved medical evacuations.⁶⁶²

convoy for 17 May); Ex. 5D00903, “VRS Main Staff notification concerning humanitarian convoys, signed by Milovanović, 12 May 1995” (approval of convoys for 13–14 May and 16–18 May); Ex. 5D00905, “VRS Main Staff notification to Drina Corps and East Bosnia Corps regarding humanitarian aid convoys, signed by Milovanović, 19 May 1995” (approval of convoys for 20–21 May and 23–26 May; refusal of satellite telex with accompanying equipment for Srebrenica); Ex. 5D00907, “VRS Main Staff notification on humanitarian convoys to military posts 7111 and 7102, signed by Milovanović, 28 May 1995” (approval of one convoy for 30 May); Ex. P02714, “VRS Main Staff notification concerning UNHCR convoys, type-signed Miletić, 2 June 1995” (approval of convoys for 3–4 June and 6–8 June; refusal of Swedish construction project for Srebrenica, one truck of school supplies, 60 litres of oil for saws); Ex. P02717, “VRS Main Staff notification to Drina Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995” (approval of one convoy of departing MSF staff 13 June, rotation refused); Ex. 5D01429, “VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995” (approval convoys 13–15 June; refusal of one truck of school supplies for Srebrenica, 60 litres of oil for saws); Ex. P04062, “VRS Main Staff Notification to the Drina Corps on authorization of humanitarian aid convoys, signed by Miletić, 30 June 1995” (approval convoys 4–5 July; refusal of convoys for 1–2 July and 5–6 July, refusal of one truck of school supplies); Ex. P02570, “VRS Main Staff Notification re movement ICRC and UNHCR to various Military Posts, signed by Miletić, 18 July 1995” (approval of movement ICRC and UNHCR staff 19–21 July). The Stipulations also include notifications to subordinate units concerning humanitarian convoys however, their number is not specified. *See* Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, Appendix, Table 3. In addition, the Trial Chamber has several notifications in evidence from between 1 January and 28 April 1995 that have not been included in the Stipulations. Ex. P02678, “VRS Main Staff document to the Drina, Sarajevo Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995” (8 approvals for working visits, movement and delivery of humanitarian aid); Ex. P02689, “VRS Main Staff document to the Drina Corps, signed by Milovanović, 7 April 1995” (approval of convoys for 8–9 April and 11–13 April; refusal of material for the Swedish construction project, and beef, salt, oil and clapboards for Srebrenica); Ex. P02652b, “VRS Main Staff notification of humanitarian convoys to Military Posts 7111 and VP 7102, signed by Miletić, 14 April 1995” (7 approvals).

⁶⁵⁸ Ex. P02551, “VRS Main Staff notification to Military Post 7111 concerning movement of UN civilian observers, type-signed Miletić, 29 June 1995” (1 approval of movement of UN civilian observers); Ex. P02661a, “VRS Main Staff notification to East Bosnia Corps, Drina Corps, Sarajevo-Romanija Corps and Herzegovina Corps, signed by Miletić, 26 July 1995 (5 approvals of travel permits for visits by ICRC teams to reception areas and prisons on 26–29 July).

⁶⁵⁹ Slavko Kralj, T. 29288 (4 Dec 2008).

⁶⁶⁰ *Ibid.*, T. 29287–29288, 29293 (4 Dec 2008).

⁶⁶¹ *Ibid.*, T. 29294 (4 Dec 2008). *See, e.g.*, Ex. 5D01126, “VRS Main Staff situation report, signed by Milovanović, 14 February 1995”.

⁶⁶² Slavko Kralj, T. 29292 (4 Dec 2008). *See, e.g.*, Ex. 5D00890, “VRS Main Staff notification on medical evacuation, signed by Milovanović, 21 March 1995”; Ex. 5D00894, “VRS Main Staff notification to military posts 7111 and 7598 concerning medical evacuation, signed by Milovanović, 27 March 1995”; Ex. 5D01298, “VRS Main Staff notification on medical evacuation, signed by Milovanović, 13 February 1995”; Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”. *See also* Ex. 5D01114, “Drina Corps Notification re approved movement ICRC for medical evacuation to Romanija Brigade and Rogatica Brigade, signed by Krstić, 20 July 1995”.

(e) Checking of Convoys

226. All convoys were checked by the VRS at different checkpoints.⁶⁶³ Checks of UNPROFOR convoys were agreed upon in the Agreement on the Principles of Freedom of Movement. Convoys were to be checked only once.⁶⁶⁴ Anything that was not on the list of approved goods as indicated in the notifications was not allowed to pass.⁶⁶⁵ Based on the information received from the brigades, the corps reported to the Main Staff on the passage of convoys and any problems encountered, through their regular and interim reports.⁶⁶⁶ The Trial Chamber has evidence that in June, DutchBat carried out detailed checks and searches of the convoys in addition to the checks by the VRS.⁶⁶⁷

5. Restrictions of Convoys and Humanitarian Situation in the Enclaves

227. On several occasions Karadžić expressed concern to UNPROFOR that the ABiH was being supplied with fuel and other material through the aid convoys.⁶⁶⁸ At a high-level meeting on 30 April 1995 between UNPROFOR and the Bosnian Serbs, he remarked that “[w]e regard humanitarian and UNPROFOR convoys as commercial convoys for the benefit of the Muslims. We are under double restrictions, sanctions. You can expect more restrictions.”⁶⁶⁹ Also **Gvero**, at a

⁶⁶³ SDPW-26, Ex. 5D01446, “confidential – 92 bis statement” (12 May 2009), p. 2; Vinko Pandurević, T. 30809–30810 (29 Jan 2009), T. 32141–32142 (26 Feb 2009); Robert Franken, T. 2444 (16 Oct 2006); Richard Butler, T. 19739 (15 Jan 2008).

⁶⁶⁴ Ex. 5D01404, “Principles for Freedom of Movement, signed by Brinkman and Tolimir, 31 January 1995”, p. 1

⁶⁶⁵ PW-138, T. 3797–3798 (8 Nov 2006).

⁶⁶⁶ Slavko Kralj, T. 29285 (4 Dec 2008). *See, e.g.*, Ex. 5D01070, “Drina Corps regular combat report to the VRS Main Staff, signed by Krstić, 4 May 1995”, para. 3; Ex. 5D01106, “Drina Corps regular combat report to the VRS Main Staff, signed by Živanović, 4 July 1995”, para. 3. The brigades reported to their respective corps which, in turn, reported to the Main Staff. Exs. P00230, 4D00316, “Bratunac Brigade combat readiness analysis for the first half of 1995, signed by Vidoje Blagojević, 4 July 1995”, p. 19; Ex. 5D00320, “Zvornik Brigade regular combat report to the Drina Corps, signed by Pandurević, 2 April 1995”, para. 10; Ex. 5D00321 “Zvornik Brigade regular combat report to the Drina Corps, signed by Pandurević, 4 April 1995”, para. 10.

⁶⁶⁷ Ex. 5D00054, “NIOD Report, Part 3 The fall of Srebrenica, Chapter 4 The mood in the enclave: May-July 1995”, pp. 4–6; SDPW-26, Ex. 5D01446, “confidential – 92 bis statement” (12 May 2009), p. 2. On one occasion in the second half of June 1995, UNHCR refused a DutchBat check and decided to return the convoy without delivering the aid. *Ibid.*, p. 2.

⁶⁶⁸ Ex. P02935, “Notes of meeting between Smith and Karadžić, 5 April 1995”, paras. 3, 10; Rupert Smith, T. 17489–17490 (5 Nov 2007); Ex. P02522, “VRS Main Staff document and Drina Corps, signed by Miletić, 6 March 1995”, p. 2; Rupert Smith, T. 17500–17501 (5 Nov 2007); Ex. 6D00163, “Report from Lieutenant Colonel Baxter of meeting between Smith and Karadžić, 9 May 1995” (in this meeting, Karadžić stated that the UN had ample fuel reserves in the enclaves and that they were supplying fuel to ABiH); Ex. 6D00164, “UNPROFOR report on meeting of 21 May 1995 between Smith and Karadžić, 21 May 1995”, para. 4 (stating that Karadžić had said during the meeting that “the enclaves were effectively safe havens for the [ABiH]” and that the enclaves were “a time bomb about to explode”). On supply to ABiH, *see also* Robert Franken, T. 2537–2538 (17 Oct 2006), T. 2642 (18 Oct 2006) (testifying, in general, that when a supply of humanitarian aid came in, the ABiH took a part for their own purposes); Dragiša Masal, T. 29037 (28 Nov 2008) (testifying that humanitarian aid convoys “very often carried a larger quantity of fuel than was actually needed for their vehicles. This fuel was then sold both to the army and civilians, but primarily to the Muslim army in Žepa and Goražde.”); Ex. 5D00031, “BiH summary of criminal activities in protected areas, signed by Mezić, 12 January 1996”, pp. 8–13 (ABiH would take items from the humanitarian aid warehouse for their own needs or sell them on the black market); Ex. 6D00072, “Order from Birač Brigade to prevent smuggling of fuel by UNPROFOR, UNHCR and other organizations, signed by Andrić, 12 May 1995”; Meho Džebo, T. 9619 (28 Mar 2007); Manojlo Milovanović, T. 12282–12283 (30 May 2007).

⁶⁶⁹ Rupert Smith, T. 17495–17496 (5 Nov 2007); Ex. P02937, “UNPROFOR Report re meetings in Sarajevo and Pale – 20 April 1995, 30 April 1995”, para. 12.

meeting held in Pale on 20 April to negotiate an extension of the Agreement on the Cessation of Hostilities of 31 December 1994, stated that UNPROFOR had sufficient fuel reserves and that UNPROFOR was supplying fuel to the ABiH in Srebrenica.⁶⁷⁰

228. According to DutchBat officers, in early March 1995 the humanitarian situation worsened in the Srebrenica enclave when convoys were increasingly denied clearance. Food and medical supplies were significantly reduced and occasionally refused and the stocks in their warehouse in Srebrenica became depleted.⁶⁷¹ Even if permission for passage had been granted, convoys were regularly blocked by the VRS along the route and sent back⁶⁷² and fewer and fewer supply convoys arrived.⁶⁷³ The UNPROFOR report on the implementation of the Agreement on the Cessation of the Hostilities noted that freedom of movement for UNPROFOR convoys through VRS-held territory was restricted, with all fuel and some fresh-food convoys blocked, and that the stock levels in all the eastern enclaves, including Srebrenica, was “critical”.⁶⁷⁴ UNHCR reported that the amount of food aid delivered to Srebrenica in March was practically the same as it had been in February.⁶⁷⁵ In March 1995, UNHCR also managed to get medical supplies into Srebrenica for the first time since November 1994.⁶⁷⁶ The Srebrenica hospital also received medical equipment and some other items

⁶⁷⁰ Rupert Smith, T. 17492–17493 (5 Nov 2007); Ex. P02936, “UNPROFOR Report re meetings in Sarajevo and Pale - 20 April 1995, 22 April 1995”, para. 9.

⁶⁷¹ Leendert van Duijn, T. 2260–2261 (27 Sept 2006), T. 2322 (28 Sept 2006); Johannes Rutten, T. 4807–4808 (29 Nov 2006), T. 5230–5232 (7 December 2006); Eelco Koster, T. 3034–3035, 3097 (26 Oct 2006); Pieter Boering, T. 1893–1894, 1898–1899 (19 Sept 2006); Robert Franken, T. 2446 (16 Oct 2006). Franken testified that within his battalion, they referred to VRS convoy restrictions as “convoy terror”. *Ibid.*, T. 2450 (16 Oct 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 53.

⁶⁷² Cornelis Nicolai, T. 18456–18457 (29 Nov 2007). Franken testified he knew of one UNHCR convoy “that was sent back by UNHCR because they had to give the Bosnian Serb check-point diesel fuel or something, and they refused that and returned.” Robert Franken, T. 2446 (16 Oct 2006). *See also* Momir Nikolić, T. 33294 (27 Apr 2009).

⁶⁷³ Prosecution Adjudicated Facts Decision, Annex, Fact 52. *See also* Johannes Rutten, T. 5230–5232 (7 Dec 2006), (Rutten estimated that in Srebrenica two UNHCR convoys arrived in January, one or two in February, one in late March, none in April, one in May, and none in June).

⁶⁷⁴ Ex. 5D00728, “Report on the implementation of the Cessation of Hostilities Agreement during March 1995”, paras. 6, 12. *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 53. For details on convoys approved in March 1995, *see, e.g.*, Ex. 5D01312, “VRS Main Staff - Information on approved and non-approved convoys, signed by Miletić, 10 March 1995”; Ex. 5D00909, “Bratunac Brigade regular combat report to the Drina Corps, signed by Slavko Ognjenović, 21 March 1995”; Ex. 5D00911, “Bratunac Brigade regular combat report to the Drina Corps, signed by Slavko Ognjenović, 25 March 1995”; Ex. 5D01314, “VRS Main Staff notification to the UNPROFOR Command regarding UNPROFOR convoys, signed by Milovanović, 29 March 1995”. For details of refused convoys, *see, e.g.*, Ex. P02531 “VRS Main Staff document to the notification to Drina Corps regarding UNPROFOR convoys, type-signed Miletić, 10 March 1995”; Ex. P03924, “Document from VRS Main Staff to the UNPROFOR Command, signed by Milovanović, 31 March 1995”. *See also* Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, Table 3.

⁶⁷⁵ Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21 (reflecting 479 MT in February and 482 MT in March, out of the 678 MT monthly target); Ex. 5D01411, “Review of humanitarian aid delivered to Bosnian enclaves”. According to the UNPROFOR report on the implementation of the Agreement on the Cessation of the Hostilities, in March 1995, UNHCR met 93% of its food-aid target for Srebrenica. Ex. 5D00728, “Report on the implementation of the Cessation of Hostilities Agreement during March 1995”, para. 7.

⁶⁷⁶ Ex. P04125, “UN outgoing code cable from Akashi to Annan, 22 March 1995”.

through air drops and from DutchBat, but nevertheless faced a shortage of essential medical supplies.⁶⁷⁷

229. DutchBat received supplies through convoys, but from March or April, fewer and fewer convoys were approved.⁶⁷⁸ The VRS categorically denied communication equipment, weapons, ammunition, and spare parts from even being placed on the requested re-supply list.⁶⁷⁹ Re-supply convoys of fuel became more restricted from mid-February, with only one fuel convoy allowed until June.⁶⁸⁰ Due to a fuel shortage, DutchBat had to discontinue motor patrols and could only do patrols by foot.⁶⁸¹ The fuel shortage, in combination with a shortage of medical supplies, also caused DutchBat to stop providing medical care through its mobile Red Cross points to the civilian population in several villages in the Srebrenica enclave.⁶⁸² DutchBat had a catering contract with Hotel Fontana⁶⁸³ but nevertheless faced shortages of fresh food and water, which caused to diminish the health conditions of DutchBat troops.⁶⁸⁴ The situation for UNPROFOR in the Srebrenica enclave and the other enclaves became such that UNPROFOR had to develop a detailed military plan for re-supply by air.⁶⁸⁵ DutchBat troops became progressively depleted, as officers who left the enclave were denied re-entry by the Bosnian Serbian authorities.⁶⁸⁶ The number of DutchBat troops

⁶⁷⁷ PW-106, T. 3941–3942 (15 Nov 2006), T. 4004–4005 (closed session), 4048 (closed session) (16 Nov 2006).

⁶⁷⁸ Cornelis Nicolai, T. 18457 (29 Nov 2007); Eelco Koster, T. 3034–3035 (26 Oct 2006).

⁶⁷⁹ Eelco Koster, T. 3034–3035 (26 Oct 2006); Robert Franken, T. 2443–2444, 2447–2448 (16 Oct 2006); Leendert van Duijn, T. 2262–2263 (27 Sept 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 48.

⁶⁸⁰ Eelco Koster, T. 3034–3035, 3097 (26 Oct 2006); Robert Franken, T. 2445 (16 Oct 2006). *See also* Cornelis Nicolai, T. 18456 (29 Nov 2007) (noting that one convoy carrying fuel was able to enter the enclave in March; however, all subsequent fuel convoys were refused).

⁶⁸¹ Cornelis Nicolai, T. 18459 (29 Nov 2007); Robert Franken, T. 2446–2447 (16 Oct 2006); Leendert van Duijn, T. 2261 (27 Sept 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 55. DutchBat's daily fuel requirement was between 8,000 and 9,000 litres. By July, DutchBat minimised usage to no more than 250 litres a day. Robert Franken, T. 2447 (16 Oct 2006), T. 2656–2658 (18 Oct 2006). During March and April, DutchBat was forced to use UNHCR's fuel. Robert Franken, T. 2638–2639, 2658 (18 Oct 2006); Eelco Koster, T. 3097 (26 Oct 2006).

⁶⁸² Robert Franken, T. 2643–2644 (18 Oct 2006).

⁶⁸³ Pieter Boering, T. 2108 (25 Sept 2006); Ex. 5D00525, "Catering Contract between Hotel Fontana and DutchBat, 18 March 1995"; Nedeljko Ilić, T. 29391–29394 (9 Dec 2008) (testifying that he supplied DutchBat with food and drinks once or twice a week, pursuant to the Hotel Fontana catering contract); Ex. 5D01173, "Hotel Fontana Invoice for DutchBat, 5 May 1995"; Ex. P04074, "Hotel Fontana Invoice for DutchBat, 2 May 1995"; P04073, "Hotel Fontana Invoice for DutchBat, signed by Nedeljko Ilić, 17 February 1995". The invoices concern mainly drinks.

⁶⁸⁴ Leendert van Duijn, T. 2260–2262 (27 Sept 2006). Water purification required fuel. *Ibid.*; Vincent Egbers, T. 2919 (20 Oct 2006); Robert Franken, T. 2447 (16 Oct 2006).

⁶⁸⁵ Cornelis Nicolai, T. 18454–18456 (29 Nov 2007). Preparations for the plan started in March. The plan was ready at the end of April. *Ibid.*

⁶⁸⁶ Pieter Boering, T. 1872 (19 Sept 2006); Leendert van Duijn, T. 2261 (27 Sept 2006), T. 2407 (29 Sept 2006); Cornelis Nicolai, T. 18457–18458 (29 Nov 2007); Robert Franken, T. 2449–2450 (16 Oct 2006); Johannes Rutten, T. 4960 (4 Dec 2006); Vincent Egbers, T. 2708 (18 Oct 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 48. However, in January and February, some UNPROFOR requests for movement of UN personnel were approved: Ex. P03999, "From the VRS Main Staff to the UNPROFOR Command regarding convoys, signed by Milovanović, 22 February 1995"; Ex. P04001, "From the VRS Main Staff to the UNPROFOR Command regarding convoys, signed by Milovanović, 25 February 1995". *But see, e.g.*, Ex. 5D01310, "Information on non-approved convoys, addressed to the UNPROFOR Command, type-signed Milovanović, 20 February 1995", which refused the passage of convoys of some goods and the movement of an individual from Srebrenica to Sarajevo and back.

decreased significantly during the first part of 1995 to a level where DutchBat was unable to perform its tasks satisfactorily.⁶⁸⁷

230. From the beginning of April, Momir Nikolić, Chief of Security and Intelligence of the Bratunac Brigade, required some humanitarian convoys to enter Srebrenica only in his presence and with his permission.⁶⁸⁸ Particularly in the period preceding the attack on Srebrenica, Momir Nikolić often received oral orders by telephone relating to convoys according to which he was to deny passage of convoys contrary to prior written Main Staff notifications.⁶⁸⁹

231. According to UNHCR reports, slightly more food aid was delivered to Srebrenica in April than in March.⁶⁹⁰ UNPROFOR reported that UNHCR aid deliveries were “generally good” with about 80% of the target being met.⁶⁹¹ However, several fuel convoys for UNPROFOR were

⁶⁸⁷ Robert Franken, T. 2449–2450 (16 Oct 2006) (testifying that DutchBat troops in Srebrenica decreased from 318 in January 1995 to 147 in July); Cornelis Nicolai, T. 18458 (29 Nov 2007) (testifying that the number of UNPROFOR soldiers in the enclave ultimately decreased from about 600 to about 350); Pieter Boering, T. 1872 (19 Sept 2006) (testifying that the number of DutchBat troops from January to July 1995 decreased from 400 or 450 to 300 or fewer). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 48.

⁶⁸⁸ Ex. P02678, “VRS Main Staff document to the Drina, Sarajevo Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995”. This notification is signed by Milovanović, but contains a hand-written note signed by Momir Nikolić, stating that no convoy from the ICRC or from MSF could enter Srebrenica without both his permission and presence; Momir Nikolić, T. 33291, 33293–33294 (27 Apr 2009). Nikolić testified that he was either ordered or told to do so as he “most definitely” did not decide on the instruction on his own initiative. *Ibid.*, T. 33293 (27 Apr 2009).

⁶⁸⁹ Momir Nikolić, T. 33291, 33294 (27 Apr 2009).

⁶⁹⁰ Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21; Ex. 5D01411, “Review of humanitarian aid delivered to Bosnian enclaves”.

⁶⁹¹ Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4; Ex. P04126, “UN outgoing code from Akashi to Annan, 18 April 1995”. *See also, e.g.*, Ex. P02678, “VRS Main Staff document to the Drina, Sarajevo-Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995” (which consented to the passage of various vehicles, including those of MSF and the ICRC, carrying a cargo including school/office supplies, soap, toothpaste, toothbrushes, shampoo, coffee, matches, personal luggage, medicines, and cigarettes); Ex. 5D00914, “Bratunac Brigade regular combat report, 4 April 1995” (which notes that the ICRC was granted passage with a cargo of mail and seed potatoes); Ex. 5D00915, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 5 April 1995” and Ex. 5D00916, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 8 April 1995” (both noting that convoy movements took place without difficulties as per the defined plan); Ex. 5D00918, “Regular Combat Report from the Bratunac Brigade to Drina Corps, signed by Slavko Ognjenović, 11 April 1995”; Ex. 5D00917, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 15 April 1995” (noting that two military observers left Srebrenica and that the ICRC entered with a cargo of mail and that a Russian UNHCR convoy entered with a cargo of food and hygiene items); Ex. 5D00921, “Report from Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 22 April 1995” (noting that a Russian convoy entered Srebrenica carrying flour); Ex. P02651a, “VRS Main Staff document to Military Post 7111, signed by Miletić, 14 April 1995” (notifying the Zvornik Military Post of approved UNPROFOR convoys, including for Srebrenica a convoy on 15 April carrying, *inter alia*, 9.5 tonnes of dry/canned food, 4 tonnes of frozen food, and 8.7 tonnes of cold/canned food and 16 personnel. Not approved for 15 April were one convoy to Žepa consisting of three jeeps and eight trucks, another convoy to Žepa with the purpose of relieving UN military observers, and three convoys to Srebrenica carrying personnel, diesel fuel, technical and medical goods, kerosene, and machine oil.); Ex. P03987 “VRS Main Staff document to the UNPROFOR Command, signed by Miletić, 18 April 1995” (approving the passage of convoys to Srebrenica on 19 April carrying personal equipment, equipment for vehicles, daily meals for the drivers, mail and other material, food, a water trailer, a container with medical supplies, wood to improve living conditions in the base, nails, a Xerox machine, one satellite telephone system, cables and connectors for signalling equipment, roofing material, office supplies, cleaning material, toilet paper, television sets, and video recorders); Ex. P02689, “VRS Main Staff document to the Drina Corps, signed by Milovanović, 7 April 1995” (which approved the passage of several

refused⁶⁹² and at least four convoys carrying food, construction materials, humanitarian aid, and medical equipment were refused passage to Srebrenica.⁶⁹³ Two regular combat reports from the Zvornik Brigade, dated 2 and 4 April respectively, show the VRS confiscated items from convoys.⁶⁹⁴ The confiscated items comprised a field sterilizer, laundry detergent, floor cleaner, shampoo, towels, beer, wine, vodka, coffee, cigarettes, lighters, and rolling papers.⁶⁹⁵ It is not clear whether the confiscated items had previously been approved for passage.⁶⁹⁶

232. Following a letter from Akashi to Karadžić, on 10 April the transport of medical supplies to DutchBat was resumed, after which the situation regarding medical stock improved and DutchBat resumed its medical aid to the local population at full capacity.⁶⁹⁷ However, the re-supply was discontinued again at the end of April.⁶⁹⁸

233. In early May, UNHCR enjoyed “fairly regular access” to the eastern enclaves.⁶⁹⁹ Following the NATO air strikes on 25 May 1995, UNHCR was forced to cancel some convoys for Goražde

convoys carrying food, clothing, heating oil, pads, and matches but did not approve, *inter alia*, material for the Swedish construction project, clapboards, and certain food items).

⁶⁹² Ex. P02687, “Document from the VRS Main Staff, signed by Milovanović, 7 April 1995” (listing refused UNPROFOR convoys and teams, including several vehicles and personnel who were supposed to transport diesel fuel on 8 April to Srebrenica because “they had 79 tonnes of fuel with [Naser] Orić”); Ex. P02651a, “VRS Main Staff document to military post 7111, signed by Miletić, 14 April 1995”, p. 3 (providing a list of refused UNPROFOR convoys, including the transport of diesel fuel to Srebrenica); Ex. P03989, “VRS Main Staff document to the Command of the military posts 7111 and 7598, signed by Miletić, 18 April 1995” (refusing passage of two convoys that were meant to carry diesel, kerosene, and machine oil to Srebrenica).

⁶⁹³ Ex. P02687, “VRS Main Staff document to the Sarajevo-Romanija and Drina Corps, signed by Milovanović, 7 April 1995” (refusing the movement of UNPROFOR convoys that were to contain fuel, kerosene, gas, humanitarian aid (beds, food, clothing, medicine, school supplies), oil, solvents and other vehicle maintenance supplies, dry rations, people, hospital beds, an x-ray machine, signalling equipment, office supplies and cleaning goods); Ex. P02651a, “Document from the VRS Main Staff to military post 7111, signed by Miletić, 14 April 1995”, pp. 3–4 (which refused passage for convoys with cargoes of technical and medical goods as well as kerosene and machine oil); Ex. P02689, “VRS Main Staff document to the Drina Corps, signed by Milovanović, 7 April 1995” (in which the VRS “concur[red] with the implementation of the permits of the Coordinating Body” pertaining to UNHCR’s weekly plan, for delivery to Srebrenica, of 72 MT of flour, beans, and pads on 8 April; 72 MT of flour, baby milk, yeast, pads, clothes, and matches for 11 April; 72 MT of flour and 5,600 litres of heating oil for 12 April; and for Žepa, 40 MT of flour, beans, and two barrels of oil on 12 April. Not approved was material for the Swedish construction project for Srebrenica on 9, 11, and 13 April until receipt of the position on this request of the Committee for Cooperation. Also not approved were beef, salt, oil, and clapboards for Srebrenica enclave on 8–9 April and 11–13 April).

⁶⁹⁴ Ex. 5D00320, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 2 April 1995”, para. 10; Ex. 5D00321, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 4 April 1995”, para. 10.

⁶⁹⁵ *Ibid.*

⁶⁹⁶ See Ex. 5D00320, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 2 April 1995”; Ex. 5D00321, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 4 April 1995”; Ex. 5D00605, “VRS Main Staff Order regarding movement of humanitarian aid, signed by Milovanović, 31 August 1994”. The Drina Corps combat report of 4 April does not report the confiscated goods to the Main Staff. Ex. 5D00722, “Drina Corps Regular Combat Report, signed by Milenko Živanović, 4 April 1995”.

⁶⁹⁷ Ex. 5D00053, “NIOD Report Chapter 4. The emergency stock”, p. 4. According to the report, upon the resumption of the transport of medical supplies there were hardly any shortages. Supplies of some articles were even “much too high”. *Ibid.*

⁶⁹⁸ Ex. P00510, “UNMO daily sitrep, 11 July 1995”, p. 4. According to the report, DutchBat was not able to offer much help to the wounded “because their supplies ha[d] not been coming in since the end of April”. *Ibid.*

⁶⁹⁹ Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4.

due to security reasons and VRS restrictions, however, access to Srebrenica and Žepa was “unhindered”.⁷⁰⁰

234. In June the humanitarian aid access to Srebrenica was “sporadic”, with UNHCR only meeting about 30% of its aid target to the enclave.⁷⁰¹ On 2 June 1995, the Main Staff informed the relevant command of the Military Police of the weekly convoy plan of UNHCR.⁷⁰² The approved convoys for the Srebrenica enclave included nine trucks carrying mostly flour and oil for 3 June and 6 June, and ten trucks also carrying flour, oil, and other foodstuff for 7 June.⁷⁰³ The Main Staff did not approve one truck of school supplies and the Swedish construction project for Srebrenica.⁷⁰⁴ On 12 June, the Main Staff sent a notification to the Drina Corps and the Eastern Bosnia Corps concerning the approved UNHCR convoys for that week. For Srebrenica, the approved convoys included for 13 June, eight trucks with flour, fish, oil, sugar, and soap; for 14 June, ten trucks with mostly flour, and to a lesser extent beans, powdered milk and biscuits; and for 15 June, two trucks for the Swedish construction project.⁷⁰⁵

235. On 1 July, the Main Staff informed the Zvornik Brigade that the passage of two convoys into Srebrenica had been approved conditionally following an agreement that the trucks would

⁷⁰⁰ Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4. For information on access of convoys to Srebrenica in the weeks prior to the NATO air strikes, *see, e.g.*, Ex. 5D00924, “Regular Combat Report from the Bratunac Brigade to Drina Corps Command, signed by Slavko Ognjenović, 6 May 1995”, para. 8, which noted that a UNHCR convoy entered Srebrenica carrying 72 tonnes of flour; Ex. 5D00925 “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 9 May 1995” para. 7, which noted that a Russian UNHCR convoy entered carrying a cargo of tinned beef, vegetable oil, salt and rat poison; Ex. 5D00926, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, 10 May 1995”, para. 7, which noted that a Russian UNHCR convoy entered Srebrenica carrying a cargo of 74 tonnes of flour and 22 tonnes of beans; Ex. 5D00927, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 16 May 1995”, para. 6, reporting the passage of a convoy carrying a cargo of flour, dry yeast, soap and sanitary towels; Ex. 5D00928 “Regular Combat Report from the Bratunac Brigade to the Drina Corps, type-signed Novica Pajić, 20 May 1995”, para. 8, noting that a Russian UNHCR convoy entered Srebrenica carrying flour; Ex. 5D00929, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, signed by Slavko Ognjenović, 21 May 1995”, para. 8, noting that a UNHCR convoy entered carrying construction material and 200 litres of diesel for the Swedish construction project; Ex. 5D00930, “Regular Combat Report from the Bratunac Brigade to the Drina Corps, 23 May 1995”, para. 7, which noted that a UNHCR convoy entered Srebrenica carrying food.

⁷⁰¹ Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21. In June 1995, Srebrenica received 230 tonnes of food out of a monthly target of 678 tonnes. *Ibid.* *See also* Ex. P04138, “UN daily report from Akashi to Annan, 20 June 1995”, pp. 2, 4 (stating that problems with convoys, both logistics re-supply and UNHCR, continued in many parts of the UNPROFOR area of responsibility. For the eastern enclaves, the VRS cut the number of approved trucks from 56 to 23, the amount of food by 50%, and the amount of fuel by 70%; the VRS rejected passage of two ambulances needed for UN troops and did not allow any troop rotation or reinforcement); Ex. 4D00301, “ABiH 2nd Corps Command Document, signed by Sead Delić, 28 June 1995” (referring to the difficult situation with supplying food to citizens and members of the ABiH).

⁷⁰² Ex. P02714, “VRS Main Staff document to Command Military Police, signed by Miletić, 2 June 1995”.

⁷⁰³ *Ibid.* On 3 June, the trucks were to carry 72 tonnes of which 64 were flour and oil. On 6 June, the nine trucks were to carry 72 tonnes, which included 64 tonnes of flour and 320 boxes of oil. On 7 June, the ten trucks were to carry 72 tonnes, which included 11 tonnes of flour, 769 boxes of oil, 21 tonnes of beans, 1376 boxes of beef, and 18 boxes of bottle nipples.

⁷⁰⁴ Ex. P02714, “VRS Main Staff document to Command Military Police, signed by Miletić, 2 June 1995”.

⁷⁰⁵ Ex. 5D01429, “VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995”, p. 1. One truck of school supplies for Srebrenica for 13 June was not approved. *Ibid.*, p. 2.

transport the same amount of humanitarian aid for Zvornik as would be allowed through for the Bosnian Muslims.⁷⁰⁶ The Zvornik Brigade was specifically instructed to check the trucks once they arrived in Zvornik to establish that they were carrying humanitarian aid and to inform the Commander of the Main Staff⁷⁰⁷ after which instructions regarding the continuation of the convoy would be received.⁷⁰⁸ On 3 July, the Main Staff sent a notification to the Drina Corps informing it of the Main Staff's approval of a DutchBat convoy departing from Srebrenica on 4 July. The return of the convoy was not approved.⁷⁰⁹

236. The food stock in the UNHCR warehouse by early July was described in an UNMO report as "almost zero" and "there [was] not even sufficient stock to run the social kitchens to provide one meal a day for the most vulnerable".⁷¹⁰ UNMO, after having visited the markets and small shops around Srebrenica town, reported that the prices of essential commodities were rising and that it was clear that the food situation was very critical since most inhabitants lacked the means to buy the food.⁷¹¹ UNHCR had three planned convoys per week to Srebrenica, which would cover 65% of the needs of the population, however, the refusal of the VRS to allow into the enclave more than one convoy per week on average meant that less than 25% of the population's needs were met.⁷¹² Medical supplies were low, only estimated to provide for two to four weeks.⁷¹³

237. Humanitarian aid arrived more regularly in Žepa than in Srebrenica⁷¹⁴ and the Bosnian Muslims from Srebrenica went to Žepa for food.⁷¹⁵ A report from the ABiH to the Žepa Municipality reports that UNHCR was providing a "relatively good supply" of humanitarian aid, with an average of 85% of its deliveries reaching Žepa between 1 December 1994 to 15 February

⁷⁰⁶ Ex. P02554, "VRS Main Staff Document to the Sarajevo-Romanija and Drina Corps, signed by Miletić, 1 July 1995", p. 3.

⁷⁰⁷ See Ljubomir Obradović, T. 28424–28427 (18 Nov 2008).

⁷⁰⁸ Ex. P02554, "VRS Main Staff document to the Sarajevo-Romanija and Drina Corps, signed by Miletić, 1 July 1995", p. 3.

⁷⁰⁹ Ex. P02556, "VRS Main Staff document to the Drina Corps, signed by Miletić, 3 July 1995".

⁷¹⁰ Ex. P00493, "UNMO Report, 8 July 1995", para. 2(a). While the Bosnian government reported 13 deaths of civilians due to starvation, the UNHCR noted that "although the food situation is precarious, it has not reached a level where the population is facing malnutrition." Ex. 6D00200, "UN Daily Report, 6 July 1995", para. 4. See also Prosecution Adjudicated Facts Decision, Annex, Fact 64 ("By mid-1995, the humanitarian situation of the Bosnian Muslim civilians and military personnel in the [Srebrenica] enclave was catastrophic").

⁷¹¹ Ex. P00493, "UNMO Report, 8 July 1995", para. 2(d); Joseph Kingori, T. 19196–19197 (13 Dec 2007). The ABiH reported on 6 July that the first persons dying of starvation had been registered. Ex. P00432, "ABiH 28th Division combat report, signed by Ramiz Bećirović, 6 July 1995", para. 4.

⁷¹² Ex. P00493, "UNMO Report, 8 July 1995", para. 3. See Ex. P04062, "VRS Main Staff notification re humanitarian convoys addressed to Drina Corps, signed by Miletić, 30 June 1995" (concerning the approval of the weekly plan of UNHCR. For Srebrenica, eight trucks were approved with mostly flour and some milk and oil for 4 July. For Žepa, seven trucks were approved for 5 July carrying mostly flour and some milk, beans, and oil. The convoys to Srebrenica on 1 and 5 July were not approved. Also not approved was a truck of school supplies.).

⁷¹³ Ex. P00493, "UNMO Report, 8 July 1995", para. 5. Medical evacuations from Srebrenica were granted throughout the first half of 1995. Slavko Kralj, T. 29287–29293 (4 Dec 2008).

⁷¹⁴ PW-155, T. 6829 (5 Feb 2007).

⁷¹⁵ *Ibid.*, T. 6829–6830 (5 Feb 2007); Meho Džebo, Ex. P02486, "92 ter statement" (23 Mar 2007), p. 2, para. 5.

1995.⁷¹⁶ UNPROFOR reported that in March about 80% of UNHCR's food aid target for Žepa was met.⁷¹⁷ According to UNHCR reports, the amount of aid brought into Žepa was 112 tonnes in March; 104 tonnes in April; and 180 tonnes in May (out of a targeted 160 tonnes per month).⁷¹⁸ However, also in Žepa the humanitarian aid eventually decreased.⁷¹⁹

238. By the end of March, illegal trade in Žepa was so rife and uncontrolled that it was also of concern to the ABiH.⁷²⁰ It was well-known that UKRCoy members were selling fuel and goods at

⁷¹⁶ Ex. 5D01357, "Supreme Command Staff Report to the Žepa Municipality, type-signed Hasan Muratović, 27 February 1995". The amount of aid achieved (as a percentage) per item is described as follows: leguminous plants 57%; meat/fish/cheese 112%; yeast 40%; rice/flour 109%; powdered milk 62%; oil 114%; salt 120%; and sugar 73%. The Trial Chamber has been presented with evidence of approvals of transfer through VRS held territory. The VRS Main Staff reported at the end of January 1995 that all approved convoys had safely passed through the territory of the Republika Srpska. Ex. 5D01122, "VRS Main Staff Situation Report, signed by Milovanović, 29 January 1995", p. 3; Ex. 5D01123, "VRS Main Staff Document to the RS President and the Corps, signed by Milovanović, 30 January 1995", p. 3; Ex. 5D01124, "VRS Main Staff Document to the 1st and 2nd Krajina, Sarajevo-Romanija and East Bosnia Corps, signed by Milovanović, 31 January 1995". On 2 February, the VRS Main Staff reported that convoys had passed through the Drina Corps area of responsibility pursuant to the plan approved by the Main Staff. Ex. 5D01048, "Drina Corps regular combat report, signed by Milutin Skocajić, 2 February 1995", para. 3. On 22 February, the VRS Main Staff notified three convoys destined for Žepa, which authorised all the food cargo requested by UNPROFOR (with the exception of coffee which was reduced in quantity). Ex. P03999, "VRS Main Staff Document to UNPROFOR, type-signed Milovanović, 22 February 1995". On 25 February, the VRS Main Staff approved a passage of a convoy from Žepa to Sarajevo. Ex. P04001, "VRS Main Staff Document to UNPROFOR, signed by Milovanović, 25 February 1995". On 28 February, the Drina Corps reported to the VRS Main Staff that all planned convoys had passed through the territory of the Republika Srpska without difficulties. Ex. 5D01056, "Drina Corps Regular Combat Report, signed by Milenko Živanović, 28 February 1995", para. 3.

⁷¹⁷ In March 1995, 80% of the aid planned for delivery by the UNHCR to Žepa was delivered and three convoys had been obstructed. Ex. 5D00728, "Report on the Implementation of the Cessation of Hostilities Agreement for March 1995", para. 7. In April, two requests for passage of food (which were coupled with a request for the transportation of UN military police) were refused. On 18 April, two UNPROFOR requests for transportation from Sarajevo to Žepa of UN military policemen for rotation and of technical supplies, food, and drinks, were refused. Ex. P03986, "VRS Main Staff Document to UNPROFOR, signed by Miletić, 17 April 1995"; Ex. P03989, "VRS Main Staff Document to Military Posts 7111 and 7598, signed by Miletić, 18 April 1995". An overview from the Drina Corps Command of allowed quantities of humanitarian aid into Žepa in April showed almost identical quantities of flour, beans, canned beef, cooking oil, and baby milk to those allowed in March, but no deliveries whatsoever of powdered milk, powdered juice, sugar, salt, and dry yeast. Ex. 5D00953, "Drina Corps Report on Breakdown of Humanitarian Aid to the Muslim enclaves for March and April 1995, signed by Slavko Novaković, 3 May 1995". On 4 May, the Drina Corps reported that a UNHCR convoy with nine trucks carrying 72 tonnes of food passed into Žepa. Ex. 5D01070, "Drina Corps regular combat report to the VRS Main Staff, signed by Krsti", 4 May 1995", p. 1. The Main Staff approved a convoy for Žepa for 17 May carrying 26 tonnes of flour, 2.5 tonnes of beans, 156 boxes of beef, 111 boxes of yeast and 3 tonnes of sugar. Ex. 5D00903, VRS Main Staff document, concerning humanitarian convoys, type-signed Manojlo Milovanovic, 12 May 1995". The Rogatica Brigade reported the passage on 17 May of a UNHCR convoy to the Drina Corps. Ex. 5D01257, "Rogatica Brigade Report, signed by Rajko Kušić, 18 May 1995", para. 3. On 19 May, the VRS Main Staff approved a UNHCR convoy to Žepa consisting of 40 tonnes of flour, beans, canned beef, sugar, baby food, and washing powder. Ex. 5D00905, "VRS Main Staff document to the commands of the Drina Corps and East Bosnia Corps, signed by Milovanović, 19 May 1995".

⁷¹⁸ Ex. P04145, "UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995", p. 21; Ex. 5D01411, "Review of humanitarian aid delivered to Bosnian enclaves".

⁷¹⁹ Meho Džebo, Ex. P02486, "92^{ter} statement" (23 Mar 2007), para. 3; PW-155, T. 6829 (5 Feb 2007); Ex. P04145, "UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995", p. 21; Ex. 5D01411, "Review of humanitarian aid delivered to Bosnian enclaves".

⁷²⁰ Ex. 5D00223, "Report of ABiH Public Security Service, 4 April 1995". See also Ex. 5D01359, "Letter from ABiH Žepa to the General Staff of the Army requesting instructions re smuggling, signed by Avdo Palić, 31 March 1995".

UKRCoy checkpoints.⁷²¹ In order to control the entry of people, vehicles, and goods, the ABiH set up a checkpoint in Brezova Ravan at the entrance of Žepa from the south.⁷²² The checkpoint was in the vicinity of the UKRCoy checkpoint and was manned by armed Žepa Public Security Station Police (“SJB”).⁷²³ On 30 March, Bosnian Muslim SJB at this checkpoint confiscated illegal goods found during a convoy inspection, which belonged to an UKRCoy major.⁷²⁴ UNPROFOR exerted enormous pressure on the ABiH to remove the checkpoint.⁷²⁵

239. During April, the VRS Main Staff allowed UN staff stationed in Žepa to leave the enclave but not to enter it.⁷²⁶

240. Between 7 March and 18 June, the VRS Main staff did not approve any fuel transportation to Žepa.⁷²⁷ The lack of fuel caused UKRCoy to stop using its generators, which affected its food storage capacity.⁷²⁸ At the end of May, the food supply situation had reached a “critical point” according to UNPROFOR.⁷²⁹ On 7 June, the VRS stopped a UNHCR convoy on its way to Žepa for a detailed search after having found ammunition for infantry weapons.⁷³⁰ When fuel was approved on 18 June, the Rogatica Brigade reported to the Main Staff that it had, with the agreement of

⁷²¹ PW-155, T. 6829 (5 Feb 2007); Meho Džebo, T. 9619–9620 (28 Mar 2007), T. 9669 (29 Mar 2007); Louis Fortin, T. 18269–18270 (27 Nov 2007). *See also* Ex. 5D01359, “Letter from ABiH Žepa to the General Staff of the ABiH requesting instructions re smuggling, signed by Avdo Palić, 31 March 1995”.

⁷²² Ex. 5D00223, “ABiH Public Security Service Report, 4 April 1995”.

⁷²³ *Ibid.*

⁷²⁴ *Ibid.* The illegal goods included coffee, chocolate, cigarette lighters and cigarette papers.

⁷²⁵ Ex. 5D00223, “ABiH Public Security Service Report, 4 April 1995”.

⁷²⁶ In the beginning of April, the VRS Main Staff allowed a UNHCR team to make a working visit to the UKRCoy. Ex. P02678, “VRS Main Staff Document to the Drina, Sarajevo Romanija and East Bosnia Corps, signed by Milovanović, 2 April 1995”, p. 1. On 18 April, passage from Žepa to Sarajevo was approved for one UNMO and a driver. Ex. P03987, “VRS Main Staff document to UNPROFOR, signed by Miletić, 18 April 1995”. At least five requests for transfer to Žepa for rotations were refused in April. On 14 April, the requests for two convoys to Žepa were refused by the VRS Main Staff; one composed of three jeeps and eight trucks, and the other with the purpose of relieving the UNMOs. Ex. P02651a, “VRS Main Staff document to military post 7111, signed by Miletić, 14 April 1995”. On 18 April, two UNPROFOR requests for movement from Sarajevo to Žepa were refused, which would have transported UN military police men for rotation and a certain quantity of technical supplies, food, and drinks. Ex. P03989, VRS Main Staff document to commands of the military posts 7111 and 7598, signed by Miletić, 18 April 1995”. On 22 April, the transfer of UN military personnel into Žepa was refused. Ex. 5D01315, “VRS Main Staff document to the UNPROFOR Command Sarajevo, signed by Milovanović, 22 April 1995”.

⁷²⁷ Ex. P02956, “Sarajevo Sector Weekly Situation Report, 3 June 1995”, p. 3; Ex. P02497, “VRS Main Staff Report to Military Post 7111, signed by Miletić, 18 June 1995”.

⁷²⁸ Ex. P02956, “Sarajevo Sector Weekly Situation Report, 3 June 1995”, p. 3. *See also* Rupert Smith, T. 17816 (9 Nov 2007).

⁷²⁹ Ex. P02956, “Sarajevo Sector Weekly Situation Report, 3 June 1995”, p. 3; Ex. P04132, “Sarajevo Sector Weekly Situation Report, 1 June 1995”, p. 1.

⁷³⁰ Ex. 5D01259, “Rogatica Brigade Regular Combat Report to the Drina Corps, signed by Rajko Kušić, 8 June 1995”, para. 3. *See also* Ex. 5D01405, “Intercept, 8 June 1995, 17.58 hours”; Ex. P03051, “Order from RS President to Supreme Headquarters of the VRS, signed by Karadžić, 13 June 1995”, para. 2.

UKRCoy, taken five of the ten tonnes of fuel for its own needs.⁷³¹ The 18 June convoy also brought long-awaited food and water to UKRCoy.⁷³²

241. In May, UNHCR delivered 180 tonnes of food aid to Žepa, while the target was 160 tonnes.⁷³³ In June, however, humanitarian aid access to Žepa, like that to Srebrenica, was “sporadic” with UNHCR reaching only about 30% of the aid target. According to the 12 June Main Staff notification to the Drina Corps and the Eastern Bosnia Corps concerning the approved UNHCR convoys for that week, for Žepa, five trucks were approved carrying mostly flour and some beans, fish, soap and sugar.⁷³⁴ One truck of school supplies and one truck containing oil for saws were not approved.⁷³⁵ On 21 June, a UNHCR convoy arrived in Žepa, carrying 50 tonnes of mainly food supplies out of the targeted delivery of 160 tonnes for that month.⁷³⁶

D. Military Attack on Srebrenica – Krivaja-95

1. 28 June to 9 July 1995

242. On 28 June 1995, Radovan Karadžić, President of RS and the Supreme Commander of the VRS, Momčilo Krajišnik, the President of the Bosnian Serb Assembly, and an entourage came to the Drina Corps Command in Vlasenica.⁷³⁷ General Živanović, the Drina Corps Commander was absent, and Krstić, Chief of Staff of the Drina Corps was summoned to meet Karadžić.⁷³⁸ Karadžić asked Krstić how much time he needed to set off for Srebrenica.⁷³⁹ Krstić answered it would take three to five days, depending on the objective.⁷⁴⁰ Karadžić said they should try to keep the preparations as short as possible.⁷⁴¹ Krstić told Karadžić that the Drina Corps was short of ammunition, fuel and food, to which Karadžić responded if Krstić put in a request he would be given everything.⁷⁴² It was unusual that Karadžić as the Supreme Commander intervened directly

⁷³¹ Ex. P02496, “Rogatica Brigade document to the VRS Main Staff, signed by Rajko Kušić, 23 June 1995”.

⁷³² Ex. P02497, “Main Staff Report to Military Post 7111, signed by Miletić, 18 June 1995”, para. 1. UKRCoy considered the re-supply content which consisted of 525 kg ketchup, 1396 kg potatoes, 150 litres vinegar, and some spicy Malaysian combat rations “unusual”. The convoy reportedly did not carry any meat, sugar, salt, flour, vegetables or fruit. Ex. P02957, “Sarajevo Sector Weekly Situation Report, 24 June 1995”.

⁷³³ Ex. P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21.

⁷³⁴ Ex. 5D01429, “VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995”, p. 1.

⁷³⁵ *Ibid.*, pp. 1–2.

⁷³⁶ Ex. 6D00200, “UN Daily Report, 6 July 1995”, para. 4; P04145, “UNHCR Information Notes on former Yugoslavia, No. 7/95, July 1995”, p. 21.

⁷³⁷ Milenko Lazić, T. 21727, 21745 (4 June 2008), T. 21861 (5 June 2008).

⁷³⁸ *Ibid.*, T. 21727 (4 June 2008).

⁷³⁹ *Ibid.*, T. 21727 (4 June 2008), T. 21862 (5 June 2008).

⁷⁴⁰ *Ibid.*, T. 21727 (4 June 2008), T. 21862 (5 June 2008).

⁷⁴¹ *Ibid.*, T. 21727 (4 June 2008), T. 21862 (5 June 2008).

⁷⁴² *Ibid.*, T. 21866 (5 June 2008).

with the Corps circumventing the Main Staff.⁷⁴³ In such cases the Corps had an obligation to inform the Main Staff, which was done by telegram.⁷⁴⁴

243. After Karadžić left, Krstić called Lazić, the Chief of Operations and Training of the Drina Corps, to his office and ordered him to summon “the entire command” to the operations room.⁷⁴⁵ About half an hour to an hour after Karadžić’s visit, a meeting was held at which Krstić explained the assignment to the command of the Drina Corps.⁷⁴⁶ The Corps command started working to draft a combat plan.⁷⁴⁷ Krstić was responsible for the drafting and the wording of the plan, which would later become known as *Krivaja-95*.⁷⁴⁸

244. On 2 July 1995, two orders, “*Krivaja-95*”, were issued in the name of Živanović, the Drina Corps Commander.⁷⁴⁹ The first order was a preparatory order addressed to the Zvornik, Birač, Romanija, Vlasenica, Podrinje, Bratunac, Milići and Skelani brigades of the Drina Corps.⁷⁵⁰ It stated that the ABiH launched a wide-ranging offensive to divide RS along several axes and that its forces from the enclaves of Srebrenica and Žepa would act in order to cut the Drina Corps area of responsibility in two and connect the enclaves with ABiH held territory.⁷⁵¹ The Command of the Drina Corps ordered, pursuant to directive 7 and 7/1, the respective units to prepare for an attack.⁷⁵²

245. The second order was a combat order, according to which, the Drina Corps was to “continue a resolute and active defence and to separate the enclaves of Žepa and Srebrenica as soon as possible”.⁷⁵³ The order did not include taking Srebrenica town.⁷⁵⁴ The combat order envisaged that the Drina Corps had “the task of carrying out offensive activities with free forces [...] in order to

⁷⁴³ Milenko Lazić, T. 21745–21746 (4 June 2008). The rule was that the chain of command should be followed but there were exceptions allowed like this one. In these exceptional cases, Krstić had the obligation to inform the Main Staff. *Ibid.*, T. 21746 (4 June 2008).

⁷⁴⁴ *Ibid.*, T. 21746 (4 June 2008), T. 21865 (5 June 2008).

⁷⁴⁵ *Ibid.*, T. 21724, 21728, 21757–21758 (4 June 2008).

⁷⁴⁶ *Ibid.*, T. 21728 (4 June 2008).

⁷⁴⁷ *Ibid.*, T. 21728 (4 June 2008). Krstić drew reference for the documents from Directives 7 and 7/1. Lazić understood Karadžić’s order to be consistent with the goals of Directives 7 and 7/1. *Ibid.*, T. 21864 (5 June 2008).

⁷⁴⁸ *Ibid.*, T. 21731 (4 June 2008); Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”.

⁷⁴⁹ Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”.

⁷⁵⁰ Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995.” This preparatory order was not brought to the notice of the VRS Main Staff as it was not mandatory for the commander to send preparatory orders to the superior command. Mirko Trivić, T. 11913–11914 (22 May 2007).

⁷⁵¹ Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995,” para. 1.

⁷⁵² *Ibid.*, para. 2.

⁷⁵³ Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4. The task was to reach the Predol–Divljakinja–Banja Guber–Živkova Brdo–Alibegovac–Kak line, and then the Gradac–Boja–Šiljato Brdo line.

⁷⁵⁴ Prosecution Adjudicated Facts Decision, Annex, Fact 70; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

split apart the enclaves of Žepa and Srebrenica, and to reduce them to their urban areas.”⁷⁵⁵ The objective of the order was “a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”.⁷⁵⁶ The order further gave the respective brigades specific tasks along the different axes and stated that the security organs and the military police were responsible for indicating areas for gathering and securing prisoners of war and war booty.⁷⁵⁷ In dealing with prisoners of war and the civilian population, the forces were instructed to behave in full accord with the Geneva Conventions.⁷⁵⁸

246. The VRS estimated that there were around 10,000 armed men organized in the ABiH 28th Division in Srebrenica,⁷⁵⁹ whereas DutchBat estimated the 28th Division was organised with 3,000 or 4,000 men.⁷⁶⁰ The exact location of the headquarters of the 28th Division of the ABiH, was not clear to DutchBat officers as they perceived it kept being moved.⁷⁶¹ The ABiH 28th Division had six subordinate brigades, supported by the brigade firing group, in its area of responsibility.⁷⁶² A detailed internal ABiH document shows that ABiH Brigades used private houses, hotels and industrial buildings for housing command and other military purposes, for example in Srebrenica

⁷⁵⁵ Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 2.

⁷⁵⁶ *Ibid.*, para. 4.

⁷⁵⁷ *Ibid.*, paras. 5, 10. B. More specifically, a part of the Bratunac Brigade was given the task to prevent the intervention of the ABiH from Potočari towards Srebrenica, and the Battalion of the Zvornik Brigade was given the task to attack ABiH forces along the axis of three wooded hills (500 metres north of Zeleni Jadar) – Pusmulčići village – Bojna – Srebrenica. *Ibid.*, para. 5.

⁷⁵⁸ *Ibid.*, para. 10. B. According to Trivić, they were given assignments to act against members of the 28th Division of the ABiH but to avoid any conflicts with the UN personnel. Trivić confirmed an order from the Main Staff to the Drina Corps which emphasized that they should fully protect members of UNPROFOR and the Bosnian Muslim civilian population, while they demilitarize the Srebrenica area. Mirko Trivić, T. 11884–11886 (21 May 2007), Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”.

⁷⁵⁹ Mirko Trivić, T. 11807–11809 (18 May 2007), T. 11881 (21 May 2007). *See also* Milenko Lazić, T. 21735 (4 June 2008).

⁷⁶⁰ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2164 (5 Apr 2000).

⁷⁶¹ Johannes Rutten, T. 4959 (4 Dec 2006). *See also* Robert Franken, T. 2646 (18 Oct 2006) (testifying that the ABiH 28th Division had more or less, two headquarters; they used one classroom in Potočari and some rooms in the former post office of Srebrenica); Pieter Boering, T. 2178–2179 (26 Sept 2006) (testifying that the headquarters of the ABiH 28th Division was in Srebrenica town, not in the centre but in the outskirts of the town).

⁷⁶² Ex. 7D00814, “ABiH General Staff No. 4/19-2, Reorganisation of the ABiH”, p. 3; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 1. The 280th Brigade, which had its Command Post in the village of Budak, was to defend Zonik, the industrial zone in Potočari. The 281st Brigade, which had its Command Post in the area of Sućeska, was to defend Borovac, Žedanjsko village, Sućeska village and Kok. The 282nd Brigade, which had its Command Post in the Bojna village, was to defend the wooded hills 200 metres north of Zeleni Jadar, Prhulja, Živkovo Brdo, the area of Pusmulčići village, the region of Bojna and Vagan. The 283rd Brigade, which had its Command Post in the area of Slapovići village, was to defend Alibegova, Bučeje village, Kiprova village, and Viogor. The 284th Brigade, which had its Command Post in Milačevići village, was to defend Jabučno, Jagličići village, and Pale village. The reserve 28th Division consisting of a mountain battalion and police forces were located in Srebrenica, in Potočari and Luka village, ready for action at threatened axes. Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 1. However, DutchBat estimated that ABiH forces in the enclave were organised into four brigades. Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2164 (5 Apr 2000).

town the GRAD UPI, the Agricultural Processing complex was used and in Potočari four family houses were used.⁷⁶³

247. On 2 July, pursuant to the preparatory order of *Krivaja-95*, two tactical groups were established (“Tactical Group 1” or “TG-1”, “Tactical Group 2” or “TG-2”, respectively).⁷⁶⁴ TG-1 was established to “separate the forces of the 28th Division between the Srebrenica and Žepa enclaves and to reduce the enclaves themselves.”⁷⁶⁵ On the same day, **Pandurević** was given an oral order by Krstić to command TG-1,⁷⁶⁶ and Milan Jolović, aka “Legenda”, was appointed as Deputy Commander.⁷⁶⁷ TG-2 was commanded by Mirko Trivić, Commander of the Romanija Brigade.⁷⁶⁸ On 4 July, when TG-1 left the Standard Barracks in Zvornik, it was divided into two segments, one of which was led by **Pandurević** himself, and the other by Major Milutinović.⁷⁶⁹

248. On 5 July 1995, the segment of Tactical Group 1, led by **Pandurević** and Tactical Group 2, led by Trivić arrived in Zeleni Jadar, in the south of the Srebrenica enclave.⁷⁷⁰ In the afternoon,

⁷⁶³ Ex. 4D00135, “BiH Ministry of Defence report on office space used by ABiH, signed by Suljo Hasanović, 22 February 1995”, para. II. The ABiH 280th Brigade which had a command post in Budak was to defend, *inter alia*, the industrial zone in Potočari and the reserve 28th Division was located in the school in Potočari. See Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 1. *But see* Johannes Rutten, T. 4829–4832 (30 Nov 2006) (testifying that there were no real military targets or manned position of BiH soldiers near the Potočari area).

⁷⁶⁴ Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995,” paras. 1–2; Miodrag Dragutinović, T. 12573 (13 June 2007); Mirko Trivić, T. 11798 (18 May 2007). A tactical group is a provisional formation set up of a number of combat groups for the purpose of executing a specific task within a certain period of time and in a certain place. The size of a tactical group is usually equivalent to that of a battalion, but it has reinforcements. These reinforcements can be either artillery reinforcements or armoured and mechanized forces. A combat group can be part of the tactical group; therefore, it is smaller in size and strength, but it sometimes can be almost identical to a tactical group. Vinko Pandurević, T. 30813 (29 Jan 2009).

⁷⁶⁵ Miodrag Dragutinović, T. 12575–12576 (13 June 2007).

⁷⁶⁶ Vinko Pandurević, T. 31441–31443 (13 Feb 2009).

⁷⁶⁷ Ex. P00318, “Order from the Zvornik Infantry Brigade to the Chief of Security signed by Pandurević, 2 July 1995”; Vinko Pandurević, T. 30848 (29 Jan 2009). Major Jolović’s unit was called the Drina Wolves. Mirko Trivić, T. 11814 (18 May 2007).

⁷⁶⁸ Miodrag Dragutinović, T. 12577–12578 (13 June 2007). TG-2 consisted of a combat group commanded by Major Ljubo Erić, organized with 200 men from the Romanija Brigade. Mirko Trivić, T. 11798–11800 (18 May 2007). Trivić’s original combat group was reinforced by troops that equaled a battalion. The combat group’s artillery was composed of three tanks and two mortars, along with infantry weapons carried by soldiers. Mirko Trivić, T. 11800, 11806 (18 May 2007).

⁷⁶⁹ Vinko Pandurević, T. 30852–30853 (29 Jan 2009); Miodrag Dragutinović, T. 12675–12678 (15 June 2007). The Zvornik Brigade contributed a light battalion to the formation of TG-1. Approximately 400 men left the Standard Barracks in Zvornik on 4 July. Miodrag Dragutinović, T. 12671–12672 (15 June 2007); Ex. 7DP00384, “Zvornik Brigade War Diary”, p. 2. **Pandurević** testified that the first segment was 3rd echelon, whereas the second segment was 1st and 2nd echelon, led by himself. The first segment, the armoured mechanised company, went from Zvornik via Bratunac to Pribićevac, whereas the infantry unit, the second segment, went from Zvornik via Bratunac, Skelani to Zeleni Jadar. Vinko Pandurević, T. 30852 (29 Jan 2009); Miodrag Dragutinović, T. 12675–12678 (15 June 2007).

⁷⁷⁰ Vinko Pandurević, T. 30853 (29 Jan 2009); Mirko Trivić, T. 11800–11801 (18 May 2007); Ex. P02111, “Map 6 of map book”. On 5 July in the evening, **Pandurević** went to see the other segment of TG-1, the armoured mechanised company, in Pribićevac so as to investigate the situation there and give them specific assignments. Vinko Pandurević, T. 30853 (29 Jan 2009). According to Dragutinović, the segment led by **Pandurević** stayed in Zeleni Jadar until 6 July. Miodrag Dragutinović, T. 12679 (15 June 2007).

commanders, including **Pandurević**, received their instructions and specific orders for the attack on the Srebrenica enclave.⁷⁷¹

249. Combat readiness had been set for 6 July, at 4 a.m.⁷⁷² In the morning of the same day, the Main Staff sent a situation report, type-signed by **Miletić**, to Karadžić, the VRS Supreme Commander, that the forces of the Drina Corps were prepared for active combat in the areas of Srebrenica and Žepa.⁷⁷³ At approximately 3 a.m., the military attack on Srebrenica started from all positions.⁷⁷⁴ The shelling was intense and constant.⁷⁷⁵ Six 120mm rockets landed near the DutchBat compound in Potočari around 3:30 a.m., and at least 250 artillery and mortar rounds were recorded in the Srebrenica enclave until 8 p.m.⁷⁷⁶ By comparison, the shelling of Srebrenica and Potočari on 7 July was less intense, due to poor weather conditions,⁷⁷⁷ though it continued.⁷⁷⁸ There was heavy shelling around the DutchBat compound in Potočari and three shells were reported to have landed in Srebrenica.⁷⁷⁹ On 8 July, the shelling was heavier with 30 shells landing in Srebrenica and Potočari.⁷⁸⁰

⁷⁷¹ Mirko Trivić, T. 11801, 11809 (18 May 2007).

⁷⁷² *Ibid.*, T. 11807–11810 (18 May 2007); Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

⁷⁷³ Ex. P02895, “Main Staff Situation Report type-signed Miletić”, 6 July 1995”, p. 4.

⁷⁷⁴ Vinko Pandurević, T. 30855 (29 Jan 2009) (testifying that in the early morning hours on 6 July, before dawn, all the units of the TG-1 were at their starting positions, and that they launched the attack, all of them together); Joseph Kingori, T. 19173 (13 Dec 2007). *See also* Lazar Ristić, T. 10042 (16 Apr 2007) (testifying that on 6 July, a radio signal was sent out to the VRS units that the attack on Srebrenica had begun); Miodrag Dragutinović, T. 12679 (15 June 2007); PW-121, Ex. 02227, “92 *ter* transcript”, KT. 5748-5749 (26 July 2000); Ex. P00233, “Daily Combat Report from the Bratunac Brigade to the Drina Corps signed by Colonel Blagojević, 6 July 1995”; Ex. P00490, “UNMO report, 6 July 1995”, p. 1.

⁷⁷⁵ Leendert van Duijn, T. 2263 (27 Sept 2006).

⁷⁷⁶ Ex. P00490, “UNMO report, 6 July 1995”, p. 1; Ex. P00491, “UNPROFOR report, 6 July 1995”, p. 2. (stating that the DutchBat compound in Potočari was targeted and OP Foxtrot was hit by several tank rounds; there was also heavy firing in the southern, eastern and northern parts of the Srebrenica enclave, and 150 detonations were counted although due to bunker alarms, an exact figure could not be given; and a civilian was killed and a child was injured by an artillery impact in Srebrenica enclave); Joseph Kingori, T. 19172–19173, 19177–19181 (13 Dec 2007); Pieter Boering, T. 1920, 1922 (19 Sept 2006); Robert Franken, T. 2456-2457 (16 Oct 2006); Saliha Osmanović, Ex. P03228, “92 *bis* statement” (19 June 2000) p. 2 (testifying that her son was killed from a shell fallen on 6 July).

⁷⁷⁷ Cornelis Nicolai, T. 18539 (30 Nov 2007).

⁷⁷⁸ Joseph Kingori, T. 19181 (13 Dec 2007); PW-127, T. 3502 (2 Nov 2006). At least 200 shells struck Srebrenica. Joseph Kingori, T. 19188 (13 Dec 2007).

⁷⁷⁹ Ex. P00492, “UNMO report, 7 July 1995,” p. 1 (stating that 3 men were injured as a result of shelling around the DutchBat compound and 2 men were injured due to shelling in Srebrenica), p. 2 (stating that “whatever their aims are, they seem to be concentrating more on civilian targets in Srebrenica town and Potočari”). Ex. P00494 “UNPROFOR report, 7 July 1995,” p. 2 (stating that 147 detonations were recorded in Srebrenica enclave; electricity plant 200 metres away from the DutchBat compound in Potočari was targeted; and due to shelling inside the enclave, four civilians were killed and 17 were injured); Ex. P02975, “UNPROFOR Warning to VRS, 9 July 1995”, p. 2 (“The Bosnian Serb Army resumed attacks against the Srebrenica enclave on Friday, 7 July 1995, firing indiscriminately into the safe area and directly targeting UN facilities, causing several civilian deaths.”); Cornelis Nicolai, T. 18477 (29 Nov 2007), T. 18534 (30 Nov 2007).

⁷⁸⁰ Ex. P00497, “UNMO report, 8 July 95” p. 4 (stating that UNMO had counted 60 explosions from 1:35 p.m. to 2:06 p.m. in Srebrenica and Potočari); Ex. P00495, “UNMO report, 8 July 1995, 14:30”; Ex. P00496, “UNPROFOR report, 8 July 1995, 21:00” (also stating that the number of detonations in the Srebrenica enclave was not known precisely). The marketplace was hit several times, and the hospital and the PTT building were targeted, although they were not struck. Joseph Kingori, T. 19192 (13 Dec 2007), T. 19354–19356 (10 Jan 2008).

250. The five DutchBat OPs in the southern part of the enclave fell one by one in the face of the VRS advance.⁷⁸¹ Some of the DutchBat soldiers retreated into the enclave after their OPs were attacked, while others surrendered into VRS custody.⁷⁸² The ABiH soldiers tried to stop the DutchBat's withdrawal from the OPs.⁷⁸³ On 8 July, while soldiers of an OP were retreating on a vehicle, a DutchBat Private was killed by a hand grenade thrown by an ABiH soldier, after unsuccessfully trying to stop the vehicle.⁷⁸⁴ Once the southern perimeter of the enclave began to collapse, about 4,000 Bosnian Muslims, who had been living in a nearby Swedish housing complex, fled north into Srebrenica town.⁷⁸⁵ Lieutenant Colonel Karremans, the DutchBat commander described the attack of the VRS from 7 to 9 July as follows:

[T]hese operations have been executed by all means: attacking ABiH and UN positions, shelling the enclave and suppressing DutchBat through intimidation by using artillery, mortars, and MLRS [the Multi-Launched Rocket System] (M-63 and M-77) overhead compound Potočari with over 200 soldiers. Most of my OPs have been shot by mortars. The VRS does exactly know what they are doing and till how far they can go. They do execute their operations according to a predominated[sic] and well-organised plan.⁷⁸⁶

251. On 9 July, in addition to the shelling, incoming small arms fire was observed.⁷⁸⁷ By evening, the VRS had pressed four kilometres deep into the enclave, halting just one kilometre short of Srebrenica town.⁷⁸⁸ OP Mike at the northern border of the Srebrenica enclave was under mortar fire and direct firing, and the commander of the OP was permitted to withdraw.⁷⁸⁹ The VRS was able to establish a line from which it could fully control the boundaries of the enclave and prevent any communication between Srebrenica and Žepa.⁷⁹⁰

⁷⁸¹ Prosecution Adjudicated Facts Decision, Annex, Fact 93.

⁷⁸² *Ibid.*, Facts 95 and 96. The DutchBat soldiers who were detained were taken to Bratunac and Milići. Ten to fifteen DutchBat soldiers were taken prisoner, and eventually held at the Hotel Fontana. Pieter Boering, T. 1923–1924 (19 Sept 2006). OP Foxtrot fell on 8 July, where the defensive wall was blown away by the tank fire, and the OP personnel were overrun by Serb forces, but were allowed to withdraw to Srebrenica town. Robert Franken, T. 2460 (16 Oct 2006).

⁷⁸³ Cornelis Nicolai, T. 18463 (29 Nov 2007); Ex. P00534, "Dutch Ministry of Defence, Debriefing on Srebrenica," para. 3.2.

⁷⁸⁴ Cornelis Nicolai, T. 18463 (29 Nov 2007); Pieter Boering, T. 1924 (19 Sept 2006); Vincent Egbers, T. 2931 (20 Oct 2006); Ex. P00534, "Dutch Ministry of Defence, Debriefing on Srebrenica," paras. 3.2., 6.23.

⁷⁸⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 99. Bosnian Muslim villages in the south of the enclave were under fire and the population was being driven into the Srebrenica town. Pieter Boering, T. 1923 (19 Sept 2006).

⁷⁸⁶ Ex. P02974, "Memorandum from Colonel Karremans to Commander, BiH Command HQ, 9 July 1995". Nicolai agreed to the last sentence of Karremans' assessment. Cornelis Nicolai, T. 18480 (29 Nov 2007).

⁷⁸⁷ Joseph Kingori, T. 19224 (13 Dec 2007). UNMO reported hearing 78 explosions from the Srebrenica town between 2 p.m. and 3:16 p.m. Ex. P00499, "UNMO report, 9 July 95, 17:00".

⁷⁸⁸ Prosecution Adjudicated Facts Decision, Annex, Fact 100; Cornelis Nicolai, T. 18474 (29 Nov 2007).

⁷⁸⁹ Robert Franken, T. 2461 (16 Oct 2006).

⁷⁹⁰ Vinko Pandurević, T. 30859 (29 Jan 2009). **Pandurević** felt that the TG-1 had completed the task given for *Krivaja-95*. Vinko Pandurević, T. 30860 (29 Jan 2009).

2. The Takeover of Srebrenica Town

252. Late on 9 July, Karadžić issued an order authorising the VRS to capture Srebrenica town.⁷⁹¹ This order was sent by Tolimir from the Main Staff to the IKM in Pribićevec, by way of a telegram addressed to **Gvero** and Krstić personally.⁷⁹² This changed the objective of the “*Krivaja-95*” operation from reducing the enclave to the urban area to the taking-over of Srebrenica town.⁷⁹³

253. At around the same time, DutchBat Bravo Company was ordered to defend Srebrenica town by taking blocking positions on the south edge of town.⁷⁹⁴ The DutchBat positions were established at about 6:30 a.m. on 10 July.⁷⁹⁵ From one of the blocking positions, DutchBat soldiers observed the shelling of Srebrenica town, and the explosion of houses and smoke could be seen.⁷⁹⁶ In the afternoon, the VRS attacked the DutchBat blocking positions.⁷⁹⁷ This led DutchBat to request air support from UNPROFOR headquarters in Sarajevo.⁷⁹⁸ However, no NATO air support was received on that day.⁷⁹⁹

254. Before dawn on the morning of 10 July, the 28th Division counter-attacked and pushed TG-1 almost back to its starting positions, so that TG-1 lost all the positions it had taken the day before.⁸⁰⁰ Sometime before noon on 10 July, **Pandurević** had a radio communication (via RUP-12)

⁷⁹¹ Prosecution Adjudicated Facts Decision, Annex, Fact 101; Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995” (stating that *inter alia* that Karadžić had “agreed with the continuation of operations for the takeover of Srebrenica, disarming of Muslim terrorist gangs and complete demilitarisation of the Srebrenica enclave.”). See also Miroslav Deronjić, Ex. P03139a “confidential – 92 quater transcript”, BT. 6132 (19 Jan 2004).

⁷⁹² Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”.

⁷⁹³ Vinko Pandurević, T. 31061, 31063 (3 Feb 2009) (explaining that “the aim of the operation was changed” when on 9 July “the document reached the IKM of the corps at Pribićevec saying that the President of the Republic was satisfied with the progress of the operation, and that he approved the continuation of the operation and the VRS to enter Srebrenica”). See also Vinko Pandurević, T. 31332 (12 Feb 2009) (explaining that “the very appearance of General Mladić at the forward command post of the Drina Corps and his order that they should continue in the direction of Srebrenica changed the course of the operation itself and expanded its goals”).

⁷⁹⁴ Robert Franken, T. 2462–2464 (16 Oct 2006); Ex. P02263, “Order from Franken to Groen, 9 July 1995”. Franken issued an order to Captain Groen, which is described as “a seriously meant green order”, to use all military means available and to behave as a “normal army” and not under the restrictions of the UN mission. Robert Franken, T. 2464–2465 (16 Oct 2006).

⁷⁹⁵ Robert Franken, T. 2471 (16 Oct 2006). See also Cornelis Nicolai, T. 18482 (29 Nov 2007).

⁷⁹⁶ Leendert van Duijn, T. 2265–2266 (27 Sept 2006).

⁷⁹⁷ Cornelis Nicolai, T. 18482 (29 Nov 2007); Robert Franken, T. 2472–2473 (16 Oct 2006).

⁷⁹⁸ Cornelis Nicolai, T. 18482 (29 Nov 2007). Boering testified that at some point in July 1995, Colonel Karremans stated in the meeting with the ABiH leaders of the enclave that UN air support would be provided. Pieter Boering, T. 1923, 1926 (19 Sept 2006). According to Nicolai, the Chief of Staff of UNPROFOR from the end of February until early September 1995, Sarajevo approved the request, but Zagreb headquarters hesitated to give ultimate decision, which delayed the actual deployment of air support. Cornelis Nicolai, T. 18482–18483, 18446–18447 (29 Nov 2007).

⁷⁹⁹ Prosecution Adjudicated Facts Decision, Annex, Fact 113.

⁸⁰⁰ Vinko Pandurević, T. 30861–30862 (29 Jan 2009); Ex. 7D00474, “Interim Combat Report from the Drina Corps Command signed by Krstić, 10 July 1995”. According to Dragutinović, the VRS was pushed by 28th Division to Biljeg, where a DutchBat OP was located with forces of 28th Division in the immediate vicinity. Miodrag Dragutinović, T. 12572–12573 (13 June 2007), T. 12687 (15 June 2007).

with Mladić at the Drina Corps Pribićevac IKM,⁸⁰¹ who ordered that the positions lost that day be re-taken urgently.⁸⁰² In the afternoon, TG-1 managed to re-take one of the lost features.⁸⁰³ Ultimately that day, TG-1 was able to recapture the lost positions.⁸⁰⁴ Among the VRS, 6 soldiers were killed and 10 were wounded, mainly from the members of TG-1.⁸⁰⁵

255. On 10 July, the situation in Srebrenica town was tense.⁸⁰⁶ Villages in the Srebrenica enclave fell and the siege got tighter, which resulted in Bosnian Muslims streaming into Srebrenica town.⁸⁰⁷ Numerous rockets were launched into Srebrenica town.⁸⁰⁸ There was intense shelling of Srebrenica town with more than 160 or 200 detonations, and DutchBat could count about 32 VRS active artillery or mortar positions.⁸⁰⁹ The Bravo Company compound was also shelled.⁸¹⁰ At 11 a.m., two heavy shells, probably 155mm artillery shells, hit the direct surroundings of the hospital where 2,000 civilians had gathered for refuge, and six of them were killed.⁸¹¹ On 10 July, the ABiH was still present in Srebrenica town but they started leaving the enclave that night.⁸¹²

256. On 10 July, Colonel Salapura, Chief of the Intelligence Department of the Main Staff, ordered members of the 10th Sabotage Detachment to be sent to Srebrenica.⁸¹³ On the same day, **Borovčanin** was designated as a commander of a new independent MUP unit, consisting of the 2nd Šekovići Detachment of the RS MUP Special Police Brigade ("SBP 2nd Šekovići Detachment"), the 1st Company of the PJP of the Zvornik SJB ("1st PJP Company"), a mixed company of joint

⁸⁰¹ Vinko Pandurević, T. 30862 (29 Jan 2009).

⁸⁰² *Ibid.*, T. 30863 (29 Jan 2009).

⁸⁰³ *Ibid.*, T. 30863 (29 Jan 2009). It was the Zivko Bojn feature. *Ibid.*

⁸⁰⁴ *Ibid.*, T. 30865 (29 Jan 2009).

⁸⁰⁵ *Ibid.*, T. 30873-30874 (30 Jan 2009); Ex. 7D00474, "Drina Corps interim combat report signed by Krstić, 10 July 1995".

⁸⁰⁶ Prosecution Adjudicated Facts Decision, Annex, Fact 104.

⁸⁰⁷ Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4. People were streaming into Srebrenica and reporting that the VRS was burning villages. Joseph Kingori, T. 19232 (13 Dec 2007).

⁸⁰⁸ Joseph Kingori, T. 19237 (13 Dec 2007); Ex. P00505, "UNMO Report, 10 July 95", p. 3.

⁸⁰⁹ Robert Franken, T. 2473-2474 (16 Oct 2006). UNMO reported that from morning until 12:30 p.m. over 100 detonations were confirmed in Srebrenica. 49 shells were also recorded from 12:50 p.m. to 1:53 p.m.. Ex. P00505, "UNMO Report, 10 July 95", p. 3.

⁸¹⁰ Robert Franken, T. 2473 (16 Oct 2006), T. 2551 (17 Oct 2006). Not only ABiH positions but also UN positions and civilians were fired at by the VRS. Cornelis Nicolai, T. 18485 (29 Nov 2007). On 10 July, one mortar grenade hit close to Bravo Company and wounded a little boy. Pieter Boering, T. 1932 (19 Sept 2006).

⁸¹¹ Prosecution Adjudicated Facts Decision, Annex, Fact 106; Joseph Kingori, T. 19229-19230 (13 Dec 2007); Ex. P00501, "UNMO Report, 10 July 95, 10:25". All the windows of the hospital were smashed and shrapnel had showered the walls and rooms of the hospital, which made the surgery very difficult. Ex. P00501, "UNMO Report, 10 July 95, 10:25", para. 2. Kingori personally inspected the hospital and stated that it did not appear to be in use as a military facility. Joseph Kingori, T. 19223 (13 Dec 2007). Asked by **Miletić** whether it was possible that the ABiH soldiers and the headquarters of the ABiH 28th Division was the target of the VRS shelling of Srebrenica town on 10 July, Robert Franken responded: "Yes, it is possible, but I have to make one remark: Then they were very poor gunners because they hit the whole city instead of those two locations." Robert Franken, T. 2646-2647 (18 Oct 2006).

⁸¹² Cornelis Nicolai, T. 18527 (30 Nov 2007); Leendert van Duijn, T. 2267-2268 (27 Sept 2006); Robert Franken, T. 2584 (17 Oct 2006), T. 2646 (18 Oct 2006).

⁸¹³ Dragan Todorović, T. 13998 (21 Aug 2007); Ex. P02869, "10th Sabotage Detachment Order, 10 July 1995". See *supra* paras. 119, 127.

Republic of Serbian Krajina, Serbian and RS MUP forces and a company from Jahorina deserters unit of the Jahorina Training Centre (“1st Company of the Jahorina Recruits”).⁸¹⁴

257. On the morning of 11 July, DutchBat realised that members of the ABiH 28th Division had disappeared.⁸¹⁵ The Bosnian Muslim population was continuing to move into Srebrenica town from the outer enclave.⁸¹⁶ Thousands of people, desperate for protection, crowded around the DutchBat Bravo Company compound in Srebrenica town, eventually forcing their way inside.⁸¹⁷ The chaotic scene was exacerbated when mortar shells landed inside the compound around noon, wounding several people.⁸¹⁸ There were some people wounded and killed in Srebrenica town.⁸¹⁹ Following the shelling of Bravo Company compound and with the encouragement of the DutchBat troops, Bosnian Muslims began to move north from Srebrenica town towards Potočari.⁸²⁰ The shelling followed them on the journey to Potočari.⁸²¹

258. DutchBat sent urgent requests for NATO air support to defend Srebrenica town, but no assistance was forthcoming until around 2:30 p.m. on 11 July, when NATO bombed the VRS tanks advancing towards the town.⁸²² NATO planes also attempted to bomb the VRS artillery positions overlooking the town, but had to abort the operation due to poor visibility.⁸²³ In the afternoon, **Gvero** called the UNPROFOR headquarters in Sarajevo,⁸²⁴ saying that unless the air support stopped immediately “General Nicolai, in the capacity of the Commander’s deputy, would be held

⁸¹⁴ Ex. P00057, “RS Ministerial Order 64/95 to MUP units, type-signed Tomislav Kovac, 10 July 1995”, paras. 1–4.

⁸¹⁵ Robert Franken, T. 2479 (16 Oct 2006).

⁸¹⁶ *Ibid.*, T. 2479–2480 (16 Oct 2006).

⁸¹⁷ Prosecution Adjudicated Facts Decision, Annex, Fact 108.

⁸¹⁸ *Ibid.*, Fact 109; Joseph Kingori, T.19538–19539 (11 Jan 2008).

⁸¹⁹ Mirsada Malagić, Ex. P02218, “92 bis transcript”, KT. 1944–1945 (3 Apr 2000) (testifying that before her departure from Srebrenica, shells had fallen among a group of people and she was one of those wounded; and that as she left Srebrenica, at the first UNPROFOR base, not far from Srebrenica, shells fell and a number of people including her were wounded); PW-126, T. 3598–3599 (6 Nov 2006) (testifying that on 11 July people were leaving Srebrenica because they saw others being killed and that she heard a woman screaming that her son was killed).

⁸²⁰ Prosecution Adjudicated Facts Decision, Annex, Fact 110; Robert Franken, T. 2480 (16 Oct 2006), T. 2550–2551 (17 Oct 2006).

⁸²¹ Leendert van Duijn, T. 2268–2270 (27 Sept 2006) (testifying that shells fell around him as he was facilitating the withdrawal of refugees from Bravo Company compound to Potočari); Robert Franken, T. 2480–2481 (16 Oct 2006) (testifying that he received reports on the shelling of the column of refugees by mortar and artillery as it left the Bravo Company compound in Srebrenica towards Potočari), T. 2610–2611 (17 Oct 2006) (testifying that according to the reports he received, the people who went in a column from Srebrenica to Potočari were shelled and that wounded people from the column were picked up by DutchBat soldiers and brought in APCs to the DutchBat hospital). *But see* Judge Kwon’s Separate Opinion, *infra*, fn. 849.

⁸²² Prosecution Adjudicated Facts Decision, Annex, Fact 113.

⁸²³ *Ibid.*, Fact 114. Pieter Boering testified that limited air support was provided. Pieter Boering, T. 1927–1928 (19 Sept 2006). Nicolai testified that the close air support was conducted at a small scale with a limited number of planes. Cornelis Nicolai, T. 18486 (29 Nov 2007).

⁸²⁴ Cornelis Nicolai, T. 18486–18488, 18512 (29 Nov 2007); Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995 at 16:15 hours”.

responsible for all further developments and the destiny of his men and the civilian population in Srebrenica”.⁸²⁵

259. At that point, the DutchBat compound in Potočari was flooded with Bosnian Muslims from Srebrenica town and there were thousands in the open air in the areas surrounding the compound.⁸²⁶ NATO plans to continue the air strikes were abandoned following the VRS threats to kill DutchBat troops being held by the VRS, as well as threats to shell the DutchBat compound in Potočari and surrounding areas.⁸²⁷

260. On 11 July, the VRS took Srebrenica town.⁸²⁸ In the morning, **Pandurević** received an oral order from Krstić to proceed with TG-1 and to take control of Srebrenica town and the surrounding features.⁸²⁹ Between 1 and 2 p.m., members of the 10th Sabotage Detachment reached the centre of Srebrenica town.⁸³⁰ More VRS soldiers then started to descend from the surrounding hills.⁸³¹ Approximately between 4 and 5 p.m., a combat group of TG-1 moved east of Srebrenica town and took control of the features closest to the town, while the other combat group went into the town and took control of a feature west of town.⁸³² TG-2 was to cover the general area more to the west.⁸³³ TG-1 entered Srebrenica town and based its command in the police station.⁸³⁴ On that day, Mladić, Živanović, Krstić, **Popović** and **Pandurević** walked through the empty streets of Srebrenica town.⁸³⁵ They were met by members of the 10th Sabotage Detachment, the Drina

⁸²⁵ Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995 at 16:15 hours”; Ex. P02374a (confidential); Cornelis Nicolai, T. 18486–18487 (29 Nov 2007). According to Nicolai, it meant that unless the air support stopped, the DutchBat compound in Potočari and surrounding areas would be shelled. In cross-examination, Nicolai confirmed that notes of the telephone conversation between **Gvero** and himself did not reflect that the compound in Potočari was to be shelled. But he maintained his position stating that “at the moment of this conversation, when General Gvero pointed out the consequences, I took that as being the threat of shelling the compound”. *Ibid.*, T. 18486–18487, 18511 (29 Nov 2007).

⁸²⁶ Cornelis Nicolai, T. 18487 (29 Nov 2007).

⁸²⁷ Prosecution Adjudicated Facts Decision, Annex, Fact 115.

⁸²⁸ Prosecution Adjudicated Facts Decision, Annex, Fact 107; Miroslav Deronjić, Ex. P03139a, “confidential – 92 quater transcript”, BT. 6155–6156 (19 Jan 2004); Božo Momčilović testified that on 11 July, late in the afternoon or in the evening, the Serb forces entered Srebrenica and the IKM was closed down. Božo Momčilović, T. 14098, 14115 (22 Aug 2007).

⁸²⁹ Vinko Pandurević, T. 30867 (29 Jan 2009), T. 30874–30875 (30 Jan 2009).

⁸³⁰ Dražen Erdemović, T. 10946–10948 (4 May 2007). Erdemović stated that he thought the location was the centre of town where there were buildings and a mosque. Dražen Erdemović, T. 10946. According to **Pandurević**, in the morning of 11 July, he had seen members of the 10th Sabotage Detachment. Vinko Pandurević, T. 30880 (30 Jan 2009).

⁸³¹ Dražen Erdemović, T. 10946–10948 (4 May 2007).

⁸³² Vinko Pandurević, T. 30875–30876 (30 Jan 2009).

⁸³³ *Ibid.*, T. 30875 (30 Jan 2009).

⁸³⁴ Miodrag Dragutinović, T. 12689 (15 June 2007).

⁸³⁵ Ex. P02047, “Srebrenica Trial Video”, 00:24:30–00:33:15; Jean René Ruez, T. 1330 (8 Sept 2006); Vinko Pandurević, T. 30882 (30 Jan 2009).

Wolves and the Romanija Brigade.⁸³⁶ Mladić repeatedly instructed the soldiers to continue to Potočari and Bratunac.⁸³⁷

261. Upon their arrival in Srebrenica town, members of the 10th Sabotage Detachment were calling on the few people who remained to leave their houses.⁸³⁸ Members of the Detachment sent about 200 civilians up towards the football field on the other side of the town of Srebrenica.⁸³⁹

262. On the same day, Karadžić appointed Miroslav Deronjić Civilian Commissioner of the “Serbian Municipality of Srebrenica” with the task to revitalise the area for the return of displaced Serbs.⁸⁴⁰

3. Movement of the Population from Srebrenica Town to Potočari

263. On 10 July groups of the civilian population in Srebrenica town started moving north towards Potočari.⁸⁴¹ On the evening of 10 July, the ABiH 28th Division stopped the Bosnian Muslim civilian population who tried to leave Srebrenica town for Potočari and told them to return.⁸⁴² The same evening, 1,500 armed men gathered in the marketplace in Srebrenica town.⁸⁴³ That was the last time DutchBat noticed the presence of ABiH 28th Division in Srebrenica town.⁸⁴⁴

264. On 11 July, thousands of Bosnian Muslims fled Srebrenica to Potočari seeking protection within the DutchBat compound.⁸⁴⁵ Major Robert Franken, Deputy Commanding Officer of DutchBat, issued an order to Captain Groen, the Bravo Company Commander, to withdraw from Srebrenica and follow the tail of the Bosnian Muslims in a northern direction.⁸⁴⁶

⁸³⁶ Dražen Erdemović, T. 10947–10948, 10951 (4 May 2007); Jean René Ruez, T. 1329 (8 Sept 2006); Ex. P02047, “Srebrenica Trial Video”, 00:24:30–00:24:39, 00:28:20–00:28:58; Ex. P02048 “Srebrenica Trial Video Transcript”, pp. 7, 9.

⁸³⁷ Ex. P02047, “Srebrenica Trial Video”, 00:25:45–00:26:20, 00:28:00–00:28:13, 00:29:00–00:29:30, 00:30:28–00:30:36, 00:31:11–00:31:50; Ex. P02048 “Srebrenica Trial Video Transcript”, pp. 7–12.

⁸³⁸ Prosecution Adjudicated Facts Decision, Annex, Fact 119; Dražen Erdemović, T. 10944, 10953 (4 May 2007).

⁸³⁹ Dražen Erdemović, T. 10953 (4 May 2007). See Prosecution Adjudicated Facts Decision, Annex, Fact 119.

⁸⁴⁰ Prosecution Adjudicated Facts Decision, Annex, Fact 118; Ex. P00010, “Republika Srpska Presidential Directive 01-1340/95 (01-1350/95)”. According to Deronjić, Karadžić asked him to take care of the Serb and Muslim civilians who had left Srebrenica and who were in Potočari. Miloslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6157 (19 Jan 2004).

⁸⁴¹ Pieter Boering, T. 1931 (19 Sept 2006), T. 1937 (21 Sept 2006). During the night of 10 July, Van Duijn saw people fleeing from the south with everything they could carry to the northern part of the enclave. Leendert van Duijn, T. 2267 (27 Sept 2006).

⁸⁴² Robert Franken, T. 2583 (17 Oct 2006).

⁸⁴³ *Ibid.*, T. 2584 (17 Oct 2006), T. 2646 (18 Oct 2006).

⁸⁴⁴ *Ibid.*, T. 2584 (17 Oct 2006).

⁸⁴⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 120. Vincent Egbers said that it would be correct to say the movement of people from Srebrenica to Potočari was initiated by the UN because the population was panicking and did not know what to do. Vincent Egbers, T. 2879 (20 Oct 2006).

⁸⁴⁶ Robert Franken, T. 2435, 2480 (16 Oct 2006). Franken wanted the Bravo Company to stay between the Serbs and the civilians and to bring the civilians to Potočari. *Ibid.*, T. 2480 (16 Oct 2006).

265. Several thousand Bosnian Muslims were moving along the road from Srebrenica to Potočari, most of them on foot.⁸⁴⁷ The Trial Chamber finds that the population was shelled and shot at as it left and proceeded along the road from Srebrenica town to Potočari.⁸⁴⁸ Some people were wounded, there were dead bodies along the road, and the civilians were terrified.⁸⁵⁰ DutchBat

⁸⁴⁷ Johannes Rutten, T. 4834 (30 Nov 2006); Ex. 6DIC00054, "Aerial image marked by Rutten"; Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3394–3395 (24 May 2000).

⁸⁴⁸ Prosecution Adjudicated Facts Decision, Annex, Fact 121; PW-126, T. 3599–3600 (6 Nov 2006) (testifying that when PW-126 left Srebrenica around 11:00 and moved slowly to Potočari there was constant shelling; when large shells fell as they walked along the road to Potočari, she and her brother would hide behind trees or houses, and continue after things calmed down); Momir Nikolić, T. 32977–32978 (22 Apr 2009) (testifying that in the afternoon of 11 July, the civilians who were on the move from Srebrenica to Potočari were targeted by the 2nd Battalion of the Bratunac Brigade; Momir Nikolić heard from the people who had targeted the civilians moving to Potočari, that they thought it was the movement of the Muslim force, however Momir Nikolić believed it to be an excuse; Momir Nikolić learned from members of DutchBat and military monitors that civilians were targeted; in Momir Nikolić's view, one could clearly see from the location of 2nd Battalion and other locations of Bratunac Brigade whether the people on move were armed or not); Vincent Egbers, T. 2717–2718 (18 Oct 2006) (testifying that when he placed people on the APC and started moving towards Potočari, they were shelled on the left and right side of the road, by mortar, four or five times, before he left; as a result of the firing people in the column were very, very scared), T. 2882 (20 Oct 2006) (testifying that there were grenades falling 100 metres from the colony); Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1946–1947 (3 Apr 2000) (testifying that after she set off from Srebrenica to Potočari, all along the way, that is about four kilometres to the UNPROFOR base, shells were falling down both sides of the road; those shells were more intended to frighten children and helpless people); PW-118, Ex. P02210, "confidential – 92 *ter* transcript", KT. 1330 (27 Mar 2000) (testifying that there was some shelling, but he cannot be sure whether the column itself was targeted; there were lots of shells falling in the vicinity of the road); PW-121, Ex. P02227, "92 *ter* transcript", KT. 5751 (26 July 2000) (testifying that on the way to Potočari, the shells kept falling around her); PW-125, T. 3309 (31 Oct 2006) (testifying that as people were walking towards Potočari, they were not directly shelled but shells were falling around them); Leendert van Duijn, T. 2268–2270 (27 Sept 2006); Robert Franken, T. 2480–2481 (16 Oct 2006) (testifying that he was informed by the commander of the Bravo Company that the population moving towards Potočari was shelled by mortar and artillery), T. 2610–2611 (17 Oct 2006); Pieter Boering, T. 1938 (21 Sept 2006) (testifying that shots from a combination of firearms, rifles, machine-guns, and occasional shelling, of mortars, were audible, although they were not a very close range).

⁸⁴⁹ **Judge Kwon's Separate Opinion:** I respectfully disagree with the majority's finding that either "the shelling followed [the Bosnian Muslims] on the journey to Potočari", as in *supra para. 257*, or "the population was shelled and shot at as it left and proceeded along the road from Srebrenica town to Potočari", as in the above main text. I feel compelled to write separately because, in my view, the evidence presented before the Trial Chamber does not substantiate such a finding and the finding as currently formulated may be misleading. There is no evidence that shells landed among the Bosnian Muslims moving from Srebrenica town to Potočari or that the people were targeted or shot at from close range. The evidence cited by the majority (except for Prosecution Adjudicated Fact 121 and Momir Nikolić's evidence, which still does not clearly address the context and the way in which the Bosnian Muslims were shelled and shot at) in the previous footnote 848 does not support such a finding. Most of the evidence adduced indicates that shells fell nearby or around the road. In addition, in this regard, I recall Franken's testimony that "if [the Bosnian Serb Forces] wanted to kill everybody in that column, they could have done so". *Robert Franken, T. 2611 (17 Oct 2006)*. While I accept that some shells landed in the vicinity of the Bosnian Muslim population fleeing to Potočari, I cannot agree that they were "shelled and shot at", as intentional targets.

⁸⁵⁰ PW-126, T. 3599 (6 Nov 2006) (testifying that there were dead people and blood along the road, and there were a lot of people screaming for help; there were those covered in blood and dead and not moving); Momir Nikolić, T. 32977–32978 (22 Apr 2009) (testifying that he learned from members of DutchBat and military monitors that civilians were targeted, and those who were wounded during the attack were evacuated and given medical assistance by DutchBat members); Robert Franken, T. 2610–2611 (17 Oct 2006) (testifying that according to the reports he received, the people who went in a column from Srebrenica to Potočari were shelled and that wounded people from the column were picked up by DutchBat soldiers and brought in APCs to the DutchBat hospital). *But see* Vincent Egbers, T. 2882–2883 (20 Oct 2006) (testifying that nobody was killed when grenades fell 100 meters from the column; the injured people who were on his APC came from the hospital, and were not picked up along the road).

soldiers were guiding the fleeing population towards Potočari and DutchBat trucks were sent from Potočari to assist in transporting the population.⁸⁵¹

266. From around 3 p.m. on 11 July, Bosnian Muslims, mostly women, children and elderly started arriving at the DutchBat compound in Potočari—first in small groups and then in a large constant stream.⁸⁵² People were directed to enter the DutchBat compound through the hole in the fence at the rear.⁸⁵³ By around 6 p.m., when 4,000 or 5,000 Bosnian Muslims were in the compound, additional Bosnian Muslims were prevented from entering.⁸⁵⁴ They were spread in the neighbouring factories, the bus station, empty houses, or further away on the western side of the road.⁸⁵⁵ By the end of 11 July, in addition to those people inside the DutchBat compound there were about 15,000 people outside it.⁸⁵⁶ This figure also included about 300 Bosnian Muslim men in the DutchBat compound and approximately 600 to 800 Bosnian Muslim men outside it.⁸⁵⁷ Major Franken ordered Major Otter to find a safe route to guide the people into the DutchBat compound in Potočari because the road in front of the compound was in direct sight of the VRS artillery, including the anti-tank gun located in the area of OP Papa which had been firing all the time at the

⁸⁵¹ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2113, 2181 (5 Apr 2000); Johannes Rutten, T. 4883 (30 Nov 2006). According to Vincent Egbers, about 20 people were in and on his APC. Vincent Egbers, T. 2883 (20 Oct 2006).

⁸⁵² Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3391–3392 (24 May 2000). *See also* Eelco Koster, T. 3035–3036 (26 Oct 2006) (stating that an injured woman had arrived in Potočari on the evening of 10 July); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2111 (5 Apr 2000).

⁸⁵³ The hole was made by the DutchBat at the evening of 10 July and was sealed. It was reopened on 11 July. Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2108, 2110–2113 (5 Apr 2000).

⁸⁵⁴ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2113 (5 Apr 2000).

⁸⁵⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 122; Robert Franken, T. 2485 (16 Oct 2006); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1020 (10 July 2003); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3393–3394 (24 May 2000); Jean René Ruez, T. 1314–1318 (7 Sept 2006) (indicating the DutchBat compound in Potočari and the surrounding factories); Ex. P01545, “Video Srebrenica to Potočari/Susnjari”, 00:42 (showing the express compound that was used by the bus company), 00:36–01:06 (showing the blue factory which was just before the DutchBat compound), 01:22–01:25 (showing the Akumulator factory which was used by the UN battalion as its main base); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2113 (5 Apr 2000).

⁸⁵⁶ Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3395–3396 (24 May 2000); PW-115, Ex. P02200, “92 *bis* transcript”, BT. 6082–6083 (17 Dec 2003); Robert Franken, T. 2487–2488 (16 Oct 2006). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 122 (stating that by the end of 11 July, an estimated 20,000 to 25,000 Bosnian Muslims were gathered in Potočari); Ex. P00510 “UNMO daily sitrep, 11 July 1995”, p. 4 (stating that at 4:00 p.m. already 20,000 refugees have come to the DutchBat compound in Potočari and the number is growing steadily, and at 5:30 p.m. the refugees are still coming into the compound); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1020 (10 July 2003); Ex. 1D00035 “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation of Srebrenica 12 July 1995,” p. 2; Pieter Boering, T. 1939 (21 Sept 2006); Vincent Egbers, T. 2719 (18 Oct 2006).

⁸⁵⁷ Robert Franken, T. 2489 (16 Oct 2006). *See also* Exs. 1D00463, 4D00017 “Interim Combat Report Army General Staff Republic of Bosnia and Herzegovina signed by Chief of Staff Enver Hadžihasanović 12 July 1995”, pp. 1–2 (reading in part that around 11 p.m. of 11 July, there were between 15,000 and 20,000 refugees in the zone of combat activities, together with 300 ABiH combatants in the camp in Potočari); Leendert van Duijn, T. 2350–2351 (28 Sept 2006). When shown Ex. 1D00463 Van Duijn stated that the figures of 15,000 to 20,000 refugees and 300 “fighters” of the ABiH in the DutchBat compound in Potočari seemed incorrect to him and that in any case, the total number of men of military age he saw on 12 and 13 July 1995, and the men that were singled out was over 350. *Ibid.*

compound.⁸⁵⁸ Between 6:45 p.m. and 8:51 p.m., 45 shells flew over the DutchBat compound causing a lot of panic among the Bosnian Muslims who had taken refuge but deliberately missing the buildings.⁸⁵⁹

4. Formation and Movement of the Column

267. On the evening of 11 July 1995, word spread through the Bosnian Muslim community that while the women and the more feeble were to go to Potočari, the able-bodied men should gather at Šušnjari,⁸⁶⁰ a village on the edge of the Srebrenica enclave, located in a valley several kilometres north-west of Srebrenica.⁸⁶¹ Instead of continuing along the road to Potočari, Bosnian Muslim men separated from their families at the Lehovići hill, north-west of Srebrenica⁸⁶² and went into the woods and walked towards Šušnjari.⁸⁶³ The testimony of various Bosnian Muslim witnesses

⁸⁵⁸ Robert Franken, T. 2481 (16 Oct 2006); Robert Franken marked on Ex. PIC00017, "Aerial Potočari", where the UN base, the bus compound, and the abandoned factories were located; and indicated the route that Major Otter had established for the reception of the refugees. Robert Franken, T. 2482–2483 (16 Oct 2006).

⁸⁵⁹ Ex. P00511, "UNMO Report dated 11 July 1995, 19:10" (stating that also around 6:40 p.m. 22 rockets and shells have been fired towards Budak and Gradac); Joseph Kingori, T. 19237, 19240–19241 (13 Dec 2007) (testifying that the sound of those 22 rockets were very scary to the civilians who were gathering at the compound). *See also* Eelco Koster, T. 3037–3038, 3044–3045, 3057 (26 Oct 2006) (testifying that on 11 July, shells fell in between the houses in the vicinity of the refugees); Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3399 (24 May 2000); Ex. 1D00035, "Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995," p. 1.

⁸⁶⁰ PW-139, Ex. P02288, "confidential – 92 *ter* statement" (28 May 2000), para. 2; PW-110, T. 812 (25 Aug 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 245. The evidence presented before the Trial Chamber does not clearly establish the source of the decision to head to Šušnjari and the manner in which it was communicated. One witness gave evidence that "civilian structures" had ordered the move. PW-116, Ex. P02205, "92 *bis* transcript", KT. 2943 (14 Apr 2000). Another witness testified that "Army Command" had ordered all able bodied men to go to Šušnjari. PW-113, Ex. 4D00048 "confidential – 92 *ter* statement" (24 July 1995), p. 2. Salčinović's husband, who was a soldier in the ABiH, told her that he had been ordered to leave before Srebrenica fell. Samila Salčinović, Ex. P03233, "92 *bis* statement" (18 June 2000), p. 3. Ibišević testified that "military leadership" in Srebrenica told women, children and the elderly to head for the DutchBat base in Potočari, and grown men to try to break through the woods to Tuzla. Šehra Ibišević, Ex. P03235, "92 *bis* statement" (21 June 2000) p. 2. Other witnesses testified that the surrounding chaos and panic made them flee in a direction opposite to Potočari. PW-111, T. 6972 (6 Feb 2007), T. 7032–7033 (7 Feb 2007); PW-106, T. 3950 (15 Nov 2006); Osman Salkić, Ex. P02225, "92 *bis* statement" (4 Dec 2004), p. 4; PW-117, Ex. P02207, "92 *bis* transcript", KT. 3016–3017 (14 Apr 2000). Mevludin Orić, commander of a Bosnian Muslim "defence squad" in the villages neighbouring Lehovići, testified that no order was issued for the Bosnian Muslim men to gather at Šušnjari. Mevludin Orić, T. 974, 985, 987 (29 Aug 2006). Prior to the gathering of men, PW-113 heard from BiH soldiers and UNPROFOR that NATO airplanes were expected to bomb the Serbian army. He also heard that BiH soldiers were planning to launch a counter-attack to capture lost positions. PW-113, T. 3378 (1 Nov 2006); Ex. 4D00048, "confidential – 92 *ter* statement" (24 July 1995), p. 2. At the exit of the Srebrenica enclave, ham operators broadcasted that NATO planes would react and that people should wait and not leave Srebrenica yet. PW-106, T. 3945 (15 Nov 2006).

⁸⁶¹ PW-110, T. 794–795 (25 Aug 2006); Mevludin Orić, T. 872 (28 Aug 2006) (stating that Šušnjari was selected as a gathering location because, as surrounded by hills, the village was best protected from shelling and could not easily be observed).

⁸⁶² Ex. PIC00019, "Map of Srebrenica marked by Egbers".

⁸⁶³ PW-116, Ex. P02205, "92 *bis* transcript", KT. 2943 (14 Apr 2000); PW-139, Ex. P02288, "confidential – 92 *ter* statement" (28 May 2000), para. 2; PW-112, Ex. P02272, "confidential – 92 *ter* transcript", KT. 3239 (23 May 2000); Šehra Ibišević, Ex. P03235, "92 *bis* statement" (21 June 2000) p. 2. (testifying that women, children, and a number of men who did not want to leave their families went to Potočari, while other fit men tried to get through the woods to free territory); Osman Salkić, Ex. P02225, "92 *bis* statement" (4 Dec 2004), p. 4; PW-117, Ex. P02207, "92 *bis* transcript", KT. 3016–3017 (14 Apr 2000). *See also* PW-111, T. 6972 (6 Feb 2007), T. 7032–7033 (7 Feb 2007) (PW-111 went to Jaglići).

indicates that the men attempted to escape in a column because they feared they would be killed if they remained there once the enclave fell into Bosnian Serb hands.⁸⁶⁴

268. At about 7 p.m. on 11 July, the Command of the ABiH 28th Division arrived from Srebrenica in Šušnjari, after which time people started to gather in “Sead’s house”.⁸⁶⁵ At around 10 p.m., those present in “Sead’s house”, including the Bosnian Muslim authorities of Srebrenica, and Ramiz Bećirović, who was Chief of Staff of the ABiH 28th Division and standing in for its commander, Naser Orić, deliberated and decided to set off in a column, towards the ABiH-controlled territory in the north.⁸⁶⁶ This decision was then communicated by word of mouth.⁸⁶⁷ Since Šušnjari was south of the Bratunac–Konjević Polje Road, which was the main asphalt road in the area,⁸⁶⁸ moving towards Tuzla meant breaking through VRS-held positions and eventually crossing the Konjević Polje–Nova Kasaba area.⁸⁶⁹

269. Before midnight on 11 July, the column was formed at the entrance of Buljim, a village close to the villages of Jaglići and Šušnjari.⁸⁷⁰ Around midnight,⁸⁷¹ the column, which was

⁸⁶⁴ See Mevlida Bektić, Ex. P03245, “92 bis statement” (16 June 2000), p. 2; Hana Mehmedović, Ex. P03244, “92 bis statement” (17 June 2000), p. 2; Salih Mehmedović, Ex. P03241, “92 bis statement,” (15 June 2000), p. 2; Hanifa Hafizović, Ex. P03230, “92 bis statement” (16 June 2000), p. 2 (stating that her son-in-law and his brother were afraid to get killed if they went to the DutchBat compound in Potočari and that indeed all the men who went to Potočari were killed); PW-112, Ex. P02272, “confidential – 92 ter transcript”, KT. 3239 (23 May 2000) (stating that he left for the woods as after the Bosnian Serbs took over the Srebrenica town because the situation was chaotic and there was no way out as they could only expect death, and there was no protection from DutchBat). See also Samila Salčinović, Ex. P03233, “92 bis statement” (18 June 2000), p. 3 (stating that male members of her family were afraid to go to Potočari); PW-127, T. 3509, 3537 (2 Nov 2006) (stating that it was evident that the objective of the Bosnian Serbs was “to kill all of us”. PW-127 concluded this “because of everything that had been happening from the beginning of the war, and all the shelling in Srebrenica.” He also stated “that because we were Muslims, they wanted to kill us.” That is why he left with the column); PW-111, T. 6972 (6 Feb 2007) (stating that the situation in Srebrenica was chaotic, the artillery and shelling attacks were intense, so they had to leave and he left with the column).

⁸⁶⁵ Mevludin Orić, T. 871–872 (28 Aug 2006), T. 1076–1077 (30 Aug 2006).

⁸⁶⁶ Prosecution Adjudicated Facts Decision, Annex, Facts 245–246; Mevludin Orić, T. 990–992 (29 Aug 2006), T. 1077 (30 Aug 2006), T. 1100 (31 Aug 2006); PW-139, Ex. P02288, “confidential – 92 ter statement” (28 May 2000), para. 2; PW-110, T. 812–814 (private session) (25 Aug 2006); PW-112, Ex. P02272, “confidential – 92 ter transcript”, KT. 3241–3242 (23 May 2000) (testifying that in Šušnjari there was consultation among “the head of the municipality, those in charge of civilian authority, and some others who were in Srebrenica in the course of the war, the chiefs of some secretariats for example”, and that the “Territorial Defence” was also there); PW-106, T. 3945–3947 (15 Nov 2006).

⁸⁶⁷ Mevludin Orić, T. 1077 (30 Aug 2006).

⁸⁶⁸ Ex. P02103, “Documents tendered with Statement of witness Jean-René Ruez”, p. 1; PW-110, T. 794 (25 Aug 2006); Jean René Ruez, T. 1381 (8 Sept 2006).

⁸⁶⁹ See Prosecution Adjudicated Facts Decision, Annex, Facts 251–252. “As the Bosnian Muslim column attempted to break out of the enclave, it first moved through the area of responsibility of the Bratunac Brigade [...] [and] moved up towards the Zvornik Brigade’s zone of responsibility.”

⁸⁷⁰ Prosecution Adjudicated Facts Decision, Annex, Fact 247; PW-116, Ex. P02205, “92 bis transcript”, KT. 2945 (14 Apr 2000); PW-139, Ex. P02288, “confidential – 92 ter statement” (28 May 2000), paras. 3–4; Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 4, para. 3. Jaglići was a village at the very outskirts of the Srebrenica enclave, close to OP Mike. PW-111, T. 7032 (7 Feb 2007); PW-138, T. 3871–3872 (9 Nov 2006); Vincent Egbers, T. 2707 (18 Oct 2006). Buljim is a village above Šušnjari. PW-112, T. 3284 (30 Oct 2006). See also PW-106, T. 4045 (private session) (16 Nov 2006).

⁸⁷¹ PW-139, Ex. P02288, “confidential – 92 ter statement” (28 May 2000), para. 4 (stating that due to the length of the column, the people at the rear only started moving around 2 a.m. on 12 July 1995). But see PW-111, T. 6972 (6 Feb

approximately ten kilometres long consisting of about 10,000 to 15,000 individuals,⁸⁷² started advancing towards Konjević Polje, passing through Nova Kasaba, and then towards Tuzla.⁸⁷³ The group consisted predominantly of men between the ages of 16 and 65, although a small number of women, children, and elderly travelled with the column.⁸⁷⁴

270. The column was mixed with civilian and military components. There is evidence that approximately one third of the members of the column were armed.⁸⁷⁵ While some witnesses testified that the men of the column carried only hunting rifles,⁸⁷⁶ there is also evidence of semi-automatic and automatic firearms⁸⁷⁷ as well as a range of other weapons.⁸⁷⁸ Some of the Bosnian Muslim men in the column wore partial or full military uniform; others wore civilian clothes.⁸⁷⁹

2007), T. 7032 (7 Feb 2007) (stating that he arrived in Jaglići on 12 July at dawn and left Jaglići in the afternoon of the same day together with the other men in the column, setting off towards Tuzla through the woods).

⁸⁷² PW-116, Ex. P02205, "92 bis transcript", KT. 2944–2945 (14 Apr 2000); PW-117, Ex. P02207, "92 bis transcript", KT. 3017 (14 Apr 2000); Mirko Trivić, T. 11848 (21 May 2007); Salih Mehmedović, Ex. P03241, "92 bis statement," (15 June 2000), p. 2; Mevludin Orić, T. 872–873 (28 Aug 2006), T. 991 (29 Aug 2006), T. 1078 (30 Aug 2006); PW-139, Ex. P02288, "confidential – 92 ter statement" (28 May 2000), para. 3 (stating that the column consisted of between approximately 17,000 or 18,000 people); PW-112, T. 3231, 3258 (30 Oct 2006); PW-112, Ex. P02272, "confidential – 92 ter transcript", KT. 3240 (23 May 2000) (stating that 12,000–15,000 men were gathered in the area of Šušnjari); Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4 (according to which the column was about seven kilometres long); PW-106, T. 3950–3951 (15 Nov 2006) (stating that the column was a couple of kilometres long).

⁸⁷³ Prosecution Adjudicated Facts Decision, Annex, Fact 257; PW-116, Ex. P02205, "92 bis transcript", KT. 2945 (14 Apr 2000); Ramiz Husić, Ex. P02203, "92 bis statement" (9 June 1999), p. 4, para. 3; Salih Mehmedović, Ex. P03241, "92 bis statement," (15 June 2000), p. 2.

⁸⁷⁴ Prosecution Adjudicated Facts Decision, Annex, Facts 248–249; PW-116, Ex. P02205, "92 bis transcript", KT. 2944 (14 Apr 2000) (stating that around 200–300 were women, and that the males were aged between 16 and 50 or 60); PW-119, Ex. P02212, "92 bis transcript", KT. 3188–3189 (23 May 2000) (stating that they were aged between 10 and 70). *See also* PW-106, T. 3949 (15 Nov 2006), T. 4029 (private session) (16 Nov 2006).

⁸⁷⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 256. Around one third were armed. PW-116, Ex. P02205, "92 bis transcript", KT. 2944 (14 Apr 2000); PW-112, Ex. P02272, "confidential – 92 ter transcript", KT. 3240 (23 May 2000); PW-112, T. 3259, 3283–3284 (30 October 2006) (specifying that the "one third" estimate solely pertained to the members of the column present at Buljim where armed Bosnian Muslim men in civilian clothes returned to assist those unarmed members of the column who had not been able to pass through the Bosnian Serb lines). *See also* PW-119, Ex. P02212, "92 bis transcript", KT. 3217–3218 (23 May 2000) (testifying that there were some people not of military age in the column, which consisted mainly of civilians with few weapons). Ex. P00060, "CJB Zvornik Report, 12 July 1995", (stating that on 12 July, at approximately 5:30 p.m., the "majority of men of military age, about 8,000, (of whom 1,500 were armed) led by Ejub Golić and Ibrahim Mandžić [...] were in the Konjević Polje and Sandići sector"); PW-111, T. 6972–6973 (6 Feb 2007), T. 7032–7034 (7 Feb 2007) (testifying that PW-111, a soldier belonging to the 282nd Brigade, which was part of the 28th Division, arrived in Jaglići on the 12 July at dawn, and left Jaglići in the afternoon of the same day together with the other men in the column, setting off towards Tuzla through the woods; the column contained a substantial number of people who had hunting rifles and other types of weapons). *But see* Zoran Janković, T. 27371, 27373, 27389 (27 Oct 2008), according to whom 80% of the people in the column carried weapons.

⁸⁷⁶ PW-139, Ex. P02288, "confidential – 92 ter statement" (28 May 2000), para. 3; PW-119, Ex. P02212, "92 bis transcript", KT. 3189–3190, 3217 (23 May 2000).

⁸⁷⁷ PW-127, T. 3512 (2 Nov 2006); PW-119, Ex. P02212, "92 bis transcript", KT. 3218 (23 May 2000).

⁸⁷⁸ Ramiz Husić, Ex. P02203, "92 bis statement" (9 June 1999), p. 5, para. 1; PW-111, T. 7034 (7 Feb 2007); Ex. 4D00013, "Interim Report by ABiH General Staff, 13 July 1995" (mentioning the delivery to the Srebrenica area of weapons and ammunition, including two nitroglycerin rifles with 100 nitroglycerin rounds and a 107 mm rocket launcher with 28 107 mm rockets). *See also* Zoran Janković, T. 27371, 27373, 27389 (27 Oct 2008), testifying that the Bosnian Muslim men in the column had rifles with nitro-glycerin bullets, sniper rifles, anti-helicopter rockets and two Brownings.

⁸⁷⁹ PW-112, T. 3259–3261 (30 Oct 2006); PW-156, T. 7140 (8 Feb 2007); PW-110, T. 647 (24 Aug 2006), T. 806 (25 Aug 2006); Mevludin Orić, T. 875–876 (28 Aug 2006); Zoran Janković, T. 27371 (27 Oct 2008).

271. At the head of the column were units of the ABiH 28th Division,⁸⁸⁰ including the stand-in commander Ramiz Bećirović with de-miners and armed soldiers,⁸⁸¹ directly followed by the staff of the Srebrenica hospital.⁸⁸² The composition of the rest of the column was mixed.⁸⁸³ The ABiH Mountain Battalion, which was under the command of Ejub Golić, was responsible for protecting the rear of the column.⁸⁸⁴

E. Potočari (10–13 July 1995)

272. After walking approximately four or five kilometres from Srebrenica to Potočari, the Bosnian Muslims arriving at the DutchBat compound in Potočari were exhausted and frightened.⁸⁸⁵ On 11 July, approximately 20,000 people gathered in and around the DutchBat compound.⁸⁸⁶ The shelling on that day, in particular, the shells which flew over the DutchBat compound, caused panic amongst the people gathered there.⁸⁸⁷

273. In the evening of 11 July, Franken, the DutchBat Deputy Commander, appointed a guard commander and prepared a ring of outposts to prevent Bosnian Serb Forces from entering the area in order to protect the Bosnian Muslims gathered in Potočari.⁸⁸⁸ DutchBat also established two first aid posts, and distributed water and some food.⁸⁸⁹

1. Hotel Fontana Meetings

274. Around 8 p.m. on 11 July, a meeting between the VRS and DutchBat took place at the Hotel Fontana in Bratunac.⁸⁹⁰ According to Mladić, DutchBat had asked for the meeting.⁸⁹¹ DutchBat was

⁸⁸⁰ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2996 (14 Apr 2000); PW-139, Ex. P02288, “confidential – 92 *ter* statement” (28 May 2000), para. 3; PW-106, T. 3958, 4027 (private session) (15 Nov 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 256. *See also* Mevludin Orić, T. 991 (29 Aug 2006) (testifying that at the time the decision to move towards Tuzla was made, all those who were armed, the soldiers, had to take command from their superiors and the civilians were simply moving behind the army).

⁸⁸¹ Mevludin Orić, T. 1051 (30 Aug 2006).

⁸⁸² PW-106, T. 4019, 4026–4027 (private session) (16 Nov 2006).

⁸⁸³ Mevludin Orić, T. 1050 (30 Aug 2006).

⁸⁸⁴ PW-127, T. 3574 (private session) (3 Nov 2006); PW-139, T. 3749 (7 Nov 2006); PW-110, T. 795 (25 Aug 2006). *But see* Prosecution Adjudicated Facts Decision, Annex, Fact 256, referring to the “Independent Battalion of the 28th Division of the ABiH”.

⁸⁸⁵ Robert Franken, T. 2488–2489 (16 Oct 2006); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1019 (10 July 2003); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3394 (24 May 2000); Jean René Ruez, T. 1312 (7 Sept 2006) (testifying that Potočari is about four or five kilometers away from Srebrenica); Ex. P01514, “Video south to Srebrenica town” at 00:01:54–00:01:59 (showing the route from Srebrenica to Potočari with the DutchBat compound which was south of Srebrenica town); Pieter Boering, T. 1931–1932 (19 Sept 2006), T. 1937–1938 (21 Sept 2006). *See also* Ex. 4D00017, “Interim Report of General Staff of ABiH, 12 July 1995”, p. 1.

⁸⁸⁶ *See supra* paras. 264, 266.

⁸⁸⁷ *See supra* para. 266.

⁸⁸⁸ Robert Franken, T. 2488 (16 Oct 2006).

⁸⁸⁹ *Ibid.*

⁸⁹⁰ Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1; Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 14–37.

represented by Colonel Karremans, Major Boering, and Sergeant-Major Rave, and the VRS was led by General Mladić who was accompanied by General Živanović, Colonel Radislav Janković, an intelligence officer of the Main Staff, Lieutenant-Colonel Svetozar Kosorić, the Drina Corps Chief of Intelligence, Major Momir Nikolić, the Chief of Security and Intelligence of the Bratunac Brigade, and other VRS officers.⁸⁹²

275. Mladić led this meeting in an intimidating manner.⁸⁹³ He accused DutchBat of firing on VRS soldiers and failing to disarm the safe area.⁸⁹⁴ Karremans said that he had spoken with General Nicolai at the UNPROFOR Command in Sarajevo and also with the “national authorities” about a request on behalf of the Bosnian Muslims at Potočari.⁸⁹⁵ Karremans said that the UNPROFOR Command believed the enclave had been lost and he was there to “negotiate or ask for the withdrawal of the battalion and withdrawal of [the] refugees [gathered in Potočari], and if there [were] possibilities to assist in that withdrawal”.⁸⁹⁶ Karremans told Mladić that there were at least 10,000 women and children within the DutchBat compound at Potočari, along with 82 wounded persons, and that many women had said: “We are waiting for the buses and can we leave the enclave?”⁸⁹⁷ Mladić stated that neither UNPROFOR nor the Bosnian Muslim population was the objective of his “operations”, and told Karremans: “You can all leave, all stay, or all die here”.⁸⁹⁸

276. Karremans asked Mladić for humanitarian support including food and medicine.⁸⁹⁹ They discussed the situation of the wounded among the Bosnian Muslim population and Mladić said that the VRS would take care of the wounded.⁹⁰⁰ Near the end of the meeting, Mladić asked Karremans

⁸⁹¹ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:09:38–00:09:42; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 19.

⁸⁹² Pieter Boering, T. 1941–1943, 1948–1949 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1; Prosecution Adjudicated Facts Decision, Annex, Fact 165. Pieter Boering said that he thought Krstić was present as well. Pieter Boering, T. 1943 (21 Sept 2006).

⁸⁹³ Prosecution Adjudicated Facts Decision, Annex, Fact 168.

⁸⁹⁴ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:02:11–00:06:59; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 15–18; Boering testified that he did not feel like an equal at this meeting; rather, he felt threatened by Mladić’s language and the manner in which Mladić’s bodyguards pushed Karremans into a corner. Pieter Boering, T. 1945–1946 (21 Sept 2006). Momir Nikolić said that Mladić “threatened and intimidated the Dutch officers”. Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1.

⁸⁹⁵ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:09:43–00:10:00; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 19.

⁸⁹⁶ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:10:36–00:11:41; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 19; Prosecution Adjudicated Facts Decision, Annex, Fact 170.

⁸⁹⁷ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”, 00:11:02–00:11:08, 00:11:57–00:12:05, 00:23:20–00:23:28, 00:33:19–00:33:29; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 19–20, 27, 34.

⁸⁹⁸ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 29–30; Prosecution Adjudicated Facts Decision, Annex, Facts 170, 171.

⁸⁹⁹ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 20.

⁹⁰⁰ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 33–34.

whether he could ask through General Nicolai for some buses, and Karremans answered that he thought that it could be arranged.⁹⁰¹ Mladić asked Karremans to return at 11 p.m. for a second meeting and to bring representatives of the Bosnian Muslims at Potočari to the meeting to work out an “arrangement”, and said that if the ABiH in Srebrenica “want[ed] to talk” Karremans should bring one of their representatives.⁹⁰²

277. The second meeting began at approximately 11 p.m. that night.⁹⁰³ Mladić was accompanied by Krstić, Radislav Janković, Kosorić, and Momir Nikolić.⁹⁰⁴ Karremans and Boering were accompanied by Nesib Mandžić, a former teacher who agreed to unofficially represent the Bosnian Muslim population gathered in Potočari.⁹⁰⁵ Boering described the second meeting as a “desperate situation, in trying [...] to make clear that we wanted to leave the enclave and that there were no prospects for better support.”⁹⁰⁶ Karremans explained the difficult humanitarian situation in Potočari to Mladić, that there were between 15,000 and 20,000 persons there, with more coming in, and that 95% percent of them were women, children, and the elderly.⁹⁰⁷ He told Mladić there were 88 wounded persons and explained that there was an urgent need for food, medicine, and fuel.⁹⁰⁸ Karremans told Mladić that UNHCR was ready to provide 30 buses, that he also wanted to ask the UNPROFOR Command for buses, and that an evacuation plan should be made which would establish priority for those who should be transported first.⁹⁰⁹

278. During the meeting, the screaming of a pig being killed nearby could be heard by those in attendance, which Boering found threatening.⁹¹⁰ Additionally, Mladić ordered that a broken sign

⁹⁰¹ Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 36; Prosecution Adjudicated Facts Decision, Annex, Fact 173.

⁹⁰² Ex. P01992, “Video clip of the first meeting at the Hotel Fontana taken from Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 30, 31, 36; Prosecution Adjudicated Facts Decision, Annex, Facts 172, 175.

⁹⁰³ Pieter Boering, T. 1951 (21 Sept 2006); Ex. P01992, “Video clip of the first meeting at Hotel Fontana taken from Ex. P02047”, 00:39:03–00:39:05; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 37; Prosecution Adjudicated Facts Decision, Fact 176. Momir Nikolić said that the meeting occurred at 10 p.m. Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 1.

⁹⁰⁴ Pieter Boering, T. 1952, 1954, 1959 (21 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Facts 178, 181.

⁹⁰⁵ Pieter Boering, T. 1950–1951 (21 Sept 2006); Robert Franken, T. 2486–2487, 2501 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Fact 182. Boering testified that the DutchBat officers looked for a representative of the Bosnian Muslim population in Potočari after they left the first meeting, and asked Mandžić only because they saw him at that time and had met him previously on several occasions. Pieter Boering, T. 2137, 2139–2140 (25 Sept 2006). Franken testified that by this time, the ABiH commanders had disappeared. Robert Franken, T. 2501 (16 Oct 2006).

⁹⁰⁶ Pieter Boering, T. 1958 (21 Sept 2006).

⁹⁰⁷ Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:01:10–00:03:33; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 38–39.

⁹⁰⁸ Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:02:02–00:15:18; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 39–46.

⁹⁰⁹ Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:08:48–00:09:20, 00:13:50–00:14:17, 00:15:55–00:16:18; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 42, 45, 46.

⁹¹⁰ Prosecution Adjudicated Facts Decision, Fact 183; Pieter Boering, T. 1953–1954, 1958–1959 (21 Sept 2006); Ex. P01994, “Video clip of the second meeting at Hotel Fontana taken from Ex. P02047”, 00:01:44–00:02:02.

from Srebrenica's town hall be brought into the meeting and displayed to Mandžić, which Boering interpreted as a message to Mandžić that the VRS was in control of Srebrenica.⁹¹¹ Finally, Mladić addressed Mandžić directly, saying:

Please write down the following: Number one, you need to lay down your weapons and I guarantee that all those who lay down their weapons will live. I give you my word, as a man and a General that I will use my influence to help the innocent Muslim population which is not the target of the combat operations carried out by the VRS. [...] In order to make a decision as a man and a Commander, I need to have a clear position of the representatives of your people on whether you want to survive [...] stay or vanish. I am prepared to receive here tomorrow at 10 am hrs a delegation of officials from the Muslim side with whom I can discuss the salvation of your people from the enclave, the former enclave of Srebrenica. [...] Have I made myself clear? Nesib, the future of your people is in your hands, not only in this territory.⁹¹²

279. Mandžić said that he had no authority to negotiate on behalf of the ABiH or the Bosnian Muslims in Potočari.⁹¹³ Mladić told Mandžić that he needed to bring with him to the hotel the next morning "the people who can secure the surrender of weapons and save your people from destruction".⁹¹⁴ After this meeting, Mandžić, frightened, went in search of additional representatives of the Bosnian Muslims in Potočari who might accompany him to the third meeting.⁹¹⁵ Karremans sent a fax to the UNPROFOR Command, describing the situation as deteriorating, and noting that there were more than 15,000 people in an extremely vulnerable position, and that he would be unable to defend them.⁹¹⁶

280. Immediately prior to the third meeting held at the Hotel Fontana at 10:00 a.m. on 12 July, Momir Nikolić met his superior **Popović**, Chief of Security of the Drina Corps, outside the Hotel.⁹¹⁷ **Popović** told Momir Nikolić that thousands of Bosnian Muslim women and children would be transported out of Potočari towards ABiH-held territory near Kladanj, and that the able-bodied men within the crowd of Bosnian Muslim civilians would be separated, temporarily detained in Bratunac, and killed shortly thereafter.⁹¹⁸ **Popović** told Momir Nikolić that "all the balija had to be

⁹¹¹ Pieter Boering, T. 1959–1960 (21 Sept 2006); Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:09:49–00:10:02; Prosecution Adjudicated Facts Decision, Fact 184. Momir Nikolić said that Mladić "threatened and intimidated the Dutch officers present and Nesib Mandžić" during this meeting. Momir Nikolić, Ex. C00001, "Statement of Facts and Acceptance of Responsibility, 6 May 2003", p. 1.

⁹¹² Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:20:46–00:24:14; Ex. P02048, "Srebrenica Trial Video Transcript", pp. 47–48; Prosecution Adjudicated Facts Decision, Annex, Fact 187.

⁹¹³ Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:17:59–00:20:45, 00:24:34–00:24:45; Ex. P02048, "Srebrenica Trial Video Transcript" pp. 47–48; Prosecution Adjudicated Facts Decision, Annex, Fact 188.

⁹¹⁴ Ex. P01994, "Video clip of the second meeting at Hotel Fontana taken from Ex. P02047", 00:24:46–00:24:53; Ex. P02048, "Srebrenica Trial Video Transcript" p. 48; Prosecution Adjudicated Facts Decision, Annex, Fact 189.

⁹¹⁵ Pieter Boering, T. 1962 (21 Sept 2006).

⁹¹⁶ *Ibid.*, T. 1965 (21 Sept 2006); Ex. P00531, "Letter from Commanding Officer Dutch Battalion regarding meetings with General Mladić on 11 and 12 July."

⁹¹⁷ Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2.

⁹¹⁸ *Ibid.*

killed”.⁹¹⁹ **Popović** asked for Nikolić’s help with the operation, and Nikolić suggested that the Bosnian Muslim men could be detained in facilities such as the Vuk Karadžić School and the hangar in Bratunac.⁹²⁰ At some point during this discussion, Kosorić, Chief of Intelligence in the Drina Corps,⁹²¹ joined the men and the three of them continued to discuss possible locations for detention of the Bosnian Muslim men prior to their execution, including the brick factory and the Sase mine.⁹²² At the time of this conversation, none of the convoys had left Potočari.⁹²³

281. **Popović** and others have contested Momir Nikolic’s evidence as to this conversation on 12 July.⁹²⁴ As noted earlier, the Trial Chamber has taken a cautious approach to Momir Nikolic’s evidence in light of concerns as to his credibility.⁹²⁵ It has done so with respect to this particular conversation, which is of significance. To begin with, the Trial Chamber notes that Momir Nikolić related this conversation in May 2003 as part of his Statement of Facts and Acceptance of Responsibility,⁹²⁶ and his description of the content of the conversation with **Popović** has remained constant since that time.

282. The Trial Chamber has carefully reviewed his testimony on this point, noting that this was the first occasion where the circumstances of the discussion were the subject of intense scrutiny, given that one of the other alleged participants—**Popović**—was an Accused in the trial. In the view of the Trial Chamber, it is understandable, therefore, that more details were revealed on this occasion. While his description was not clear throughout as to who was present at precisely which point in time, the Trial Chamber considers this is attributable to the circumstances in which the meetings occurred and the passage of time. Importantly though, despite much cross-examination on the point, he remained consistent as to the subject matter discussed.⁹²⁷

283. Having assessed his evidence on this point carefully and in totality, the Trial Chamber accepts it as reliable. Specifically, the Trial Chamber is satisfied that Momir Nikolić was told by **Popović** of the plan to separate and murder the Bosnian Muslim men and that the conversation unfolded as Momir Nikolić described it.

284. By way of support for this conclusion, the Trial Chamber notes that in acknowledging the

⁹¹⁹ Momir Nikolić, T. 32918 (21 Apr 2009).

⁹²⁰ *Ibid.*, T. 32918 (21 Apr 2009); Momir Nikolić, Ex. C00002, “Supplementary Statement provided by Momir Nikolić on request of the Trial Chamber, 16 Apr 2009”, p. 2.

⁹²¹ Svetozar Kosorić, T. 33760 (30 June 2009).

⁹²² Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2.

⁹²³ Momir Nikolić, T. 32921 (21 Apr 2009).

⁹²⁴ *See, inter alia*, Popović Final Brief, paras. 289–305; Nikolić Final Brief, paras. 590–646.

⁹²⁵ *See supra*, paras. 48–54.

⁹²⁶ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”.

⁹²⁷ *See* Momir Nikolić, T. 32904, 32917–32919 (21 April 2009), T. 33042 (22 April 2009), T. 33329–33330 (28 April 2009).

subject-matter of the conversation, Momir Nikolić incriminated himself directly in these matters. He placed himself and his superior in the Security Branch within the chain of command responsible for arranging the executions. Further, he outlined suggestions he made as to possible detention and execution sites. It is also notable that in so doing, he removed any possibility of arguing that his role in the subsequent separations at Potočari was in furtherance of a simple screening process, as opposed to a murder operation. This is of note considering that witnesses described that he had a list of suspected war criminals with him in Potočari.⁹²⁸ Any arguments in his favour based on that evidence were eliminated by what he related about his conversation with **Popović** on the morning of 12 July. These factors add to the reliability of the evidence.

285. There are also pieces of evidence which corroborate his testimony on this point. There is video evidence which places **Popović** and Momir Nikolić together outside the Hotel Fontana prior to the third meeting on the morning of 12 July.⁹²⁹ **Popović** and Kosorić were seen speaking to each other outside the Hotel Fontana before the meeting on 12 July.⁹³⁰ In addition, DutchBat officer Boering saw Kosorić and Momir Nikolić together in Bratunac after the third Hotel Fontana meeting.⁹³¹

286. Several events which followed directly after the conversation also support Momir Nikolić's version of what was discussed. Shortly after this conversation, at the third Hotel Fontana meeting, Mladić announced for the first time the "screening" of men to be carried out in Potočari, consistent with what **Popović** told Nikolić would happen.⁹³² Momir Nikolić claims he mentioned the Vuk Karadžić school and the Bratunac hanger as detention sites and indeed those sites were ultimately used.⁹³³ Further, he mentioned the Brick Factory as a potential execution site and according to other evidence, the next day **Beara** examined this same site.⁹³⁴

287. And tellingly, the Trial Chamber notes that the tragic events which played out shortly thereafter correspond exactly to what Momir Nikolić described in that conversation. The Bosnian

⁹²⁸ DutchBat members testified that Momir Nikolić, together with Colonel Vuković, did make some effort to check the identities of the detained men at Potočari, and that they did this with a list of alleged war criminals in their possession. *See supra*, para. 323; Joseph Kingori, T. 19270 (14 Dec 2007); Johannes Rutten, T. 4853, 4899 (30 Nov 2006); Ex. 4D00015, "List of War Criminals known to the command of the Bratunac Brigade, 12 July 1995".

⁹²⁹ Ex. P02047, "Srebrenica Trial Video", 01.42.50; Ex. P01936, "Video stills taken from the Srebrenica Trial Video", p. 29.

⁹³⁰ PW-109, T. 14589–14591 (private session) (31 Aug 2007) (testifying that General Krstić and Col. Krsmanovic were also part of this conversation, and the men discussed buses for the transfer of the Bosnian Muslim population, although PW-109 did not hear **Popović** speak).

⁹³¹ Pieter Boering, T. 1976–1977 (21 Sept 2006).

⁹³² *See infra*, paras. 1051–1052.

⁹³³ *See infra*, paras. 452–455, 460–463.

⁹³⁴ Miroslav Deronjić, Ex. P03139a, "92 *quater* transcript", BT. 6275 (20 Jan 2004) (stating that on 14 July, **Beara** was inquiring about using the brick factory to house prisoners).

Muslim men were separated in Potočari, detained in Bratunac and ultimately killed in mass executions. While the majority of the executions took place in Zvornik, the discussions between **Beara** and **Deronjić** on the night of 13 July evidence that this was a change of plan resulting from **Deronjić**'s opposition to the killings taking place in his area.⁹³⁵ Momir Nikolić describes the coordinating role that **Popović** and the Security Branch were to play in the operation and that is in fact what the Trial Chamber finds occurred.⁹³⁶ The Trial Chamber has considered the possibility that Momir Nikolić constructed his evidence of this conversation to correspond to the events which subsequently unfolded. However, given that in so doing he directly incriminated himself in the murder operation at this early stage, the Trial Chamber considers it is not a reasonable possibility. Weighing all these factors, the Trial Chamber finds Momir Nikolić's testimony regarding this conversation to be reliable.

288. In making this finding, the Trial Chamber notes that **Kosorić** in his testimony denied that he discussed the killing operation with Momir Nikolić and **Popović** on 12 July.⁹³⁷ The Trial Chamber has considered **Kosorić**'s evidence on this point. The Trial Chamber notes that **Kosorić** was a reluctant witness and his evidence was not forthcoming.⁹³⁸ He was evasive in his answers and he was clearly downplaying his role in events and denying any involvement on his part. The Trial Chamber does not find his evidence on the content of this conversation reliable and it does not raise any doubt as to the Trial Chamber's finding about the conversation between Momir Nikolić, **Popović** and eventually **Kosorić** on the morning of 12 July. Thus, the Trial Chamber finds that the conversation between **Popović** and Momir Nikolić took place on the morning of 12 July as described by Momir Nikolić in his testimony.⁹³⁹

289. At approximately 10 a.m. on 12 July, the third and final meeting was held at the Hotel Fontana.⁹⁴⁰ This time, **Mandžić** and the DutchBat officers were accompanied by two additional

⁹³⁵ See *infra*, paras. 1264, 1266.

⁹³⁶ See *infra*, paras. 1068, 1072, 1166, 1168.

⁹³⁷ Svetozar **Kosorić**, T. 33763–33765 (30 June 2009).

⁹³⁸ **Kosorić** was subpoenaed to give evidence (see Decision on Vujadin **Popović**'s Request for a Subpoena *ad Testificandum*, confidential, 14 May 2009). During his testimony, **Kosorić** frequently evaded questions by responding that he either did not remember or did not know and consistently provided alternative justifications instead of straight answers. When asked repeatedly whether he met Momir Nikolić outside the Hotel Fontana on 12 July, **Kosorić** states that he does not remember. However, when confronted with testimony from Major Boering that he encountered Nikolić and **Kosorić** at the Hotel Fontana on 12 July, **Kosorić** stated that he doesn't "know about that". Svetozar **Kosorić**, T. 33793–33794 (30 June 2009). Even after being presented with a video clip that depicts **Kosorić** in Potočari, **Kosorić** asserted that he does not remember standing around while officers gave press interviews and, when pressed, stated that he was only there as part of **Mladić**'s entourage. Svetozar **Kosorić**, T. 33789 (30 June 2009). **Kosorić** was also evasive about the Hotel Fontana meetings. When asked if he attended the first meeting, he stated that he was merely a liaison before eventually responding that he did in fact attend the meeting. Svetozar **Kosorić**, T. 33779–33780 (30 June 2009).

⁹³⁹ See *supra*, para. 280.

⁹⁴⁰ Pieter Boering, T. 1968 (21 Sept 2006); Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7607 (15 Apr 2004); Ex. P01995, "Video clip of the third meeting at Hotel Fontana taken from Ex. P02047".

persons from among the crowd of Bosnian Muslims at Potočari, Ibro Nuhanović and Ćamila Omanović, neither of whom officially represented the ABiH or the Muslim municipal authorities in Srebrenica.⁹⁴¹ Mladić was accompanied by Krstić, Kosorić, Radislav Janković and **Popović**.⁹⁴² Several civilian authorities, including Ljubisav Simić, the President of the Bratunac municipality, Srbislav Davidović, the President of the Bratunac municipality Executive Board, Miroslav Deronjić, the Civilian Commissioner for the Serbian Municipality of Srebrenica,⁹⁴³ and Dragomir Vasić, the Head of the Zvornik CJB were also present.⁹⁴⁴ The Bosnian Muslim representatives “request[ed] free passage for able-bodied men, because, allegedly, they [we]re unarmed and they [we]re not in contact with their army in the woods.”⁹⁴⁵

290. Addressing the Bosnian Muslim representatives, Mladić said:

I want to help you, but I want absolute co-operation from the civilian population because your army has been defeated. There is no need for your people to get killed, your husband, your brothers or your neighbours. All you have to do is say what you want. As I told this gentleman last night, you can either survive or disappear. For your survival, I demand that all your armed men, even those who committed crimes – and many did – against our people, surrender their weapons to the VRS. Upon surrendering the weapons you may choose to stay in the territory or, if so you wish, go wherever you want. The wish of every individual will be observed no matter how many of you there are.⁹⁴⁶

Mladić also said that he would provide the vehicles to transport the Bosnian Muslims but that someone else would need to provide fuel, noting specifically that UNPROFOR should bring four or five tanker trucks of fuel because of the high number of Bosnian Muslims gathering at Potočari.⁹⁴⁷ Mladić announced that all the Bosnian Muslim men in Potočari would be screened for war crimes.⁹⁴⁸ At the end of the meeting, Mladić and Deronjić, along with Vasić, discussed with the DutchBat officers technical details of the transportation and reached an agreement that DutchBat

⁹⁴¹ Pieter Boering, T. 1968 (21 Sept 2006); Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 49–51.

⁹⁴² Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1 (listing the participants at the 12 July meeting); Pieter Boering, T. 1968–1969 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2; Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”.

⁹⁴³ Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1 (listing the participants at the 12 July meeting); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6189, 6192–6194, 6200–6201 (19 Jan 2004), 6423 (22 Jan 2004); Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7608 (15 Apr 2004).

⁹⁴⁴ Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1 (listing the participants at the 12 July meeting); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6193 (19 Jan 2004); Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7608 (15 Apr 2004); Ljubisav Simić, T. 27207 (22 Oct 2008).

⁹⁴⁵ Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

⁹⁴⁶ Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”, 00:04:26–00:05:38; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 51.

⁹⁴⁷ Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”, 00:06:18–00:06:48; Ex. P02048, “Srebrenica Trial Video Transcript” p. 52. *See also* Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

⁹⁴⁸ Pieter Boering, T. 1969, 1974 (21 Sept 2006). *See also* Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

would escort the convoys.⁹⁴⁹ Mladić asked the Bosnian Serb civilian authorities to provide food and milk to the infants, to organise an infirmary, and to transfer those in the hospital in Srebrenica to the DutchBat infirmary.⁹⁵⁰ Following the meeting, Radislav Janković, from the Department of Security and Intelligence of the VRS Main Staff, told Momir Nikolić to “coordinate” the transportation of the women and children and the separation of the able-bodied Bosnian Muslim men.⁹⁵¹

291. After leaving this third meeting, Boering and Karremans discussed what had happened and realised that they did not understand precisely what agreements had been reached at the meeting.⁹⁵² It was unclear to them how inspections or screenings of the Bosnian Muslims in Potočari would take place,⁹⁵³ who would arrange for their humanitarian needs, or who would carry out the transportations or provide the fuel.⁹⁵⁴ Karremans then sent Boering back to Bratunac to get further information.⁹⁵⁵ Upon his return to the Hotel Fontana, Boering encountered Momir Nikolić together with Kosorić.⁹⁵⁶ Momir Nikolić told Boering that everything had already been agreed upon, that “things had already started”, that Boering had no further business in Bratunac, and that Boering should leave immediately.⁹⁵⁷ As he drove back to Potočari, Boering could see a line of buses and trucks heading towards Potočari.⁹⁵⁸

292. At the request of Radislav Janković, five days later on 17 July, Mandžić, Deronjić, and Franken, the DutchBat Deputy Commander, signed a statement purporting to memorialise the agreements reached at the 12 July meeting at the Hotel Fontana.⁹⁵⁹ The signed statement says that following a request from the Bosnian Muslim side to conduct negotiations on the evacuation of the Bosnian Muslim civilian population from the Srebrenica enclave the two sides agreed: (1) that the Bosnian Muslim civilian population could stay in the enclave or move out, depending upon the wish of each individual, (2) that the Bosnian Muslim civilian population could go where it wanted to go if it should elect to leave the enclave, and that it had chosen to be evacuated to Kladanj, and (3) that the evacuation would be carried out by the VRS and RS police, with UNPROFOR

⁹⁴⁹ Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6192–6193 (19 Jan 2004). *See also* Ex. P03040, “Report from the Zvornik CJB RS MUP on third Hotel Fontana Meeting, 12 July 1995”, p. 1.

⁹⁵⁰ Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7611 (15 Apr 2004). *See also* Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6200 (19 Jan 2004), BT. 6423 (22 Jan 2004).

⁹⁵¹ Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2; Momir Nikolić, Ex. C00002, “Further Statement”, p. 2, T. 33268–33269 (27 Apr 2009).

⁹⁵² Pieter Boering, T. 1976 (21 Sept 2006).

⁹⁵³ *Ibid.*, T. 1969 (21 Sept 2006).

⁹⁵⁴ *Ibid.*, T. 1975 (21 Sept 2006).

⁹⁵⁵ *Ibid.*, T. 1976 (21 Sept 2006).

⁹⁵⁶ Pieter Boering, T. 1976–1977 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2.

⁹⁵⁷ Pieter Boering, T. 1976 (21 Sept 2006); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2.

⁹⁵⁸ Pieter Boering, T. 1976 (21 Sept 2006), 2008 (22 Sept 2006).

supervising and providing an escort for the evacuation.⁹⁶⁰ Deronjić stated that segments of the signed statement were inaccurate with regard to agreements reached at the 12 July meeting, including specifically that the civilian population could stay or move depending on its wish.⁹⁶¹ Franken testified that the statement was “nonsense” as the Bosnian Muslims did not have “a realistic opportunity to stay [...] or move in any direction” and Mladić had ordered that they should go to Kladanj.⁹⁶²

2. Provision of Buses and Fuel for the Transportation of the Bosnian Muslim Population

293. During the night of 11 July, General Petar Škrbić, the Assistant Commander for Mobilisation and Personnel Affairs of the Main Staff,⁹⁶³ was asked by Mladić over the telephone to request the requisition of buses from the RS Ministry of Defence (“MOD”) to be sent to the Bratunac sports stadium by 2:30 p.m. on 12 July.⁹⁶⁴ Škrbić sent Momčilo Kovačević, the Assistant Minister of the MOD⁹⁶⁵ an urgent written request for buses the next morning.⁹⁶⁶ At 9:50 a.m. on 12 July, the MOD received Škrbić’s urgent request that it mobilise at least 50 buses to be sent to the Bratunac sports stadium by 2:30 p.m. from the municipalities of “Pale, Sokolac, Rogatica, Višegrad, Han Pijesak, Vlasenica, Milići, Bratunac, and Zvornik”.⁹⁶⁷ In response to this request, Kovačević sent an order to the local MOD Departments in Sarajevo and in Zvornik, requesting the mobilisation of at least 20 and 50 buses respectively.⁹⁶⁸

⁹⁵⁹ Robert Franken, T. 2516–2519 (16 Oct 2006), 2530 (17 Oct 2006); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6205–6206 (19 Jan 2004), 6217–6218 (20 Jan 2004); Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1.

⁹⁶⁰ Ex. P00453, “Statement signed by Franken, Mandžić and Deronjić on 17 July 1995”, p. 1.

⁹⁶¹ Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6205–6206 (19 Jan 2004), 6217–6218 (20 Jan 2004).

⁹⁶² Robert Franken, T. 2517–2518 (16 Oct 2006), T. 2530 (17 Oct 2006).

⁹⁶³ Petar Škrbić, T. 15467–15469 (17 Sept 2007).

⁹⁶⁴ *Ibid.*, T. 15469–15474, 15481 (17 Sept 2007); Ex. P02899, “Main Staff document No. 09/31/18-3/154, type-signed Škrbić, 12 July 1995”.

⁹⁶⁵ See Ex. P00012, “RS MOD Document, Request No. 02-21-3614/95 for mobilisation of buses, Momčilo Kovačević, 12 July 1995”.

⁹⁶⁶ Petar Škrbić, T. 15472–15473, 15476 (17 Sept 2007); Ex. P02899, “Main Staff document No. 09/31/18-3/154, type-signed Škrbić, 12 July 1995.”

⁹⁶⁷ Ex. P02899, “Main Staff document No. 09/31/18-3/154, type-signed Škrbić, 12 July 1995.”

⁹⁶⁸ Ex. P00012, “RS MOD Document, Request No. 02-21-3614/95 for mobilisation of buses, Momčilo Kovačević, 12 July 1995”. Ex. P00014, “RS MOD document, Request 02-21-3638/95 for mobilisation of buses, signed by Momčilo Kovačević, 12 July 1995”; Ex. P00013, “Document titled – request for the mobilisation of buses from the Secretariat for the Defence Ministry Zvornik No. 02-21-3615/95, signed by Momčilo Kovačević, 12 July 1995.” In response to Kovačević’s order to the MOD – Zvornik, Stevan Ivanović, Secretary of the MOD – Zvornik, ordered the MOD Departments in Zvornik, Milići, Vlasenica, Šekovići, and Bratunac to immediately mobilise all buses and trucks and to report to the Bratunac sports stadium. Ivanović further ordered the cancellation of all regular bus services and requested a report every 30 minutes regarding the implementation of this order. Ex. P02900, “Order from RS MOD No. 02–78/95, to the MOD departments in Zvornik, Milići, Vlasenica, Šekovići and Bratunac, 12 July 1995”; Ex. P02901, “Order from RS MOD No. 02–79/95 to the MOD departments in Zvornik, Milići, Šekovići and Bratunac, signed by Stevan Ivanović, 12 July 1995.”

294. On 12 July, at 7:35 a.m., Krstić ordered Lt. Colonel Krsmanović, the Chief of Transportation of the Drina Corps, to send 50 buses from Pale, Višegrad, Rogatica, Sokolac, Han Pijesak, Vlasenica, Milići, Bratunac, and Zvornik to the Bratunac sports stadium by 5 p.m. that day.⁹⁶⁹ At 8:35 a.m., the Bratunac Brigade received an urgent Drina Corps Command order from Živanović, addressed to all subordinate units of the Drina Corps, requesting that “all the available buses and mini-buses belonging to the [VRS] must be secured for the use of the Drina Corps Command on 12 July”, that they arrive at the Bratunac sports stadium by 4:30 p.m. at the latest, and follow instructions about locations for fuel distribution while the buses from the Zvornik and Bratunac Brigades were to be fueled at their commands.⁹⁷⁰ The order further stated that the Drina Corps Command had sent a message to the MOD asking for public and private buses to be mobilised.⁹⁷¹

295. At 10 a.m. on 12 July, the Drina Corps reported to the Main Staff that buses would be used from various municipalities,⁹⁷² but that their exact final destination was still unknown.⁹⁷³

296. At some point on 12 July, Živanović sent another urgent order from the Drina Corps Command to the Zvornik and Bratunac Brigades, instructing the Zvornik Brigade to regulate the traffic at the Konjević Polje junction while the Bratunac Brigade was ordered to regulate the traffic in cooperation with the Bratunac SJB on the Konjević Polje – Bratunac road at 4:30 p.m., particularly around the Bratunac sports stadium.⁹⁷⁴ Priority was to be “given to the buses for evacuation”.⁹⁷⁵ In response, the Zvornik Brigade sent a military police detachment to Konjević Polje.⁹⁷⁶ At 1:05 p.m., an intercept recorded Krstić ordering the Vlasenica Brigade to get in touch with the MUP and then to secure the road which would be used as the evacuation route for the buses.⁹⁷⁷

297. The VRS made considerable efforts to requisition buses.⁹⁷⁸ Fuel, which was scarce in the VRS at the time, was needed in large quantities to transport the Bosnian Muslim population out of

⁹⁶⁹ Ex. P01101d, “Intercept, 12 July 1995, 0735 hours.” *See supra*, fn. 330.

⁹⁷⁰ Ex. P00110, “Drina Corps Order, signed by Živanović, 12 July 1995”; Dragoslav Trišić, T. 27064 (20 Oct 2008).

⁹⁷¹ Ex. P00110, “Drina Corps Order, signed by Živanović, 12 July 1995”; *See also* Dragoslav Trišić, T. 27064–27066 (20 Oct 2008); Ex. P00322, “Zvornik Brigade daily combat report no. 06/215, type-signed Vinko Pandurević, 12 July 1995”.

⁹⁷² Ex. P00156, “Document of Drina Corps No. 21/6-686 to the VRS Main Staff, Command Post and Rear Command Post (for information) signed by Maj. Gen. Živanović, Commander, 12 July 1995”. The municipalities are identified as Pale, Sokolac, Višegrad, Rogatica, Han Pijesak, Milići, Šekovići, Bratunac and Zvornik. *Ibid.*

⁹⁷³ *Ibid.*

⁹⁷⁴ Ex. 7DP00157, “Drina Corps Order, signed by Živanović, 12 July 1995”.

⁹⁷⁵ *Ibid.*

⁹⁷⁶ Ex. P00322, “Zvornik Brigade daily combat report no. 06/215, type-signed Vinko Pandurević, 12 July 1995”; Vinko Pandurević, T. 30925–30926 (30 Jan 2009). *See also* PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16150–16151 (closed session) (10 Oct 2007).

⁹⁷⁷ Ex. P01114a, “Intercept, 12 July 1995, 13:05 hours”.

⁹⁷⁸ *See* Ex. P01105a, “Intercept, 12 July 1995, 09:15 hours, from notebook 92.”

Potočari.⁹⁷⁹ Early on 12 July, following an order from Mladić, the Drina Corps requested approval for 10,000 litres of diesel and 2,000 litres of petrol from the Main Staff for the fueling of the buses being used for the transportation.⁹⁸⁰ Various intercepts recorded conversations on the problems the VRS was having in procuring fuel on 12 July.⁹⁸¹

298. Similar to the orders sent on 12 July, Kovačević sent orders to MOD Departments in Sarajevo, Zvornik and Bijeljina on 13 July, requesting the immediate mobilisation of all available means of transport from designated municipalities to report to specified locations or to be on call.⁹⁸²

299. On 12 July, at 10 p.m., a meeting attended by a number of officers, including Mladić, Krstić, **Pandurević**, and Mirko Trivić was held at the Bratunac Brigade Headquarters.⁹⁸³ During the meeting, Trivić overheard Mladić on the telephone procuring vehicles and fuel to transport the Bosnian Muslim population away from Potočari.⁹⁸⁴ Mladić said that he would take care of the buses while the person he was speaking to was ordered to take care of the fuel.⁹⁸⁵

300. On 13 July, in a report sent to the MUP in Pale and to the Bijeljina Public Security Department and Bijeljina Police Forces Headquarters, Vasić stated that the MUP would be in charge of the “evacuation of the remaining civilian population from Srebrenica to Kladanj (about 15,000) by bus” and that 10 tonnes of petrol were “urgently” needed.⁹⁸⁶

301. Franken testified that “somebody in the UN” had decided that UNPROFOR would supply the fuel for the transportation of the Bosnian Muslim population out of Srebrenica.⁹⁸⁷ However, due to DutchBat’s shortage of fuel, the VRS first provided the fuel which DutchBat had to replace later.⁹⁸⁸ The VRS was able to procure fuel itself and at some point on 12 July, a cistern carrying fuel

⁹⁷⁹ Dragoslav Trišić, T. 27114–27115 (21 Oct 2008).

⁹⁸⁰ Ex. P00156, “Document of Drina Corps No. 21/6-686 to the VRS Main Staff, Command Post and Rear Command Post (for information) signed by Maj. Gen. Živanović, Commander, 12 July 1995”.

⁹⁸¹ Ex. P01105a, “Intercept, 12 July 1995, 09:15 hours, from notebook 92”; Ex. P01111a, “Intercept, 12 July 1995, 12:20 hours”.

⁹⁸² Ex. P00015, “RS MOD document, Request (01–21–3655/95), for mobilisation of buses for transportation of personnel, 13 July 1995”; Ex. P00016, “RS MOD Document, Request (01–21–3656/95) for mobilisation of buses for transportation of personnel, 13 July 1995”; Ex. P00017, “RS MOD document, Request (02–21–3640/95), for mobilisation of buses, 13 July 1995”.

⁹⁸³ See *infra* paras. 366–376.

⁹⁸⁴ Mirko Trivić, T. 11845 (21 May 2007), T. 11980–11981 (23 May 2007).

⁹⁸⁵ *Ibid.*, T. 11845 (21 May 2007).

⁹⁸⁶ Ex. P00886, “Document from the Zvornik CJB to Republika Srpska MUP Office of the Minister, Pale Bijeljina Public Security Department, Bijeljina Police Forces Headquarters signed by Chief of the Centre Dragomir Vasić, 13 July 1995”.

⁹⁸⁷ Robert Franken, T. 2568 (17 Oct 2006). Franken says either “Smith or Karremans”. *Ibid.*

⁹⁸⁸ *Ibid.*, T. 2569 (17 Oct 2006).

came from the Drina Corps and was available for re-fueling of buses at Vihor's Transport Company's parking lot in Bratunac.⁹⁸⁹

3. Bosnian Serb Forces Taking over Control of Potočari

302. In the morning of 12 July, when groups of Bosnian Muslims were still arriving in Potočari,⁹⁹⁰ Bosnian Serb Forces, including some Jahorina Recruits,⁹⁹¹ the 1st PJP Company from Zvornik,⁹⁹² and the Bratunac Brigade,⁹⁹³ approached Potočari and the area of the DutchBat compound from all directions.⁹⁹⁴ They took over OP Papa, the UN checkpoint at Žuti Most without engaging DutchBat.⁹⁹⁵ Some time before the third Hotel Fontana meeting, Dragomir Vasić, the Chief of the Zvornik CJB, sent a report to, *inter alia*, the MUP forces in Bijeljina and in Pale, stating that joint police forces were advancing towards Potočari with the goal of "taking UNPROFOR personnel prisoner, surrounding the entire civilian population and cleansing the area of enemy troops."⁹⁹⁶

⁹⁸⁹ Dragoslav Trišić, T. 27078–27079 (20 Oct 2008), T. 27111–27115 (21 Oct 2008); Ex. 4D00613, "Bratunac Brigade overview of fuel, 2 Aug 1995", p. 1; Ex. 5D01385, "Bratunac Brigade receipt for fuel, 13 July 1995"; Ex. 5D01386, "Vihor Company receipt fuel, 14 July"; Robert Franken, T. 2569–2570 (17 Oct 2006).

⁹⁹⁰ Robert Franken, T. 2488 (16 Oct 2006).

⁹⁹¹ PW-160, T. 8579–8581 (9 Mar 2007), T. 8676–8677 (12 Mar 2007). *See also* PW-100, T. 14802–14803, 14807 (5 Sept 2007); Mendeljev Đurić, T. 10805–10807, 10833–10834, 10857–10859 (2 May 2007), T. 10893 (3 May 2007); Ex. PIC00098, "Ex. P02478 marked by Mendeljev Đurić."

⁹⁹² Zarko Zarić, T. 26917–26918, (9 Oct 2008), T. 26952 (10 Oct 2008); Nenad Filipović, T. 26995–26997 (10 Oct 2008); PW-160, T. 8580–8581, 8592 (9 Mar 2007).

⁹⁹³ Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; PW-160, T. 8593 (9 Mar 2007), T. 8675 (private session) (12 Mar 2007).

⁹⁹⁴ Robert Franken, T. 2489–2490 (16 Oct 2006), T. 2614 (17 Oct 2006); Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2116–2117 (5 Apr 2000); Johannes Rutten, T. 4835–4836, 4877 (30 Nov 2006); Martijn Anne Mulder, Ex. P02199, "92 *bis* statement", (24 and 25 Oct 1995 and 12 May 2000), p. 3 (24 and 25 Oct 1995); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Leendert van Duijn, T. 2273 (27 Sept 2006), T. 2335–2339 (28 Sept 2006); Ex. 4DIC00014, "Map marked by Van Duijn". *See also* Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3402 (24 May 2000); PW-160, T. 8592–8593 (9 Mar 2007), T. 8675 (private session) (12 Mar 2007); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 27–28; Zarko Zarić, T. 26917–26918, (9 Oct 2008), T. 26952 (10 Oct 2008); Ex. 4D00547, "Aerial of Žuti Most close-up." There is also evidence that VRS soldiers in black uniforms passed through Potočari on 12 July. Joseph Kingori, T. 19245 (13 Dec 2007); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1499–1500, 1544 (28 Mar 2000). *See also* Dražen Erdemović, T. 10939–10940, 10951–10952, 10960, 10996 (4 May 2007) (stating that uniform included a black overall with a removable insignia and that most of them wore black uniforms when they were in Srebrenica on 11 July). Based solely on the evidence that one of the uniforms of the 10th Sabotage Detachment was black, on Erdemović's testimony that he did not approach Potočari on that day, and on the fact that the members of the 10th Sabotage Detachment he recognised on photos were not wearing black uniforms, the Trial Chamber is not satisfied that the troops in black approaching Potočari on 12 July were members of the 10th Sabotage Detachment.

⁹⁹⁵ Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995," p. 2; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", p. 1; PW-160, T. 8657–8659 (12 Mar 2007); Mendeljev Đurić, T. 10805–10807, 10856–10858 (2 May 2007); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002," pp. 61, 63–64; Nenad Filipović, T. 26994, 26996–26997 (10 Oct 2008); Robert Franken, T. 2588 (17 Oct 2006).

⁹⁹⁶ Ex. P00059, "Dispatch signed by Dragomir Vasić, 12 July 1995," para. 6. *See also* Zarko Zarić, T. 26937–26938 (9 Oct 2008).

303. As the Bosnian Serb Forces advanced towards Potočari, they searched houses and some houses and haystacks were set on fire.⁹⁹⁷ The Bosnian Muslims gathered in Potočari could see the burning houses and haystacks and coupled with the arrival of the Bosnian Serb Forces, this caused panic amongst them.⁹⁹⁸

304. Once in Potočari, members of the Bosnian Serb Forces, including MUP units, who were all well-armed,⁹⁹⁹ took up positions along the road among the Bosnian Muslims.¹⁰⁰⁰ While some of the members of the Bosnian Serb Forces acted properly towards the Bosnian Muslims,¹⁰⁰¹ there were instances of mockery and threats.¹⁰⁰² Some insulted the Bosnian Muslims, telling them, for example, that “[they] will never go back to Srebrenica” or “[y]ou are Turks and you would be best off if you go to Turkey.”¹⁰⁰³

305. At one point, Bosnian Serb Forces, including members of the MUP with dogs, went inside the DutchBat compound accompanied by Franken and other DutchBat soldiers to check if there were any ABiH soldiers hiding there and moved around the Bosnian Muslims sheltering there.¹⁰⁰⁴ Amongst the Bosnian Serb Forces entering the compound were Momir Nikolić, Chief of Intelligence and Security of the Bratunac Brigade, **Borovčanin**, and one of his commanders.¹⁰⁰⁵

⁹⁹⁷ PW-114, Ex.P02188, “92 *ter* transcript”, KT.1501 (28 Mar 2000); Leendert van Duijn, T. 2273 (27 Sept 2006), T. 2339 (28 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 144; Mendeljev Đurić, T. 10806, 10833 (2 May 2007).

⁹⁹⁸ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2116–2117 (5 Apr 2000); Hana Mehmedović, Ex. P03244 “92 *bis* statement” (17 June 2000), p. 2; PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1250–1251 (24 Mar 2000); Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1950–1951 (3 Apr 2000); Ex. P04536, “Potočari Footage – Video of the Serb forces entering Potočari on 12 July 1995” 00:03:06–00:03:43, p. 1 (transcript); Prosecution Adjudicated Facts Decision, Annex, Fact 144.

⁹⁹⁹ PW-126, T. 3601 (6 Nov 2006); PW-114, Ex. P02188, “92 *ter* transcript”, KT. 1504–1507 (28 Mar 2000).

¹⁰⁰⁰ Joseph Kingori, T. 19245–19246 (13 Dec 2007); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2117–2118 (5 Apr 2000); Johannes Rutten, T. 4877 (30 Nov 2006); Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), p. 2; Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1951 (3 Apr 2000).

¹⁰⁰¹ PW-126, T. 3601 (6 Nov 2006); PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1251 (24 Mar 2000); PW-118, T. 3483 (2 Nov 2006).

¹⁰⁰² Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2117–2118, (5 Apr 2000); Johannes Rutten, T. 4877 (30 Nov 2006); Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1951 (3 Apr 2000).

¹⁰⁰³ PW-126, T. 3601 (6 Nov 2006).

¹⁰⁰⁴ Robert Franken, T. 2490–2491, 2493 (16 Oct 2006); Paul Groenewegen, T. 2975 (25 Oct 2006); Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), p. 12 (12 May 2000); Ex. ID00035”, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995,” p. 3; Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), pp. 3–4. Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 14, 18, 89–91, 144–146; PW-160, T. 8570 (9 Mar 2007), T. 8631 (12 Mar 2007). The Trial Chamber finds that the Bosnian Serb Forces with dogs were MUP forces.

¹⁰⁰⁵ Joseph Kingori, T. 19450–19451, 19454 (11 Jan 2008); PW-160, T. 8583, 8585 (9 Mar 2007), T. 8671 (12 Mar 2007). See also Ex. P04536, “Potočari Footage – video of the Serb forces entering Potočari on 12 July 1995 and transcript”, 00:07:13–00:07:44, pp. 3–4 (transcript) (showing Duško Jević, on the morning of 12 July asking DutchBat officers whether there were also ABiH soldiers among the civilians sheltering in the DutchBat compound and a male voice asking how many men there were and their age).

4. Disarming DutchBat

306. In the early afternoon of 12 July, Rutten and other DutchBat soldiers were patrolling the area around the bus station in Potočari, when Bosnian Serb Forces approached the area and robbed them of some equipment and personal belongings.¹⁰⁰⁶ The DutchBat soldiers were pushed away when they tried to stop the members of the Bosnian Serb Forces from carrying off their equipment.¹⁰⁰⁷ At that moment, ABiH gunfire was heard coming from a hill, and the Bosnian Serb Forces fired back, using some of the DutchBat soldiers as shields.¹⁰⁰⁸ When he saw this, Rutten pointed his gun at the members of the Bosnian Serb Forces and demanded that they let the DutchBat soldiers go.¹⁰⁰⁹ They did so but then continued carrying DutchBat equipment away.¹⁰¹⁰

307. Later that afternoon, some Jahorina Recruits forced Rutten and the DutchBat soldiers under his command, in the bus station area, to surrender more of their equipment at gunpoint, including weapons, communication equipment, and bulletproof vests.¹⁰¹¹ Rutten and the other DutchBat soldiers were then detained for a few hours near a small bridge close to the bus station.¹⁰¹² They were guarded by two Jahorina Recruits until Mendeljev Đurić, a.k.a. “Mane”, Commander of the 1st Company of the Jahorina Recruits, released them after a few hours, and only after Rutten had twice protested to him about the DutchBat soldiers’ detention and their being robbed of their equipment.¹⁰¹³

308. In the early hours of the night of 12 July, some Jahorina Recruits robbed DutchBat soldiers who were stationed in the area of the bus station of their equipment.¹⁰¹⁴ They walked in groups of three or four up to one DutchBat soldier at a time, and demanded that he surrender his weapons,

¹⁰⁰⁶ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2118, 2120–2121 (5 Apr 2000); PW-114, Ex. P02188, “92 *ter* transcript”, KT. 1510 (28 Mar 2000), KT. 1562 (29 Mar 2000).

¹⁰⁰⁷ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2118 (5 Apr 2000).

¹⁰⁰⁸ *Ibid.*, KT. 2118–2119 (5 Apr 2000).

¹⁰⁰⁹ *Ibid.*, KT. 2119 (5 Apr 2000).

¹⁰¹⁰ *Ibid.*, KT. 2119 (5 Apr 2000).

¹⁰¹¹ *Ibid.*, KT. 2120–2122 (5 Apr 2000); Johannes Rutten, T. 4810–4811 (29 Nov 2006), T. 4920–4922 (4 Dec 2006). *But see* PW-100, T. 14875 (6 Sept 2007); PW-160, T. 8659 (12 Mar 2007), T. 8708 (13 Mar 2007). *See also* Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 70–71; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 7, 24; PW-160, T. 8587, 8604 (9 Mar 2007), T. 8637–8638 (private session), 8639, 8654, 8683 (12 Mar 2007); Mendeljev Đurić, T. 10806–10807, 10864, (2 May 2007). The Trial Chamber finds that in the afternoon of 12 July the only special police force present in Potočari under **Borovčanin**’s command was the Jahorina Recruits which was under the command of Mendeljev Đurić a.k.a. Mane, who released Rutten and the other DutchBat soldiers. The Trial Chamber therefore finds that some Jahorina Recruits robbed and detained Rutten and his men.

¹⁰¹² Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2122–2123 (5 Apr 2000); Johannes Rutten, T. 4816 (29 Nov 2006); Ex. PIC00052, “Aerial Image with Rutten’s Markings”. *See also* Ex. PIC00181, “Document from the HQ UNPROFOR Sarajevo, Office of Lieutenant General Rupert Smith regarding the Aftermath of Fall of Srebrenica,” pp. 2–3.

¹⁰¹³ Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2122–2124 (5 Apr 2000); Johannes Rutten, T. 4929–4930 (4 Dec 2006).

¹⁰¹⁴ Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3411 (24 May 2000); Eelco Koster, T. 3049–3052 (26 Oct 2006).

bulletproof vest, and helmet.¹⁰¹⁵ Two Jahorina Recruits demanded that Lieutenant Koster, a DutchBat officer, surrender all his equipment and when he refused, a gun was pointed at him.¹⁰¹⁶ He was only released when he threatened to report the incident to Mane.¹⁰¹⁷ Most of the 30 to 40 DutchBat officers who were there with Koster that night lost their equipment in this way.¹⁰¹⁸

5. Humanitarian Situation and Atmosphere

309. During the period from 11 to 13 July there was very little food or water in Potočari.¹⁰¹⁹ During the day, the Bosnian Muslim population gathered there suffered from the stifling heat.¹⁰²⁰ During the nights, when it was cold, most of the people had to sleep outside without blankets.¹⁰²¹ Because food was scarce, DutchBat rations could only be provided to those Bosnian Muslims inside the DutchBat compound.¹⁰²² DutchBat could not purify the water it had due to lack of fuel.¹⁰²³ While there was a well outside,¹⁰²⁴ the small water supply available was insufficient for the 20,000 to 30,000 Bosnian Muslims who were inside and outside the DutchBat compound.¹⁰²⁵

310. On 12 July, the Bosnian Serb civilian authorities, acting on Mladić's order, sent fire engines carrying drinking water and a few water cisterns to Potočari and provided some food, including bread and sweets, that was handed out to the Bosnian Muslim civilians by the Bosnian Serb Forces.¹⁰²⁶ Mladić personally handed out the food, as did **Borovčanin**; **Popović** was also present.¹⁰²⁷ This was all filmed by a Serbian television station.¹⁰²⁸ However, as soon as the cameras

¹⁰¹⁵ Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3411 (24 May 2000).

¹⁰¹⁶ *Ibid.*; Eelco Koster, T. 3052–3053 (26 Oct 2006).

¹⁰¹⁷ Eelco Koster, T. 3052–3054 (26 Oct 2006).

¹⁰¹⁸ Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3411 (24 May 2000); Šehra Ibišević, Ex. P03235, "92 bis statement" (21 June 2000), pp. 3–5.

¹⁰¹⁹ Prosecution Adjudicated Facts Decision, Annex, Fact 123; Ex. 1D00035, "Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995," p. 2; Mirsada Malagić, Ex. P02218, "92 bis transcript", KT. 1950 (3 Apr 2000); Pieter Boering, T. 1940 (21 Sept 2006); Ex. 4D00017, "Interim Report of General Staff of ABiH, 12 July 1995", p. 1.

¹⁰²⁰ Robert Franken, T. 2511 (16 Oct 2006); Vincent Egbers, T. 2719 (18 Oct 2006); PW-121, Ex. P02227, "92 bis transcript", KT. 5751–5752 (26 July 2000); Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9772 (24 May 2004).

¹⁰²¹ Paul Groenewegen, Ex. P02196, "92 ter transcript", BT. 1021 (10 July 2003).

¹⁰²² Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3398 (24 May 2000).

¹⁰²³ Robert Franken, T. 2511 (16 Oct 2006); Vincent Egbers, T. 2919–2920 (20 Oct 2006).

¹⁰²⁴ Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3398 (24 May 2000).

¹⁰²⁵ Vincent Egbers, T. 2919 (20 Oct 2006); Robert Franken, T. 2488, 2511 (16 Oct 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3398 (24 May 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 124; PW-114, Ex. P02188, "92 ter transcript", KT. 1510 (28 Mar 2000). *See also* Exs. P00515, P00489, "UNMO Report, 13 July 1995".

¹⁰²⁶ Ljubisav Simić, Ex. 4D00606, "92 ter transcript", BT. 7610–7613, 7660–7661 (15 Apr 2004); Ljubisav Simić, T. 27198–27200 (22 Oct 2008); PW-162, T. 9207 (22 Mar 2007), T. 9299 (23 Mar 2007); PW-170, Ex. P02960, "confidential – 92 ter transcript", BT. 7868 (20 Apr 2004); Mendeljev Đurić, T. 10894–10895, 10900 (3 May 2007); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3404–3405 (24 May 2000); Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2127 (5 Apr 2000); Dragoslav Trišić, T. 27066–27067 (20 Oct 2008).

¹⁰²⁷ Mendeljev Đurić, T. 10900–10901 (3 May 2007); Leendert van Duijn, T. 2277 (27 Sept 2006); Ex. P04536, "Potočari Footage -Video of the Serb forces entering Potočari on 12 July 1995", 00:16:28–00:18:10 (showing **Borovčanin** distributing food); 00:30:13–00:30:14 (showing **Popović** at the scene), pp. 10–11 (transcript);

turned away, some of the Bosnian Serb Forces took the bread and other goods back.¹⁰²⁹ As described by Simić, a member of the Bosnian Serb civilian authorities, "[t]he food was a drop in the sea, I must say. I was surprised when I realised what the situation was. I had never seen anything like it. It was shocking [...] and remains shocking to me to this day."¹⁰³⁰

311. The standards of hygiene in Potočari deteriorated very quickly due to the overcrowded conditions combined with the lack of shelter facilities.¹⁰³¹ People who had been injured were also seeking shelter in the DutchBat compound.¹⁰³² Some people even injured themselves hoping that they would get better treatment and be transported to the ICRC.¹⁰³³ Medical doctors informed Franken that without water and without improvement of the hygienic situation, people would die in the next two or three days.¹⁰³⁴ On 11 July 1995, DutchBat soldiers distributed basic medical supplies and first aid assisted by MSF,¹⁰³⁵ but there was a shortage of medical supplies.¹⁰³⁶

312. In the DutchBat compound, DutchBat soldiers tried to calm the Bosnian Muslims, as panic broke out from time to time.¹⁰³⁷ Due to the presence of the Bosnian Serb Forces, people did not dare leave the compound and used it as toilet, bedroom, and even gave birth there.¹⁰³⁸ There was at least one suicide in the DutchBat compound¹⁰³⁹ and a number of deaths, including some because of dehydration.¹⁰⁴⁰

Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 13–14, 143. *See also* Dragoslav Trišić, T. 27164 (21 Oct 2008).

¹⁰²⁸ PW-160, T. 8721 (13 Mar 2007); Ex. P04536, "Potočari Footage-Video of the Serb forces entering Potočari on 12 July 1995", p. 11 (transcript); Ex. P01577, "Video clip showing UN APC in Srebrenica, taken from Srebrenica trial video – 00:09:16 to 00:10:06"; Pieter Boering, T. 2008 (22 Sept 2006); Joseph Kingori, T. 19248 (13 Dec 2007); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 143.

¹⁰²⁹ Joseph Kingori, T. 19248 (13 Dec 2007); Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2125 (5 Apr 2000).

¹⁰³⁰ Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7612 (15 Apr 2004); Ljubisav Simić, T. 27273 (23 Oct 2008).

¹⁰³¹ Robert Franken, T. 2511 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 125; Ex. 1D00035", "Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995," p. 2.

¹⁰³² Prosecution Adjudicated Facts Decision, Annex, Fact 125.

¹⁰³³ Leendert van Duijn, T. 2299 (27 Sept 2006).

¹⁰³⁴ Robert Franken, T. 2511 (16 Oct 2006).

¹⁰³⁵ Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3397, 3401 (24 May 2000); Eelco Koster, T. 3060 (26 Oct 2006). *See also* Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7611–7612, 7629 (15 Apr 2004).

¹⁰³⁶ Robert Franken, T. 2511 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 125. *See also* Ljubisav Simić, Ex. 4D00606, "92 *ter* transcript", BT. 7611–7612, 7629 (15 Apr 2004); Zlatan Čelanović, T. 6676–6677 (31 Jan 2007).

¹⁰³⁷ Leendert van Duijn, T. 2299 (27 Sept 2006).

¹⁰³⁸ Robert Franken, T. 2511 (16 Oct 2006). *See also* Joseph Kingori, T. 19273–19274 (14 Dec 2007); Exs. P00515, P00489, "UNMO Report, 13 July 1995".

¹⁰³⁹ Eelco Koster, T. 3095 (26 Oct 2006); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1526 (28 Mar 2000); Paul Groenewegen, T. 2985–2986 (25 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 146; Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1959–1960 (3 Apr 2000); Robert Franken, T. 2511 (16 Oct 2006); Leendert van Duijn, T. 2299 (27 Sept 2006).

¹⁰⁴⁰ Robert Franken, T. 2511 (16 Oct 2006); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1509 (28 Mar 2000); Joseph Kingori, T. 19273–19274 (14 Dec 2007); Exs. P00515, P00489, "UNMO Report, 13 July 1995".

313. The mood during the night between 12 and 13 July was fearful.¹⁰⁴¹ Bosnian Serb Forces moved through the crowd and repeatedly took men away, regardless of their age, after which shouting, moaning, screaming and bursts of fire would be heard.¹⁰⁴² Some of the Bosnian Muslim men that were taken away did not return.¹⁰⁴³

314. Women were also taken away during the night and screams would then be heard.¹⁰⁴⁴ One witness heard children crying and screaming, and women screaming “Let me go”, “Don’t,” “Please let me go”, “Leave me alone,” which contributed to the atmosphere of panic and fear.¹⁰⁴⁵

315. As night fell, the Bosnian Muslims became more frightened and Ahmo Hasić, a Bosnian Muslim there, described it as “hell on earth”.¹⁰⁴⁶ Other witnesses described the night as follows: “[T]hat night [...] was terrible, killings, raping, it was horror [...]”, and “you hear 30,000 people all screaming at the same time, there is just no way to describe that situation”.¹⁰⁴⁷

6. Transportation of Bosnian Muslims out of Potočari

(a) Boarding of Buses and Separation of Bosnian Muslim Men from their Families

316. In the early or mid-afternoon of 12 July, dozens of buses and trucks started arriving in Potočari in front of the DutchBat compound.¹⁰⁴⁸ When the boarding of the buses began, Jević, who communicated with Mane via radio,¹⁰⁴⁹ stood in front of the DutchBat compound and instructed the buses and trucks to turn around to enable the people to board.¹⁰⁵⁰ Mane, leading the Jahorina Recruits, together with members of the Bratunac Brigade Military Police, coordinated the boarding

¹⁰⁴¹ Paul Groenewegen, Ex. P02196, “92 *ter* transcript” BT. 1028 (10 July 2003).

¹⁰⁴² Ahmo Hasić, T. 1176-1177 (6 Sept 2006); Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), pp. 2, 4; Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), p. 5. *See also* Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1955-1959 (3 Apr 2000); Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000), pp. 2-3.

¹⁰⁴³ Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), p. 5; Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), p. 2; Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1955-1957 (3 Apr 2000) (stating that their families had not seen or heard from them since that day, and that among these men were Ahmo Salihović, who was one of Mirsada Malagić’s neighbours, who is listed in the list of individuals whose remains have been exhumed in the Srebrenica Related Graves, compiled and identified by The International Commission on Missing Persons (“2009 ICMP List of Deceased”), and Bijao Fejzić, who was approximately 17 years old at the time, but whose name does not appear on the 2009 ICMP List of Deceased). *See* Ex. P04494 (confidential).

¹⁰⁴⁴ Šehra Ibišević, Ex. P03235, “92 *bis* statement” (21 June 2000), p. 3; Behara Krdžić, Ex. P03237, “92 *bis* statement” (16 June 2000), p. 3; Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), pp. 2, 4.

¹⁰⁴⁵ PW-118, Ex. P02210, “confidential— 92 *ter* transcript”, KT. 1254 (24 Mar 2000); PW-125, T. 3310-3311 (31 Oct 2006).

¹⁰⁴⁶ Ahmo Hasić, T. 1176-1177 (6 Sept 2006); Mirsada Malagić, Ex. P02218, “92 *bis* transcript”, KT. 1955 (3 Apr 2000).

¹⁰⁴⁷ PW-125, T. 3311 (31 Oct 2006); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3398-3399 (24 May 2000) (describing the situation as “surrealistic”).

¹⁰⁴⁸ Robert Franken, T. 2492 (16 Oct 2006); Pieter Boering, T. 2008 (22 Sept 2006); Vincent Egbers, T. 2719 (18 Oct 2006); Leendert van Duijn, T. 2285 (27 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 203; Ex. P00512, “UNMO HQ Sector BH-NE Daily sit report, 12 July 95.”

¹⁰⁴⁹ Mendeljev Đurić, T. 10808-10809, 10816 (2 May 2007).

of the buses by the Bosnian Muslims.¹⁰⁵¹ Colonel Lazar Acamović, the Assistant Commander for Logistics of the Drina Corps, told Franken, that he was in charge of the transportation.¹⁰⁵² The people boarding the buses were predominantly Bosnian Muslim women, children, and the elderly.¹⁰⁵³

317. To prevent aggression and contact on both sides, DutchBat soldiers tried to maintain a free area with a string of tape between the Bosnian Muslim population and the Bosnian Serb Forces.¹⁰⁵⁴ In the early afternoon of 12 July, **Borovčanin** was inside this taped-off area.¹⁰⁵⁵ The DutchBat soldiers tried to position themselves as a human cordon, in a line, in between the Bosnian Muslim population on the one hand, and the Bosnian Serb Forces, some of them with dogs,¹⁰⁵⁶ and the buses on the other.¹⁰⁵⁷ To help control the crowd heading to the buses, DutchBat soldiers let through small groups of Bosnian Muslims at a time.¹⁰⁵⁸

318. At some point, Mladić, who was also in this area, moved towards the Bosnian Muslim people gathered there and told them to be patient, that anyone wishing to stay could stay and anyone wishing to be transported to Kladanj or wherever, would be transported and that they were safe.¹⁰⁵⁹ Mladić also stated that priority to board the buses be given to the women and children over

¹⁰⁵⁰ PW-160, T. 8586, 8596–8598 (9 Mar 2007); Ex. PIC00073, “Aerial image of Potočari marked by PW-160”.

¹⁰⁵¹ Prosecution Adjudicated Facts Decision, Annex, Fact 210; Leendert van Duijn, T. 2290, 2300–2301 (27 Sept 2006). *But see* Mendeljev Đurić, T. 10810–10812 (2 May 2007), T. 10898 (3 May 2007) (stating that they directed the people towards the buses together with DutchBat but that “[i]t was not [his] responsibility to ensure the boarding. It was [his] responsibility to ensure security on that location. But [he] had nothing to do with transport or the boarding.”). The Trial Chamber finds that on the totality of the evidence before it, Mane and the Jahorina Recruits were assisting in the boarding of the buses by the Bosnian Muslims. To the extent that he downplayed his role in this, the Trial Chamber finds Đurić not credible on this point.

¹⁰⁵² Robert Franken, T. 2492 (16 Oct 2006). *See also* Joseph Kingori, T. 19274–19275 (14 Dec 2007); Exs. P00515, P00489, “UNMO Report, 13 July 1995”; Dragoslav Trišić, T. 27058, 27066, 27092 (20 Oct 2008).

¹⁰⁵³ Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1026 (10 July 2003); Robert Franken, T. 2496–2497 (16 Oct 2006); Mendeljev Đurić, T. 10897 (3 May 2007); Prosecution Adjudicated Facts Decision, Annex, Fact 203.

¹⁰⁵⁴ Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1024–1025 (10 July 2003); Paul Groenewegen, T. 2967–2968 (25 Oct 2006); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 13; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 67–68; PW-125, T. 3312 (31 Oct 2006).

¹⁰⁵⁵ Ex. P04536, “Potočari Footage-Video of the Serb forces entering Potočari on 12 July 1995”, 00:16:35–00:17:17, p. 8 (transcript); Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 69; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 13, 143.

¹⁰⁵⁶ Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1024–1025 (10 July 2003); Paul Groenewegen, T. 2975 (25 Oct 2006); Ex. P04536, “Potočari Footage-Video of the Serb forces entering Potočari on 12 July 1995”, 00:18:10–00:19:00, p. 9 (transcript). *See also* Eelco Koster, T. 3052–3053 (26 Oct 2006).

¹⁰⁵⁷ Leendert van Duijn, T. 2274, 2285–2286, T. 2291 (27 Sept 2006). *See also* Paul Groenewegen, T. 2981 (25 Oct 2006); PW-126, T. 3630–3631, 3638–3639 (6 Nov 2006).

¹⁰⁵⁸ Leendert van Duijn, T. 2286 (27 Sept 2006); Mendeljev Đurić, T. 10809–10812 (2 May 2007), T. 10898 (3 May 2007); PW-160, T. 8679 (12 Mar 2007).

¹⁰⁵⁹ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9772 (24 May 2004); PW-160, T. 8581 (9 Mar 2007), T. 8720 (13 Mar 2007), T. 8721–8722 (private session) (13 Mar 2007); Mendeljev Đurić, T. 10809 (2 May 2007); Ex. P02047, “Srebrenica Trial Video”, 01:58:57–01:59:00, 02:02:33–02:02:54; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 55–56.

the men.¹⁰⁶⁰ However, around this time, he was intercepted saying that “They’ve all capitulated and surrendered and we’ll evacuate them all – those who want to go and those [who] don’t want to.”¹⁰⁶¹

319. Very soon after the first buses and trucks arrived, the Bosnian Serb Forces, including some Jahorina Recruits led by Mane,¹⁰⁶² and the Bratunac Brigade Military Police, supervised by Momir Nikolić, started separating the Bosnian Muslim men from their families and did not allow them to board the buses.¹⁰⁶³ The men separated were aged between around 15 and 65 years.¹⁰⁶⁴ The separation caused great anxiety and concern among the Bosnian Muslim population.¹⁰⁶⁵

320. As the separations continued, Bosnian Serb Forces used force at times and pushed people onto the overloaded buses and trucks.¹⁰⁶⁶ When Van Duijn, a DutchBat officer, noticed the separations, he asked Mane, who had told Van Duijn that he was “the local commander of the Serb forces there”, why they singled out the men.¹⁰⁶⁷ Mane responded that they had a list of war criminals and they wanted to screen the Bosnian Muslim men.¹⁰⁶⁸ Van Duijn objected to Mane whenever young boys or men too old to be soldiers were separated from their families and on all these occasions, the boys or men were let through and could accompany their families on the buses

¹⁰⁶⁰ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9772 (24 May 2004); Ex. P02047, “Srebrenica Trial Video”, 01:59:04–01:59:08, 01:59:19–01:59:21; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 55.

¹⁰⁶¹ Ex. P01113a, “Intercept 12 July 1995, 12:50 hours”.

¹⁰⁶² Leendert van Duijn, T. 2290, 2300–2301 (27 Sept 2006); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9779–9780 (24 May 2004); Mile Janjić, T. 17938–17941 (20 Nov 2007).

¹⁰⁶³ Leendert van Duijn, T. 2286 (27 Sept 2006), T. 2317 (28 Sept 2006); Joseph Kingori, T. 19251–19252 (13 Dec 2007); Mile Janjić, T. 17937–17938 (20 Nov 2007); PW-100, T. 14818–14819 (5 Sept 2007). Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003,” p. 2, Momir Nikolić, T. 33012 (22 Apr 2009). *But see* Mendeljev Đurić, T. 10811, 10816–10817, 10838, 10862–10863, 10872 (2 May 2007) (denying his or the Jahorina Recruits’ role in separating the men); Mile Janjić, T. 18015, 18017–18019, 18021 (21 Nov 2007) (stating that the Bratunac Brigade Military Police did not participate in the separation of the Bosnian Muslims on 12 and 13 July). The Trial Chamber finds, in the light of the totality of the evidence before it, that Mane and members of the 1st Company of the Jahorina Recruits also participated in the separation of the Bosnian Muslim men. The Trial Chamber finds the testimony of Đurić and Janjić not credible on this point.

¹⁰⁶⁴ Joseph Kingori, T. 19251, 19254–19255 (13 Dec 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9829–9831 (25 May 2004); Leendert van Duijn, T. 2289, 2291 (27 Sept 2006), T. 2347 (28 Sept 2006); Paul Groenewegen, T. 3001–3002 (25 Oct 2006); Peter Boering T. 2012 (22 Sept 2006). *See* PW-110, T. 632–633 (private session) (24 Aug 2006); Ahmo Hasić, T. 1173 (6 Sept 2006); PW-105, T. 7744 (private session) (26 Feb 2007); PW-106, T. 3927, 3968 (private session) (15 Nov 2006); PW-107, T. 4113 (17 Nov 2006); Ex. P03522 (confidential).

¹⁰⁶⁵ Joseph Kingori, T. 19251–19252, 19256–19257 (13 Dec 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9786 (24 May 2004). *See also* Paul Groenewegen, T. 2968–2969 (25 Oct 2006).

¹⁰⁶⁶ Robert Franken, T. 2651–2652 (18 Oct 2006); PW-160, T. 8589–8590 (private session) (9 Mar 2007); Joseph Kingori, T. 19255–19256 (13 Dec 2007); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 3.

¹⁰⁶⁷ Leendert van Duijn, T. 2287 (27 Sept 2006).

¹⁰⁶⁸ Leendert van Duijn, T. 2287 (27 Sept 2006), T. 2346 (28 Sept 2006); Mile Janjić, T. 18036 (21 Nov 2007); Ex. 4D00015, “List of war criminals known to the command of the Bratunac Brigade, 12 July 1995”; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 10–11, 21. *But see* Mendeljev Đurić, T. 10883–10884 (3 May 2007). *See also* Johannes Rutten, T. 4853–4855 (30 Nov 2006); Joseph Kingori, T. 19283 (14 Dec 2007).

leaving Potočari.¹⁰⁶⁹ Some of the men separated included disabled men and men with walking sticks.¹⁰⁷⁰

321. The transportation and separation lasted until the evening of 12 July.¹⁰⁷¹ Mane told Van Duijn that they would stop for the night and return the next day, at 8:30 a.m, to continue the transportation.¹⁰⁷² Before they left, Jević headed a roll call of the Jahorina Recruits.¹⁰⁷³ Jević reported that same evening to **Borovčanin** at the police station in Bratunac and **Borovčanin** told him to continue with the “evacuation” the next day.¹⁰⁷⁴

322. While the separation and transportation of the Bosnian Muslims were ongoing, Mladić was constantly moving through the area.¹⁰⁷⁵ Radislav Janković was also present in Potočari.¹⁰⁷⁶ Mile Janjić, a Bratunac Brigade military policeman, together with other members of the Bratunac Brigade military police and one member of MUP assisted Janković in the counting of the Bosnian Muslims who were getting onto the buses.¹⁰⁷⁷

323. Around 6 a.m. on 13 July 1995, buses were already arriving;¹⁰⁷⁸ DutchBat soldiers started the transportation of the Bosnian Muslims before the Bosnian Serb Forces’ arrival, in order to keep the Bosnian Muslim men with their families and allow them to step onto the buses.¹⁰⁷⁹ When the Bosnian Serb Forces returned, some two hours later, Bosnian Muslim men were again separated from their families.¹⁰⁸⁰ Mane was again leading the Bosnian Serb Forces who were directing the people to the buses and separating the men from their families.¹⁰⁸¹ Momir Nikolić, together with

¹⁰⁶⁹ Leendert van Duijn, T. 2289, 2291 (27 Sept 2006), T. 2347 (28 Sept 2006).

¹⁰⁷⁰ PW-169, T. 17313 (1 Nov 2007).

¹⁰⁷¹ Leendert van Duijn, T. 2295–2296 (27 Sept 2006); Eelco Koster, T. 3025–3026 (25 Oct 2006); PW-160, T. 8607 (9 Mar 2007).

¹⁰⁷² Leendert van Duijn, T. 2295–2296 (27 Sept 2006).

¹⁰⁷³ PW-100, T. 14821 (5 Sept 2007); Leendert van Duijn, T. 2297–2298 (27 Sept 2006). The roll call took place on the road between the house with the lawn and the White House where the separation of the men had taken place. *Ibid.* The Trial Chamber finds that the roll call of the Bosnian Serb Forces referred to by Van Duijn was a roll call of the Jahorina Recruits.

¹⁰⁷⁴ PW-160, T. 8607–8608 (9 Mar 2007).

¹⁰⁷⁵ Mendeljev Đurić, T. 10809 (2 May 2007), T. 10900–10901 (3 May 2007); Leendert van Duijn, T. 2292 (27 Sept 2006); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9771–9772 (24 May 2004); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 13, 144–145; Ex. P02047, “Srebrenica Trial Video”, 1:58:10–2:02:56 (showing Mladić walking around and talking to the Bosnian Muslims gathered there).

¹⁰⁷⁶ Leendert van Duijn, T. 2280–2281, 2283 (27 Sept 2006); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9770 (24 May 2004); Robert Franken, T. 2493 (16 Oct 2006), T. 2597–2598 (17 Oct 2006); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5.

¹⁰⁷⁷ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9767–9770, 9773–9778 (24 May 2004), BT. 9840–9846 (25 May 2004); Mile Janjić, T. 17943, 17946–17948 (20 Nov 2007), T. 18011–18012 (21 Nov 2007); PW-126, T. 3602 (6 Nov 2006).

¹⁰⁷⁸ Leendert van Duijn, T. 2298–2300 (27 Sept 2006); Ex. P02196, Paul Groenewegen, “92 *ter* transcript”, BT. 1028 (10 July 2003).

¹⁰⁷⁹ Leendert van Duijn, T. 2300 (27 Sept 2006), T. 2318–2319 (28 Sept 2006); Mendeljev Đurić, T. 10815, 10870–10871 (2 May 2007).

¹⁰⁸⁰ Leendert van Duijn, T. 2300–2301 (27 Sept 2006); Ex. P02196, Paul Groenewegen, “92 *ter* transcript”, BT. 1030–1031 (10 July 2003). *See also* Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9792–9793 (24 May 2004).

¹⁰⁸¹ Leendert van Duijn, T. 2290, 2300–2301 (27 Sept 2006); Mile Janjić, T. 17938–17941 (20 Nov 2007).

Colonel Vuković, liaison officer with DutchBat for the Skelani Brigade,¹⁰⁸² had a list of alleged war criminals, and was identifying who the Bosnian Muslim men in the DutchBat compound were.¹⁰⁸³

324. That morning, Momir Nikolić had again ordered Janjić and the other military policemen of the Bratunac Brigade who had already been in Potočari on 12 July to return there to continue with the same assignments performed the day before.¹⁰⁸⁴ Janjić found the same people who were there on 12 July, including Radislav Janković and the members of the SBP.¹⁰⁸⁵ The boarding of the buses ended in the late afternoon, just before nightfall.¹⁰⁸⁶ As the last buses were being boarded, Janković ordered Janjić to go to Srebrenica to see if any Bosnian Muslims were still there.¹⁰⁸⁷ It is clear that the Bosnian Serb Forces wanted to ensure that no Bosnian Muslims remained there.¹⁰⁸⁸

(b) Detention of Bosnian Muslim Men in the White House

325. On both 12 and 13 July 1995, the Bosnian Muslim men separated from their families were detained in houses in the vicinity; one of these was a white house ("White House").¹⁰⁸⁹ The White House was about 150 metres in front of the main gate of the DutchBat compound in the direction of Bratunac about 15 to 20 metres off the main road and it was being guarded by Bosnian Serb Forces.¹⁰⁹⁰

326. Franken received reports on 12 July that the Bosnian Muslim men held in the White House were being mistreated.¹⁰⁹¹ He sent patrols there during the course of the afternoon but Bosnian Serb Forces did not allow them to enter the White House.¹⁰⁹² Franken complained to Radislav Janković

¹⁰⁸² Momir Nikolić, T. 33269–33270 (27 Apr 2009).

¹⁰⁸³ Joseph Kingori, T. 19270 (14 Dec 2007) (also stating that there was also a Colonel Drcić with Momir Nikolić and Vuković), T. 19450–19451 (11 Jan 2008); Ex. 4D00015, "List of War Criminals known to the command of the Bratunac Brigade, 12 July 1995"; Johannes Rutten, T. 4853, 4898–4899 (30 Nov 2006).

¹⁰⁸⁴ Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9793–9795, 9797–9798 (24 May 2004); Mile Janjić, T. 18015–18016 (21 Nov 2007).

¹⁰⁸⁵ Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9794–9795, 9797 (24 May 2004); Mile Janjić, T. 18015–18016 (21 Nov 2007).

¹⁰⁸⁶ Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9798 (24 May 2004).

¹⁰⁸⁷ *Ibid.*, BT. 9799–9800 (24 May 2004).

¹⁰⁸⁸ Joseph Kingori, T. 19441–19442 (11 Jan 2008).

¹⁰⁸⁹ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2129–2130 (5 Apr 2000); Johannes Rutten T. 4815–4816 (29 Nov 2006), T. 4855 (30 Nov 2006); Ex. PIC00052, "Aerial Image with Rutten's Markings"; Pieter Boering, T. 2012, 2015, 2017–2018 (22 Sept 2006), Ex. P01535, "Photograph of White House"; Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9782–9783 (24 May 2004); Mile Janjić, T. 18006–18007 (20 Nov 2007).

¹⁰⁹⁰ Pieter Boering, T. 2012 (22 Sept 2006); Vincent Egbers, T. 2749–2750 (19 Oct 2006); Joseph Kingori, T. 19455 (11 Jan 2008); PW-169, T. 17310–17312 (1 Nov 2007); Robert Franken, T. 2497 (16 Oct 2006); Ahmo Hasić, T. 1235–1236 (6 Sept 2006).

¹⁰⁹¹ Robert Franken, T. 2498–2500 (16 Oct 2006); Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2134 (5 Apr 2000); Momir Nikolić, T. 32989–32990 (22 Apr 2009). *But see* Ahmo Hasić, T. 1178–1179 (6 Sept 2006), 1252–1253 (7 Sept 2006); Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2134 (5 Apr 2000); Johannes Rutten T. 4857–4858, (30 Nov 2006).

¹⁰⁹² Robert Franken, T. 2499 (16 Oct 2006).

who responded that the men were prisoners of war and that he would take action to prevent any ill-treatment.¹⁰⁹³ However, throughout the day, Franken continued receiving disconcerting reports.¹⁰⁹⁴

327. In order to “protect” the Bosnian Muslim men who were still in the DutchBat compound, Franken had them registered on a list.¹⁰⁹⁵ Hoping to deter the Bosnian Serb Forces from mistreating the Bosnian Muslim men detained, Franken informed Radislav Janković of this list and that the names of the men on the list were not only known within the UN, but had also been sent to the Dutch government.¹⁰⁹⁶ Attempts were made to also register the Bosnian Muslim men outside the DutchBat compound but because of intimidation by the Bosnian Serb Forces, it could not be done.¹⁰⁹⁷

328. In the afternoon of 12 July, Boering saw members of the Bosnian Serb Forces, led by Mladić’s bodyguard, marching off behind the White House.¹⁰⁹⁸ Boering was stopped from following them by other members of Bosnian Serb Forces with dogs.¹⁰⁹⁹ Later he heard shots being fired.¹¹⁰⁰ On 13 July, Kingori, an UNMO observer, went to the White House, attempting to investigate reports from DutchBat on such incidents.¹¹⁰¹ However he was prevented from doing so by Bosnian Serb Forces.¹¹⁰² In addition, he also witnessed a Bosnian Muslim man being taken behind the White House and then he heard a gun being fired, but he was asked to leave the area under threat.¹¹⁰³

329. On 13 July, the White House was packed with Bosnian Muslim men, including some sitting in front of it.¹¹⁰⁴ The front balcony on the left side was also full.¹¹⁰⁵ Members of DutchBat estimated that the White House and its balcony held approximately 300 or 400 Bosnian Muslim

¹⁰⁹³ Robert Franken, T. 2499 (16 Oct 2006).

¹⁰⁹⁴ *Ibid.*, T. 2499–2500 (16 Oct 2006).

¹⁰⁹⁵ *Ibid.*, T. 2500–2503 (16 Oct 2006); Eelco Koster, Ex. P02187, “92 *ter* transcript”, KT. 3423–3424 (24 May 2000).

¹⁰⁹⁶ Robert Franken, T. 2503 (16 Oct 2006).

¹⁰⁹⁷ *Ibid.*, T. 2502 (16 Oct 2006).

¹⁰⁹⁸ Pieter Boering, T. 2013, 2015–2016 (22 Sept 2006).

¹⁰⁹⁹ *Ibid.*, T. 2013 (22 Sept 2006).

¹¹⁰⁰ *Ibid.*, T. 2013, 2016 (22 Sept 2006). The Trial Chamber notes that this incident was not charged in the Indictment and it is also not satisfied that shots were fired behind the White House.

¹¹⁰¹ Joseph Kingori, T. 19267–19268, 19271–19272 (14 Dec 2007) *See also* Ex. P00514, P00488, “Sitrep update, 13 July 1995”; Ex. PIC00181, “Document from the HQ UNPROFOR Sarajevo, Office of Lieutenant General Rupert Smith regarding the Aftermath of Fall of Srebrenica, 13 July 1995, p. 2.

¹¹⁰² Joseph Kingori, T. 19267 (14 Dec 2007).

¹¹⁰³ *Ibid.*

¹¹⁰⁴ Leendert van Duijn, T. 2303 (27 Sept 2006); Joseph Kingori, T. 19249 (13 Dec 2007); Johannes Rutten, Ex. P02178, “92 *ter* transcript”, KT. 2135 (5 Apr 2000).

¹¹⁰⁵ Johannes Rutten, T. 4971 (4 Dec 2006); Zoran Petrović, T. 18770–18771 (5 Dec 2007); Ex. P02011, “Video by journalist Zoran Petrović, Studio B version, which includes two scenes not in the original video (V000-0550)”, 00:07:28–00:07:34.

men.¹¹⁰⁶ That afternoon, **Borovčanin** was standing with Van Duijn, Kingori and Miki, the interpreter, outside the White House in front of which personal belongings of the detained Bosnian Muslim men were piled up.¹¹⁰⁷

330. No food, water or sanitary facilities were provided to the detained Bosnian Muslim men.¹¹⁰⁸ Kingori complained to Mladić about the conditions and the overcrowding of the Bosnian Muslim men detained in the White House but Mladić ignored him.¹¹⁰⁹ Mladić also refused Kingori entry into the White House.¹¹¹⁰ Egbers and Rutten, DutchBat officers who managed to go into the White House in the morning and afternoon of 13 July respectively, both noted that the Bosnian Muslim men looked very frightened.¹¹¹¹ Some men held there were interrogated by members of the Bosnian Serb Forces.¹¹¹²

331. On both days, before entering the White House, the Bosnian Muslim men were made to leave behind their personal belongings outside, including identity cards and passports.¹¹¹³ On 13 July, when Van Duijn confronted Mane with the reason he had given Van Duijn the day before as to why the Bosnian Muslim men had been separated—to be screened for war criminals—and with the fact that the men would need their passports in order to prove their identity, Mane grinned and told Van Duijn that the men would no longer need their passports.¹¹¹⁴ The Bosnian Muslim men's belongings were later set on fire after they were transported out of Potočari on 13 July.¹¹¹⁵ Most of the men separated at Potočari on 12 and 13 July 1995 have not been seen alive since.¹¹¹⁶

¹¹⁰⁶ Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2150 (5 Apr 2000); Johannes Rutten, T. 5216 (7 Dec 2006); Ex. 1DIC00058, "Photograph of the White House marked by Rutten"; Paul Groenewegen, Ex. P02196, "92 *ter* transcript", BT. 1031 (10 July 2003); Paul Groenewegen, T. 2973, 3015–3016 (25 Oct 2006).

¹¹⁰⁷ Ex. P02047, "Srebrenica Trial Video", 02:29:45–02:30:00; Joseph Kingori, T. 19292 (14 Dec 2007). *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 85, 125–127; Leendert van Duijn, T. 2301 (27 Sep 2006).

¹¹⁰⁸ Joseph Kingori, T. 19291 (14 Dec 2007); PW-169, T. 17311 (1 Nov 2007).

¹¹⁰⁹ Joseph Kingori, T. 19249–19250 (13 Dec 2007); T. 19293 (14 Dec 2007); Ex. P02047, "Srebrenica Trial Video", 02:30: 46.6 (showing the White House identified by Kingori as "where all the men were herded in").

¹¹¹⁰ Joseph Kingori, T. 19250–19251 (13 Dec 2007).

¹¹¹¹ Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2150 (5 Apr 2000); Vincent Egbers, T. 2751–2752 (19 Oct 2006), T. 2887 (20 Oct 2006). *See also* Leendert van Duijn, T. 2303–2304 (27 Sep 2006).

¹¹¹² Robert Franken, T. 2497 (16 Oct 2006); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1512 (28 Mar 2000); Johannes Rutten, Ex. P02178, "92 *ter* transcript", KT. 2134 (5 Apr 2000); PW-100, T. 14818–14819 (5 Sept 2007).

¹¹¹³ Robert Franken, T. 2497 (16 Oct 2006); Eelco Koster, Ex. P02187, "92 *ter* transcript", KT. 3408–3409 (24 May 2000); Joseph Kingori, T. 19251, 19256 (13 Dec 2007), T. 19454 (11 Jan 2008); Johannes Rutten, Ex. P02178, KT. 2132, 2134, 2195 (5 Apr 2000); Johannes Rutten, T. 4893 (30 Nov 2006); Pieter Boering, T. 2018–2019 (22 Sept 2006); Leendert van Duijn, T. 2303–2304 (27 Sep 2006); Momir Nikolić, T. 32989 (22 Apr 2009); Mile Janjić, Ex. P02963, "92 *ter* transcript", BT. 9783 (24 May 2004), BT. 9832 (25 May 2004).

¹¹¹⁴ Leendert van Duijn, T. 2304 (27 Sep 2006).

¹¹¹⁵ Robert Franken, T. 2512–2513 (16 Oct 2006) (testifying that Ex. P01897, "photograph", shows the burning pile of belongings next to the White House); PW-114, Ex. P02188, "92 *ter* transcript", KT. 1512–1513 (28 Mar 2000), T. 1541–1542 (29 Mar 2000); Ex. P02194, "Photograph of Belongings Burning".

¹¹¹⁶ Hanifa Hafizović, Ex. P03230, "92 *bis* statement" (16 June 2000), pp. 1, 3, 5; Nura Efendić, Ex. P03238, "92 *bis* statement" (21 June 2000), pp. 2–4; Behara Krdžić, Ex. P03237, "92 *bis* statement" (16 June 2000), pp. 2–3. For example, Kasim Hafizović and Senahid Hafizović, who were identified by Hanifa Hafizović and Nura Efendić, and whose names appeared on the 2009 ICMP List of Deceased; Meho (Mesa) Efendić who was identified by Nura

(c) Transportation of Bosnian Muslim Women, Children, and the Elderly to ABiH-held Territory

332. On 12 and 13 July 1995, the Bosnian Muslim women, children, and the elderly were transported out of Potočari on buses and trucks, to ABiH-held territory near Kladanj.¹¹¹⁷ Each convoy was escorted by Bratunac Brigade Military Police or members of the SBP.¹¹¹⁸ The buses and trucks went through Bratunac, towards Konjević Polje and Vlasenica, and many of them stopped at the village of Tišća on the way to Kladanj.¹¹¹⁹

333. DutchBat soldiers attempted to escort the buses and the escort of the first convoy on 12 July, headed by Kosorić, the Drina Corps Chief of Intelligence, in fact succeeded.¹¹²⁰ Subsequent attempts by DutchBat to escort the buses on 12 July failed as DutchBat jeeps were hijacked by the Bosnian Serb Forces.¹¹²¹ They were robbed of their vehicles, their weapons, their flak jackets, ammunition and the equipment they had in their jeeps.¹¹²² The Bosnian Serb Forces seized approximately 16 UN vehicles at the time.¹¹²³

334. On a number of occasions, the vehicles transporting the Bosnian Muslim women, children, and the elderly were stopped by Bosnian Serb Forces who checked if there were men on board and threatened and demanded money from the women.¹¹²⁴

335. On arriving in Tišća, VRS soldiers directed the women, children, and the elderly to the direction of Kladanj.¹¹²⁵ They continued on foot to ABiH-held territory and later boarded buses that took them to Dubrave, in the vicinity of Tuzla.¹¹²⁶ Major Sarkić, a liaison officer with the Milići

Efendić and Hanifa Hafizović and whose name appeared on the 2009 ICMP List of Deceased; and Nazif Krdžić, who was identified by Behara Krdžić, and whose name appeared on the 2009 ICMP List of Deceased. *See* Ex. P04494 (confidential).

¹¹¹⁷ Nura Efendić, Ex. P03238, "92 *bis* statement" (21 June 2000), pp. 2, 4; Šehra Ibišević, Ex. P03235, "92 *bis* statement" (21 June 2000), p. 5; Samila Salčinović, Ex. P03233, "92 *bis* statement" (18 June 2000), p. 1; Pieter Boering, T. 2010, 2015 (22 Sept 2006).

¹¹¹⁸ Mile Janjić, T. 17934–17935 (20 Nov 2007), T. 18016–18017 (21 Nov 2007); Martijn Anne Mulder, Ex. P02199, "92 *bis* statement" (24 and 25 Oct 1995 and 12 May 2000), p. 3 (24 and 25 Oct 1995); Ex. P01133a (confidential).

¹¹¹⁹ Hana Mehmedović, Ex. P03244, "92 *bis* statement" (17 June 2000), pp. 2, 6; Hanifa Hafizović, Ex. P03230, "92 *bis* statement" (16 June 2000), p. 2; Pieter Boering, T. 2021–2022, 2078 (22 Sept 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 215.

¹¹²⁰ Pieter Boering, T. 2020–2021 (22 Sept 2006) (stating that the first convoy consisted of approximately ten buses and six trucks); Martijn Anne Mulder, Ex. P02199, "92 *bis* statement", (24 and 25 Oct 1995 and 12 May 2000), pp. 3 (24 and 25 Oct 1995), pp. 12–13 (12 May 2000); Vincent Egbers, T. 2720 (18 Oct 2006), T. 2803–2804 (19 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Facts 130, 131, 217.

¹¹²¹ Prosecution Adjudicated Facts Decision, Annex, Fact 217.

¹¹²² Vincent Egbers, T. 2721 (18 Oct 2006); Robert Franken, T. 2494–2495 (16 Oct 2006).

¹¹²³ Robert Franken, T. 2495 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 218.

¹¹²⁴ Hana Mehmedović, Ex. P03244, "92 *bis* statement" (17 June 2000), p. 6; Šehra Ibišević, Ex. P03235, "92 *bis* statement" (21 June 2000), pp. 2, 5; Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1975-1976 (3 Apr 2000).

¹¹²⁵ Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1981–1982 (4 Apr 2000).

¹¹²⁶ Nura Efendić, Ex. P03238, "92 *bis* statement" (21 June 2000), pp. 1, 3; Mejra Mešanović, Ex. P03234, "92 *bis* statement" (19 June 2000), p. 2; Samila Salčinović, Ex. P03233, "92 *bis* statement" (18 June 2000), p. 1; Mirsada Malagić, Ex. P02218, "92 *bis* transcript", KT. 1981–1982 (4 Apr 2000); Vincent Egbers, T. 2747–2749 (19 Oct 2006), T. 2923 (20 Oct 2006).

Brigade, who was in charge of these VRS soldiers, asked Boering, the DutchBat officer who had escorted the first convoy of buses on 12 July, to accompany the Bosnian Muslims as they walked through no man's land toward the Bosnian Muslim side at Kladanj, a distance of approximately five kilometres, which Boering did.¹¹²⁷ That day, Mulder, a DutchBat officer, also found a few dead bodies of Bosnian Muslim women, who did not appear to have any wounds, inside the vehicles that had just transported them.¹¹²⁸

336. Boering witnessed an incident where VRS soldiers, led by Major Sarkić, selected some Bosnian Muslim men who were "older than about 14 and younger [...] [than] 60 or 70" from the people who had just disembarked from the first convoy of buses near Tišća, and took them away in the direction of a forest.¹¹²⁹ Major Sarkić told Boering "that he was doing this job upon assignment from the Drina Corps, with [the Milići Brigade]."¹¹³⁰

337. In the morning of 13 July 1995, DutchBat soldiers were again given the task of escorting convoys to Kladanj.¹¹³¹ However, members of the Bosnian Serb Forces again forced about 10 DutchBat officers at gunpoint to stop, took their vehicles and equipment, including helmets and bullet-proof vests, and had them sit by the side of the road at Konjevići.¹¹³² When Rutten attempted to escort a final convoy out of Potočari that day, his car was blocked at gunpoint by two cars driven by members of the Bosnian Serb Forces so he turned back.¹¹³³

(d) Transportation of Bosnian Muslim Men to Bratunac

338. The first convoys of buses to leave Potočari included a few men but some of them were separated at checkpoints, including Tišća, before reaching Kladanj.¹¹³⁴ Later on 12 July, the Bosnian Muslim men detained in the White House were taken one behind the other under the guard of members of the Bosnian Serb Forces to other buses.¹¹³⁵ The members of the Bosnian Serb Forces forcing the men to board the buses, kicked some of them and hit them with rifle butts.¹¹³⁶ In the

¹¹²⁷ Pieter Boering, T. 2023–2025 (22 Sept 2006). *See also* Ex. P02047, "Srebrenica Trial Video", 02:13:19–02:17:31.

¹¹²⁸ Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995 and 12 May 2000), p. 13 (12 May 2010). *See also* Exs. P00515, P00489, "UNMO Report, 13 July 1995".

¹¹²⁹ Pieter Boering, T. 2022–2023 (22 Sept 2006); Exs. 1D00018, 4D00025 "Statement of Pieter Boering, 3–6, 10 Feb 1998", p. 11.

¹¹³⁰ Pieter Boering, T. 2022–2024 (22 Sept 2006) (stating that this was said in broken German). *See also* Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995 and 12 May 2000), pp. 13–14 (12 May 2000).

¹¹³¹ Vincent Egbers, T. 2749 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, 24 and 25 Oct 1995 and 12 May 2000", 12 May 2000), p. 3 (24 and 25 Oct 1995), p. 14 (12 May 2000).

¹¹³² Vincent Egbers, T. 2753–2757 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995 and 12 May 2000), pp. 3–4 (24 and 25 Oct 1995), p. 14 (12 May 2000).

¹¹³³ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2154–2155 (5 Apr 2000).

¹¹³⁴ *See supra*, Chapter III, Section E. 6(c). *See also* Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 3.

¹¹³⁵ Joseph Kingori, T. 19256 (13 Dec 2007); PW-100, T. 14818–14819 (5 Sept 2007).

¹¹³⁶ PW-126, T. 3618–3619 (private session) (6 Nov 2006). *See also* PW-160, T. 8589–8590 (private session) (9 Mar 2007).

beginning of the process, in every convoy with Bosnian Muslim women, children, and the elderly, there was a bus transporting men from the White House towards Bratunac.¹¹³⁷ Later, men were transported separately from the convoy of women, children, and the elderly.¹¹³⁸ Between 10 and 15 buses full with Bosnian Muslim men left Potočari on 12 July.¹¹³⁹

339. An UNMO member tried to record the men's names as they were boarding the buses by asking them to shout it out.¹¹⁴⁰ Men were crying out, asking UNPROFOR why they would not stop the Bosnian Serbs from separating them and taking them away "to be killed by these people".¹¹⁴¹ DutchBat soldiers tried to follow a bus carrying the men, but they were stopped at OP Papa in the area of Žuti Most, and when they tried to continue, they were again stopped by Bosnian Serb Forces.¹¹⁴² When the escort jeep later caught up with the tail of the convoy, the bus carrying the Bosnian Muslim men had disappeared.¹¹⁴³

340. On 13 July, Van Duijn, a DutchBat officer, wanting to make sure that DutchBat would accompany the Bosnian Muslim men when they were transported away separately from the White House, tried to get on a bus carrying Bosnian Muslim men only, but was prevented at gunpoint from doing so.¹¹⁴⁴ Mane pulled him away and in a clear, deliberate tone, told him not to get on that bus.¹¹⁴⁵ Escorted by Bratunac Brigade Military Police, the Bosnian Muslim men were taken to the Vuk Karadžić School and the Old School in Bratunac.¹¹⁴⁶

¹¹³⁷ Robert Franken, T. 2497–2498 (16 Oct 2006), T. 2591 (17 Oct 2006); Hana Mehmedović, Ex. P03244, "92 bis statement" (17 June 2000), pp. 2–3. Some of the men were taken to a hangar behind the Vuk Karadžić School in Bratunac. PW-169, T. 17315–17316, 17318, 17330 (1 Nov 2007); Ahmo Hasić, T. 1178 (6 Sept 2006).

¹¹³⁸ Robert Franken, T. 2497–2498 (16 Oct 2006).

¹¹³⁹ Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9786 (24 May 2004), BT. 9844–9845 (25 May 2004); Mile Janjić, T. 17933, 17942–17945 (20 Nov 2007). *See also* Momir Nikolić, T. 33009–33010 (22 Apr 2009).

¹¹⁴⁰ Joseph Kingori, T. 19263 (14 Dec 2007).

¹¹⁴¹ *Ibid.*, T. 19256–19257 (13 Dec 2007).

¹¹⁴² Robert Franken, T. 2498 (16 Oct 2006); Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2108 (5 Apr 2000); Johannes Rutten, T. 4962 (4 Dec 2006).

¹¹⁴³ Robert Franken, T. 2498 (16 Oct 2006).

¹¹⁴⁴ Leendert van Duijn, T. 2304–2305 (27 Sept 2006).

¹¹⁴⁵ *Ibid.*, T. 2305–2306 (27 Sept 2006).

¹¹⁴⁶ Ahmo Hasić, T. 1178 (6 Sept 2006), T. 1259–1260 (7 Sept 2006). However, the Trial Chamber notes that the Parties have stipulated that he had identified the Old School on an aerial of Bratunac in a proofing session in 2003. *See* T. 21190–21191 (7 Feb 2008); Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9805 (24 May 2004); Mile Janjić, T. 17934 (20 Nov 2007), T. 18016–18017 (21 Nov 2007); PW-115, Ex. P02200, "92 bis transcript", BT. 6090–6094, 6098 (17 Dec 2003). From the sequence of events described by PW-115, the Trial Chamber concludes that he was referring to 13 July 1995. PW-115 showed the location of the school on Ex. P02202, "Aerial Image of Bratunac town, marked by witness during proofing session" which was the location of the Vuk Karadžić School as indicated on Ex. P02103, "Documents tendered with Ruez", p. 272.

(e) Conclusion

341. In all, about 10,000 to 15,000 Bosnian Muslims left Potočari on 12 July.¹¹⁴⁷ The remaining Bosnian Muslim population in Potočari, except for some wounded, was removed on 13 July.¹¹⁴⁸

342. On both 12 and 13 July, Momir Nikolić, together with Jević¹¹⁴⁹ and several VRS and MUP units—Drina Corps military police under Major Petrović,¹¹⁵⁰ elements of the 10th Sabotage Detachment,¹¹⁵¹ elements of the 65th Protection Regiment's Military Police,¹¹⁵² the Bratunac Brigade 2nd and 3rd Battalions,¹¹⁵³ the Bratunac Brigade Military Police,¹¹⁵⁴ and MUP members with German Shepherd dogs¹¹⁵⁵ assisted in the separation and detention of the Bosnian Muslim able-bodied men and the transportation of the Bosnian Muslim population.¹¹⁵⁶

¹¹⁴⁷ Ex. P00059, "Dispatch signed by Dragomir Vasić, 12 July 1995," para. 3; Ex. P00239, "Bratunac Brigade Daily combat report to the Drina Corps signed by Blagojević, 12 July 1995," para. 7.

¹¹⁴⁸ Robert Franken, T. 2504 (16 Oct 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3413–3414 (24 May 2000); Ex. P00516, "UNMO Sit report 13 July 95"; Prosecution Adjudicated Facts Decision, Annex, Fact 219.

¹¹⁴⁹ Momir Nikolić, T. 32904–32905 (21 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3; Leendert van Duijn, T. 2278–2279 (27 Sept 2006); Mendeljev Đurić, T. 10809 (2 May 2007). *But see* PW-160, T. 8587–8588, 8591–8592 (9 Mar 2007), T. 8619–8620, 8657 (12 Mar 2007), T. 8720, 8725–8726, 8744 (13 Mar 2007). The Trial Chamber finds that Jević and the Jahorina Recruits were assisting in the separation of the Bosnian Muslim men and the boarding of the Bosnian Muslim women, children, and the elderly. *See supra*, paras. 316, 319–321, 323.

¹¹⁵⁰ Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3. *See also* Dragoslav Trišić, T. 27073–27074, 27087 (20 Oct 2008), T. 27168 (21 Oct 2008). Momir Nikolić, T. 32986–32987 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3.

¹¹⁵¹ *See also* Robert Franken, T. 2616 (17 Oct 2006).

¹¹⁵² Momir Nikolić, T. 32986–32987 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3. *See also* Dragoslav Trišić, T. 27166 (21 Oct 2008).

¹¹⁵³ Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, p. 3. *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 18–19; Prosecution Adjudicated Facts Decision, Annex, Fact 132; Dragoslav Trišić, T. 27069 (20 Oct 2008).

¹¹⁵⁴ Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3; Prosecution Adjudicated Facts Decision, Annex, Fact 210; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 146; Ex. P03246, "Borovčanin Interview Book of Still Images," p. 85. *See also* Dragoslav Trišić, T. 27073–27074 (20 Oct 2008), T. 27168 (21 Oct 2008); PW-160, T. 8592–8593 (9 Mar 2007), T. 8675 (12 Mar 2007). *See supra*, paras. 316, 319, 322, 324, 332, 340.

¹¹⁵⁵ Momir Nikolić, T. 32986–32987 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement, 16 Apr 2009", p. 3. *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 89–91, 144; PW-160, T. 8570 (9 Mar 2007).

¹¹⁵⁶ Momir Nikolić, T. 33012–33013 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2; Momir Nikolić, Ex. C00002, "Supplementary Statement provided by Momir Nikolić on request of the Trial Chamber, 16 Apr 2009", p. 3. The Trial Chamber notes that Momir Nikolić testified that the soldiers of the Drina Wolves of the Zvornik Brigade were involved in tasks in Potočari related to the "transportation of the women and children to Kladanj and the separation and detention of the able-bodied Muslim men". The Trial Chamber however finds that in light of the fact that his testimony on this point is vague and uncorroborated, such evidence is insufficient to find that members of the Drina Wolves assisted in the separation and transportation of the Bosnian Muslims in Potočari. *See infra*, para. 2001.

343. The following VRS officers were present in Potočari during the process of removal of the Bosnian Muslim population: Mladić,¹¹⁵⁷ Krstić,¹¹⁵⁸ Radislav Janković,¹¹⁵⁹ **Popović**,¹¹⁶⁰ Svetozar Kosorić,¹¹⁶¹ Momir Nikolić,¹¹⁶² Zeljko Kerkez, Chief of the Department for Traffic and Transportation Service of the Main Staff,¹¹⁶³ Colonel Acamović,¹¹⁶⁴ and Colonel Krsmanović, Chief of the Transportation Service of the Drina Corps.¹¹⁶⁵

(f) Transportation of the Wounded out of Srebrenica

344. On 11 July, DutchBat officers moved some of the wounded and sick from the hospital in Srebrenica to Potočari.¹¹⁶⁶ Others were taken to the Bratunac hospital,¹¹⁶⁷ although on 13 July, there were still some wounded and sick in the Srebrenica hospital.¹¹⁶⁸

345. On 12 July, Nicolai contacted **Gvero** on the evacuation of the Bosnian Muslim wounded from Srebrenica.¹¹⁶⁹ Nicolai informed **Gvero** of the agreements reached regarding the “evacuation of the wounded people” from Srebrenica at the 3rd Hotel Fontana meeting.¹¹⁷⁰ **Gvero** and Nicolai had a disagreement about the transportation of the wounded by air.¹¹⁷¹

346. On 15 July, a meeting was held in Belgrade between Milošević and Mladić on the one hand, and Akashi, Carl Bildt, Thorvald Stoltenberg, and Smith, on the other hand, during which, among other issues, the situation in Srebrenica was discussed.¹¹⁷² Informal agreements were reached that UNHCR and ICRC were to have full access to the Srebrenica area and that UNPROFOR was to

¹¹⁵⁷ See *supra*, paras. 310, 322, 330.

¹¹⁵⁸ Ex. P02047, “Srebrenica Trial Video”, 02:03:05–02:04:25; PW-109, T. 14592 (closed session) (31 Aug 2007); Mile Janjić, T. 17964–17965 (20 Nov 2007).

¹¹⁵⁹ See *supra*, paras. 322, 326–327.

¹¹⁶⁰ See *supra*, para. 310.

¹¹⁶¹ Pieter Boering, T. 2020–2021 (22 Sept 2006); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 15–16. **Borovčanin** also stated that Glogovac Siniša from the State Security in Zvornik and a second officer from the State Security whose name **Borovčanin** did not know were also present in Potočari on 12 July. *Ibid.* See *supra*, para. 333.

¹¹⁶² See *supra*, paras. 305, 319, 323–324.

¹¹⁶³ Zeljko Kerkez, T. 24068, 24087 (25 July 2008).

¹¹⁶⁴ See *supra*, para. 316.

¹¹⁶⁵ Zeljko Kerkez, T. 24088 (25 July 2008).

¹¹⁶⁶ Robert Franken, T. 2610–2611 (17 Oct 2006), T. 2628–2629 (18 Oct 2006); Vincent Egbers, T. 2717–2718 (18 Oct 2006), T. 2918, 2929 (20 Oct 2006); Pieter Boering, T. 1940 (21 Sept 2006).

¹¹⁶⁷ Joseph Kingori, T. 19265 (14 Dec 2007).

¹¹⁶⁸ *Ibid.*, T. 19269–19270 (14 Dec 2007).

¹¹⁶⁹ Cornelis Nicolai, T. 18493, 18495 (29 Nov 2007), T. 18553 (30 Nov 2007). See Joseph Kingori, T. 19280 (14 Dec 2007); Ex. P00519, “Sitrep update, 14 July 1995”.

¹¹⁷⁰ Cornelis Nicolai, T. 18494–18495 (29 Nov 2007); Ex. P02907, “Notes of telephone conversation between General Nicolai and General Gvero, 12 July 1995 at 14:45 hours”, p. 1.

¹¹⁷¹ Ex. P02907, “Notes of a telephone conversation between General Nicolai and General Gvero, 12 July 1995 at 14:45 hours”, p. 1; Cornelis Nicolai, T. 18495 (29 Nov 2007), T. 18554–18555 (30 Nov 2007). See also Ex. 1D00035”, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation in Srebrenica, 12 July 1995,” p. 2.

¹¹⁷² Ex. P02942, “UNPROFOR cable from Akashi to Annan regarding meeting in Belgrade, 17 July 1995”; Rupert Smith, T. 17530–17532 (6 Nov 2007).

organise the immediate evacuation of the wounded from Potočari and Bratunac.¹¹⁷³ Towards the end of the meeting, it was agreed that **Gvero** would meet with UNHCR, at noon on 16 July 1995, to discuss the evacuation of the wounded.¹¹⁷⁴

347. On 16 July, representatives of the VRS Main Staff and of the ICRC agreed that evacuations of about 100 Bosnian Muslim wounded from Bratunac to Tuzla would be carried out by ICRC teams on 17 July.¹¹⁷⁵

348. At the local level, DutchBat contacted the VRS and General Nicolai understood that he had reached an agreement to evacuate several Bosnian Muslim wounded, from Bratunac Hospital, to Tuzla.¹¹⁷⁶ However, when the convoy reached the border of Bosnian Serb territory, Bosnian Serb Forces shot at it and forced it back.¹¹⁷⁷ Around 3 p.m. on 16 July, when Nicolai called the VRS and requested that the convoy be let through as had been agreed, he was told that there was no detailed agreement and that **Gvero** was discussing the matter with UNHCR.¹¹⁷⁸

349. It was only on 17 July that Franken met with ICRC, Radislav Janković, Momir Nikolić, and Deronjić to discuss the situation of the wounded Bosnian Muslims who remained in the DutchBat compound in Potočari and in the Bratunac Hospital.¹¹⁷⁹ At this meeting, Franken agreed to hand over the wounded to the ICRC.¹¹⁸⁰ Momir Nikolić however insisted on accompanying the ICRC members to the infirmary in the DutchBat compound as Nikolić believed there were war criminals among the Bosnian Muslim wounded.¹¹⁸¹ In a press release dated 18 July 1995, the ICRC announced that on 17 and 18 July, with **Gvero**'s agreement, 88 wounded and sick were evacuated from Bratunac and Potočari to Tuzla.¹¹⁸² 23 other Bosnian Muslims were refused Bosnian Serb

¹¹⁷³ Ex. P02942, "UNPROFOR cable from Akashi to Annan regarding meeting in Belgrade, 17 July 1995".

¹¹⁷⁴ *Ibid.*; Rupert Smith, T. 17533 (6 Nov 2007).

¹¹⁷⁵ Ex. P02567, "VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995".

¹¹⁷⁶ Cornelis Nicolai, T. 18497 (29 Nov 2007); Ex. P02978, "Notes of a telephone conversation between General Nicolai and Col. Marković, 16 July 1995 at 15:00 hours."

¹¹⁷⁷ Cornelis Nicolai, T. 18497–18498 (29 Nov 2007).

¹¹⁷⁸ *Ibid.* See also Ex. P02978, "Notes of a telephone conversation between General Nicolai and Col. Marković, 16 July 1995, 15:00 hours."

¹¹⁷⁹ Robert Franken, T. 2514-2515 (16 Oct 2006). See also Prosecution Adjudicated Facts Decision, Annex, Fact 224. The Trial Chamber finds that this must have been Miroslav Deronjić who appears as signatory of Ex. P00453, "Declaration signed by Franken, Deronjić and Mandžić on 17 July 1995, p. 2.

¹¹⁸⁰ Robert Franken, T. 2516 (16 Oct 2006).

¹¹⁸¹ *Ibid.*

¹¹⁸² Robert Franken, T. 2530 (17 Oct 2006); Ex. P00536, "ICRC Communication to the press No. 95/32, 18 July 1995". See also Ex. P04157, "ICRC interview to Deutsche Welle, 20 July 1995", p. 2; Ex. P02567, "VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995"; Ex. P00524, UNMO Sit Report, 17 July 1995"; Ex. P02570, "VRS Main Staff order regarding movement of international humanitarian organizations, signed by Miletić, 18 July 1995". See also Prosecution Adjudicated Facts Decision, Annex, Fact 224.

authorisation to leave as they were men of military age, and they were kept in the Bratunac hospital.¹¹⁸³ ICRC considered them POWs.¹¹⁸⁴

350. On 19 July, an agreement was signed by Smith and Mladić which stated that both sides agreed to “the evacuation of wounded Muslims from Potočari, as well as from the hospital in Bratunac” and the “evacuation of women, children and elderly Muslims, those who want to leave.”¹¹⁸⁵

7. Killings

(a) Luke School near Tišća¹¹⁸⁶

351. On the morning of 13 July 1995, PW-118, a Bosnian Muslim man, managed to board one of the buses near the DutchBat compound in Potočari.¹¹⁸⁷ He was hidden by Bosnian Muslim women on the bus as it drove to Luke.¹¹⁸⁸ The town of Luke is about 5 kilometres southwest of Tišća which is approximately 35 kilometres northwest of Potočari.¹¹⁸⁹ There, the bus stopped and the women and children were ordered to proceed on foot.¹¹⁹⁰ PW-118 was stopped by a VRS soldier and taken to Luke School on the orders of a VRS major.¹¹⁹¹ After he arrived at the school at approximately 10:00 a.m., PW-118’s hands were tied and he sat on the ground outside the school until nightfall.¹¹⁹² Then, he and about 21 other Bosnian Muslim men were taken into a classroom of the school, questioned, and beaten by a group of about ten VRS soldiers.¹¹⁹³ Each question was

¹¹⁸³ Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995”; Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”; Ex. P00524, UNMO Sit Report, 17 July 1995”.

¹¹⁸⁴ Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995.”

¹¹⁸⁵ Ex. P02265, “Agreement between General Smith and General Mladić, 19 July 1995”; Robert Franken, T. 2698 (18 Oct 2006).

¹¹⁸⁶ The Indictment alleges that on 13 July 1995, some Bosnian Muslims were taken to the Luke School, where they were abused and assaulted, and that on or about 13 July and 14 July, 25 Bosnian Muslim males from the school were transported to a pasture nearby and executed. Indictment, para. 30.5.

¹¹⁸⁷ PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1257–1258 (24 Mar 2000).

¹¹⁸⁸ *Ibid.*, KT. 1257–1259 (24 Mar 2000); PW-118, T. 3467 (1 Nov 2006).

¹¹⁸⁹ Ex. P02110, “Map 5 of the Zvornik area from Map Book with red dots making mass execution points.”

¹¹⁹⁰ PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1259–1261 (24 Mar 2000).

¹¹⁹¹ *Ibid.*, KT. 1261 (24 Mar 2000); PW-118, T. 3427 (1 Nov 2006). *See also* Ex. P02103, “Documents tendered with statement of Witness Jean René Ruez”, pp. 20–21; Jean-René Ruez, T. 1369–1370 (8 Sept 2006); Pieter Boering, T. 2022–2023 (22 Sept 2006).

¹¹⁹² PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1263, 1268–1269, 1281 (24 Mar 2000); PW-118, T. 3427 (1 Nov 2006).

¹¹⁹³ PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, “92 *ter* transcript”, KT. 1285–1287 (24 Mar 2000); PW-118, T. 3428 (1 Nov 2006), T. 3472 (2 Nov 2006); Ex. P02283, “Photograph of Witness” (confidential). PW-118 recognised one of the Bosnian Serb soldiers at the Luke School that day as Savo Ristanović. He also saw someone else he knew from before the war, who he was told was a commander of a special intervention unit of the army. PW-118 testified that the VRS soldiers who beat the prisoners were dressed like this commander, and wore “coverall type” uniforms with different coloured bandanas tied in the back, similar to the uniforms of sabotage units. PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1271–1274, 1276–1277, 1282, 1284, 1287–1288 (24 Mar 2000). The Trial Chamber finds that based solely on this piece of evidence, it cannot conclude that the VRS soldiers beating the Bosnian Muslim prisoners were members of the 10th Sabotage Detachment.

followed by a blow to the head with a fist or a rifle, or a kick to the chest.¹¹⁹⁴ PW-118 overheard the soldiers discussing Kravica and how they had “finished with the balijs”.¹¹⁹⁵

352. Sometime after midnight, the prisoners were ordered onto a truck.¹¹⁹⁶ The truck drove towards Vlasenica, turned left, and stopped briefly at a small brook.¹¹⁹⁷ PW-118 heard one of the VRS soldiers bang on the roof of the truck and say, “Not here. Take them up there, where they took people before.”¹¹⁹⁸ The truck then drove to an abandoned meadow in Rašića Gaj, where the VRS soldiers began shooting the prisoners in the truck and throwing them off.¹¹⁹⁹ Two men sitting next to PW-118 jumped out of the truck and ran, but only made it approximately 20 metres before being shot.¹²⁰⁰ PW-118 also jumped off the truck and ran.¹²⁰¹ He heard one of the VRS soldiers say, “Look at this balijs motherfucker. He’s fleeing, he’s escaping”, at which time the VRS soldiers began shooting at PW-118.¹²⁰² PW-118 reached the forest and eventually arrived in ABiH-controlled territory.¹²⁰³

353. The Trial Chamber finds that on 13 July, approximately 22 Bosnian Muslim men were interrogated and beaten while detained at the Luke School. At night, these prisoners were loaded onto a truck, driven to a meadow in Rašića Gaj, and shot.

(b) “Opportunistic” Killings in Potočari

(i) Killings of nine Bosnian Muslim Men whose Bodies were Found on 13 July near the DutchBat Compound¹²⁰⁴

354. On 13 July 1995, after midday, DutchBat officers Rutten, Koster, and Van Schaik went to investigate the rumours they had heard that Bosnian Muslim men had been killed in Potočari, close to a stream, near the road on the Budak side.¹²⁰⁵

¹¹⁹⁴ PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1285–1286 (24 Mar 2000).

¹¹⁹⁵ *Ibid.*, KT. 1285 (24 Mar 2000).

¹¹⁹⁶ *Ibid.*, KT. 1288–1290 (24 Mar 2000).

¹¹⁹⁷ *Ibid.*, KT. 1292–1293 (24 Mar 2000).

¹¹⁹⁸ *Ibid.*, KT. 1293 (24 Mar 2000).

¹¹⁹⁹ *Ibid.*, KT. 1294–1296 (24 Mar 2000). PW-118 identified two of the men on the truck with him who were killed at Rašića Gaj as Azem Bočić and Abdul Kadir. PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1262, 1301–1302 (24 Mar 2000). The Trial Chamber notes that neither name appears on the list of individuals whose remains have been exhumed in the Srebrenica Related Graves, compiled and identified by The International Commission on Missing Persons (“2009 ICMP List of Deceased”). See Ex. P04494 (confidential).

¹²⁰⁰ PW-118, Ex. P02210, “confidential – 92 *ter* transcript”, KT. 1296 (24 Mar 2000).

¹²⁰¹ *Ibid.*, KT. 1297 (24 Mar 2000).

¹²⁰² *Ibid.*

¹²⁰³ *Ibid.*, KT. 1297, 1301 (24 Mar 2000).

¹²⁰⁴ The Indictment alleges that on 12 July, nine Bosnian Muslim men were killed in the woods near the DutchBat compound on the Budak side of the main road. These killings are alleged as part of the “opportunistic” killings. Indictment, para. 31.1.a. See also Prosecution Closing Arguments, T. 34175 (3 Sept 2009) (noting that while the Indictment states 12 July, the evidence shows the dead men were found on 13 July). The Trial Chamber notes that the Defence have been on notice of this.

355. They were directed by locals to a field near the stream, at about 500 metres distance from the DutchBat compound, where they discovered nine dead male bodies in civilian clothes.¹²⁰⁶ All but two of the men whose faces were sideways were lying with their faces down toward the stream.¹²⁰⁷ Rutten inspected each of the bodies and checked for vital signs.¹²⁰⁸ The corpses were still warm, without flies around them and blood was still flowing from small-calibre gunshot wounds in the back in the vicinity of the heart.¹²⁰⁹ There were no blood trails on the ground.¹²¹⁰

356. Van Schaik saw identification documents lying close to the bodies but as the DutchBat officers came under fire from the Bosnian Serb Forces, he did not take the documents.¹²¹¹

357. On their return to the DutchBat compound, Rutten informed the DutchBat Command, of the discovery of the bodies,¹²¹² but no follow-up investigation was carried out as the Bosnian Serb Forces curtailed DutchBat's movements outside their compound.¹²¹³

358. On 25 July 2005, a grave containing the remains of three individuals was exhumed in a field known as "Rabin", owned by Osmo Šahinagić, in Potočari.¹²¹⁴ On 25 April 2006, another grave containing the remains of six individuals, later identified, was exhumed in the same field.¹²¹⁵ An

¹²⁰⁵ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2138–2139 (5 Apr 2000); Johannes Rutten, T. 4906–4907 (30 Nov 2006), T. 4965 (4 Dec 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415 (24 May 2000); Eelco Koster, T. 3025–3026 (25 Oct 2006), T. 3073–3075 (26 Oct 2006).

¹²⁰⁶ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2139–2140 (5 Apr 2000); Johannes Rutten, T. 4965 (4 Dec 2006); Ex. PIC00053, "Aerial Image, Ex. P02179, marked by Rutten"; Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415–3416 (24 May 2000); Eelco Koster, T. 3072–3074 (26 Oct 2006); Ex. PIC00025, "Aerial Image, Ex. P01516 marked by Koster". See also PW-114, Ex. P02188, "92 ter transcript", KT. 1506, 1528–1533 (28 Mar 2000), KT. 1538–1539 (29 Mar 2000); PW-114, T. 3146–3147, 3157–3159 (27 Oct 2006); Ex. P02190, "Aerial Image of Potočari on 13 July Marked by PW-114"; Ex. 4DIC00027, "Aerial Image, Ex. P01516 marked by PW-114"; Robert Franken, T. 2505–2507 (16 Oct 2006); Ex. PIC00017, "Aerial photograph of Potočari marked by Franken".

¹²⁰⁷ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2140 (5 Apr 2000); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415 (24 May 2000); Eelco Koster, T. 3077 (26 Oct 2006); PW-114, T. 3147 (27 Oct 2006).

¹²⁰⁸ Johannes Rutten, T. 4878, 4907–4908 (30 Nov 2006).

¹²⁰⁹ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2140 (5 Apr 2000); Johannes Rutten, T. 5257–5258 (7 Dec 2006); Eelco Koster, Ex. P02187, "92 ter transcript", KT. 3415 (24 May 2000); PW-114, Ex. P02188, "92 ter transcript", KT. 1539 (29 Mar 2000); PW-114, T. 3170 (27 Oct 2006).

¹²¹⁰ Johannes Rutten, T. 4812 (29 Nov 2006); PW-114, T. 3170 (27 Oct 2006).

¹²¹¹ Johannes Rutten, T. 4916–4917 (4 Dec 2006); Eelco Koster, T. 3032–3033 (26 Oct 2006), T. 3116–3117 (27 Oct 2006). Rutten took several photographs of the nine bodies and kept the film until he returned to The Netherlands where Major de Ruiter from the intelligence branch of the Dutch Army took it for developing. The following day Rutten was informed that the film was destroyed. That same day, when Rutten spoke to Commander Bloemen, he had the impression that the latter had seen the developed photographs. Johannes Rutten, T. 4901–4902 (30 Nov 2006), T. 4979–4982 (4 Dec 2006), T. 5268–5269 (7 Dec 2006).

¹²¹² Johannes Rutten, T. 4965–4966 (4 Dec 2006).

¹²¹³ *Ibid.*, T. 4879 (30 Nov 2006).

¹²¹⁴ Dušan Dunjić, T. 27860–27864 (5 Nov 2008); Ex. 4D00540, "Prof. Dušan Dunjić's Forensic Expert Report on Potočari and Sandići", pp. 32–37; Ex. P03894, "Sketch of exhumations in Potočari on 25 July 2005, location no. SR POT-01"; Ex. P03486, "Exhumation report No. 1466/05 for Potocari 27 July 2005.

¹²¹⁵ Ex. P04490, "Srebrenica Investigation by Dušan Janc, ICTY-OTP Investigator - Update to the summary of forensic evidence – Exhumation of the graves related to Srebrenica, 13 Mar 2009", pp. 4, 34; Ex. P03517d (confidential). The men listed are Ramo Zukić, Mujo Pejmanović, Sadik Suljagić, Redzo Dautović, Hasib Čavkušić, Muaz Šišić, last seen on 11 July 1995 in Potočari, with the exception of Ramo Zukić who was last seen in the forest. *Ibid.* Dušan Dunjić, T. 27859 (private session), 27860–27864 (5 Nov 2008); Ex. 4D00540, "Prof. Dušan Dunjić's

aerial photograph of the Rabin field shows two areas of disturbed earth between 17 and 27 July 1995.¹²¹⁶ These two disturbed areas are close to where the DutchBat officers indicated they had found the nine Bosnian Muslim men and in the same area where the bodies were exhumed in the two burial sites in 2005 and 2006.¹²¹⁷

359. Having considered all the evidence before it, the Trial Chamber finds that nine Bosnian Muslim men were killed by Bosnian Serb Forces in a field near a stream, at about 500 metres distance from the DutchBat compound, on 13 July 1995.

(ii) Killing of one Bosnian Muslim Man near the White House on 13 July¹²¹⁸

360. On 13 July 1995, while he was patrolling the area where the Bosnian Muslims were boarding the buses, Paul Groenewegen, a DutchBat soldier, heard a lot of shouting.¹²¹⁹ The shouting was coming from the direction of a house where an unarmed Bosnian Muslim man of about 30 years, in civilian clothes, was trying to resist being taken away by four members of the Bosnian Serb Forces.¹²²⁰ They rather aggressively made him stand facing a wall, stood around him, and shot him in the head from a distance of about three metres.¹²²¹ The man immediately collapsed.¹²²² Other members of the Bosnian Serb Forces were walking around the area where this occurred and watched the incident but continued with their business.¹²²³ The shooting took place about 70 to 80 metres away from the crowd of Bosnian Muslims,¹²²⁴ and it was possible for them to see it.¹²²⁵ Groenewegen reported the shooting later that same evening, and made an official statement the next morning.¹²²⁶

Forensic Expert Report on Potočari and Sandići”, pp. 32–37 (also stating that identification documents belonging to Hasib Čavkušić and Muaz Šišić were also found in the grave); Ex. P03895, “Sketch of an exhumation site in Potočari on 25 Apr 2006, location no. POT 01 SRE”; Ex. P03485, “Autopsy report No. KTA-RZ. 22/06 for Potocari, 15 May 2006 (exhumation conducted on 25 Apr 2006).”

¹²¹⁶ Ex. P03483 “Aerial image of disturbed earth - Potocari, Bosnia and Herzegovina, 27 July 1995.”

¹²¹⁷ Ex. P03897 “Comparison of aerial images of disturbed earth and DutchBat testimony re location of nine bodies at Potočari”; Ex. P03894, “Sketch of exhumations in Potočari on 25 July 2005, location no. SR POT-01”; Ex. P03895, “Sketch of an exhumation site in Potočari on 25 Apr 2006, location no. POT 01 SRE”; Dušan Dunjić, T. 27862–27865 (5 Nov 2008).

¹²¹⁸ The Indictment alleges that on 13 July, one Bosnian Muslim man was taken behind a building near the “White House” and executed. Indictment, para. 31.1. d.

¹²¹⁹ Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1030, 1034 (10 July 2003).

¹²²⁰ *Ibid.*, BT. 1033–1035 (10 July 2003); Paul Groenewegen, T. 2965, 2976, 3013–3014 (25 Oct 2006).

¹²²¹ Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1034 (10 July 2003); Paul Groenewegen, T. 2965–2967, 2990–2991, 3014 (25 Oct 2006); Ex. P02266, “Map marked by Groenewegen”; Robert Franken, T. 2506 (16 Oct 2006), Robert Franken, T. 2572–2573, 2589 (17 Oct 2006).

¹²²² Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1035 (10 July 2003).

¹²²³ *Ibid.*, BT. 1035–1036 (10 July 2003).

¹²²⁴ *Ibid.*, BT. 1036 (10 July 2003); Paul Groenewegen, T. 2989–2990 (25 Oct 2006); Ex. P02266, “Map marked by Groenewegen”. *See also* Robert Franken, T. 2506 (16 Oct 2006), T. 2621–2622 (17 Oct 2006); Ex. 6DIC00018, “Aerial photograph of Potočari marked by Franken.”

¹²²⁵ Paul Groenewegen T. 2989–2990 (25 Oct 2006).

¹²²⁶ Paul Groenewegen, Ex. P02196, “92 ter transcript”, BT. 1036 (10 July 2003); Paul Groenewegen, T. 2991–2992 (25 Oct 2006); Robert Franken, T. 2505–2506 (16 Oct 2006), T. 2572–2573, 2589 (17 Oct 2006).

361. The Trial Chamber finds that a Bosnian Muslim man was killed on 13 July by Bosnian Serb Forces near the White House in full view of the Bosnian Muslims gathered there.

F. Bratunac Area (11–15 July 1995)

1. Introduction

362. For the purposes of this section, the term “Bratunac area” comprises the territory delimited by the Bratunac-Konjević Polje Road to the north, the Konjević Polje-Milići Road to the west and the Bratunac-Srebrenica Road to the east. The town of Bratunac is in Republika Srpska and is located about five kilometres from Potočari and ten kilometres from Srebrenica in a northerly direction and was outside the parameters of the Srebrenica “safe area”.¹²²⁷ Bratunac fell within the area of responsibility of the Bratunac Brigade with its headquarters located in Bratunac town.¹²²⁸ Other buildings significant for the purposes of the present Judgement, such as Hotel Fontana,¹²²⁹ the SDS Bratunac office and both military and civilian police stations, were also situated there. Bratunac town was a necessary passage *en route* from Potočari to Kladanj and other parts of ABiH-held territory.

363. As previously mentioned in this Judgement, during the night of 11 to 12 July 1995, a column of Bosnian Muslim men attempted to leave the Srebrenica enclave towards Tuzla by breaking through the defence lines of the VRS in the Bratunac area.¹²³⁰

2. Deployment of Bosnian Serb Forces in the Bratunac Area (11–12 July)

364. On 11 July 1995, in response to information received as to the movement of the ABiH 28th Division, VRS forces, mostly units of the Drina Corps, were ordered “to block the return and withdrawal of Muslim forces to and from Srebrenica and their communicating along the enclave-Kladanj and Olovo axis and back,” by “erecting additional obstructions, carrying out ambush activities and introducing patrols, ensuring control over the territory along the frontline and deep in[to] the defence zones and areas”.¹²³¹

¹²²⁷ Dragan Nesković, T. 27432 (28 Oct 2008); Mićo Gavrić, T. 26495 (1 Oct 2008); Ex. P01876, “Map of northern area Showing Battalion AOR’s”, p. 2; Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 5.

¹²²⁸ Zlatan Čelanović, T. 6627–6628, 6649 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”. See also *supra*, 135.

¹²²⁹ See *supra*, paras. 274–293.

¹²³⁰ See *infra*, paras. 267–271.

¹²³¹ Exs. 7DP00438, 4D00079, “Order by Milenko Živanović to the Drina Corps, 11 July 1995”; Ex. 6DP00439, “Order to block, the linking up of the 28th Division, 11 July”, p. 2. See also Ex. 4D00078, “Order by Mladić to the Drina Corps, 11 July 1995”.

365. On 12 July 1995,¹²³² at approximately 9 a.m., Krstić convened a meeting in Bojna,¹²³³ which was also attended by **Pandurević**, Mirko Trivić, Colonel Svetozar Andrić and Colonel Obrad Vičić.¹²³⁴ That day, a number of different units were deployed to cover various sections of the Bratunac-Konjević Polje Road.¹²³⁵ The SBP 2nd Šekovići Detachment was ordered by its commander, Rado Čuturić,¹²³⁶ to secure the road from “Bosnian Muslim forces” trying to break through in the direction of Tuzla.¹²³⁷ In the early evening of 12 July, the 1st PJP Company was also deployed at Sandići and instructed to remain there and secure the Bratunac-Konjević Polje Road, which they did until early the next morning.¹²³⁸ In total, approximately 170 members of the Jahorina Recruits were deployed along the road on 12 July during the late afternoon and night.¹²³⁹ A Praga and a BVP combat vehicle with a three-barrel gun were deployed in the same area as the 1st PJP Company from Zvornik,¹²⁴⁰ followed by a tank on 13 July.¹²⁴¹ In addition, elements of the Military Police Battalion of the 65th Protection Regiment of the VRS Main Staff and, subsequently, other companies of the Zvornik PJP, a company from the Bijeljina PJP, a company of the Doboj PJP and the 2nd Company of the Jahorina Recruits, amongst others, were also involved in blocking

¹²³² Vinko Pandurević, T. 30897 (30 Jan 2009); Mirko Trivić, T. 11833 (21 May 2007), T. 11978, 11998–12000 (23 May 2007).

¹²³³ Bojna borders Srebrenica town to the south. Ex. P02116, “Map Krivaja 95-Srebrenica and Bratunac”.

¹²³⁴ Vinko Pandurević, T. 30897 (30 Jan 2009); Mirko Trivić, T. 11795 (18 May 2007). On 12 July 1995, Obrad Vičić was the Chief of Operations and Training of the Drina Corps. For a more detailed description of the position of Mirko Trivić, Colonel Andrić and Colonel Vičić.

¹²³⁵ Lazar Ristić, T. 10043–10044 (16 Apr 2007), T. 10190 (18 Apr 2007); Ex. 7D01056, “Map of zone of responsibility of the Zvornik Brigade according to Drina Corps Order”.

¹²³⁶ There is conflicting evidence as to who was the commander of the SBP 2nd Šekovići Detachment in July 1995. Some evidence points to Rado Čuturić being the commander. Predrag Čelić, T. 13459 (28 June 2007); PW-160 T. 8625 (12 Mar 2007); Milenko Pepić, T. 13539 (9 July 2007). *See also* Borovčanin Final Brief, para. 26. *But see* Ex. P02853, “Transcript of OTP interview of Ljubomir Borovčanin, 11 and 12 Mar 2002”, p. 64; Prosecution Final Brief, paras. 594, 1410, 1874, 1991, 1997, 2145; Ex. P00070, “Ministry of Interior of Republika Srpska – Personal questionnaire to establish rank of an authorized official, Miloš Stupar”. The Trial Chamber after considering the evidence in its totality, relies on Pepić’s and Čelić’s testimony, given they were members of the SBP 2nd Šekovići Detachment, and finds that Čuturić was the Commander of the SBP 2nd Šekovići Detachment in the relevant period.

¹²³⁷ Milenko Pepić, T. 13549–13551, 13589–13590 (9 July 2007). Along this road, in the direction from Kravica to Sandići, the 2nd Platoon of the SBP 2nd Šekovići Detachment was positioned closest to Kravica—about one kilometre from the Kravica Warehouse, directly on the border that divided Sandići and Kravica villages, not far from the road sign that marked the beginning of the area of Sandići—the 3rd Platoon was positioned closest to Konjević Polje, and the 1st Platoon was positioned between the two. *Ibid.*, T. 13550–13551 (9 July 2007).

¹²³⁸ Dobrisav Stanojević, T. 12880–12883, 12896, 12900–12901 (19 June 2007); Ex. PIC00132, “Map of Sandići marked by witness”; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2004”, pp. 78–79.

¹²³⁹ Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995,” p. 3; Ex. P00060, “CJB Zvornik Report, 13 July 1995”; Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007); Nenad Filipović, T. 26998–26999, 27015 (10 Oct 2008); Zarko Zarić, T. 26931–26933 (9 Oct 2008); PW-160, T. 8602–8604 (9 Mar 2007), T. 8683, 8687 (12 Mar 2007).

¹²⁴⁰ Dobrisav Stanojević, T. 12882 (19 June 2007); *see also* Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995,” p. 3; Ex. P00062, “Document from Zvornik CJB signed by Dragomir Vasić, 13 July 1995”.

¹²⁴¹ Dobrisav Stanojević, T. 12882 (19 June 2007).

the column on 12 and 13 July at various locations in the Bratunac area, including around Konjević Polje and Nova Kasaba.¹²⁴²

(a) Meeting at the Bratunac Brigade Command

366. The Prosecution and the Accused agree that there was a meeting of the VRS commanders at the Bratunac Brigade Command after the fall of Srebrenica. The date of this meeting is heavily contested, however. The Prosecution submits that the meeting took place on 12 July.¹²⁴³ On the other hand, **Pandurević** contends that this meeting occurred on 11 July.¹²⁴⁴

367. The Prosecution case is centred around the testimony and diary of Mirko Trivić, Commander of the Romanija Brigade, who testified that the meeting took place on 12 July 1995.¹²⁴⁵ **Pandurević** challenges the reliability of Trivić's diary, also pointing to his own testimony and those of Milenko Jevđević, Zvonko Bajagić, Eileen Gilleece, and Miodrag Dragutinović, who say that the meeting took place on 11 July.¹²⁴⁶

368. The Trial Chamber has carefully scrutinised the diary in its entirety, and has viewed the relevant parts in context, in the light of the evidence given by Trivić and other evidence before it. The Trial Chamber notes that the diary fell apart at some point and was reassembled by Trivić, numbered on the top, and certain pages containing personal information taken out.¹²⁴⁷ Nonetheless, the Trial Chamber finds that there is nothing to suggest that Trivić had any motive to modify the construction of the diary or to rearrange the order in favour of the Prosecution case. The markings at the top of the pages, added by him, after the diary came apart, were to the best of his recollection

¹²⁴² Prosecution Adjudicated Facts Decision, Annex, Fact 259; PW-168, T. 15991–15992 (closed session) (28 Sept 2007); Ex. P01121a, "Intercept, 12 July 1995, 16:40 hours" (specifying that one squad of the civilian police was located around Konjević Polje and Hrnčići and the 65th Protection Regiment around Nova Kasaba, Jelah and Kamenica); PW-160, T. 8600 (private session), 8603–8604 (9 Mar 2007), T. 8683, 8687 (12 Mar 2007); Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995," p. 3; Ex. P00886, "Document from the Zvornik CJB to the RS MUP, type-signed Vasić, 13 July 1995"; Ex. P03112, "CJB Zvornik Dispatch No. 12-6/08-508/95, regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995."

¹²⁴³ Prosecution Pre-Trial Brief, para. 224. *See also* Prosecution Final Brief, paras. 1355–1361, 1380, 1387–1388. *See also infra*, para. 1855.

¹²⁴⁴ Pandurević Final Brief, paras. 98, 411, 413–419; Vinko Pandurević, T. 32151, 32173 (26 Feb 2009). *See also infra*, para. 1855.

¹²⁴⁵ Mirko Trivić, T. 11836–11837 (21 May 2007), T. 11978–11979 (23 May 2007); Ex. P04630, "Trivić's Diary", p. 0648-6799.

¹²⁴⁶ Vinko Pandurević, T. 32161–32163 (26 Feb 2009); Pandurević Final Brief, paras. 414–418, 421. According to **Pandurević**, a significant number of Žepa entries in Trivić's diary are out of order, which impacts on the correctness of the sequence of pages at the front, as the pages, as part of a notebook, would have been linked. Pandurević Final Brief, paras. 422–423. This was because Trivić wrote the events on the Srebrenica operation conventionally, but then turned the book around and recorded the Žepa operation from the back of the book. *Ibid.*, para. 421. The Trial Chamber notes that indeed, the date 12 July does not appear on the same leaf as the reference to the meeting.

¹²⁴⁷ *See* Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010; Ex. 7D01240, "Stipulations between OTP and the Defence on Trivić's Diary".

according to the original structure of the diary.¹²⁴⁸ The Trial Chamber considers that in this regard, it was Trivić who was in the best position at the time to know what the right order had been.

369. The Trial Chamber cannot exclude the possibility that page 0648-6788 of the diary is misplaced and that it is not a continuation of 0648-6787.¹²⁴⁹ Nevertheless, this bears little significance in the context of the pages just before and after it, as viewing pages 0648-6787 to 0648-6795 in context, the Trial Chamber is satisfied that they accurately describe the attack on Srebrenica town, from 9 a.m. to 5:30 p.m., which culminated in the arrival of Mladić and his triumphant walk in the town on 11 July. Further, the Trial Chamber notes that pages 0648-6794 to 0648-6795 flow well, in that Trivić ends a somewhat personalised description about his conversation with Mladić, and then flips over to a new page to note the events from 5.30 p.m. onwards on 11 July. These are understandably brief after the momentous fall of Srebrenica. The events recorded here are generally corroborated by other evidence on the trial record.¹²⁵⁰

370. Turning to pages 0648-6796 to 0648-6798, covering the day of 12 July, the Trial Chamber is satisfied that after describing his assigned tasks, Trivić sets out the actual movement of the units through the town and further, on the next page. More importantly, the events described on page 0648-6797 reflect what other evidence has already established—in the morning of 12 July there was a meeting at Bojna with Krstić, the “town [...] [was] full of soldiers”, the “crowd of refugees; [who] fled to the woods,” and Krstić came to the Viogor village—cumulatively indicating this could only have occurred on 12 July.¹²⁵¹ Page 0648-6798 is a logical follow-up to the last entry on the previous page—Krstić arrives, Trivić talks to him, and he then notes down his reflections on what was said.¹²⁵²

371. Moving on to pages 0648-6799 to 0648-6801, the Trial Chamber is of the opinion that these also follow logically. On page 0648-6799, Trivić records the orders Krstić gives him, including that the Brigade Commanders were to go to the Bratunac Brigade Command that night at 9 p.m. These are events that clearly took place on 12 July, and most importantly, it is clear that with the entry “General Mladić came at 2200”, Trivić is describing the contested Bratunac Brigade Command

¹²⁴⁸ See Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010; Ex. 7D01240, “Stipulations between OTP and the Defence on Trivić’s Diary”.

¹²⁴⁹ The Trial Chamber notes that there is a reasonable possibility that this could be a continuation of what happened on 11 July and not 10 July. See Ex. P04630, “Trivić’s Diary”.

¹²⁵⁰ See *supra*, paras. 260, 264, 266; Vinko Pandurević, T. 32166–32167 (26 Feb 2009) (stating that the Bratunac Brigade did have problems in the attack on 10 July). The date of 11 July appears on page 0648-6789. See Ex. P04630, “Trivić’s Diary”.

¹²⁵¹ Mirko Trivić, T. 11832–11833, 11853–11854 (21 May 2007); Ex. PIC00116, “Map 02116 marked by Mirko Trivić”; Vinko Pandurević, T. 30897 (30 Jan 2009). See also *supra*, paras. 266, 272, 342–343, 365.

¹²⁵² Even if this page were to have been misplaced, and the discussion on the Birač Brigade were to fall in the section related to 11 July, the Trial Chamber is satisfied that page 0648-6798 still flows into page 0648-6799, and does not

meeting.¹²⁵³ This description flows from page 0648-6798 to page 0648-6800. At the top of page 0648-6800, Trivić notes that Mladić would address the troops in the morning of 13 July. The remaining entries relate to the late hours of 12 July and the first entry on page 0648-6801 begins with the planned Mladić address at the Viogor village to the troops who were about to set off to Žepa on 13 July.¹²⁵⁴

372. The Trial Chamber has considered the diary with the testimony given by Trivić, and finds the diary reliable.¹²⁵⁵ In particular, the Trial Chamber has also looked at certain important indicators, such as the fact that Trivić testified that at around 8:30 p.m., he passed through Potočari on his way to the Bratunac Brigade Command meeting, where he saw large crowds of people and VRS and MUP units.¹²⁵⁶ This goes to prove that Trivić passed through Potočari on 12 July. The Trial Chamber has also considered **Pandurević's** submission that Mladić went to boost the troops' morale on 13 July, even though he ordered the move to Žepa allegedly on 11 July.¹²⁵⁷ The Trial Chamber is not persuaded, as this would mean that the troops marched all day on 12 July before getting their morale speech at Viogor on 13 July, which is not a credible possibility.

373. The Trial Chamber has also looked at the evidence of Jevđević, Bajagić and **Pandurević**, also noting the arguments made with respect to the fish meal which was traditionally eaten on the eve of St Peter's day, 11 July, purportedly indicative that the Bratunac Brigade Command meeting took place on 11 July.¹²⁵⁸ Given the attendees and the content of the meeting, and in the light of other credible evidence, it is clear that Jevđević, Trivić and **Pandurević** all attended the same meeting. However, the Trial Chamber finds that the evidence of **Pandurević**, Jevđević, and Bajagić on the fish meal cannot be determinative of the date of this meeting.¹²⁵⁹

affect the placing of the entry on the Bratunac Brigade Command meeting that evening which appears on page 0648-6799. See Ex. P04630, "Trivić's Diary".

¹²⁵³ See also Mirko Trivić, T. 11839–11842 (21 May 2007).

¹²⁵⁴ See also *Ibid.*, T. 11853–11854 (21 May 2007); Vinko Pandurević, T. 30904–30905 (30 Jan 2009).

¹²⁵⁵ In this context, the Trial Chamber has considered the testimony of PW-109 and found that while his recollection of times, dates and events somewhat inaccurate, in the light of the evidence from Trivić, it finds that his evidence on the date of the Bratunac Brigade Command meeting is correct. PW-109, T. 14591 (private session), 14594–14595 (private session) (31 Aug 2007). See also *Ibid.*, T. 14586 (private session) (31 Aug 2007).

¹²⁵⁶ Mirko Trivić, T. 11837–11838, 11853 (21 May 2007). See also *Ibid.*, T. 11981–11982 (23 May 2007).

¹²⁵⁷ Vinko Pandurević, T. 30897 (30 Jan 2009), T. 32153 (26 Feb 2009). See Mirko Trivić, T. 11832–11833, 11843 (21 May 2007).

¹²⁵⁸ Zvonko Bajagić, T. 32513, 32516–32519, 32527–32535 (9 Mar 2009); *Ibid.*, Ex. 7D01092, "92 ter statement", p. 2; Milenko Jevđević, T. 29607–29609, 29649–29650 (12 Dec 2008), T. 29754–29762 (15 Dec 2008), T. 29766–29777, 29799–29814, 29824–29830 (16 Dec 2008), T. 29914, 29918–29928 (17 Dec 2008). Exs. 7DP00438, 4D00079, "Order by Milenko Zivanović to the Drina Corps, 11 July 1995", p. 2; Ex. 6DP00439, "Order to block, the linking up of 28th Division, 11 July 1995", p. 2; Ex. P04418, "Vehicle log for VW Gold P-7105 for July 1995", with regard to which Bajagić denied that he refuelled the car on 12 July; Ex. 7D01090, "Interview of Svetozar Andrić", p.1.

¹²⁵⁹ See Ex. P04535, "Footage of St. Peter's day on 12 July 1995" (showing that fish was also served for the St. Peter's Day celebratory lunch).

374. Similarly, the Trial Chamber has assessed the evidence of Gilleece, who, based on her notes, testified that **Pandurević** told her that on the evening of 11 July, he attended a meeting with Krstić and Mladić in Bratunac and told her that on 12 July the Drina Corps moved on to Žepa.¹²⁶⁰ Based on reliable evidence showing that the move to Žepa took place on 13 July, the Trial Chamber finds this evidence unreliable. Further, it has also looked at the evidence of Dragutinović, and notes that it does not find it convincing.¹²⁶¹

375. Looking at the totality of the evidence before it, and placing particular weight on Trivić's testimony and diary, the Trial Chamber finds that the Bratunac Brigade Command meeting took place on 12 July.

376. In the evening of 12 July 1995, Mladić, Živanović, Krstić, Trivić, and **Pandurević**,¹²⁶² amongst others, met at the Bratunac Brigade Command, where Mladić arrived at about 10 p.m. and congratulated the commanders on their successes.¹²⁶³ He ordered Krstić to prepare for the liberation of Žepa.¹²⁶⁴ Trivić and **Pandurević** suggested that their troops be sent to rest and be replaced, but they were overruled.¹²⁶⁵ At the end of the meeting, Mladić agreed to address their troops himself the following day, to boost their morale, since they would not be relieved.¹²⁶⁶ Mladić agreed to do this on 13 July before the move to Žepa.¹²⁶⁷ Further, the Bratunac and Milići Brigades, in co-operation with the MUP forces, were ordered to secure the Bratunac-Konjević Polje Road and the Konjević Polje-Milići Road.¹²⁶⁸ The VRS had security concerns about this route since they believed several thousand armed ABiH soldiers were trying to break through VRS defence lines, heading for Tuzla and Kladanj.¹²⁶⁹

(b) Further Deployment of Bosnian Serb Forces in the Bratunac Area (12–13 July)

377. During the night of 12 July, about 50 people from the 1st Company of Jahorina Recruits were assigned to secure a section of the Bratunac-Konjević Polje Road, approximately up to

¹²⁶⁰ Eileen Gilleece, T. 6728 (1 Feb 2007); Ex. P02408, "Redacted notes of an interview with Milenko Živanović and Vinko Pandurević, 2 Oct 2001", p. 3.

¹²⁶¹ Miodrag Dragutinović, T. 12579–12580, 12583–12584 (13 June 2007) (stating that on the morning of 12 July he saw **Pandurević** in Zeleni Jadar, who told him he had gone to Bratunac to attend a meeting convened by Krstić).

¹²⁶² Mirko Trivić, T. 11837–11841 (21 May 2007). Jevđević was also present at the meeting, Milenko Jevđević, T. 29607 (12 Dec 2008); Vinko Pandurević, T. 32151 (26 Feb 2009).

¹²⁶³ Mirko Trivić, T. 11841–11842, 11844 (21 May 2007).

¹²⁶⁴ *Ibid.*, T. 11841–11842 (21 May 2007).

¹²⁶⁵ *Ibid.*, T. 11842 (21 May 2007).

¹²⁶⁶ *Ibid.*, T. 11843 (21 May 2007).

¹²⁶⁷ *Ibid.*, T. 11843 (21 May 2007). The next morning on 13 July, between 10 and 11 a.m., Mladić and Krstić addressed Trivić's troops. *Ibid.*, T. 11853–11854 (21 May 2007). *See also* Vinko Pandurević, T. 30904–30905 (30 Jan 2009).

¹²⁶⁸ Mirko Trivić, T. 11844 (21 May 2007). Trivić more specifically referred to the "roads from Srebrenica towards Vlasenica via Bratunac." The Trial Chamber will refer to these roads as the Bratunac-Konjević Polje Road and the Konjević Polje-Milići Road.

¹²⁶⁹ Mirko Trivić, T. 11844–11845, 11847–11848 (21 May 2007), T. 11984–11985, 11989 (23 May 2007).

Glogova¹²⁷⁰ During the night of 13 July, a larger group from the 1st Company of the Jahorina Recruits, together with the 2nd Company of the Jahorina Recruits, was deployed to cover a longer section of the road: from Glogova right up to the entrance to Kravica.¹²⁷¹

378. During the night between 12 and 13 July, there was fighting along the Bratunac-Konjević Polje Road. The column attacked the VRS forces stationed there. A member of the 1st PJP Company from Zvornik was killed and several were injured.¹²⁷²

379. Further, VRS orders to block the column in the areas of responsibility of Bratunac, Zvornik and Vlasenica were issued on 13 July. For instance, the VRS Main Staff ordered the commands of the Drina Corps, the Zvornik Brigade, the Birač Brigade and the Vlasenica Brigade, to “detect, block, disarm, and capture detected Muslim groups and prevent them from crossing over to the Muslim territory [and] [s]et up ambushes around the clock on the Zvornik-Crni Vrh-Šekovići-Vlasenica road.”¹²⁷³ Further implementation orders were issued at the Drina Corps level.¹²⁷⁴

3. Searching the Terrain for Bosnian Muslim Men from the Column (12–13 July)

380. The column was ambushed by the VRS on 12 July 1995, at about 8 a.m., below the hill of Buljim near Bare, approximately three kilometres from Jaglići in the direction of the Bratunac-Konjević Polje Road.¹²⁷⁵ Approximately 30 individuals from the column were killed and at least 45 were injured.¹²⁷⁶ The front of the column was heavily shelled around 10:30 a.m. between Buljim and Kamenica, a short distance south of the Bratunac-Konjević Polje Road in a southerly direction from Sandići;¹²⁷⁷ 15 to 20 Bosnian Muslim men were killed.¹²⁷⁸ At around noon, a two-hour ambush killed four men.¹²⁷⁹ Fifteen minutes later, an additional ten individuals were killed and 20 were wounded, some of whom were ABiH soldiers carrying rifles.¹²⁸⁰

¹²⁷⁰ Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10868–10870 (2 May 2007).

¹²⁷¹ *Ibid.*, T. 10819–10824, 10868–10869 (2 May 2007).

¹²⁷² Milenko Pepić, T. 13594–13595 (9 July 2007); Nenad Filipović, T. 27001, 27003 (10 Oct 2008); Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 79; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 33–34, 41.

¹²⁷³ Ex. P00045, “VRS Main Staff Order to the Drina Corps type-signed Milan Gvero, 13 July 1995”, p.1.

¹²⁷⁴ Ex. 4D00080, “Order of the Drina Corps Command, 13 July 1995”; Ex. P00116, “Drina Corps Order, 13 July 1995.”

¹²⁷⁵ PW-139, Ex. P02288, “confidential - 92 *ter* statement” (28 May 2000), p. 2; Ex. 7D01066, “Map of engagement of TG-1”.

¹²⁷⁶ PW-139, Ex. P02288, “confidential - 92 *ter* statement” (28 May 2000), p. 2 para. 5. *See also* PW-156, T. 7083 (8 Feb 2007); PW-127, T. 3512–3513 (2 Nov 2006); Mevludin Orić, T. 876 (28 Aug 2006).

¹²⁷⁷ Osman Salkić, Ex. P02225, “92 *bis* statement” (4 Dec 2004), p. 4; Ex. 7D01066, “Map of engagement of TG-1”.

¹²⁷⁸ Osman Salkić, Ex. P02225, “92 *bis* statement” (4 Dec 2004), p. 4. *See also* PW-156, T. 7083 (8 Feb 2007).

¹²⁷⁹ Ramiz Husić, Ex. P02203, “92 *bis* statement” (9 June 1999), p. 4; PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3243 (23 May 2000).

¹²⁸⁰ Ramiz Husić, Ex. P02203, “92 *bis* statement” (9 June 1999), p. 4.

381. At around 6 p.m. on 12 July, after having regrouped and collected the wounded, members of the column were heavily shelled as they were crossing the Bratunac-Konjević Polje Road.¹²⁸¹ During this 20-minute attack, some people were killed and some were badly wounded.¹²⁸² The column was shelled by Bosnian Serb Forces throughout the night¹²⁸³ and ambushed several times,¹²⁸⁴ including near Kravica.¹²⁸⁵ Bosnian Serb Forces fired with anti-aircraft guns and threw hand-grenades from the Bratunac-Konjević Polje Road into the woods.¹²⁸⁶ During the night of 12 to 13 July, there was an exchange of fire between the Bosnian Serb Forces and members of the column.¹²⁸⁷ In addition, some people in the column committed suicide using hand-grenades.¹²⁸⁸ The dead and some of the wounded were left behind.¹²⁸⁹ At different times on 12 and 13 July, members of the column split into various groups either by choice or because they found themselves cut off from the main group.¹²⁹⁰

382. In addition to ambushing and shelling the column, other tactics were used by members of the Bosnian Serb Forces to stop the advancing column. For instance, the Bosnian Serb Forces called into the forest with loudspeakers, telling the men from the column they would be shelled if they did not surrender, promising that the Geneva Conventions would be complied with and indicating that the men would be transported to ABiH-controlled territory.¹²⁹¹ In other places, Bosnian Serb Forces fired into the woods with anti-aircraft guns and other weapons, or used stolen UN equipment to deceive the Bosnian Muslim men into believing that the UN was present to monitor the treatment afforded to them upon capture.¹²⁹² At around 2 or 3 p.m. on 13 July, the Bosnian Serb Forces issued

¹²⁸¹ Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4. *See also* PW-113, T. 3363–3365 (31 Oct 2006).

¹²⁸² Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4.

¹²⁸³ PW-113, Ex. P02280, "92 ter transcript", BT. 1383 (21 July 2003); PW-113, T. 3347, 3354–3357, 3364–3365 (31 Oct 2006). *See also*, *Ibid.*, T. 3356 (31 Oct 2006); PW-139, Ex. P02288, "confidential - 92 ter statement" (28 May 2000), p. 3; PW-139, T. 3732–3734 (7 Nov 2006).

¹²⁸⁴ PW-113, T. 3354–3355 (31 Oct 2006); Mevludin Orić, T. 877 (28 Aug 2006). *See also* PW-116, Ex. P02205, "92 bis transcript", KT. 2946–2947, 2991, 3003–3004 (14 Apr 2000).

¹²⁸⁵ PW-111, T. 7040 (7 Feb 2007).

¹²⁸⁶ *Ibid.* *See also* PW-106, T. 3956–3957 (15 Nov 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 260.

¹²⁸⁷ PW-111, T. 7039–7040 (7 Feb 2007); PW-139, Ex. P02288, "confidential - 92 ter statement", (28 May 2000), para. 5.

¹²⁸⁸ PW-113, T. 3342–3346 (31 Oct 2006); PW-139, Ex. P02288, "confidential - 92 ter statement", (28 May 2000), p. 3; PW-139, T. 3732–3734 (7 Nov 2006); PW-110, T. 797–798 (25 Aug 2006); Marinko Jevđević, T. 23848–23849 (23 July 2008); PW-116, Ex. P02205, "92 bis transcript", KT. 2946 (14 Apr 2000).

¹²⁸⁹ PW-111, T. 7040 (7 Feb 2007). *See also* PW-113, Ex. P02280, "92 ter transcript", BT. 1383–1384 (21 July 2003); PW-106, T. 3957, 3959 (15 Nov 2006), T. 4009 (16 Nov 2006); Ex. 2D00233, "Official Note from the Srebrenica Police Station, Kadija Avdić, 24 Aug 2003".

¹²⁹⁰ PW-116, Ex. P02205, "92 bis transcript", KT. 2945–2946 (14 Apr 2000); Ramiz Husić, Ex. P02203, "92 bis statement" (9 June 1999), p. 4; Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4; PW-106, T. 3958 (15 Nov 2006); Mevludin Orić, T. 876 (28 Aug 2006), T. 975–976 (29 Aug 2006); *see also* Prosecution Adjudicated Facts Decision, Annex, Fact 261.

¹²⁹¹ PW-106, T. 3956 (15 Nov 2006); Osman Salkić, Ex. P02225, "92 bis statement" (4 Dec 2004), p. 4; PW-111, T. 6974–6475 (6 Feb 2007); PW-113, Ex. P02280, "92 ter transcript", BT. 1384 (21 July 2003); PW-110, T. 650 (24 Aug 2006); PW-116, Ex. P02205, "92 bis transcript", KT. 2946 (14 Apr 2000). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 264.

¹²⁹² Prosecution Adjudicated Facts Decision, Annex, Fact 265. *See also* Ex. P02047, "Srebrenica Trial Video", 02:50:13.

an ultimatum to the Bosnian Muslims in the woods, to either surrender or be killed,¹²⁹³ in response to which large numbers of Bosnian Muslim men surrendered.¹²⁹⁴

4. Detention of Surrendered and Captured Bosnian Muslim Men from the Column along the Bratunac–Konjević Polje Road and the Nova Kasaba–Konjević Polje Road (13 July)

383. The two main axes along which large groups of Bosnian Muslim men from the column were captured by members of the Bosnian Serb Forces or surrendered on 13 July were the Bratunac–Konjević Polje Road and the Nova Kasaba–Konjević Polje Road.¹²⁹⁵ A conversation intercepted at 5:30 p.m. on 13 July indicates that approximately 6,000 Bosnian Muslim prisoners were detained in the Bratunac area at three locations, with about 1,500 to 2,000 men in each location.¹²⁹⁶ One of the locations appears to be the football field at Nova Kasaba, another was “up there where the checkpoint at the intersection is,” and a third was “halfway between the checkpoint and the loading place.”¹²⁹⁷ In this context, the Trial Chamber is of the view that one of the places is Sandići Meadow and the other Nova Kasaba.

(a) Sandići Meadow

384. Along the Bratunac–Konjević Polje Road, approximately one and a half kilometres from the Kravica Warehouse in the direction of Konjević Polje, there was a large open patch of land in the forest—Sandići Meadow.¹²⁹⁸ Over the course of 13 July, it is estimated that between 1,000 and 2,000 Bosnian Muslims from the column who had surrendered or been captured were detained there.¹²⁹⁹

¹²⁹³ PW-113, Ex. P02280, “92 *ter* transcript”, KT. 1384 (21 July 2003); PW-110, T. 650 (24 Aug 2006).

¹²⁹⁴ *Ibid.*

¹²⁹⁵ With regard to the Bratunac–Konjević Polje Road, *see* PW-111, T. 6973 (6 Feb 2007); PW-100, T. 14837–14838 (5 Sept 2007), T. 1488214883 (6 Sept 2007); PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3245–3247 (23 May 2000); PW-110, T. 648–650 (24 Aug 2006); PW-120, Ex. P02220, “92 *bis* transcript”, KT. 2766–2767 (12 Apr 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 268; Ex. P02215, “Map of PW-119’s route to Nežuk”.

¹²⁹⁶ Ex. P01143a, “Intercept, 13 July 1995, 17:30 hours.”

¹²⁹⁷ *Ibid.*

¹²⁹⁸ Ex. P02986, “Road Book - Still frames from the Petrović video and images of locations found in the Petrović video”, p. 21; Ex. PIC00132, “Aerial Image marked by the witness”; *See infra* Ex. P02111, “Map–Zvornik Area”; PW-100, T. 14822 (5 Sept 2007).

¹²⁹⁹ Estimates of the number of prisoners detained at the meadow ranged from 900 to 2,000. PW-110, T. 657–658 (24 Aug 2006); PW-127, T. 3516–3517, 3524 (2 Nov 2006), T. 3557–3558 (3 Nov 2006); PW-111, T. 6975 (6 Feb 2007), T. 7052 (7 Feb 2007); Ramiz Husić, Ex. P02203 “92 *bis* statement” (9 June 1999), p. 64; PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1386, 1391 (21 July 2003); PW-156, T. 7086 (8 Feb 2007). The Trial Chamber notes that although PW-156 testified that he heard the meadow where he was detained was in Lolići, Lolići and Sandići are close and finds that PW-156 was detained in the same meadow in Sandići described by the other witnesses who were there. *See* Tomasz Blaszczyk, T. 18637 (3 Dec 2007) (noting a location in the Lolići “area” approximately 900 metres from Sandići Meadow). *See also* Zoran Petrović, T. 18791–18792, 18795–18796 (5 Dec 2007), T. 18857–18858 (6 Dec 2007); Ex. P02011, “Video by Zoran Petrović, Studio B version”; Ex. P02986, “Road Book - Still frames from the Petrović video and images of locations found in the Petrović video”, p. 56; Ex. P02047, “Srebrenica Trial Video,” 02:47:45–02:48:12.

385. Upon surrender, some Bosnian Muslim men were ordered to raise their hands behind their heads, drop their belongings onto a pile and hand over their money.¹³⁰⁰ In some instances, those who had carried weapons had thrown them away before surrendering.¹³⁰¹ While the prisoners were provided with water, they were given neither food nor medical treatment.¹³⁰² Some members of the Bosnian Serb Forces insulted the prisoners and asked them for money.¹³⁰³ However, some women, young girls, and about a dozen boys who were younger than 15 years of age, were allowed to leave Sandići Meadow and get on the buses and trucks heading to ABiH-held territory.¹³⁰⁴

386. Several units of the Bosnian Serb Forces were present in the Sandići Meadow area on 13 July.¹³⁰⁵ Both the SBP 2nd Šekovići Detachment¹³⁰⁶ and the 1st PJP Company from Zvornik¹³⁰⁷ remained deployed along the Bratunac-Konjević Polje Road in and around Sandići Meadow that day.¹³⁰⁸ Members of the 1st Company of the Jahorina Recruits were also deployed in and around Sandići Meadow.¹³⁰⁹ At a certain point during the afternoon of 13 July, another group of Bosnian

¹³⁰⁰ Prosecution Adjudicated Facts Decision, Annex, Fact 270; PW-111, T. 6972–6973 (6 Feb 2007).

¹³⁰¹ PW-111, T. 7038–7039 (7 Feb 2007).

¹³⁰² PW-110, T. 660 (24 Aug 2006). *See also* PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1396–1397 (21 July 2003); PW-127, T. 3533–3534 (2 Nov 2006); PW-156, T. 7088 (8 Feb 2007).

¹³⁰³ PW-111, E. P02280, “92 *ter* transcript”, KT. 1386 (21 July 2003); PW-110, T. 651 (24 Aug 2006), T. 804–805 (25 Aug 2006) (stating that the prisoners were told to lie down and shout “Long live the King”).

¹³⁰⁴ PW-110, T. 656, 658–659 (24 Aug 2006); PW-111, T. 6976–6977, 6981 (6 Feb 2007). *See also* PW-127, T. 3535 (2 Nov 2006).

¹³⁰⁵ PW-127, T. 3530–3531 (2 Nov 2006), T. 3566 (private session) (3 Nov 2006); PW-156, T. 7089 (8 Feb 2007); PW-110, T. 759, 802–803 (25 Aug 2006); PW-111, T. 6973–6974 (6 Feb 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 54–56.

¹³⁰⁶ Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, at 00:09:51 (showing Milenko Trifunović, a member of the SBP 2nd Sekovići Detachment); Predrag Celić, T. 13489–13490 (28 June 2007) (identifying Trifunović); Dobrisav Stanojević, T. 12894–12896 (19 June 2007) (identifying Trifunović, “Dugi”, a member of the 1st PJP Company from Zvornik, standing next to his brother, also nicknamed “Dugi”, a member of the SBP 2nd Sekovići Detachment); Milenko Pepić, T. 13549–13551, 13555–13556, 13589–13590, 13594 (9 July 2007); Zoran Petrović, T. 18855 (6 Dec 2007); Ex. P01936, “Video stills taken from the Srebrenica Trial Video”, p. 66 (showing a man nicknamed “Dugi”, a member of the 1st PJP Company from Zvornik, standing next to his brother, also called “Dugi”, a member of the SBP 2nd Sekovići Detachment).

¹³⁰⁷ Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, 00:22:25–00:24:05 (showing Predrag Krstić, a member of the 1st Company PJP from Zvornik); Ex. P02047, “Srebrenica Trial Video, “02:49” 15.27”; Dobrisav Stanojević, T. 12896–12897 (19 June 2007) (identifying Predrag Krstić, Vasić, a member of the 1st PJP Company from Zvornik with a black bandana and a policeman from Skelani, and “Dugi”, a member of the SBP 2nd Sekovići Detachment); Ex. P02832, “Still of man in military uniform with a black bandana near Sandići Meadow taken from Srebrenica Trial Video at 02:49:15–02:49:27 (showing an individual in a black headband with the last name “Vasić” who was a member of the 1st PJP Company from Zvornik and a policeman from Skelani); Ex. P01936, “Video stills taken from the Srebrenica Trial Video”, p. 65 (showing a man nicknamed “Dugi”, a member of the 1st PJP Company from Zvornik, standing next to his brother, also called “Dugi”, a member of the SBP 2nd Sekovići Detachment).

¹³⁰⁸ Zoran Petrović, T. 18782–18784, 18786 (5 Dec 2007); Ex. P00062, “Document from Zvornik CJB signed by Dragomir Vasić, 13 July 1995”; Ex. P00886, “Document from the Zvornik CJB to the RS MUP type-signed Vasić, 13 July 1995”; Ex. P03112, “CJB Zvornik Dispatch regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995”; Mendeljev Đurić, T. 10822–10824 (2 May 2007); Ex. P02054, “A high quality copy of the Zoran Petrović’s roll material in 8 mm standard,” 00:16:25–00:22:14; Ex. P02985, “Transcript of the Petrović video”, pp. 10–14.

¹³⁰⁹ Mendeljev Đurić, T. 10812–10813, 10819, 10822, 10826, 10865–10866, 10869–10871 (2 May 2007); PW-160, T. 8586 (9 Mar 2007), T. 8642–8644 (12 Mar 2007); Ex. P02047, “Srebrenica Trial Video”, 02:47:20–02:47:22, 02:47:51, 02:49:37, 02:49:45; Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, at 00:18:45–00:21:32; PW-100, T. 14813–14818, 14820–14827, 14843–14844 (5 Sept 2007), T. 14908–14909 (6 Sept 2007). Combining PW-100’s testimony and other circumstantial evidence, such as the fact that

Serb Forces, wearing black uniforms, arrived at Sandići Meadow to guard the Bosnian Muslim prisoners.¹³¹⁰ A black tank positioned near the meadow had its machine-gun pointed at the Bosnian Muslim prisoners.¹³¹¹ Two or three APCs were also located nearby.¹³¹²

387. **Borovčanin** was at Sandići Meadow during the afternoon of 13 July.¹³¹³ At some point in the afternoon,¹³¹⁴ Mladić came to the meadow and told the detained men that they would not be hurt but would be exchanged as POWs, and that their families had been transported safely to ABiH-held territory.¹³¹⁵

388. During the afternoon, groups of prisoners were transported out of Sandići Meadow.¹³¹⁶ While some were put on buses or marched towards the nearby Kravica Warehouse,¹³¹⁷ others were put on buses and trucks and taken to Bratunac town.¹³¹⁸ Meanwhile, there were also episodes of beatings and killings of Bosnian Muslim prisoners¹³¹⁹ by some members of the Bosnian Serb Forces.¹³²⁰

(b) Konjević Polje

389. On 13 July 1995, a number of Bosnian Muslim men from the column surrendered or were captured at the intersection of the Bratunac-Konjević Polje Road and the Nova Kasaba-Konjević

Bosnian Muslims were bused out of Potočari on 12 July, the Trial Chamber finds that PW-100 was describing Sandići Meadow and that he was present at the meadow on 13 July.

¹³¹⁰ PW-110, T. 804–805 (25 Aug 2006); PW-111, T. 6976 (6 Feb 2007).

¹³¹¹ PW-127, T. 3524 (2 Nov 2006); PW-111, T. 6976 (6 Feb 2007); Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 7; Ex. P02986, “Road Book–Still Frames from the Petković Video and Images of Locations found in the Petković Video”, p. 28.

¹³¹² PW-110, T. 804 (25 Aug 2006), *See also* Dobrisav Stanojević, T. 12882 (19 June 2007).

¹³¹³ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 47–51; Zoran Petrović, T. 18783, 18793 (5 Dec 2007), T. 18855 (6 Dec 2007). *See also* PW-160, T. 8585–8586 (9 Mar 2007).

¹³¹⁴ PW-110, T. 748–749 (25 Aug 2006); PW-111, T. 6977–6978 (6 Feb 2007).

¹³¹⁵ PW-110, T. 661–662 (24 Aug 2006), T. 748–749 (25 Aug 2006); PW-111, T. 6977–6978 (6 Feb 2007); PW-160, T. 8585–8586 (9 Mar 2007); Prosecution Adjudicated Facts Decision, Annex, Fact 271.

¹³¹⁶ PW-111, T. 6978–6979, 6981 (6 Feb 2007), T. 7056 (7 Feb 2007); PW-156, T. 7094, 7112–7113 (8 Feb 2007). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 272.

¹³¹⁷ PW-111, T. 6978–6979, 6981 (6 Feb 2007), T. 7056 (7 Feb 2007); PW-156, T. 7094, 7112–7113 (8 Feb 2007). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 272.

¹³¹⁸ PW-110, T. 663 (24 Aug 2006); PW-113, T. 3337–3338 (31 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 272.

¹³¹⁹ PW-127 identified Dulan Tabaković, Tabaković’s two-sons, Ahmo Tihić and Džemo Tihić, and another man who was the brother of Sead Krdžić at Sandići Meadow. PW-127, T. 3531–3532 (private session) (2 Nov 2006). PW-127 identified Tabaković’s two sons in Ex. P02407, “Srebrenica Trial Video” at 02:50:48; PW-127 T. 3540 (private session) (2 Nov 2006); Ramiz Husić, Ex. P02203, “92 bis statement” (9 June 1999), p. 7 (stating that he saw Dulan Tabaković being taken to a cornfield and did not see him return). None of the prisoners came back and PW-127 never saw these prisoners again. PW-127, T. 3532 (2 Nov 2006). The Trial Chamber notes that there is no Dulan Tabaković found on the 2009 ICMP List of Deceased. However, there is an Ahmo Tihić and a Džemo Tihić. There is also a Sejad Krdžić, who appears to have two brothers: Seid Krdžić, and Adem Krdžić. *See* Ex. P04494 (confidential).

¹³²⁰ PW-127 T. 3530–3531, 3533–3534 (2 Nov 2006); PW-156, T. 7088 (8 Feb 2007); PW-111, T. 6976 (6 Feb 2007), T. 7054–7055 (7 Feb 2007).

Polje Road.¹³²¹ The Bosnian Muslim men were told to lie face down and to put their hands behind their heads while they were searched and everything was taken away from them.¹³²² Some of the Bosnian Muslims were taken to a warehouse in Konjević Polje and held in a guarded room.¹³²³ The captured Bosnian Muslims were provided with water, albeit not enough for everyone, as well as with some beer and cigarettes.¹³²⁴ They were guarded by three military policemen.¹³²⁵ One group of around 30 captured Bosnian Muslims, including PW-116, was transported from the warehouse to the Nova Kasaba Football Field in three or four civilian trucks.¹³²⁶ Another group of captured Bosnian Muslims, including Mevludin Orić, was loaded onto two buses at around 9 or 10 p.m. and, together with the military policemen who had guarded them, transported from the warehouse to Bratunac town.¹³²⁷

390. Three Bosnian Muslim men and a boy of approximately 15 years from the column were also captured on the Bratunac-Konjević Polje Road near Konjević Polje on 13 July 1995.¹³²⁸ One of them, PW-112, was captured by members of the MUP.¹³²⁹ He was stripped of his identification documents and personal belongings,¹³³⁰ and brought to a first location of detention, where he met

¹³²¹ Mevludin Orić, T. 883–885, 902–903 (28 Aug 2006); Željko Kerkez, T. 24090 (25 July 2008); PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000). Orić stated that they were 13 people in total at the time and some of them went down to surrender, thinking that they were safe when they saw the vehicles. Mevludin Orić, T. 884–885 (28 Aug 2006). Mevludin Orić further stated that he was no longer an ABiH soldier when he headed off from Jagličić towards Tuzla. *Ibid.* The members of the Bosnian Serb Forces—one of whom was a certain “Gligić” or “Simić”—were armed and wore camouflage uniforms. Orić indicated the location where he was captured on Ex. PIC00002, “Map marked by Mevludin Orić”. It is close to an intersection in Konjević Polje. Mevludin Orić, T. 886–887, 904 (28 Aug 2006).

¹³²² Mevludin Orić, T. 885–889 (28 Aug 2006). Orić remembers that, in the *Blagojević* case, he mentioned the last name of the individual who told them to lie down but does not recall whether he stated Gligić or Simić. The man was from Studenić near Potočari. Mevludin Orić, T. 1002 (30 Aug 2006). Mevludin Orić stated that many of the Bosnian Muslim captives had thrown away their identification documents before they were captured. Mevludin Orić, T. 889–890 (28 Aug 2006).

¹³²³ Mevludin Orić, T. 889 (28 Aug 2006); PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000) (referring to a “hangar” where they were kept for 20 minutes).

¹³²⁴ Mevludin Orić, T. 888 (28 Aug 2006); PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000) (testifying that although water was provided, it was insufficient).

¹³²⁵ Mevludin Orić, T. 890–894 (28 Aug 2006), T. 1123 (31 Aug 2006) (also stating that the guards were wearing blue flak jackets with round patches bearing big letters “VP” which stand for the “Military Police” on their arms).

¹³²⁶ PW-116, Ex. P02205, “92 bis transcript”, KT. 2948–2950 (14 Apr 2000) (stating that the group of 30 men with whom he had been held in the warehouse were ordered to board three or four civilian trucks which had been parked at the Konjević Polje intersection).

¹³²⁷ Mevludin Orić, T. 889 (28 Aug 2006) (stating he was told that the buses that were transporting civilians from Potočari to Kladanj would transport the prisoners, including himself, to Bratunac on their return), 890–894 (28 Aug 2006), T. 1123 (31 Aug 2006).

¹³²⁸ PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3245, 3250, 3252–3253, 3263 (23 May 2000).

¹³²⁹ PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3245–3250, 3251–3253 (private session) (23 May 2000). PW-112 described the Bosnian Serb Forces who captured him and took his identification away as having on “[...] dark blue uniforms and slightly multicoloured. They weren’t all blue, they were the mass type of blue uniform and they were all in one. They had a belt around their waist in front.” *Ibid.*, KT. 3247. PW-112 recognised one of the men involved in his capture as Milisav Gavrić from Srebrenica. *Ibid.*, KT. 3253. The Trial Chamber has heard evidence that Milisav Gavrić was a policeman. PW-126, T. 3602, 3625 (private session) (6 Nov 2006).

¹³³⁰ PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3246 (23 May 2000).

the two other Bosnian Muslim men.¹³³¹ The three men were guarded by members of the Bosnian Serb Forces,¹³³² at least one of whom was an MUP member.¹³³³ The three men were taken to another location where they were interrogated by four members of the Bosnian Serb Forces.¹³³⁴ After the interrogation, the three men were taken to the third detention site, where they were joined by the boy.¹³³⁵ They were all later taken to a warehouse on the banks of the Jadar River where they were detained with 12 other Bosnian Muslim prisoners, ordered to take off their clothes, lined up against the wall, and beaten.¹³³⁶ The Bosnian Serb Forces guarding and beating the prisoners at the warehouse wore military camouflage uniforms.¹³³⁷ Nenad Deronjić, a member of the MUP,¹³³⁸ was one of them.¹³³⁹

(c) Bratunac Brigade Headquarters¹³⁴⁰

391. At approximately 10 or 11 a.m. on 13 July, Nazif Avdić,¹³⁴¹ Munib Dedić,¹³⁴² Aziz Husić,¹³⁴³ Mujo Husić¹³⁴⁴ and Hasib Ibišević,¹³⁴⁵ were brought to Zlatan Čelanović, a desk officer for legal, religious, and moral affairs in the Bratunac Brigade,¹³⁴⁶ in his office in the Bratunac

¹³³¹ PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3250 (23 May 2000); Ex. P02103, "Documents tendered with statement of Jean-René Ruez", p. 32; Jean-René Ruez, T. 1378 (8 Sept 2006).

¹³³² PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3250-3251 (partially private session) (23 May 2000).

¹³³³ *Ibid.* PW-112 knew this man from before the war and identified him as Dragiša Žekić. PW-112 testified that when he saw Žekić at Konjević-Polje, he was wearing a dark blue one-piece camouflage uniform like the MUP members that arrested him, PW-112, T. 3251-3252 (private session) (23 May 2000). The Trial Chamber has not heard other evidence regarding Dragiša Žekić's position, but concludes, given the colour of his uniform, that he was in fact a member of the MUP.

¹³³⁴ PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3255-3261 (23 May 2000); PW-112, T. 3222 (30 Oct 2006); Ex. P02275, "Photograph" (indicating the house where PW-112 and two other Bosnian Muslim men were interrogated).

¹³³⁵ PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3262-3263 (23 May 2000); PW-112, T. 3221 (30 Oct 2006); Ex. P01935, "Photograph" (indicating the house where PW-112 and the two other Bosnian Muslim men were brought after the interrogation). The boy was beaten by a policeman while they were being held at this location. PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3263 (23 May 2000).

¹³³⁶ PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3264-3271 (partially private session) (23 May 2000).

¹³³⁷ *Ibid.* KT. 3268 (private session) (23 May 2000).

¹³³⁸ *See infra*, para. 408.

¹³³⁹ PW-112, Ex. P02272, "confidential - 92 ter transcript", KT. 3267 (private session) (23 May 2000).

¹³⁴⁰ The Indictment alleges that on 13 July 1995, six Bosnian Muslim men from Srebrenica were captured by MUP forces and then interrogated at the Bratunac Brigade Headquarters. The Indictment further alleges that after interrogation these six men were detained along with other Bosnian Muslim prisoners in Bratunac and thereafter summarily executed. Indictment, para. 30.1.

¹³⁴¹ Zlatan Čelanović, T. 6658 (31 Jan 2007); Ex. P00249, "Notes regarding interrogation of Nazif Avdić, Munib Dedić, Aziz Husić, and Hajrudin Begzadić". The Indictment refers to a "Zazif Avdić, son of Ramo, date of birth: 15 September 1954," Indictment, para. 30.1(a). The Trial Chamber notes, however, that Zlatan Čelanović's handwritten notes of the interrogation refer to Nazif Avdić, with the same father and date of birth specified in the Indictment and considers the spelling of his first name in the Indictment to be a typographical error.

¹³⁴² Zlatan Čelanović, T. 6658 (31 Jan 2007); Ex. P00249, "Notes regarding interrogation of Nazif Avdić, Munib Dedić, Aziz Husić, and Hajrudin Begzadić". The Indictment lists Munib Dedić's date of birth as 26 April 1956. Indictment, para. 30.1(b). The Trial Chamber notes that Zlatan Čelanović's handwritten notes of the interrogation list Munib Dedić's date of birth as 26 April 1966, but considers this reference to be a typographical error.

¹³⁴³ Zlatan Čelanović, T. 6658 (31 Jan 2007); Ex. P00249, "Notes regarding interrogation of Avdić, Nazif, Dedić, Munib, Husić, Aziz, and Begzadić, Hajrudin".

¹³⁴⁴ Zlatan Čelanović, T. 6655 (31 Jan 2007); Ex. P00247, "Notes regarding interrogation of Mujo Husić".

¹³⁴⁵ Zlatan Čelanović, T. 6659 (31 Jan 2007); Ex. P00250, "Notes regarding interrogation of Hasib Ibišević".

¹³⁴⁶ Zlatan Čelanović, T. 6626, 6630 (31 Jan 2007).

Brigade Headquarters, by “members of special forces” or “specials”.¹³⁴⁷ At some point thereafter, Rešid Sinanović, the former chief of the Bratunac police¹³⁴⁸ was brought to Čelanović’s office by Momir Nikolić.¹³⁴⁹ Following their interrogation, the six Bosnian Muslim men were taken by the “a special military unit or a special police” to the Vuk Karadžić School in Bratunac town.¹³⁵⁰

(d) Nova Kasaba Football Field¹³⁵¹

392. On 13 July 1995, a group of approximately 300 Bosnian Muslim men who had surrendered or been captured in the area of the Nova Kasaba-Konjević Polje Road was transported by members of the Bosnian Serb Forces in trucks with canvas covers that a witness described as “civilian trucks from the Boksit Company.”¹³⁵² They were taken in the direction of Nova Kasaba, after their money and gold were taken away from them.¹³⁵³ The Bosnian Serb Forces on board the trucks were wearing dark blue camouflage uniforms.¹³⁵⁴

393. The group of prisoners, which included PW-116, was ordered to get out of the trucks at a football field just outside Nova Kasaba, the Nova Kasaba Football Field.¹³⁵⁵ A group of 15 to 20 armed military policemen of the 65th Protection Regiment stationed in a school building in the vicinity of the Nova Kasaba Football Field just outside Nova Kasaba were already present at the entrance of the field.¹³⁵⁶ They swore at the prisoners and ordered them to enter the field.¹³⁵⁷ Upon

¹³⁴⁷ Zlatan Čelanović, T. 6628, 6632, 6645, 6647 (31 Jan 2007). Čelanović described the men who brought the prisoners as wearing new uniforms consisting of black or dark blue military overalls, although two were dressed in multicoloured camouflage, which indicated that they were part of an elite unit, as Čelanović’s unit had old, worn-out uniforms. *Ibid.*, T. 6645, 6647, 6671 (31 Jan 2007).

¹³⁴⁸ PW-162, T. 9219 (22 Mar 2007); Zlatan Čelanović, T. 6632–6633 (31 Jan 2007).

¹³⁴⁹ Zlatan Čelanović, T. 6632–6635 (31 Jan 2007); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 4; T. 32932 (21 Apr 2009). Momir Nikolić also told PW-138 that he had taken Rešid Sinanović to Bratunac. PW-138, T. 3826–3827 (8 Nov 2006). Momir Nikolić suspected Sinanović of having participated in an attack on the village of Bjelovac. Zlatan Čelanović, T. 6634 (31 Jan 2007).

¹³⁵⁰ Zlatan Čelanović, T. 6645 (31 Jan 2007). Čelanović called the school to which the men were taken the “Branko Radičević School” but stated that he was unsure of the name of this school in July 1995. *Ibid.*, T. 6638–6639 (31 Jan 2007). Čelanović also told PW-162, who visited Sinanović that day, that Sinanović would be transferred to the Branko Radičević School in the afternoon. PW-162, T. 9219, 9226–9227 (22 Mar 2007). The Trial Chamber has heard evidence that this school was formerly the Vuk Karadžić School. *See* PW-162, T. 9221 (22 Mar 2007). After speaking to Sinanović for an hour, Čelanović felt that there were no grounds for suspecting him of having harmed Bosnian Serbs in any way. Čelanović also questioned the five other Bosnian Muslims out in the front yard of the building, and came to the conclusion that at least most of them were not soldiers but civilians. Čelanović questioned the men about people and events mentioned in the book *The Chronicle of our Cemetery*. Zlatan Čelanović, T. 6634–6635, 6637, 6657–6658 (31 Jan 2007).

¹³⁵¹ The Trial Chamber will refer to the location in Nova Kasaba where Bosnian Muslim prisoners were held as the “Nova Kasaba Football Field” although witnesses have referred to it interchangeably as a “football field,” *see* Vincent Egbers, T. 2726 (18 Oct 2006), PW-116, Ex. P02205, “92 bis transcript”, KT. 2950 (14 Apr 2000), Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, pp. 27–28.

¹³⁵² PW-116, Ex. P02205, “92 bis transcript”, KT. 2948, 2950 (14 Apr 2000).

¹³⁵³ *Ibid.*, KT. 2950 (14 Apr 2000). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 274.

¹³⁵⁴ PW-116, Ex. P02205, “92 bis transcript”, KT. 2948 (14 Apr 2000).

¹³⁵⁵ *Ibid.* KT. 2950–2951 (14 Apr 2000); Ex. P01664, “Video Still of football field taken from helicopter”.

¹³⁵⁶ PW-116, Ex. P02205, “92 bis transcript”, KT. 2950, 2952–2953 (14 Apr 2000); Mirko Trivić, T. 11860–11861 (21 May 2007), T. 12002 (23 May 2007); Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct

arrival of PW-116's group of prisoners, the field was already full with several hundred Bosnian Muslim prisoners, sitting in rows.¹³⁵⁸ They were not given any food or water.¹³⁵⁹ The prisoners were guarded by a total of about 100 military policemen of the 65th Protection Regiment in camouflage uniforms, some of whom had their guns pointed at the prisoners.¹³⁶⁰

394. At some point, an olive-green coloured APC arrived from which Mladić alighted.¹³⁶¹ Mladić shouted at the prisoners, and told them that their authorities in ABiH-held territory did not want them, that his troops would give them water and food, "and then we'll see whether we'll send you to Krajina, to Fikret Abdić or [...] to the Batkovići camp in Bijeljina."¹³⁶² Bosnian Serb Forces with dogs were covering the woods in order to prevent anyone from crossing the Nova Kasaba-Konjević Polje Road.¹³⁶³

395. About an hour after Mladić left, the prisoners were boarded onto trucks and buses.¹³⁶⁴ In reply to one of the prisoners commenting that they should take their bags, one of the Bosnian Serb soldiers said that they would no longer need them; later on, the Bosnian Muslim prisoners' belongings were burnt.¹³⁶⁵ By around 7 p.m. on 13 July 1995, all the Bosnian Muslim men who were detained at the Nova Kasaba Football Field had been transported to Bratunac by the Military Police of the 65th Protection Regiment and handed over to the civilian police in Bratunac who were awaiting them at the Vuk Karadžić School in Bratunac town.¹³⁶⁶ The prisoners were transported in buses and large civilian trucks, which arrived from the direction of Zvornik and Milići.¹³⁶⁷ In total, eight military policemen of the 65th Protection Regiment accompanied the convoy of buses and

1995, 12 May 2000), pp. 4–5 (12 May 2000); Bojan Subotić, T. 24976, 24984 (1 Sept 2008); Vincent Egbers, T. 2758 (19 Oct 2006); Ex. P01688, "Photograph of school at Nova Kasaba".

¹³⁵⁷ PW-116, Ex. P02205, "92 bis transcript", KT. 2952 (14 Apr 2000).

¹³⁵⁸ Vincent Egbers, T. 2756 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), pp. 14–15 (24 and 25 Oct 1995); Bojan Subotić, T. 24980, 25018–25019 (1 Sept 2008). *See also* Ex. P01130a, "Intercept, 13 July 1995, 10:09 hours"; Ex. P02103, "Documents tendered with statement of Jean-René Ruez", pp. 27–28 (showing the Nova Kasaba Football Field with prisoners at 2 p.m. on 13 July 1995)." *See also* PW-116, Ex. P02205, "92 bis transcript", KT. 2950–2952 (14 Apr 2000); Mirko Trivić, T. 11859–11860 (21 May 2007), T. 12002 (23 May 2007).

¹³⁵⁹ PW-116, Ex. P02205, "92 bis transcript", KT. 2955 (14 Apr 2000).

¹³⁶⁰ Mirko Trivić, T. 11860–11861 (21 May 2007), T. 12002 (23 May 2007); Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), pp. 4–5 (12 May 2000); Bojan Subotić, T. 24976, 24984 (1 Sept 2008); Vincent Egbers, T. 2758 (19 Oct 2006); Ex. P01688, "Photograph of Nova Kasaba School"; PW-116, Ex. P02205, "92 bis transcript", KT. 2952–2953 (14 Apr 2000).

¹³⁶¹ PW-116, Ex. P02205, "92 bis transcript", KT. 2953 (14 Apr 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 278.

¹³⁶² PW-116, Ex. P02205, "92 bis transcript", KT. 2954 (14 Apr 2000).

¹³⁶³ *Ibid.* KT. 2953–2954, 2992 (14 Apr 2000).

¹³⁶⁴ *Ibid.* KT. 2954–2955 (14 Apr 2000); Bojan Subotić, T. 24987–24989, 24991 (1 Sept 2008).

¹³⁶⁵ PW-116, Ex. P02205, "92 bis transcript", KT. 2954–2955 (14 Apr 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 277.

¹³⁶⁶ Bojan Subotić, T. 24971, 24985, 24988, 24990–24993, 24995, 25011, 25025–25026, 25029, 25033–25034 (1 Sept 2008). *See also* Chapter III, Section F.5.

¹³⁶⁷ *Ibid.*, T. 24987–24991 (1 Sept 2008).

trucks, which was headed by an armoured vehicle and at the rear, a Praga.¹³⁶⁸ They stopped frequently on the way because the prisoners were restless due to the overcrowded vehicles and the heat, allowing them to drink when they passed a creek.¹³⁶⁹ For this reason, they only arrived in Bratunac town around 9 p.m.¹³⁷⁰

396. On 13 July, five DutchBat officers, attempting to escort convoys of Bosnian Muslim women, children and the elderly from Potočari to ABiH-held territory, were captured by VRS soldiers, and held at a school building in the vicinity of the Nova Kasaba Football Field by the Military Police of the 65th Protection Regiment.¹³⁷¹ They were held there, overnight, and only released the following afternoon.¹³⁷² While at the school, Martijn Anne Mulder, one of the DutchBat soldiers, saw about 30 prisoners in civilian clothes accompanied by armed VRS soldiers being brought into an annex of the school, and subsequently heard pistol shots.¹³⁷³

(e) Trucks near Kravica Supermarket

397. On 13 July 1995, PW-116, a member of the column of Bosnian Muslim men, surrendered to Bosnian Serb police officers¹³⁷⁴ near Kravica, and was detained at the Nova Kasaba Football Field before being made to board one of three or four trucks with 118 other Bosnian Muslim men.¹³⁷⁵ The trucks all stopped near Kravica Supermarket, and remained there overnight with the Bosnian Muslim men on board.¹³⁷⁶

¹³⁶⁸ Bojan Subotić, T. 24991, 25025 (1 Sept 2008) (stating that there were not enough military policemen to accompany the convoy).

¹³⁶⁹ *Ibid.* T. 24992–24993 (1 Sept 2008).

¹³⁷⁰ *Ibid.* T. 24993 (1 Sept 2008).

¹³⁷¹ Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct 1995, 12 May 2000), pp. 4–5 (24 and 25 Oct 1995), 14–15 (12 May 2000); Vincent Egbers, T. 2756–2758, 2784–2788, 2799–2800 (19 Oct 2006); Bojan Subotić, T. 24976, 24984, 24995, 25014 (1 Sept 2008); Ex. P01688, “Photograph of school at Nova Kasaba” *See also* paras. 333, 337.

¹³⁷² Vincent Egbers, T. 2760–2761, 2773–2776, 2817, 2819–2831 (19 Oct 2006), T. 2848–2851, 2854–2856 (20 Oct 2006). *See also* Milomir Savčić, T. 15249 (12 Sept 2007).

¹³⁷³ Martijn Anne Mulder, Ex. P02199, “92 bis statement” (24 and 25 Oct 1995, 12 May 2000), p. 5 (24 and 25 Oct 1995).

¹³⁷⁴ PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000). PW-116 testified that the men were wearing dark blue camouflage uniforms, but at the time of the events, he could not tell the difference between police and army camouflage uniforms. PW-116, Ex. P02205, “92 bis transcript”, KT. 2949 (14 Apr 2000). PW-112 saw police in blue uniforms near Kravica on 13 July 1995. PW-112, Ex. P02272, “confidential - 92 ter transcript”, KT. 3244–3247 (23 May 2000). Simanić also testified that police officers wore blue uniforms “in the region of Konjević Polje”. Mile Simanić, T. 14721 (4 Sept 2007). The Trial Chamber is satisfied that the Bosnian Serb soldiers to whom PW-116 surrendered were police officers.

¹³⁷⁵ PW-116, Ex. P02205, “92 bis transcript”, KT. 2946–2951, 2954–2956, 2959–2960 (14 Apr 2000). The men in PW-116’s truck counted themselves. *Ibid.*, KT. 2956 (14 Apr 2000). PW-116 also indicated the location of the football field (between Nova Kasaba and Konjević Polje) and Kravica on a map. *Ibid.*, KT. 2958–2959 (14 Apr 2000). *See infra*, paras. 446–449.

¹³⁷⁶ PW-116, Ex. P02205, “92 bis transcript”, KT. 2956, 2958–2959, 2961–2962 (14 Apr 2000). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 276.

398. The Bosnian Muslim men in the truck were calling for help and some water.¹³⁷⁷ They received no food and only one bucket of water in the whole time they were on the truck.¹³⁷⁸ Some of the prisoners were drinking their own urine because of the extreme heat under the truck's canvas.¹³⁷⁹

5. Detention of Bosnian Muslim Men in Bratunac Town (12–14 July)¹³⁸⁰

399. In the evening hours of 12 July, vehicles carrying Bosnian Muslim men began to arrive in Bratunac town,¹³⁸¹ and continued to arrive on 13 July.¹³⁸² At around 7 p.m. on 13 July, about fifteen vehicles arrived at the Nova Kasaba Football Field on their return journey from Kladanj, to transport the prisoners to Bratunac.¹³⁸³ The Bosnian Muslim men taken to Bratunac town were detained in different buildings, such as the Vuk Karadžić School¹³⁸⁴ and the hangar located between the Vuk Karadžić School and the old civil engineering school.¹³⁸⁵ Bosnian Muslim prisoners were also detained in vehicles¹³⁸⁶ parked near the Vuk Karadžić School,¹³⁸⁷ the town hall,¹³⁸⁸ the

¹³⁷⁷ PW-116, Ex. P02205, "92 bis transcript", KT. 2961 (14 Apr 2000).

¹³⁷⁸ *Ibid.* KT. 2959 (14 Apr 2000). On 14 July, PW-116, together with other prisoners, was taken to the Petković School. While in the trucks, they were again beaten and threatened with death if any of them tried to escape. *See infra*, paras. 495–498.

¹³⁷⁹ PW-116, Ex. P02205, "92 bis transcript", KT. 2961 (14 Apr 2000).

¹³⁸⁰ The Indictment alleges that between 12 and 15 July 1995 Bosnian Muslim men, who had been separated from their families in Potočari, and Bosnian Muslim men, who had surrendered to or had been captured by Bosnian Serb Forces along the road between Bratunac, Konjević Polje and Milići, were held temporarily in buildings and vehicles in Bratunac. Indictment, paras. 28–29.

¹³⁸¹ PW-162, T. 9214–9215 (22 Mar 2007); PW-169, T. 17307, 17315, 17330 (1 Nov 2007). *See also* PW-161, T. 9494, 9513 (27 Mar 2007).

¹³⁸² Mevludin Orić, T. 889 (28 Aug 2006), T. 931 (29 Aug 2006); PW-110, T. 648, 663 (24 Aug 2006); Miroslav Deronjić, Ex. P03139a, "confidential - 92 quater transcript", BT. 6422 (22 Jan 2004); Zlatan Čelanović, T. 6638, 6694–6695 (31 Jan 2007); PW-117, Ex. P02207, "92 bis transcript", KT. 3017–3018, 3027–3028 (14 Apr 2000); PW-113, Ex. P02280, "92 ter transcript", BT. 1397–1398 (21 July 2003); PW-113, T. 3369 (31 Oct 2006); Bojan Subotić, T. 24991, 25025 (1 Sept 2008); Vincent Egbers, T. 2749–2753 (19 Oct 2006), T. 2884–2885 (20 Oct 2006). *See also* Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9798, 9805–9806 (24 May 2004); Mile Janjić, T. 18016–18017 (21 Nov 2007); Dobrisav Stanojević, T. 12886 (19 June 2007); Jean-René Ruez, T. 1474 (11 Sept 2006); Ex. P02103, "Documents tendered with statement of Jean-René Ruez", pp. 11, 119, 121 (showing an overview of Bratunac town with convoys of buses and detention sites on 12 and 13 July 1995).

¹³⁸³ Bojan Subotić, T. 24989–24990 (1 Sept 2008).

¹³⁸⁴ Ahmo Hasić, T. 1178–1179 (6 Sept 2006), T. 1259–1260 (7 Sept 2006); Zlatan Čelanović, T. 6653 (31 Jan 2007); PW-138, T. 3833 (private session) (8 Nov 2006); PW-162, T. 9218, 9221 (22 Mar 2007); Miroslav Deronjić, Ex. P03139a, "confidential - 92 quater transcript", BT. 6418 (22 Jan 2004); Mevludin Orić, T. 931 (29 Aug 2006); Ex. P02094, "Hand-drawn sketch of a map of Bratunac, drawn and signed by Mevludin Orić". Mile Janjić, Ex. P02963, "92 ter transcript", BT. 9808 (24 May 2004). The Trial Chamber notes that several witnesses called the school Branko Radičević School, and finds that the Vuk Karadžić School and the Branko Radičević School are the same schools. PW-162, T. 9218, 9221 (22 Mar 2007); Zlatan Čelanović, T. 6638–6639 (31 Jan 2007).

¹³⁸⁵ PW-169, T. 17315–17318, 17330 (1 Nov 2007); PW-138, T. 3833 (private session) (8 Nov 2006). *See also* Miroslav Deronjić, Ex. P03139a, "confidential - 92 quater transcript", BT. 6418 (22 Jan 2004); PW-113, Ex. P02280, "92 ter transcript", BT. 1392 (21 July 2003); PW-170, T. 17866, 17868–17869 (19 Nov 2007); Ex. PIC00187, "Aerial image of Bratunac town (Ex. P01552) marked by PW-170"; Ex. PIC00188, "Photograph of hangar at Vuk Karadžić School (Ex. P02103 p. 13) marked by PW-170"; Ex. P01553, "Aerial image of Bratunac town - annotated with various key locations".

¹³⁸⁶ Mevludin Orić, T. 908–909 (28 Aug 2006); PW-138, T. 3833 (private session) (8 Nov 2006); Zlatan Čelanović, T. 6639, 6645 (31 Jan 2007); PW-117, Ex. P02207, "92 bis transcript", KT. 3027–3028 (14 Apr 2000); PW-113, Ex. P02280, "92 ter transcript", BT. 1397–1398 (21 July 2003); PW-113, T. 3369 (31 Oct 2006), T. 3386 (1 Nov 2006).

stadium,¹³⁸⁹ and the Vihor garage.¹³⁹⁰ On 12 July 1995, three buses were parked outside the municipal building of Bratunac town,¹³⁹¹ another three buses were parked in a nearby street,¹³⁹² and between 20 and 25 buses were parked at the stadium.¹³⁹³ Furthermore, on 13 July 1995, about 20 buses and trucks were parked in the street leading to the Vuk Karadžić School,¹³⁹⁴ and at least 20 buses were parked near the Vihor garage.¹³⁹⁵

400. The conditions inside the buildings and vehicles where the Bosnian Muslim prisoners were detained were cramped.¹³⁹⁶ For instance, between 150 and 200 Bosnian Muslims were held in one room of the Vuk Karadžić School,¹³⁹⁷ the hangar located behind the Vuk Karadžić School was filled with approximately 400 prisoners,¹³⁹⁸ and in the vehicles, Bosnian Muslims were crowded together.¹³⁹⁹

401. At the Vuk Karadžić School, the prisoners were forced to leave their bags, including food, outside the building.¹⁴⁰⁰ During their time there, they were not asked to give their names, nor were they interviewed by anyone.¹⁴⁰¹ Hardly any food was distributed and while water was given, it was not sufficient.¹⁴⁰² No medical aid was provided there,¹⁴⁰³ although the Trial Chamber heard evidence that Bosnian Muslim prisoners in Bratunac received some medical treatment.¹⁴⁰⁴

¹³⁸⁷ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9805, 9808 (24 May 2004); Zlatan Čelanović, T. 6638 (31 Jan 2007); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3028 (14 Apr 2000); PW-115, Ex. P02200, “92 *bis* transcript”, BT. 6093 (17 Dec 2003); Mevludin Orić, T. 908–909 (28 Aug 2006), T. 931 (29 Aug 2006); Ex. P02094, “Sketch of a map of Bratunac, by Mevludin Orić”; Ex. P02202, “Ex. P-677 in the *Blagojević* and *Jokić* Trial - Aerial of Bratunac town”; Ex. PIC00077, “Aerial image, Ex. P01553 (Vuk Karadžić School) marked by PW-161”.

¹³⁸⁸ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9809 (24 May 2004).

¹³⁸⁹ Zlatan Čelanović, T. 6642, 6651 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 35–36, 82–83.

¹³⁹⁰ PW-110, T. 663–666 (24 Aug 2006), T. 810 (25 Aug 2006). PW-110 testified that when the vehicles stopped, one of the prisoners told him that they were close to the Vihor garage. PW-110, T. 663, 665–666 (24 Aug 2006). Moreover, PW-110 testified that he saw a column of vehicles parked there. PW-110, T. 666–667 (24 Aug 2006). See also Ex. P01553, “Aerial image of Bratunac town - annotated with various key locations.” The Trial Chamber finds that PW-110 was detained in a vehicle that was parked near the Vihor garage.

¹³⁹¹ PW-161, T. 9494 (27 Mar 2007); PW-162, T. 9212–9215 (22 Mar 2007).

¹³⁹² PW-162, T. 9214–9215 (22 Mar 2007).

¹³⁹³ *Ibid.*, T. 9215 (22 Mar 2007).

¹³⁹⁴ Zlatan Čelanović, T. 6638, 6652 (31 Jan 2007). See also Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9798, 9805 (24 May 2004).

¹³⁹⁵ PW-110, T. 676 (24 Aug 2006).

¹³⁹⁶ Ahmo Hasić, T. 1178–1179, 1222 (6 Sept 2006); PW-169, T. 17315–17316, 17319 (1 Nov 2007); PW-110, T. 666 (24 Aug 2006); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1398, 1402 (21 July 2003); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3027 (14 Apr 2000); Mevludin Orić, T. 898, 907 (28 Aug 2006).

¹³⁹⁷ Ahmo Hasić, T. 1178–1179, 1222 (6 Sept 2006).

¹³⁹⁸ PW-169, T. 17315–17316, 17319 (1 Nov 2007).

¹³⁹⁹ PW-110, T. 666 (24 Aug 2006); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1398 (21 July 2003); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3027 (14 Apr 2000); Mevludin Orić, T. 898, 907 (28 Aug 2006).

¹⁴⁰⁰ Ahmo Hasić, T. 1179–1180 (6 Sept 2006).

¹⁴⁰¹ *Ibid.*, T. 1179, 1222 (6 Sept 2006).

¹⁴⁰² *Ibid.*, T. 1189–1190 (6 Sept 2006). Ahmo Hasić, testified that only after the second night at the school, before leaving Bratunac, and after being put into a bus, Bosnian Serb soldiers and drivers gave the prisoners a couple of slices of bread each. *Ibid.*, T. 1190 (6 Sept 2006).

402. In the morning of 13 July, the prisoners who were detained at the hangar behind the Vuk Karadžić School were ordered to hand over their identity cards, wallets and watches.¹⁴⁰⁵ The prisoners were given some water and no food and when they complained, the guards fired over their heads and threatened to kill them.¹⁴⁰⁶ In the afternoon, Mladić came to the hangar and told the prisoners that they would be exchanged in Kalesija.¹⁴⁰⁷ While at the hangar, Mladić was observed giving instructions to about ten members of the Bosnian Serb Forces.¹⁴⁰⁸

403. In the vehicles parked in various locations throughout Bratunac town, the prisoners were provided with little or no food,¹⁴⁰⁹ and when water was provided, it was not sufficient.¹⁴¹⁰ The prisoners did not receive medical treatment there.¹⁴¹¹

404. Some prisoners detained in various locations in Bratunac town were beaten by members of the Bosnian Serb Forces.¹⁴¹² Screams, moans, and bursts of fire were heard in the vicinity of the places of detention.¹⁴¹³ On some occasions, on a bus parked near the Vuk Karadžić School, a military policeman intervened and stopped the beatings.¹⁴¹⁴ Some of the prisoners who were taken outside the rooms and vehicles did not return.¹⁴¹⁵ When one of the prisoners asked whether he

¹⁴⁰³ Ahmo Hasić, T. 1189–1190 (6 Sept 2006).

¹⁴⁰⁴ Bojan Subotić, a member of the Military Police Battalion of the 65th Motorised Protection Regiment, testified that he dressed the wounds of the prisoners who were later taken to Bratunac. Bojan Subotić, T. 24980–24981 (1 Sept 2008). The Trial Chamber also heard evidence that a large number of wounded, sick and infirm were taken to the local medical centre in Bratunac, and that on 11 or 12 July 1995, the Executive Board directed the civilian protection to secure 42 Bosnian Muslim prisoners who had been taken to a medical centre in Bratunac. The prisoners stayed at the Bratunac medical centre for a day or two, and were later taken away by a doctor and a DutchBat representative. Miroslav Deronjić, Ex. P03139a, “confidential - 92 *quater* transcript”, BT. 6202 (19 Jan 2004); PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT.7867–7868, 7919 (20 Apr 2004); PW-170, T. 17877–17878 (closed session) (19 Nov 2007).

¹⁴⁰⁵ PW-169, T. 17326 (1 Nov 2007), T. 17379–17380 (2 Nov 2007).

¹⁴⁰⁶ *Ibid.*, T. 17319, 17326 (1 Nov 2007).

¹⁴⁰⁷ *Ibid.*, T. 17324–17325 (1 Nov 2007).

¹⁴⁰⁸ *Ibid.*, T. 17325 (1 Nov 2007).

¹⁴⁰⁹ Mevludin Orić, T. 919 (28 Aug 2006); PW-110, T. 668 (24 Aug 2006). The Trial Chamber notes that the small amount of food provided was not sufficient. Furthermore, it was provided on an individual basis and not as part of an organised system. Mile Janjić testified that following a request by the Bosnian Muslim prisoners, he and the other two military policemen gave them some bread. Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9848 (25 May 2004).

¹⁴¹⁰ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1399, 1402 (21 July 2003). *See also* PW-161, T. 9494 (27 Mar 2007); PW-162, T. 9213–9214 (22 Mar 2007); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3030 (14 Apr 2000); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9848 (25 May 2004); PW-110, T. 668, 674 (24 Aug 2006); Mevludin Orić, T. 919 (28 Aug 2006).

¹⁴¹¹ PW-110, T. 668 (24 Aug 2006).

¹⁴¹² PW-169, T. 17319–17323 (1 Nov 2007); Ahmo Hasić, T. 1189 (6 Sept 2006); PW-110, T. 663, 666–667 (24 Aug 2006), T. 808 (25 Aug 2006), T. 835–836 (28 Aug 2006); Mevludin Orić, T. 910–911, 914–918 (28 Aug 2006); Ahmo Hasić, T. 1180–1181, 1187–1189, 1223 (6 Sept 2006), T. 1253 (7 Sept 2006). *See also infra*, paras. 452–454, 460.

¹⁴¹³ PW-169, T. 17320 (1 Nov 2007), T. 17387–17388 (2 Nov 2007); PW-110, T. 666–667 (24 Aug 2006); Ahmo Hasić, T. 1180–1181, 1187, 1222 (6 Sept 2006); Mevludin Orić, T. 918–919 (28 Aug 2006).

¹⁴¹⁴ Mevludin Orić, T. 910–911, 914 (28 Aug 2006).

¹⁴¹⁵ PW-169, T. 17320–17321 (1 Nov 2007), T. 17385–17386 (2 Nov 2007); Ahmo Hasić, T. 1180, 1187–1188, 1223 (6 Sept 2006); Mevludin Orić, T. 915–919 (28 Aug 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029 (14 Apr 2000). *See also infra*, paras. 453, 460–461.

should take his bag with him, he was told that he would not need anything anymore.¹⁴¹⁶ Others were brought back by the members of the Bosnian Serb Forces after they had been beaten, and were shown to the other prisoners.¹⁴¹⁷ In the Vuk Karadžić School, prisoners were beaten on their way to the toilet and therefore chose to relieve themselves where they were.¹⁴¹⁸

405. On the evening of 13 July, PW-110 was detained in a vehicle parked near the Vihor garage.¹⁴¹⁹ Throughout the night, PW-110 heard people he assumed were soldiers calling for Bosnian Muslims from certain villages to identify themselves.¹⁴²⁰ Those Bosnian Muslims who responded were taken out of the vehicles and beaten with rifle butts. PW-110 heard screaming and yelling and bursts of fire.¹⁴²¹ The members of the Bosnian Serb Forces did not seem to have a list with the names of the prisoners, and at no point during that night did they ask the prisoners for their names.¹⁴²²

406. The Bosnian Muslim prisoners in Bratunac town were guarded by members of the Bosnian Serb Forces,¹⁴²³ including military policemen of the Bratunac Brigade.¹⁴²⁴ The military police had received instructions from Momir Nikolić to take the prisoners to Bratunac.¹⁴²⁵ MUP members were also seen around the Vuk Karadžić School,¹⁴²⁶ and outside the municipal building on 12 July 1995.¹⁴²⁷ At a meeting held in the evening of 13 July, at the Bratunac Brigade Headquarters, it was decided that the Bosnian Muslim men in and around Bratunac should continue “to be guarded by

¹⁴¹⁶ PW-169, T. 17320 (1 Nov 2007).

¹⁴¹⁷ *Ibid.*, T. 17320–17321 (1 Nov 2007).

¹⁴¹⁸ Ahmo Hasić, T. 1189 (6 Sept 2006).

¹⁴¹⁹ PW-110, T. 663 (24 Aug 2006), T. 749 (25 Aug 2006).

¹⁴²⁰ *Ibid.*, T. 663, 667 (24 Aug 2006), T. 808 (25 Aug 2006), T. 835–836 (28 Aug 2006).

¹⁴²¹ *Ibid.*, T. 666–667 (24 Aug 2006), T. 810–811 (25 Aug 2006).

¹⁴²² *Ibid.*, T. 677–678 (24 Aug 2006). PW-110 mentioned only one incident in which a prisoner was asked for his name, or his father’s name. In this incident, which took place on 14 July 1995, the prisoner provided a first name only. *Ibid.*, T. 668–669 (24 Aug 2006). Mile Janjić testified that he almost had no contact with the prisoners. Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9848 (25 May 2004). *See also* Zlatan Čelanović, T. 6639–6640 (31 Jan 2007) (who testified that he told **Beara** that “only a few people were brought in front of the police building, [a]nd that there are no results in terms of looking at the [identity cards]”).

¹⁴²³ Mevludin Orić, T. 908–909 (28 Aug 2006); Ahmo Hasić, T. 1181 (6 Sept 2006); PW-169, T. 17315 (1 Nov 2007). PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3027–3029 (14 Apr 2000); PW-115, Ex. P02200, “92 *bis* transcript”, BT. 6093–6095 (17 Dec 2003). *See also* Ex. P00220, “Bratunac Brigade Military Police logbook”, p. 13; Zlatan Čelanović, T. 6691 (31 Jan 2007); Milomir Savčić, T. 15292–15293 (12 Sept 2007).

¹⁴²⁴ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9804, 9808–9809 (24 May 2004). *See also* PW-138, T. 3834–3836 (private session) (8 Nov 2006), T. 3907–3908 (private session) (9 Nov 2006); Zlatan Čelanović, T. 6689–6690 (31 Jan 2007).

¹⁴²⁵ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9804, 9807–9808, 9811 (24 May 2004); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 4; Momir Nikolić, T. 33170 (24 Apr 2009).

¹⁴²⁶ Bojan Subotić, T. 24971, 24987–24988, 24991–24993, 24995, 25006–25008, 25029, 25033–25034 (1 Sept 2008).

¹⁴²⁷ PW-161, T. 9494, 9526–9527 (27 Mar 2007); PW-162, T. 9213 (22 Mar 2007). *See also* Ahmo Hasić, T. 1178–1181 (6 Sept 2006), T. 1253 (7 Sept 2006).

elements of the Bratunac Brigade Military Police, various civilian MUP forces and armed volunteers from Bratunac town.”¹⁴²⁸

407. The large concentration of Bosnian Muslim prisoners in the town raised concerns amongst the Bosnian Serbs, especially since ABiH forces were still operating in the area.¹⁴²⁹ On the evening of 13 July, Zlatan Čelanović met **Beara** in Bratunac town and walked with him to the Vuk Karadžić School¹⁴³⁰ and the stadium,¹⁴³¹ where they saw the vehicles with detained Bosnian Muslim men.¹⁴³²

6. Killings of Bosnian Muslim Men (12–14 July)

(a) Around Konjević Polje

(i) Jadar River (13 July)¹⁴³³

408. On the morning of 13 July 1995, PW-112 was interrogated by members of the Bosnian Serb Forces.¹⁴³⁴ He was later taken to a warehouse near the banks of the Jadar River where he and other Bosnian Muslim men were beaten by members of the Bosnian Serb Forces, including Nenad Deronjić, who was an MUP member.¹⁴³⁵ These were different than the MUP members who had captured and detained him earlier that morning close to Konjević Polje.¹⁴³⁶ PW-112 heard Nenad Deronjić say that the prisoners were not going to be exchanged, but that he was going to “kill them all”.¹⁴³⁷ Eventually, PW-112 and 15 other prisoners—among them an about fifteen-year-old boy—were ordered onto a bus guarded by four members of the Bosnian Serb Forces and driven to a

¹⁴²⁸ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

¹⁴²⁹ Zoran Petrović T. 18814–18815 (5 Dec 2007); Miroslav Deronjić, Ex. P03139a, “confidential-92 *quater* transcript”, BT. 6418–6419, 6437 (22 Jan 2004); PW-162, T. 9215–9216 (22 Mar 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 93. The Trial Chamber, however, also heard different testimony, according to which the situation in Bratunac was safe with no incidents between the Bosnian Muslim prisoners and Bosnian Serb citizens living in town. PW-170, T. 17877 (closed session) (19 Nov 2007).

¹⁴³⁰ Zlatan Čelanović, T. 6640–6641, 6650 (31 Jan 2007). *See infra*, paras. 1207–1249 for a discussion of **Beara**’s whereabouts on 13 July 1995.

¹⁴³¹ Zlatan Čelanović, T. 6641–6642 (31 Jan 2007) (where Zlatan Čelanović testified that **Beara** looked inside the stadium from the gate, while he stayed behind).

¹⁴³² Zlatan Čelanović, T. 6640–6642, 6650 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”.

¹⁴³³ The Indictment alleges that 16 Bosnian Muslims were taken from Konjević Polje to an isolated area on the banks of the Jadar River, where 15 of them were summarily executed. Indictment, para. 30.2.

¹⁴³⁴ PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3245, 3250, 3252–3253, 3255–3261 3263 (23 May 2000), T. 3222 (30 Oct 2006).

¹⁴³⁵ *Ibid.*, KT. 3267, 3269–3270, 3287 (private session) (23 May 2000), T. 3215–3216 (private session) (30 Oct 2006) (identifying Nenad Deronjić as a member of the MUP, as he had known him for a few years). *See also* Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 4; Momir Nikolić, T. 32931 (21 Apr 2009); Slavisa Simić, T. 27535 (29 Oct 2008). The Trial Chamber also notes the evidence of Richard Butler stating that Nenad Deronjić was a member of the 2nd PJP Company from Zvornik. Richard Butler, T. 19829 (16 Jan 2008). As Butler did not provide any basis for arriving at this conclusion, it will not consider his evidence as reliable. While the Trial Chamber is satisfied that Nenad Deronjić was an MUP member, it cannot find he was a Bratunac police officer and a member of the 2nd PJP Company from Zvornik, as alleged in the Indictment. *See* Indictment, para. 123 (d).

¹⁴³⁶ *See supra*, paras. 383, 389–390.

¹⁴³⁷ PW-112, Ex. P02272, “confidential - 92 *ter* transcript”, KT. 3270 (23 May 2000).

widening of the road above Konjević Polje.¹⁴³⁸ There, the prisoners were lined up against the river bank and fired upon by the members of the Bosnian Serb Forces, amongst whom was Nenad Deronjić.¹⁴³⁹ PW-112 saw that the man standing in front of him was shot.¹⁴⁴⁰ PW-112 was also hit by a bullet in the left hip and threw himself into the river. As he floated away, the members of the Bosnian Serb Forces continued to fire at him.¹⁴⁴¹ Eventually, although bleeding heavily, he managed to draw himself out of the water.¹⁴⁴² Later, he met with a separate group of Bosnian Muslim men fleeing from Srebrenica close to the Drinjaca River and continued moving with them.¹⁴⁴³ On 15 July 1995, he was admitted to the Gradina clinical centre in Zvornik.¹⁴⁴⁴

409. The Trial Chamber finds that, on 13 July 1995, members of the Bosnian Serb Forces, including Nenad Deronjić, transported 16 Bosnian Muslim men from the column to an area on the banks of the Jadar River and shot them. The Trial Chamber further finds that 15 of them were killed.

(ii) Cerska Valley (13 July)¹⁴⁴⁵

410. On 13 July 1995, PW-120, a Bosnian Muslim man who was fleeing from Srebrenica, was on a hill less than 500 meters from the Konjević Polje-Nova Kasaba Road.¹⁴⁴⁶ Looking down into Cerska Valley, PW-120 saw two or three buses turn right off this asphalt road, driving in the direction of Cerska.¹⁴⁴⁷ These buses were followed by an APC and a green vehicle that carried soldiers in camouflage uniforms.¹⁴⁴⁸ In turn, the buses and the APC were followed by a yellow backhoe.¹⁴⁴⁹ Approximately ten minutes after these vehicles had driven out of PW-120's sight, he

¹⁴³⁸ PW-112, Ex. P02272, "confidential - 92 *ter* transcript", KT. 3272, 3274–3276, 3286–3287; Ex. P01470, "Map" (depicting the area between Zvornik and Nova Kasaba indicating with a yellow dot the location where the bus stopped).

¹⁴³⁹ PW-112, Ex. P02272, "confidential - 92 *ter* transcript", KT. 3274–3276, 3279–3280, 3287 (private session) (23 May 2000); Ex. P01923, "Photograph" (showing the edge of the Jadar River where the shooting took place). *See supra*, para. 390.

¹⁴⁴⁰ PW-112, Ex. P02272, "confidential - 92 *ter* transcript", KT. 3276–3277 (23 May 2000).

¹⁴⁴¹ *Ibid.*, KT. 3277, 3280 (23 May 2000).

¹⁴⁴² *Ibid.*, KT. 3278 (23 May 2000).

¹⁴⁴³ *Ibid.*, T. 3277–3278 (30 Oct 2006).

¹⁴⁴⁴ *Ibid.*, T. 3277–3278, 3280 (30 Oct 2006).

¹⁴⁴⁵ The Indictment alleges that "[o]n 13 July 1995, in the early afternoon hours, VRS and/or MUP soldiers transported about 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley about three (3) kilometers from Konjević Polje, summarily executed them and, using heavy equipment, covered them with dirt." Indictment, para. 30.3.

¹⁴⁴⁶ PW-120, Ex. P02220, "92 *bis* transcript", KT. 2733–2737, 2741–2742, 2769–2770 (12 Apr 2000); *see also* Ex. 7D01066, "Map of engagement of TG-1 in actions" (showing the villages of Jelah and Krke east of the Konjević Polje-Nova Kasaba Road, described by PW-120 as the two villages surrounding the Dolina Hill, his viewpoint on 13 July).

¹⁴⁴⁷ PW-120, Ex. P02220, "92 *bis* transcript", KT. 2738–2739, 2772, 2784 (12 Apr 2000). From his viewpoint, PW-120 also observed trucks and buses moving from Konjević Polje towards Nova Kasaba throughout the day. *Ibid.*, KT. 2737, 2785 (12 Apr 2000).

¹⁴⁴⁸ *Ibid.*, KT. 2738–2739 (12 Apr 2000).

¹⁴⁴⁹ *Ibid.*, KT. 2737, 2739 (12 Apr 2000).

heard heavy small arm and machine gun fire echoing along the valley.¹⁴⁵⁰ The shooting lasted for about 15 to 30 minutes.¹⁴⁵¹ The buses returned empty along the same road and continued in the direction of Konjević Polje, followed somewhat later by the backhoe.¹⁴⁵²

411. In September 1995, PW-120 found what he took to be a large grave along the road leading through Cerska Valley to the junction with the Nova Kasaba-Konjević Polje-Zvornik Road.¹⁴⁵³ PW-120 saw excavated earth and visible tracks from an excavator, and smelled a stench from the ground.¹⁴⁵⁴ Forensic anthropologists later exhumed a mass grave to the southwest of the narrow, unpaved road through Cerska Valley.¹⁴⁵⁵

412. Forensic evidence has established that this grave was a primary, undisturbed grave.¹⁴⁵⁶ Among the remains exhumed from that grave, 142 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.¹⁴⁵⁷ 150 male individuals were exhumed; all but one had died as a result of gunshot wounds.¹⁴⁵⁸ Cartridges found in the grave matched cartridges found along the road and in the vicinity of the gravesite.¹⁴⁵⁹ Based upon this evidence, William Haglund, the forensic anthropologist who led the exhumation, concluded that the victims were lined up along the southern side of the road, while the individuals

¹⁴⁵⁰ PW-120, Ex. P02220, "92 bis transcript", KT. 2739, 2781 (12 Apr 2000).

¹⁴⁵¹ *Ibid.*

¹⁴⁵² *Ibid.*, KT. 2739, 2780, 2785–2787 (12 Apr 2000).

¹⁴⁵³ *Ibid.*, KT. 2751–2754, 2758–2759, 2777 (12 Apr 2000).

¹⁴⁵⁴ *Ibid.*, KT. 2751–2754, 2777 (12 Apr 2000).

¹⁴⁵⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 309; Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", cover page, vii, p. 16. Examinations were conducted between 31 July and 22 August 1996. For the location of the Cerska mass grave, *see* Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. 16. The Trial Chamber is satisfied that the location identified by PW-120 is the same as the location of the grave exhumed in 1996. *Compare* Ex. P02221, "Ex P-120 in *Krstić* and part of Ex. P-801 in *Blagojević and Jokić*" with Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. 6.

¹⁴⁵⁶ William Haglund, Ex. P02150, "92 ter transcript", KT. 3737 (29 May 2000). A "primary grave" is the original location in which individuals were buried. *Ibid.*, KT. 3742 (29 May 2000). The conclusion that a grave is undisturbed is based on the fact that the remains are relatively intact and that, in these types of graves decomposition is more accelerated. *Ibid.*, KT. 3737–3738 (29 May 2000).

¹⁴⁵⁷ Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, p. 2. The Trial Chamber finds that there is no discrepancy with the adjudicated fact from the *Krstić* case that nine of the individuals had been identified at that time, given the passage of time and the subsequent identification. Prosecution Adjudicated Facts Decision, Annex, Fact 315. Prosecution Investigator Dušan Janc testified that DNA identification is an ongoing process. Dušan Janc, T. 33524 (1 May 2009).

¹⁴⁵⁸ William Haglund, Ex. P02150, "92 ter transcript", KT. 3734 (29 May 2000). The cause of death for one individual was undetermined. Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. 52.

¹⁴⁵⁹ Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", pp. 9–10. The cartridges were found by the exhumation team. Ex. P00611 "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", *Ibid.*

who shot them were on the northern side of the road shooting the victims in a spraying-type fashion.¹⁴⁶⁰

413. Of the 150 bodies recovered from the grave at Cerska, the oldest were in their fifties and the youngest between 11 and 15.¹⁴⁶¹ A total of 48 ligatures were found in the grave, 24 of them still binding the arms of the victims behind their backs.¹⁴⁶² 147 bodies were dressed in civilian clothing and items of Muslim affiliation, such as prayer beads and pouches and Islamic community papers, were found on nine individuals.¹⁴⁶³

414. The Trial Chamber concludes that on 13 July 1995, unidentified members of the Bosnian Serb Forces transported approximately 150 Bosnian Muslim men to an area along a dirt road in the Cerska Valley and killed them there.

(iii) Nova Kasaba (13 July)¹⁴⁶⁴

415. On 13 July 1995, approximately 2,000 to 3,000 Bosnian Muslims from the column were trapped between Nova Kasaba and Konjević Polje as the Nova Kasaba-Konjević Polje Road was blocked by members of the Bosnian Serb Forces.¹⁴⁶⁵ While some hid in the surrounding woods,¹⁴⁶⁶ others surrendered to the Bosnian Serb Forces.¹⁴⁶⁷ Others were surrounded at around 1 p.m. by members of the Bosnian Serb Forces and pushed towards the asphalt road.¹⁴⁶⁸ By then, PW-119 had moved away from the column of Bosnian Muslim men and was hiding in the surrounding woods.¹⁴⁶⁹ At around this time, from his vantage point 300 to 500 metres away from the Nova Kasaba-Konjević Polje Road, PW-119 saw members of Bosnian Serb Forces surrounding the

¹⁴⁶⁰ William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3734–3737 (29 May 2000). For a general analysis of Haglund's work throughout Srebrenica, *see infra*, paras. 612–620.

¹⁴⁶¹ Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", pp. viii, 25, 28; Prosecution Adjudicated Facts Decision, Annex, Facts 311–312; William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3734 (29 May 2000). Haglund clarified that in determining the minimum and maximum age range, there is always a margin of error of minus or plus one. William Haglund, T. 9007–9008 (15 Mar 2007).

¹⁴⁶² William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3734 (29 May 2000); Prosecution Adjudicated Facts Decision, Annex, Fact 314; Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", p. viii.

¹⁴⁶³ Prosecution Adjudicated Facts Decision, Annex, Fact 313. One military jacket and two military-type trousers were found. *See* Ex. P00611, "Report by William Haglund – Forensic Investigation of the Cerska Grave Site, 15 June 1998", pp. 50, 53.

¹⁴⁶⁴ The Indictment alleges that "[o]n 13 July 1995, in the early afternoon hours, VRS and/or MUP soldiers, supported by approximately 4 APCs, escorted approximately 100 Bosnian Muslim men to a location on a hill near the road between Konjević Polje and Nova Kasaba, lined up the prisoners in several ranks and executed them with heavy machine guns. A short time later, a second group of approximately 30 prisoners arrived, were lined up, and also executed. A third group arrived soon thereafter and was similarly executed." Indictment, para. 30.3.1.

¹⁴⁶⁵ PW-119, Ex. P02212, "92 *bis* transcript", KT. 3190–3191 (23 May 2000); Ex. P02215, "Map of PW-119's route to Nežuk". *See* paras. 382–383, 389.

¹⁴⁶⁶ PW-119, Ex. P02212, "92 *bis* transcript", KT. 3188–3189, 3191–3192 (23 May 2000).

¹⁴⁶⁷ PW-120, Ex. P02220, "92 *bis* transcript", KT. 2766–2769 (12 Apr 2000).

¹⁴⁶⁸ PW-119, Ex. P02212, "92 *bis* transcript", KT. 3192–3193 (23 May 2000).

¹⁴⁶⁹ *Ibid.*, KT. 3188–3189, 3191–3193 (23 May 2000).

Bosnian Muslims¹⁴⁷⁰ and watched as the Bosnian Serbs killed about 200 to 300 Bosnian Muslims, who, after having decided to surrender, were standing at a distance from the main group which totalled approximately 2,000 Bosnian Muslims.¹⁴⁷¹

416. During excavations conducted between 22 and 26 July 1996, four shallow graves were located near the Nova Kasaba-Konjević Polje-Zvornik Road, north of Nova Kasaba.¹⁴⁷² These four graves were all primary, undisturbed graves, and the condition of the bodies indicated that they had been buried for about a year.¹⁴⁷³ Among the remains exhumed from these graves, 32 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.¹⁴⁷⁴ The individuals in one of these graves were killed in the grave itself.¹⁴⁷⁵ Of the remains found in these graves, 27 individuals had ligatures binding their arms behind their backs,¹⁴⁷⁶ and all but one individual died of gunshot wounds.¹⁴⁷⁷ 31 of them wore civilian clothing¹⁴⁷⁸ and Islamic “*zapis*”¹⁴⁷⁹ were found on two individuals.¹⁴⁸⁰

417. Approximately one and a half kilometres from the four primary graves exhumed in 1996, four additional primary graves in close proximity to each other were excavated near the Nova Kasaba-Konjević Polje-Zvornik Road between 18 August and 6 September 1999.¹⁴⁸¹ Among the

¹⁴⁷⁰ *Ibid.*, KT. 3192–3193 (23 May 2000).

¹⁴⁷¹ *Ibid.*, KT. 3192–3193, 3221, 3226–3227 (23 May 2000).

¹⁴⁷² William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3738–3739 (29 May 2000); William Haglund, T. 8910 (15 Mar 2007); Ex. P00621, “Report by William Haglund – Forensic Investigation of Four Graves in the Area of Nova Kasaba, 15 June 1998”, pp. vii, 5, 26. According to Dean Manning, these gravesites were located using aerial imagery. Dean Manning, T. 19056–19057 (11 Dec 2007).

¹⁴⁷³ William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3742 (29 May 2000); Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 48. Examinations of the bodies in the graves were carried out between 27 August and 1 Sept 1996. Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, pp. viii, 1.

¹⁴⁷⁴ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 2.

¹⁴⁷⁵ William Haglund, T. 8910–8911 (15 Mar 2007). When asked how he knew that individuals in the grave known as Nova Kasaba 2 were killed in the grave itself, forensic anthropologist William Haglund said: “They were in kneeling positions with their torsos bent forward, [with] their heads forward. Many of them were still in that position, some had fallen over sideways in that position. And the majority of those individuals [...] 95 per cent of them received gun-shots to the head.” William Haglund, T. 8911 (15 Mar 2007). *See also* Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, pp. viii, 14, 25.

¹⁴⁷⁶ William Haglund, T. 8910 (15 Mar 2007). *See also* William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3740 (29 May 2000).

¹⁴⁷⁷ William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3740 (29 May 2000). The person who did not die of gunshot wounds died of massive head wounds, caused by an unknown instrument. *Ibid.*, KT. 3740 (29 May 2000).

¹⁴⁷⁸ Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 40 (stating that these two individuals each wore a military-type jacket and military-type trousers).

¹⁴⁷⁹ Haglund defines a “*zapis*” as a small piece of paper with a verse or phrase from the Koran written in Arabic. The paper is wrapped into a triangle in a small piece of red cloth which has been oiled or waxed to make it more resistant. Ex. P00621, “Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998”, p. 45.

¹⁴⁸⁰ Ex. P00621, “Report by William Haglund – Forensic Investigation of four graves in Nova Kasaba, 15 June 1998”, p. 45. These graves were exhumed by forensic anthropologist William Haglund. For a general analysis of Haglund’s work throughout Srebrenica, *see infra*, paras. 612–620.

¹⁴⁸¹ Ex. P00560, “Report on the exhumation of gravesites in Eastern Bosnia, August-Oct 1999,” pp. 3 (stating that three of the graves were located in the front and back garden of a house and that the fourth was in a neighbouring field to the east), 7, 12, 15, 18, 44 (with map showing location of the graves near the road); Ex. P00575, “ICTY Operations

remains exhumed from these graves, 51 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.¹⁴⁸² As far as could be determined all of the victims were male, aged between 13 and 85, with the majority over 25 years old.¹⁴⁸³ One of the buried individuals carried 54 live rounds of Kalashnikov ammunition on a clip close to his body.¹⁴⁸⁴ None of the bodies had blindfolds or ligatures¹⁴⁸⁵ and sets of prayer beads were found in two graves.¹⁴⁸⁶ Of the bodies, 48 showed evidence of gunshot injuries.¹⁴⁸⁷ Of those shot, 60 per cent were shot from behind or the side.¹⁴⁸⁸ Pathologist John Clark testified that there was an overall pattern of execution-type injuries and “there’s every indication that these were people who were executed”.¹⁴⁸⁹

418. An aerial photograph taken on 27 July 1995 shows areas of disturbed earth at the location of each of both sets of gravesites,¹⁴⁹⁰ while an aerial image taken on 13 July 1995 shows no disturbed earth at this location.¹⁴⁹¹ In 1999, Prosecution investigators discovered bullets, bullet fragments, shell cases and apparent shrapnel in this concentrated area.¹⁴⁹²

419. The point at which PW-119 crossed the Nova Kasaba-Konjević Polje Road coincides with the location of the graves exhumed in both 1996 and 1999, though the information is insufficiently precise to allow an inference to be drawn as to which of the two sets of graves is closer to where PW-119 was when he observed the killings.¹⁴⁹³

in Bosnia-Herzegovina in 1999, Report of the Chief Pathologist”, p. 1; Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3810, 3815, 3819, 3822, 3823 (30 May 2000).

¹⁴⁸² Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 2–3.

¹⁴⁸³ John Clark, Ex. P02128, “92 *ter* transcript”, KT. 3925 (31 May 2000).

¹⁴⁸⁴ Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3818, 3857, 3884–3885 (30 May 2000); Ex. P00560, “Report on the exhumation of gravesites in Eastern Bosnia, August-Oct 1999,” p. 11, Baraybar testified that the package of bullets was literally attached to the body, but not with a belt. Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3884–3885 (30 May 2000).

¹⁴⁸⁵ Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season; Report of the Chief Pathologist 1999”, p. 13 (raising the possibility of a ligature binding the wrists in one case).

¹⁴⁸⁶ Ex. P00560, “Report on the Exhumation of Mass Gravesites in Eastern Bosnia, August-Oct 1999,” p. 21.

¹⁴⁸⁷ Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist 1999”, p. 13.

¹⁴⁸⁸ *Ibid.*, p. 14.

¹⁴⁸⁹ John Clark, Ex. P02128, “92 *ter* transcript”, KT. 3968–3971 (31 May 2000). Clark’s opinion on this point was in regard to all the post-mortems carried out in 1999 at Kozluk, Nova Kasaba, Konjević Polje, and Glogova. *Ibid.*

¹⁴⁹⁰ Jean-René Ruez, T. 1427–1430 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 64; William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3738–3739 (29 May 2000) (referring to Exhibit 14/4 from the *Krstić* case, identical to Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, Annex A, p. 12).

¹⁴⁹¹ Jean-René Ruez, T. 1424–1425 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 61.

¹⁴⁹² Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, Annex A, p. 8. *See also*. Jean-René Ruez, T. 1426 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 63. The location of the meadow referred to in relation to the two sets of gravesites is shown on Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, p. 64. Jean-René Ruez, T. 1427–1430 (11 Sept 2006).

¹⁴⁹³ PW-119, Ex. P02212, “92 *bis* transcript”, KT. 3190–3191 (23 May 2000); Ex. P02215, “Map of PW-119’s route to Nežuk”; Ex. P00560, “Report on the exhumation of gravesites in Eastern Bosnia, August-Oct 1999,” pp. 44–45;

420. Looking at the evidence before it, the Trial Chamber finds that the killings at Nova Kasaba alleged in the Indictment do not match in some key details with those described by PW-119.¹⁴⁹⁴ In addition, there is nothing to materially link the graves exhumed to the incident described by PW-119. There is no other evidence on this particular incident and nothing to link the evidence of PW-119 to any other incident charged in the Indictment or to a gravesite. However, the Trial Chamber finds that the DNA and forensic evidence does link the remains found at these gravesites to the mass killings that followed the fall of Srebrenica.¹⁴⁹⁵

(b) Along the Bratunac-Konjević Polje Road

(i) Sandići Meadow (13 July)¹⁴⁹⁶

421. By late afternoon or early evening on 13 July, all except 10 to 15 of the Bosnian Muslim prisoners held at the Sandići Meadow had been transported to Bratunac or the Kravica Warehouse.¹⁴⁹⁷ The Jahorina Recruits were told that no more buses would come and they needed to get rid of the prisoners by shooting them.¹⁴⁹⁸ The order to shoot the remaining prisoners came through a person called "Aleksa" who was the Deputy Commander of a platoon of an SBP company.¹⁴⁹⁹ PW-100 and two Jahorina Recruits refused to follow the order to execute the

Ex. P00621, "Report by William Haglund – Forensic investigation of four graves in Nova Kasaba, 15 June 1998", p. 5.

¹⁴⁹⁴ The allegation that approximately 100 Bosnian Muslim men were escorted to a hill where they were lined up and executed, that a short time later a second group of 30 prisoners arrived, were lined up and executed, and that soon thereafter a third group arrived and were similarly executed, does not correspond to the account given by PW-119 of the killings that he observed. *See* Indictment, para. 30.3.1; PW-119, Ex. P02212, "92 bis transcript", KT. 3192–3193, 3221, 3226–3227 (23 May 2000). The Trial Chamber notes that the Prosecution does not rely upon PW-119's testimony in its final brief to support the allegation that executions took place at Nova Kasaba. PW-119 is only referred to with regard to the Nežuk execution. *See* Prosecution Final Brief, paras. 1006–1019.

¹⁴⁹⁵ *See infra*, Chapter III, Section J.1–3, 5–7.

¹⁴⁹⁶ The Indictment alleges that on the evening of 13 July, 10–15 Bosnian Muslim prisoners who had been detained by MUP forces at Sandići Meadow and had remained there while the other prisoners had been taken to other locations were summarily executed by members of a unit of RS police officers from the Jahorina Training Facility. Indictment, para. 30.4.1.

¹⁴⁹⁷ PW-100, T. 14830 (5 Sept 2007); *see also infra*, Chapter III, Section F.6(b)(ii) on killing at the Kravica Warehouse.

¹⁴⁹⁸ *Ibid.*, T. 14830–14831 (5 Sept 2007).

¹⁴⁹⁹ PW-100, T. 14830–14831 (5 Sept 2007) (stating that Aleksa was the deputy commander of a platoon of the 1st Company of the Jahorina Recruits or the SBP). Aleksa was the deputy of a man named Goran and Aleksa's company commander was named Mane. Though unsure, PW-100 also said that Aleksa was a member of the SBP. Aleksa was already in Sandići Meadow when the Jahorina Recruits were sent there in the late afternoon. The Jahorina Recruits would report to members of the SBP who had a two-way radio and were stationed about half a kilometer away whenever they had prisoners that needed to be taken away. PW-100 also said that Aleksa had a two-way radio. *Ibid.*, T. 14829–14831 (5 Sept 2007), T. 14906–14907 (6 Sept 2007). PW-100 was in the 1st Company of the Jahorina Recruits and his commander was "Mane". PW-100, T. 14797, 14801 (5 Sept 2007). Mendeljev Đurić, a.k.a. "Mane" testified before this Trial Chamber that on 13 July in the late afternoon, he received an order from his superior commander, Jević, to deploy along the Bratunac-Konjević Polje Road, up to around Glogova. Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007). There is no conclusive evidence before the Trial Chamber to place him in command of Aleksa however. There is considerable evidence showing that the SBP 2nd Šekovići Detachment and the 1st PJP Company from Zvornik were also deployed around Sandići Meadow throughout the day and early evening on 13 July. *See supra*, paras. 384–388.

prisoners.¹⁵⁰⁰ Two other Jahorina Recruits, however, agreed to carry out the order and found other volunteers to kill the Bosnian Muslim prisoners.¹⁵⁰¹ The prisoners were taken away, PW-100 then heard bursts of gunshots, and subsequently Aleksa returned to where PW-100 had remained on the road near Sandići Meadow with the members of the Jahorina Recruits who had volunteered to kill the Bosnian Muslims.¹⁵⁰²

422. Between 14–21 June 2004, the Bosnian Federal Commission on Missing Persons exhumed a grave near Sandići Meadow.¹⁵⁰³ Among the remains exhumed from these graves, 17 individuals have been identified as persons reported missing following the fall of Srebrenica, based upon DNA analysis.¹⁵⁰⁴ The location of the grave and the sparse evidence on this exhumation preclude the Trial Chamber from finding that this grave is linked to the killings that are charged in the Indictment, however.¹⁵⁰⁵

423. The Trial Chamber finds that 10 to 15 Bosnian Muslims who had been detained at Sandići Meadow were killed by members of the Jahorina Recruits, upon the order of Aleksa, the Deputy Commander of a platoon of an SBP company.

(ii) Kravica Warehouse (13–14 July)¹⁵⁰⁶

424. Kravica Warehouse is the agricultural cooperative located on the Bratunac-Konjević Polje Road.¹⁵⁰⁷ It consisted of a west room, (“West Room,”) an east room, (“East Room”) and a centre room.¹⁵⁰⁸ From the direction of Bratunac, going west towards Nova Kasaba, Kravica Warehouse is between Žuti Most,¹⁵⁰⁹ located to the east and Sandići Meadow to the west.¹⁵¹⁰ On 13 July, the 2nd

¹⁵⁰⁰ Jahorina Recruits who refused to kill the Bosnian Muslim men were put in isolation without food for one day. PW-100, T. 14833–14834 (5 Sept 2007).

¹⁵⁰¹ PW-100, T. 14832–14833 (5 Sept 2007).

¹⁵⁰² *Ibid.*

¹⁵⁰³ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 28–29.

¹⁵⁰⁴ *Ibid.*

¹⁵⁰⁵ See also Borovčanin Final Brief, para. 406 (stating that several persons identified from this grave were seen alive after 13 July). The 2007 List of Missing and Deceased records four people who were identified in the Sandići Meadow grave, but have a date of disappearance after 13 July 1995. Ex. P03006 (confidential), pp. 16, 76, 94, 133; Dean Manning, T. 19116–19118 (private session) (12 Dec 2007); Ewa Tabeau, T. 21065–21068 (private session) (5 Feb 2008); Dušan Dunjić, T. 27823–27824 (private session) (4 Nov 2008); Ex. 4D00540, “Prof. Dušan Dunjić’s Forensic Expert Report re Potočari and Sandići”, p. 67.

¹⁵⁰⁶ The Indictment alleges that on 13 July 1995, MUP Special Police Forces captured and detained hundreds of Bosnian Muslim men in a large warehouse in Kravica. The Indictment further alleges that “VRS and/or MUP Special Police Forces” summarily executed over 1,000 Bosnian Muslim men detained in the warehouse, whose bodies were buried in mass graves located nearby in Glogova and Ravnice. Indictment, para. 30.4.

¹⁵⁰⁷ Milenko Pepić, T. 13555, 13559–13561 (9 July 2007); Miladin Jovanović, Ex. 2D00554, “92 ter statement,” 24 April 2007, p. 1; Miladin Jovanović, T. 24219–24220 (28 July 2008); Ex. P01563, “Still taken from aerial film of Kravica Warehouse”; Ex. P04529, “Sketch with measurements of Kravica Warehouse, with marked copy of Ex. P01563 and attached declaration of Tomasz Blaszczyk, 4 May 2009”.

¹⁵⁰⁸ Jean-René Ruez T. 1142–1445, 1149, 1451–1455 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of Jean-René Ruez,” pp. 91, 93, 103, 112, 114.

¹⁵⁰⁹ The Trial Chamber notes that this Žuti Most is different from the one in Potočari. See Milenko Pepić, T. 13557 (9 July 2007).

Platoon of the SBP 2nd Šekovići Detachment was deployed along the road closest to the Kravica Warehouse, approximately one kilometre from it, directly on the border that divided Sandići and Kravica villages.¹⁵¹¹ In the afternoon, at around 4:50 p.m., **Borovčanin** who was in a car along the Bratunac-Konjević Polje Road, was informed that the column of prisoners from Sandići Meadow was moving,¹⁵¹² and ordered Čuturić, the Commander of the SBP 2nd Šekovići Detachment, to stop the traffic on the Bratunac-Konjević Polje Road.¹⁵¹³

425. Meanwhile, Čuturić informed Milenko Pepić, a subordinate member of the 2nd Platoon, that a large group of Bosnian Muslim prisoners was to be escorted along the road from Sandići Meadow to Kravica Warehouse.¹⁵¹⁴ Čuturić gave Pepić a radio and drove him to Žuti Most, about 700 metres from Kravica Warehouse in the direction of Bratunac.¹⁵¹⁵ He eventually radioed Pepić an instruction to stop a convoy of buses carrying Bosnian Muslim women, children and the elderly travelling from Potočari to Konjević Polje and then on to ABiH-held territory, so that the Bosnian Muslim prisoners being marched from Sandići Meadow to Kravica Warehouse could pass unhindered.¹⁵¹⁶ Pepić stopped the convoy when it arrived at his location.¹⁵¹⁷

426. PW-111 and PW-156 were among other Bosnian Muslim men detained in Sandići Meadow who were taken by unidentified members of Bosnian Serb Forces to Kravica Warehouse on 13 July on foot or by bus.¹⁵¹⁸ PW-156 and many other Bosnian Muslim men were ordered to form a column and march from Sandići Meadow to Kravica, arriving in front of Kravica Warehouse between 3 and 5 p.m.¹⁵¹⁹ The Bosnian Serb Forces accompanying them were in military uniform, with automatic

¹⁵¹⁰ Milenko Pepić, T. 13555-13557, 13570-13571 (9 July 2007); Ex. PIC00137, "Map marked by Milenko Pepić". See *infra* Ex. P02111, "Map-Zvornik Area".

¹⁵¹¹ Milenko Pepić, T. 13550-13551, 13589-13590, 13594-13595 (9 July 2007); Predrag Čelić, T. 13472 (28 June 2007). See *also supra*, paras. 384, 386.

¹⁵¹² Ex. P02047, "Srebrenica Trial Video", at 02:45:25-02:45:53; Ex. P02048, "Srebrenica Trial Video Transcript", p. 70; Ex. P02054, "Copy of the Zoran Petrović's roll material in 8 mm", at 00:16:48-00:16:58; Ex. P02985, Transcript of Petrović video, pp. 10-11. See *infra*, paras. 1454, 1514.

¹⁵¹³ Ex. P02047, "Srebrenica Trial Video", at 02:45:25-02:45:53; Ex. P02048, "Srebrenica Trial Video Transcript", p. 70; Ex. P02054, "Copy of the Zoran Petrović's roll material in 8 mm" at 00:16:48-00:16:58; Ex. P02985, Transcript of Petrović video, pp. 10-11; Milenko Pepić, T. 13559-13560 (9 July 2007). See *infra*, paras. 1454, 1514.

¹⁵¹⁴ Milenko Pepić, T. 13538-13539, 13555-13556, 13561-13562 (9 July 2007).

¹⁵¹⁵ Milenko Pepić, T. 13555-13557, 13570-13571 (9 July 2007); Ex. PIC00137, "Map marked by Milenko Pepić taken from P02111. Čuturić drove him towards "Žuti Most" in Kravica, This "Žuti Most" is not the yellow bridge that was above the DutchBat compound in Potočari. Milenko Pepić, T. 13557 (9 July 2007).

¹⁵¹⁶ Milenko Pepić, T. 13555-13557, 13559, 13595-13596 (9 July 2007).

¹⁵¹⁷ Milenko Pepić, T. 13559-13561 (9 July 2007).

¹⁵¹⁸ PW-156, T. 7094, 7112-7113, 7123 (8 Feb 2007); PW-111, T. 6978-6979, 6981 (6 Feb 2007), T. 7056 (7 Feb 2007). See *also* Milenko Pepić, T. 13556-13557, 13559 (9 Jul 2007).

¹⁵¹⁹ PW-156, T. 7090-7091, 7094, 7106 (private session), 7123 (8 Feb 2007). See *also* Ex. P02103, "Documents tendered with statement of Jean-René Ruez," p. 92 (aerial image showing that at approximately 2 p.m. on 13 July, two buses were parked beside the entrance to the east room of the Kravica Warehouse); Jean-René Ruez, T. 1443-1444 (11 Sept 2006); Mevludin Orić, T. 897-898 (28 Aug 2006), T. 1061-1062 (30 Aug 2006).

rifles and wearing ammunition belts.¹⁵²⁰ A Bosnian Serb man in civilian clothes and accompanied by a German shepherd dog headed the column as it walked to Kravica Warehouse.¹⁵²¹

427. PW-111 was ordered into the first of two buses that came to Sandići Meadow.¹⁵²² The bus was tightly packed.¹⁵²³ PW-111 was one of the first Bosnian Muslim prisoners to arrive at Kravica Warehouse.¹⁵²⁴ He arrived in the afternoon when it was still sunny and very hot.¹⁵²⁵ He was taken to the East Room of Kravica Warehouse.¹⁵²⁶ It took about one and a half to two hours for the room to be filled with the Bosnian Muslim prisoners.¹⁵²⁷ Meanwhile, PW-156 was detained in the West Room.¹⁵²⁸ Kravica Warehouse was packed with Bosnian Muslim men who were guarded by members of Bosnian Serb Forces, including members of the SBP 2nd Šekovići Detachment,¹⁵²⁹ and members of the Military Police, the 1st Infantry Battalion and the Red Berets of the Bratunac Brigade,¹⁵³⁰ wearing green camouflage, multi-coloured uniforms.¹⁵³¹ One of them had a UN blue helmet.¹⁵³² Money, gold, and watches were taken from the prisoners.¹⁵³³ The Bosnian Muslim prisoners were provided with some water in a bucket but this was insufficient given the number of prisoners.¹⁵³⁴

428. The account of PW-111 and PW-156, the two survivors, on how the shootings started differs, but this may be partly due to the fact that they were detained in different rooms of Kravica Warehouse.¹⁵³⁵ According to PW-156, the shootings started in the West Room of Kravica Warehouse.¹⁵³⁶ He recalls that as the last of the Bosnian Muslim prisoners entered the West Room, one protested to a Bosnian Serb guard that he had nowhere to sit and the guard opened fire on him

¹⁵²⁰ PW-156, T. 7113 (8 Feb 2007); Predrag Čelić, T. 13477–13478, 13503–13504 (28 June 2008).

¹⁵²¹ *Ibid.*, T. 7090, 7112–7113 (8 Feb 2007).

¹⁵²² PW-111, T. 6978–6979, 6981, 6987 (6 Feb 2007).

¹⁵²³ *Ibid.*, T. 6978–6979 (6 Feb 2007).

¹⁵²⁴ *Ibid.*, T. 6987 (7 Feb 2007).

¹⁵²⁵ *Ibid.*, T. 6987, 7056 (7 Feb 2007).

¹⁵²⁶ *Ibid.*, T. 6987–6988 (7 Feb 2007); Ex. PIC00063, “Aerial image marked by PW-111 taken from P01563”; Ex. P02103, “Documents tendered with statement of Jean-René Ruez,” pp. 103, 114.

¹⁵²⁷ PW-111, T. 6990 (7 Feb 2007).

¹⁵²⁸ PW-156, T. 7101–7104 (8 Feb 2007); Ex. PIC00065, “Photograph 01565 marked by PW-156”; Ex. PIC00066, “Photograph 01565 marked by PW-156”; Ex. P02103, “Documents tendered with statement of Jean-René Ruez,” pp. 93, 112.

¹⁵²⁹ *See infra*, paras. 1522–1523.

¹⁵³⁰ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5 (stating that after looking into the matter, he found out that among those who participated in the execution at Kravica Warehouse, apart from the MUP members, were: Nikola Popović from Kravica, who was attached to the Bratunac Brigade Military Police; Milovan Matić, who was attached to the 1st Infantry Battalion of the Bratunac Brigade; Ilija Nikolić, who was attached to the 1st Infantry Battalion of the Bratunac Brigade; and Rašo Milanović, who was the Commander of the Police Unit in Kravica.); Ex. 4DP01892, “Bratunac Health Centre patient log” (noting the Red Beret member, Miroslav Stanojević, who was injured).

¹⁵³¹ PW-156, T. 7094, 7089, 7128 (private session) (8 Feb 2007); PW-111, T. 6990, 6992 (7 Feb 2007).

¹⁵³² PW-111, T. 6992 (7 Feb 2007).

¹⁵³³ *Ibid.*, T. 6990–6991, 7057 (7 Feb 2007).

¹⁵³⁴ *Ibid.*, T. 6992, 7058 (7 Feb 2007).

¹⁵³⁵ *See infra*, paras. 1516, 1529.

¹⁵³⁶ PW-156, T. 7095, 7123 (8 Feb 2007).

and on the other prisoners.¹⁵³⁷ In a corner of the West Room, PW-156 bent his head and closed his eyes.¹⁵³⁸ The shooting continued, with pauses, almost until it became dark.¹⁵³⁹ When night fell, the shooting quieted down.¹⁵⁴⁰

429. Meanwhile, PW-111, who was in the East Room, stated that “after a certain period of time,”¹⁵⁴¹ the Bosnian Serb Forces guarding the prisoners in the East Room became agitated and angry.¹⁵⁴² PW-111 then heard and saw shooting outside the East Room in the direction of the West Room.¹⁵⁴³ The members of the Bosnian Serb Forces guarding them also looked frightened.¹⁵⁴⁴ Two of them—the one in the blue UN helmet and another one with curly, shoulder-length hair and black glasses—wanted to shoot at the prisoners.¹⁵⁴⁵ They were stopped by a third who told them that these prisoners were not to blame for anything.¹⁵⁴⁶ The shooting outside lasted for about half an hour.¹⁵⁴⁷ After it calmed down, members of the Bosnian Serb Forces ordered two Bosnian Muslims to go out to bring in the wounded Bosnian Serb “soldier”.¹⁵⁴⁸ Things then calmed down and became very quiet.¹⁵⁴⁹

430. Later, five to ten members of the Bosnian Serb Forces entered the East Room and the one with the curly, shoulder-length hair with the black glasses and the one in the blue UN helmet were the first two that started shooting at the prisoners.¹⁵⁵⁰ PW-111 immediately lay down on his stomach, believing that all the prisoners were to be killed.¹⁵⁵¹ There was a lot of noise, smoke and shooting from various types of weapons.¹⁵⁵²

431. Some time after Pepić had stopped the convoy of buses, from their position on the Bratunac-Konjević Polje Road, he and Čelić, another member of the 2nd Platoon of the SBP 2nd Šekovići Detachment, heard loud and intense gunfire, “as if fire was being opened from one side alone”

¹⁵³⁷ PW-156, T. 7095, 7123 (8 Feb 2007).

¹⁵³⁸ *Ibid.*

¹⁵³⁹ *Ibid.*

¹⁵⁴⁰ *Ibid.*, T. 7095, 7123–7124 (8 Feb 2007). PW-156 could not identify the members of the Bosnian Serb Forces shooting. *Ibid.*, T. 7124 (8 Feb 2007).

¹⁵⁴¹ PW-111, T. 6992 (7 Feb 2007).

¹⁵⁴² *Ibid.*, T. 6992–6995, 7059, 7065 (7 Feb 2007).

¹⁵⁴³ *Ibid.*, T. 6992–6995, 6997–6999 (7 Feb 2007); Ex. PIC00063, “Aerial image marked by PW-111, taken from P01563” (showing PW-111’s arrow mark indicating that the guards were firing in the direction of the West Room and the forest).

¹⁵⁴⁴ PW-111, T. 6998 (7 Feb 2007).

¹⁵⁴⁵ *Ibid.*, T. 6992 (7 Feb 2007).

¹⁵⁴⁶ *Ibid.*, T. 6992 (7 Feb 2007).

¹⁵⁴⁷ *Ibid.*, T. 6995–6996, 7060 (7 Feb 2007). *See also* Miloš Đukanović, T. 11768 (18 May 2007).

¹⁵⁴⁸ PW-111, T. 6993 (7 Feb 2007).

¹⁵⁴⁹ *Ibid.*, T. 6999 (7 Feb 2007).

¹⁵⁵⁰ *Ibid.*, T. 6999–7000, 7060–7062 (7 Feb 2007). *See also* PW-158, T. 7095, 7123 (8 Feb 2007).

¹⁵⁵¹ PW-111, T. 6999–7000 (7 Feb 2007).

¹⁵⁵² *Ibid.*, T. 6999 (7 Feb 2007). *See also* PW-156, T. 7095, 7123 (8 Feb 2007).

coming from the direction of Kravica Warehouse.¹⁵⁵³ He also heard voice traffic over the radio, including Čuturić calling out to **Borovčanin**¹⁵⁵⁴ and reporting that the “hairpin had happened”, meaning that someone had been killed or wounded.¹⁵⁵⁵

432. Meanwhile, **Borovčanin** arrived at Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m., after receiving a message from Stupar to go there urgently.¹⁵⁵⁶ **Borovčanin** saw a pile of bodies in front of the West and Centre Rooms of the Kravica Warehouse and a large number of bullet holes on the outside walls.¹⁵⁵⁷ The door of the West Room of Kravica Warehouse was closed.¹⁵⁵⁸ **Borovčanin** said that he had a short conversation with Stupar and then left the scene.¹⁵⁵⁹

433. At around 5:30 p.m., Čuturić drove past Žuti Most from the direction of Kravica Warehouse towards Bratunac with a bandaged arm.¹⁵⁶⁰ He stopped briefly and told Pepić that he had just come from Kravica Warehouse where a Bosnian Muslim prisoner had taken the rifle of Krsto Dragičević, a member of the 3rd Platoon, the “Skelani” Platoon, of the SBP 2nd Šekovići Detachment, shot, and killed him.¹⁵⁶¹ Čuturić had grabbed the barrel of the rifle from the Bosnian Muslim prisoner, burnt his hand, and was on his way to the Bratunac Health Centre.¹⁵⁶² Čuturić told Pepić that “they were shooting at Muslims” at Kravica Warehouse.¹⁵⁶³ Miroslav Stanojević, a member of the Red Berets of the Bratunac Brigade was also injured in this “burnt-hands” incident.¹⁵⁶⁴ When Čuturić left, Pepić continued holding up the convoy.¹⁵⁶⁵

434. Čuturić passed by Pepić again, on his way back from the Bratunac Health Centre.¹⁵⁶⁶ After a while, Čuturić ordered Pepić to re-open the Bratunac-Konjević Polje Road and let the convoy pass

¹⁵⁵³ Milenko Pepić, T. 13560–13561 (9 July 2007). *See also* Predrag Čelić, T. 113478–3479 (28 June 2007).

¹⁵⁵⁴ *Ibid.*, T. 13558 (9 July 2007).

¹⁵⁵⁵ *Ibid.*, T. 13561 (9 July 2007).

¹⁵⁵⁶ Ex P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 63; Zoran Petrović, T. 18797–18798 (5 Dec 2007). **Borovčanin** generally agrees with this time-line, stating however that it was more likely that he was there between 5:20 and 5:30 p.m. Borovčanin Closing Arguments, T. 34563 (9 Sept 2009). *See also* Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 65, 72.

¹⁵⁵⁷ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 64, 66; Ex. P02047, “Srebrenica Trial Video”, at 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, “Video by Zoran Petrović, Studio B Version”, at 18:08–18:11. *See infra*, paras. 1516–1519.

¹⁵⁵⁸ In its closing arguments, the Prosecution offered to enter an agreement of facts that the doors of Kravica Warehouse that are seen on the video footage were closed when **Borovčanin** was there. Prosecution Closing Arguments, T. 34232 (4 Sept.2009). *See* Borovčanin Final Brief, para. 150.

¹⁵⁵⁹ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 64–65.

¹⁵⁶⁰ Milenko Pepić, T. 13561 (9 July 2007); Ex 4DP01892, “Bratunac Health Centre patient log” (showing Čuturić being admitted at 5:40 p.m. and the arrival of Krsto Dragičević’s body at 7 p.m.).

¹⁵⁶¹ Milenko Pepić, T. 13561–13565, 13577, 13599 (9 July 2007); Ex. 4DP01892, “Bratunac Health Centre patient log.”

¹⁵⁶² Milenko Pepić, T. 13562 (9 July 2007).

¹⁵⁶³ *Ibid.*, T. 13563 (9 July 2007).

¹⁵⁶⁴ Ex. 4DP01892, “Bratunac Health Centre patient log”.

¹⁵⁶⁵ Milenko Pepić, T. 13566 (9 July 2007).

¹⁵⁶⁶ *Ibid.*, T. 13566 (9 July 2007).

through, which he did.¹⁵⁶⁷ Pepić remained at his position until the SBP 2nd Šekovići Detachment bus passed by to pick him up and take him to Konjević Polje, some time in the evening hours or at dusk.¹⁵⁶⁸ Piles of hay which had not been there earlier that day were visible outside Kravica Warehouse.¹⁵⁶⁹ There were also armed members of the Bosnian Serb Forces in front of Kravica Warehouse.¹⁵⁷⁰

435. Throughout the night between 13 and 14 July, members of the Bosnian Serb Forces would periodically enter Kravica Warehouse, shoot, and throw hand grenades through the windows.¹⁵⁷¹ PW-111 managed to escape from Kravica Warehouse by squeezing through a narrow window during a lull in the shooting.¹⁵⁷² When he dropped on the ground, PW-111 heard a voice saying: “There is another one jumping out”.¹⁵⁷³ As PW-111 lay on his stomach waiting to be killed, a soldier approached him and shot him in his right shoulder.¹⁵⁷⁴ Without reacting, PW-111 lay still for the rest of the night, pretending to be dead.¹⁵⁷⁵ PW-156 also pretended to be dead as he lay amongst the dead in Kravica Warehouse.¹⁵⁷⁶ At one point, PW-156 moved through the dead and found a neighbour of his who was still alive.¹⁵⁷⁷ When this man got up, he was shot down by a burst of fire.¹⁵⁷⁸ PW-156 then placed two bodies over himself and stayed there throughout 14 July.¹⁵⁷⁹ During the night between 14 and 15 July, PW-156 eventually managed to escape from Kravica Warehouse.¹⁵⁸⁰

436. On the morning of 14 July, members of the Bosnian Serb Forces called out to the wounded to come out of Kravica Warehouse to be taken to the hospital.¹⁵⁸¹ Those who went out were made to sing nationalistic Serb songs about Draza Mihajlović and were then killed.¹⁵⁸² The wounded who shouted out with pain or for water were cursed for their “Turkish mother” or their “Islam[ic] tribe” before they were also shot dead.¹⁵⁸³

¹⁵⁶⁷ Milenko Pepić, T. 13566–13567, 13598–13599 (9 July 2007).

¹⁵⁶⁸ Milenko Pepić, T. 13567, 13572, 13600–13601 (9 July 2007); Predrag Čelić, T. 13480, 13505 (28 Jun 2007).

¹⁵⁶⁹ Milenko Pepić, T. 13573 (9 July 2007).

¹⁵⁷⁰ *Ibid.*, T. 13575, 13599 (9 July 2007).

¹⁵⁷¹ PW-111, T. 6999–7000 (7 Feb 2007).

¹⁵⁷² *Ibid.*, T. 7001 (7 Feb 2007).

¹⁵⁷³ *Ibid.*, T. 7003 (7 Feb 2007).

¹⁵⁷⁴ *Ibid.*, T. 7003–7005 (7 Feb 2007).

¹⁵⁷⁵ *Ibid.*, T. 7005 (7 Feb 2007).

¹⁵⁷⁶ PW-156, T. 7095–7096 (8 Feb 2007).

¹⁵⁷⁷ *Ibid.*, T. 7095–7096, 7106–7107 (private session) (8 Feb 2007).

¹⁵⁷⁸ *Ibid.*

¹⁵⁷⁹ *Ibid.*, T. 7095–7096 (8 Feb 2007).

¹⁵⁸⁰ *Ibid.*, T. 7097–7098 (8 Feb 2007).

¹⁵⁸¹ *Ibid.*, T. 7005 (7 Feb 2007); PW-156, T. 7096 (8 Feb 2007).

¹⁵⁸² PW-111, T. 7006 (7 Feb 2007).

¹⁵⁸³ PW-156, T. 7096–7097 (8 Feb 2007).

437. Forensic examination of Kravica Warehouse later revealed not only clear evidence of human blood, bones, and tissue adhering to the walls, floor and ceiling, but also evidence of damage caused by arms, grenades and explosives.¹⁵⁸⁴ Hand grenade handles and samples of explosive residues were also found.¹⁵⁸⁵

438. On 14 and 15 July 1995, excavators were brought to Kravica Warehouse to load the dead bodies.¹⁵⁸⁶ On the morning of 14 July, graves were prepared in Glogova¹⁵⁸⁷ and over the next three days, further pits were dug while trucks arrived with bodies.¹⁵⁸⁸ On 14 July, Ostoja Stanojević—a driver in the engineering company of the Zvornik Brigade— was ordered by Dragan Jokić to report to the civilian protection unit building in Zvornik for a garbage clean-up assignment.¹⁵⁸⁹ He was ordered to load bodies at Kravica Warehouse and drive them to the burial site near Glogova, delivering two loads on 15 July.¹⁵⁹⁰ A small group of civilian protection personnel from Bratunac was sent to Glogova to dig the graves and a larger group to Kravica to load the bodies.¹⁵⁹¹ Momir Nikolić told the civilian protection workers that they were to go to Kravica and the Bratunac Brigade Military Police escorted them there in vehicles.¹⁵⁹²

439. Primary graves¹⁵⁹³ at two different locations were found to have forensic links to the events at Kravica Warehouse: two graves at Ravnice—Ravnice 1 and Ravnice 2—were found to have building materials including foam, concrete and plaster linking them to Kravica Warehouse,¹⁵⁹⁴ and two graves at Glogova—Glogova 1 and Glogova 2— were found to have broken masonry and door frames indistinguishable from those located at Kravica Warehouse.¹⁵⁹⁵

¹⁵⁸⁴ Dean Manning, T. 18979–18980 (10 Dec 2007); Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, p. 5, Annex A, pp. 4–7. Investigation revealed a significant number of bullet strikes to Kravica Warehouse, both internally and externally. Dean Manning, T. 18979 (10 Dec 2007). Investigation of the interior of Kravica Warehouse also revealed explosive residue and impact damage. Ex. P00649, “Summary of Forensic Evidence – Execution points and mass graves, 16 May 2000”, p. 5, Annex A, p. 6; Dean Manning, T. 18979–18980 (10 Dec 2007); Ex. P02103, “Documents tendered with statement of Jean-René Ruez”, pp. 94–99, 102, 104–106, 112–118.

¹⁵⁸⁵ Ex. P00649, “Summary of Forensic Evidence – Execution Points and Mass Graves, 16 May 2000”, p. 5, Annex A, p. 6. Grenade handles were also found grouped around two windows at the western end of Kravica Warehouse. *Ibid.*, Annex A, p. 4.

¹⁵⁸⁶ PW-111, T. 7006 (7 Feb 2007); PW-156, T. 7097–7098, 7103–7104, 7106–7107 (private session), 7124 (8 Feb 2007); Ex. PIC00066, “Picture 01565 marked by PW-156”; PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7909 (20 Apr 2004); PW-170, T. 17862–17863 (closed session) (19 Nov 2007).

¹⁵⁸⁷ PW-161, T. 9370–9371 (23 Mar 2007); PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7876, 7879 (20 Apr 2004); PW-170, T. 17862 (closed session) (19 Nov 2007).

¹⁵⁸⁸ PW-161, T. 9391–9392 (26 Mar 2007).

¹⁵⁸⁹ Ostoja Stanojević, T. 13656–13657 (10 July 2007).

¹⁵⁹⁰ Ostoja Stanojević, Ex. P02260, “92 *ter* transcript”, BT. 5685, 5688–5691 (4 Dec 2003).

¹⁵⁹¹ PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7876, 7879, (20 Apr 2004); PW-170, T. 17862 (closed session) (19 Nov 2007).

¹⁵⁹² Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7321–7322 (23 Feb 2004).

¹⁵⁹³ *See infra*, para. 608.

¹⁵⁹⁴ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 7.

¹⁵⁹⁵ *Ibid.*, p. 6. *See also* Dean Manning, T. 18981 (10 Dec 2007); Ex. P01565, “Panoramic photo of Kravica Warehouse”; Ex. P02993, “Summary of Forensic Evidence by Dean Manning, 27 November 2007”, pp. 5–7, 16;

440. In addition, forensic evidence links secondary graves¹⁵⁹⁶ at three different locations to the events at Kravica Warehouse. At Zeleni Jadar, seven gravesites can be linked to Kravica Warehouse: in Zeleni Jadar 5 and 6, concrete, plaster and other building materials located in the grave established a link;¹⁵⁹⁷ in Zeleni Jadar 2, body parts located in the grave were matched with a tooth found at Kravica Warehouse.¹⁵⁹⁸ Furthermore, in all of the Zeleni Jadar graves—Zeleni Jadar 1A, 1B, 2, 3, 4, 5, and 6—links with the Glogova 1 primary grave were established through the identification of body parts belonging to the same individuals in both the Glogova 1 grave and the relevant secondary grave.¹⁵⁹⁹

441. Meanwhile, two secondary graves at Blječeva were linked to the Glogova 2 primary grave, and one secondary grave at Blječeva was linked to the Glogova 1 primary grave. The links were established through the identification of body parts belonging to the same individuals in both the primary and the relevant secondary graves.¹⁶⁰⁰

442. Furthermore, at Budak, two secondary graves were also linked to the Glogova 1 primary grave. These links were again established through the identification of body parts belonging to the same individuals in both the primary and the relevant secondary grave.¹⁶⁰¹

443. Prosecution investigator Dušan Janc prepared an expert report in which he concluded that the remains of 1,319 individuals have been found in primary and secondary graves associated with the Kravica Warehouse killings.¹⁶⁰² Janc subsequently filed a corrigendum to his report in which he stated that some of these 1,319 persons may have died in circumstances unrelated to the Kravica Warehouse events.¹⁶⁰³ Janc does not explicitly state by how many the number should be reduced, however he indicates that the following bodies were buried in graves related to Kravica Warehouse, but cannot be linked to the Kravica Warehouse killings: (a) 12 individuals who were returned to the VRS from Serbia;¹⁶⁰⁴ (b) up to 80 bodies from the area around the Vuk Karadžić School;¹⁶⁰⁵ (c) 6–7

Ex. P00674, "Report on excavations and exhumations at the Glogova 1 in 2000", pp. 18–19; Prosecution Adjudicated Facts Decision, Annex, Fact 329.

¹⁵⁹⁶ See *infra*, para. 608.

¹⁵⁹⁷ Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, p. 21.

¹⁵⁹⁸ Dušan Janc, T. 33394–33395 (28 Apr 2009), T. 33486–33490 (1 May 2009); Ex. P04525, "Report of the examination and recovery of evidence from Kravica Warehouse, in Sep, Oct 2000, by Michael J. Hedley, 9 Mar 2001", p. 9. This connection is not listed in Janc's report, as he was not aware of it at the time of drafting. Dušan Janc, T. 33495 (1 May 2009).

¹⁵⁹⁹ Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, pp. 21–25. DNA connections linking each secondary grave to other secondary graves were also established.

¹⁶⁰⁰ *Ibid.*, pp. 26–27. DNA connections linking each secondary grave to other secondary graves were also established.

¹⁶⁰¹ *Ibid.*, p. 27–28. DNA connections linking each secondary grave to other secondary graves were also established.

¹⁶⁰² Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 Mar 2009", Annex A, pp. 34–36. These individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica. *Ibid.*

¹⁶⁰³ Ex. P04492, "Corrigendum to the 'Update to the Summary of Forensic Evidence – exhumation of the graves related to Srebrenica – March 2009 prepared by Dušan Janc', 9 April 2009".

¹⁶⁰⁴ See Dušan Janc, T. 33664–33665 (5 May 2009).

bodies from Potočari;¹⁶⁰⁶ (d) 10–15 bodies from Konjević Polje;¹⁶⁰⁷ and (e) one truck load of bodies from the area along the Bratunac-Konjević Polje Road.¹⁶⁰⁸ Further, the Trial Chamber notes that there is evidence before it regarding three persons buried in the Glogova grave, which indicates that they were not victims of the Kravica Warehouse killings.¹⁶⁰⁹ In addition, one individual from the Blječeva secondary grave was last seen on 18 July and therefore cannot be linked to the Kravica Warehouse execution.¹⁶¹⁰ As stated below, the Trial Chamber accepts the evidence presented by Janc regarding the DNA and forensic links established between the primary and secondary graves.¹⁶¹¹ Taking the evidence outlined above into account, the Trial Chamber concludes that at least 1,000 people were killed in Kravica Warehouse.

444. Many Bosnian Serbs heard contemporaneous accounts of the “burnt-hands” incident and how prisoners were shot dead at Kravica Warehouse.¹⁶¹² The Trial Chamber has considered the various testimony, the circumstances of the “burnt-hands” incident and of the full-scale execution that clearly also occurred there, and which members of the Bosnian Serb Forces participated in these two incidents extensively below.¹⁶¹³

445. The Trial Chamber is of the view that the only reasonable inference is that the full-scale execution of the Bosnian Muslim men at Kravica Warehouse was part of the common plan to murder the able-bodied males of Srebrenica and of the genocidal plan. The Trial Chamber is also satisfied that the prisoners were detained there temporarily, most likely to be moved to another detention site, as was the pattern throughout, to ultimately be killed. However, as a reaction to the

¹⁶⁰⁵ See PW-161 T. 9538, 9555–9556 (27 Mar 2007); PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7883, 7916–7918, 7920 (20 Apr 2004); PW-170, T. 17863–17864 (closed session) (19 Nov 2007); Dušan Janc, T. 33638–33639 (4 May 2009) (where a portion of the statement of Desmir Dukanović was read into the record in which Dukanović stated that bodies from the Vuk Karadžić School were buried in Glogova. Janc accepted that this testimony was correct).

¹⁶⁰⁶ See PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7886, 7925 (20 Apr 2004).

¹⁶⁰⁷ See PW-161, T. 9372 (23 Mar 2007), T. 9455 (26 Mar 2007).

¹⁶⁰⁸ See *Ibid.*, T. 9389 (26 Mar 2007).

¹⁶⁰⁹ One individual disappeared on 11 July 1995 in Udrc-Zvornik, a long way from Kravica; another disappeared on 18 July 1995, after the incident at Kravica Warehouse; a third had no date of disappearance recorded. Dušan Janc, T. 33675–33676 (5 May 2009); Ex. 4D00535 (confidential), “Extract from the ‘Srebrenica Missing’ - The 2007 Progress Report by ICMP, (Glogova Only)”. Janc agreed that these persons could not have been victims of the Kravica Warehouse killings, although he stated that the data for the date of disappearance is not always reliable. Dušan Janc, T. 33675–33676 (5 May 2009).

¹⁶¹⁰ *Ibid.*

¹⁶¹¹ See *infra*, paras. 653–658, 660.

¹⁶¹² See PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7873 (20 Apr 2004); PW-170, T. 17909 (closed session) (19 Nov 2007); Miladin Jovanović, Ex. 2D00554, “92 *ter* statement” (24 Apr 2007), p. 2; Mendeljev Đurić, T. 10829 (2 May 2007); Dragan Nešković, T. 27440 (28 Oct 2008); Miloš Đukanović, T. 11767–11768, 11791 (18 May 2007); PW-160, T. 8622, 8624–8626 (partially private session) (12 Mar 2007); Predrag Čelić, T. 13480–13483 (28 June 2007); Slaviša Simić, T. 27515 (29 Oct 2008); Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7629–7630 (15 Apr 2004); Ljubisav Simić, T. 27206–27207 (22 Oct 2008); PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007); PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5. See *infra*, paras. 1516–1526.

¹⁶¹³ See *infra*, paras. 1516–1536.

unexpected “burnt-hands” incident, the Trial Chamber finds that the plan to murder the Bosnian Muslim prisoners detained in Kravica Warehouse was moved forward and they were killed on the spot.

(iii) “Opportunistic” Killings at Kravica Supermarket¹⁶¹⁴

446. During the night between 13 and 14 July 1995, members of the Bosnian Serb Forces who were guarding the trucks near the Kravica Supermarket, which had arrived from the Nova Kasaba Football Field,¹⁶¹⁵ struck the prisoners with rifle butts and asked people from certain villages around Srebrenica to identify themselves.¹⁶¹⁶ They then removed these particular prisoners from the truck.¹⁶¹⁷ Five Bosnian Muslim men were individually taken from PW-116’s truck during the night.¹⁶¹⁸ In relation to these men, PW-116 stated: “I didn’t see them being killed there on the spot, but they didn’t come back to the truck”.¹⁶¹⁹ PW-116 heard bursts of gunfire, screams, moaning and cries for help in the vicinity of his truck throughout the night.¹⁶²⁰

447. A member of the Bosnian Serb Forces threatened to kill PW-116 and ten other prisoners if he heard any noise coming from the truck.¹⁶²¹ At around 2 or 3 p.m. on 14 July, PW-116’s truck left in the direction of Zvornik, and the Bosnian Muslim men were warned that if any of them tried to jump out of the truck, ten of them would be killed.¹⁶²² Behind his truck, PW-116 saw another truck begin to move which had two armed members of the Bosnian Serb Forces riding in the cabin.¹⁶²³ One was pointing his rifle out of the window towards the truck in which PW-116 was travelling.¹⁶²⁴

448. The Trial Chamber notes that PW-116’s testimony was admitted pursuant to the former Rule 92 *bis* (D) of the Rules without cross-examination by the Accused in this case. This statement is the only evidence before the Trial Chamber of specific beatings and killings taking place near the

¹⁶¹⁴ The Indictment alleged that “[d]uring the night between 13 July and 14 July near the Kravica Supermarket, a VRS or MUP soldier placed his rifle barrel into the mouth of a Bosnian Muslim prisoner and summarily executed the man. Also during this period, VRS and/or MUP soldiers struck, beat with rifle butts and summarily executed Bosnian Muslim prisoners who had surrendered or been captured from the column of men retreating from the Srebrenica enclave or had been separated at Potočari and were detained on trucks near the Kravica Supermarket.” Indictment, para. 31.3. The Trial Chamber notes that on 2 Sept 2009, the Prosecution filed a “Corrigendum to the Prosecution Final Trial Brief,” in which it dropped the allegation that a Bosnian Serb soldier placed his rifle barrel into the mouth of a Bosnian Muslim and killed him. The Prosecution maintained the other allegations in para. 31.3 of the Indictment. Corrigendum to the Prosecution Final Trial Brief, 2 Sept 2009, para. 9.

¹⁶¹⁵ See *supra*, paras. 397–398.

¹⁶¹⁶ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2957 (14 Apr 2000).

¹⁶¹⁷ *Ibid.*, KT. 2957, 2992 (14 Apr 2000).

¹⁶¹⁸ *Ibid.*, KT. 2957 (14 Apr 2000).

¹⁶¹⁹ *Ibid.*, KT. 2957 (14 Apr 2000).

¹⁶²⁰ *Ibid.*, KT. 2957 (14 Apr 2000).

¹⁶²¹ *Ibid.*, KT. 2961 (14 Apr 2000).

¹⁶²² *Ibid.*, KT. 2961–2962 (14 Apr 2000). See also *infra*, paras. 470, 473–474, 1061, 1063.

¹⁶²³ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2962 (14 Apr 2000).

¹⁶²⁴ *Ibid.*, KT. 2962 (14 Apr 2000).

Kravica Supermarket, as alleged in the Indictment.¹⁶²⁵ However, it should be noted that the circumstances described by PW-116 are analogous to those in other locations where “opportunistic” killings have been found to have occurred. This incident forms one of several allegations contained in the Indictment of “opportunistic” killings which were the natural and foreseeable consequence of the JCE to Forcibly Remove and the JCE to Murder.¹⁶²⁶ These killings form a part of the factual allegations, underlying the murder and persecution counts with reference to Milić and Gvero. In the case of the other accused, it is the combined allegation of summary executions of thousands and several “opportunistic” killings which underlie the murder, extermination and persecution counts. Thus, these specific factual allegations related solely to “opportunistic” killings under JCE III, testified to by PW-116, could never form the basis for a conviction of any of the Accused for genocide, crimes against humanity or war crimes as alleged in the Indictment. It follows that PW-116’s uncorroborated evidence, in the context of the facts of this case, cannot be classified as evidence which could form the sole or even a decisive basis for the conviction of any of the Accused. No Accused faces the prospect of conviction exclusively or to a large part on this evidence, which has not been tested by cross-examination and is uncorroborated. The Trial Chamber, by majority, Judge Kwon dissenting,¹⁶²⁷ therefore is prepared to accept it as a basis for concluding that the alleged beatings and killings have been established by the Prosecution.

449. In the light of all the evidence before it, the Trial Chamber, by majority, Judge Kwon dissenting, finds that during the night of 13 to 14 July, members of the Bosnian Serb Forces threatened, beat and summarily executed an unknown number of Bosnian Muslim prisoners who were detained on trucks near the Kravica Supermarket.

(iv) Bratunac Brigade Headquarters¹⁶²⁸

450. After their interrogation at the Bratunac Brigade headquarters on 13 July, Nazif Avdić, Munib Dedić, Aziz Husić, Mujo Husić, Hasib Ibišević, and Resid Sinanović were taken by members of the special police or a special platoon of the VRS to the Vuk Karadžić School in Bratunac.¹⁶²⁹ With the exception of Ibišević and Sinanović,¹⁶³⁰ the remains of these men were found at the primary gravesite of Kozluk and in a linked secondary gravesite.¹⁶³¹

¹⁶²⁵ See Indictment para. 31.3.

¹⁶²⁶ See Indictment, para. 31.

¹⁶²⁷ See *supra*, paras. 62–63. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

¹⁶²⁸ The Indictment alleges that on 13 July 1995, after their interrogation, six Bosnian Muslim men from Srebrenica were detained along with other Bosnian Muslim prisoners in Bratunac and thereafter summarily executed. Indictment, para. 30.1.

¹⁶²⁹ See *supra*, para. 391.

¹⁶³⁰ Ex. P03159a (confidential), p. 165. Rešid Sinanović does not appear on the 2009 ICMP List of Deceased. See Ex. P04494 (confidential). A letter, dated 5 March 2003, from Dr. Milenko Marin of a health centre in Loznica,

451. Given the similar circumstances in which these men were captured, interrogated, and detained, and what the Trial Chamber has heard happened to the Bosnian Muslim prisoners detained in the Vuk Karadžić School, the Trial Chamber finds that Nazif Avdić, Munib Dedić, Aziz Husić, Mujo Husić, and Hasib Ibišević, were killed by members of the Bosnian Serb Forces. Rešid Sinanović survived but there is some evidence that he was subsequently killed in another execution.

(v) “Opportunistic” Killings in Bratunac Town

a. Bosnian Muslim Men from the Hangar (12–13 July)¹⁶³²

452. By the morning of 13 July 1995, at least 400 Bosnian Muslim men were detained in a hangar behind the Vuk Karadžić School, some of whom were taken out by members of the Bosnian Serb Forces and beaten.¹⁶³³ Some of the prisoners did not return, while others were brought back to the room by the members of the Bosnian Serb Forces after they were beaten. They were shown to the other prisoners, and then dragged to the sides of the hangar.¹⁶³⁴ After a person named Hamed Efendić was taken out, PW-169 heard a gunshot, followed by people saying: “You can drag him away. He’s finished. He’s dead. Drag him off.”¹⁶³⁵ The body of a person by the name Hamed Efendić was exhumed in 1998 and identified from the grave site in Zeleni Jadar, south of Srebrenica.¹⁶³⁶

Serbia to Veselin Londrović, at the time counsel for Momir Nikolić, is attached to Ex. P02407. Appended to the letter is a register from a hospital in Banja Koviljača, Serbia, in which the name of a person named “Rešid” with the date 15 July 1995 appears. Although the English translation marks as illegible all the other identifying information, Čelanović testified that in the original document it is clear that the surname Sinanović also appears. According to Čelanović, this entry constitutes proof that Sinanović was in the hospital on 15 July 1995 receiving treatment. Ex. P02407, “Letter and photocopy of Medical Register”, p. 3; Zlatan Čelanović, T. 6660–6661 (31 Jan 2007). *See also* Momir Nikolić, T. 33073–33074 (23 Apr 2009), T. 33352–33353 (28 Apr 2009).

¹⁶³¹ Ex. P04494 (confidential), p. 102 (Nazif Avdić), p. 42 (Munib Dedić), p. 7 (Aziz Husić), p. 82 (Mujo Husić). The Trial Chamber notes that in Ex. P04494, Nazif Avdić’s date of birth is listed as 10 September 1954, whereas the Indictment refers to Zazif Avdić, born on 15 September 1954. The Trial Chamber finds that this disparity is not material. Hasib Ibišević’s sister-in-law testified that his body was exhumed in Pilica and identified. Šehra Ibišević, Ex. P03235, “92 *bis* statement”, p. 5 (21 June 2001). Hasib Ibišević’s name does not appear on the 2009 ICMP List of Deceased, however it does appear on the 2005 List of missing and deceased. *See* Ex. P04494 (confidential); Ex. P03159a (confidential), p. 76.

¹⁶³² The Indictment alleges that, between 12 and 13 July 1995, more than 50 Bosnian Muslim men were taken from a hangar behind the Vuk Karadžić School in Bratunac and summarily executed. Indictment, para. 31.2.a.

¹⁶³³ *See supra*, para. 402, 404.

¹⁶³⁴ PW-169, T. 17320–17321 (1 Nov 2007).

¹⁶³⁵ *Ibid.*, T. 17321 (1 Nov 2007). *See also ibid.*, T. 17388 (2 Nov 2007).

¹⁶³⁶ Ex. P04494 (confidential). The graves at Želeni Jadar 2, 5 and 6 are secondary graves situated south of Bratunac and Srebrenica. Forensic evidence links the primary grave at Glogova 1 to the secondary graves at Zeleni Jadar 5 and 6. Richard Wright, Ex. P02162, “92 *ter* transcript”, KT. 3666–3667 (26 May 2000); Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998” pp. 24–25; Ex. P00561, “Report on the Anthropology Examination of Human Remains from Eastern Bosnia in 2000”, p. 4; Ex. P02475, “Report on Excavations at Glogova 2 1999–2001, 25 August 2003”, p. 20; Ex. P02476, “Report on Excavations at the Site of Želeni Jadar 6, Bosnia and Herzegovina 2001”, pp. 12–13. Glogova is located approximately 8 kilometres east of Kravica, in the direction of Bratunac. Jean-René Ruez, T. 1540 (12 Sept 2006).

453. PW-169 did not see any killings during the night from 12 to 13 July.¹⁶³⁷ However, he heard screams, moans, and one gunshot.¹⁶³⁸ He assumed that those prisoners who did not return to the hangar were killed.¹⁶³⁹ On the morning of 13 July 1995, the bodies of five of the prisoners who had been beaten were dragged out of PW-169's room by other prisoners.¹⁶⁴⁰ Those who dragged the bodies out of the room told PW-169 that they saw a pile of bodies behind the hangar.¹⁶⁴¹ PW-169 estimated that approximately 40 prisoners were killed.¹⁶⁴²

454. The process of taking prisoners out of the hangar continued on 13 July 1995.¹⁶⁴³ Men were beaten and some killed.¹⁶⁴⁴ In the afternoon of 13 July, prior to their transportation out of Bratunac, the number of Bosnian Muslim prisoners at the hangar was counted and reached 296.¹⁶⁴⁵ PW-169 estimated that an additional 40 prisoners were killed during that day.¹⁶⁴⁶

455. The Trial Chamber is satisfied that approximately between 40 and 80 Bosnian Muslim prisoners were taken from the hangar behind the Vuk Karadžić School and killed on 12 and 13 July 1995.

b. A Mentally Handicapped Bosnian Muslim Man in front of the Vuk Karadžić School (13 July)¹⁶⁴⁷

456. On 13 July 1995, one of the prisoners detained on a bus parked outside the Vuk Karadžić School fell asleep.¹⁶⁴⁸ One of the VRS military policemen got into the bus and hit the man on the shoulder. The man, who was mentally handicapped, hit back.¹⁶⁴⁹ After the military policeman cursed him, two other military policemen stepped onto the bus and took him off. Outside the bus, he was surrounded by VRS military policemen and soldiers, and taken towards the school.¹⁶⁵⁰

¹⁶³⁷ PW-169, T. 17387–17388 (2 Nov 2007).

¹⁶³⁸ *Ibid.*, T. 17387–17388 (2 Nov 2007).

¹⁶³⁹ PW-169, T. 17389 (2 Nov 2007).

¹⁶⁴⁰ PW-169, T. 17321–17322 (1 Nov 2007).

¹⁶⁴¹ *Ibid.*, T. 17322 (1 Nov 2007).

¹⁶⁴² *Ibid.*, T. 17320, 17324 (1 Nov 2007), T. 17385 (2 Nov 2007).

¹⁶⁴³ *Ibid.*, T. 17320, 17322–17323 (1 Nov 2007).

¹⁶⁴⁴ *Ibid.*, T. 17323 (1 Nov 2007), T. 17387 (2 Nov 2007).

¹⁶⁴⁵ *Ibid.*, T. 17324–17325 (1 Nov 2007).

¹⁶⁴⁶ *Ibid.*, T. 17322–17324, 17346 (1 Nov 2007).

¹⁶⁴⁷ The Indictment alleges that in the evening of 13 July 1995 a mentally handicapped Bosnian Muslim man was taken off a bus parked in front of the Vuk Karadžić School in Bratunac and summarily executed. Indictment, para. 31.2.c.

¹⁶⁴⁸ Mevludin Orić, T. 889, 908–909, 911 (28 Aug 2006).

¹⁶⁴⁹ Mevludin Orić, T. 911–912 (28 Aug 2006), T. 1071–1072 (30 Aug 2006). Mevludin Orić stated: “People who were sitting next to [the mentally handicapped man] and who probably know [sic] him said that he was not entirely normal, that he was crazy. Probably because they knew him. This is what they were saying.” *Ibid.*, T. 911 (28 Aug 2006).

¹⁶⁵⁰ Mevludin Orić, T. 911–914 (28 Aug 2006), T. 927 (29 Aug 2006), T. 1071–1072 (30 Aug 2006); Ex. P02094, “Hand-drawn sketch of a map of Bratunac, drawn and signed by witness Mevludin Orić.”

Mevludin Orić heard a short burst of fire and the man's screams.¹⁶⁵¹ He described the event as follows: "When they took him off, they dragged him towards the school. He was fighting them. Then I heard a short burst of fire, I heard him utter a faint sound, somebody said, 'Drag him toward the school' and that was it".¹⁶⁵²

457. The Trial Chamber finds that the mentally handicapped man was killed on 13 July by VRS military policemen and soldiers.

c. Two Bosnian Muslim Men Taken off a Truck and Brought to a Garage¹⁶⁵³

458. On the morning of 14 July, just before departure, a soldier recognised two Bosnian Muslim prisoners in PW-110's vehicle parked near the Vihor garage,¹⁶⁵⁴ and they were ordered to get off.¹⁶⁵⁵ No shooting was heard after the two prisoners were taken away. PW-110 heard the soldiers shouting: "take them to Fikret and [A]lija and have them exchanged", and the vehicles departed, without the two prisoners.¹⁶⁵⁶

459. In light of the insufficient evidence before it, the Trial Chamber is not satisfied beyond reasonable doubt that these two Bosnian Muslim men were killed.

d. Bosnian Muslim Males inside and outside the Vuk Karadžić School (13–15 July)¹⁶⁵⁷

460. On 13 and 14 July 1995, members of the Bosnian Serb Forces took six to seven Bosnian Muslim prisoners out of a room in the Vuk Karadžić School.¹⁶⁵⁸ The prisoners did not return to the room.¹⁶⁵⁹ Prisoners were also beaten.¹⁶⁶⁰ One man was taken outside the School, after which moans

¹⁶⁵¹ Mevludin Orić, T. 913 (28 Aug 2006), T. 1072–1073 (30 Aug 2006).

¹⁶⁵² Mevludin Orić, T. 913 (28 Aug 2006). *See also ibid.*, T. 1073 (30 Aug 2006).

¹⁶⁵³ The Indictment alleges that in the evening of 13 July 1995 two Bosnian Muslim men were taken off a truck in Bratunac town to a nearby garage and summarily executed. Indictment, para. 31.2.b.

¹⁶⁵⁴ PW-110, T. 668, 671–673 (24 Aug 2006).

¹⁶⁵⁵ *Ibid.*, T. 809, 811 (25 Aug 2006).

¹⁶⁵⁶ *Ibid.*, T. 668–669, 673 (24 Aug 2006), T. 809, 811 (25 Aug 2006).

¹⁶⁵⁷ The Indictment alleges that between the evening of 13 July and the morning of 15 July 1995 Bosnian Muslim men were continuously killed both inside and outside the Vuk Karadžić School in Bratunac by VRS and/or MUP forces. Indictment, para. 31.2.d.

¹⁶⁵⁸ Ahmo Hasić, T. 1180–1181, 1187–1188, 1223 (6 Sept 2006). Ahmo Hasić testified: "[The soldiers] did whatever they wanted. There was nobody to say, 'stop', to prevent that." *Ibid.*, T. 1188 (6 Sept 2006).

¹⁶⁵⁹ *Ibid.*, T. 1180, 1187–1188, 1223 (6 Sept 2006).

¹⁶⁶⁰ *Ibid.*, T. 1180, 1189, 1222 (6 Sept 2006), T. 1252–1253, 1255, 1260 (7 Sept 2006).

and screams were heard.¹⁶⁶¹ He did not return.¹⁶⁶² During both the day and at night between 13 and 15 July, screams and bursts of machine-gun fire were audible.¹⁶⁶³

461. During the course of the night between 13 and 14 July 1995, prisoners detained in buses near the Vuk Karadžić School were taken out of the buses and did not return.¹⁶⁶⁴ A VRS soldier¹⁶⁶⁵ and two other members of the Bosnian Serb Forces picked Bosnian Muslim prisoners from the different vehicles¹⁶⁶⁶ as well as from the courtyard of the school, and took them into the school.¹⁶⁶⁷ Screams and bursts of fire were heard from the school. None of those who had been taken out returned.¹⁶⁶⁸ During the night between 13 and 14 July, a Bosnian Muslim prisoner called upon his fellow prisoners to resist.¹⁶⁶⁹ Shortly after, automatic gunfire was heard coming from the direction of the Vuk Karadžić School.¹⁶⁷⁰

462. Around 13 July 1995, five to six bodies were seen in front of the Vuk Karadžić School.¹⁶⁷¹ A truck carrying bodies was seen driving through the centre of Bratunac town on 14 July 1995.¹⁶⁷² Furthermore, in the morning of 15 or 16 July 1995, between 40 and 60 male bodies were found scattered in more than one classroom on the ground and first floors of the Vuk Karadžić School.¹⁶⁷³ The bodies were buried in Glogova.¹⁶⁷⁴

463. The Trial Chamber finds that an unknown number of Bosnian Muslim prisoners were killed by members of the Bosnian Serb Forces inside and outside the Vuk Karadžić School between the evening of 13 July and the morning of 15 July 1995.

¹⁶⁶¹ Ahmo Hasić, T. 1180 (6 Sept 2006).

¹⁶⁶² *Ibid.*

¹⁶⁶³ *Ibid.*, T. 1181, 1187, 1192–1193, 1222 (6 Sept 2006).

¹⁶⁶⁴ Mevludin Orić, T. 915–919 (28 Aug 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029 (14 Apr 2000).

¹⁶⁶⁵ Orić identified the soldier as a certain “Ilija” from Spat, whom he knew before the war and used to see him in Bratunac and Srebrenica. Mevludin Orić, T. 915–918 (28 Aug 2006), T. 1053 (30 Aug 2006).

¹⁶⁶⁶ In Mevludin Orić’s vehicle the soldier looked for a certain “Catić” or “Dzanić”, and took away the prisoner who identified himself as being that person. Mevludin Orić, T. 915 (28 Aug 2006).

¹⁶⁶⁷ Mevludin Orić, T. 915–917 (28 Aug 2006).

¹⁶⁶⁸ *Ibid.*, T. 918–919 (28 Aug 2006).

¹⁶⁶⁹ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9812 (24 May 2004); Mile Janjić, T. 18002 (20 Nov 2007).

¹⁶⁷⁰ Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9811–9812 (24 May 2004); Mile Janjić, T. 18002 (20 Nov 2007).

¹⁶⁷¹ PW-161, T. 9390 (26 Mar 2007); Ex. PIC00077, “Exhibit P01553 (Vuk Karadžić School) marked by PW-161”. See also Momir Nikolić, T. 32946 (21 Apr 2009) (stating that the bodies were by the road in the direction of the municipality building).

¹⁶⁷² Zoran Petrović T. 18817–18818 (5 Dec 2007).

¹⁶⁷³ PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7883, 7916–7918, 7920 (20 Apr 2004); PW-170, T. 17852, 17863, 17866, 17879, 17881 (19 Nov 2007); Ex. PIC00187, “Aerial image of Bratunac town (Ex. P1552) marked by PW-170”.

¹⁶⁷⁴ PW-170, Ex. P02960, “confidential - 92 *ter* transcript”, BT. 7920 (20 Apr 2004); PW-161, T. 9391 (26 Mar 2007). See also Ex. P04492, “Corrigendum to the ‘Update to the summary of forensic evidence – Exhumation of the graves related to Srebrenica – Mar 2009 prepared by Dušan Janc’, 9 April 2009”.

7. Communications to and from the VRS Main Staff on 13 July 1995

464. Prisoners continued to be the topic of a number of orders and communications in the VRS Main Staff on 13 July.¹⁶⁷⁵ On 13 July, in the early afternoon, the VRS Main Staff, issued an order, type-signed by **Gvero**, instructing the Commands of the Drina Corps, the Zvornik Brigade, the Birač Brigade, and the Vlasenica Brigade to “discover[ing], block[ing], disarm[ing] and capture[ing]” Bosnian Muslims.¹⁶⁷⁶ It also ordered them to prevent the Bosnian Muslims from crossing over to ABiH-held territory, “place captured and disarmed Muslims in suitable premises where they can be guarded by small forces, and report immediately to the superior command.”¹⁶⁷⁷

465. At around 3 p.m. on 13 July 1995, Tolimir issued an order to the Command of the Military Police Battalion of the 65th Motorised Protection Regiment¹⁶⁷⁸ on the procedure for the treatment of POWs.¹⁶⁷⁹ Mladić and **Gvero** were copied in.¹⁶⁸⁰ Tolimir suggested to prohibit “access to all unauthorized individuals, filming and photographing of prisoners, [...] traffic for all United Nations vehicles” on the Zvornik–Vlasenica road and to re-route them via Šekovići until further notice, and to take measures to remove POWs from the main Milići-Zvornik road and place them somewhere out of sight from the ground or air.¹⁶⁸¹

466. In the evening of 13 July, at around 10:30 p.m., Tolimir sent another communication, this time to **Gvero** personally at the Main Staff.¹⁶⁸² Tolimir informed **Gvero** that should he not find adequate accommodation for all the POWs in the Srebrenica area, space for 800 prisoners had been arranged in Sjemeč camp where they could be used for agricultural work.¹⁶⁸³

¹⁶⁷⁵ See Ex. 7D2D00642, “Intercept, 13 July 1995, 11:25 a.m.” (stating that “Beara is sending four buses, two trucks, and one trailer truck to Kasaba to transport Muslim prisoners. They will be dispatched to the camp in Batkovići village, where they will be ‘sorted’ into war criminals and normal soldiers.”); Ljubomir Mitrović, T. 23608, 23613–23616, 23638–23639, 23642–23643 (11 Jul 2008). See *infra*, paras. 1263–1274. See also Ex. P00117, “Drina Corps Order-preventing passage of Muslim groups to Tuzla and Kladanj, Živanović, 13 July 1995”. The Batković detention centre was located approximately in the East Bosnia Corps area of responsibility. Novica Simić, T. 28581 (20 Nov 2008). See *infra*, paras. 590–596.

¹⁶⁷⁶ Exs. P01059, P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed Gvero, 13 July 1995”, p. 1.

¹⁶⁷⁷ *Ibid.*

¹⁶⁷⁸ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić”. See also Milomir Savčić, T. 15261–15263 (12 Sept 2007).

¹⁶⁷⁹ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić”; Novica Simić, T. 28726 (24 Nov 2008). See also Petar Skrbić, T. 15616–15617 (19 Sept 2007).

¹⁶⁸⁰ *Ibid.*

¹⁶⁸¹ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić”.

¹⁶⁸² Ex. P00131, “Information on accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”.

¹⁶⁸³ *Ibid.*, p. 1.

467. Around that time,¹⁶⁸⁴ Mladić issued an order, similar in content to what Tolimir had proposed earlier that afternoon,¹⁶⁸⁵ to the Drina Corps and other units,¹⁶⁸⁶ instructing them to take certain measures in order, *inter alia*, “to ensure the organised conduct of planned combat operations and other activities in the wider area of Srebrenica and Žepa”.¹⁶⁸⁷ The order further instructed them to prevent the entry of “all uninvited individuals” to the area of combat operations in Srebrenica and Žepa, to close the Konjević Polje-Kravica-Bratunac and Rogatica-Borike-Višegrad roads to traffic and to set up road blocks and check-points at certain cross-roads.¹⁶⁸⁸ They were also to prevent the entry of all local and foreign journalists and to refrain from giving out information or making statements to the media on the combat situation, especially on POWs, evacuated civilians and escapees.¹⁶⁸⁹

8. Meetings held in Bratunac between 13 and 14 July 1995

468. A series of meetings took place on the evening of 13 July and into the early morning of 14 July at the SDS offices in Bratunac. Members of the civilian authorities, including Miroslav Deronjić, met with VRS members, including *inter alia*, **Beara**, to discuss the logistics of the killing operation.¹⁶⁹⁰ It was eventually decided that the Bosnian Muslim prisoners held in Bratunac were to be transferred to Zvornik where the executions would be carried out.¹⁶⁹¹ The burial operation, including possible locations for gravesites and the resources needed, was also discussed in detail.¹⁶⁹²

¹⁶⁸⁴ Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995” (showing in the original BCS version “22:30” next to “13 July” indicating the time when the order was sent out and receipt time of 12:20 on 14 July, erroneously marked “13 July”).

¹⁶⁸⁵ Danko Gojković, Ex. P02776, “92 *ter* statement” (16 May 2006), pp. 24–26; Danko Gojković, T. 10727–10731 (1 May 2007).

¹⁶⁸⁶ These were the 65th Protection Regiment, the 67th Communications Regiment, the Sector for Morale, Religious and Legal Affairs and Intelligence and Security Services—for information—and to the Rogatica Brigade, the 5th Podrinje Brigade, the Romanija Brigade, the Birač Brigade and the Bratunac Brigade, the Milići Brigade, the Vlasenica Brigade, and the Zvornik Brigade. See Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

¹⁶⁸⁷ Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

¹⁶⁸⁸ *Ibid.*, p. 1.

¹⁶⁸⁹ *Ibid.*

¹⁶⁹⁰ Ljubisav Simić, Ex. 4D00606, “92*ter* transcript”, BT. 7625–7627 (15 Apr 2004); Ljubisav Simić, T. 27238–27239, 27245 (22 Oct 2008); Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6226–6227, 6274, 6278 (20 Jan 2004), BT. 6438, 6440–6443, 6447–6450 (22 Jan 2004). See also Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6 (testifying about a meeting at the SDS offices, where he saw Deronjić and **Beara**); Momir Nikolić, T. 32937 (21 Apr 2009); **Borovčanin** also overheard **Beara**’s and Deronjić’s argument that evening. Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 83, 92. See also *infra*, paras. 1263–1274.

¹⁶⁹¹ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6; Momir Nikolić, T. 32944–32945 (21 Apr 2009), T. 33180 (24 Apr 2009). See *infra*, paras. 472, 1061, 1106, 1270, 1357.

¹⁶⁹² PW-161, T. 9362, 9367–9372 (23 Mar 2007), T. 9459 (26 Mar 2007), T. 9485–9487, 9553 (private session) (27 Mar 2007 PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7873–7874, 7876, 7901–7902 (20 Apr 2004); PW-170, T. 17862 (closed session) (19 Nov 2007); Momir Nikolić, T. 33127–33130 (private session)

G. Zvornik Area (13–17 July 1995)

1. Introduction

469. The area of responsibility of the Zvornik Brigade stretched along the west bank of the Drina River, from Pilica in the north to the mouth of the Drinjaca tributary in the south.¹⁶⁹³ In July 1995, **Vinko Pandurević** was the Commander,¹⁶⁹⁴ Dragan Obrenović was the Chief of Staff,¹⁶⁹⁵ and **Drago Nikolić** was the Chief of Security.¹⁶⁹⁶ The Zvornik Brigade headquarters, known as the Standard Barracks, was situated in Karakaj along the Konjević Polje-Zvornik-Bijeljina Road, which followed the Drina River.¹⁶⁹⁷ The Standard Barracks was a compound comprising several buildings behind a manned security gate.¹⁶⁹⁸ It housed *inter alia* the Brigade Command, the Engineering Company, and the Military Police Company.¹⁶⁹⁹ The Zvornik Brigade forward command post was located in Kitovnice (the “Kitovnice IKM”), 15 kilometres from the Standard Barracks, towards Orahovac.¹⁷⁰⁰

2. Lead-up to the Events in Zvornik

470. In the early evening of 13 July 1995, **Drago Nikolić** was at the Kitovnice IKM.¹⁷⁰¹ Between 7 and 8 p.m., **Drago Nikolić** called Obrenović and said that **Popović** had informed him that a large number of prisoners were to be brought from Bratunac to Zvornik.¹⁷⁰² **Popović** also told **Drago Nikolić** that the prisoners were being brought to Zvornik to be killed.¹⁷⁰³ **Nikolić** indicated that Mladić personally ordered this, and that the superior command and **Pandurević** had been

(23 Apr 2009), T. 33355 (28 Apr 2009); PW-162, T. 9230–9232, 9235 (22 Mar 2007). *See infra*, paras. 1263–1274.

¹⁶⁹³ Ex. 7DP02109, “Map 4 from Map Book: Drina Corps Area of Responsibility”; Miodrag Dragutinović, T. 12655–12658 (14 June 2007); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1. *But see* PW-168, who testified that Kula, Branjevo, Pilica, Ročević, Petković and Orahovac (including the school) were outside the area of defence of the battalions of the Zvornik Brigade, and at a considerable distance from the Brigade’s front lines where most of its active personnel were stationed. PW 168, T. 16131 (closed session) (10 Oct 2007).

¹⁶⁹⁴ Vinko Pandurević, T. 30668–30669 (27 Jan 2009); Ex. 7DP00372, “Detail of Professional Military Personnel for Vinko Pandurević”, pp. 4–8.

¹⁶⁹⁵ Vinko Pandurević, T. 30686 (27 Jan 2009); *supra*, para. 147.

¹⁶⁹⁶ Vinko Pandurević, T. 30781–30782 (28 Jan 2009); *supra*, para. 148.

¹⁶⁹⁷ *See supra*, para. 142.

¹⁶⁹⁸ *See* Ex. 3D00498, “Photo”; Ex. 3DIC00245, “Exhibit 3D00497 (photo) marked by Momir Nikolić”; Ex. 3DIC00244, “Document 3D00502 marked by Momir Nikolić”; Momir Nikolić, T. 33221–33222 (24 Apr 2009), T. 33241–33244 (27 Apr 2009).

¹⁶⁹⁹ *See supra*, paras. 142, 158; Miodrag Dragutinović, T. 12565 (13 June 2007) (stating that the Engineering Company had its headquarters at the Standard Barracks).

¹⁷⁰⁰ *See supra*, para. 142; Milorad Birčaković, T. 11013 (7 May 2007).

¹⁷⁰¹ *See infra*, para. 1345.

¹⁷⁰² PW-168, T. 15830 (closed session) (26 Sept 2007). The Trial Chamber notes that this is disputed by **Nikolić**. For a detailed analysis *see infra*, paras. 1346–1356.

¹⁷⁰³ *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007). **Nikolić** said that “The order is to bring the prisoners there, to the Zvornik sector, and to shoot them”. *Ibid.*

informed.¹⁷⁰⁴ **Nikolić** also said that the prisoners would be brought by **Beara** and **Popović**, who had been tasked with organising and carrying out the operation and that **Popović** had asked **Nikolić** to assist.¹⁷⁰⁵

471. **Nikolić** asked Obrenović if he could have at his disposal Miomir Jasikovac, the Commander of the Zvornik Brigade Military Police Company¹⁷⁰⁶ and a military police platoon.¹⁷⁰⁷ On the evening of 13 July, on Obrenović's order, Miomir Jašikovac and his military police platoon were available to assist with the task.¹⁷⁰⁸ Jasikovac ordered members of the Zvornik Brigade Military Police Company to go to the Grbavci School in Orahovac to prepare the school for the arrival of prisoners.¹⁷⁰⁹ Once at the school, the Military Police followed Jasikovac's orders, and made the necessary preparations.¹⁷¹⁰ That evening, a convoy of six buses of Bosnian Muslim men left Bratunac town and arrived at the Grbavci School.¹⁷¹¹ The buses were accompanied by an unidentified, high ranking VRS officer who spoke to Jašikovac at the school.¹⁷¹² **Nikolić** was also present at the school that night, and he assigned members of the Zvornik Brigade Military Police Company to stay overnight behind the school to guard the prisoners.¹⁷¹³ Unidentified VRS soldiers were also at the school that night.¹⁷¹⁴

472. On 14 July at around 8 a.m., **Nikolić**, **Popović** and **Beara** met at the Standard Barracks for 15 to 20 minutes.¹⁷¹⁵ Although there is no direct evidence of what was discussed at this meeting, in light of the timing of this meeting and these men's positions and their prior and subsequent

¹⁷⁰⁴ PW-168, T. 15831 (closed session) (26 Sept 2007).

¹⁷⁰⁵ *Ibid.*, T. 15830–15833 (closed session) (26 Sept 2007).

¹⁷⁰⁶ *Ibid.*, T. 15759 (closed session) (25 Sept 2007).

¹⁷⁰⁷ PW-168, T. 15830–15832 (closed session) (26 Sept 2007). **Nikolić** first requested a military police company but when told it was impossible he insisted on having Jašikovac and a platoon. *Ibid.*, T. 16050 (closed session) (9 Oct 2007).

¹⁷⁰⁸ PW-168, T. 15759 (closed session) (25 Sept 2007), T. 15830–15833, 15836–15837 (closed session) (26 Sept 2007). *See infra* paras. 1345–1356.

¹⁷⁰⁹ Dragoje Ivanović, T. 14539–14541 (30 Aug 2007); Stanoje Birčaković, T. 10741–10744, 10764 (1 May 2007); PW-143, T. 6527 (30 Jan 2007); Stevo Kostić, T. 26003 (22 Sept 2008); PW-142, T. 6441, 6443 (private session), 6446–6447 (partially private session), (29 Jan 2007). Although none of these witnesses could identify the specific date of the evening that the members of the Zvornik Brigade Military Police Company went to the Grbavci School, it is clear that they went to the school on the evening before the day that the prisoners were killed. Dragoje Ivanović, T. 14539–14552 (30 Aug 2007); Stanoje Birčaković, T. 10741–10754 (1 May 2007); PW-143, T. 6527–6541 (30 Jan 2007). The Zvornik Brigade Military Police attendance roster shows 14 July as the day on which all but two member of the Zvornik Brigade Military Police were away from the Standard Barracks. Ex. P00354, "Zvornik Brigade Military Police attendance roster, July 1995".

¹⁷¹⁰ Dragoje Ivanović, T. 14540–14541 (30 Aug 2007); Stanoje Birčaković, T. 10744, 10766 (1 May 2007); PW-142, T. 6446–6447 (partially private session) (29 Jan 2007).

¹⁷¹¹ PW-162, T. 9216 (22 Mar 2007); PW-169, T. 17324, 17326–17327 (1 Nov 2007). PW-169, who was transported from Bratunac to Orahovac on 13 July 1995, testified that he travelled in a convoy of six vehicles. PW-169, T. 17327 (1 Nov 2007). *See also* Stanoje Birčaković, T. 10745–10746, 10766 (1 May 2007); Dragoje Ivanović, T. 14541, 14543 (30 Aug 2007).

¹⁷¹² Dragoje Ivanović, T. 14542 (30 Aug 2007).

¹⁷¹³ PW-143, T. 6529–6533 (partially private session) (30 Jan 2007); *see infra*, paras. 1350–1356.

¹⁷¹⁴ PW-143, T. 6530–6531 (30 Jan 2007).

actions,¹⁷¹⁶ the Trial Chamber finds that this meeting concerned the organisation and coordination of the killing operation. After the meeting with **Popović** and **Beara**, **Nikolić** and **Birčaković** went to the Vidikovac Hotel, about two kilometres from Zvornik, and waited for the buses from Bratunac.¹⁷¹⁷

473. On 14 July, prisoners who had been detained in various locations around Bratunac were made to board buses¹⁷¹⁸ accompanied, *inter alia*, by members of the Bratunac Brigade Military Police¹⁷¹⁹ and civilian police from Zvornik.¹⁷²⁰ There were a number of buses which formed a convoy.¹⁷²¹ It was crowded and extremely hot onboard the buses—prisoners collapsed, some died, and others were shot trying to escape.¹⁷²²

474. **Popović** accompanied the convoy of vehicles through Konjević Polje to Zvornik in his dark blue Golf.¹⁷²³ He ordered the Commander of the Bratunac Brigade Military Police to follow his

¹⁷¹⁵ Milorad Birčaković, T. 11014–11017 (7 May 2007), T. 11090–11091 (8 May 2007). *See infra*, paras. 1106, 1272, 1357.

¹⁷¹⁶ In particular that **Popović** called **Nikolić** the night before to discuss the plan to kill the Bosnian Muslim males (*supra*, para. 470 and *infra*, para. 1104) and immediately after the meeting, **Popović** and **Nikolić** facilitated the transport of Bosnian Muslim males at Bratunac to Zvornik, where they were killed in the days that followed (*infra*, paras. 474, 1107, 1358). The Trial Chamber also notes its findings on the role of the Security Branch in the murder operation. *See infra*, para. 1068.

¹⁷¹⁷ Milorad Birčaković, T. 11017 (7 May 2007), T. 11121 (8 May 2007).

¹⁷¹⁸ In some vehicles new soldiers replaced those that guarded the prisoners in Bratunac, while in others they remained the same. PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3031 (14 Apr 2000); Mevludin Orić, T. 934–935 (29 Aug 2006); PW-169, T. 17325 (1 Nov 2007); Mile Janjić, Ex. P02963, “92 *ter* transcript”, BT. 9815–9816 (24 May 2004); Ahmo Hasić, T. 1191 (6 Sept 2006).

¹⁷¹⁹ Ex. P00220, “Bratunac Brigade Military Police logbook, 30 June 1995 to 29 April 1996”, p. 14 (where the report for 14 / 15 July reads: “The police was engaged in the escort of Muslim refugees”); PW-138, T. 3857, 3859 (private session) (9 Nov 2006).

¹⁷²⁰ PW-142 testified that the prisoners were guarded by civilian policemen in blue combat overalls, some armed and some wearing flak jackets. He recognised some civilian policemen from Zvornik who were not part of the Zvornik Brigade. PW-142, T. 6446, 6449, 6467–6469, 6475–6476, 6481–6482 (private session) (29 Jan 2007). *See also* Dragoje Ivanović, T. 14541 (30 Aug 2007) (testifying that he saw VRS officers on the buses that arrived at the school in Orahovac); Milorad Birčaković, T. 11019 (7 May 2007), T. 11085, 11122, 11149–11150 (8 May 2007), T. 11158–11159 (9 May 2007) (confirming his previous statement that the security guards on the bus were civilian policemen in blue uniforms, then testifying that he was not sure whether the security guards were civilian policemen or military police, then conceding that there might have been military police officers as well as civilian police officers).

¹⁷²¹ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1400–1402 (21 July 2003); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029–3030 (14 Apr 2000); Mevludin Orić, T. 934–938 (29 Aug 2006); Ahmo Hasić, T. 1190–1191 (6 Sept 2006), T. 1291–1292 (7 Sept 2006); PW-169, T. 17326–17328 (1 Nov 2007). *See also* PW-110, T. 675–677 (24 Aug 2006), T. 761 (25 Aug 2006); PW-138, T. 3837–3844 (private session) (8 Nov 2006), T. 3849 (9 Nov 2006); Milorad Birčaković, T. 11017–11018 (7 May 2007); Nebojša Jeremić, T. 10423–10426 (24 Apr 2007), T. 26074, 26085–26087 (23 Sept 2008); Stevo Kostić, T. 26002–26003 (22 Sept 2008), T. 26074, 26077 (23 Sept 2008).

¹⁷²² PW-110, T. 674 (24 Aug 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029–3030 (14 Apr 2000); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1400, 1402 (21 July 2003); Ahmo Hasić, T. 1191–1192 (6 Sept 2006), T. 1273–1274, 1291–1292 (7 Sept 2006).

¹⁷²³ PW-138, T. 3842–3844 (private session) (8 Nov 2006), T. 3849–3851 (9 Nov 2006) (testifying that **Popović** led the convoy to the Grbavci School). **Popović** argued that **Popović** was elsewhere on 14 July, and this evidence is analysed at *infra*, paras. 1114–1115.

vehicle in a UN APC.¹⁷²⁴ The convoy stopped at the Vidikovac Hotel *en route* to Zvornik, where **Nikolić** and Birčaković were waiting.¹⁷²⁵ There, Birčaković joined the convoy and it continued on past Karakaj, to the Grbavci School.¹⁷²⁶ **Nikolić** made his own way from the Vidikovac Hotel to the Grbavci School in his Opel Rekord.¹⁷²⁷

3. Detentions and Killings of Bosnian Muslim Males (13–17 July)

(a) Orahovac (13–16 July)¹⁷²⁸

(i) Detentions – Grbavci School (13–14 July)

475. Orahovac is a small hamlet north-west of Zvornik.¹⁷²⁹ It is located approximately 10 kilometres west of the Standard Barracks.¹⁷³⁰ The Grbavci School is located on the main road in the centre of Orahovac.¹⁷³¹

476. On 13 July, civilian policemen accompanied the Bosnian Muslim prisoners on buses to the Grbavci School.¹⁷³² Upon arrival, these policemen escorted the Bosnian Muslim males into the gymnasium, assisted by Zvornik Brigade Military Policemen and unidentified VRS officers.¹⁷³³

¹⁷²⁴ PW-138, T. 3796 (private session), T. 3837–3840–3843 (private session) (8 Nov 2006); PW-117, Ex. P02207, “92 *bis* transcript”, KT. 3029–3030, 3032 (14 Apr 2000); Mevludin Orić, T. 934–938 (29 Aug 2006) (testifying that the convoy was headed by an UNPROFOR APC); Stanoje Birčaković, T. 10745–10746, 10766 (1 May 2007) (testifying that the convoy comprised 15–20 buses, was headed by an UN APC).

¹⁷²⁵ Milorad Birčaković, T. 11017–11019 (7 May 2007), T. 11083–11085 (8 May 2007).

¹⁷²⁶ PW-138, T. 3838, 3842–3844 (private session) (8 Nov 2006); Milorad Birčaković, T. 11017–11019 (7 May 2007).

¹⁷²⁷ Milorad Birčaković, T. 11022 (7 May 2007), T. 11124–11125 (8 May 2007).

¹⁷²⁸ The Indictment alleges that hundreds of Bosnian Muslim males were transported from Bratunac to Grbavci School, where they were detained and two prisoners were killed. Approximately 1,000 Bosnian Muslim males were then transported from the Grbavci School to a nearby field where they were executed. Indictment, para. 30.6.

¹⁷²⁹ Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1; Mevludin Orić, T. 937 (29 Aug 2006).

¹⁷³⁰ Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

¹⁷³¹ Milorad Birčaković, T. 11031, 11035 (7 May 2007); Ex. P01700, “Aerial of Grbavci School and LZ-02 and LZ-01”.

¹⁷³² *See supra*, para. 473.

¹⁷³³ Stanoje Birčaković, T. 10745–10746, 10766 (1 May 2007); Dragoje Ivanović, T. 14541, 14543 (30 Aug 2007); PW-169, T. 17328 (1 Nov 2007); PW-142, T. 6441, 6443–6445, 6476, 6479–6482 (private session) (29 Jan 2007);; Nada Stojanović, Ex. 3D00511, “92 *quater* transcript of interview” (1 July 2002), pp. 12, 17, 20–21, 38, 40; Milorad Birčaković, T. 11021–11022 (7 May 2007), T. 11086–11087 (8 May 2007); Lazar Ristić, T. 10075–10077, 10080–10082 (16 Apr 2007). *See also* Ex. P00289, “Logbook Kp-6 of transport service detailing vehicle Movements, 2 Dec 1994 to 31 Dec 1995”, p. 8 (recording that a Zvornik Brigade vehicle was in Orahovac at 0100 hours on 13 July with the notation “Orahovac – police”); Sreten Milosevic, T. 34014 (15 July 2009) (stating that he thinks the BCS version says “0100” – the translation says that this number is illegible). The four members of the Zvornik Brigade Military Police who Dragoje Ivanović said accompanied him to Orahovac as well as Dragoje Ivanović himself are all shown to be “in the field” on 14 July according to the attendance roster of the Zvornik Brigade Military Police. Ex. P00354, “Zvornik Brigade Military Police Unit Attendance Roster for July 1995”. *See also* Dragoje Ivanović, T. 14540 (30 Aug 2007). The Prosecution alleged that the attendance roster was altered so as to hide their presence however. Stevo Kostić confirmed that Zvornik Brigade Military Police were sent to the Grbavci School and stated during his testimony that he altered the attendance roster for ten soldiers who were at Orahovac to show that they were in the field, although he said that this was standard practice, was not done to hide information, and not done pursuant to any order. Stevo Kostić, T. 26015–26016, 26025, 26043, 26053–26057

477. On 13 and 14 July, the Zvornik Brigade Military Police guarded the prisoners.¹⁷³⁴ Between 20 and 40 VRS soldiers—unknown to the Zvornik Brigade Military Policeman who saw them—were also present on 14 July.¹⁷³⁵

478. In the morning of 14 July, the convoy of vehicles accompanied by **Popović** arrived at the Grbavci School carrying prisoners who had previously been detained in various locations in Bratunac.¹⁷³⁶ Each bus had civilian police on board, who escorted the prisoners inside together with the Zvornik Brigade Military Police already present at the school.¹⁷³⁷ The prisoners were forced to leave their personal belongings and some of their clothing in a pile outside the school.¹⁷³⁸ By the time the last group of men was brought to the school, hundreds of prisoners were tightly packed in the gymnasium, to the point where for some, the only place to sit was in another man's lap.¹⁷³⁹ The guards occasionally shot at the walls and the ceiling.¹⁷⁴⁰ The prisoners received no food and little water. The only toilet facility provided was a bucket.¹⁷⁴¹ The wounded did not receive medical care and some elderly people fainted from the heat.¹⁷⁴²

(ii) Killings (14 July)

479. At around noon on 14 July, members of the Zvornik Brigade Engineering Company assembled at a field a short distance from the Grbavci School and began digging a large pit.¹⁷⁴³ Meanwhile, at some point in the afternoon of 14 July, ten members of the 4th Battalion of the

(22 Sept 2008), 26071 (23 Sept 2008); Ex. P00354, "Zvornik Brigade Military Police Unit Attendance Roster for July 1995". Based on an assessment of all the evidence, the Trial Chamber is satisfied beyond reasonable doubt that members of the Zvornik Brigade Military Police were at the Grbavci School on the evening of 13 July and on 14 July 1995.

¹⁷³⁴ See *supra*, para. 476, fn. 1733, where the Trial Chamber finds that members of the Zvornik Brigade Military Police were at the Grbavci School on the evening of 13 July and on 14 July.

¹⁷³⁵ Dragoje Ivanović, T. 14544 (30 Aug 2007); Stanoje Birčaković, T. 10747 (1 May 2007) (testifying that at around 8 a.m., between 20 and 40 Bosnian Serb soldiers unknown to him arrived); Tanacko Tanić, T. 10327–10335 (23 Apr 2007), T. 10400–10403 (24 Apr 2007). Sreten Milošević, the Zvornik Brigade Assistant Commander for Logistics, was present at the Grbavci School on 14 July. Sreten Milošević, T. 33977 (15 July 2009).

¹⁷³⁶ Mevludin Orić, T. 908–909 (28 Aug 2006), T. 933–934 (29 Aug 2006); PW-169, T. 17315–17316, 17333, 17345 (1 Nov 2007); PW-110, T. 663, 665–666 (24 Aug 2006). See *supra*, para. 1108.

¹⁷³⁷ PW-142, T. 6446, 6475–6476, 6481 (29 Jan 2007); Milorad Birčaković, T. 11122–11123 (8 May 2007).

¹⁷³⁸ Mevludin Orić, T. 938–939 (29 Aug 2006); PW-110, T. 677, 695–696 (24 Aug 2006) (testifying that his leather jacket was taken away from him on arrival, and others were forced to remove their shirts). See also, Milorad Birčaković, T. 11029 (7 May 2007); Tanacko Tanić, T. 10336 (23 Apr 2007) (testifying that he saw a pile of clothes and a crutch at the Grbavci School on 14 July).

¹⁷³⁹ PW-169, T. 17332–17333 (1 Nov 2007).

¹⁷⁴⁰ PW-110, T. 698–699 (24 Aug 2006). See also Jean-René Ruez, T. 1479–1480 (11 Sept 2006); Ex. P02103, "Documents tendered with the statement of the witness Jean-René Ruez", pp. 126–127, 129 (showing bullet holes in the walls and ceiling of the Grbavci School).

¹⁷⁴¹ PW-110, T. 700–702 (24 Aug 2006).

¹⁷⁴² Mevludin Orić, T. 942–945 (29 Aug 2006), T. 1005 (30 Aug 2006); PW-169, T. 17333 (1 Nov 2007); PW-110, T. 700–701 (24 Aug 2006).

¹⁷⁴³ Cvijetin Ristanović, Ex. P02256, "92 *ter* transcript", BT. 5361–5364, 5371–5372, 5406–5408 (1 Dec 2003).

Zvornik Brigade arrived at the gymnasium.¹⁷⁴⁴ Lazar Ristić, the acting Commander of the 4th Battalion, had sent his men pursuant to a request from Milorad Trbić.¹⁷⁴⁵

480. After the arrival of the 4th Battalion soldiers, guards began shooting at the walls and the ceilings, and sporadic shooting could be heard outside.¹⁷⁴⁶ At least two prisoners were taken out of the gymnasium—shortly after which a burst of gunfire could be heard—never to return.¹⁷⁴⁷ There were at least two dead bodies observed outside the school that afternoon.¹⁷⁴⁸ Another prisoner who stood up and proclaimed “[d]on’t be afraid, people. There is enough of us” was shot at the entrance to the gymnasium in front of the prisoners.¹⁷⁴⁹

481. In the midst of these incidents, transportation to the execution site began. The prisoners first entered a locker room where they had their hands tied and were blindfolded.¹⁷⁵⁰ Next, each prisoner was given a cup of water to drink.¹⁷⁵¹ The prisoners were then led onto TAM trucks by members of the Zvornik Brigade including members of the 4th Battalion, the Logistics Company and the Military Police.¹⁷⁵² Most of the civilian police had by this time left Grbavci School.¹⁷⁵³

¹⁷⁴⁴ Lazar Ristić, T. 10035–10037, 10062–10063, 10068–10069 (16 Apr 2007), T. 10116 (17 Apr 2007); PW-168, T. 15888 (closed session) (27 Sept 2007); Milorad Birčaković, T. 11039 (7 May 2007), T. 11143 (8 May 2007). At some point on the afternoon of 14 July, Mladić came to the gymnasium and addressed the prisoners. Mevludin Orić, T. 947 (29 Aug 2006); PW-169, T. 17334 (1 Nov 2007).

¹⁷⁴⁵ Lazar Ristić, T. 10035–10037, 10062–10063, 10068–10069 (16 Apr 2007), T. 10116 (17 Apr 2007) (testifying that he was told on 14 July that Gojko Simić was at the Grbavci School, although he knew that Simić was on leave that day); Milorad Birčaković, T. 11038–11039 (7 May 2007) (testifying that Gojko Simić, a member of the 2nd Company of the 4th Battalion whom Birčaković had known since 1992, was one of the men sent); PW-168, T. 15888 (closed session) (27 Sept 2007) (stating that Ristić told him he had sent men to Orahovac on 14 July, and his men were there when the executions were taking place). The Trial Chamber is satisfied that Gojko Simić was present at the Grbavci School on 14 July.

¹⁷⁴⁶ Mevludin Orić, T. 945–946 (29 Aug 2006), T. 1006 (30 Aug 2006). *See also* Jean-René Ruez, T. 1479–1480 (11 Sept 2006); Ex. P02103, “Documents tendered with the statement of the witness Jean-René Ruez”, pp. 126–127, 129 (showing bullet holes in the roof of the Grbavci School).

¹⁷⁴⁷ PW-110, T. 698–699, 703 (24 Aug 2006), T. 765 (25 Aug 2006); PW-169, T. 17333–17334 (1 Nov 2007). *See* Mevludin Orić, T. 945–946 (29 Aug 2006), T. 1006 (30 Aug 2006).

¹⁷⁴⁸ Tanacko Tanić, T. 10336 (23 Apr 2007).

¹⁷⁴⁹ Mevludin Orić, T. 945–946 (29 Aug 2006).

¹⁷⁵⁰ *Ibid.*, T. 949, 952–953, 955–956 (29 Aug 2006); PW-169, T. 17335–17336 (1 Nov 2007); PW-110, T. 708–712 (24 Aug 2006); Milorad Birčaković, T. 11025–11026 (7 May 2007); PW-142, T. 6454, 6458 (private session) (29 Jan 2007); Sreten Milošević, T. 33978 (15 July 2009) (testifying that as the men were blindfolded as they boarded the buses).

¹⁷⁵¹ PW-110, T. 709 (24 Aug 2006), T. 765–766 (25 Aug 2006); PW-169, T. 17335 (1 Nov 2007); Mevludin Orić, T. 949 (29 Aug 2006).

¹⁷⁵² Mevludin Orić, T. 953–956 (29 Aug 2006); PW-169, T. 17335–17336 (1 Nov 2007); PW-110, T. 708–712 (24 Aug 2006); Milorad Birčaković, T. 11025–11026, 11038 (7 May 2007) (testifying that one of the drivers was from the Zvornik Brigade 4th Battalion); PW-142, T. 6454, 6458 (private session) (29 Jan 2007); PW-101, T. 7559, 7571–7572, 7579 (22 Feb 2007), T. 7682–7683 (23 Feb 2007); 3DPW-10, T. 25658–25660 (private session), 25664–25668, 25671–25672 (15 Sept 2008) (testifying that at least two members of the Zvornik Brigade transported the prisoners).

¹⁷⁵³ PW-142, T. 6454, 6476 (29 Jan 2007); Milorad Birčaković, T. 11087, 11128 (8 May 2007) (testifying that once or twice, a civilian policeman from Bijeljina accompanied him as he followed the trucks to and from the execution site, although the reason for this was because a brother of this civilian policeman had been imprisoned in Srebrenica and he was there to ask people (presumably the prisoners on the buses) for information).

482. The prisoners were transported to a field approximately one kilometre from the school where members of the Zvornik Brigade Engineering Company had commenced work digging a large pit.¹⁷⁵⁴ At around 2 p.m. on 14 July, Obrenović heard on the radio that the Duty Officer was requesting two machine operators from the Zvornik Brigade Engineering Company to “go build a road” and when he inquired about this request, he was told that the two machine operators had to go to Orahovac “in relation to the task being performed by **Beara and Popović**”.¹⁷⁵⁵

483. Soldiers from the 4th Battalion and the Logistics Company transported the prisoners to the execution site.¹⁷⁵⁶ The trucks, at least one of which belonged to the Zvornik Brigade,¹⁷⁵⁷ made several trips back and forth throughout the afternoon and into the evening, with trucks arriving and leaving approximately every ten minutes.¹⁷⁵⁸ Soon after the first trucks left, gunfire was heard from the direction in which the trucks had travelled.¹⁷⁵⁹

484. Once at the field, the prisoners were ordered off the trucks, lined up and shot with automatic rifles.¹⁷⁶⁰ One of the shooters was a member of the 4th Battalion of the Zvornik Brigade.¹⁷⁶¹ The prisoners fell upon one another as the shots were fired.¹⁷⁶² Some wounded prisoners asked to be killed but were left lying in pain for some time before being shot again at close range.¹⁷⁶³

485. Mevludin Orić described the killings as follows:

My relative was killed immediately. He was screaming, and he was squeezing my hand very tight. I pushed his hand, and I threw myself on the ground. And he fell on me, on the lower side of my

¹⁷⁵⁴ Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5367–5372, 5407–5408 (1 Dec 2003); Cvijetin Ristanović, T. 13620–13621 (10 July 2007) (testifying that the pit was dug about a kilometre from the school along the road between Orahovac and Križeviči, near a water point and an underpass of the Živinice/Zvornik railroad). *See also*, Milorad Birčaković, T. 11031–11035 (7 May 2007); Ex. PIC00104, “Exhibit P01700 marked by Milorad Birčaković”; Ex. PIC00105, “Exhibit P01700 marked by Milorad Birčaković”.

¹⁷⁵⁵ PW-168, T. 15842–15846, 15853–15857 (closed session) (26 Sept 2007) (quotation at T. 15845).

¹⁷⁵⁶ Milorad Birčaković, T. 11038 (7 May 2007); 3DPW-10, T. 25658–25660 (private session), 25662–25674 (15 Sept 2008). *See also* Sreten Milošević, T. 33978 (15 July 2009).

¹⁷⁵⁷ Ostojica Stanojević, Ex. P02260, “92 *ter* transcript”, BT. 5675, 5694–5695 (4 Dec 2003) (testifying that despite the fact that the Zvornik Brigade vehicle log records his name as a driver who went to Orahovac on 14 July with a TAM truck, he merely filled the vehicle with petrol and did not go to Orahovac on 14 July). *See* Ex. P00298, “Exhibit P-517 - Case No. IT-02-60-T - Zvornik Brigade Vehicle Log Book for TAM 75 (M-5264) (1 July 1995–31 July 1995)”. The Trial Chamber finds that, regardless of the driver, a truck belonging to the Zvornik Brigade was at Orahovac on 14 July.

¹⁷⁵⁸ Mevludin Orić, T. 962 (29 Aug 2006) (testifying that trucks arrived every four or five minutes); PW-110, T. 713, 715 (24 Aug 2006) (testifying that trucks arrived every 10 to 15 minutes); PW-169, T. 17336–17337 (1 Nov 2007); Stanoje Birčaković, T. 10753–10754 (1 May 2007).

¹⁷⁵⁹ PW-143, T. 6540–6541 (30 Jan 2007).

¹⁷⁶⁰ Mevludin Orić, T. 955–956 (29 Aug 2006); PW-169, T. 17335–17336 (1 Nov 2007); PW-110, T. 712 (24 Aug 2006).

¹⁷⁶¹ PW-110, T. 717–718 (private session) (24 Aug 2006), T. 731–732 (private session) (25 Aug 2006) (testifying that he recognised the voice of Gojko Simić, a member of the 4th Battalion of the Zvornik Brigade, at the execution site telling others to gather ammunition and go to the meadow where the grass had been mowed to continue killing, and he assumed that Simić was in charge). *See supra*, para. 479, fn. 1745, where the Trial Chamber finds that Gojko Simić was at Orahovac on 14 July.

¹⁷⁶² Mevludin Orić, T. 956 (29 Aug 2006).

¹⁷⁶³ *Ibid.*, T. 956–957, 962 (29 Aug 2006); PW-110, T. 712–715 (24 Aug 2006), T. 727–728 (25 Aug 2006).

back, and from that moment on I pretended I was dead. He was shaking. His body was shaking on my body, and then he went stiff. He died on me. And the rest of the group, maybe two or three of them, started wailing and screaming because they were wounded, and these other men came and finished them off. And that's how it continued. People were being brought there and killed.¹⁷⁶⁴

486. Milorad Birčaković, a member of the Zvornik Brigade Military Police, followed one of the trucks in an Opel Rekord as it drove to and from the execution site.¹⁷⁶⁵ He escorted the trucks four to six times, once or twice accompanied by a civilian policeman from Bijeljina.¹⁷⁶⁶ Cvijetin Ristanović, a member of the Zvornik Brigade Engineering Company, used an excavator from the Zvornik Brigade to dig graves while the killings were taking place.¹⁷⁶⁷ In the evening of 14 July, **Nikolić** and a "Lieutenant Colonel or Colonel" were present during the executions.¹⁷⁶⁸

487. PW-101 watched as the prisoners were lined up and shot.¹⁷⁶⁹ He testified:

In that heap, in that pile of dead bodies, who did not resemble people any longer, this was just a pile of flesh in bits, and then a human being emerged. I say a human being, but it was actually a boy of some five to six years. It is unbelievable. Unbelievable. A human being came out and started moving towards the path, the path where men with automatic rifles stood doing their job. [...] And then all of a sudden they lowered their rifles and all of them, to the last one, just froze. And it was just a child there. Had it been a person of 70 or 80 years old, it would have been horrible, let alone an innocent, sweet child. And the child was covered in bits of bowel tissue of other people. [...] And as the child was emerging out of the pile of those who had been executed, he was saying, "Baba," this is how they call father. He was saying, "Baba, where are you?"¹⁷⁷⁰

488. According to PW-101, the "Lieutenant Colonel or Colonel" asked the soldiers what they were waiting for and said "Just finish him off."¹⁷⁷¹ The soldiers refused, and the boy was ultimately taken to the hospital in Zvornik by PW-101.¹⁷⁷²

¹⁷⁶⁴ Mevludin Orić, T. 956 (29 Aug 2006).

¹⁷⁶⁵ Milorad Birčaković, T. 11025–11029, 11031, 11035, 11037 (7 May 2007), T. 11087, 11126, 11129 (8 May 2007) (testifying that he was ordered to follow the buses to a water source, the location of which he indicated on an aerial photograph of the area). See Ex. P01700, "Aerial image of Grbavci School and LZ-02 and LZ-01"; Ex. PIC00103, "Exhibit P01700 marked by Milorad Birčaković". See also, Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", p. 135 (showing that the place which Birčaković indicated was where the graves were later found).

¹⁷⁶⁶ Milorad Birčaković, T. 11027–11028 (7 May 2007), T. 11087, 11128 (8 May 2007).

¹⁷⁶⁷ Cvijetin Ristanović, Ex. P02256, "92 ter transcript", BT. 5361–5364, 5406–5408 (1 Dec 2003); Cvijetin Ristanović, T. 13627–13629 (10 July 2007); Ex. P00300, "Exhibit P-515 - Case No. IT-02-60-T - Zvornik Brigade Vehicle Log Book for Rovakopac (C-3117)" (recording that on 14 July a backhoe excavator made a trip "Base-Orahovac-Return" for the purpose of "trench digging"); PW-169, T. 17337 (1 Nov 2007; PW-110, T. 715, 719–721, 723 (24 Aug 2006) (testifying that a loader arrived and its lights lit the area while the killing continued); Ex. P02851, "Zvornik Brigade Engineering Company attendance roster, July 1995"; Mevludin Orić, T. 957 (29 Aug 2006) (testifying that he heard the sound of a construction machine at the execution site).

¹⁷⁶⁸ PW-101, T. 7581–7582, 7585–7586, 7589–7590 (22 Feb 2007). For a detailed analysis of the role **Nikolić** played, see *infra*, paras. 1361–1365. See also the findings as to the identification of the "Lieutenant Colonel or Colonel" at *infra*, paras. 1111–1112.

¹⁷⁶⁹ PW-101, T. 7580 (22 Feb 2007).

¹⁷⁷⁰ *Ibid.*, T. 7581–7582 (22 Feb 2007).

¹⁷⁷¹ *Ibid.*, T. 7581–7582 (22 Feb 2007) (quotation at T. 7582).

¹⁷⁷² *Ibid.*, T. 7582–7584 (22 Feb 2007), T. 7659–7660 (23 Feb 2007). See also PW-105, T. 7742–7751 (26 Feb 2007); Ex. P02452 (confidential); PW-101, T. 7596 (22 Feb 2007). There are differing accounts before the Trial Chamber of the boy's journey from the execution site to the hospital. PW-101 said that he was alone with the boy, however Tanacko Tanić said that he was also present in the van, along with Sreten Milošević and others. Regardless of this

(iii) Burials (14–15 July)

489. As previously stated, the graves were dug as the executions took place,¹⁷⁷³ and both of these tasks continued into the evening.¹⁷⁷⁴ The order to dig the grave came from Dragan Jokić, Duty Officer and Chief of Engineering for the Zvornik Brigade.¹⁷⁷⁵ Upon arrival at Orahovac, Cvijetin Ristanović took orders from Slavko Bogičević, Deputy Commander of the Engineering Company.¹⁷⁷⁶

490. The burials continued on 15 July, when Ristanović was ordered to return to Orahovac by Damjan Lazarević, his Platoon Commander in the Zvornik Brigade Engineering Company.¹⁷⁷⁷ On this day, Ristanović dug a second grave and noticed approximately four to six people dressed in civilian work clothes (from the civilian protection or the Zvornik public utility company), and soldiers.¹⁷⁷⁸ He also saw corpses at the site.¹⁷⁷⁹

discrepancy, Tanić confirmed that the boy “who survived the execution” was present in the van with PW-101, and that PW-101 drove the boy to the hospital in Zvornik. Tanacko Tanić, T. 10351–10352, 10353 (private session) (23 Apr 2007). 3DPW-10 said that PW-101 took the boy from the Grbavci School, not the execution site. 3DPW-10, T. 25688 (private session) (15 Sept 2008). Mirko Šakotić, who was on duty in the traffic unit of the Zvornik Brigade on 14 July said that he sent PW-101 to Užice in Serbia on that day, as indicated in the Zvornik Brigade’s vehicle log for July 1995, and that the “loko” (local trips) entry for that day could not have covered a journey to Orahovac. Mirko Šakotić, T. 25768–25770 (16 Sept 2008); Ex. 3D00473 (confidential), p. 3. PW-101 on the other hand said that his journey to Orahovac was covered by “loko”. PW-101, T. 7619–7621 (private session) (22 Feb 2007). Taking into account all of the evidence, the Trial Chamber finds that the contradictions in the evidence are not capable of undermining the essence of PW-101’s testimony, nor are they capable of undermining PW-101’s credibility. The Trial Chamber therefore accepts the evidence of PW-101.

¹⁷⁷³ Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5363–5387, 5406–5407 (1 Dec 2003); Cvijetin Ristanović, T. 13622, 13625–13626 (10 July 2007) (testifying that more than once, he was ordered to stop digging and turn his back as a truck approached, after which he heard shouting and gunfire, he saw a number of dead bodies and he used a G-700 owned by a private company in Zvornik); Ex. P00297, “Zvornik Brigade Engineering Company Daily Orders Logbook”, pp. 15–16 (showing that a BGH-700 and a ULT-220 were working in Orahovac on 15 and 16 July); Damjan Lazarević, T. 14446–14451, 14457–14461, 14471–14472 (29 Aug 2007) (testifying that he saw numerous dead bodies in several locations at the execution site, and a ULT-220 being used to dump bodies in the graves); Ex. P00302 “Exhibit P-522-Case No. IT-02-60-T – Zvornik Brigade Vehicle Log Book for ULT 220 from Birač-Holding”, pp. 1–2 (indicating that a ULT-22 owned by the Birač-Holding was used by the VRS on 15 July 1995 for “digging trenches in Orahovac”).

¹⁷⁷⁴ Mevludin Orić, T. 964, 966 (29 Aug 2006).

¹⁷⁷⁵ Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5361–5364, 5406–5408 (1 Dec 2003); Ex. P02851, “Zvornik Brigade Engineering Company attendance roster for July 1995”.

¹⁷⁷⁶ Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5371–5372 (1 Dec 2003); Ex. P00300, “Exhibit P-515 - Case No. IT-02-60-T - Zvornik Brigade Vehicle Log book for Rovakopac (C-3117)” (recording that on 14 July a backhoe excavator was Cvijetin Ristanović and it made a trip “Base-Orahovac-Return” for the purpose of “trench digging”).

¹⁷⁷⁷ Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5363, 5382, 5411 (1 Dec 2003).

¹⁷⁷⁸ *Ibid.*, BT. 5382–5384, 5412 (1 Dec 2003).

¹⁷⁷⁹ *Ibid.*, BT. 5383–5384, 5386 (1 Dec 2003). *See also* Ex. P02258, “Exhibit P-661 - Case No. IT-02-60-T - Sketch by witness during an interview with the OTP”, p. 2 (showing the place where Ristanović saw the corpses).

(iv) Forensic Evidence¹⁷⁸⁰

491. In 1996 and 2000, two primary disturbed mass grave sites designated Lažete 1 and 2 were exhumed near the road that leads to the Grbavci School.¹⁷⁸¹ Strips of cloth “probably used as blindfolds” were associated with 89 individuals in the Lažete 1 grave, and three bodies were found with ligatures.¹⁷⁸² A total of 456 shell cases were recovered from in and around the grave.¹⁷⁸³ Regarding Lažete 2, 14 shell cases were collected on the surface of the grave and cloth blindfolds were found with 107 individuals.¹⁷⁸⁴ In relation to Lažete 1, it was found that where cause of death could be determined, it was by gunshot wounds, and the experts opined that the manner of death for all individuals was homicide.¹⁷⁸⁵ In addition, forensic evidence links seven secondary graves located at Hodžići Road to the primary gravesites at Lažete 1 and 2.¹⁷⁸⁶

492. Among the remains exhumed from the primary graves at Orahovac and the secondary graves associated with it, 807 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.¹⁷⁸⁷ Taking all of the evidence into account, including the testimony and assessments¹⁷⁸⁸ of witnesses, the Trial Chamber finds that between 800 and 2,500 Bosnian Muslim males were executed at Orahovac on 14 July 1995.

¹⁷⁸⁰ The Trial Chamber will examine the forensic evidence before it in relation to each gravesite associated with the Zvornik killings. The Trial Chamber notes that this examination is purely an exercise in evidentiary analysis, and it is not necessary to arrive at a finding in relation to the exact number of individuals killed in each location. The forensic evidence is examined with a view to corroborating the evidence already presented in relation to these executions and illustrating of the scale of the crimes alleged.

¹⁷⁸¹ Ex. P00649, “Summary of Forensic Evidence – Execution Points and Mass Graves, 16 May 2000”, Annex A, p. 24; Ex. P00616, “Report by William Haglund on Lažete 2 gravesite, 15 June 1998”, pp. 1–2; Ex. P02459, “Lažete 1 Bosnia and Herzegovina Excavation and Exhumation Report”, pp. 2, 4; Prosecution Adjudicated Facts Decision, Annex, Facts 364, 365, 369.

¹⁷⁸² Ex. P02459, “Lažete 1 Bosnia and Herzegovina Excavation and Exhumation Report”, pp. 3, 22–23, 30; Freddy Peccerelli, T. 8751 (13 Mar 2007).

¹⁷⁸³ Ex. P02459, “Lažete 1 Bosnia and Herzegovina Excavation and Exhumation Report”, p. 10.

¹⁷⁸⁴ Ex. P00616, “Report by William Haglund on Lažete 2, 15 June 1998”, p. 69; Ex. P00649, “Summary of Forensic Evidence – Execution Points and Mass Graves, 16 May 2000”, Annex A, p. 25.

¹⁷⁸⁵ Ex. P00616, “Report by William Haglund on Lažete 2 gravesite, 15 June 1998”, p. 49 (stating that the cause of death for 158 of 165 individuals was gunshot wounds).

¹⁷⁸⁶ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 36; Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, pp. 22–24 (stating that the links included limestone, rock, pollen, lumps of exotic soil and black plastic pipe); Prosecution Adjudicated Facts Decision, Annex, Fact 374; Dean Manning, T. 18976 (10 Dec 2007) (testifying that shell casings found at the primary and secondary graves matched).

¹⁷⁸⁷ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, p. 2, Annex A, pp. 36–37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

¹⁷⁸⁸ The estimate as to the number of prisoners detained in the Grbavci School varies. The indictment alleges approximately 1,000 men. Indictment, para. 30.6. *See* PW-110, T. 697–698 (24 Aug 2006) (estimating 500 to 1,000 men); PW-142, T. 6478–6479 (private session) (29 Jan 2007) (estimating 1,000 men); Mevludin Orić, T. 943 (29 Aug 2006) (estimating more than 2,000 men); PW-169, T. 17338, 17352 (1 Nov 2007) (estimating 2,500 prisoners).

(b) Petkovci (14–16 July)¹⁷⁸⁹

493. The turn-off to Petkovci from the Konjević Polje–Zvornik–Bijeljina Road is about one kilometre north of the Standard Barracks.¹⁷⁹⁰ Petkovci is a small hamlet about six to seven kilometres west of the main road, and the new elementary school, the “Petkovci School”¹⁷⁹¹ is a two storey building located therein.¹⁷⁹² The headquarters of the 6th Battalion of the Zvornik Brigade was located at the old school in Petkovci, approximately 600 to 800 meters from the Petkovci School.¹⁷⁹³ The Crveni Mulj Dam, known as the “Petkovci Dam”, is just three to four kilometres outside Petkovci.¹⁷⁹⁴

(i) Detentions and “Opportunistic” Killings – Petkovci School (14 July)

494. On the morning of 14 July, Duty Officer Dragan Jokić telephoned Marko Milošević, the Deputy Commander of the 6th Battalion of the Zvornik Brigade, to inform him that Bosnian Muslim prisoners would be brought to the Petkovci School accompanied by “security.”¹⁷⁹⁵ Milošević notified the Battalion Commander, Captain Ostoja Stanišić, of this when Stanišić returned to the Battalion Command later in the afternoon.¹⁷⁹⁶

495. Hundreds of Bosnian Muslim males who had been detained at various locations in Bratunac were taken to the Petkovci School in the afternoon of 14 July.¹⁷⁹⁷ The prisoners were ordered to chant pro-Serb slogans and were hit with rifle butts as they entered the school.¹⁷⁹⁸ Some prisoners

¹⁷⁸⁹ The Indictment alleges that approximately 1,000 Bosnian Muslim men were transported from Bratunac to the Petkovci School where they were detained, and then taken to a dam near Petkovci, where they were executed. The Indictment further alleges that “many” Bosnian Muslim men were killed at the Petkovci School prior to the transportation to the dam. These killings are alleged as part of the “opportunistic killings”. Indictment, paras. 30.7–30.8, 31.4.

¹⁷⁹⁰ Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 156.

¹⁷⁹¹ Marko Milošević, T. 13318 (26 June 2007).

¹⁷⁹² Marko Milošević, T. 13318 (26 June 2007); Jean-René Ruez, T. 1494–1497 (11 Sept 2006); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 157–168.

¹⁷⁹³ Marko Milošević, T. 13318 (26 June 2007); Ostoja Stanišić, T. 11606 (16 May 2007); Ex. P02815, “Aerial Photograph of Petkovci, marked by Ostoja Stanišić during proofing session on 13 May 2007”.

¹⁷⁹⁴ PW-168, T. 15917 (closed session) (27 Sept 2007); Jean-René Ruez, T. 1495 (11 Sept 2006).

¹⁷⁹⁵ Marko Milošević, T. 13299–13301, 13336, 13341–13342 (26 June 2007).

¹⁷⁹⁶ Marko Milošević, T. 13301 (26 June 2007); Ostoja Stanišić, T. 11600–11601 (16 May 2007).

¹⁷⁹⁷ PW-113, T. 3337–3338, 3367–3368 (31 Oct 2006); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1389–1393, 1396–1405 (21 July 2003); PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2950–2956, 2961–2965 (14 Apr 2000); Ex. P01730, “Picture showing the stairs inside Petkovci School” Ex. P01729, “Photo, Petkovci School”; Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 158–162; Jean-René Ruez, T. 1495–1496 (11 Sept 2006).

¹⁷⁹⁸ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2965 (14 Apr 2000) (testifying that the men were slapped, kicked and hit with rifle butts, and were ordered to put their hands behind their heads and chant aloud “Long live the Serb Republic” and “Srebrenica is Serb”); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1404–1405 (21 July 2003) (testifying that the men were hit with rifle butts, and were forced to repeat that the land and Srebrenica were Serbian).

were made to wait on the buses for up to an hour before being allowed off. Their pleas for water went unheeded.¹⁷⁹⁹

496. The prisoners were detained in overcrowded classrooms across the two levels of the school.¹⁸⁰⁰ The floor of one of the classrooms was covered with blood and urine.¹⁸⁰¹ Those guarding the prisoners demanded money, and a pile of identification documents and clothes was gathered in the corridor.¹⁸⁰² As PW-116 entered the classroom in which he was detained, he saw two men in a corner who had been severely beaten and were covered in blood.¹⁸⁰³ Despite the heat, the prisoners were given little or no water and were not permitted to open the windows.¹⁸⁰⁴ The prisoners were prevented from using the bathroom.¹⁸⁰⁵

497. The prisoners were also shot at and beaten by those guarding them.¹⁸⁰⁶ As one Bosnian Muslim man tried to look out the window, he was shot and lay wounded in the classroom.¹⁸⁰⁷ Other prisoners were removed from the classrooms, after which the sound of gunfire, beatings and moaning could be heard.¹⁸⁰⁸ The prisoners who were removed did not return, and three or four dead bodies were later seen in the bloodstained corridor.¹⁸⁰⁹ Shooting could be heard throughout the building until midnight.¹⁸¹⁰ The Trial Chamber finds that several Bosnian Muslim men were shot and killed during the detentions at the Petkovci School on 14 July 1995.

498. In the late afternoon of 14 July, Ostoja Stanišić received a call from Dragan Jokić instructing him to notify **Beara**—whom Jokić said could be found around the Petkovci School—that **Beara** needed to report to the Standard Barracks.¹⁸¹¹ Following this call, Stanišić sent Marko

¹⁷⁹⁹ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1402 (21 July 2003) (testifying that one prisoner was so thirsty that he drank his own urine).

¹⁸⁰⁰ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966, 2995 (14 Apr 2000); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406 (21 July 2003).

¹⁸⁰¹ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406 (21 July 2003).

¹⁸⁰² PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2965–2968 (14 Apr 2000). *See also*, PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1407 (21 July 2003).

¹⁸⁰³ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966–2967 (14 Apr 2000).

¹⁸⁰⁴ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406–1407 (21 July 2003); PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966 (14 Apr 2000).

¹⁸⁰⁵ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1406 (21 July 2003) (testifying that almost everyone was soaked with urine).

¹⁸⁰⁶ There is insufficient evidence before the Trial Chamber to determine the identity of those guarding the prisoners.

¹⁸⁰⁷ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2966–2967 (14 Apr 2000); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 165–166 (showing bullet holes in a blackboard in one of the classrooms in the Petkovci School); Jean-René Ruez, T. 1499 (11 Sept 2006).

¹⁸⁰⁸ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1407–1408 (21 July 2003).

¹⁸⁰⁹ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1407–1408, 1415 (21 July 2003); PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2970 (14 Apr 2000).

¹⁸¹⁰ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1408 (21 July 2003). Marko Milošević and Ostoja Stanišić both heard gunfire from the direction of the school on 14 July. Marko Milošević, T. 13307 (26 June 2007); Ostoja Stanišić, T. 11607 (16 May 2007).

¹⁸¹¹ Ostoja Stanišić, T. 11601, 11604 (16 May 2007), T. 11703–11705, 11725–11726 (17 May 2007) (testifying that when he asked Jokić which “command” **Beara** was supposed to report to, Jokić said “Well, he knows well which

Milošević to deliver the message. Milošević met **Nikolić** at a crossroads 70 or 80 metres from the Petkovci School.¹⁸¹² Milošević delivered the message to **Beara** after **Nikolić** pointed him out.¹⁸¹³ Milošević saw a few buses and trucks parked down the road, and soldiers guarding the school.¹⁸¹⁴ Four or five Military Police officers were also present.¹⁸¹⁵

(ii) Killings – Petkovci Dam (15 July)

499. In the early morning hours of 15 July, the prisoners at the Petkovci School were brought out of the classrooms one by one and told to remove their shoes and most of their clothes.¹⁸¹⁶ There was a pile of IDs, clothes, footwear and documents in the corridor.¹⁸¹⁷ The prisoners then had their hands tied behind their backs and were told to board trucks parked at the front of the school.¹⁸¹⁸ Groups of prisoners were transported in several trucks belonging to the 6th Battalion of the Zvornik Brigade to a field near Petkovci Dam.¹⁸¹⁹ PW-116 stated that his truck carried approximately 100 men.¹⁸²⁰ A number of times PW-113's truck stopped and some prisoners were told to disembark. After the selected prisoners had done so, a burst of gunfire could be heard outside the truck.¹⁸²¹

command he's supposed to report to"); Marko Milošević, T. 13302–13303 (26 June 2007) (testifying that he told **Beara** to report "to the brigade command").

¹⁸¹² Ostojica Stanišić, T. 11604–11606 (16 May 2007); Marko Milošević, T. 13302–13304 (26 June 2007).

¹⁸¹³ See *infra*, paras. 1279, 1366. Marko Milošević, T. 13303–13304 (26 June 2007); Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995", p. 128 (noting the following for 14 July: "1500 hrs – Colonel Beara is coming in order to Orovoc [sic], Petkovci, Ročević, Pilica").

¹⁸¹⁴ Marko Milošević, T. 13304–13305 (26 June 2007) (testifying that he saw a blue Golf III car parked near the buses and trucks). See also Ostojica Stanišić, T. 11605 (16 May 2007).

¹⁸¹⁵ Marko Milošević, T. 13304–13305, 13344 (26 June 2007) (testifying that the Military Police officers were not from the Zvornik Brigade, although he did not know every Zvornik Brigade MP); Ostojica Stanišić, T. 11605 (16 May 2007). Ex. P00220, "Bratunac Brigade Military Police Daily Log Book, 30 June 1995–29 April 1996", p. 14 (recording that on 14 July "The police was engaged in the escort of Muslim refugees"). Neither Milošević nor Stanišić testified as to which brigade these military policemen came from. The Prosecution argues that these men must have been from the Zvornik Brigade because "the Petkovci School was within the Zvornik Brigade's area of responsibility and the MPs were with Drago Nikolić". Prosecution Final Brief, para. 784. The Trial Chamber is of the view that there is insufficient evidence before it to make a finding as to the brigade to which these military policemen belonged.

¹⁸¹⁶ PW-116, Ex. P02205, "92 bis transcript", KT. 2968 (14 Apr 2000) (stating that he was ordered to remove all of his clothes, but was allowed to keep only a vest on); PW-113, Ex. P02280, "92 ter transcript", BT. 1409 (21 July 2003) (stating that he striped down to his waist).

¹⁸¹⁷ PW-116, Ex. P02205, "92 bis transcript", KT. 2968 (14 Apr 2000).

¹⁸¹⁸ PW-116, Ex. P02205, "92 bis transcript", KT. 2969–2970 (14 Apr 2000); PW-113, Ex. P02280, BT. 1409–1410, 1414–1416 (21 July 2003).

¹⁸¹⁹ PW-113, Ex. P02280, "92 ter transcript", BT. 1415–1418, 1423 (22 July 2003); PW-116, Ex. P02205, "92 bis transcript", KT. 2968–2970, 2974–2975 (14 Apr 2000); Ex. P00944, "Vehicle Work Log valid from 1 July until 31 July 1995, Military Post Zvornik", p. 2 (recording that two TAM trucks from the 6th Battalion of the Zvornik Brigade made six and four trips, respectively, between Petkovci and Petkovci Dam on 15 July). See also PW-116, Ex. P02205, "92 bis transcript", KT. 2988 (14 Apr 2000) (identifying the area shown in Ex. P01741, "Helicopter overview of the area, annotated in court"); PW-113, Ex. P02280, "92 ter transcript", BT. 1497–1498 (22 July 2003); Jean-René Ruez, T. 1499 (11 Sept 2006); Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", pp. 173–176 (identifying the areas indicated by PW-116 and PW-113 as being located at Petkovci).

¹⁸²⁰ PW-116, Ex. P02205, "92 bis transcript", KT. 2974 (14 Apr 2000).

¹⁸²¹ PW-113, Ex. P02280, "92 ter transcript", BT. 1417 (22 July 2003).

500. When a group of prisoners arrived at the field beside Petkovci Dam, it was illuminated by floodlights and full of dead bodies lying facedown with their hands tied.¹⁸²² The prisoners were ordered to form a line and members of the Bosnian Serb Forces shot at their backs and heads from a distance of about seven to ten metres.¹⁸²³ The prisoners fell upon the bodies.¹⁸²⁴ Two prisoners fell to the ground pretending to be dead,¹⁸²⁵ and watched as other prisoners were executed around them:

Well, they were still bringing out more groups in the second row to my right [...] And the bullets were whizzing past me. They were whistling past. I was just twitching from that, and I was waiting to be hit [...] I was thinking that I'd like to die.¹⁸²⁶

As members of the Bosnian Serb Forces checked the bodies to make sure that the prisoners were dead, one of them shot a prisoner in the head.¹⁸²⁷

(iii) Burials (15–16 July)

501. In the early morning hours of 15 July, a ULT and an excavator belonging to the Zvornik Brigade Engineering Company operated close to the Petkovci Dam.¹⁸²⁸ A loader scooped up the bodies and deposited them onto a large tractor.¹⁸²⁹ PW-116 believes that the bodies were taken somewhere in the vicinity of the Petkovci Dam.¹⁸³⁰ Later that same day, pursuant to a request from the Petkovci villagers, Stanišić authorised a truck belonging to the 6th Battalion to be used to assist with the disposal of bodies at the Petkovci School.¹⁸³¹

(iv) Forensic Evidence

502. In 1998, a primary disturbed mass grave site was exhumed near the Petkovci Dam.¹⁸³² The shape of several skull fragments was reported to be consistent with those seen in gunshot wounds to

¹⁸²² PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2975, 2984 (14 Apr 2000).

¹⁸²³ *Ibid.*, KT. 2975–2976 (14 Apr 2000).

¹⁸²⁴ *Ibid.*, KT. 2976–2977 (14 Apr 2000).

¹⁸²⁵ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1419–1421 (22 July 2003).

¹⁸²⁶ *Ibid.*

¹⁸²⁷ PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1420–1421 (22 July 2003).

¹⁸²⁸ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2978–2981 (14 Apr 2000); Ex. P00297, “Zvornik Brigade Engineering Company Daily Orders Logbook”, p. 15.

¹⁸²⁹ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2981, 2983–2984 (14 Apr 2000); PW-113, Ex. P02280, “92 *ter* transcript”, BT. 1423 (22 July 2003) (both PW-113 and PW-116 testifying that they saw the loader picking up the dead bodies. PW-116 was familiar with construction equipment and believed that what he saw was a bulldozer, type number 7, with a “Caterpillar”, with tracks and a ULT 160 loader manufactured in Kragujevac before the war).

¹⁸³⁰ PW-116, Ex. P02205, “92 *bis* transcript”, KT. 2982 (14 Apr 2000). PW-116 did not elaborate on why he thought this.

¹⁸³¹ Ostoja Stanišić, T. 11610–11612 (16 May 2007).

¹⁸³² Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”, p. 7; Ex. P01746, “Aerial, 5 July 1995”; Dean Manning, T. 18934 (10 Dec 2007) (showing an area of disturbed earth near the Petkovci Dam where exhumations were later conducted, and an aerial photograph of the same location taken on 5 July 1995 shows no such disturbance.).

the head.¹⁸³³ A twine ligature and a cloth which could have been used as a blindfold were also found in the grave.¹⁸³⁴ Evidence of gunshot wounds was noted.¹⁸³⁵ In addition, forensic evidence links five secondary mass graves along Liplje Road to the primary grave at the Petkovci Dam.¹⁸³⁶

503. Among the remains exhumed from the primary grave at Petkovci Dam and the secondary graves associated with it, 805 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.¹⁸³⁷ Taking all of the evidence into account, including the testimony and assessments of witnesses,¹⁸³⁸ the Trial Chamber finds that over 800 Bosnian Muslim males were executed at Petkovci on 15 July 1995.

(c) Ročević School and Kozluk (14–16 July)¹⁸³⁹

504. The village of Kozluk is situated on the banks of the Drina River about ten kilometres north of the Standard Barracks along the Konjević Polje-Zvornik-Bijeljina Road.¹⁸⁴⁰ The turn off to Ročević is an additional five to six kilometres north, and the Ročević School is located just 100 meters or so from this juncture.¹⁸⁴¹ The 2nd Battalion command was located in Malešić, approximately 14 kilometres from Ročević.¹⁸⁴²

¹⁸³³ Ex. P00640, "Report by Dr. Lawrence on the Dam Site, June 1998", p. 7.

¹⁸³⁴ *Ibid.*, p. 2.

¹⁸³⁵ Ex. P00640, "Report by Dr. Lawrence on the Dam Site, June 1998", p. 2 (stating that there were six definite gunshot wounds, two probable gunshot wounds and 15 possible gunshot wounds identified in the contents of 10 body bags).

¹⁸³⁶ Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, pp. 36–37. Liplje Road is approximately 14 kilometres from the Petkovci Dam. Ex. P00666, "Report by Richard Wright on exhumations in Eastern Bosnia in 1998", p. 20. The Liplje 2 grave contained the same type of rock found at the primary grave. Richard Wright, Ex. P02162, "92 *ter* transcript", KT. 3658 (26 May 2000); Ex. P00666, "Report by Richard Wright on exhumations in Eastern Bosnia in 1998", pp. 20, 24; Ex. P00640, "Report by Dr. Lawrence on the Dam Site, June 1998", p. 8 (noting that the pattern of weathering and crushing due to stone fragments at Liplje 2 was similar to the grave near the dam at Petkovci).

¹⁸³⁷ Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, pp. 36–37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

¹⁸³⁸ PW-116, Ex. P02205, "92 *bis* transcript", KT. 2968 (14 Apr 2000) (testifying that there were approximately 200 men in one of the classrooms of the Petkovci School).

¹⁸³⁹ The Indictment alleges that approximately 500 Bosnian Muslim males were detained in the Ročević School and then transported to a site near Kozluk and executed. Indictment, paras. 30.8.1, 30.10. The Trial Chamber notes that the victims detained at Ročević School are the same killed near Kozluk.

¹⁸⁴⁰ Ex. P01760, "Map of Kozluk"; Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", p. 1.

¹⁸⁴¹ PW-165, T. 9919–9921 (3 Apr 2007); Dragan Jović, T. 18059 (21 Nov 2007); Mile Janjić, T. 17949–17951 (20 Nov 2007); Ex. P02494, "Map of Ročević"; Ex. PIC00083, "Ex. P02494 marked by PW-165"; Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", p. 1.

¹⁸⁴² Srećko Aćimović, T. 12931 (20 June 2007).

(i) Detentions – Ročević School (14–15 July)

505. By the evening of 14 July, Bosnian Muslim men were detained inside the Ročević School, guarded by men from the Bratunac Brigade, including military police officers.¹⁸⁴³

506. Srećko Aćimović, Commander of the 2nd Battalion of the Zvornik Brigade, gave evidence before the Trial Chamber.¹⁸⁴⁴ **Nikolić** challenged the reliability of Aćimović's evidence, on the grounds that Aćimović was personally involved in the events at Ročević and parts of his testimony were inconsistent with other evidence before the Trial Chamber.¹⁸⁴⁵ **Nikolić** argues on this basis that Aćimović's evidence is unreliable and no probative value should be attached to it.¹⁸⁴⁶ The Trial Chamber has evaluated the evidence given by Aćimović in its totality, including the extensive cross-examinations conducted.¹⁸⁴⁷ Having seen and heard him, the Trial Chamber has considered not only the content of his testimony but also his demeanour and manner of delivery. Further, the Trial Chamber has assessed his testimony in the context of other evidence before it as well as examined its internal constancy. The Trial Chamber is of the view that throughout his testimony Aćimović sought to downplay his own involvement in the events at Ročević. The Trial Chamber believes that due to this motivation, Aćimović was not always truthful in his account of events nor fully forthcoming. It is further of the opinion that the inconsistencies uncovered between parts of Aćimović's testimony and other evidence before the Trial Chamber in most instances arise from his attempt to minimise his own responsibility, perhaps even to himself. However, the Trial Chamber does not agree with **Nikolić** that this renders Aćimović's evidence unreliable in its entirety. Many aspects of his evidence are consistent with other evidence and some is specifically corroborated.¹⁸⁴⁸ Further, several points were credibly adhered to despite intensive cross-examination. Therefore, the Trial Chamber considers that it must examine his evidence carefully on each salient issue in order to determine what weight, if any, to attribute to it and has accordingly done so in the analysis which follows.

¹⁸⁴³ Mile Janjić, T. 17951–17952, 17954, 17998 (20 Nov 2007); Mile Janjić, Ex. P02963, "92 *ter* transcript", BT. 9756 (24 May 2004); Dragan Jović, T. 18053, 18083 (21 Nov 2007). PW-138 told the Trial Chamber that the Bratunac Brigade Military Police were never responsible for guarding Bosnian Muslim prisoners, but later stated that he was unsure. In his prior testimony before the Tribunal in another case, PW-138 stated that the Bratunac Brigade Military Police did in fact assist in guarding the Bosnian Muslims in Bratunac. When this testimony was put to PW-138 in this case, he confirmed its accuracy. PW-138, T. 3834–3836 (private session) (8 Nov 2006), T. 3908 (private session) (9 Nov 2006). Having observed PW-138's testimony, in light of Mile Janjić's evidence that he saw Bratunac Brigade Military Police at the school, the Trial Chamber finds that Bratunac Brigade Military Police and soldiers guarded the prisoners at the Ročević School overnight on 14 July.

¹⁸⁴⁴ T. 12928 (20 June 2007)–13158 (22 June 2007) (including private sessions).

¹⁸⁴⁵ See **Nikolić** Final Brief, paras. 892–955.

¹⁸⁴⁶ *Ibid.*, paras. 892, 907, 955.

¹⁸⁴⁷ Srećko Aćimović, T. 12992 (21 June 2007)–13157 (22 June 2007) (including private sessions).

¹⁸⁴⁸ E.g., Mitar Lazarević, Dragan Jović, Veljko Ivanović.

507. Aćimović testified that he learned of the detentions at the Ročević School through civilians and also heard that some prisoners had been killed outside the Ročević School.¹⁸⁴⁹ Between 8:30 and 9:30 p.m. on 14 July, after visiting the school himself, Aćimović called the Zvornik Brigade Command at the Standard Barracks, and was told by the Duty Officer that **Pandurević** and Obrenović were absent, but that **Popović** had just arrived.¹⁸⁵⁰ Aćimović reported to **Popović** that prisoners were being detained in the Ročević School and there were reports that some had been killed. **Popović** told Aćimović not to be so dramatic as the prisoners would be exchanged the next morning.¹⁸⁵¹

508. Aćimović testified that between 1 and 2 a.m. on 15 July, he received a telegram from the Zvornik Brigade Command at the Standard Barracks that a platoon of soldiers should be dispatched to execute the prisoners at the Ročević School.¹⁸⁵² According to Aćimović, the telegram was coded and decoded by members of the 2nd Battalion.¹⁸⁵³ Aćimović discussed the telegram with two close associates in the 2nd Battalion, Vujo Lazarević, the Assistant Commander for Morale and Religious Affairs, and Mitar Lazarević, the General Affairs Officer.¹⁸⁵⁴ They all agreed that no personnel would be assigned to the task, and a reply telegram was sent to the Zvornik Brigade Command stating that the 2nd Battalion did not have any personnel available to execute the prisoners.¹⁸⁵⁵ Aćimović testified that a second coded telegram was received from the Zvornik Brigade Command, relaying the same order, and that a second reply was sent.¹⁸⁵⁶ Aćimović stated that he again discussed the second telegram with his two close associates, as well as company commanders or deputy commanders.¹⁸⁵⁷ However, Mitar Lazarević testified that there was only one telegram and one reply.¹⁸⁵⁸

509. **Nikolić** argued that Aćimović's evidence on this point should be rejected because (a) it was impossible for the 2nd Battalion Command to receive a coded telegram, and (b) other witnesses in

¹⁸⁴⁹ Srećko Aćimović, T. 12934–12935, 12941–12943 (20 June 2007), T. 13006 (21 June 2007), T. 13123–13124 (22 June 2007).

¹⁸⁵⁰ *Ibid.*, T. 12937–12940 (20 June 2007) (testifying that he made the telephone call from Kozluk on an "induction telephone" at his "former logistics unit"); Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007).

¹⁸⁵¹ Srećko Aćimović, T. 12940–12941 (20 June 2007), T. 13008–13009 (21 June 2007). Although Mitar Lazarević did not identify **Popović** as the person to whom Aćimović spoke, Mitar Lazarević said that Aćimović spoke to a "security man from the corps". Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007). Given the context and content of the conversation related, the Trial Chamber finds Aćimović's evidence as to the conversation reliable.

¹⁸⁵² Srećko Aćimović, T. 12944–12946 (20 June 2007); Mitar Lazarević, T. 13373–13374, 13386 (27 June 2007).

¹⁸⁵³ Srećko Aćimović, T. 12945 (20 June 2007), T. 13020–13021 (21 June 2007).

¹⁸⁵⁴ *Ibid.*, T. 12943, 12948 (20 June 2007).

¹⁸⁵⁵ *Ibid.*, T. 12943, 12946–12948 (20 June 2007). *See also*, Mitar Lazarević, T. 13375–13377, 13406 (27 June 2007).

¹⁸⁵⁶ Srećko Aćimović, T. 12947–12950 (20 June 2007).

¹⁸⁵⁷ *Ibid.*, T. 12948–12949 (20 June 2007), T. 13059 (21 June 2007), T. 13069–13070, 13141 (22 June 2007).

¹⁸⁵⁸ Mitar Lazarević, T. 13405 (26 June 2007).

the 2nd Battalion were not informed of the telegram, and therefore it must not have existed.¹⁸⁵⁹ The Trial Chamber notes the conflicting testimony regarding the mode and timing of delivery of the telegram, as well as the number of telegrams received.¹⁸⁶⁰ The Trial Chamber is of the opinion that how exactly the instruction was received is a peripheral issue, however. The essence of Aćimović's testimony is that an instruction was received from the Standard Barracks that a platoon should be dispatched to execute prisoners at Ročević School, and the Trial Chamber does not consider the inconsistencies sufficiently grave to cast doubt upon the existence of this instruction. The Trial Chamber also notes that this evidence is corroborated by Mitar Lazarević.¹⁸⁶¹ The essence of the evidence is further corroborated by the fact that soldiers from the 2nd Battalion were in fact sent to Ročević School, and the prisoners there were executed.¹⁸⁶² The Trial Chamber also notes that an analogous process was used to enlist the assistance of the 1st Battalion with the guarding of prisoners at the Kula School. First a telegram was sent from the Zvornik Brigade Command, which **Nikolić** followed up with a phone call.¹⁸⁶³ While the evidence does not indicate that killings were mentioned in either the telegram or phone call, the Trial Chamber considers that the similarity of the process provides some further corroboration for Aćimović's evidence.

510. Around 2:30 a.m., Aćimović received a call from **Nikolić**, who told him that the order "had come from above" and had to be carried out.¹⁸⁶⁴ **Nikolić** called him again at approximately 7 or 8 a.m. to find out whether Aćimović had executed the order.¹⁸⁶⁵ Aćimović told **Nikolić** that he

¹⁸⁵⁹ Nikolić Final Brief, paras. 920–943, referring, *inter alia*, to the evidence of Dragan Stevanović, the Commander of the communications unit of the 2nd Battalion, that "codes were not used" at the 2nd Battalion Command. Dragan Stevanović, T. 32856 (1 Apr 2009).

¹⁸⁶⁰ See also Mitar Lazarević, T. 13373–13376 (27 June 2007) (stating that the telegram was coded and signalmen of the 2nd Battalion, including Milisav Cvijetinović, would have decoded it and Milan Radić, Commander of the 3rd Company of the 2nd Battalion, was aware of it, and all those who were present at the Command of the 2nd Battalion read the telegram); Milisav Cvijetinović, T. 25835–25838, 25855, 25891 (17 Sept 2008) (stating that neither he nor the other communicators were able or qualified to code or decode telegrams, and he was unaware of any telegram requesting that soldiers participate in executions); Milan Radić, Ex. 3D00477, "92 *ter* statement" (6 Apr 2008), p. 2 (stating that he was in the field on 15 July and had no communication with the 2nd Battalion); Petko Tomić, T. 26181 (24 Sept 2008); Petko Tomić, Ex. 3D00478, "92 *ter* statement" (6 Apr 2008), p. 2 (Radić's deputy, stating that he never told Radić about the existence of such a telegram and said that he did not attend any meeting of company commanders at the 2nd Battalion Command during which such a telegram was discussed, nor was he ever informed about the telegram); Dragan Jović, T. 18086 (21 Nov 2007) (Aćimović's driver, stating that he never heard about the existence of any telegram); Dragan Stevanović, T. 32848–32849 (1 Apr 2009) (stating he never heard of a telegram ordering the 2nd Battalion to provide soldiers to participate in the execution of prisoners).

¹⁸⁶¹ Mitar Lazarević, T. 13399, 13421 (private session) (27 June 2007). T. 13373–13374 (27 June 2007) (stating that the telegram was coded and signalmen of the 2nd Battalion, including Milisav Cvijetinović, would have decoded it and Milan Radić, Commander of the 3rd Company of the 2nd Battalion, was aware of it, and all those who were present at the Command of the 2nd Battalion read the telegram).

¹⁸⁶² See *infra* paras. 517, 519–520.

¹⁸⁶³ See *infra* para. 527.

¹⁸⁶⁴ Srećko Aćimović, T. 12949–12951 (20 June 2007); Mitar Lazarević, T. 13377–13378, 13387–13388, 13392 (27 June 2007) (testifying that Aćimović never mentioned **Nikolić** but that after the reply telegram was sent, he heard Aćimović cursing and quarrelling with an unknown person over the phone). Noting this corroboration of Aćimović's evidence, the Trial Chamber accepts Aćimović's evidence on this point.

¹⁸⁶⁵ Srećko Aćimović, T. 12951 (20 June 2007).

would not assign anyone to execute the prisoners.¹⁸⁶⁶ **Nikolić** was angry and ordered Aćimović to meet him at the school later that morning.¹⁸⁶⁷

511. At around 9 or 10 a.m. on 15 July, Aćimović drove to the Ročević School where he saw at least a dozen corpses lying on the ground.¹⁸⁶⁸ **Nikolić** was not present, but Aćimović met **Popović** in front of the School.¹⁸⁶⁹ **Popović** shouted at Aćimović, asking him why he had not brought men as ordered.¹⁸⁷⁰ **Popović** threatened Aćimović that he would be held responsible for not following the order.¹⁸⁷¹ **Popović** also asked Aćimović about suitable execution sites and pressured him to ask the soldiers in the schoolyard to find volunteers willing to participate in the executions.¹⁸⁷² Aćimović approached Dragan Jović, a member of the 2nd Battalion who was at the Ročević School, and told him to inquire whether a certain “Drasković”, whose brother had been killed in the war, wanted to participate in executing the prisoners at Ročević School.¹⁸⁷³ Aćimović stated “[w]e have to do that. It’s an order, the order must be carried out”.¹⁸⁷⁴ Considering this evidence, combined with that of other witnesses present, particularly the corroboration as to **Popović’s** presence, and the subsequent acts of Aćimović and others as found, the Trial Chamber is satisfied that Aćimović’s description of this encounter with **Popović** is reliable.

512. During his meeting with Aćimović, **Popović** called the Standard Barracks, requesting that trucks be sent to Ročević.¹⁸⁷⁵ **Popović** also requested that either Trbić or Jasikovac be sent

¹⁸⁶⁶ Srećko Aćimović, T. 12951–12952 (20 June 2007).

¹⁸⁶⁷ *Ibid.*, T. 12952–12953, 12956 (20 June 2007).

¹⁸⁶⁸ *Ibid.*, T. 12957–12958 (20 June 2007); Mitar Lazarević, T. 13367, 13379 (26 June 2007) (testifying that Aćimović went to the Ročević School alone in order to inform those at the school that Aćimović would not dispatch any men to participate in the executions, and also that Aćimović told him that prisoners had been killed at the school on 14 July); Dragan Jović, T. 18049–18050 (21 Nov 2007) (testifying that he heard that there were dead bodies at the Ročević School on 14 July).

¹⁸⁶⁹ Srećko Aćimović, T. 12957–12958 (20 June 2007); Dragan Jović, T. 18055–18056 (21 Nov 2007) (testifying that at the Ročević School, he saw Aćimović talking to a “rather big” man with a shaven, round face who wore a uniform without a rank, and wore no gun or uniform hat. Jović did not recognise him as someone from the Zvornik Brigade).

¹⁸⁷⁰ *Ibid.*, T. 12958–12959, 12964–12965 (private session) (20 June 2007).

¹⁸⁷¹ *Ibid.*

¹⁸⁷² *Ibid.*, T. 12959–12961, 12964–12966 (private session) (20 June 2007), T. 13117 (private session) (22 June 2007) (testifying that when he told **Popović** that he would not provide men or participate in executing the prisoners, **Popović** cursed at him and said “Do you know what happened to the Serbs in Kravica and other Serb villages which were torched and which are around Srebrenica?”).

¹⁸⁷³ Dragan Jović, T. 18056–18057 (21 Nov 2007).

¹⁸⁷⁴ *Ibid.*, T. 18057–18081 (21 Nov 2007) (testifying that “Drasković” declined to participate in the execution of the prisoners); PW-174, T. 32701, 32706 (private session), 32716–32717 (private session), 32760 (private session) (23 Mar 2009) (testifying that he saw a man called Vukasin Drasković at the school, heading in the direction of the execution site, although PW-174 did not know if he fired at the prisoners). Contrary to Jović’s testimony, Aćimović testified that he did not recruit volunteers to participate in the executions. Srećko Aćimović, T. 13121 (private session) (22 June 2007). The Trial Chamber is satisfied that this is one instance where Aćimović was downplaying his role in the events and therefore accepts Jović’s evidence on this point.

¹⁸⁷⁵ Srećko Aćimović, T. 12965–12966 (private session) (20 June 2007).

urgently.¹⁸⁷⁶ At around 11 a.m. or noon, Jasikovac visited the Ročević School where he gave orders to Zvornik Brigade Military Police officers.¹⁸⁷⁷

513. **Popović** was angry when only a single truck arrived and said that the prisoners would all have to be killed near the school.¹⁸⁷⁸ **Popović** attempted to source additional trucks by engaging civilian drivers.¹⁸⁷⁹ Aćimović testified that he purposely did not make contact with any drivers.¹⁸⁸⁰ However, Dragan Jović and Veljko Ivanović, another member of the 2nd Battalion, testified that Aćimović ordered them to transport prisoners to the execution site near Kozluk.¹⁸⁸¹ The Trial Chamber, noting that Aćimović was motivated to diminish his own responsibility during the course of his testimony, accepts the evidence of Jović and Ivanović on this point.

514. At some point, a soldier came into the office and said someone had volunteered to participate in the executions.¹⁸⁸² This volunteer was not a member of the Zvornik Brigade, and **Popović** told him to go out and find other volunteers.¹⁸⁸³ Aćimović left the school early in the afternoon, leaving three soldiers from the 2nd Battalion there.¹⁸⁸⁴

515. Some other soldiers from the Zvornik Brigade were also present at the Ročević School.¹⁸⁸⁵ Members of the Zvornik Brigade Military Police, acting upon orders from their Commander

¹⁸⁷⁶ Srećko Aćimović, T. 12986–12987 (21 June 2007) (testifying that **Popović** requested “one of the two men who were located either in Petkovci or Orahovac”, and that after this event, Milorad Trbić told Aćimović that **Popović** had probably referred to either Trbić or Jasikovac). Noting this evidence, and also noting that Jasikovac later arrived at the Ročević School, the Trial Chamber concludes that **Popović** requested Trbić or Jasikovac.

¹⁸⁷⁷ PW-142, T. 6463 (private session) (29 Jan 2007); Dragoje Ivanović, T. 14553–14555 (30 Aug 2007) (testifying that Jasikovac went into the school for approximately 20 minutes and when he came out, they returned to the Standard Barracks, and that he did not see any other members of the Zvornik Brigade at the school, although he did see VRS soldiers there); Ex. P00296, “Vehicle Logbook for Opel Rekord P-4528”, p. 4 (recording that the Zvornik Brigade car travelled, *inter alia*, to Ročević on 14 July).

¹⁸⁷⁸ Srećko Aćimović, T. 12968–12969 (private session) (20 June 2007). *See also infra*, para. 1282, where at 10 a.m. on 15 July **Beara** is intercepted attempting to source 15–30 men, stating that “I don’t know what to do. I mean it Krle. There are still 3,500 “parcels” that I have to distribute and I have no solution.”

¹⁸⁷⁹ Srećko Aćimović, T. 12967–12970 (private session) (20 June 2007).

¹⁸⁸⁰ *Ibid.*, T. 12969–12970 (private session) (20 June 2007); T. 13105 (22 June 2007).

¹⁸⁸¹ Dragan Jović, T. 18058–18059 (21 Nov 2007); Veljko Ivanović, T. 18174, 18177–18178 (26 Nov 2007) (testifying that he told Aćimović he did not want to transport the prisoners to the execution site, but Aćimović shrugged his shoulders and told him it “has to be done”. Ivanović again refused, telling Aćimović that driving to the field would mean making a U-turn in his village, but Aćimović said “You have to do this [...] And I can’t watch this”). In stark contrast to the testimony of both Jović and Ivanović, Aćimović adamantly denied that he issued any orders to his men to participate in the execution and stated that it was **Popović** who gave such orders. Srećko Aćimović, T. 12957, 12968–12969 (private session) (20 June 2007).

¹⁸⁸² Srećko Aćimović, T. 12971 (private session) (20 June 2007).

¹⁸⁸³ Srećko Aćimović, T. 12971–12972 (private session) (20 June 2007), T. 13118 (private session) (22 June 2007) (testifying that he had never seen this individual before, and described the volunteer as 17 or 18 years old, wearing civilian clothes).

¹⁸⁸⁴ *Ibid.*, T. 12988–12989 (21 June 2007), T. 13109–13110 (private session) (22 June 2007) (testifying in private session that these men were Veljko Ivanović, Dragan Jović, and Đoko Nikolić).

¹⁸⁸⁵ PW-142, T. 6461–6462, 6487–6488 (29 Jan 2007) (testifying that these uniformed men were members of the Zvornik Brigade from the vicinity but he could not confirm which unit they belonged to); PW-143, T. 6545 (30 Jan 2007).

Jašikovac, guarded the prisoners¹⁸⁸⁶ and established a checkpoint just outside the school in order to prevent civilians from gaining access.¹⁸⁸⁷ At some point during the day, two vehicles passed the checkpoint carrying Zvornik Brigade security officers.¹⁸⁸⁸

516. Several dead bodies were seen outside the school.¹⁸⁸⁹ At one point a crowd of angry Bosnian Serb civilians gathered by the school.¹⁸⁹⁰ Later that day, the Zvornik Brigade Military Police put the prisoners detained at the Ročević School on trucks and transported them to a gravel pit near Kozluk, together with the dead bodies.¹⁸⁹¹

(ii) Killings – Kozluk (15 July)

517. On 15 July 1995, Veljko Ivanović, a member of the 2nd Battalion of the Zvornik Brigade, was stationed at Karakaj when he received an order to take three crates of ammunition for automatic rifles to the Ročević School.¹⁸⁹² Ivanović received this order from a man named Pantić.¹⁸⁹³ Ivanović delivered the ammunition to Aćimović at the school.¹⁸⁹⁴ Later that day, Dragan Jović, another member of the 2nd Battalion, was at the Ročević School when he learned from

¹⁸⁸⁶ PW-142, T. 6460 (private session), 6461 (29 Jan 2007); PW-143, T. 6542–6543, 6545 (30 Jan 2007) (testifying that the VRS soldiers belonged to one of the battalions of the Zvornik Brigade, saying “That was my opinion. It did not even occur to me that there were soldiers from other brigades there”).

¹⁸⁸⁷ PW-165, T. 9905, 9909–9913, 9919–9921 (3 Apr 2007), T. 9988, 10002 (4 Apr 2007); Ex. P02494, “Map of Ročević”; Ex. PIC00083, “Map P02494 marked by the witness”; Ex. 3DIC00085, “Map of Ročević School marked the witness”; PW-142, T. 6461 (29 Jan 2007); PW-143, T. 6542–6543, 6545 (30 Jan 2007). PW-165 testified that he received this order on 11 July. PW-165, T. 9913, 9916 (3 Apr 2007). However, based upon the testimony of PW-142 and PW-143 that they received this assignment the day after they were stationed at the Grbavci School, together with the Zvornik Brigade Military Police attendance roster detailed below, the Trial Chamber concludes that PW-165 was mistaken about the date and was actually present at Ročević School with the other men on 15 July. *See* PW-142, T. 6460–6461, 6478 (29 Jan 2007); PW-143, T. 6542–6543, 6550 (30 Jan 2007). The Prosecution alleges that the Zvornik Brigade Military Police attendance roster for July 1995 was altered to change the location of six officers from “R” to “T”. Stevo Kostić, T. 26053 (22 Sept 2008); Ex. P00354, “Zvornik Brigade Military Police attendance roster, July 1995”. Stevo Kostić, the administrative clerk of the Zvornik Brigade Military Police Company, testified that he was responsible for maintaining the attendance roster and that, although he made some alterations to the records, it was not done with the intention to hide information. Moreover, he testified that the letter “R” does not appear on the exhibit in his list of abbreviations. Stevo Kostić, T. 25982, 26015–26016 (22 Sept 2008), T. 26070 (23 Sept 2008). Kostić also testified that the designation of the letter “T” was used generally to denote that a soldier was in the field. *Ibid.*, T. 26025, 26043 (22 Sept 2008). The Trial Chamber considers that there is no need to decide this issue—regardless of whether the attendance roster was altered; either way the evidence indicates that Zvornik Brigade military police officers were in the field.

¹⁸⁸⁸ PW-165, T. 9923 (3 Apr 2007), T. 9961 (4 Apr 2007). A vehicle log, signed out to Milorad Birčaković, records five trips to Ročević on 15 July. Ex. P00296, “Vehicle Logbook for Opel Rekord P-4528”, p. 4. *See also infra*, para. 1370.

¹⁸⁸⁹ PW-142, T. 6461–6462, 6487 (29 Jan 2007).

¹⁸⁹⁰ *Ibid.*, T. 6461, 6467–6468 (29 Jan 2007) (testifying that he thought the civilians wanted to take revenge on the prisoners at the school because he heard someone shout “Let me come in and kill someone”); PW-165, T. 9911–9912 (3 Apr 2007) (testifying that there was a group of 20 to 30 angry Bosnian Serb civilians at the school).

¹⁸⁹¹ PW-142, T. 6461–6462, 6464 (29 Jan 2007).

¹⁸⁹² Veljko Ivanović, T. 18176–18179 (26 Nov 2007).

¹⁸⁹³ *Ibid.*, T. 18176–18177 (26 Nov 2007). Pantić was head of the transportation pool in the Standard Barracks. *Ibid.*, T. 18178 (26 Nov 2007).

¹⁸⁹⁴ Veljko Ivanović, T. 18177 (26 Nov 2007).

Aćimović that the prisoners detained there were to be executed.¹⁸⁹⁵ Jović and Veljko Ivanović transported prisoners to the execution site in the afternoon.¹⁸⁹⁶

518. The prisoners were loaded into trucks that came from the 2nd Battalion, accompanied by two to four Military Police officers who had assisted with guard duty at the school.¹⁸⁹⁷ Jović and Ivanović participated in the transportation of three or four truckloads of prisoners using the 2nd Battalion's truck.¹⁸⁹⁸ The prisoners were blindfolded and their hands were tied.¹⁸⁹⁹ Ivanović stated:

They were half dead, exhausted, without water or bread. Nobody — nobody begged for their lives. And this worries me greatly. Nobody said, "Spare my life".¹⁹⁰⁰

519. At a gravel pit in Kozluk, the military police unloaded the prisoners.¹⁹⁰¹ A group of Bosnian Serb men—at least one of whom was a member of the Zvornik Brigade Military Police—shot the prisoners.¹⁹⁰² Ivanović described the executions as disorganised and confused, and at the time he wondered if the shooters were going to end up hitting each other.¹⁹⁰³ Some of the wounded fell into the Drina River and clung to shrubbery on the riverbank while being shot at.¹⁹⁰⁴ The wounded who tried to escape were chased down and beaten.¹⁹⁰⁵ A 12–14 year old boy was among the prisoners,

¹⁸⁹⁵ Dragan Jović, T. 18048, 18051, 18056–18057 (21 Nov 2007).

¹⁸⁹⁶ *Ibid.*, T. 18063 (21 Nov 2007) (stating that he transported prisoners from 2 or 3 p.m. until 6 or 7 p.m.); Veljko Ivanović, T. 18179 (26 Nov 2007) (stating that he arrived at Ročević School at around 11 a.m., and transportation to the execution site commenced some time after this and concluded by 2.30 or 3 p.m.); PW-142, T. 6461–6462, 6464–6465 (29 Jan 2007) (stating that he arrived at Ročević School at around 11 a.m., and transportation to the execution site commenced some time after this and concluded by nightfall).

¹⁸⁹⁷ Dragan Jović, T. 18059–18060, 18083 (21 Nov 2007) (testifying that he did not know which unit the military police officers belonged to). Members of both the Bratunac Brigade Military Police and the Zvornik Brigade Military Police were seen at the Ročević school that day. *See supra*, paras. 505, 512, 515.

¹⁸⁹⁸ Dragan Jović, T. 18061–18062 (21 Nov 2007) (testifying that he transported prisoners from Ročević to Kozluk two or three times with a truck, which could carry approximately 10 prisoners; Veljko Ivanović, T. 18191 (private session) (26 Nov 2007). *Cf.* Srećko Aćimović, T. 12930–12931 (20 June 2007); T. 13110, 13118–13119 (private session) (22 June 2007) (denying that certain members of his Battalion whom Veljko Ivanović named as participating in the transportation of prisoners, but acknowledging that when he left the Ročević School Veljko Ivanović, Dragan Jović and Đoko Nikolić remained behind and he assumed they participated in transportation of the prisoners).

¹⁸⁹⁹ Veljko Ivanović, T. 18182 (private session) (26 Nov 2007).

¹⁹⁰⁰ *Ibid.*, T. 18218 (private session) (26 Nov 2007).

¹⁹⁰¹ Dragan Jović, T. 18059–18060 (21 Nov 2007).

¹⁹⁰² Veljko Ivanović, T. 18189–18192, 18195, 18222 (private session) (26 Nov 2007); Dragan Jović, T. 18060 (21 Nov 2007); PW-174, T. 32701–32702, 32707–32713 (partially private session), 32720, 32758 (private session), 32762 (private session) (23 March 2009) (stating that he was present at the execution site as the killings took place, and he saw 15–20 military policemen at the site, one of whom he recognized as a Zvornik Brigade Military Police officer named "Čigo". "Čigo" had a gun, but PW-174 did not see him shoot it. PW-174 described "Čigo" as tall, dark and skinny, and stated "Čigo was not in Srećko's battalion but, rather, in the Zvornik Brigade". PW-174 stated that he became acquainted with Čigo two or three years after July 1995, and he now knows him well. PW-174 also stated that Dragan Jović handed him a gun and said "What are you doing here? Why did he bring you here, just to stand around?", in response to which, PW-174 fired a gun into the hole where prisoners were being held). The Trial Chamber is satisfied, on the basis of the evidence of PW-174, that at least one member of the Zvornik Brigade Military Police was involved in the executions at Kozluk. *See also* Milorad Birčaković, T. 11049 (7 May 2007); PW-142, T. 6489–6490 (29 Jan 2007).

¹⁹⁰³ Veljko Ivanović, T. 18189–18191 (private session), 18222 (private session) (26 Nov 2007).

¹⁹⁰⁴ *Ibid.*, T. 18224 (private session) (26 Nov 2007).

¹⁹⁰⁵ *Ibid.*, T. 18189 (private session) (26 Nov 2007).

“begging to be spared his life.”¹⁹⁰⁶ At first, none of the men were willing to shoot the boy, however eventually an executioner was found and the boy was killed.¹⁹⁰⁷

520. Sometime later, Jović transported soldiers and more prisoners from the Ročević School to the gravel pit, and noticed that there were more soldiers present than earlier, in addition to the military police.¹⁹⁰⁸

(iii) Burials (16 July)

521. On the morning of 16 July, Dragan Jokić, the Duty Officer and Chief of Engineering for the Zvornik Brigade, ordered Damjan Lazarević, the Commander of the 2nd Platoon of the Zvornik Brigade Engineering Company, to go to Kozluk to bury the bodies.¹⁹⁰⁹ The same morning, Jokić also ordered two other members of the Zvornik Brigade Engineering Company, Miloš Mitrović and Nikola Rikanović, to travel to Kozluk with an excavator.¹⁹¹⁰ The execution site had pits filled with bodies and broken glass from the nearby glass factory.¹⁹¹¹ When Mitrović and Rikanović arrived, Lazarević showed them the bodies and told them to cover them using a skip, however it turned out to be too small for the task.¹⁹¹² Later, a civilian named Rade Bosković arrived with a ULT-220 loader and Lazarević instructed him to cover the bodies.¹⁹¹³

522. The Trial Chamber notes the significant involvement of elements of the Zvornik Brigade in the events at Ročević School and Kozluk. While the Bosnian Muslim males were in detention at the

¹⁹⁰⁶ Veljko Ivanović, T. 18190 (private session) (26 Nov 2007).

¹⁹⁰⁷ *Ibid.*; Ex. P04494 (confidential), p. 176 (recording that the remains of a boy aged 14 in 1995 were found in the Kozluk grave).

¹⁹⁰⁸ Dragan Jović, T. 18060–18062, 18065–18066 (21 Nov 2007) (testifying that he did not know or recognise these soldiers, and that he did not know whether they were from the 2nd Battalion).

¹⁹⁰⁹ Damjan Lazarević, T. 14436, 14431, 14435–14436, 14454–14455 (29 Aug 2007) (testifying that this order was conveyed by either Slavko Bogičević, the Deputy Commander of the Zvornik Brigade Engineering Company, or Vojkan Šekonjić, the Company Desk Officer); Jean-René Ruez, T. 1507–1508 (12 Sept 2006) (testifying that an aerial image indicates that the Kozluk mass gravesite was created between 5 and 17 July 1995); Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 192; Ex. P00649, “Summary of forensic evidence – execution points and mass graves, 16 May 2000”, Annex A, p. 48; Dean Manning, T. 18933–18934, 18976 (10 Dec 2007); Ex. P01761, “Aerial Kozluk, 5 and 17 July 1995”; Ex. P01763, “Aerial Kozluk, 7 and 27 Sept 1995”.

¹⁹¹⁰ Miloš Mitrović, Ex. P02259, “92 bis transcript”, BT. 5603, 5612 (3 Dec 2003); Ex. P00295, “Zvornik Brigade July 1995 vehicle work log book”, pp. 489–490 (indicating that a Torpedo Excavator was digging trenches in Kozluk for eight hours on 16 July. Mitrović identified this Torpedo Excavator as the Skip he took to Kozluk); Damjan Lazarević, T. 14435, 14454–14455 (29 Aug 2007).

¹⁹¹¹ Damjan Lazarević, T. 14455–14457 (29 Aug 2007) (describing the location of the bodies as near the Drina River where gravel was being dug for the construction industry and broken glass from the Vitinka Kozluk mineral water plant was taken to be dumped); Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, p. 4 (describing the exhumation he conducted as occurring in an area of rubbish dumping and gravel extraction alongside the Drina River).

¹⁹¹² Miloš Mitrović, Ex. P02259, “92 ter transcript”, BT. 5604–5609 (3 Dec 2003); Damjan Lazarević, T. 14456–14457 (29 Aug 2007), T. 14522 (30 Aug 2007).

¹⁹¹³ Miloš Mitrović, Ex. P02259, “92 ter transcript”, BT. 5606–5607, 5609–5610 (3 Dec 2003), T. 5630–5631 (4 Dec 2003); Damjan Lazarević, T. 14458–14459 (29 Aug 2007), T. 14522 (30 Aug 2007).

Ročević School, Aćimović was present with members of the 2nd Battalion¹⁹¹⁴ and Jašikovac was present with members of the Zvornik Brigade Military Police.¹⁹¹⁵ Both men issued orders to their subordinates.¹⁹¹⁶ Members of the 2nd Battalion transported prisoners from the school to the execution site.¹⁹¹⁷ At least one member of the Zvornik Brigade Military Police was involved in the execution,¹⁹¹⁸ and the Zvornik Brigade Engineering Company buried the bodies.¹⁹¹⁹

(iv) Forensic Evidence

523. A primary disturbed mass gravesite was exhumed in Kozluk in 1999.¹⁹²⁰ The bodies were dressed in civilian clothing, all for whom sex could be determined were male and at least 237 individuals were concluded to have died as a result of gunshot injuries.¹⁹²¹ Hundreds of shell casings were found at the site and forensic evidence established that many of the bodies had been shot at the gravesite.¹⁹²² Blindfolds were located with 44 bodies and ligatures were still binding 140 bodies.¹⁹²³ In addition, forensic evidence links six secondary graves at Čančari Road to the primary gravesite at Kozluk.¹⁹²⁴

524. Among the remains exhumed from the primary grave at Kozluk and the secondary graves associated with it, 1,040 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.¹⁹²⁵ Taking all of the evidence into account, including this forensic evidence and the estimates of an eyewitness,¹⁹²⁶ the Trial Chamber concludes that over 1,000 males were executed at Kozluk on 15 July 1995.

¹⁹¹⁴ Srećko Aćimović, Dragan Jović and Veljko Ivanović testified that they were present. *Supra*, paras. 511, 517.

¹⁹¹⁵ See *supra* para. 512.

¹⁹¹⁶ Jašikovac ordered his men to guard the prisoners, Aćimović ordered his men to find drivers. *Supra*, paras. 512–513.

¹⁹¹⁷ See *supra*, para. 518.

¹⁹¹⁸ See *supra*, para. 519.

¹⁹¹⁹ See *supra*, para. 521.

¹⁹²⁰ Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, pp. 3–4.

¹⁹²¹ *Ibid.*, p. 2; Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist”, pp. 6, 10–12. See also Prosecution Adjudicated Facts Decision, Annex, Facts, 453–454.

¹⁹²² Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, p. 11, 13–14; Richard Wright, Ex. P02162, “92 ter transcript”, KT. 3687–3688, 3716–3717 (29 May 2000); Richard Wright, T. 7507–7509 (21 Feb 2007).

¹⁹²³ Ex. P00575, “ICTY Operations in Bosnia-Herzegovina 1999 Season: Report of the Chief Pathologist”, p. 7.

¹⁹²⁴ The secondary gravesites associated with Kozluk are Čančari Road 2–5, 7 and 13. Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 36–37. These links included broken green bottle glass, labels from the Vitinka soft drink bottling factory in Kozluk, and soil with patches of imported clay containing red ceramics and clinker. Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 Feb 2000”, p. 14; Prosecution Adjudicated Facts Decision, Annex, Fact 461.

¹⁹²⁵ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, pp. 36–37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

¹⁹²⁶ PW-142, T. 6478–6479 (private session) (29 Jan 2007) (testifying that approximately 1,000 prisoners were detained at the school, acknowledging that the estimate was difficult, but that he thought that the number of prisoners at Ročević was the same as at Orahovac, where he understood that 1,000 prisoners were detained).

(d) Pilica (14–17 July)¹⁹²⁷

525. Pilica is a small village in the Zvornik municipality located approximately 25 kilometres north of the Standard Barracks along the Konjević Polje-Zvornik-Bijeljina Road.¹⁹²⁸ The Pilica Cultural Centre is located on this road in the centre of town.¹⁹²⁹ To reach the Kula School at Pilica, one must turn off the Konjević Polje-Zvornik-Bijeljina Road approximately one kilometre south of Pilica, and travel two or three kilometres along this road past small plots of farmland until one reaches a two storey peach-coloured building, the Kula School.¹⁹³⁰ The headquarters of the 1st Battalion of the Zvornik Brigade was in Manojlovići, in the village of Lokanj, which is situated between two and four kilometres west of Pilica.¹⁹³¹

526. In late 1994, **Pandurević** requisitioned six hectares of land near Pilica from a company called Agroprom in order to produce food for the 1st Battalion.¹⁹³² This plot of land came to be known as the Branjevo Military Farm,¹⁹³³ and is located approximately two to three kilometres from Pilica, down a road which turns off the Konjević Polje-Zvornik-Bijeljina Road.¹⁹³⁴ In July 1995 the Branjevo Military Farm was under the authority and control of the 1st Battalion of the Zvornik Brigade.¹⁹³⁵

(i) Detentions and Killings – Kula School (14–15 July)

527. On the morning of 14 July 1995, Momir Pelemiš, the Deputy Commander of the 1st Battalion, announced to members of the command that “somebody at the Brigade” had informed him that a group of 200 Bosnian Muslim prisoners were to be brought to the Kula School.¹⁹³⁶ A telegram from the Zvornik Brigade Command at the Standard Barracks ordered the 1st Battalion

¹⁹²⁷ The Indictment alleges that 1,200 Bosnian Muslim males were transported from Bratunac to the Kula School, where they were detained. The “remaining members” of this group were transported to the Branjevo Military Farm and executed. Five hundred men who had surrendered or been captured from the column of men retreating from Srebrenica or been separated at Potočari were killed inside the Pilica Cultural Centre.

¹⁹²⁸ Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1.

¹⁹²⁹ Zoran Radosavljević, T. 22118, 22131–22132 (11 June 2008); Ex. 1D1C00203, “Map of Zvornik municipality marked by the witness”; Ex. P01820, “Video of Pilica Cultural Centre”; Jean René Ruez, T. 1534–1535 (12 Sept 2006).

¹⁹³⁰ Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, pp. 1, 197–208.

¹⁹³¹ Slavko Perić, T. 11369, 11371 (11 May 2007); Rajko Babić, T. 10214–10215 (18 Apr 2007); Radivoje Lakić, T. 10264–10265, 10286–10287 (19 Apr 2007).

¹⁹³² Radivoje Lakić, T. 10265–10268, 10297 (19 Apr 2007) (testifying, *inter alia*, that the 1st Infantry Battalion was also at times referred to as the Pilica–Lokanj Battalion).

¹⁹³³ *Ibid.*, T. 10265, 10293–10294 (19 Apr 2007).

¹⁹³⁴ Ex. P02103, “Documents tendered with statement of witness Jean-René Ruez”, p. 1; Ahmo Hasić, T. 1200–1201 (6 Sept 2006) (testifying that Branjevo Military Farm was two and a half kilometres from Pilica).

¹⁹³⁵ Prosecution Adjudicated Facts Decision, Annex, Fact 439; Radivoje Lakić, T. 10264–10267 (19 Apr 2007) (testifying that he was captain first class of the 1st Battalion of the Zvornik Brigade and was in charge of a work platoon on Branjevo Military Farm. His Battalion Commander was Milan Stanojević).

¹⁹³⁶ Slavko Perić, T. 11369, 11371, 11375–11376 (11 May 2007) (quotation at T. 11375).

to prepare the Kula School for the arrival of between 100 and 200 prisoners.¹⁹³⁷ Approximately an hour after the telegram arrived, **Nikolić** called Slavko Perić, the Assistant Commander for Intelligence and Security in the 1st Battalion, and told him “something very similar to what was written in the telegram” and that Perić should go to the Kula School to ensure that there were no problems with local civilians.¹⁹³⁸ Between one and two hours after receiving this order, around 10 to 15 members of the 1st Battalion secured the Kula School in preparation for the arrival of the prisoners.¹⁹³⁹

528. In the afternoon of 14 July after the members of the 1st Battalion arrived at the Kula School, groups of Bosnian Muslim prisoners began to arrive in buses and trucks guarded by members of the Bosnian Serb Forces who were not from the 1st Battalion.¹⁹⁴⁰ Together with these men, members of the 1st Battalion undertook guard duties at the school.¹⁹⁴¹

¹⁹³⁷ Rajko Babić, T. 10214–10217, 10241 (18 Apr 2007) (testifying that he reviewed the telegram and that when he returned to the Battalion Command on 16 July, he checked the logbook and found that the page of the logbook containing “the order”—presumably, the initial order to prepare the school—was missing. No one would tell Babić how or why the page was missing); Slavko Perić, T. 11375–11378 (11 May 2007) (testifying that he was aware of a telegram to this effect); Ex. 3D00131, “Zvornik Brigade Duty Officer Logbook, 13 to 15 July 1995”, pp. 7–15 (containing no information about an order to prepare any school for the arrival of prisoners on 14 July, and nothing on the scanned original to indicate that a page relating to 14 July has been ripped out); Pero Petrović, Ex. P02470 (confidential), BT. 5499–5500, 5503–5504 (2 Dec 2003) (testifying that he was told by Perić that an order had been received to prepare the premises of Kula School to receive prisoners. Petrović then called the Zvornik Brigade Command and spoke to Dragan Jokić, asking him what was happening in Pilica. Jokić responded that the prisoners were none of Petrović’s concern and that Petrović should mind his own business because the situation was being taken care of). *See also supra*, para. 508 (stating that between 1 and 2 a.m. on 15 July, the Zvornik Brigade Command sent a telegram to the 2nd Battalion ordering a platoon to be dispatched to execute prisoners at Ročević School).

¹⁹³⁸ Slavko Perić, T. 11375–11378 (11 May 2007) (quotation at T. 11376). Perić said that what **Nikolić** told him did not constitute an order, although not much later during his testimony he classified the instruction from **Nikolić** as an order. *Ibid.*, T. 11378, 11380 (11 May 2007).

¹⁹³⁹ The men included Slavko Perić, Rajko Babić, the Officer for General Affairs, and Dragan Pantić, the Assistant Battalion Commander for Morale and Information. Slavko Perić, T. 11380–11381 (11 May 2007); Rajko Babić, T. 10214, 10219–10220 (18 Apr 2007). *See supra*, para. 494 (stating that on 14 July Jokić called Marko Milošević, the Deputy Commander of the 6th Battalion of the Zvornik Brigade, in Petkovci and informed him that Bosnian Muslim prisoners would be brought to the Petkovci School).

¹⁹⁴⁰ Slavko Perić, T. 11381–11382 (11 May 2007); Rajko Babić, T. 10221–10224, 10232–10233 (18 Apr 2007). Perić did not know the soldiers or who commanded them. Slavko Perić, T. 11381–11382, 11389, 11396 (11 May 2007). Babić did not know where they were from, adding that he was sure that the soldiers were not from the 1st Battalion of the Zvornik Brigade, but he did not know whether they were from another unit of the Zvornik Brigade. Rajko Babić, T. 10223, 10250 (18 Apr 2007).

¹⁹⁴¹ Slavko Perić, T. 11383–11385 (11 May 2007). Perić testified as follows about the role of the 1st Battalion: “[...] as to what their actual task was, it was to prevent any contact with the locals. [...] Q. Are you suggesting that the men were protecting the prisoners from the local population? A. Yes. Q. Were the men also preventing the prisoners from escaping? A. Well, it’s a complex issue, in fact. The sole authority over these people was exerted by the men who escorted them. They had the power to take them out at any point and do whatever they wished with them. We were there simply as silent observers.” *Ibid.*, T. 11385 (11 May 2007). The Prosecution argues that Perić’s explanation is “utterly implausible”, and it is reasonable to infer that the 1st Battalion was there to prevent the prisoners from escaping. Prosecution Final Brief, paras. 892–893. Rajko Babić testified that a prisoner was shot attempting to escape, regarding which he said: “And then probably our soldiers prevented him from escaping and shooting at him as he was fleeing and they probably hit him in the leg.” Rajko Babić, T. 10229 (18 Apr 2007). The Trial Chamber accepts the Prosecution’s argument and finds that the role of the 1st Battalion was to guard the prisoners to ensure that they did not escape.

529. The prisoners were placed in the school gymnasium and classrooms, while some prisoners remained on buses parked outside the school.¹⁹⁴² Conditions were very difficult because of overcrowding.¹⁹⁴³ Food and water were scarce, and no medical treatment was provided.¹⁹⁴⁴ Prisoners were beaten when they went to the toilet, so they relieved themselves where they stood.¹⁹⁴⁵ Throughout the night screaming, moaning and bursts of gunfire could be heard, and some men were taken outside, never to return.¹⁹⁴⁶ One prisoner sustained a gunshot wound to the leg as he attempted to escape.¹⁹⁴⁷

530. At around 10 or 11 a.m. on 15 July, Perić visited the Standard Barracks to discuss the lack of cooperation from the Zvornik Brigade Command regarding a request to relocate the prisoners at the Kula School.¹⁹⁴⁸ Perić discussed the situation at the School with four or five officers, including Dragan Jokić, describing it in “even more dramatic terms than it actually was”.¹⁹⁴⁹ Perić described the atmosphere at the meeting as tense, and found the officers to be disinterested in what he was saying.¹⁹⁵⁰

531. In the evening of 15 July, 15–20 1st Battalion soldiers arrived at the Kula School to take over duty from the 1st Battalion soldiers who had been there overnight.¹⁹⁵¹ Also on 15 July, one dead body was seen on the ground outside the Kula School,¹⁹⁵² and nine dead bodies wearing civilian clothes were found approximately 50 metres from the Kula School.¹⁹⁵³ These bodies were loaded onto a truck by the work Platoon of the 1st Battalion of the Zvornik Brigade.¹⁹⁵⁴ The Trial

¹⁹⁴² Rajko Babić, T. 10221–10227 (18 Apr 2007); Slavko Perić, T. 11393 (11 May 2007), T. 11429–11430 (14 May 2007); Ahmo Hasić, T. 1194 (6 Sept 2006) (testifying that the men with whom he was detained in Pilica ranged from 15 to 80 years of age).

¹⁹⁴³ PW-117, Ex. P02207, “92 bis transcript”, KT. 3036 (14 Apr 2000).

¹⁹⁴⁴ *Ibid.*, KT. 3032–3033, 3036–3037 (14 Apr 2000) (testifying that the water that he and four others had volunteered to collect was insufficient for all the prisoners and that he was given some paté and a piece of bread after he had fainted, but he did not see anyone else given food on the night of 14 July); Ahmo Hasić, T. 1195 (6 Sept 2006) (testifying that at one point bite-size pieces of a loaf of bread were given to some prisoners).

¹⁹⁴⁵ Ahmo Hasić, T. 1193 (6 Sept 2006).

¹⁹⁴⁶ PW-117, Ex. P02207, “92 bis transcript”, KT. 3033–3036; 3038, 3050 (14 Apr 2000); Ahmo Hasić, T. 1192–1195 (6 Sept 2006).

¹⁹⁴⁷ Rajko Babić, T. 10229 (18 Apr 2007).

¹⁹⁴⁸ Slavko Perić, T. 11392, 11395 (11 May 2007).

¹⁹⁴⁹ *Ibid.*, T. 11395–11397, 11399–11401 (11 May 2007) (quotation at T. 11397) (testifying that he knew most of the officers in the Brigade by sight, and one of the officers present may have been Jokić. He also stated: “I think that one of them left the office and came back quite soon, and he said that Major Obrenović -- whether he had actually seen him or spoken to him, I don’t know, but he relayed to us that there was a total lack of interest in that problem”); PW-168, T. 15869–15871 (26 Sept 2007) (testifying that Obrenović returned to the Zvornik Brigade Command on 15 July at around 11 am., and was told by Jokić that there were huge problems guarding and burying the prisoners). Based upon the testimony of PW-168 and Slavko Perić, the Trial Chamber is satisfied that Dragan Jokić was one of the officers present at this meeting.

¹⁹⁵⁰ Slavko Perić, T. 11395–11396, 11399–11400 (11 May 2007).

¹⁹⁵¹ Rajko Babić, T. 10231–10233 (18 Apr 2007).

¹⁹⁵² Milorad Birčaković, T. 11046 (7 May 2007).

¹⁹⁵³ Jevto Bogdanović, T. 11323–11324, 11344 (10 May 2007).

¹⁹⁵⁴ *Ibid.*, T. 11323–11324, 11344 (10 May 2007).

Chamber finds that between 14 and 15 July 1995, ten Bosnian Muslim men detained at the Kula School near Pilica were killed.

(ii) Killings – Branjevo Military Farm (16 July)

532. On the morning of 16 July, Pelemiš was informed by the Zvornik Brigade Command at the Standard Barracks that someone would be coming to take the prisoners at the Kula School away.¹⁹⁵⁵

533. Around noon, **Beara** and **Popović** arrived at the Kula School.¹⁹⁵⁶ An intercept from 16 July at 1:58 p.m. records the Duty Officer of the Zvornik Brigade telling the Duty Officer of the Drina Corps that **Popović** required 500 litres of fuel to be delivered to Pilica.¹⁹⁵⁷ Also at 11:11 a.m., a conversation took place between **Beara**, Milorad Trbić and the Drina Corps Duty Officer in which conducting a “triage” on certain prisoners was discussed.¹⁹⁵⁸

534. That same day, Jevto Bogdanović, a member of the work platoon in the 1st Battalion, was ordered by Radivoje Lakić, the Commander of the same platoon and the director of Branjevo Military Farm,¹⁹⁵⁹ to go to the Kula school.¹⁹⁶⁰ When he arrived, Bogdanović was ordered by the soldiers present to stand guard so that the prisoners, who were all wearing civilian clothes, could be loaded onto buses.¹⁹⁶¹ The prisoners were taken from the school in groups of around eight, had their hands tied behind their backs—some groups were also blindfolded—and were loaded onto buses and transported to the Branjevo Military Farm.¹⁹⁶² As he was led out of the school, Ahmo Hasić saw a dead body lying in a pool of blood on the ground floor of the school.¹⁹⁶³

535. Brano Gojković was in charge of a unit of the 10th Sabotage Detachment of the Main Staff, which was directly subordinated to the Administration for Intelligence.¹⁹⁶⁴ On the morning of

¹⁹⁵⁵ Slavko Perić, T. 11408 (11 May 2007) (testifying that Pelemiš called him and relayed this information to him. Pelemiš did not say how the prisoners would be transported, nor where they would be transported to).

¹⁹⁵⁶ Slavko Perić, T. 11414 (11 May 2007). The reliability of Perić’s identification will be discussed at *infra*, para. 1125, fn. 3674. The Trial Chamber notes an entry in the Zvornik Brigade Duty Officer Notebook made between 4:00 a.m. and 6:00 a.m. on 16 July, recording that the 1st Battalion requested 50 litres of oil, 20 litres of gasoline and 10 crates of ammunition for “transport of troops to Kula”. Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 37. For further analysis of this entry, see *infra*, para. 1372.

¹⁹⁵⁷ Ex. P01189a, “Intercept, 16 July 1995, 13:58 hours”.

¹⁹⁵⁸ Ex. P01187a, “Intercept, 16 July 1995, 11:11 hours”. This conversation is analysed in more detail at *infra*, para. 1285.

¹⁹⁵⁹ Radivoje Lakić, T. 10264–10265, 10267 (19 Apr 2007); Ex. P02506, “Zvornik Brigade document, signed by Vinko Pandurević, 7 Dec 1994”.

¹⁹⁶⁰ Jevto Bogdanović, T. 11314–11315, 11319, 11343 (10 May 2007) (testifying that his work platoon was part of the 1st Battalion, and that the order was conveyed to him by Stevo Ostojić and Rajko Jurosević).

¹⁹⁶¹ *Ibid.*, T. 11320–11322 (10 May 2007).

¹⁹⁶² PW-117, Ex. P02207, “92 bis transcript”, KT. 3040–3041 (14 Apr 2000); Ahmo Hasić, T. 1192–1195, 1200–1201 (6 Sep 2006); Rajko Babić, T. 10234–10235 (18 Apr 2007).

¹⁹⁶³ Ahmo Hasić, T. 1195–1196 (6 Sep 2006).

¹⁹⁶⁴ See Dražen Erdemović, T. 10963 (4 May 2007).

16 July, Gojković ordered eight of his men¹⁹⁶⁵ to execute busloads of Bosnian Muslims due to arrive at the Branjevo Military Farm.¹⁹⁶⁶ These eight men travelled to the Standard Barracks where a certain “Lieutenant Colonel” and two military police officers joined them.¹⁹⁶⁷ They continued on to Branjevo Military Farm together, however the “Lieutenant Colonel” and the military policemen left as the Bosnian Muslims began to arrive.¹⁹⁶⁸

536. Between 10 a.m. and 3 or 4 p.m., the eight members of the 10th Sabotage Detachment executed the Bosnian Muslim prisoners.¹⁹⁶⁹ Early in the afternoon eight or ten VRS soldiers arrived from Bratunac and joined in the executions.¹⁹⁷⁰

537. Erdemović, a member of the 10th Sabotage Detachment, described the killings as follows:

They brought out ten persons. We were standing in a line. [...] the first people from that first bus were blindfolded and their hands were tied behind their backs. [...] We took those people, I can't be precise, but I believe it was 100, 200 meters away from the bus, and then we were ordered to shoot at them. They had their backs to us. [...] They took people out from the bus in groups, group by group, and the second group followed the first one. Groups were of ten and they were executed.¹⁹⁷¹

538. Survivors of the execution described being led in groups to a meadow littered with corpses and told to turn their backs to the waiting soldiers.¹⁹⁷² Brano Gojković gave the order to open fire,

¹⁹⁶⁵ Dražen Erdemović, Zoran Svetković, Marko Boskić, Zoran Goronja, Franc Kos, Stanko Savanović, and a certain Golijan. Dražen Erdemović, T. 11005 (7 May 2007). Dražen Erdemović was a member of the 10th Sabotage Detachment who has been convicted for his participation in the killings at Branjevo Military Farm. *Ibid.*, T. 10928 (4 May 2007). *See also*, Indictment, para. 123(d). The Indictment alleges that “Zoran Goronjs” was a physical perpetrator, however, the Trial Chamber considers the disparity in spelling to be a typographical error. *See* Indictment, para. 123(d). Erdemović concluded that Second Lieutenant Milorad Pelemiš, Commander of the 10th Sabotage Detachment, told Brano Gojković “what needed to be done” in relation to the activities at Branjevo Military Farm. Dražen Erdemović, T. 10963 (4 May 2007).

¹⁹⁶⁶ Dražen Erdemović, T. 10962–10963 10970–10972 (4 May 2007).

¹⁹⁶⁷ *Ibid.*, T. 10964–10971 (4 May 2007). As to the identity of the Lieutenant Colonel, *see infra*, paras. 1131–1135. Erdemović said that he remembered reading “military police” on the men’s uniforms, and concluded that they were from the Drina Corps, because he understood that the headquarters of the Drina Corps was located in Zvornik. *Ibid.*, T. 10966–10967 (4 May 2007). Given that Erdemović’s assumption was based upon incorrect information (the headquarters of the Drina Corps was actually located in Vlasenica, *see supra*, para. 134), the Trial Chamber is unable to make a finding regarding the affiliation of these military policemen.

¹⁹⁶⁸ Dražen Erdemović, T. 10969–10971 (4 May 2007).

¹⁹⁶⁹ *Ibid.*, T. 10962, 10971–10973, 10983 (4 May 2007).

¹⁹⁷⁰ These men also beat the prisoners. Dražen Erdemović, T. 10974–10975 (4 May 2007). Brano Gojković, leader of Dražen Erdemović’s unit of the 10th Sabotage Detachment, recognised these men, however Erdemović did not know what unit these men belonged to, but he did recall one of the men because he wore a US Army uniform and a bandana. *Ibid.*, T. 10974, 10992 (4 May 2007). Erdemović recognised this man on Ex. PIC00101, “Picture of a man wearing a bandana, marked by Erdemović” and Ex. P01918, “Picture of a man wearing a bandana in Potočari on 12 July 1995”. Dražen Erdemović, T. 10976–10977 (4 May 2007). The man in the bandana was also identified, based upon the same photo, by Dobrisav Stanojević, who knew him to be Radenko Tomić, nicknamed Gargija, a member of two units, first working in the Panthers Unit before transferring to the Bratunac Brigade. No time period was given for when Tomić might have transferred to the Bratunac Brigade. Dobrisav Stanojević, T. 12888, 12891, 12899 (19 June 2007); Ex. PIC00127, “Photograph P01936 marked by the witness.” The Trial Chamber concludes that Radenko Tomić, nicknamed Gargija, a VRS Soldier, participated in the executions at Branjevo Military Farm.

¹⁹⁷¹ Dražen Erdemović, T. 10971–10972 (4 May 2007).

¹⁹⁷² PW-117, Ex. P02207, “92 bis transcript”, KT. 3040–3041 (14 Apr 2000); Ahmo Hasić, T. 1202–1203 (6 Sept 2006); Ex. 7D00013 (confidential), p. 4; Dražen Erdemović, T. 10970–10971 (4 May 2007). Erdemović also testified that Second Lieutenant Milorad Pelemiš, Commander of the 10th Sabotage Detachment Unit, would have

and the prisoners fell to the ground upon being shot.¹⁹⁷³ Soldiers would then ask whether anyone remained alive and shoot any of those who responded.¹⁹⁷⁴ As Ahmo Hasić was led to the execution site, he was kicked in the stomach because he had no money to give the soldiers. He described the desperation of his fellow prisoners as they pleaded for water before being killed. Others agreed to register as Serbs, although this did not save them.¹⁹⁷⁵

539. PW-117 recalled:

When they opened fire, I threw myself on the ground. My hands were still tied behind my back and I fell on my stomach, face down. And one man fell on my head. I think he was killed on the spot. And I could feel the hot blood pouring over me. The shooting continued and then they ordered soldiers to shoot people individually. And I could hear a voice saying that they shouldn't shoot people in their heads, so that their brains wouldn't spill out, but rather to shoot them in their backs.¹⁹⁷⁶

(iii) Detentions and Killings – Pilica Cultural Centre

540. A few days prior to 16 July 1995, VRS soldiers brought prisoners to the Pilica Cultural Centre.¹⁹⁷⁷ At around 3 or 4 p.m. on 16 July, the “Lieutenant Colonel” returned to the Branjevo Military Farm and ordered the VRS soldiers deployed there to go to the Pilica Cultural Centre in order to execute the 500 Bosnian Muslims who were detained there.¹⁹⁷⁸ The eight members of the 10th Sabotage Detachment refused to go.¹⁹⁷⁹ The VRS soldiers from Bratunac who had also been at Branjevo Military Farm that day volunteered and left with the “Lieutenant Colonel” and the two military policemen.¹⁹⁸⁰ The roads from the direction of Pilica were secured, and that same afternoon, firing could be heard at Branjevo Military Farm.¹⁹⁸¹ Firing and explosions could also be heard that afternoon in Pilica town, coming from the direction of the Pilica Cultural Centre.¹⁹⁸²

541. Pursuant to an instruction from the “Lieutenant Colonel”, Erdemović went to a café directly across the road from the Pilica Cultural Centre at 3 or 4 p.m. on 16 July, from which point he could

known about the killings because “not a single action or mission of our unit was possible without the knowledge of the commander of our unit”. *Ibid.*, T. 11004 (7 May 2007).

¹⁹⁷³ Dražen Erdemović, T. 10972 (4 May 2007); Ahmo Hasić, T. 1201-1203 (6 Sep 2006); PW-117, Ex. P02207, “92 bis transcript”, KT. 3041 (14 Apr 2000).

¹⁹⁷⁴ PW-117, Ex. P02207, “92 bis transcript”, KT. 3042 (14 Apr 2000); Ahmo Hasić, T. 1203-1205 (6 Sep 2006) (testifying that he waited until two hours before dusk to escape from the meadow).

¹⁹⁷⁵ Ahmo Hasić, T. 1201-1202 (6 Sep 2006).

¹⁹⁷⁶ PW-117, Ex. P02207, “92 bis transcript”, KT. 3041 (14 Apr 2000).

¹⁹⁷⁷ Witnesses also refer to the Pilica Cultural Centre as the Pilica Dom or the Pilica Community Centre. Pero Petrović, Ex. P02470, “92 ter transcript”, BT. 5511-5515 (2 Dec 2003); Ex. P02471, “Diagram drawn by Pero Petrović”. Slavko Perić observed security—men in military and police uniforms which he did not recognise—outside the Pilica Cultural Centre on 15 July, having travelled there because he heard that prisoners were being detained. Slavko Perić, T. 11404-11405 (11 May 2007).

¹⁹⁷⁸ Dražen Erdemović, T. 10970-10971, 10975, 10982 (4 May 2007).

¹⁹⁷⁹ *Ibid.*, T. 10982 (4 May 2007).

¹⁹⁸⁰ *Ibid.*, T. 10982 (4 May 2007).

¹⁹⁸¹ Radivoje Lakić, T. 10269-10271 (19 Apr 2007).

see a number of bodies outside the Pilica Cultural Centre.¹⁹⁸³ A check-point had been set up outside the centre guarded by armed civilian police.¹⁹⁸⁴ After a short while, VRS soldier Radenko Tomić, who was nicknamed Gargija and who had participated in the executions at Branjevo Military Farm, entered the café and told the “Lieutenant Colonel”, that “everything was finished”.¹⁹⁸⁵ Later, just before they all left the café the “Lieutenant Colonel” stood up and announced: “Who remained alive has remained alive.”¹⁹⁸⁶

(iv) Burials (16–17 July)

542. On 16 July 1995,¹⁹⁸⁷ a “courier” from the 1st Battalion¹⁹⁸⁸ arrived at the Branjevo Military Farm and asked that five men go to the Pilica Cultural Centre to load corpses.¹⁹⁸⁹ Lakić sent all of the men from his 1st Battalion work platoon (namely, Jevto Bogdanović, Đusan Trivković, Jevto Lazarević, Jovan Ilić, Rajo Jurosević, Vojo Lakić and Stevo Ostojić) to complete this task.¹⁹⁹⁰

543. The men travelled the few kilometres to the Pilica Cultural Centre with the “courier” on a tractor. They noticed the bodies of approximately ten people in civilian clothes along the way with apparent gunshot wounds by the side of the road.¹⁹⁹¹ When they arrived at the Pilica Cultural Centre, there were soldiers present.¹⁹⁹² The soldiers were securing the area and not letting the local villagers into the Cultural Centre.¹⁹⁹³ Once at the Pilica Cultural Centre, members of the

¹⁹⁸² Dražen Erdemović, T. 10983–10985 (4 May 2007) (testifying that the firing and explosions were heard around 3 or 4 p.m.).

¹⁹⁸³ *Ibid.*, T. 10983–10986 (4 May 2007); Ex. P01820, “Video of Pilica Cultural Center”, 0:34–0:55.

¹⁹⁸⁴ *Ibid.*, T. 10984 (4 May 2007) (testifying that there were two or three armed civilian policemen wearing blue camouflage uniforms of the RS MUP).

¹⁹⁸⁵ *Ibid.*, T. 10985 (4 May 2007). *See supra*, para. 536, fn. 1970.

¹⁹⁸⁶ *Ibid.*, T. 10986 (4 May 2007).

¹⁹⁸⁷ Lakić testified that these events occurred on a Sunday, and 16 July 1995 fell on a Sunday. Radivoje Lakić, T. 10275 (19 Apr 2007).

¹⁹⁸⁸ Radivoje Lakić, T. 10272–10273 (19 Apr 2007).

¹⁹⁸⁹ *Ibid.*, T. 10272–10275 (19 Apr 2007).

¹⁹⁹⁰ *Ibid.*, T. 10272–10275 (19 Apr 2007); Jevto Bogdanović, T. 11327, 11343 (10 May 2007). Lakić testified that it was difficult for him to select five men, and his assistant Perisa suggested that he send all of his men (Lakić testified that there were six), which he did. Lakić could tell from their expression that they did not want to go but they obeyed. Radivoje Lakić, T. 10274 (19 Apr 2007). Contrary to Lakić’s statement that there were six men in the work platoon, Bogdanović testified that there were 12 members of the work platoon, excluding him. Jevto Bogdanović, T. 11329 (10 May 2007). Bogdanović also testified that Lakić was present in Pilica when the men were loading the trucks. *Ibid.*, T. 11332 (10 May 2007). This is contrary to Lakić’s testimony, where he said that he did not go to Pilica with his men. Radivoje Lakić, T. 10275–10276 (19 Apr 2007). Having observed Lakić’s testimony, the Trial Chamber concludes that he was not telling the whole truth about his presence in Pilica, and accepts Bogdanović’s testimony that Lakić was present in Pilica with his men.

¹⁹⁹¹ Radivoje Lakić, T. 10273–10274 (19 Apr 2007); Jevto Bogdanović, T. 11327 (10 May 2007). On 17 July 1995, Stevo Osojić left the group as soon as he had an opportunity and there was no consequence for him. Radivoje Lakić, T. 10274 (19 Apr 2007). Pero Petrović saw five men wearing t-shirts and olive grey trousers loading corpses in front of the Pilica Cultural Centre. Petrović testified that he saw this on the Monday morning after St Peter’s day, which is on 12 July. Pero Petrović, Ex. P02470 (confidential), BT. 5517–5518 (2 Dec 2003). 12 July fell on a Wednesday in 1995, which would mean that the following Monday was 17 July 1995.

¹⁹⁹² Bogdanović did not know what unit or battalion the soldiers were from. Jevto Bogdanović, T. 11328 (10 May 2007).

¹⁹⁹³ Jevto Bogdanović, T. 11328 (10 May 2007).

1st Battalion loaded the dead bodies onto two “tipper trucks”. The inside of the Pilica Cultural Centre was described as having corpses “piled up on each other, just lying there scattered all over the place”¹⁹⁹⁴ and the bodies—two of which were female—were all wearing civilian clothes and appeared to have been killed inside the Centre.¹⁹⁹⁵

544. Forensic evidence supports that killings occurred inside the Pilica Cultural Centre.¹⁹⁹⁶ Heavy concentrations of apparent blood splatter and tissue were found on the walls of the centre, regarding which it was noted that “very few areas are spared”, and multiple impacts consistent with gunfire and explosions were also noted.¹⁹⁹⁷

545. On 17 July, Milenko Tomić, a driver and member of the R Battalion¹⁹⁹⁸ of the Zvornik Brigade, reported to the Pilica Cultural Centre, acting upon an order from his supervisor, Radislav Pantić.¹⁹⁹⁹ Tomić arrived at the Pilica Cultural Centre with a lorry belonging to Metalno (the Company for which he worked), and proceeded to transport two truckloads of corpses from the Pilica Cultural Centre to Branjevo Military Farm together with an unidentified soldier.²⁰⁰⁰

546. On the morning of 17 July 1995, Damjan Lazarević, the Commander of the 2nd Platoon of the Zvornik Brigade Engineering Company,²⁰⁰¹ ordered members of the Zvornik Brigade Engineering Company including a machine operator Cvijetin Ristanović to take an excavating machine to Branjevo Military Farm and to dig a pit there.²⁰⁰² This task had been assigned to

¹⁹⁹⁴ Jevto Bogdanović, T. 11329–11330 (10 May 2007) (quotation at T. 11330).

¹⁹⁹⁵ *Ibid.*, T. 11330–11331 (10 May 2007).

¹⁹⁹⁶ Between 27 September and 2 October 1996, a team comprising ICTY Prosecution personnel and members the United States Naval Criminal Investigation Service inspected the Pilica Cultural Centre. Ex. P00679, “Report by United States Naval Criminal Investigative Service”, pp. 1, 3–4; Dean Manning, T. 18981–18983 (10 Dec 2007). *See also* Ex. P01817, “Photo at back of room of the Pilica Cultural Centre” (depicting blood and tissue on the walls, as well as damage to the floor indicating an explosion); Ex. P00599, “Report by de Bruyn on forensic explosives samples, 2 Mar 2000”, p. 5 (stating that subsequent analysis of samples taken from Pilica Cultural Centre confirmed the existence of explosive residue).

¹⁹⁹⁷ Ex. P00679 “Report of investigation by United States Naval Criminal Investigative Service”, pp. 3, 10–11 (quotation at p. 3).

¹⁹⁹⁸ *See supra*, para. 145.

¹⁹⁹⁹ Milenko Tomić, T. 21001, 21022 (5 Feb 2008); Ex. P00295, Zvornik Brigade July 1995 Transportation Records, pp. 583–584.

²⁰⁰⁰ Milenko Tomić, T. 21001–21002, 21006 (5 Feb 2008); Ex. P00295, Zvornik Brigade July 1995 Transportation Records, p. 584 (recording five trips “Zvor-Pilica-Kula-Pilica-Zvor” on 17 July 1995); Ex. P00305, “Vehicle Work Log number 22-1667/95” (recording that a lorry from the Metalno Company was issued to Milenko Tomić on 17 July 1995).

²⁰⁰¹ Damjan Lazarević, T. 14436 (29 Aug 2007).

²⁰⁰² Cvijetin Ristanović, Ex. P02256, “92 *ter* transcript”, BT. 5360, 5389–5392, 5418 (1 Dec 2003); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995” (Notebook), p. 153 (recording the following request (and that it was conveyed to Dragan Jokić, Chief of Engineering, and Sreten Milošević, Assistant Commander for Logistics) for 16 July at 10:22 p.m.: “the 1st pb asked for one loader, one excavator and a dump-truck with a tarpaulin to be in Pilica at 08:00 hours”); Damjan Lazarević, T. 14472 (29 Aug 2007); Ex. P00297, “Zvornik Brigade Engineer Company Daily Orders log book”, p. 17 (recording that a BGH-700 and the ULT 220 were in Branjevo on 17 July 1995); Damjan Lazarević, T. 14480 (29 Aug 2007); Ex. P00302, “Zvornik Brigade vehicle logbook for ULT 220 from Birac-Holding”, p. 2 (recording that the ULT-220 log for the 17 July 1995 was “VRS, digging trenches in Branjevo” for eight and a half hours); however, Damjan Lazarević testified that this

Lazarević by Slavko Bogičević, the Deputy Commander of the Engineering Company, and by Vojkan Šekonjić, the Company Desk Officer.²⁰⁰³ As Ristanović carried out Lazarević's order, he noticed a loader operating in the vicinity of a number of corpses at the site.²⁰⁰⁴

547. Damjan Lazarević himself was at Branjevo Military Farm while burials were taking place, and noticed that while the operator of the machine would occasionally use the bucket to load the bodies, the bodies were mostly loaded onto the machine manually.²⁰⁰⁵ He also noticed that there may have been a few people from the rear battalion of the Zvornik Brigade present,²⁰⁰⁶ and also that workers from public utilities and civilian protection authorities assisted in the burial.²⁰⁰⁷

(v) Forensic Evidence

548. In 1996, a primary mass gravesite was exhumed at Branjevo Military Farm in which all but one individual was found wearing civilian clothing.²⁰⁰⁸ In every case where gender could be determined, it was determined to be male, and where the cause of death could be determined, it was gunshot wounds.²⁰⁰⁹ Ligatures associated with 83 individuals were recovered, and evidence of affiliation with the Muslim religion was found on five individuals.²⁰¹⁰ It was considered plausible that the individuals were killed, at a minimum, one year prior to the exhumation conducted in 1996.²⁰¹¹ In addition, four secondary gravesites located along Čančari Road have been associated with the primary gravesite at Branjevo Military Farm.²⁰¹²

machine was not in Branjevo on 17 July 1995, and there was another ULT-220 machine in Branjevo that was the property of the quarry at Jošanica. Damjan Lazarević, T. 14481 (29 Aug 2007). Taking all of this evidence into account, the Trial Chamber finds that equipment of the Zvornik Brigade Engineering Company was digging trenches in Pilica on 17 July 1995.

²⁰⁰³ Damjan Lazarević, T. 14435, 14459 (29 Aug 2007).

²⁰⁰⁴ The corpses were in the meadow. Cvijetin Ristanović, Ex. P02256, "92 *ter* transcript", BT. 5393–5395 (1 Dec 2003); Ex. P02258, "Sketch by Cvijetin Ristanović", p. 1; Ex. P00299, "Zvornik Brigade vehicle logbook for Mercedes 2626", p. 2. (recording that a 700 loader was taken on the route "Base-Standard-Branjevo-Base" on 17 July 1995).

²⁰⁰⁵ Damjan Lazarević, T. 14461–14462 (29 Aug 2007).

²⁰⁰⁶ *Ibid.*, T. 14462 (29 Aug 2007).

²⁰⁰⁷ *Ibid.*

²⁰⁰⁸ Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", pp. ix, 43, 49, 67–68. *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 431.

²⁰⁰⁹ Prosecution Adjudicated Facts Decision, Annex, Fact 432; Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", pp. 43, 50–51, 67; William Haglund, Ex. P02150, "92 *ter* transcript", KT. 3754. (29 May 2000).

²⁰¹⁰ Prosecution Adjudicated Facts Decision, Annex, Fact 433.; Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", pp. 52–53 (recording that amulets, prayer beads, and documents indicating membership in the Islamic community were found in the grave).

²⁰¹¹ Ex. P00622, "Report by William Haglund on Branjevo Military Farm grave site, 15 June 1998", p. 68 (stating that This conclusion is based solely upon the "fleshed state" and relative absence of natural disarticulation of the remains).

²⁰¹² These graves are Čančari Road 9–12. Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009", Annex A, pp. 13–14, 37. Čančari Road is located approximately 30–40 kilometres south-west of Branjevo Military Farm. Ex. 4DP04524, "Srebrenica – Mass graves primary and secondary; DNA and forensic evidence connections"; Dušan Janc, T. 33496–33497 (1 May 2009). The connection between the gravesites is based upon

549. Among the remains exhumed from the primary gravesite at Branjevo Military Farm and the secondary gravesites associated with it, 960 individuals have been identified through DNA analysis as persons reported missing following the fall of Srebrenica.²⁰¹³ In addition to the 960 individuals identified in these gravesites, a fifth secondary gravesite associated with the Branjevo Military Farm primary grave has been found, Čančari Road 8. This grave was exhumed in October and November of 2008 and was found to contain a minimum number of 84 individuals, as well as five cloth ligatures.²⁰¹⁴

550. Taking all of the evidence into account, including forensic evidence as well as evidence regarding the estimated number of prisoners executed²⁰¹⁵ and the transport of bodies from the Pilica Cultural Centre to Branjevo Military Farm,²⁰¹⁶ the Trial Chamber concludes that between 1,000 and 2,000 persons were executed in the Pilica area (at Branjevo Military Farm and Pilica Cultural Centre) on 16 July 1995.

soil, pollen and textile analysis. *See* Ex. P00559, “Report by Jose Pablo Baraybar – Anthropology examination of human remains from Eastern Bosnia in 1999”, pp. 3, 8; Ex. P00562, “Statement of Antony G Brown, 26 Feb 1999”, p. 10; Ex. P00675, “Report by S.E. Maljaars on textile investigation, 11 Feb 2000”, p. 23; Prosecution Adjudicated Facts Decision, Annex, Fact 488. Aerial images indicate that Čančari Road 12 was created between 7 and 27 September 1995 and backfilled prior to 2 October 1995. Prosecution Adjudicated Facts Decision, Annex, Fact 434; Ex. P01868, “Aerial, Čančari, 27 Sept 1995”; Ex. P01869, “Aerial, Čančari, 2 Oct 1995 (with marking CR-12)”; Dean Manning, T. 19148 (12 Dec 2007).

²⁰¹³ Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex A, p. 37; Thomas Parsons, T. 20873 (1 Feb 2008) (testifying that the information that these individuals went missing following the fall of Srebrenica was provided to the ICMP by the families of the missing persons).

²⁰¹⁴ Ex. P04499, “ICMP Summary Report on Čančari Road 8, created from 20 Oct to 19 Nov 2008”, p. 8.

²⁰¹⁵ Dražen Erdemović, T. 10983 (4 May 2007) (estimating that 1,000–1,200 prisoners were executed. He based this estimate upon on the 15–20 buses which arrived at the farm); Ahmo Hasić, T. 1205, 1229 (6 Sept 2006) (estimating that between 1,000 and 1,500 men were killed at Branjevo Military Farm on 16 July 1995, based on the number of corpses he saw);

²⁰¹⁶ *Supra*, para. 545 (evidence that corpses were transported from the Pilica Cultural Centre to Branjevo Military Farm). *See also* Dražen Erdemović, T. 10982 (4 May 2007) (testifying that he was told that there were 500 prisoners in the Pilica Cultural Centre); Jevto Bogdanović, T. 11333 (10 May 2007) (testifying that he saw approximately 550 bodies in and around the Pilica Cultural Centre in July 1995). Some time in mid to late July 1995, Pero Petrović heard from local people that those killed at Pilica Cultural Centre were buried at Branjevo Military Farm. Pero Petrović, Ex. P02470, “92 ter transcript”, BT. 5519 (2 Dec 2003); Pero Petrović was the President of the Pilica Local Commune at the time. Pero Petrović, Ex. P02470, “92 ter transcript”, BT. 5496 (2 Dec 2003).

H. 16–27 July 1995

1. 16 July 1995: Opening of a Corridor for the Passage of the Bosnian Muslim Men from the Column

(a) Circumstances Leading up to the Opening of the Corridor

551. On the morning of 15 July, Krstić ordered **Pandurević**—who was in the vicinity of Podžeplje²⁰¹⁷—to return with his forces to the Zvornik Brigade area of responsibility to “block” the column, in order to “prevent the consequences of a possible attack on Zvornik” and the joining up of the column with the forces of the ABiH 2nd Corps.²⁰¹⁸

552. At approximately 11 a.m. on 15 July, Dragan Obrenović met with Dragomir Vasić at the Standard Barracks to discuss the situation the Zvornik Brigade was facing with the 28th Division. **Borovčanin** and Miloš Stupar—from the 2nd Šekovići Detachment—joined the meeting later.²⁰¹⁹ By that time, Duško Vukotić, Assistant Chief of Staff for Intelligence of the Zvornik Brigade,²⁰²⁰ had already had several communications with Šemso Muminović on behalf of Obrenović, in which Muminović requested safe passage for the 28th Division through the Zvornik Brigade area.²⁰²¹ An initial proposal, either from Vasić²⁰²² or from **Borovčanin**,²⁰²³ to grant safe passage to the Bosnian Muslim men from the column was discussed at the meeting.²⁰²⁴

²⁰¹⁷ Podžeplje is located north of Žepa, towards Han Pijesak. Ex. 7DIC00126, “Map marked by Miodrag Dragutinović”.

²⁰¹⁸ Ex. 5D7D00686, “Order to return elements of the Zvornik Brigade, signed by Krstić, 15 July 1995”. *See also infra*, para. 1859. *See also* Ex. 5DP00327, “Zvornik Brigade interim combat report, 14 July 1995” (noting that one part of the column was two or three kilometres long); Ex. 5DP00169, “Drina Corps report on formation of armed Muslims, 14 July 1995”; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 138 (stating at 9:21 a.m. on 15 July: “Obrenović: ordered an urgent request for reinforcements from the Corps. REPORTED”). Colonel Milanović indicated that large groups of enemy soldiers were still present in the area to the east of the Milići-Konjević Polje-Bratunac Road and that the Bratunac Brigade was still searching this terrain. Prosecution Adjudicated Facts Decision, Annex, Fact 285. *See also* Ex. 4D00083, “Bratunac Brigade order, signed by Blagojević, 14 July 1995”; Ex. 4D00085, “Drina Corps regular combat report, type-signed Krstić, 15 July 1995.” Colonel Milanović proposed, in the absence of available personnel from the Drina Corps, the appointment of the Commander of the Bratunac Brigade, Colonel Blagojević, as the commander of the forces engaged in sweeping the terrain. General Krstić subsequently accepted this proposal. Prosecution Adjudicated Facts Decision, Annex, Fact 286; *see also* Ex. 4D00086, “Document by Ignjat Milanović concerning searching the terrain, 15 July 1995”. Ex. P00913, “CJB Report, 15 July 1995” (stating that on 15 July, offensive MUP forces were heading towards Crni Vrh and Baljkovica together with the VRS).

²⁰¹⁹ PW-168, T. 15869–15873 (closed session) (26 Sept 2007), T. 16524 (closed session) (17 Oct 2007), T. 16527–16528 (closed session) (18 Oct 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, p. 102.

²⁰²⁰ *See supra*, para. 152.

²⁰²¹ PW-168, T. 15872 (closed session) (26 Sept 2007), T. 16545–16546 (closed session) (18 Oct 2007).

²⁰²² *Ibid.*, T. 15872 (closed session) (26 Sept 2007).

²⁰²³ Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–103.

²⁰²⁴ PW-168, T. 15872 (closed session) (26 September 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–103.

553. At this point, Obrenović sought approval from the Drina Corps Command for the proposal to let the 28th Division pass through their territory.²⁰²⁵ He also tried to contact **Pandurević** who could not be reached as he was already on his way to the Zvornik Brigade Command.²⁰²⁶ The Drina Corps Commander and Chief of Staff being unavailable, Dragan Obrenović called the VRS Main Staff and asked to be connected to “any of the generals”.²⁰²⁷ **Miletić** took the call and stated he did not approve the proposal; and he ordered that Obrenović use all available manpower and equipment of the Zvornik Brigade to continue fighting the column and “destroy it”.²⁰²⁸

554. At around 12 p.m, **Pandurević** met with Obrenović, **Borovčanin**, Vasić, Danilo Zoljić—Commander of the PJP units from Zvornik—and Miloš Stupar, at the Standard Barracks; and he ordered them to cut off the column and thus neutralise the forces of the 28th Division.²⁰²⁹ At the end of the meeting, **Pandurević** sent Obrenović to the command of the 4th Battalion in Baljkovica, while **Borovčanin** took his units to the Parlog and Baljkovica area.²⁰³⁰ **Pandurević** went to the Kitovnice IKM. He testified that the situation on the ground was very different from what had been described to him earlier: it was calm in the sectors of the 4th and 6th Battalions of the Zvornik Brigade and only sporadic firing was coming from the Memići area, on the left bank of the IKM.²⁰³¹ **Borovčanin**, however, on reaching Baljkovica, saw that his units were under intensive fire and that part of the column had captured the post where his units were staying.²⁰³²

555. In the afternoon of 15 July, after deploying the forces necessary should combat break out, **Pandurević** had a disagreement with Muminović about letting the whole column through the VRS defence line in the Nezuk area.²⁰³³ At 7:25 p.m. that evening, **Pandurević** sent an interim report informing the Drina Corps Command that he had made an offer to the Commander of the 28th Division to separate the civilians and have the others surrender, but the 28th Division had refused, asking that they all be permitted to pass.²⁰³⁴

²⁰²⁵ PW-168, T. 15873–15874 (closed session) (26 Sept 2007). See also Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–103.

²⁰²⁶ PW-168, T. 15873 (closed session) (26 Sept 2007).

²⁰²⁷ *Ibid.*, T. 15873 (closed session) (26 Sept 2007), T. 16639 (closed session) (19 Oct 2007).

²⁰²⁸ *Ibid.*, T. 15874 (closed session) (26 Sept 2007).

²⁰²⁹ See *infra*, paras. 1862–1863. Vinko Pandurević, T. 30962–30963 (2 Feb 2009). See also Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, p. 40; PW-168, T. 16524–16525 (closed session) (17 Oct 2007); Zarko Zarić, T. 26945 (10 Oct 2008).

²⁰³⁰ See *infra*, para. 1863.

²⁰³¹ Vinko Pandurević, T. 30964–30969 (2 Feb 2009). **Pandurević** arrived at the Kitovnice IKM around 1 p.m. *Ibid.*

²⁰³² Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, p. 106. Baljkovica is located north west of Zvornik, near Nezuk. Ex. 7D01056, “Map of zone of responsibility of Zvornik Brigade according to Drina Corps order of 1992”.

²⁰³³ Vinko Pandurević, T. 30977–30978 (2 Feb 2009). See also *infra*, para. 1867.

²⁰³⁴ Ex. P00329, “Zvornik Brigade interim combat report signed by Pandurević, 15 July 1995”. See also *infra*, paras. 1868–1870.

556. On the evening of 15 July and into the early morning hours of 16 July, there were several waves of attacks by the ABiH 2nd Corps and fighting between the two forces was fierce.²⁰³⁵

(b) Opening of the Corridor

557. Between 9 and 10 a.m. on 16 July, after having been informed by Obrenović that the situation in the 28th Division was very grave due to numerous losses, **Pandurević** established contact with the 28th Division to negotiate the passage of the column.²⁰³⁶ Negotiations ensued between **Pandurević** and Muminović between 10 and 11 a.m., during which time artillery weapons were not fired.²⁰³⁷ **Pandurević** agreed, contrary to Krstić's orders, to let the 28th Division and the "civilian population accompanying it" pass through.²⁰³⁸ The agreement was to open a corridor several hundred metres wide along the Resnik and Žuta Zemlja axis by moving soldiers from the Zvornik Brigade 4th Battalion from three trenches and to direct soldiers from the 28th Division to pass through that corridor. It was also agreed that some 2nd Corps soldiers should enter in the direction of Baljkovica and assist in the evacuation of the wounded and ill within the column.²⁰³⁹

558. Between 1 and 2 p.m. on 16 July—after the VRS had left the trenches and the hostilities had ceased for approximately two hours—the agreement entered into effect.²⁰⁴⁰ The defence lines were re-established around 6 p.m. on 17 July.²⁰⁴¹ **Pandurević** monitored the situation throughout all this time and he estimated that approximately 5,000 to 6,000 Bosnian Muslims from the column passed through the corridor on 16 and 17 July, some armed and some in uniform.²⁰⁴² Other evidence provided the Trial Chamber with slightly higher numbers.²⁰⁴³

²⁰³⁵ Ex. P02853, "Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002", p. 109. In the early morning of 16 July, at around 4 a.m., fighting further escalated, when the 2nd Corps attacked the positions of the 4th, 6th and 7th Battalions of the Zvornik Brigade. Vinko Pandurević, T. 31012 (2 Feb 2009), T. 31056 (3 Feb 2009); Lazar Ristić, T. 10097 (16 Apr 2007). The 7th Battalion successfully repelled the attack. Miodrag Dragutinović, T. 12601 (14 June 2007).

²⁰³⁶ See *infra*, paras. 1872–1873.

²⁰³⁷ See *infra*, para. 1873. See also Miodrag Dragutinović, T. 12707–12708 (15 June 2007); Lazar Ristić, T. 10150 (17 Apr 2007).

²⁰³⁸ See *infra*, paras. 1873–1874.

²⁰³⁹ Vinko Pandurević, T. 31034 (3 Feb 2009) (specifying that at the time the agreement was reached, **Pandurević** made no counter-request, but that later, he asked for the release of two prisoners).

²⁰⁴⁰ See *infra*, para. 1873.

²⁰⁴¹ Vinko Pandurević, T. 31093–31094 (9 Feb 2009).

²⁰⁴² *Ibid.*, T. 31075 (3 Feb 2009). See *infra*, para. 1873. See also Ostoja Stanišić, T. 11713–11714 (17 May 2007) (testifying that it was a "great mass of people, a huge number of people, a long column, maybe a kilometre or two long"); Lazar Ristić, T. 10157–10159 (17 Apr 2007) ("there were a lot of them. It was a huge column but I wouldn't be able to estimate it."); Miodrag Dragutinović, T. 12708 (15 June 2007) (stating that he observed the column in part from Pandurica, and saw that some of the Bosnian Muslims were soldiers).

²⁰⁴³ PW-168, T. 15897 (closed session) (27 Sept 2007) (estimating that 7,000 to 10,000 people passed through the corridor, half of whom were armed).

(c) Report and Inquiry about the Opening of the Corridor

559. At 1:55 p.m. on 16 July, **Pandurević** communicated to the Drina Corps Command that he had set up a corridor for Bosnian Muslim civilians to pass through, and that he was still fighting the 28th Division.²⁰⁴⁴ After several unsuccessful attempts from the VRS Main Staff and the Drina Corps to get an update from **Pandurević** on the situation in the field, **Pandurević** sent a report to the Drina Corps Command at 8 p.m. the same day, stating, *inter alia*, that he had decided “to open a corridor [...] for the civilian population – about 5,000 of them [...] It is likely that a certain number of soldiers got out among the civilians, but all who passed, passed through unarmed.”²⁰⁴⁵

560. On the morning of 17 July, two officers from the VRS Main Staff, Colonel Nedeljko Trkulja²⁰⁴⁶ and Bogdan Sladojević²⁰⁴⁷, travelled to the Zvornik Brigade Command pursuant to an order from **Miletić**.²⁰⁴⁸ Sladojević’s understanding was that the purpose of their trip was to determine whether someone should be held accountable for allowing the column of Bosnian Muslims to pass through the Udrc-Crni Vrh axis towards Tuzla.²⁰⁴⁹ In the afternoon, Trkulja and Sladojević went to the Kitovnice IKM to meet with **Pandurević**.²⁰⁵⁰ A third Main Staff Officer, Colonel Milovan Stanković, was already present at the Kitovnice IKM with **Pandurević**.²⁰⁵¹

²⁰⁴⁴ See *infra*, para. 1874.

²⁰⁴⁵ Ex. 7DP00330, “Zvornik Brigade interim combat report signed by Pandurević, 16 July 1995”. See also *infra*, paras. 1874, 1876.

²⁰⁴⁶ Colonel Trkulja is a retired colonel. In July 1995, he was the Chief of the armoured units with the VRS Main Staff. Nedeljko Trkulja, T. 15072, 15074–15075 (10 Sept 2007).

²⁰⁴⁷ On 13 July 1995, Colonel Bogdan Sladojević was transferred to Han Pijesak where **Miletić** informed him that he would be Chief of the Main Staff Operations Department. Bogdan Sladojević, T. 14358–14361 (27 Aug 2007).

²⁰⁴⁸ Nedeljko Trkulja, T. 15105–15107, 15110 (10 Sept 2007). That morning, Sladojević saw that **Miletić** gave a piece of paper to Trkulja, who later told Sladojević that **Miletić** had hinted that “something was going to happen” in the Baljkovica area. Bogdan Sladojević, T. 14367–14368 (27 Aug 2007). See *infra*, para. 1680.

²⁰⁴⁹ Bogdan Sladojević, T. 14367, 14372–14373, 14406 (27 Aug 2007) (also testifying that there was a rumour that a column of Bosnian Muslims had been allowed to pass through “the area of defence” of the Zvornik Brigade); Miodrag Dragutinović, T. 12604–12605 (14 June 2007); T. 12709–12710 (15 June 2007). See also Ex. 7DP00378, “Zvornik Brigade Duty Officer logbook, 12 February 1995 to 3 January 1996”, p. 4 (stating: “08.45 hrs – A group of commanding officers led by Colonel Trkulja came to the Brigade’s IKM in order to review the conditions in new situation and they returned at 1500 hrs”); Vinko Pandurević, T. 31090–31092 (9 Feb 2009). Ex. P00927, “Main Staff order, re integration of operations to crush lagging Muslim forces, signed by Mladić, 17 July 1995” (stating “1. Send 3 officers (Colonels Nedo Trkulja, Milovan Stanković and Bogdan Sladojević) from the [...] Main Staff [...] to the command of the [Zvornik Brigade] to assist in the joining of the VRS and MUP [...] forces, the planning and coordination of combat operations to block, crush and destroy lagging Muslim forces in the wider areas of Kamenica and Cerska. 2. The team from the VRS [Main Staff] shall assess the situation on the Brigade’s front line and in the rear, the available forces, and hear out the proposal and opinion of the commander of the [Zvornik Brigade]”).

²⁰⁵⁰ Miodrag Dragutinović, T. 12602–12603 (14 June 2007). See also *infra*, para. 1887.

²⁰⁵¹ Bogdan Sladojević, T. 14369–14370, 14372 (27 Aug 2007). Colonel Milovan Stanković was a desk officer in the Security and Intelligence Department of the VRS Main Staff. Bogdan Sladojević, T. 14370 (27 Aug 2007). See also Ex. P00927, “VRS Main Staff order re integration of operations to crush lagging Muslim forces, signed by Mladić, 17 July 1995” (instructing to send 3 officers from the VRS Main Staff—Colonels Nedo Trkulja, Milovan Stanković and Bogdan Sladojević—to the Command of the Zvornik Brigade).

561. **Pandurević** briefed the Main Staff officers on the combat situation and the reasons for the opening of the corridor.²⁰⁵² Sladojević and Trkulja left the IKM between 3 and 4 p.m. the same day; and Trkulja reported orally to **Miletić** on 18 July.²⁰⁵³

2. Continued Searches Through the Terrain

562. Before 9 a.m. on the morning of 17 July, a meeting was convened at the Bratunac Brigade headquarters to distribute tasks to the Bratunac Brigade and MUP units involved, “to comb the area and the territory”.²⁰⁵⁴ During this operation, parts of the terrain, including the areas of Pobude, Glogova, Hrnčići and Konjević Polje, were searched for ABiH forces.²⁰⁵⁵ The search of the terrain was commanded by Mićo Gavrić from the Bratunac Brigade.²⁰⁵⁶

563. On 17 July, Miodrag Dragutinović, Assistant Chief of Staff for Operations and Training in the Zvornik Brigade, was ordered by **Pandurević** to reconnoitre the area and verify whether the ABiH was in compliance with the agreement previously reached between **Pandurević** and Muminović and whether it was staying within the agreed limits of the corridor.²⁰⁵⁷ On 18 July, Dragutinović and his unit continued to assist the 4th and 7th Battalions of the Zvornik Brigade in combat and to “strengthen that area of the defence”.²⁰⁵⁸

564. During the first three or four days after the corridor was closed, elements of the Zvornik Brigade also participated in scouring the terrain for ABiH soldiers.²⁰⁵⁹ Some ABiH soldiers were killed and others were captured.²⁰⁶⁰ In an intercepted conversation of 23 July 1995 at 8 a.m.,

²⁰⁵² See *infra*, para. 1887.

²⁰⁵³ Nedeljko Trkulja, T. 15115 (10 Sept 2007); Bogdan Sladojević, T. 14377–14378 (27 Aug 2007).

²⁰⁵⁴ PW-160, T. 8631, 8633 (12 Mar 2007); Mićo Gavrić, T. 26488–26490 (1 Oct 2008). PW-160 testified: “we had Sapas to demine the areas and from the police side we had units with guard dogs, search dogs and we were given tasks.” PW-160, T. 8631 (12 Mar 2007). But see Momir Nikolić, T. 32946–32947, 32957 (21 Apr 2009) (testifying that he was not interested in the “sweep operation” starting 17 July 1995 and did not participate in it).

²⁰⁵⁵ PW-160, T. 8634 (12 Mar 2007), T. 8704–8706 (13 Mar 2007); Mićo Gavrić, T. 26488–26489, 26514 (1 Oct 2008); Dragoslav Trišić, T. 27093 (20 October 2008); Ex. 4DP00262, “Bratunac Brigade daily combat report, 18 July 1995”; Ex. 4DIC00074, “Map marked by PW-160”; PW-160, T. 8700–8703, 8706 (13 Mar 2007).

²⁰⁵⁶ PW-160, T. 8699 (13 Mar 2007). See also PW-160, T. 8705 (13 Mar 2007); Ex. 4D00086, “Document by Colonel Ignjat Milanović regarding terrain Search, 15 July 1995” (recording a proposal to “authorise and appoint the Commander of the 1st [Bratunac Brigade] as commander of all forces which [are] participating in searching of the terrain and sweeping of the battlefield to the east of the road (and in control of the Kasaba-Drinjača road)”.

²⁰⁵⁷ Miodrag Dragutinović, T. 12602–12603 (14 June 2007).

²⁰⁵⁸ *Ibid.*, T. 12603–12604 (14 June 2007).

²⁰⁵⁹ Vinko Pandurević, T. 31099, 31130 (9 Feb 2009) (stating that the Podrinje Detachment, the East Bosnia Corps and the 4th and 7th Battalions and their intervention platoons were amongst the units that participated); PW-168, T. 15905 (closed session) (27 Sept 2007); Ljubo Bojanović, Ex. P03135, “92 bis transcript”, BT. 11734–11735 (8 July 2004). See also Ex. P01206a, “Intercept, 17 July 1995, 06:15 hours” (recording Krstić asking Trbić, the Zvornik Brigade Security Assistant, “have you killed the Turks up there?”). See also *infra*, para. 1892.

²⁰⁶⁰ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 164 (stating that “[a]nother 28 were liquidated and three were captured”); Vinko Pandurević, T. 31130 (9 Feb 2009). See also *infra*, paras. 1892, 1897. See also Ex. P01261a, “Intercept, 19 July 1995, 08:12 hours” (indicating that **Pandurević** had knowledge of a sweep operation near Baljkovica. During this conversation, **Pandurević** told Colonel Cerović that “yesterday we liquidated some 20-odd”, and that earlier that morning, they “started chasing about 150 of them”

Pandurević told Colonel Cerović, Assistant for Moral, Legal and Religious Affairs of the Drina Corps, that he was “still catching Turks”.²⁰⁶¹ On 23 July 1995, the Zvornik Brigade was still combing the terrain.²⁰⁶²

3. Killings in the Zvornik Area

(a) Baljkovica – near Nezuk²⁰⁶³

565. On 15 July 1995, **Miletić** issued a report on the reassignment of a unit from the 1st Krajina Corps, in order to assist “in breaking up and destroying fleeing Muslim groups in the general area of Kamenica”.²⁰⁶⁴ The Krajina Corps dispatched an infantry company of the 16th Krajina Motorised Brigade, which reported to the Zvornik Brigade at 6.30 p.m. on 16 July 1995.²⁰⁶⁵ Both **Pandurević** and the Commander of the 16th Brigade of the Krajina Corps were informed.²⁰⁶⁶ The 16th Brigade remained under the command of **Pandurević** until 21 July 1995, when the unit was redeployed to the Sarajevo Romanija Corps pursuant to an order signed by **Miletić**.²⁰⁶⁷

566. An entry dated 18 July in the Zvornik Brigade Duty Officer Notebook records a report from Ljubo Bojanović, who was at the Kitovnice IKM, that a unit from the 16th Brigade of the Krajina Corps was deployed approximately four kilometres from Nezuk.²⁰⁶⁸

who were encircled in the Planinci-Baljkovica area); Ex. P00336 “Zvornik Brigade daily combat report, type-signed Vinko Pandurević, 19 July 1995” (recording on 19 July that a Company of the 16th Krajina Brigade, amongst others, conducted a search operation around Kalesija during which “two Muslim soldiers were captured and 13 eliminated”). *See also* Ex. P01387b, “Intercept, 2 August, 09:50 hours”, where Krstić was asking Obrenović whether he was “working down there” and he told Obrenović “[d]on’t leave a single one alive”.

²⁰⁶¹ Vinko Pandurević, T. 31146 (9 Feb 2009); Ex. P01309a “Intercept dated 23 July 1995, 08:00 hours”.

²⁰⁶² Ex. P01307a, “Intercept, 23 July 1995, 06:40” (recording the Zvornik Brigade Duty Officer Ljubo Bojanović telling Krstić that “six Turks were captured”).

²⁰⁶³ The Indictment alleges that on 19 July 1995, members of the 1st Krajina Corps of the VRS, re-subordinated to the Zvornik Brigade, captured approximately 10 Bosnian Muslim males from Srebrenica near the town of Nezuk. Shortly after, they were summarily executed by their captors. Indictment, para. 30.13.

²⁰⁶⁴ Ex. P02754, “Report on the dispatch of an infantry company to assist the 1st Zvornik Infantry Brigade”, para. 1. *See infra*, para. 1641.

²⁰⁶⁵ Ex. P00405, “Order from 1st Krajina Corps, dispatching an infantry company to the Zvornik area, signed by Momir Talić, 16 July 1995”, p.1 (recording that Momir Talić, Commander of the 1st Krajina Corps, issued the dispatch order, which also included instructions to send “an officer as an advance party [...] to obtain the necessary instruction and orders from the Brigade Commander”); Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 151.

²⁰⁶⁶ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 151.

²⁰⁶⁷ Ex. P03923, “VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995”, p. 1. *See infra*, para. 1641.

²⁰⁶⁸ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 160 (stating that the Brigade was deployed at “trig point 602”); Ex. 3DIC00232, “Map of Kladanj and Zvornik area marked by the witness”; Jovo Marković, T. 27665 (31 Oct 2008) (testifying as to the position of “trig point 602”); Ex. 3D00094, “Map of Kladanj and Zvornik area - (Baljkovic-Zvornik-Snagovo-Memici)” (showing that trig point 602 is approximately 4 kilometres from Nezuk); Vinko Pandurević, T. 31587 (17 February 2009) (stating that the report in the Duty Officer Notebook came from Ljubo Bojanović); Ljubo Bojanović, Ex. P03135, BT. 11723, 11732 (8 July 2004) (stating what he was at the Kitovnice IKM on 16 July). *See also* Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”, para. 2 (“The Zvornik infantry brigade forces, reinforced by a company from the Krajina 16th brigade, a company from the Bratunac [Light Infantry Brigade], two platoons of

567. On 18 July, a group of between 500 and 1,000 Bosnian Muslim men from the column gathered in Baljkovica, near Nezuk.²⁰⁶⁹ The following day, small groups of men began to break away from the larger group in an attempt to cross into ABiH territory.²⁰⁷⁰ Sometime between noon and 2 p.m., six of these men²⁰⁷¹ were captured by soldiers including a component from the 16th Krajina Brigade and were told to hand over their documents and valuables and lie face down on the ground.²⁰⁷² They were then interrogated at gunpoint.²⁰⁷³ A VRS Soldier nicknamed "Stari" was in charge of the interrogations, during which one of the Bosnian Muslim men stated that there were approximately 500 members of the ABiH in the vicinity.²⁰⁷⁴ Upon hearing such information, Stari immediately telephoned through an instruction to another commander, "Vuka Šinović", to "finish [them] off" and told the VRS soldiers present that the Wolves (Vukovi) would "deal with that."²⁰⁷⁵

the Bijeljina Military Police and one platoon from the Vlasenica [Light Infantry Brigade] successfully repulsed all enemy attacks on the front, sealed off and searched the terrain in the wider area of Crni vrh-Pandurica-Križevici...").

²⁰⁶⁹ PW-119, Ex. P02212, "92 bis transcript", KT. 3194-3196 (23 May 2000) (testifying that he arrived in Bajkovica on 18 July and was captured the next day); PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2009), paras. 9-10 (testifying that he was captured on 18 or 19 July); T. 3686 (7 Nov 2006). Although medical records indicate that PW-119 was injured on 11 August, the Trial Chamber is nevertheless satisfied-based upon the evidence of PW-119 and PW-139-that the incident took place on 19 July. See Ex. P02213 (confidential) (medical record showing PW-119's treatment at a military hospital for a gunshot wound above his left clavicle dated 12 August 1995 and stating that the injury was sustained the previous day).

²⁰⁷⁰ PW-119, Ex. P02212, "92 bis transcript", KT. 3194-3196 (23 May 2000); PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2009), para. 9.

²⁰⁷¹ The Trial Chamber notes that PW-119 testified that there were eleven in the group, whereas PW-139 testified that six men surrendered (in both cases, this number includes the witness). Given that PW-139 is able to name the men he was captured with (including PW-119), the Trial Chamber accepts PW-139's evidence on this point. PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2009), para. 10; *ibid.*, T. 3673-3675 (private session) (6 Nov 2006). See also PW-119, Ex. P02212, "92 bis transcript", KT. 3196 (23 May 2000).

²⁰⁷² PW-119, Ex. P02212, "92 bis transcript", KT. 3196-3197, 3205-3206, 3212 (23 May 2000); PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2009), paras. 9-10; *ibid.*, T. 3672-3675 (private session) (6 Nov 2006). PW-119 is certain to have seen yellow insignia on the left arm of soldiers' uniforms. There was "a yellow sort of circle and it said the Krajišnici, men from Krajišnici, something like that, on this circle in this patch." PW-119, Ex. P02212, "92 bis transcript", KT. 3205-3206, 3224-3225, 3229-3230 (23 May 2000). On a few other patches, PW-119 thinks that he saw the letters "DRE" on the left sleeve, coming to the conclusion that the word was "Drinski" or "Drina". He has "a feeling that it was there". PW-119, Ex. P02212, "92 bis transcript", KT. 3206-3207, 3223, 3225 (23 May 2000). PW-139 testified that the VRS Soldiers wore camouflage uniforms with a badge on the sleeve displaying "Army of the Republika Srpska" in Cyrillic with the three colours of the Serbian flag and an eagle with four letters "S" in the Cyrillic script. PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 11; *ibid.*, T. 3680 (6 Nov 2006). The eagle was similar to the design of the insignia on Ex. 7D00063, "Photograph of military insignia". PW-139, T. 3719 (7 Nov 2006). One soldier said they were "Krajišnici", from the Krajina. PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 11; T. 3680 (6 Nov 2006). Based upon all the evidence, the Trial Chamber finds that there were men from the 16th Brigade of the 1st Krajina Corps re-subordinated to the Zvornik Brigade present.

²⁰⁷³ PW-119, Ex. P02212, "92 bis transcript", KT. 3197-3199 (23 May 2000); PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 11; PW-139, T. 3677-3678 (private session) (6 Nov 2006).

²⁰⁷⁴ PW-119, Ex. P02212, "92 bis transcript", KT. 3198, 3202-3204 (23 May 2000) (describing Stari as wearing "a military uniform [...] without any insignia or rank, and it was a camouflage army uniform. He was somewhat older, he was bald, he had hairy arms, short in build").

²⁰⁷⁵ *Ibid.*, KT. 3198, 3203-3204 (23 May 2000). PW-119 assumed that "the wolves" meant the "Drina Wolves" unit, because PW-119 had heard of that unit. *Ibid.*, KT. 3229 (23 May 2000). When the commander spoke on the radio, he referred to another commander by the name of "Vuka Šinović". PW-139 had the impression that "Vuka Šinović" was from the Drina Wolves, but could not recall why he thought so. PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 11.

568. After the interrogations, the VRS soldiers took the Bosnian Muslim men aside and shot them at close range one by one with automatic rifles.²⁰⁷⁶ One of the Bosnian Muslim men was not shot, because an order came through via radio that he should be taken to Zvornik and exchanged with captured VRS soldiers.²⁰⁷⁷ This man was eventually taken to the Batković detention centre.²⁰⁷⁸ One other Bosnian Muslim man survived, despite being shot in the left shoulder.²⁰⁷⁹

569. PW-139, one of the men who survived this incident, named the five men with whom he was captured.²⁰⁸⁰ One of the men he named is PW-119. For another man, PW-139 could only give part of his name. The remaining three men's names all appear on the 2007 List of Missing and Deceased with the status "still missing", meaning that they were reported missing following the fall of Srebrenica, but have not yet been identified or their death confirmed through DNA analysis. There is no other forensic evidence related to this incident before the Trial Chamber.²⁰⁸¹ Based upon the testimony of eyewitnesses and considering that three of these men disappeared at the same time, the Trial Chamber is satisfied that four Bosnian Muslim men were killed at Baljkovica on 19 July. However, the Trial Chamber finds that there is insufficient evidence to establish beyond reasonable doubt that members of the 16th Krajina Brigade, who were involved in capturing the men, were involved in the killings of these four men.²⁰⁸²

²⁰⁷⁶ PW-119, Ex. P02212, "92 bis transcript", KT. 3198–3207 (23 May 2000) (testifying that he was taken to a slope and shot in the left shoulder from a distance of approximately one metre. As he lay on the slope pretending to be dead, PW-119 heard people being shot around him, and saw a number of corpses. Before heading towards territory held by the ABiH, PW-119 called out two or three times to check whether anybody was alive, but nobody responded. PW-119 could see that the man lying next to him was dead because he gave no signs of life. Prior to being shot, PW-119 also noticed that one of the men who had been taken to be shot before him was dead by the colour of his skin). *See also* Ex. P02213 (confidential).

²⁰⁷⁷ PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 11 (stating that it was the commander who made the phone call, but giving no further details). Viewed together with PW-119's testimony, the Trial Chamber concludes that the commander was, in fact, Stari.

²⁰⁷⁸ *Ibid.*, paras. 12–13.

²⁰⁷⁹ PW-119, Ex. P02212, "92 bis transcript", KT. 3200–3202 (23 May 2000).

²⁰⁸⁰ *See* PW-139, Ex. P02288, "confidential - 92 ter statement" (18 May 2000), para. 10; T. 3674–3675 (private session) (6 Nov 2006).

²⁰⁸¹ Ewa Tabeau, T. 21032 (5 Feb 2008); Ex. P03159a (confidential), pp. 3, 12, 112. Two of the names given by PW-139 also appear on the 2009 ICMP List of Deceased, however the names given on the list are imprecise (two alternative first names are given), and the remains were found in two different places (an unspecified dam, and Liplje, approximately 12 kms south east of Baljkovica). In light of this, the Trial Chamber finds there is insufficient evidence to conclude that these remains are those of the men named by PW-139. *See* Ex. P04494, (confidential); Ex. P01876, "Map of "northern" area showing battalion AORs" (showing that Liplje, approximately 12 kms south east of Baljkovica).

²⁰⁸² The Trial Chamber notes that there is a daily combat report of the Zvornik Brigade type-signed **Pandurević** and dated 19 July 1995, stating that a Company of the 16th Krajina Brigade, amongst others, conducted a search operation around Kalesija during which "two Muslim soldiers were captured and 13 eliminated". Ex. P00336, "Zvornik Brigade daily combat report, type-signed Vinko Pandurević, 19 July 1995". The Trial Chamber however cannot conclude that the reference to Muslim soldiers "eliminated" in this report is a reference to the four men killed near Nežuk in the absence of additional evidence. In this regard, the Trial Chamber considers that a reasonable inference can be drawn that the soldiers "eliminated" during a search operation as mentioned in the report refers to soldiers killed during the course of combat.

(b) Wounded Bosnian Muslim Prisoners from Milići Hospital²⁰⁸³

570. On 14 July, after spending approximately 24 hours at the Milići Hospital, a group of wounded Bosnian Muslim men were transferred to the Zvornik Hospital.²⁰⁸⁴ The transfer order came from Dr. Ratko Rokvić, Chief Medical Officer of the VRS, who was a member of the VRS Main Staff.²⁰⁸⁵ The men appeared to be afraid, and some of them were severely wounded.²⁰⁸⁶ A report signed by Dr. Davidović, director of Milići Hospital, states that a total of 18 Bosnian Muslim men were transferred from Milići to Zvornik.²⁰⁸⁷ The medical records of 11 Bosnian Muslim men are in evidence.²⁰⁸⁸ The Trial Chamber finds that 11 Bosnian Muslim men were transferred from Milići to the Zvornik Hospital.

571. Dr. Radivoje Novaković, a surgeon at the Zvornik Hospital, treated these Bosnian Muslim prisoners, and was told that they were to be exchanged.²⁰⁸⁹ Aziz Bećirović,²⁰⁹⁰ one of the Bosnian Muslim men, was suffering from severe facial injuries and passed away at the Zvornik Hospital.²⁰⁹¹

²⁰⁸³ The Indictment alleges that on approximately 13 July 1995, 19 wounded Bosnian Muslim men were taken to Milići Hospital, after they either surrendered or were captured. Shortly after, 11 of the 19 wounded were transferred to the Zvornik Hospital on orders from the VRS Main Staff; and from there they were taken to the infirmary of the Zvornik Brigade a few days later. Around 20 July, the 11 Bosnian Muslim men were summarily executed by the VRS. Indictment, para. 30.15.

²⁰⁸⁴ Jugoslav Gavrić, T. 9114–9115 (21 Mar 2007); Ex. P02482, “92 *ter* statement” (19 Jan 2003), pp. 1–3; Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 2; *ibid.*, T. 9029–9030, 9036 (20 Mar 2007); Ex. P01884, (confidential); Ex. 6DP01880, “Note regarding transfer of wounded from Milići Hospital to Zvornik Hospital, signed by Radomir Davidović, 20 July 1995”. See also Jugoslav Gavrić, T. 9120 (21 Mar 2007) (Gavrić understood that the only reason the men were being transferred was because the Milići Hospital did not have capacity to treat them; this was routine practice and had occurred before); Ex. P01882, “Two pages extracted from a hospital patient logbook with entries dated 13 July 1995” pp. 1–2 (pages extracted from the Milići Hospital patient logbook, showing that on 13 July 1995, 14 Muslim men were admitted to the hospital).

²⁰⁸⁵ Ex. P03178, “VRS Main Staff personnel employment records”, p. 0505-7641; Ex. 6DP01888, “Letter from the Director of the Milići Hospital signed by Dr. Davidović, 20 July 1995” (stating that “the injured” were to be transferred to Zvornik Hospital on the orders of the Chief Medical Officer of the VRS, the Head of the Municipality and the Chief of the Milići SJB); Ex. P01880, “Report addressed to the Drina Corps Command, General Radislav Krstić, regarding medical service providers, signed by Dr. Davidović” (stating that wounded Bosnian Muslim men were transferred to Zvornik Hospital on the orders of the Main Staff).

²⁰⁸⁶ Jugoslav Gavrić, Ex. P02482, “92 *ter* statement” (19 Jan 2003), p. 2. According to Milići Hospital’s medical records, the men were named Aziz Bećirović, Mensur Salkić, Behaija Kurtić, Izet Halilović, Behudin Lolić, Huso Salihović, Vahdet Suljić, Remzija Ibišević, Mujo Bečić, Sulejman Begović and Mehmedalija Hamzabegović. Ex. P01884 (confidential). Although this exhibit is confidential, the Trial Chamber considers that there is no barrier to public disclosure of the names of the men, given that the names appear in the public Indictment.

²⁰⁸⁷ Ex. P01880, “Report addressed to the Drina Corps Command, General Radislav Krstić, regarding medical service providers, signed by Dr. Davidović”, p. 2.

²⁰⁸⁸ Ex. P01884 (confidential).

²⁰⁸⁹ Radivoje Novaković, T. 9036 (20 Mar 2007).

²⁰⁹⁰ Ex. P01884 refers to “Aziz Bećirović” and also “Aziz Bećirević”, however Novaković’s live testimony refers only to “Bećirević”. As Novaković was referring to Bećirović’s medical records in Ex. P01884 when he testified, the Trial Chamber concludes that he is referring to the Aziz Bećirović listed in the Indictment.

²⁰⁹¹ Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 2; *ibid.*, T. 9039–9041, 9075, 9084 (20 Mar 2007). See also Ex. P01884, (confidential), p. 34; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 144 (stating “Aziz Bećirević died at the hospital. Novaković notified that the utility company should take care of it”). But see Radivoje Novaković, T. 9081–9082 (20 Mar 2007) (testifying that he did not remember having reported about Aziz Bećirović’s death, nor that the Zvornik Brigade was informed). Novaković’s

572. The wounded Bosnian Muslim prisoners from Milići Hospital remained at the Zvornik Hospital for more than one day before being transferred again, this time to the Standard Barracks.²⁰⁹² Given that one of the men passed away at the Zvornik Hospital, the Trial Chamber finds that ten wounded prisoners were transferred from the Zvornik Hospital to the Standard Barracks. At the time of their transfer to the Standard Barracks, the injuries of the Bosnian Muslim men were not life-threatening.²⁰⁹³ The Bosnian Muslim men stayed at the Standard Barracks for five to seven days,²⁰⁹⁴ guarded by Zvornik Brigade military police.²⁰⁹⁵

573. Upon **Pandurević**'s order, Obrenović went to the clinic at the Standard Barracks to inspect the security situation with respect to the wounded Bosnian Muslims prisoners from Milići Hospital.²⁰⁹⁶ **Pandurević** also contacted the Superior Command in order to resolve the problem of the wounded prisoners, as the Zvornik Brigade was not equipped to guard and look after them.²⁰⁹⁷ Two intercepted conversations on 23 July 1995 support the conclusion that **Pandurević** sought guidance on the issue of wounded prisoners and was told that **Popović** would arrive to sort the matter out.²⁰⁹⁸ In the first conversation at 8 a.m., **Pandurević** tells Colonel Cerović that he has some wounded prisoners whom he does not know what to do with, and inquires about the possibility of an exchange.²⁰⁹⁹ The second call occurs five minutes later, and Cerović instructs the Duty Officer to convey to **Pandurević** the message that **Popović** will arrive at 5 p.m. to "say what needs to be done regarding the work we talked about."²¹⁰⁰

evidence on this point does not affect the Trial Chamber's finding that Aziz Bećirević did, in fact, pass away at the Zvornik Hospital.

²⁰⁹² Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), para. 7; Radivoje Novaković, Ex. P02480, "92 *ter* statement" (6 Mar 2003), p. 2.

²⁰⁹³ Zoran Begović, T. 9146–9147 (21 Mar 2007).

²⁰⁹⁴ Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), paras. 8–9. Dr. Novaković and other doctors continued to treat the Bosnian Muslim men after their transfer to the Standard Barracks, though Novaković treated the men at the Standard only once. Radivoje Novaković, Ex. P02480, 6 Mar 2003, p. 3; Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), para. 15.

²⁰⁹⁵ Zoran Begović, T. 9140 (21 Mar 2007); *ibid.*, Ex. P02481, "92 *ter* statement" (2 Apr 2003), para. 10; PW-168, T. 15914 (closed session) (27 Sept 2007). PW-168 did not specify whether the police were military or civilian, however on the basis of Begović's testimony and the fact that they were being hospitalized at the Standard Barracks, the Trial Chamber concludes that the wounded Bosnian Muslims were guarded by military policemen of the Zvornik Brigade.

²⁰⁹⁶ Vinko Pandurević, T. 31169 (10 Feb 2009); Zoran Begović, T. 9134 (21 Mar 2007), Ex. P02481, "92 *ter* statement" (2 Apr 2003), p. 2–3; PW-168, T. 15914 (closed session) (27 Sept 2007). Specifically, **Pandurević** told Obrenović that he should prohibit any Zvornik Brigade troops from entering the clinic (PW-168, T. 15914 (closed session) (27 Sept 2007)), and that the wounded Bosnian Muslim prisoners would be treated in the same way as any other wounded person. Vinko Pandurević, T. 31169 (10 Feb 2009).

²⁰⁹⁷ PW-168, T. 15914 (closed session) (27 Sept 2007).

²⁰⁹⁸ See *infra*, paras. 1903–1904.

²⁰⁹⁹ Ex. P01309a, "Intercept, 23 July 1995, 08:00 hours"; Vinko Pandurević, T. 31146 (9 Feb 2009) (testifying that he believed the other person in this intercepted conversation was Colonel Cerović).

²¹⁰⁰ Ex. P01310a, "Intercept, 23 July 1995, 08:05 hours". See also Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995", p. 177 (stating "0830 hrs. – Lieutenant Colonel Cerović relayed a message for commander that LTC Popović will arrive by 17:00 hours"); Vinko Pandurević, T. 32262–32263 (27 Feb 2009). PW-168 testified that, based on his knowledge of the incident and review of the intercept, the "Ljubo" referred to is

574. Sometime thereafter, according to PW-168, Obrenović was informed by the duty officer that the wounded prisoners were driven away very early in the morning.²¹⁰¹ Later on the same day that he learned that the wounded prisoners were taken away, Obrenović was also informed by **Pandurević** that **Popović** had arrived with an order from Mladić for the injured Bosnian Muslim men to be liquidated.²¹⁰² The wounded prisoners left Standard Barracks without their medical records.²¹⁰³

575. **Pandurević** denies having authorised the execution of the wounded Bosnian Muslim prisoners from Milići Hospital, testifying instead that on 24 July, Obrenović reported to him that these wounded prisoners were taken to Batković detention centre, in Bijelina.²¹⁰⁴ Begović, Chief of the Zvornik Brigade Medical Centre, testified that he was told by Obrenović that the wounded men were to be exchanged in Bijelina.²¹⁰⁵ Novaković, a surgeon at the Zvornik Hospital, was told by a soldier at the Standard Barracks that the wounded Bosnian Muslim men had been taken to be exchanged near Patkovača in the Bijeljina municipality.²¹⁰⁶

576. As previously stated, Aziz Bećirović, passed away at the Zvornik Hospital.²¹⁰⁷ The remains of another patient, Redžo Mustafić, have been identified in a grave at Liplje.²¹⁰⁸ As of November 2007, the other nine wounded Bosnian Muslim men were still missing.²¹⁰⁹

577. On the basis of this evidence, considering that the ten wounded prisoners from Milići Hospital disappeared around the same time and were last seen in the custody of **Popović**, the Trial Chamber is satisfied beyond reasonable doubt that the ten wounded Bosnian Muslim prisoners taken from the Standard Barracks were killed.

Major Ljubo Bojanović, who was on duty that day. PW-168, T. 16025 (closed session) (28 Sept 2007)). The Trial Chamber finds that “Ljubo” is a reference to Ljubo Bojanović and that “Vinko” is a reference to **Pandurević**.

²¹⁰¹ PW-168, T. 15914–15916 (closed session) (27 Sept 2007). *See also infra*, para. 1905.

²¹⁰² PW-168, T. 15915–15916 (closed session) (27 Sept 2007) (testifying that the men were taken “from Drago Nikolić and driven away”). *See also* Internal Memorandum re. Verification of accuracy of interpretation in case no. IT-05-88-T, hearing of 27 September 2007, confidential, 4 December 2009. *See also infra*, para. 1905.

²¹⁰³ Zoran Begović, T. 9147–9148 (21 Mar 2007).

²¹⁰⁴ Vinko Pandurević, T. 31170 (10 Feb 2009).

²¹⁰⁵ Zoran Begović, T. 9133–9134, 9148 (21 Mar 2007).

²¹⁰⁶ Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 3.

²¹⁰⁷ *See supra*, para. 571.

²¹⁰⁸ Ex. P04494 (confidential), p. 163.

²¹⁰⁹ Ex. P03159a (confidential). The name as well as the father’s name of the Muslim patients corresponds with the names listed in Ex. P01884 (confidential), however for Izet Halilović, Huso Salihović, Remzija Ibišević, Mujo Bečić and Sulejman Begović, their father’s names are not recorded in Ex. P01884. The date of birth in Ex. P03159a (confidential) for Mehmedalija Hamzabegović is 15 January 1957, whereas the Indictment lists this person’s date of birth as 15 February 1957. The Trial Chamber finds that this discrepancy is not material.

(c) Snagovo²¹¹⁰

578. Some time between 14 and 24 July, a PJP Platoon was deployed in Snagovo comprising eight to eleven policemen from various police stations, including the Ugljevik SJB.²¹¹¹ The members of PW-107's PJP Platoon all wore the same olive-coloured uniforms.²¹¹² Dragan Kulić, Commander of the Ugljevik SJB,²¹¹³ gave the PJP Platoon orders prior to their deployment during a brief meeting.²¹¹⁴ Their orders were:

to go to the Snagovo area, to go to clear or cleanse the terrain. [...] He said, "Not even a fly should be let out", which meant clearing, cleansing, or mopping up. Actually, killing. What else? He did not use the word "killing", but that's what [was] understood."²¹¹⁵

579. When the platoon reached the Snagovo area, gunfire could be heard in the background, along with members of the Bosnian Serb Forces calling through loudspeakers urging Bosnian Muslims to surrender, saying: "Give yourselves up. Don't be afraid".²¹¹⁶ A couple of decomposing corpses of men and children were scattered throughout the terrain.²¹¹⁷

580. Around 20 July 1995, near Snagovo the PJP Platoon captured a group of five Bosnian Muslims,²¹¹⁸ who were heading towards Tuzla.²¹¹⁹ As the PJP Platoon took the Bosnian Muslims

²¹¹⁰ The Indictment alleges that on or about 22 July 1995, approximately 6 Bosnian Muslim men who had separated from the column were captured and executed by MUP forces in the woods near the town of Snagovo, within the zone of responsibility of the Zvornik Brigade. Indictment, para. 30.15.1.

²¹¹¹ PW-107, T. 4093–4094, 4102–4104 (private session) (17 Nov 2006); Ex. P02295 (confidential). PW-107 testified that he left for Snagovo on 10 or 12 July 1995, but emphasised that he was uncertain about the dates. PW-107, T. 4093 (private session) (17 Nov 2006). A Report from the Bijelina Public Security Centre at Ugljevik, states that PW-107's Platoon was deployed between 14 and 24 July 1995. Ex. P02295 (confidential). Based upon this evidence, the Trial Chamber concludes that PW-107 was deployed between 14 and 24 July 1995.

²¹¹² PW-107, T. 4112, 4158 (private session) (17 Nov 2006). *See also* PW-106, T. 3968–3969, 3991, 3996 (private session) (15 Nov 2006); Ex. 6D00004 (confidential). PW-106 initially testified that he saw Ugljevik RS Military Police insignia. However later PW-106 stated that he was unsure whether the insignia indicated military or civilian police. *Ibid.*

²¹¹³ PW-107, T. 4079–4080 (private session) (16 Nov 2006).

²¹¹⁴ *Ibid.*, T. 4094, 4097–4099 (private session) (17 Nov 2006), T. 4216–4217 (private session) (20 Nov 2006); Ex. 7D00069 (confidential), p. 3.

²¹¹⁵ PW-107, T. 4094, 4097 (private session) (17 Nov 2006). The conclusion that the essence of Kulić's order was to kill any Bosnian Muslims they encountered is supported by the fact that Kulić strongly reprimanded PW-107's platoon when they returned to the Ugljevik SJB with a Bosnian Muslim male. *See* PW-107, T. 4124 (private session) (17 Nov 2006), T. 4186 (private session) (20 Nov 2006).

²¹¹⁶ PW-107, T. 4110–4111 (17 Nov 2006), T. 4169–4170 (20 Nov 2006). PW-107 stated that he did not know whether those who were using the loudspeakers were Bosnian Serb soldiers or policemen as he was located too far from them and both soldiers and policemen were dressed in the same army uniforms. *Ibid.*, T. 4169–4170 (20 Nov 2006).

²¹¹⁷ *Ibid.*, T. 4110–4111 (17 Nov 2006). PW-107 stated that he did not get close to the bodies because of the stench and he therefore did not know whether they had died from gunshot wounds or shrapnel. *Ibid.*, T. 4165–4166 (20 Nov 2006).

²¹¹⁸ PW-106 was a member of this group, and testified that there were initially seven men in the group (including him), however just prior to their capture, one member of the group went to reconnoitre the terrain and was not seen again, and another member of the group managed to escape as the others were captured, therefore five men were eventually taken into custody. PW-106, T. 3961, 3963–3966 (15 Nov 2006), 4037 (16 Nov 2006). PW-107 testified that his PJP Platoon came upon three Bosnian Muslims—two men aged 35 to 40 years old and one sixteen-year old—who came out of the woods, shouting not to shoot. PW-107, T. 4112–4113 (17 Nov 2006). PW-107 also testified that other members of his PJP Platoon gave statements that there were four Bosnian Muslim men. PW-107, T. 4113 (17 Nov 2006). Given that PW-106 could name all but one of the men in his group and also that these

into custody, about 20 members of the Bosnian Serb Forces suddenly arrived, wearing olive-coloured military uniforms similar to those of the PJP.²¹²⁰ One of them wore a band tied around his head, and he shot four of the Bosnian Muslims in the head.²¹²¹ Thinking that one of the prisoners was a minor, one of the members of the PJP Platoon took him aside and turned his gaze away from the shooting.²¹²²

581. The surviving Bosnian Muslim prisoner was frightened and traumatised and remained with the PJP Platoon until they travelled to the Ugljevik SJB on 24 July 1995.²¹²³ Members of the PJP Platoon gave him food and water.²¹²⁴ Once at the Ugljevik SJB, the prisoner was interrogated and slapped by a man in camouflage uniform before he was taken, upon Kulić's order, to the Batković detention centre by a police officer in a civilian police car.²¹²⁵

582. Kulić reprimanded the members of the PJP Platoon, making it clear that the Bosnian Muslim prisoner should not have been brought to the Ugljevik SJB.²¹²⁶ Members of the PJP Platoon were ordered to write reports explaining why they had failed to carry out orders, and were all suspended for between three and four days.²¹²⁷

men's names were recorded on the 2007 List of Missing and Deceased and the 2009 List of Deceased (*see infra*, para. 638), the Trial Chamber accepts the testimony of PW-106 that five men were taken into custody.

²¹¹⁹ PW-107, T. 4112–4114 (17 Nov 2006); PW-106, T. 3949–3950, 3960–3965 (15 Nov 2006). PW-106 testified that he could recall the date based upon the fact that when he was captured, he had already spent 11 days in the woods. PW-106, T. 3963 (15 Nov 2006). This roughly corresponds with PW-107's testimony that he came across PW-106 four or five days into the assignment, which began on 14 July 1995. PW-107, T. 4108 (17 Nov 2006); Ex. P02295, (confidential). *But see* Ex. 6D00004, (confidential) (stating that the group were taken into custody on 22 July).

²¹²⁰ PW-107, T. 4112, 4114 (17 Nov 2006), T. 4171–4172 (20 Nov 2006). The Indictment alleges, at para. 123(d), that a "police officer from Eastern Bosnia municipal police station" was the physical perpetrator of this crime. The uniforms the newly arrived men wore were issued by the army. *Ibid.*, T. 4172 (20 Nov 2006). PW-107 does not say why he thought the newly arrived men were policemen. Given PW-107's uncertainty regarding the men's appearance, the Trial Chamber is not satisfied beyond a reasonable doubt that they were also members of a PJP Unit.

²¹²¹ PW-106, T. 3969–3970 (15 Nov 2006); PW-107, T. 4114–4115 (17 Nov 2006). PW-107 did not know that man wearing a band, although he heard later that he was from Zvornik. PW-107, T. 4114 (17 Nov 2006). PW-107 testified that he was five to ten or twenty metres away, and that the Bosnian Muslims were searched and shot within ten minutes of being captured. PW-107, T. 4114–4115 (17 Nov 2006), T. 4176, 4231 (20 Nov 2006). By contrast, PW-106 testified that the group had their hands tied behind their backs, were taken 200 metres away and beaten severely for about 20 minutes, after which PW-106 was taken 200 to 300 meters from the group where he heard a burst of gunfire and individual shots. PW-106, T. 3965–3967, 3969–3970 (15 Nov 2006). Some of these discrepancies were put to PW-107 during cross-examination however he stood by his account of the events. *See* PW-107, T. 4231–4232 (private session) (20 Nov 2006). The Trial Chamber concludes that this discrepancy is not material and that PW-106 and PW-107 are in fact testifying about the same episode.

²¹²² PW-107, T. 4114–4115 (17 Nov 2006), T. 4230–4231 (private session) (20 Nov 2006). This prisoner was not, in fact, a minor. He gave his captors a false date of birth which indicated that he was 14 years old in the hope that his life would be spared. PW-106, T. 3968 (private session) (15 Nov 2006).

²¹²³ PW-106, T. 3969–3970, 3973 (15 Nov 2006); PW-107, T. 4115, 4119, 4123 (private session) (17 Nov 2006); Ex. P02295, (confidential).

²¹²⁴ PW-106, T. 4060–4061 (private session) (16 Nov 2006); PW-107, T. 4119 (private session) (17 Nov 2006), T. 4180 (20 Nov 2006), T. 4185 (private session) (20 Nov 2006).

²¹²⁵ PW-106, T. 3974–3975, 3998 (private session) (15 Nov 2006); PW-107, T. 4127 (private session) (17 Nov 2006).

²¹²⁶ PW-107, T. 4124 (private session) (17 Nov 2006).

²¹²⁷ PW-107, T. 4125 (private session) (17 Nov 2006). *See also ibid.*, T. 4128 (private session) (17 Nov 2006), T. 4186–4187 (private session) (20 Nov 2006).

583. Forensic and demographic evidence indicates that the Bosnian Muslim prisoners who were killed are either listed as missing or deceased.²¹²⁸ Based upon eyewitness testimony, and considering the four men all disappeared at the same time never to be seen again, the Trial Chamber is satisfied beyond reasonable doubt that these four Bosnian Muslim men were killed near Snagovo on or around 22 July 1995. The Indictment alleges that six Bosnian Muslim men were killed in this incident; however, it is clear from the evidence that five Bosnian Muslim men were taken into custody, four were executed and one of them survived the execution.

(d) Four Branjevo Military Farm Survivors²¹²⁹

584. On 16 July 1995, Ahmo Hasić survived the execution at Branjevo Military Farm along with four other Bosnian Muslims: Almir Halilović, Sakib Kivirić, Emin Mustafić, and Fuad Dozić (“the four Bosnian Muslims”).²¹³⁰ The four Bosnian Muslims parted ways with Hasić in a forest adjacent to the execution site at Branjevo Military Farm on the evening of 16 July 1995.²¹³¹

585. On 18 July 1995 at Lokanj, in the Zvornik municipality, the four Bosnian Muslims came upon Neško Đokić, a local farmer and VRS soldier. Đokić brought them food and fresh clothes, as the clothes they were wearing were covered in blood.²¹³² Eventually Đokić’s son, Slobodan (who was also a VRS soldier), told the four Bosnian Muslims the quickest way to reach Teočak.²¹³³

586. The four Bosnian Muslims had followed the road indicated by Slobodan, but they got lost and came upon a Serbian village. They surrendered to a Serbian soldier named “Bojo”, who fed

²¹²⁸ The remains of two of the Bosnian Muslim men have been identified through DNA analysis, with one set of remains found in a grave at Snagovo. Another of the Bosnian Muslim men is still missing. It is unclear whether the fourth Bosnian Muslim man is missing or deceased, as his name appears twice on the 2007 List of Missing and Deceased. Ex. P04494, (confidential), pp. 29, 106; Ex. P03159a (confidential), pp. 68, 107.

²¹²⁹ The Indictment alleges that around 19 July 1995, four Bosnian Muslim men who had survived the Branjevo Military Farm execution were captured by VRS and/or MUP forces in the zone of responsibility of the Zvornik Brigade. They were handed over to security personnel of the Zvornik Brigade, under the supervision of **Nikolić**, to be interrogated. After a few days in custody, the four Bosnian Muslim men were summarily executed by Zvornik Brigade personnel. Indictment, para. 30.14.

²¹³⁰ Hasić testified that the men he met were aged between 16 and 25 years of age, and one of them was from Jagodnja. Ahmo Hasić, T. 1205–1206 (6 Sept 2006). This corresponds with the witness statements taken from the men later on at the Standard Barracks Detention facility, which detail that the men were born in 1964, 1965, 1969 and 1980. Ex. P00392, “Zvornik Military Police document, statement of Halilović, Almir”, p. 1; Ex. P00389, “Zvornik Military Police Document, Statement of Kivirić, Sakib”, p. 1; Ex. P00390, “Zvornik Military Police Document, Statement of Mustafić, Emin”, p. 1; Ex. P00391, “Zvornik Military Police document, statement of Dozić, Fuad”, p. 1.

²¹³¹ Ahmo Hasić, T. 1205–1206 (6 Sept 2006). Hasić testified that he later heard that the four Bosnian Muslims with whom he escaped were captured and taken to Zvornik. *Ibid.*

²¹³² Ex. P00393 “Zvornik Military Police document, statement of Đokić, Neško”, p. 1. Đokić was a member of the 1st Battalion of the Zvornik Brigade. Đokić stated that he “knew immediately that they were Muslims since they were covered in blood and also by their clothes, because they had been fleeing from Srebrenica towards their territory at that time”. *Ibid.*

²¹³³ *Ibid.*, Exs. P00345, P00386 “Zvornik Brigade Report No. 17/94, signed by Drago Nikolić”, p. 1; Ex. P00389, “Zvornik Military Police document, statement of Kivirić, Sakib”, p. 1; Ex. P00390, “Zvornik Military Police document, statement of Emin Mustafić”, p. 1. See also Nebojša Jeremić, T. 10428–10430 (24 Apr 2007).

them and afterwards took them to the VRS command in Teočak, from where they were escorted to Ugljevik and interrogated.²¹³⁴ On 23 July 1995, the four Bosnian Muslims were brought to the Standard Barracks detention facility.²¹³⁵ Upon arrival, Nebojša Jeremić, a Military Policeman of the Crime Prevention Service of the Zvornik Brigade, took statements from three of the Bosnian Muslim prisoners, namely Almir Halilović, Sakib Kivirić and Emin Mustafić.²¹³⁶ Jeremić's colleague in the Crime Prevention Service, Čedo Jović, took a statement from the fourth prisoner, Fuad Dozić.²¹³⁷ The four Bosnian Muslims revealed they had received help from two VRS soldiers.²¹³⁸ That was the last time Jeremić saw the four Bosnian Muslims; he did not know what ultimately happened to them.²¹³⁹

587. Around the same time, Neško and Slobodan Đokić were brought to the Standard Barracks for interrogation.²¹⁴⁰ At some point during the investigation, **Nikolić** told Jeremić that these were "our fighters who had assisted the enemy" and that criminal charges should be filed against them.²¹⁴¹ **Nikolić** slapped Slobodan Đokić, because he would not admit the reasons why he and his father had been brought into the Standard Barracks.²¹⁴² Jeremić's colleague took statements from the men.²¹⁴³ **Nikolić** ordered Jeremić to draft an order on behalf of the Brigade Commander imposing a penalty of 60 days military imprisonment for the two men.²¹⁴⁴ Soon after the two men made their statements, **Nikolić** left the office.²¹⁴⁵

²¹³⁴ Ex. P00392, "Zvornik Military Police document, statement of Halilović, Almir"; Ex. P00389, "Zvornik Military Police Document, Statement of Kivirić, Sakib"; Ex. P00390, "Zvornik Military Police Document, Statement of Mustafić, Emin"; Ex. P00391, "Zvornik Military Police document, statement of Dozić, Fuad".

²¹³⁵ PW-168, T. 15916–15917 (27 Sept 2007) (closed session). *See also* Ex. P00392, "Zvornik Military Police document, statement of Almir Halilović", p. 1; Ex. P00389, "Zvornik Military Police document, statement of Sakib Kivirić", p. 1; Ex. P00390, "Zvornik Military Police document, statement of Emin Mustafić", p. 1 (all indicating that the statements were taken on 23 July 1995).

²¹³⁶ Nebojša Jeremić, T. 10431–10433 (24 Apr 2007); Ex. P00392, "Zvornik Military Police Document, statement of Almir Halilović"; Ex. P00389, "Zvornik Military Police document, statement of Kivirić, Sakib"; Ex. P00390, "Zvornik Military Police document, statement of Emin Mustafić".

²¹³⁷ Nebojša Jeremić, T. 10419, 10433 (24 Apr 2007); Ex. P00391, "Zvornik Military Police document, statement of Fuad Dozić".

²¹³⁸ PW-168, T. 15916–15917 (27 Sept 2007); Ex. P00392, "Zvornik Military Police Document, Statement of Almir Halilović"; Ex. P00389, "Zvornik Military Police document, statement of Kivirić, Sakib"; Ex. P00390, "Zvornik Military Police document, statement of Emin Mustafić"; Ex. P00391, "Zvornik Military Police document, statement of Fuad Dozić".

²¹³⁹ Nebojša Jeremić, T. 10439 (24 Apr 2007).

²¹⁴⁰ *Ibid.*, T. 10427 (24 Apr 2007).

²¹⁴¹ Nebojša Jeremić, T. 10427 (24 Apr 2007).

²¹⁴² *Ibid.*, T. 10427–10428 (24 Apr 2007).

²¹⁴³ *Ibid.*, T. 10427–10429 (24 Apr 2007).

²¹⁴⁴ *Ibid.*, T. 10427, 10473–10474 (24 Apr 2007). Jeremić could not, however, recall, whether an order for imprisonment for 60 days was actually written, on behalf of the Brigade Commander. *Ibid.*, T. 10438 (24 Apr 2007). Contrary to these verbal instructions, **Nikolić** signed an order for detention of Neško and Slobodan Đokić for just three days from 24 July 1995 until 27 July 1995. Ex. P00385 "Judgement against Nesko Đokić and Slobodan Đokić (for aiding four Bosnian Muslim males)".

²¹⁴⁵ Nebojša Jeremić, T. 10428 (24 Apr 2007).

588. The four Bosnian Muslims were reported missing following the fall of Srebrenica and have not yet been identified or confirmed dead through DNA analysis.²¹⁴⁶

589. In light of the evidence before it, and considering that the four Bosnian Muslims were in the custody of the Zvornik Brigade having recently escaped a mass execution, the Trial Chamber is satisfied beyond a reasonable doubt that these four Bosnian Muslim men were killed sometime after 23 July 1995.

4. Transfer to Batković

590. The Batković detention centre for POWs was located at approximately ten kilometers northeast of Bijeljina and 50 kilometres northeast of Zvornik, in the East Bosnia Corps area of responsibility.²¹⁴⁷ In mid July 1995, the commander of the Batković detention centre, in conjunction with the ICRC, prepared accommodation as well as food and medical provisions in anticipation of the arrival of about 1,300 prisoners.²¹⁴⁸

591. On 18 July, approximately 20 prisoners, most of them wounded, arrived at Batković.²¹⁴⁹ They came from Bratunac Hospital, escorted by the military policemen of the East Bosnian Corps, following an order from the VRS Main Staff.²¹⁵⁰

592. After 17 July, **Pandurević** ordered that the Bosnian Muslim prisoners who surrendered were to be handed over to the Military Police, who detained them in the military prison of the Standard Barracks.²¹⁵¹ By 20 July, the Zvornik Brigade already had a number of prisoners and **Pandurević**

²¹⁴⁶ Ex. P03159a, (confidential), pp. 39, 52, 93, 126.

²¹⁴⁷ Novica Simić, T. 28706 (24 Nov 2008); Ljubomir Mitrović, T. 23615–23616, 23658 (11 July 2008); Ex. P03132, (confidential). See Ex. P03521, “Aerial image of Batković”.

²¹⁴⁸ On 13 July, Milenko Todorović, Chief of Security of the East Bosnia Corps, informed Ljubomir Mitrović, of the Commission for Exchange of Prisoners and Bodies of the East Bosnia Corps, that preparations were being carried out in the Batković camp for the arrival of 1,300 Bosnian Muslim soldiers to be accommodated in two hangars. Ljubomir Mitrović, T. 23608, 23638–23639, 23642–23643 (11 July 2008). Mitrović could not explain the discrepancy between the 1,300 prisoners that were expected at Batković and the mere 200 who actually came. Ljubomir Mitrović, T. 23663–23666 (11 July 2008). He stated that “one could assume that bad things were happening” because the men failed to arrive and the country was at war, but he “did not receive information [...] from anybody”. Ljubomir Mitrović, T. 23644, 23670–23671 (11 July 2008). See also, PW-162, T. 9215 (22 Mar 2007) (testifying that a police officer told him on 11 July that Bosnian Muslim prisoners from Bratunac were to be transferred to Batković). PW-168 told the OTP that “**Drago Nikolić** told me that they were not gonna be sending prisoners to Batković because the Red Cross knew about Batković. He said that the orders were that the prisoners were to be brought to Zvornik to be shot”, PW-168, T. 17092-17093 (closed session) (29 Oct 2007). PW-168 adopted a previous statement recorded in Ex. 7D00289 (confidential), p. 12.

²¹⁴⁹ Ljubomir Mitrović, T. 23643–23644 (11 July 2008); Novica Simić, T. 28729–28730 (24 Nov 2008); Ex. P03522, (confidential); Ex. 3D00017, (confidential).

²¹⁵⁰ Novica Simić, T. 28729–28730 (24 Nov 2008). Simić could not remember who at the Main Staff gave the order. *Ibid.*

²¹⁵¹ Vinko Pandurević, T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007).

was seeking to have them exchanged.²¹⁵² By 22 July, the military prison, which could hold no more than 30 or 40 people, was full.²¹⁵³ On 22 July, **Pandurević** issued an interim combat report requesting from the Drina Corps Commission that “the Exchange Commission start work as soon as possible.”²¹⁵⁴ He also asked for instructions as to “what to do with the prisoners, where to put them, and to whom we should hand them over”.²¹⁵⁵

593. On the morning of 23 July, **Pandurević** was still attempting to move the prisoners from his overcrowded detention facility and he demanded that part of the prisoners be transferred to Batković detention centre.²¹⁵⁶ The Drina Corps decided to transfer them from the Standard Barracks to Batković.²¹⁵⁷ Between 23 and 26 July, about 140 to 150 POWs were transferred to Batković.²¹⁵⁸

594. On 26 July, the civilian police from Bijeljina escorted prisoners from Pilica to Batković.²¹⁵⁹ In the area of the Bratunac Brigade, in mid to late July 1995, a number of Bosnian Muslims from Srebrenica and Potočari, who had crossed into Serbia, were returned to the Bratunac Brigade and then transferred to the detention centres in Knezina, Batković, or Vlasenica, pursuant to an order of the Drina Corps Command.²¹⁶⁰

²¹⁵² Vinko Pandurević, T. 31137 (9 Feb 2009); Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”, p. 167. **Pandurević**, according to his own account, wanted to exchange the prisoners immediately but was prevented from doing so between 20 July and 22 July because of the combat and his feeling that it would have been too risky to attempt to move. Vinko Pandurević, T. 31144 (9 Feb 2009).

²¹⁵³ Vinko Pandurević, T. 31142–31146 (9 Feb 2009); Ex. P01307B, “Intercept, 23 July 1995, 06:40”.

²¹⁵⁴ Vinko Pandurević, T. 31142, 31146 (9 Feb 2009); Ex. 7DP00340, “Zvornik Brigade combat report, 22 July 1995”, para. 3.

²¹⁵⁵ Ex. 7DP00340, “Zvornik Brigade combat report, 22 July 1995”, para. 3.

²¹⁵⁶ Vinko Pandurević, T. 31145–31147 (9 Feb 2009); Ex. P01309a, “Intercept, 23 July 1995, 08:00.” **Pandurević** explained that he considers “matković,” as recorded on Ex. P01309a, to be a misprint as they were talking about Batković. Vinko Pandurević, T. 31147 (9 Feb 2009).

²¹⁵⁷ Vinko Pandurević, T. 32435 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007).

²¹⁵⁸ Vinko Pandurević, T. 31168–31169 (10 Feb 2009), T. 32325 (2 Mar 2009); Ex. P03522, (confidential) (listing 171 persons exchanged from Batkovci at the end of 1995). Reporting captured enemy soldiers was standard practice and the Zvornik Brigade daily combat report to the Drina Corps for 24 July noted that 14 ABiH soldiers were captured. On 25 July, it was reported that another 25 were captured and sent to Batković; and for 26 July, an additional 34 ABiH soldiers were captured and sent to Batković. Vinko Pandurević, T. 31163–31166 (10 Feb 2009); Ex. P00342, “Zvornik Brigade daily combat report, 24 July 1995”, para. 3; Ex. 3DP00344, “Zvornik Brigade daily combat report, 25 July 1995”, para. 3; Ex. 3DP00346, “Zvornik Brigade daily combat report, 26 July 1995”, para. 2.

²¹⁵⁹ Novica Simić, T. 28642 (21 Nov 2008); P00346, “Zvornik Brigade daily combat report, 26 July 1995,” para. 2.

²¹⁶⁰ Momir Nikolić, T. 33147–33148 (24 Apr 2009). Nikolić testified that he knows the prisoners were transferred to Batković and Vlasenica because Zlatko Cejanović was the person in charge of drafting the supporting documents for sending these people to these facilities; Nikolić had seen lists from Batković and Knezina containing the names and where they came from. Momir Nikolić, T. 33148 (24 Apr 2009). Nikolić rejected the possibility that the prisoners had not been transported to Batković but killed at Glogova. Momir Nikolić, T. 33152 (24 Apr 2009).

595. On 26 July, prisoners at Batković were registered by the ICRC, which had no restrictions on access to the detention centre.²¹⁶¹ In total, approximately 185 prisoners were registered as prisoners of war at the Batković detention centre in the second half of July 1995.²¹⁶²

596. Exchange of the Bosnian Muslim prisoners at Batković started in July 1995 and ended by 24 December 1995, when the detention centre was closed down.²¹⁶³

5. Other Killings – near Trnovo²¹⁶⁴

597. The Scorpions combat unit (“Scorpions”) was deployed approximately 150 kilometres from Zvornik at the Trnovo/Treskavica front, within the area of responsibility of the Sarajevo Romanija Corps.²¹⁶⁵ In July 1995, after the fall of Srebrenica, the Scorpions brought six Bosnian Muslim men from Srebrenica to an isolated location near two abandoned buildings in Godinjske Bare, near the town of Trnovo.²¹⁶⁶ Two of the men were forced to lie face down and the remaining four were lined

²¹⁶¹ Ex. 2D00522, “ICRC update on ICRC activities in the former Yugoslavia”; Ahmo Hasić, T. 1282–1283 (7 Sept 2006); Ljubomir Mitrović, T. 23646 (11 July 2008); Novica Simić, T. 28568–28569 (20 Nov 2008); PW-139, T. 3687 (7 Nov 2006). *See also* Ex. P02265, “Agreement between Smith and Mladić, 19 July 1995”.

²¹⁶² Ex. 3D00017, (confidential); Ex. P03522, (confidential). *See also* Ahmo Hasić, T. 1283 (7 Sept 2006); PW-139, Ex. P02288, “confidential - 92 *ter* statement,” 28 May 2000, para. 13, *ibid.*, T. 3699, 3745–3746 (7 Nov 2006); Novica Simić, T. 28568–28569 (20 Nov 2008), T. 28642 (21 Nov 2008); PW-107, T. 4226–4227 (private session) (20 Nov 2006); Novica Simić, T. 28731 (24 Nov 2008); PW-106, T. 4006 (private session) (16 Nov 2006).

²¹⁶³ Ljubomir Mitrović, T. 23648 (11 July 2008); Ahmo Hasić, T. 1230 (private session) (6 Sept 2006). *But see* PW-106, T. 3980 (private session) (15 Nov 2006) (testifying he was at Batković until 26 December 1995). Simić testified that first, 30 men were exchanged for VRS prisoners at Lisaca. Novica Simić, T. 28711–28712 (24 Nov 2008). On 27 July, the Tuzla Commission, which dealt with exchanges for the Bosnian Muslims offered to exchange 101 Serb prisoners for all the Bosnian Muslims that were held in Batković, which was an offer Ljubomir Mitrović, President of the Commission for Exchange of Prisoners and Bodies of the East Bosnia Corps, could not accept, because, according to him throughout the negotiations, the deal had been “one fighter for one fighter”. However, later in September two groups of prisoners were eventually transferred out of Batković—45 prisoners were transferred to Kotorsko in the area of the Krajina Corps, and 88 Bosnian Muslim prisoners were transferred from Batković in exchange for 66 men. Ljubomir Mitrović, T. 23647–23648 (11 July 2008).

²¹⁶⁴ The Indictment alleges that “[s]ometime in July or August 1995, after the fall of the Srebrenica enclave, a Serbian MUP unit called the Scorpions, working with the VRS and/or RS MUP, summarily executed six Muslims from Srebrenica near the town of Trnovo in Bosnia and Herzegovina [...]”. Indictment, para. 30.16.

²¹⁶⁵ Ex. P03248, “Stipulation on Trnovo”, para. 1. *See* T. 21188–21189 (7 Feb 2008).

²¹⁶⁶ Ex. P03248, “Stipulation on Trnovo”, paras. 2, 4. The men were Safet Fejzić, Azmir Alispahić, Smajil Ibrahimović, Sidik Salkić, Juso Delić and Dino Salihović. Osman Salkić and his brother-in-law Azmir Alispahić were part of the column of people attempting to reach ABiH territory after the fall of Srebrenica. The column was ambushed on 12 July 1995 between Buljim and Kamenica, and Salkić never saw Alispahić again, although he was told that he survived that ambush. Salkić was able to identify Alispahić on photographs that were shown to him. He was not able to identify Alispahić’s remains in the morgue in Visoko, however he was told that there was a positive DNA match. Osman Salkić. Ex. P02225, “92 *bis* statement” (4 Dec 2004), pp. 4–5. According to the 2009 ICMP List of Deceased, remains of Azmir Alispahić were found at two sites: Han Pijesak and Godinjska Bare. Ex. P04494, (confidential), p. 93. PW-125 identified Safet Fejzić in a still photograph from the video recorded by the Scorpions near Trnovo in July 1995. PW-125, T. 3304–3305, 3314 (private session) (31 Oct 2006); Ex. P02278 (confidential). Safet Fejzić’s name with particulars matching those provided by PW-125 appears on the 2009 ICMP List of Deceased, which indicates that his remains were found in both Han Pijesak and Godinjska Bare. Ex. P04494 (confidential) p. 119. The remains of three of the other men—Sidik Salkić, Juso Delić, Dino Salihović—were also found in Godinjska Bare. Ex. P04494 (confidential), pp. 119, 145, 133. The Trial Chamber finds that the Bosnian Muslim men who appear in Ex. P03249, “Scorpion video and accompanying transcripts” are the men named in Ex. P03248, “Stipulation on Trnovo”, para. 4. One of the men, Samil Ibrahimović, does not appear on the 2009 ICMP List of Deceased.

up one in front of the other.²¹⁶⁷ Members of the Scorpions shot the four men one at a time with automatic rifles, then untied the hands of the two men who were lying on the ground and forced them to carry the bodies to one of the abandoned buildings.²¹⁶⁸ Once the two men had done this, members of the Scorpions shot them with automatic rifles.²¹⁶⁹ The members of the Scorpions left the bodies in the abandoned building.²¹⁷⁰ These events were captured on videotape by Slobodan Stojković, himself a member of the Scorpions.²¹⁷¹

598. Human remains of the six Bosnian Muslim men were later discovered in and around the abandoned buildings at Godinjske Bare.²¹⁷² The bodies were recovered by a team from the Bosnian Commission for Missing Persons, and autopsy reports concluded that each victim died from gunshot wounds.²¹⁷³

599. The Trial Chamber finds that after the fall of Srebrenica, members of the Scorpions Unit killed six Bosnian Muslim men, namely Safet Fejzić, Azmir Alispahić, Smajil Ibrahimović, Sidik Salkić, Juso Delić and Dino Salihović.

I. Reburials²¹⁷⁴

600. As previously found, Bosnian Muslim men were buried in July at Branjevo Military Farm, Kozluk, the Petkovci Dam, Orahovac,²¹⁷⁵ and Glogova.²¹⁷⁶ During September and October 1995, primary graves at these locations were exhumed and bodies were reburied in secondary graves.²¹⁷⁷

601. Pursuant to orders from the VRS Main Staff, **Popović** instructed Momir Nikolić to conduct a reburial of the bodies of Bosnian Muslims at Glogova.²¹⁷⁸ Momir Nikolić was given the same

²¹⁶⁷ Ex. P03248, "Stipulation on Trnovo", para. 2; Ex. P03249, "Scorpion video and accompanying transcripts".

²¹⁶⁸ *Ibid.*

²¹⁶⁹ *Ibid.*

²¹⁷⁰ *Ibid.*

²¹⁷¹ Ex. P03248, "Stipulation on Trnovo", paras. 1–2; Ex. P03249, "Scorpion video and accompanying transcripts".

²¹⁷² Ex. P03248, "Stipulation on Trnovo", para. 3.

²¹⁷³ *Ibid.*

²¹⁷⁴ The Indictment alleges that from about 1 August 1995 to about 1 November 1995 "VRS and MUP personnel" participated in an organised and comprehensive effort to conceal the killings and executions in the Zvornik and Bratunac Brigade zones of responsibility by transferring bodies from primary mass graves to secondary gravesites. More specifically, the Indictment alleges that bodies were exhumed from Branjevo Military Farm, Kozluk, the Petkovci Dam, Orahovac, and Glogova and subsequently transferred to and buried at sites along Čančari Road (bodies from Branjevo Military Farm and Kozluk), sites near Liplje (bodies from the Dam near Petkovci), sites near Hodžići (bodies from Orahovac), and sites near Zeleni Jadar (bodies from Glogova). Indictment, para. 32.

²¹⁷⁵ The graves at Orahovac are also referred to as Lazete. Dean Manning, T. 18937 (10 Dec 2007).

²¹⁷⁶ See *supra*, paras. 438–439, 489–490, 501, 521, 545–547.

²¹⁷⁷ Dean Manning, T. 18933–18938 (10 Dec 2007); Krsto Simić, Ex. 4D00608, "92 bis statement", BT. 7336–7337 (23 Feb 2004); Momir Nikolić, Ex. C00001, "Statement of Facts and Acceptance of Responsibility, 6 May 2003", p. 7; Damjan Lazarević, T. 14468–14469 (29 Aug 2007). See also *supra*, paras. 440–443, 491, 502, 523, 548–549, 608, 653–658.

²¹⁷⁸ Ex. C00001, "Statements of facts and acceptance of responsibility, 6 May 2003", p. 7; Momir Nikolić, T. 32960–32962 (21 Apr 2009). See also PW-138, T. 3865, 3867 (private session) (9 Nov 2006).

instruction by his Commander, Blagojević.²¹⁷⁹ **Popović** also told Momir Nikolić that the Security Organ of the Drina Corps was tasked to ensure the necessary quantity of fuel to carry out the operation.²¹⁸⁰ Once the task was completed, Momir Nikolić was to report back accounting for the use of the fuel received from the Drina Corps.²¹⁸¹

602. On 14 September 1995, the Main Staff sent an urgent order, type-signed Mladić, to the Command of the Drina Corps and the Logistics Sector of VRS Main Staff, approving five tonnes of D-2 diesel for engineering work in the zone of responsibility of the Drina Corps to be delivered to Captain Milorad Trbić, Deputy Chief of Security in the Zvornik Brigade.²¹⁸² The order further states that “Trbić [was] responsible for the accurate maintenance of the records on the number of engine work hours of engineering machines and account accordingly for consumption of fuel.”²¹⁸³ This order was implemented on the same day by the Chief of the Technical Division of the logistics sector of the Main Staff, Colonel Žarko Ljuboječić, who issued the 5,000 litres of D-2 Diesel to the Drina Corps.²¹⁸⁴ The Drina Corps then provided the fuel for the operation to Trbić.²¹⁸⁵

603. In the area of the Bratunac Brigade, the exhumation and transfer of corpses from Glogova to Zeleni Jadar took place at night over a period of time.²¹⁸⁶ Following instructions from **Popović** and Blagojević, Momir Nikolić assisted in the exhumation and reburial operation.²¹⁸⁷ The Bratunac Brigade received two consignments of fuel for the operation, one for five tonnes and the other for three tonnes.²¹⁸⁸ Momir Nikolić kept records of the quantities of fuel and vehicles used and a working log of the people involved, which he submitted to the Bratunac Brigade upon finalisation of the task.²¹⁸⁹ Momir Nikolić also reported on the operation to his Commander during regular meetings.²¹⁹⁰ The reburial operation was termed “*asanacija*” in BCS, meaning hygiene and

²¹⁷⁹ Momir Nikolić, T. 32960 (21 Apr 2009).

²¹⁸⁰ *Ibid.*, T. 32961–32962 (21 Apr 2009).

²¹⁸¹ *Ibid.*, T. 32962–32963 (21 Apr 2009).

²¹⁸² Ex. P00041, “VRS Main Staff Order on assignment of fuel, type-signed Mladić, 14 September 1995”; Vinko Pandurević, T. 31243 (11 Feb 2009). *See also* Ex. 3D00217, “Excerpt from Ex. P379 - Duty Officer's Notebook for 27 Jul–29 Oct 95 - Entry for 14 Sept 95”.

²¹⁸³ Ex. P00041, “VRS Main Staff Order on assignment of fuel, type-signed Mladić, 14 September 1995”.

²¹⁸⁴ Ex. P00042, “VRS Main Staff Order issuing 5,000 litres of D-2 diesel fuel, type-signed Zarko Ljuboječić, 14 September 1995”. The Zvornik Brigade was copied on this implementation order.

²¹⁸⁵ PW-168, T. 15921–15922 (closed session) (27 Sept 2007).

²¹⁸⁶ Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 7; PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7889 (closed session) (20 Apr 2004); Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7336–7339, 7344 (23 Feb 2003); Dragoslav Trišić, T. 27169 (21 Oct 2008).

²¹⁸⁷ Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7; Exs. C00002, P04483, “Supplementary statement by Momir Nikolić, 16 April 2009”, p. 4. *See also* Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7336–7337 (23 Feb 2003).

²¹⁸⁸ Momir Nikolić, T. 33058 (23 Apr 2009).

²¹⁸⁹ Momir Nikolić, T. 32962–32963 (21 Apr 2009). Momir Nikolić testified that he submitted the logs on the issuance and consumption of fuel upon completion of the operation to the Drina Corps Command. *Ibid.*, T. 33059 (23 Apr 2009).

²¹⁹⁰ Exs. C00002, P04483, “Supplementary statement by Momir Nikolić, 16 April 2009”, p. 4.

sanitation measures.²¹⁹¹ According to Momir Nikolić, “*asanacija*” normally involved the removal and burial of the dead from a battle-field, however, in this particular case, the term referred to the relocation of the bodies buried in Glogova to smaller secondary graves in the area surrounding Srebrenica.²¹⁹² The operation was supposed to be a covert one but everything was done openly and publicly²¹⁹³ and required the involvement of a lot of people, resources, assets, and vehicles.²¹⁹⁴

604. Momir Nikolić requested Miroslav Deronjić to secure the assistance of the civilian authorities with regard to the reburial operation.²¹⁹⁵ Upon instructions of Deronjić, workers from the Municipal Staff for Civilian Protection of Bratunac reported at the Bratunac Brigade Headquarters, where Momir Nikolić instructed them to assist in the reburial operation.²¹⁹⁶ The Bratunac Brigade conducted the reburial operation in coordination with elements of the 5th Engineering Battalion of the Drina Corps.²¹⁹⁷ The Bratunac Brigade Military Police secured the road from Bratunac to Srebrenica in order to facilitate the movement of the vehicles through inhabited areas.²¹⁹⁸ They also secured the grave sites as the workers from the Municipal Staff for Civilian Protection of Bratunac carried out their tasks.²¹⁹⁹ The civilian police were involved as well.²²⁰⁰ Bodies from primary graves in Glogova were reburied in secondary graves in the area around Zeleni Jadar sometime between 24 August and 23 October 1995.²²⁰¹ An excavator loader and a backhoe excavator were used for the digging and four to five trucks were used to transport the bodies from Glogova to Zeleni Jadar.²²⁰²

²¹⁹¹ Momir Nikolić, T. 32959–32960 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7; Ex. P00219, “Bratunac Brigade Reports and Meetings Journal, 28 June 1995–May 1997”, p. 25. Dragoslav Tršić, T. 27169–27170 (21 Oct 2008) also testified Nikolić reported on “*asanacija*” during the meeting.

²¹⁹² Momir Nikolić, T. 32960–32961 (21 Apr 2009), T. 33052 (22 Apr 2009). Nikolić testified he considered this an incorrect use of the term “*asanacija*”.

²¹⁹³ Momir Nikolić, T. 32964 (21 Apr 2009).

²¹⁹⁴ *Ibid.*, T. 32962, 32964 (21 Apr 2009).

²¹⁹⁵ *Ibid.*, T. 33060 (23 Apr 2009).

²¹⁹⁶ PW-170, Ex. P02960, “confidential – 92 *ter* statement”, BT. 7886–7887, 7927–7929 (closed session) (20 Apr 2004). Momir Nikolić confirmed that at the beginning of the operation people were reporting to him. When asked if he could confirm Deronjić sent people to him, Momir Nikolić replied he could not exclude the possibility Deronjić was involved. However, he did not know if Deronjić was sending the people to him and thought this was not the case. Momir Nikolić, T. 33061–33062 (23 Apr 2009). The Trial Chamber does not consider this to affect the credibility of PW-170.

²¹⁹⁷ Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7.

²¹⁹⁸ *Ibid.*; PW-138, T. 3863–3864 (closed session) (9 Nov 2006). *See also* Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7337 (23 Feb 2004).

²¹⁹⁹ Krsto Simić, Ex. 4D00608, “92 *bis* transcript”, BT. 7337 (23 Feb 2004). *See also* PW-170, Ex. P02960, “confidential – 92 *ter* statement”, BT. 7886–7887, 7928–7929 (closed session) (20 April 2004).

²²⁰⁰ Momir Nikolić, Ex. C00001, “Statements of facts and acceptance of responsibility, 6 May 2003”, p. 7.

²²⁰¹ Ex. P01652, “Aerial Zeleni Jadar, 24 Aug and 2 Oct 1995 (with marking ZJ-2)” (which Manning interprets as evidence that Zeleni Jadar 2 was created between 24 Aug and 2 Oct 1995); Ex. P01653, “Aerial Zeleni Jadar, 20 and 23 Oct 1995 (with markings ZJ-2)” (which Manning interprets as evidence the grave was sealed between 20 and 23 Oct 1995); Ex. P01654, “Aerial Zeleni Jadar, 7 Sept and 2 Oct 1995 (with marking ZJ-3)” (which Manning interprets as evidence Zeleni Jadar 3 was created between 7 Sept and 2 Oct 1995); Ex. P01655, “Aerial Zeleni Jadar, 20 Oct 1995” (which Manning interprets as evidence that Zeleni Jadar 3 was sealed by 20 Oct 1995); Ex. P01656, “Aerial Zeleni Jadar, 7 Sept and 12 Oct 1995 (with markings ZJ-4 & ZJ-5)” (which Manning interprets as evidence that Zeleni Jadar 4 and 5 were created between 7 Sept and 12 Oct 1995); Ex. P01657, “Aerial Zeleni Jadar, 18 Oct 1995 (with markings ZJ-4 & ZJ-5)” (which Manning interprets as evidence Zeleni Jadar 4 and

605. In the Zvornik Brigade's area of responsibility, the exhumation and relocation of bodies from the primary gravesites was conducted during several nights, in September and October 1995.²²⁰³ Milorad Trbić coordinated the operation.²²⁰⁴ Photographic evidence was presented to the Trial Chamber showing activity on the sites between 7 September and 2 October 1995.²²⁰⁵

606. Machine operators of the Engineering Company of the Zvornik Brigade who conducted the initial burials²²⁰⁶ were asked to exhume the bodies at Branjevo Military Farm, Kozluk, and Orahovac,²²⁰⁷ together with additional machine operators from other units of the Zvornik Brigade.²²⁰⁸ Members of the Engineering Battalion of the Drina Corps also assisted.²²⁰⁹ Excavators were used for the digging²²¹⁰ and trucks from various companies were used to carry the bodies to

5 were sealed by 18 Oct 1995); Dean Manning, T. 18939–18942 (10 Dec 2007); Dušan Dunjić, T. 22869 (26 June 2008); Ex. P00649, "Summary of Forensic Evidence - Execution Points and Mass Graves, Dean Manning", p. 14; Ex. P02994, "Summary of Forensic Evidence by Dean Manning, 24 Aug 2003", p. 4; Richard Wright, T. 7499 (21 Feb 2007); Ex. P00560, "Report by Jose Pablo Baraybar on Anthropology Examination of Mass Grave sites in Eastern Bosnia, 8 December 1999", pp. 6, 33; Ex. P02476, "Report by Jose Pablo Baraybar on Zeleni Jadar 6, 2001, 25 Aug 2003", pp. 12–13. *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 488.

²²⁰² Krsto Simić, Ex. 4D00608, "92 *bis* statement", BT. 7337–7339 (23 Feb 2004). Richard Wright testified that Zeleni Jadar was not dug by a frontloader as it had no entrance ramp, whole tracks, or teeth marks. Wright believed Zeleni Jadar was dug by a backhoe, which is a "machine with an arm that can dig". Richard Wright, Ex. P02162, "92 *ter* transcript", KT. 3666 (26 May 2000).

²²⁰³ Damjan Lazarević, T. 14485–14487 (29 Aug 2007), T. 14509–14511 (30 Aug 2007); PW-168, T. 15920, 15927 (closed session) (27 Sept 2007); Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304 (2 Mar 2009). *See also* Ex. 7D00681, "Zvornik Brigade Regular Combat Report, signed by Pandurević, 27 September 1995," para. 6 (recording the use of 3,870 litres of D2-Diesel though not mentioning what is was used for).

²²⁰⁴ Damjan Lazarević, T. 14488–14489 (29 Aug 2007). Lazarević testified that at the end of each job, Trbić would summon the workers for an update on the work carried out. Lazarević testified he received the assignment to assist in the reburial operation from Major Jokić and Slavko Bogičević. *Ibid.*, T. 14468 (29 Aug 2007).

²²⁰⁵ Ex. P01723, "Aerial Orahovac, 7 and 27 Sept 1995 (with markings LZ-01 and LZ-01)"; Ex. P01747, "Aerial Petkovci Dam, 7, 27 Sept 1995"; Ex. P01763, "Aerial Kozluk, 7 and 27 Sept 1995"; Ex. P01800, "Aerial, 21 Sept 95 (with markings of the Biljeljine - Zvornik road)"; Ex. P01801, "Aerial, 27 Sept 1995"; Ex. P01835, "Aerial Snagovo, 7 Sept 1995 (no markings)"; Ex. P01836, "Aerial Snagovo 2 Oct 1995 (with markings LP-1 & LP-2)"; Ex. P01838, "Aerial Snagovo, 7 Sept 1995 (no markings)"; Ex. P01839, "Aerial Snagovo, 2 Oct 1995 (with marking LP-4)"; Ex. P01847, "Aerial Ravne, 7 Sept 1995 (no markings)"; Ex. P01848, "Aerial Ravne, 2 Oct 1995 (with marking CR-2)"; Ex. P01849, "Aerial Ravne, 7 Sept 1995 (no markings)"; Ex. P01850, "Aerial Ravne, 2 Oct 1995 (with marking CR-3)"; Ex. P01851, "Aerial Ravne, 7 Sept 1995 (no markings)"; Ex. P01852, "Aerial Ravne, 2 Oct 1995 (with markings CR-4 & CR-5)"; Ex. P01853, "Aerial Redzici, 7 Sept 1995 (no markings)"; Ex. P01854, "Aerial Redzici, 2 Oct 1995 (with marking CR-6)"; Ex. P01855, "Aerial Redzici, 7 Sept 1995 (no markings)"; Ex. P01856, "Aerial Redzici, 2 Oct 1995 (with marking CR-7)". *See also* Dean Manning, T. 18933–18939, 18943–18944 (10 Dec 2007); Jean-René Ruez, T. 1537–1541 (12 Sept 2007); Ex. P02103, "Documents tendered with statement of witness Jean-René Ruez", pp. 240–244, 247; Richard Wright, Ex. P02162, "92 *ter* transcript", KT. 3658–3659 (26 May 2000); Ex. P00649, "Summary of forensic evidence - execution points and mass graves, by Dean Manning", pp. 14–15; Ex. P00665, "Report by Richard Wright on Kozluk, 24 June–6 Aug 1999", p. 14; Ex. P00666, "Report by Richard Wright on exhumations in Eastern Bosnia in 1998", pp. 20–22. *See also* Prosecution Adjudicated Facts Decision, Annex, Facts 404, 488.

²²⁰⁶ *See supra*, paras. 482, 486, 490, 521–522, 546–547.

²²⁰⁷ Damjan Lazarević, T. 14468 (29 Aug 2007).

²²⁰⁸ *Ibid.*, T. 14484 (29 Aug 2007).

²²⁰⁹ Vinko Pandurević, T. 31243 (11 Feb 2009).

²²¹⁰ Damjan Lazarević, T. 14529 (30 Aug 2007). *See also* Richard Wright, Ex. P02162, "92 *ter* transcript", KT. 3661 (26 May 2000). During exhumation by the investigators, it was noted the secondary sites largely mirrored one another in terms of size and shape as well as the machinery with which they were created. All sites, except Zeleni Jadar, showed traces of the wheels and teeth of an excavator, called a front loader, indicating that they were created by such a machine. Richard Wright, Ex. P02162, "92 *ter* transcript", KT. 3661, 3669 (26 May 2000). Lazarević testified that a BGH is an excavator, also called a backhoe. The machine has a bucket at the front and is mainly used to dig canals and building foundations. It is a tracked vehicle and can turn in any direction. Damjan Lazarević,

the secondary gravesites as the trucks of the Engineering Company were old and could not be used “to complete the work.”²²¹¹ The Commander of the Roads and Bridges Platoon of the Engineering Company of Zvornik Brigade stated that, although a broader circle of soldiers and civilians might have been aware to some extent of what was going on, only very few people were aware of the details of the operation.²²¹² The trucks carrying the corpses passed through Zvornik leaving an unbearable stench and upsetting the local population.²²¹³

J. Total Number of Deceased: Forensic and Demographic Evidence

1. Introduction

607. There is an extensive body of forensic and demographic evidence before the Trial Chamber in relation to the number of persons killed following the fall of Srebrenica. The Trial Chamber notes that a precise number of deceased is not necessary in order to reach a conclusion regarding the crimes alleged in the Indictment.²²¹⁴ However such an estimate is relevant, particularly to the crime of genocide and extermination, a crime against humanity. Therefore, the Trial Chamber will review the body of evidence before it with a view to reaching an estimated number of persons killed in the mass executions following the fall of Srebrenica. Where appropriate, some forensic evidence (along with relevant challenges) is addressed in the section dealing with the specific crime site to which it applies.²²¹⁵

2. The Graves

608. The Prosecution conducted exhumations in and around Srebrenica from 1996 until 2001, when responsibility for exhuming the remaining graves was handed over to the BiH Government, in conjunction with the International Commission on Missing Persons (“ICMP”).²²¹⁶ As of March 2009, 73 graves had been identified, and all but one exhumed: 31 primary graves,²²¹⁷ 37 secondary

T. 14445 (29 Aug 2007). Lazarević further testified that a ULT is construction machine with a loading bucket in the front, mainly used to load construction material. Although the machine can be used for smaller excavations on flat areas, it cannot dig deeply. *Ibid.*, T. 14446 (29 Aug 2007). See also Ex. P02174, “Brochure for a ULT-200”.

²²¹¹ Damjan Lazarević, T. 14485 (29 Aug 2007).

²²¹² *Ibid.*, T. 14511 (30 Aug 2007).

²²¹³ Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304 (2 Mar 2009); Damjan Lazarević, T. 14485 (29 Aug 2007).

²²¹⁴ A conclusion as to the number of persons killed does not form an element of the crimes alleged. See *Brđanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, para. 260, citing *Ntakirutimana* Appeal Judgement, para. 516; *Krstić* Trial Judgement, para. 501.

²²¹⁵ See, for example, *supra*, paras. 439–443.

²²¹⁶ Ex. P02993, “Summary of Forensic Evidence by Dean Manning, 27 November 2007”, p. 1.

²²¹⁷ Ex. P04490 “Srebrenica Investigation – Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex A, pp. 1–9, 25, 28–33. Prosecution Investigator Dušan Janc identified the 31 primary graves—including mass graves, smaller graves and individual graves—in the following areas: Cerska; Nova Kasaba (2 graves); Orahovac (2 graves, also known as Lažete 1 and 2); Pilica (Branjevo Military Farm); Petkovci Dam; Kozluk; Kozluk surface remains; Glogova (2 graves); Ravnice (2 graves); Konjević Polje (2 graves); Godinjske Bare; Bišina; Sandići; Potočari; Srebrenica Hospital; Nova

graves,²²¹⁸ and five graves for which no information was available as to whether they were primary or secondary²²¹⁹ (together, the “Srebrenica Related Graves”). A primary grave is the first grave in which remains are buried after death, and a secondary grave is a grave to which remains are transferred to after initially being buried in a primary grave.²²²⁰

3. The Exhumations

609. Several experts who exhumed the graves for the Prosecution testified before the Trial Chamber, notably anthropologists William Haglund,²²²¹ Jose Pablo Baraybar,²²²² Richard Wright²²²³ and Fredy Peccerelli,²²²⁴ as well as forensic pathologists John Clark²²²⁵ and Christopher Lawrence.²²²⁶ Findings from individual reports pertaining to particular gravesites are set out in the Potočari,²²²⁷ Bratunac²²²⁸ and Zvornik²²²⁹ sections of this Judgement.

Kasaba (2 graves); Kaldrmice; Brežljak; Motovska Kosa; Križevići; Vlasenička Jelovačka Česma; Kaldrmice (1 individual grave); Pasmulići (1 individual grave); Šeher (1 individual grave); Krušev Dol-Vukotin Stan (1 individual grave). *Ibid.* The Trial Chamber notes that Janc included surface remains in his list of graves if he had information that the deaths can be linked to the events at Srebrenica. One such example is Godinjske Bare.

²²¹⁸ Ex. P04490, “Srebrenica Investigation – Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex A, pp. 9–28. Dušan Janc identifies 37 secondary mass graves at the following locations: 13 gravesites along Čančari Road; 7 gravesites along Hodžići Road; 5 gravesites in Liplje; 7 gravesites in Zeleni Jadar, 3 gravesites in Blječeva and 2 gravesites in Budak. *Ibid.* The grave known as Čančari Road 1 had not been exhumed at the time of Janc’s testimony. Dušan Janc, T. 35621 (4 May 2009).

²²¹⁹ Ex. P04490, “Srebrenica Investigation – Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex A, pp. 20–21, 32 (These graves were found in Liplje (3 graves) and Nova Kasaba (2 individual graves)).

²²²⁰ Dean Manning, T. 18930 (10 Dec 2007).

²²²¹ William Haglund led exhumations at Nova Kasaba, Lažete near Orahovac, the Cerska Valley and Pilica (Branjevo Military Farm). Ex. P00621, “Report by William Haglund - Forensic Investigation of four graves in Nova Kasaba, 15 June 1998”; Ex. P00616, “Report by William Haglund on the Lažete 2 gravesite, 15 June 1998”; Ex. P00611, “Report by William Haglund - Forensic Investigation of the Cerska Grave Site - Volume I, 15 June 1998”; Ex. P00622, “Report by William Haglund - Forensic Investigation of the Pilica (Branjevo Military Farm) Grave Site - Volume I, 15 June, 1998”.

²²²² Jose Pablo Baraybar gave evidence on the exhumations at Kozluk, Čančari Road, Glogova, Zeleni Jadar, Nova Kasaba, Konjević Polje, Lažete, Hodžići Road, Pilica (Branjevo Military Farm) and Ravnice. Ex. P00559, “Report by Jose Pablo Baraybar - Anthropology Examination of Human Remains from Eastern Bosnia in 1999”; Ex. P00561, “Report on the Anthropological Examination of Human Remains from Eastern Bosnia in 2000, by Jose Pablo Baraybar, 2 February 2001”; Ex. P02476, “Report on Excavations at the Site of Zeleni Jadar 6 in 2001, 25 August 2003”; Ex. P00560, “Report by Jose Pablo Baraybar on Anthropology Examination of Mass Grave sites in Eastern Bosnia, 8 December 1999”.

²²²³ Richard Wright worked on exhumations at Petkovci Dam, Kozluk, Glogova, Liplje, Čančari Road, Hodžići Road and Zeleni Jadar. Ex. P00666, “Report by Richard Wright on exhumations in Eastern Bosnia in 1998”; Ex. P00665, “Report by Richard Wright on Kozluk in 1999, 2 February 2000”; Ex. P00674, “Prof. Richard Wright report titled Report on Excavations and Exhumations at the Glogova 1 Mass Grave in 2000, 9 Feb 2001”.

²²²⁴ Fredy Peccerelli worked on the exhumations at Lažete. Fredy Peccerelli, T. 8773–8776 (13 Mar 2007); Ex. P02459, “Lažete 1, Bosnia Herzegovina, Excavation and Exhumation Report”.

²²²⁵ John Clark worked on exhumations at Kozluk, Nova Kasaba, Konjević Polje, Glogova, Lažete, Ravnice and Zeleni Jadar. Ex. P02446, “Report titled - ICTY Operations in Bosnia Herzegovina in 2001, 14 May 2003”; Ex. P00598, “Report by Dr. John Clark - ICTY Operations in Bosnia Herzegovina, in 2000, Srebrenica related grave sites, 24 February 2001”; Ex. P00575, “Report by Dr John Clark - ICTY Operations in Bosnia-Herzegovina in 1999, Srebrenica Grave Sites”.

²²²⁶ Christopher Lawrence worked on exhumations at Petkovci Dam, Liplje, Hodžići Road and Čančari Road and Zeleni Jadar. Ex. P02160, Christopher Lawrence, “92 ter transcript”, KT. 3979–3980 (31 May 2000).

²²²⁷ See *supra*, para. 358.

²²²⁸ See *supra*, paras. 411–413, 416–419, 422, 439–443.

(a) Challenges regarding the Timeframe

610. The forensic reports presented by the Prosecution do not generally imply a precise time of death for those buried in the Srebrenica Related Graves. Dušan Dunjić, a professor of forensic medicine who appeared as an expert witness for the Defence, stated that a precise time of death for the bodies could not be ascertained. Having reviewed some of the Prosecution expert reports,²²³⁰ Dunjić noted errors and inconsistencies when observing changes in the putrefaction of corpses,²²³¹ and insufficiencies when recording the state in which the bodies were found.²²³² Dunjić emphasised the importance of performing these procedures properly, because analysing the articulation of the joints and examining the degree of preservation, putrefaction, or skeletonisation can allow for an estimation of the time of death.²²³³

611. The Trial Chamber accepts Dunjić's opinion that based *solely* on the autopsy and exhumation reports, a determination of the precise time of death of the victims in the Srebrenica Related Graves can, at times, be problematic. In this regard, the Trial Chamber notes that many of the exhumation reports do not estimate a precise time of death of the victims based upon autopsy results.²²³⁴ However, the Trial Chamber notes that although Dunjić acknowledged that an anthropologist may consider factors other than the state of the body in order to reach conclusions,²²³⁵ when estimating the time of death, Dunjić nevertheless appears to have looked at the exhumation reports in isolation. Dunjić's report and testimony on this issue show no consideration of what took place in and around Srebrenica in July 1995. The Trial Chamber has an extensive amount of such evidence before it. Most notably, it has evidence that multiple large scale

²²²⁹ See *supra*, paras. 491–492, 502–503, 523–524, 548–549.

²²³⁰ Dunjić examined reports from Nova Kasaba (primary grave site), Pilica (Branjevo Military Farm) (primary grave site), Zeleni Jadar (secondary grave site), and Ravnice (where corpses were found on the surface). Dušan Dunjić, T. 22778 (25 June 2008).

²²³¹ For example, Dunjić noted errors and inconsistencies when recording the degree of putrefaction of the corpses compared with the putrefaction of the external part of the corpses. Additionally, Dunjić noted that this is particularly important to establish the time of death. Dušan Dunjić, T. 22790 (25 June 2008); Ex. 1D01070 "Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008", pp. 42–44.

²²³² Dušan Dunjić, T. 22856, 22873, 22906 (26 June 2008). Dunjić disputed the description of the status of the preservation, putrefaction, and partial skeletonisation of the bodies. He criticised that words used by Clark, such as "complete" or "articulation, partial", which, according to Dunjić, were "absolutely an insufficient description of the situation or the status of the joints". *Ibid.*, T. 22786 (25 June 2008).

²²³³ *Ibid.*, T. 22786–22788 (25 June 2008). There are several stages in the process leading to complete putrefaction of the soft tissues (skeletonisation), and multiple factors, such as the environment, the manner of death, or the wounds suffered, can influence the putrefaction process. *Ibid.*

²²³⁴ See, for example, Ex. P02446, "Report - ICTY Operations in Bosnia Herzegovina in 2001 Season, 14 May 2003" (where no estimation of the time of death is given); Ex. P00598 "Report by Dr. John Clark - ICTY Operations in Bosnia Herzegovina in 2000, Srebrenica related grave sites, 24 February 2001" (where no estimation of the time of death is given); Ex. P00666, "Report by Richard Wright on exhumations in Eastern Bosnia in 1998", pp. 28–31 (where the only evidence as to the time of death was the date upon which the wrist watch found in the grave had stopped); and Ex. P00665, "Report by Richard Wright on Kozluk in 1999, 2 Feb 2000", p. 14 (where the only evidence referred to regarding the time of death was the flowering plants found in the grave).

²²³⁵ Dušan Dunjić, T. 22894–22895 (26 June 2008).

mass executions took place in July 1995 in the area around where these mass graves were exhumed. The Trial Chamber is not persuaded that problems with the calculation of a precise time of death for each of the thousands of individuals exhumed from the Srebrenica Related Graves should call into question the reliability of the expert reports tendered by the Prosecution.

(b) Challenges regarding the Manner and Cause of Death

612. The forensic evidence presented by the Prosecution indicates that the main cause of death was determined to be gunshot injury.²²³⁶ However, the cause of death could not be determined in a “significant number of cases” because body parts and soft tissue were missing, and no cause of death could be determined from the bones alone.²²³⁷ Clark observed that of the graves he exhumed, there was “certainly nothing to suggest that these were combat casualties”.²²³⁸

613. Dunjić reviewed reports and autopsy records from a selection of the Srebrenica Related Graves exhumed by Haglund, Lawrence and Clark (both primary graves and secondary graves) and surface remains.²²³⁹ He opined that many of the conclusions concerning the cause and manner of death were arbitrary and not based upon scientific proof, particularly in cases where it was concluded that the deceased met a violent death.²²⁴⁰ Dunjić stated that in some of the cases he reviewed, the person conducting the exhumation and/or autopsy reached arbitrary conclusions not supported by findings;²²⁴¹ reached a conclusion without recording a detailed description of the wound, thereby rendering the finding impossible to verify;²²⁴² or recorded the manner of death as homicide, but failed to reach a conclusion as to the cause of death.²²⁴³

614. In particular, Dunjić criticised the work of Haglund, Lawrence and Clark. In relation to Nova Kasaba, Dunjić stated that the description of injuries in the graves exhumed by Haglund was

²²³⁶ Dean Manning, T. 18956 (10 Dec 2007); Ex. P02994, “Summary of Forensic Evidence by Dean Manning, 24 Aug 2003”, p. 2–3.

²²³⁷ Dean Manning, T. 18956 (10 Dec 2007).

²²³⁸ John Clark, Ex. P02128, “92 ter transcript”, KT. 3939 (31 May 2000) (concerning only the bodies autopsied in 1999); John Clark, T. 7342–7344 (20 Feb 2007). However, Clark admitted several times that he was not in a position to completely exclude the possibility that some of the victims died in combat. John Clark, T. 7344, 7368, 7369, 7371, 7372 (20 Feb 2007).

²²³⁹ Dušan Dunjić, T. 22774–22778 (25 June 2008); Ex. 1D01070 “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, pp. 4–5. Dunjić examined reports from Nova Kasaba (primary grave site), Pilica (Branjevo Military Farm) (primary grave site), Zeleni Jadar (secondary grave site), and Ravnice (where corpses were found on the surface). Dušan Dunjić, T. 22778 (25 June 2008).

²²⁴⁰ Dušan Dunjić, T. 22857–22858 (26 June 2008). For example, Dunjić indicated that for Nova Kasaba 1, 2, and 3, the conclusion that the victims had met a violent death was arbitrary because of the presence of multiple injuries caused by shrapnel. *Ibid.*

²²⁴¹ *Ibid.*, T. 22792–22793 (25 June 2008). Dunjić also found that the notations concerning evidence of trauma did not comply with accepted standards of forensic medicine because the conclusion that a gunshot wound existed was not supported by any detail in the trauma finding—the diagnosis is simply made without any accompanying description of the wound or the injury (for example, size, edges, canals, remaining tissues, etc). *Ibid.*

²²⁴² *Ibid.*, T. 22816 (25 June 2008).

“disastrous”, seriously lacking in precision and detail.²²⁴⁴ According to Dunjić, this rendered the results unreliable because they could not be verified.²²⁴⁵ Dunjić had the same criticism for Haglund’s report on Pilica (Branjevo Military Farm), stating that the conclusion reached as to the cause of death cannot be tested based upon the descriptions in the report,²²⁴⁶ and Clark’s work at Ravnice, stating that the insufficient description of trauma made it impossible to verify that the injuries occurred as described.²²⁴⁷

615. Dunjić also highlighted the fact that many of the bodies in the Srebrenica Related Graves were in an advanced state of putrefaction at the time of exhumation, which means that it is almost impossible to conclude whether a wound found on a body was inflicted before or after death.²²⁴⁸

²²⁴³ Dušan Dunjić, T. 22816–22818 (25 June 2008).

²²⁴⁴ *Ibid.*, T. 22784–22790 (25 June 2008); T. 22857–22858 (26 June 2008); Ex. 1D01070 “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, pp. 4, 35–65. In relation to the Nova Kasaba autopsy reports, Dunjić noted: “[T]he trauma reports (where everything observed on the body should be described in detail) of some autopsy reports contain cut-and-dried diagnoses and conclusions, which are even incorrect in some cases. For some skull fractures lacking the characteristic description of an entry-and-exit wound due to a projectile, it is claimed that they were caused by a projectile, and in another case, for a similar description of the injuries to another skull it is said to have been caused by blunt force – for both cases the cause of death is said to be linked to skull injury – this is professionally unacceptable. The autopsy results are thin – incomplete, with a very inadequate description of the injuries”. Ex. 1D01070, “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, p. 29.

²²⁴⁵ Dušan Dunjić, T. 22816 (25 June 2008); T. 22904–22905 (26 June 2008).

²²⁴⁶ *Ibid.*, T. 22865 (26 June 2008). For example, regarding one case from the Pilica exhumation, Dunjić noted the description of injuries provided (“Condition: not complete – missing head, only base of skull present. Preservation: Purification / Saponification”), and stated: “Insufficient description of injuries, not possible to verify the finding, cut-and-dried diagnosis of the injury given. As in the other cases, the cause of death is debatable”. Ex. 1D01070 “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, p. 74.

²²⁴⁷ Ex. 1D01070, “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, pp. 105–122. *See* Ex. P00598 “Report by Dr. John Clark - ICTY Operations in Bosnia Herzegovina in 2000, Srebrenica related grave sites, 24 February 2001”. For example, Dunjić noted the following description in one of the autopsy reports: “Main injuries described: Head & Neck: The skull was fragmented into pieces of different sizes. Following reconstruction it revealed a small hole in the right parietal bone with internal bevelling. The frontal and maxillary parts, and part of the occipital bone were missing. Trunk: There was a small hole in the blade of the left scapula. All the ribs and most of the vertebrae were missing. Extremities: All bones of both arms were missing except for the left ulna. Fractured upper third of the right tibia with fragmented bones of the middle part of the shaft. Fractured medial part of the ilium of the right hip bone. Fractured lower third of the left femur with fragmented pieces. Fractured upper end of both left tibia and fibula with missing parts. Projectiles: two bullets, fragment of copper jacket of bullet. Two metal fragments from a sock. Shell case from a plastic bag in the body bag. Cause of death: Gunshot injury of the head”. Of this, Dunjić observed “Incomplete description of the injuries, report on gunshot injuries superficial. As in most cases, the conclusion is debatable. Cut-and-dried diagnoses are given regarding the gunshot injuries, but they were not described as such”. Ex. 1D01070, “Expert Report, Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008”, p. 107.

²²⁴⁸ Dušan Dunjić, T. 22796–22797 (25 June 2008). Clark acknowledged this difficulty, stating “Strictly speaking therefore, in these often incomplete and decomposed bodies, it was virtually impossible to be certain that any of the injuries found necessarily occurred in life, and theoretically all of them could have occurred after death, even the very obvious gunshot injuries. Such comments however, have to be balanced against the observations that these people were all in mass graves, that they must have died in some way, and that if it was not predominantly from violence, then it must be from some cause which was no longer obvious. That may still have been possible, e.g. poisoning, suffocation etc, but such suggestions must be viewed in the context that most of these victims had nevertheless still been shot, often several times, and in different parts of the body.” Ex. P02446, “Report - ICTY Operations in Bosnia Herzegovina in 2001, 14 May 2003”, p. 3.

616. Dunjić acknowledged that there are many factors other than the state of the remains (for example, witness testimony and other evidence) that should be considered when reaching a determination as to the cause of death.²²⁴⁹ In this regard, the Trial Chamber notes that ligatures and blindfolds were found in the graves, indicating that the bodies exhumed were victims of mass executions.²²⁵⁰ Dunjić agreed that in regard to those bodies which had ligatures associated with them, one could find that they were victims of execution by shooting.²²⁵¹ Prosecution experts also indicated that several blindfolds had bullet holes through the material and the posture of several bodies exhumed at different sites indicated that their wrists were bound.²²⁵² Large numbers of shell casings were also found at some grave sites indicating that the individuals were killed at the gravesite.²²⁵³

617. Dunjić examined a number of cases from Nova Kasaba for which he concluded that the cause of death could have been the consequence of legitimate combat operations.²²⁵⁴ Prosecution investigator Dušan Janc agreed that some persons found in the Srebrenica Related Graves may have died as a result of land mines, suicide or legitimate combat operations, and stated that such cases were most likely to be found among the surface remains.²²⁵⁵ Janc estimated that such cases could total 1,000, based upon the 648 persons identified thus far from the surface remains, but the number

²²⁴⁹ Dušan Dunjić, T. 22895 (26 June 2008).

²²⁵⁰ According to Manning's Report, ligatures and/or blindfolds were found at the following gravesites: Cerska (48 ligatures); Nova Kasaba 1996 (27 ligatures); Orahovac (also known as Lažete 2 A & B) (1 ligature and 107 blindfolds); Orahovac (also known as Lažete 2C) (40 blindfolds and 4 ligatures); Orahovac (also known as Lažete 1) (138 blindfolds); Hodžići Road 3 (16 blindfolds), Hodžići Road 4 (40 blindfolds), Hodžići Road 5 (34 blindfolds and 1 ligature); Pilica (Branjevo Military Farm) (83 ligatures and 2 blindfolds); Čančari Road 3 (37 ligatures and 8 blindfolds), Čančari Road 12 (16 ligatures and 8 blindfolds); Petkovci Dam (1 ligature); Liplje (23 ligatures); Zeleni Jadar 5 (2 ligatures); Glogova 1 (12 ligatures); Kozluk (168 ligatures and 55 blindfolds). Ex. P02994, "Srebrenica Investigation – Summary of Forensic Evidence – Executions Points and Mass Graves 2001", Annex D. See also Dušan Janc, T. 33614–33616 (4 May 2009).

²²⁵¹ Dušan Dunjić, T. 22935–22936 (27 June 2008); Ex. 1D01070, "Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008", p. 23.

²²⁵² Dean Manning, T. 18930–18931 (10 Dec 2007).

²²⁵³ Hundreds of shell casings were found at the Kozluk grave site. Ex. P00665, "Report by Richard Wright on Kozluk in 1999, 2 Feb 2000", pp. 11, 13, 14; Richard Wright, Ex. P02162, "92 ter transcript", KT. 3688, 3716–3717 (29 May 2000); Richard Wright, T. 7507–7508 (21 Feb 2007). See also Ex. P00649, "Summary of Forensic Evidence – Executions Points and Mass Graves 2000, Report by Dean Manning, 16 May 2000". Prosecution investigator Dean Manning indicated that shell casings were found at Zeleni Jadar 5, linking this mass grave to the Kravica Warehouse. Shell cases were also found at Cerska by the side of the road next to the grave. Shell cases were also at the Lažete mass grave identical to shell cases found at three secondary graves Hodžići Road 3, 4, and 5. Lastly, shell cases were found on the surface of the Petkovci Dam and within the Petkovci Dam grave. *Ibid.*, Annex A, pp. 56, 9–11, 23–37, 40–41.

²²⁵⁴ Ex. 1D01070, "Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dušan Dunjić, March/April 2008". In total, Dunjić reviewed approximately 159 individual autopsy reports from six locations where mass graves were found: Nova Kasaba (33); Pilica (Branjevo Military Farm) (52); Zeleni Jadar (20); Ravnice (20); Potočari (11) and Sandići (23). There were several autopsy reports from Nova Kasaba, including some where Dunjić concluded the cause of death could have been obtained during combat and others where Dunjić did not reach this conclusion. Dunjić reviewed 31 autopsy reports from Nova Kasaba 8 in his Expert report, and concluded that in 25 cases, it was possible that the injuries were sustained in armed combat. This was evident in cases Nova Kasaba 8:48, 8:49, 8:50, 8:51, 8:52, 8:55, 8:56, 8:57, 8:58, 8:61, 8:62, 8:63, 8:64, 8:65, 8:66, 8:67, 8:69 because projectiles, shrapnel, or metal fragments were found in the body. *Ibid.*, pp. 44–65. See Dušan Dunjić, T. 22837–22854 (26 June 2008).

could be higher.²²⁵⁶ Combat operations occurred close to the Srebrenica Related Gravesites (specifically at Ravni Buljim, Kamenica, Sandići and Konjević Polje and Udrc), however Janc did not consider that the persons buried in the graves close by may have died as a result of these operations, because—in particular in the Nova Kasaba and Cerska graves—evidence of ligatures and blindfolds was found.²²⁵⁷

618. Dunjić also examined the work of Lawrence at Zeleni Jadar 5 and because of the evidence of wounds caused by shell and shrapnel, he argued that the injuries sustained could have been the result of combat activities.²²⁵⁸ However, the Trial Chamber notes that Zeleni Jadar 5 is a secondary grave linked to the Glogova grave, a primary grave associated with the Kravica Warehouse executions. There is evidence before the Trial Chamber of damage caused by grenades and explosives at the Kravica Warehouse.²²⁵⁹

619. The Trial Chamber notes that the advanced state of putrefaction and skeletonisation of the bodies presented problems for those exhuming the Srebrenica Related Graves, particularly when determining the cause of death. Nevertheless, when the exhumation reports are considered together with the other evidence before the Trial Chamber in relation to the large scale mass executions which took place in the Srebrenica area in July 1995, the Trial Chamber is satisfied with the reliability of the conclusions in relation to the cause of death reached in the Prosecution expert reports.

620. Haglund appeared as a Prosecution witness in the case of *Prosecutor v. Rutaganda*, where the Trial Chamber in that case held that “on the basis of the testimony of Dr. Kathleen Reich, a

²²⁵⁵ Dušan Janc, T. 33593 (4 May 2009).

²²⁵⁶ *Ibid.*, T. 33594–33604 (4 May 2009). Janc did not agree with Butler’s statement in this regard that “1,000 to 2,000 [...] would be reasonable”. *Ibid.* Janc calculated a total of 648 individuals whose remains have been found on the ground or surface. The total number of surface remains collected is 957. *Ibid.*, T. 33515 – 33517 (1 May 2009). See also Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex B, p.2. See Richard Butler, T. 20251 (23 Jan 2008). Janc did not accept the suggestion that 2,000–3,000 bodies were found on a battlefield in the Pobudje region. Dušan Janc, T. 33595–33599 (4 May 2009). See also Ex. 2D00702, “Statement of Mr. Velid Mujkić, 23 Aug. 1995” (where a man from the column stated that 500 men were killed on the battlefield). Janc categorized the locations where surface remains have been collected into four “wider areas: the Pobudje area (stretching south of the Bratunac-Konjević Polje road); the Baljkovica area (stretching north-west of Zvornik); the Snagovo area (stretching south-west of Zvornik); other areas (outside the above mentioned areas, but still relatively close to them).” Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica, March 2009”, Annex B, p. 2. Cf. Ex. 1D00374, “UNPROFOR,” Srebreniča-Tuzla Update, 17 July 1995”. According to this UNPROFOR report, dated 17 July 1995, “Escapees from Srebrenica have arrived at Tuzla Air Base to join up with their family. UNMOs, Civil Affairs, and others have spoken separately to several individuals who describe a similar ordeal: [...] Up to three thousand were killed on the way, mostly by mines and BSA engagements. Unknown others were captured. Others committed suicide. Unknown others went to Zepa”. *Ibid.*, p. 2. See also, Borovčanin Final Brief, para. 522.

²²⁵⁷ Dušan Janc, T. 33611–33616 (4 May 2009). See Ex. 2DIC00252, “Prosecution 65^{ter} document 2110 marked in court by Witness Mr. Janc, 04 May 2009” for a map of the combat areas in relation to the graves.

²²⁵⁸ Dušan Dunjić, T. 22869–22873 (25 June 2008); Ex. 1D01070, “Forensic Examination of Autopsy Reports and Medical Documentation on Exhumation, by Dunjić Dušan, March, April 2008”, pp. 93–104.

forensic pathologist called by the Defence as an expert witness, [it was] not satisfied that the scientific method used by Professor Haglund is such as to allow the Chamber to rely on his findings in the determination of the case” and that “above all, the Chamber notes that the Prosecutor failed to show a direct link between the findings of Professor Haglund and Dr. Peerwani and the specific allegation in the indictment.”²²⁶⁰ It appears that while Dr. Reich criticised Haglund’s method in determining the cause of death, such determination was actually made by another expert in that case, Dr. Peerwani.²²⁶¹ In the *Rutaganda* case, Dr. Reich also criticised Haglund’s method in determining time of death, as he did not consider insect information and fabric and clothing analysis and did not take casts of skulls or use stature estimates. Haglund responded that such methods are either not routine practice in Canada or in the United States or could not be used in the context of Rwanda.²²⁶² Haglund also appeared as Prosecution expert in the case of *Prosecutor v. Kayishema* and he was not criticised in this context.²²⁶³ An Expert Panel set up by the Prosecution to investigate complaints against Haglund and another pathologist cleared Haglund of any wrongdoing, stating that nothing regarding the conduct of the exhumations jeopardised their scientific validity.²²⁶⁴ The Trial Chamber is of the opinion that nothing raised by the Defence can create a reasonable doubt as to the reliability of Haglund’s work, which the Prosecution has proven before the Trial Chamber.

(c) Minimum Number of Individuals in Each Grave

621. It is not possible to determine the number of persons buried in each Srebrenica Related Grave via a simple body count, because of the degree of disarticulation of the remains.²²⁶⁵ When determining the number of dead at a grave site, the anthropologists measured the Minimal Number of Individuals (MNI). The MNI is an estimate of the minimum number of individuals necessary to account for the number of body parts or bones exhumed from a given grave.²²⁶⁶ The estimate is reached by counting the most widely present type of bone in a given gravesite.²²⁶⁷ Bones other than

²²⁵⁹ See *supra*, para. 437.

²²⁶⁰ William Haglund, T. 8923 (15 Mar 2007), citing *Rutaganda* Trial Judgement, paras. 257–258.

²²⁶¹ *Ibid.*, T. 8924–8927 (15 Mar 2000).

²²⁶² *Ibid.*, T. 8928–8929 (15 Mar 2007).

²²⁶³ *Ibid.*, T. 8904 (15 Mar 2007).

²²⁶⁴ Ex. 2D00070, “Haglund – Report of the Oversight Committee, 2 February 1998”, p. 7; William Haglund, Ex. P02150, “92 *ter* transcript”, KT. 3760 (29 May 2000); T. 8913, 8921, 8974 (15 Mar 2007).

²²⁶⁵ Debra Komar, T. 23903–23904 (23 July 2008); Ex. P00559, “Report by Jose Pablo Baraybar - Anthropology examination of human remains from Eastern Bosnia in 1999 (Exh. P-233 Krstić case)”, pp. 5–6.

²²⁶⁶ Jose Pablo Baraybar, Ex. P02474, “92 *ter* transcript”, KT. 3793 (29 May 2000); T. 8797, 8865 (14 Mar 2007).

²²⁶⁷ Jose Pablo Baraybar, T. 8798 (14 Mar 2007); Ex. P02474, “92 *ter* transcript”, KT. 3804 (29 May 2000). The most widely present bone should be an unpaired bone or one bone of a pair. Ex. P00559, “Report by Jose Pablo Baraybar - Anthropology examination of human remains from Eastern Bosnia in 1999 (Exh. P-233 Krstić case)”, p. 6.

the bone chosen for the MNI calculation are only considered to represent individuals if it is so obvious that that bone does not represent an individual already accounted for by the other bones.²²⁶⁸

622. Dean Manning, an investigator working for the Prosecution, wrote in his report that previously, the Office of the Prosecutor relied upon the anthropological MNI when assessing the remains. However, as DNA identification data became available through the ICMP, the Office of the Prosecutor used this data in preference over the anthropological MNI because the ICMP data “provides a much more accurate indication of the number of individuals located within the graves”.²²⁶⁹

623. Debra Komar, an anthropologist who appeared as an expert witness for the Defence, reviewed the work of Wright, Baraybar and Lawrence, and identified methodological deficiencies in their calculations of the MNI in each grave.²²⁷⁰ For example, in exhumations supervised by Wright, the lead pathologist at the morgue did not attempt to re-associate the body parts; the body bags were simply evaluated as they arrived.²²⁷¹ According to Komar, re-association is necessary for proper analysis of the number of individuals, and failing to re-associate the remains compromises the integrity of the conclusions in Wright’s report.²²⁷²

624. Even if Komar is correct in terms of the methodological deficiencies she identified in the MNI calculation, her conclusion can have no material importance in this case because the DNA evidence before the Trial Chamber supersedes MNI as a method of calculating the total number of remains in each grave. The Trial Chamber will rely upon the ICMP data when assessing the total number of deceased in the Srebrenica Related Graves.

4. Demographic Evidence

625. Helge Brunborg, a demographer working for the Prosecution, compiled a list of 7,661 persons who went missing in Srebrenica around the time of the fall (“2005 List of Missing”).²²⁷³ Ewa Tabeau, another demographer working for the Prosecution, compiled an update to the 2005 List of Missing, which gives the names of each of the 7,661 listed individuals on the 2005 List of Missing and additionally indicates whether the remains of each listed individual have been

²²⁶⁸ Jose Pablo Baraybar, T. 8802, 8865–8866 (14 Mar 2007). For example, if one hundred right femurs of adults are found, one hundred adults are accounted for. However, if, in addition, an arm bone of a child is found, but no femur of a child is found, the arm bone will be counted as one additional individual, although no additional femur was found. *Ibid.*, T. 8802 (14 Mar 2007).

²²⁶⁹ Ex. P02993, “Summary of forensic evidence by Dean Manning, 27 November 2007”, p. 2.

²²⁷⁰ Debra Komar, T. 23889–23890 (23 July 2008); Ex. 2D00534, “Dr. Komar, Expert Witness report, 28 February 2008”, pp. 2–5.

²²⁷¹ Debra Komar, T. 23898–23900 (23 July 2008). See Ex. P00666, “Report to ICTY by Richard Wright, exhumations in Eastern Bosnia in 1998”.

²²⁷² Debra Komar, T. 23900 (23 July 2008).

identified by the ICMP.²²⁷⁴ The 2005 List of Missing and the update prepared by Ewa Tabeau use ICMP data, ICRC records²²⁷⁵ and records of Physicians for Human Rights (“PHR”).²²⁷⁶ Unlike the 2009 ICMP List of Deceased, the List of Missing prepared by Ewa Tabeau includes the names of persons who have been reported missing, but for whom no DNA identification has yet been made.

626. Brunborg checked the ICRC data on persons reported missing as much as possible by comparison with other sources.²²⁷⁷ As previously mentioned, the total number of persons recorded on the 2005 List of Missing is 7,661.²²⁷⁸ The Prosecution submits that 165 individuals should be added to this list.²²⁷⁹ These people were identified through DNA analysis but could not be matched with any identities listed on the 2005 List of Missing.²²⁸⁰

627. The 2005 List of Missing was compared with the 1991 Population Census for Bosnia and Herzegovina (“1991 Census”) to ascertain whether missing persons had been recorded in the 1991 Census.²²⁸¹ If missing people were recorded in the 1991 Census, Brunborg concluded that they did,

²²⁷³ Ex. P02413, “Updated Report by Helge Brunborg - Missing and dead from Srebrenica: The 2005 Report and List”.

²²⁷⁴ Ewa Tabeau, T. 21032 (5 Feb 2008); Ex. P02413, “Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005”; Ex. P03159, “Report titled Srebrenica Missing: The 2007 Progress Report on the DNA-Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II”; Ex. P03159a, (confidential). Ewa Tabeau also provided a further list of 426 ICMP records which are not found in the 2005 List of Missing (165 individuals) or which represent less certain matches (261 individuals). Ex. P03159a, (confidential).

²²⁷⁵ More than 95% of the information on missing persons on the ICRC list was reported by family members. The ICRC data contained date of birth, sex, name, family name, father’s name, place and dates of disappearance and, perhaps, place of birth or place of residence. Brunborg did not receive the original ICRC questionnaires, which contained more details, because of the ICRC’s neutrality policy. Helge Brunborg, T. 6779–6782 (1 Feb 2007); T. 11184, 11185, 11189 (9 May 2007); T. 11255, 11285 (10 May 2007); Ex. P00571 “Report by Helge BRUNBORG - Report on the number of missing and dead from Srebrenica”, pp. 3–4.

²²⁷⁶ Ewa Tabeau, T. 21032–21033, 21042, 21050, 21063 (5 Feb 2008); Ex. P02412, “Report by Helge Brunborg - Rebuttal Report regarding Report on the number of missing and dead from Srebrenica, 25 August 2004”, pp. 5–6. PHR collected ante-mortem data to help identify missing persons. The PHR list contained data provided by family members on physical characteristics, special clothing and special dental features. PHR collected similar data to the ICRC, but additionally registered the ethnicity of missing persons. The PHR list has fewer cases than the ICRC, most likely because PHR started later than ICRC and worked actively to register persons in only Tuzla and Sarajevo. Helge Brunborg, T. 6783 (1 Feb 2007); Ex. P02413, “Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005”, p. 7.

²²⁷⁷ Helge Brunborg, T. 11285–11286 (10 May 2007).

²²⁷⁸ *Ibid.*, T. 6783–6784 (1 Feb 2007); Ex. P02413, “Updated Report by Helge Brunborg - Missing and dead from Srebrenica: The 2005 Report and List, 16 November 2005”, p. 19; Ex. P02423, “Number of Cases on the 2005 Prosecution list of missing and dead persons related to the fall of Srebrenica”. The figure of 7,661 is a minimum. Ex. P02413, “Updated Report by Helge Brunborg - Missing and dead from Srebrenica: The 2005 Report and List”, p. 2. An Addendum to this Report, emphasises that 103 names that appear on the list of identified dead provided by the ICMP but were not successfully matched with the ICRC list of missing people can be seen as an extension of the 2005 Prosecution list of missing persons. Ex. P02416 (confidential), p. 10; Ex. P02418 (confidential). 96.4% of the victims were reported as disappearing in July 1995, the vast majority of them in the period from 11 to 18 July. By the end of August 1995, almost 99% of the victims had been reported missing (i.e. 7,558); “only” 103 victims disappeared in the period from September to December 1995. Potočari was the place of disappearance for the largest number of those who disappeared (2,070), followed by the forest (1,085), Kravica (811), Konjević Polje (804) and Kamenica (723). Ex. P02413, “Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005”, pp. 20–22.

²²⁷⁹ Prosecution Final Brief, para. 1134.

²²⁸⁰ Ex. P03159a (confidential), p. ii.

²²⁸¹ Helge Brunborg, T. 6792 (1 Feb 2007).

in fact, exist.²²⁸² The census collected information on a total of 4.3 million individuals,²²⁸³ and contained data on name, father's name, date of birth, place of residence, marital status, income, education and a unique identification number.²²⁸⁴

628. The 2005 List of Missing was also compared with the list of voters collected in 1997 and 1998 and the UNHCR database of Displaced Persons and Refugees.²²⁸⁵ Brunborg explained that doing this checked the validity of the missing lists because survivors who may have been wrongly reported as missing might register to vote.²²⁸⁶ Brunborg excluded 12 persons from the list in this way.²²⁸⁷

629. Only 68 persons on the 2005 List of Missing are female²²⁸⁸ and the majority are aged between 16 and 60 years;²²⁸⁹ 87.9% were of Muslim ethnicity,²²⁹⁰ 30 persons were below 16 years of age and 360 persons (including one woman) were older than 60 years of age.²²⁹¹

630. Miladin Kovačević, a demographer who appeared as an expert witness for the Defence, repeated the exercise undertaken by Brunborg when compiling the 2005 List of Missing, *i.e.* Kovačević compared the 2005 List of Missing against the lists of voters and the 1991 census.²²⁹²

²²⁸² Helge Brunborg, T. 6792 (1 Feb 2007). *See also Ibid.*, T. 11186 (9 May 2007).

²²⁸³ *Ibid.*, T. 6791 (1 Feb 2007). *See also* Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 Report and List", p. 7. The census covered the entire population of Bosnia and Herzegovina as of 31 March 1991. *Ibid.*

²²⁸⁴ Helge Brunborg, T. 6788-6789 (1 Feb 2008). The census also included information on a large number of variables, including, *inter alia* municipality and settlement of residence, name and surname, father's name, household sequential number, personal ID number, date and place of birth, sex, occupation, ethnicity, mother tongue, religion and the number of children born. Ex. P02413, "Updated Report by Helge Brunborg - Missing and Dead from Srebrenica: The 2005 Report and List, 16 November 2005", p. 7.

²²⁸⁵ Helge Brunborg, T. 6792-6793 (1 Feb 2007); T. 11190 (9 May 2007); Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 report and List", pp.17-18.

²²⁸⁶ Helge Brunborg, T. 6793-6794 (1 Feb 2007). Brunborg said that while the voters' lists included the date of birth, a unique identification number and municipality of residence, an important drawback was that they only covered the population over the age of 18 and that on average only 70% registered to vote. *Ibid.*

²²⁸⁷ Helge Brunborg, T. 6793, 6796, 6811 (1 Feb 2007); Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 report and list", p. 18; Ex. P02423 "Document titled - Number of Cases on the 2005 OTP List of Missing and Dead Persons Related to the Fall of Srebrenica by Victim Categories." Brunborg pointed out that it is more likely that all or most of those excluded were wrongly registered as voters or displaced persons, rather than being wrongly registered as missing. Ex. P02413, "Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 Report and List", p. 18.

²²⁸⁸ Helge Brunborg, T. 6800 (1 Feb 2007).

²²⁸⁹ *Ibid.*, T. 6800 (1 Feb 2007); Ex. P02424, "Chart - Age Distribution of Srebrenica-Related Missing and Dead (Absolute Numbers)".

²²⁹⁰ Ex. P03159, "Report titled Srebrenica Missing: The 2007 Progress Report on the DNA- Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II", pp. 8-9.

²²⁹¹ Ex. P03159, "Report titled Srebrenica Missing: The 2007 Progress Report on the DNA- Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II", pp. 8-9.

²²⁹² Miladin Kovačević, T. 22652-22655 (23 June 2008); T. 22677-22678 (24 June 2008).

Kovačević found that 57 individuals out of the 7,661 on the List could not be matched to anyone in the census through criteria adopted by Brunborg.²²⁹³

631. Kovačević also used a different approach than Brunborg in order to estimate the number of missing persons following the fall of Srebrenica. He compiled tables showing *inter alia* (i) the total population of the Srebrenica enclave, including soldiers, in specific time periods ranging from 1991 until January 1995,²²⁹⁴ (ii) the number of displaced persons for each time period,²²⁹⁵ and (iii) the difference between these figures.²²⁹⁶ In relation to each time period considered, the table lists four figures for the inhabitants of Srebrenica, ranging from 36,051 to 37,255.²²⁹⁷ According to Kovačević, all the figures listed in the table are based on the 1991 census and BiH government documents.²²⁹⁸ With regard to the number of displaced persons, Kovačević eventually arrived at a single figure of 34,537 as the minimum number of displaced persons, by merging several documents, only taking into account those who were listed as becoming displaced in 1995, and eliminating any duplicates.²²⁹⁹ When subtracting the number of displaced persons from the total population—for each time period considered—the highest figure was 2,988.²³⁰⁰ These findings led Kovačević to conclude that the number of missing persons in Srebrenica after the fall could not be greater than 3,000.²³⁰¹

632. Kovačević stated that when calculating the number of displaced persons (34,537), he only counted people who became displaced in 1995.²³⁰² The Trial Chamber notes that the situation in Bosnia and Herzegovina in 1995 was such that many people would have been displaced in and around Srebrenica throughout that year. This means that there is a likelihood that the number

²²⁹³ Miladin Kovačević, T. 22665 (23 June 2008); T. 22676, 22684 (24 June 2008); Ex. 1D01129 “Report on the number of People Missing in Srebrenica in July 1995, by Miladin Kovačević”, para. 14.

²²⁹⁴ The time periods considered in the table are listed as follows: January 1994, 1991, 11 January 1995, and 11 January 1994. Ex. 1D01129 “Expert Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, p. 8.

²²⁹⁵ This figure was concluded based upon various documents from the Srebrenica Municipality Presidency, the Tuzla Bureau of Statistics, and the Srebrenica Municipality Civilian Protection Municipal Staff. Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, pp. 10–11.

²²⁹⁶ Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, p. 8.

²²⁹⁷ *Ibid.*

²²⁹⁸ Miladin Kovačević, T. 22696 (24 June 2008); Ex. 1D01129 “Expert Report on the number of People Missing in Srebrenica in July 1995, author: Miladin Kovačević”, pp. 8, 9–13, table 1; Ex. 1D00312, “Document from the Statistics Institute of the Republic of BH Department for Statistics District secretariat of Defence in Tuzla signed by Fahrudin Salihović, 11 January 1994”.

²²⁹⁹ Miladin Kovačević, T. 22697–22698 (24 June 2008); Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, pp. 8, 11–12.

²³⁰⁰ Miladin Kovačević, T. 22687, 22696 (24 June 2008).

²³⁰¹ Miladin Kovačević, T. 22687 (24 June 2008). In relation to his figures—2,988—Kovačević testified that “it is far less than 7,661. These indicators bring into question the 7,661 figure that is mentioned.” *Ibid.*; Ex. 1D01129 “Expert Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, para. 35.

²³⁰² Miladin Kovačević, T. 22697–22698 (24 June 2008); Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, table 1, p. 8, paras. 41–42.

34,537 includes persons who became displaced either before or well after July 1995. In the opinion of the Trial Chamber, this lack of precision renders Kovačević's analysis unreliable.

633. Furthermore, the Trial Chamber notes that Kovačević's analysis excludes any data concerning the number of persons *reported* missing following the fall of Srebrenica, thereby ignoring an important source used by Brunborg. Kovačević set out to determine how many people went missing following the fall of Srebrenica and declined to consider data from the ICRC and PHR on persons who were reported missing following the fall of Srebrenica. Of the documents available to Kovačević, it is clear that he chose to ignore important sources and he provides no explanation for why he may have done so. In the opinion of the Trial Chamber, this approach is not only puzzling, it is fundamentally flawed and renders Kovačević's analysis unreliable.²³⁰³

634. Svetlana Radovanović, another demographer who testified as an expert witness for the Defence, criticised Brunborg's approach on the basis that it ignored many other available sources which, if used in his study, would have produced a more reliable list of missing persons.²³⁰⁴ Examples of such sources include a Bulletin of Displaced Persons published by the BiH Ministry, various ABiH databases, a database compiled by a group called Muslims Against Genocide,²³⁰⁵ and the DEM 2T database, compiled by the Bureaux of Statistics in BiH and RS pursuant to an order of the Tribunal.²³⁰⁶

²³⁰³ **Judge Kwon's Separate Opinion:** While I concur with the Trial Chamber's finding that Kovačević's analysis is unreliable for the reason provided in para. 632, I respectfully disagree with the majority's further assessment of Kovačević's analysis, discussed in para. 633. The majority finds that Kovačević's analysis is unreliable because he took a "puzzling" and "fundamentally flawed" approach of ignoring important data from the ICRC and PHR on persons who were reported missing following the fall of Srebrenica, which were the main sources of the report of Helge Brunborg, a demographer working for the Prosecution. I note that the tasks given to Kovačević by the defence counsel of **Popović** and **Pandurević** were to "[provide] his opinion on the number of people who went missing in Srebrenica in July 1995" and also to "assess the method used by Brunborg in his report". *Ex. 1D01129 "Expert Report by Miladin Kovačević", p. 1.* I am of the view that Kovačević, as a defence expert, in performing his task of examining the objectivity and accuracy of the Brunborg's report, was entitled to select any method available to him to estimate the number of missing persons in Srebrenica in that time period and challenge Brunborg's analysis. Indeed, he may have chosen to criticise the accuracy of the main source in Brunborg's report, which is the data from the ICRC and PHR; he may have chosen to point out the deficiencies in Brunborg's methodological approach; and/or he may have chosen to conduct an analysis of his own without relying on any of Brunborg's sources and then compare his results with those of Brunborg. Kovačević chose the last approach, which I find particularly plausible in this case. While the Trial Chamber's assessment on whether Kovačević's analysis was precise in its own merit is a separate matter, I do not find his approach "fundamentally flawed" or "puzzling" solely for the fact that he did not consider the ICRC and PHR data as a source for his analysis. I consider it perfectly reasonable that Kovačević would not use the ICRC and PHR data in his analysis, given that this data formed the basis of Brunborg's report, the very report he was tasked to challenge.

²³⁰⁴ Svetlana Radovanović, T. 24326–24327 (29 July 2008); T. 24475–24476 (31 July 2008); *Ex. 3D00398*, "Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008", pp. 6, 21–23.

²³⁰⁵ Svetlana Radovanović, T. 24326–24327 (29 July 2008); T. 24345–24347 (30 July 2008).

²³⁰⁶ *Ibid.*, T. 24355–24358 (30 July 2008).

635. Radovanović concluded that the 7,661 persons on the 2005 List of Missing should be reduced by one quarter, representing two categories of persons wrongly included.²³⁰⁷ The first category were persons who, according to Radovanović, could not be found on the 1991 census, and therefore, according to Brunborg's methodology, should not be counted.²³⁰⁸ Radovanović counted 1,002 individuals, approximately 13% of 7,661, who did not match with the census records.²³⁰⁹ Radovanović maintained that even though the disappearance of these people had been reported to the ICRC, to include them in the 2005 List of Missing without matching them against the census was improper according to the methodology set out by Brunborg.²³¹⁰ Brunborg testified that the likely reason that these 1,000 individuals could not be matched was because of spelling errors or lack of full date of birth and other particulars—because the forms were scanned, errors could result through unclear handwriting.²³¹¹ A date of birth was lacking for “just a handful of persons” and in such cases Brunborg used other available data, such as place of birth and place of residence.²³¹² The Trial Chamber accepts the work of Brunborg, particularly because he addressed this issue raised by Radovanović and tried to fill gaps in his work using other available data.

636. Radovanović's second category is made up of people who Brunborg was able to match with the 1991 census, but are not associated with the July 1995 events in Srebrenica because they either died prior to 10 July 1995 or they cannot be territorially linked to the Srebrenica enclave.²³¹³ Based on Brunborg's data, Radovanović estimated that there are a further 1,000 such people.²³¹⁴ The Trial Chamber notes Tabeau's evidence that persons on the ABiH List who were recorded as missing prior to July 1995, and who Radovanović presumably included in her tally of wrongly included persons, were ultimately identified in Srebrenica Related Graves.²³¹⁵ On this basis, the Trial Chamber cannot agree with Radovanović's assertion that these people were wrongly included on the 2005 List of Missing.

²³⁰⁷ Svetlana Radovanović, T. 24363–24365 (30 July 2008); Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 19.

²³⁰⁸ Svetlana Radovanović, T. 24363–24365, 24403–24404 (30 July 2008); Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 13, 19.

²³⁰⁹ Svetlana Radovanović, T. 24408–24409 (30 July 2008); T. 24497 (31 July 2008).

²³¹⁰ *Ibid.*, T. 24497–24499 (31 July 2008).

²³¹¹ Helge Brunborg, T. 6789 (1 Feb 2007); T. 11186 (9 May 2007). *Cf.* Ex. P02413, “Updated Report by Helge Brunborg - missing and dead from Srebrenica: The 2005 Report and List”, pp. 7–8. Brunborg said that such scanning would usually be checked, but the Statistical Office in Sarajevo said that there had not been time to do this. Helge Brunborg, T. 11202 (9 May 2007).

²³¹² Helge Brunborg, T. 11203–11205 (9 May 2007).

²³¹³ Svetlana Radovanović, T. 24363–24365 (30 July 2008); Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 19.

²³¹⁴ Svetlana Radovanović, T. 24364 (30 July 2008).

²³¹⁵ Ewa Tabeau, T. 21052 (5 Feb 2008).

637. In calculating the number of displaced persons following the fall of Srebrenica, both Kovačević and Radovanović use documents identified in their reports only by number.²³¹⁶ Neither report explains the source nor the content of these documents. When Radovanović was asked about the origin of these documents, she replied that she did not know where they came from.²³¹⁷ The Trial Chamber notes in this regard that Radovanović and Kovačević both rely upon documents and sources which provide the Trial Chamber with no basis to assess their reliability. This is particularly so in the case of Radovanović, given that she cannot identify the source of these documents when asked. Without sufficient information to substantiate the findings of Radovanović and Kovačević, the Trial Chamber considers their evidence to be pure speculation.

5. ICMP Data on Deceased Persons

638. The International Commission on Missing Persons (“ICMP”) compiled a list of individuals whose remains have been exhumed in the Srebrenica Related Graves and identified (“2009 ICMP List of Deceased”).²³¹⁸ The identification was established by matching a DNA sample from the remains against a DNA sample from a relative of the person reported missing.²³¹⁹ The 2009 ICMP List of Deceased also includes 294 “unique” DNA profiles. A unique DNA profile means that a profile has been established, however no donor matching those remains could be found and therefore an identification could not be made.²³²⁰

639. Thomas Parsons, Director of Forensic Science at the ICMP, testified that, as of 30 November 2007, the ICMP had obtained samples from relatives of 7,772 individuals reported missing in July 1995 and DNA profiles from 8,445 sets of remains found on the surface and in the Srebrenica Related Graves representing 5,280 different individuals.²³²¹ Of these 5,280 DNA profiles, the ICMP has matched 5,055 sets of remains with the DNA of family members.²³²²

²³¹⁶ The documents are identified by both Radovanović and Kovačević as “D000-2101, D000-2102, D000-2103 and D000-2104”. Ex. 1D01129 “Report on the number of missing in Srebrenica in July 1995, by Miladin Kovačević”, para. 41; Ex. 3D00398, “Demographic Report by Prof. Dr. Svetlana Radovanović, March 2008”, p. 22.

²³¹⁷ Svetlana Radovanović, T. 24503–24504 (31 July 2008) (“Those are CDs that I have received from the Defence as materials disclosed by the OTP. Q. Okay. Do you know who compiled these lists? A. You mean the list containing names, family names, and so on and so forth? Well, I really couldn't be able to tell you. I don't remember. I really can't remember, as I sit here, who it was. It was a long time ago when I did that, and at this moment I can't remember who the author of the lists is, but I can check. There are CDs, there are lists, and it's easy to establish who the author of those lists is.”)

²³¹⁸ Ex. P04494 (confidential).

²³¹⁹ Thomas Parsons, T. 20872–20873; 20876; 20889–20903 (1 Feb 2008). The information about the location of disappearance of the missing person was provided directly to the ICMP by a family member. Thomas Parsons, T. 20873 (1 Feb 2008).

²³²⁰ Dušan Janc, T. 33507 (1 May 2009); Ex. P04494a (confidential). See Ex. P04491 (confidential), p. 150, which shows individuals found in the Zeleni Jadar 1B grave for whom an identification has not been made. Dušan Janc, T. 33510–33511 (1 May 2009).

²³²¹ Thomas Parsons, T. 20878 (1 Feb 2008); Ex. P03005 (confidential).

²³²² Thomas Parsons, T. 20878, 20904 (1 Feb 2008).

640. Differing interpretations of the ICMP data have been presented to the Trial Chamber with a view to calculating the total number of persons buried in the Srebrenica Related Graves.

641. Parsons used data gathered as of 30 November 2007 by the ICMP to estimate the total number of persons buried in the Srebrenica Related Graves, including those buried in graves not yet exhumed. His estimate was based on two assumptions. First, that the bone samples tested so far are representative, in terms of the chance for a DNA match, of all persons found in the Srebrenica Related Graves. Second, that the reason for failing to make a DNA match on a given bone sample is that there is no reference sample in the database of DNA profiles from living family members of the missing.²³²³ On this basis, Parsons calculated that reference samples had been collected for 95.7% of the individuals reported missing to the ICMP.²³²⁴ Parsons used the data available to him to estimate the total number of persons who perished following the fall of Srebrenica, taking into account the 4.3% of individuals reported missing for whom a sample has not yet been recovered. Parsons estimated this total number to be approximately 8,100.²³²⁵

642. Debra Komar, an anthropologist who appeared as an expert witness for the Defence, criticised Parsons's finding, arguing that there is no basis for assuming that the samples collected by the ICMP are representative of the population as a whole or in terms of the chance for a DNA match and that, therefore, to extrapolate based upon the available data is unreliable.²³²⁶ Komar examined ICMP raw data and after eliminating duplicate matches, she found a total of 3,959 identified individuals.²³²⁷ However, Komar did not state in her report or testify about how she arrived at this figure and on what basis, and one cannot be sure from the information in her report exactly what ICMP data she examined.

643. Komar warned of the danger of relying upon the ICMP data in isolation. She testified that in an ideal situation, samples would be taken from both parents of a missing individual and used to identify the individual in question, as a person's DNA is a combination of the DNA of each parent.²³²⁸ In many situations, including those at the ICMP, the DNA of one or both parents is not

²³²³ Ex. P03005 (confidential). Parsons stated that "these assumptions are likely to be nearly true, but ICMP does not represent that they are strictly true, or that the degree of uncertainty can be empirically estimated with accuracy. [...] A wide range of variables that are beyond the ICMP's ability to consider with empirical accuracy could have a minor effect on the estimate either upward or downward, but the overall high matching rate supports an estimate close to 8,100 [missing] individuals". *Ibid.*

²³²⁴ This percentage was arrived at by taking the number of matched remains (5,055) and dividing it by the number of collected DNA profiles (5,280). $[5,055 \div 5,280 = 95.7\%]$.

²³²⁵ Ex. P03005 (confidential). This number was arrived at by taking the number of samples collected (7,772) and multiplying it by 100/95.7.

²³²⁶ Ex. 2D00534, "Dr. Komar, Witness Report, 28 February 2008", p. 2.

²³²⁷ *Ibid.*

²³²⁸ Debra Komar, T. 23940 (24 July 2008). Komar testified that the DNA of both parents and their child forms a 'triangle' and that in an ideal world all three pieces of the triangle are needed to make an identification. *Ibid.*

available, and thus samples from more distant relatives are used.²³²⁹ However, since a DNA test may identify a match in a situation where multiple identifications are possible, it is necessary to add an anthropological component to the identification in order to prevent “multiple individuals who have essentially been lumped in falsely or inaccurately into representing one individual”.²³³⁰ Komar provided such an example: a case where the anthropological age estimate was 45–55 years and the estimate represented by the DNA was 23 years. Re-examination of these remains revealed that while they were initially thought to represent only one individual, the bone from which the DNA sample was taken belonged to a different individual than the balance of the remains.²³³¹ The Trial Chamber notes that Komar’s concern that DNA identification should include an anthropological component to ensure greater accuracy is addressed by Parsons’ testimony, examined below, that the ICMP conducts further investigation into cases where it suspects that an identification may be erroneous.²³³²

644. Parsons emphasised that the 2009 ICMP List of Deceased does not represent a list of closed cases, but rather DNA match reports with “high statistical surety ascrib[ing] an individual name to a victim sample”.²³³³ He testified that there are three reasons why an identification made by the ICMP may be erroneous, in which case the ICMP would be required to undertake additional investigation.²³³⁴ These instances are: (a) where additional relatives of the victim are also missing persons, and this information has not been reported to the ICMP (this can lead to an ICMP match report being issued for the wrong relative); (b) where the original DNA sample is mislabelled before it reaches the ICMP (this can lead to a correct match being assigned to the wrong case); and (c) where a sample or a label is switched during the ICMP testing process.²³³⁵ According to Parsons, there were just eight cases in the 2009 ICMP List of Deceased which required “a bit of additional investigation” due to apparent inconsistencies.²³³⁶

645. Oliver Stojković, a professor of forensic genetics who appeared as an expert witness for the Defence, noted that 4,000 identifications were conducted by the ICMP before it had received

²³²⁹ Debra Komar, T. 23939–23941 (24 July 2008). The ICMP Standard Operating Procedures for statistical calculations of DNA-based identification lists anybody with a biological blood relationship to a missing individual as a potential donor. Ex. P03224, “International Commission on Missing Persons (ICMP) Standard Operating Procedure Statistical Calculation of DNA-Based Identifications Using DNA View”, p. 14. Komar said that using a parent or both sets of parents to generate a match would be “infinitely preferable” to using more distant family members, such as grandparents, cousins, or half-siblings. Debra Komar, T. 23941 (24 July 2008).

²³³⁰ Debra Komar, T. 23943–23945 (24 July 2008). Komar outlines mistakes in the DNA identification process and the necessity for anthropological analysis by reference to Ex. 2D00540, “Yazedjian LN, Kesetovic R, Arlotti A, Karan Z, ‘The Importance of Using Traditional Anthropological Methods in a DNA-led Identification System’ Proceedings of the Annual Meeting of the American Academy of Forensic Sciences 2005.” *Ibid.*

²³³¹ Ex. 2D00534, “Dr. Komar, Witness Report, 28 February 2008”, para. 1.4.

²³³² *Infra*, para. 644.

²³³³ Thomas Parsons, T. 33404 (29 Apr 2009).

²³³⁴ Thomas Parsons, T. 33404–33405 (29 Apr 2009); Ex. P04526 (confidential).

²³³⁵ Ex. P04526 (confidential), p. 1.

professional accreditation.²³³⁷ He concluded that it was not possible to conclude whether or not the work done before the accreditation had been performed in a valid and professional manner.²³³⁸ Parsons testified that since 2001, when the ICMP's DNA laboratories first became active, there has been ongoing evolution of the ICMP's procedures and methodologies to ensure that the manner in which the ICMP performs DNA profiling was always consistent with current industry standards.²³³⁹ However, the Trial Chamber is of the opinion that the ICMP's lack of accreditation prior to October 2007²³⁴⁰ does not undermine the authenticity of the identifications concluded before this time. While Stojković speculates that the lack of accreditation undermines the work of the ICMP, the Trial Chamber is of the opinion that the accreditation is rather an expression of approval of the ICMP's work.

646. Stojković also testified that he could not assess the reliability of the findings of the ICMP²³⁴¹ because electropherograms, which represent the results of the genetic analysis of a sample, had not been provided to him.²³⁴² Stojković was provided with DNA reports, methodology reports and standard operating procedures.²³⁴³ However, he testified that in general, independent and autonomous testing of the validity of DNA profiles and reports can only be performed if electropherograms are made available.²³⁴⁴

647. Following Stojković's testimony, the **Popović** Defence filed a Motion pursuant to Rule 66(B) asking for the disclosure of records establishing the identity of exhumed persons, arguing that the testimony of Thomas Parsons and the 2009 ICMP List of Deceased tendered through him only provided a limited description of the procedures adopted in the ICMP's identification process, and no evidence was brought to show how the identifications were actually

²³³⁶ Thomas Parsons, T. 33404 (29 Apr 2009).

²³³⁷ Oliver Stojković, T. 23010 (30 June 2008). Stojković stated that accreditation, in the context of DNA analysis, means that a recognised organisation has checked to ensure that the DNA analysis, laboratories, and processes for measurement and calibration all meet international standards. Oliver Stojković, T. 23010–23011 (30 June 2008). *See also* Ex. 1D0169, "Analysis of the documents related to the DNA identification of post-mortem remains from Srebrenica performed by ICMP prepared by Oliver Stojković", p. 15.

²³³⁸ Oliver Stojković, T. 23012 (30 June 2008). *See also* Ex. 1D1069, "Analysis of the documents related to the DNA identification of post-mortem remains from Srebrenica performed by ICMP prepared by Oliver Stojković," p. 15.

²³³⁹ Thomas Parsons, T. 20868–20869, 20871 (1 Feb 2008).

²³⁴⁰ Parsons testified that the ICMP received accreditation in October 2007. Thomas Parsons, T. 20872 (1 Feb 2008).

²³⁴¹ Two DNA reports were examined in court. *See* Ex. 1D01242 (confidential); Ex. 1D01243 (confidential).

²³⁴² Oliver Stojković, T. 22985, 22992–22993 (27 June 2008); T. 23016–23017 (30 June 2008). Stojković testified that "Electropherograms represent the results of specific genetic analysis from a specific biological sample analysed at each specific case. [...] These electropherograms [...] are collected together and stored in electronic form by the computer which is attached to the system for electrophoresis, and it is on the basis of these electropherograms that the computer, with the help of two separate [...] software programs] is able to create [...] the DNA profile which represents a component part of the DNA report." *Ibid.*, T. 22984–22985 (27 June 2008).

²³⁴³ Ex. 1D01069, "Analysis of the documents related to the DNA identification of post-mortem remains from Srebrenica performed by ICMP prepared by Oliver Stojković", pp. 9–11.

²³⁴⁴ Oliver Stojković, T. 22984–22985 (27 June 2008); T. 23017 (30 June 2008). Stojković also stated that electropherograms carry high probative value in court proceedings and are necessary for an expert to pronounce his opinion on the reliability of DNA analysis. *Ibid.*, T. 22986, 22987, 22991–22992 (27 June 2008).

performed.²³⁴⁵ The Trial Chamber denied the Motion noting first, that the request was late and the **Popović** Defence could have requested the material when it first received Stojković's expert report and second, that the Motion failed to show that the material was in the Prosecution's "custody or control".²³⁴⁶

648. Stojković was eventually provided with a sample bunch of DNA analyses, including electropherograms, relating to a grave at Bišina (one of the Srebrenica Related Graves). Stojković examined the material, and argued that despite Parsons' evidence that a conservative approach was adopted in relation to DNA extraction,²³⁴⁷ this was not always practised.²³⁴⁸ When Stojković gave an example in support of this conclusion, however, he conceded that the result still fell within the standard set by the ICMP, noting that it was in the "lower limit for reporting matches" required.²³⁴⁹

649. The Trial Chamber is of the opinion that Stojković's vigorous testing of the sample, only to come to the same conclusion as the ICMP, together with Parsons' evidence is so conclusive as to the reliability of the ICMP's analysis that disclosure of additional electropherograms would have made no difference. Therefore, Stojković's analysis of the sample electropherograms serves only to strengthen the conclusion that the DNA analysis conducted by the ICMP is reliable. There is no basis to conclude that further disclosure would have led to a different conclusion in this case.

6. Janc's Expert Report

(a) Calculation of the Number of Deceased

650. Dušan Janc, an investigator working for the Prosecution, provided a summary of the forensic evidence related to the missing and dead following the fall of Srebrenica.²³⁵⁰ The main basis for Janc's report was the 2009 ICMP List of Deceased.²³⁵¹ Based upon his analysis of this list,

²³⁴⁵ Vujadin Popović's Motion for Disclosure Pursuant to Rule 66(B) and Request for Leave to File an Addendum to Prof. Stojković Expert Report, 6 August 2008.

²³⁴⁶ Decision on Popović's Motion for Disclosure Pursuant to Rule 66(B) and Request to File an Addendum to Professor Stojković's Expert Report, 6 Oct 2008, paras. 6–11.

²³⁴⁷ See Thomas Parsons, T. 33440(29 Apr 2009).

²³⁴⁸ Oliver Stojković, Ex. 1D01448, "92 bis statement" (9 May 2009), paras. 22–28.

²³⁴⁹ *Ibid.*, para. 26. Stojković stated that the estimated surety was reduced from 99.99999% to 99.95%. *Ibid.*

²³⁵⁰ Dušan Janc, T. 33378–33379, 33382 (28 Apr 2009). Janc's report is also an update to the expert report prepared by Dean Manning in November 2007. *Ibid.*, T. 33378–33379 (28 Apr 2009). See Ex. P04490, "Summary of forensic evidence by Dušan Janc, 13 March 2009"; Ex. P02993, "Summary of Forensic Evidence by Dean Manning, 27 November 2007".

²³⁵¹ Dušan Janc, T. 33378–33382 (28 Apr 2009). Janc also used documents from the Prosecutor's Office at the Tuzla Cantonal Court and the BiH State Court, as well as documents from the Bosnian Institute on Missing Persons. *Ibid.* The 2009 ICMP List of Deceased is a list of individuals who were reported missing following the fall of Srebrenica and whose remains had been exhumed in the area around Srebrenica and identified. The identification was confirmed by matching a DNA sample from the remains against a DNA sample from a relative of the person reported missing. See *supra* para. 638.

Janc concluded that 5,358 individuals had, as of March 2009, been identified through DNA analysis in the Srebrenica Related Graves.²³⁵²

651. In addition to the 5,358 individuals identified in the Srebrenica Related Graves, Janc reported that a total of 648 sets of remains had been discovered on the ground around Srebrenica or buried in shallow graves.²³⁵³ This number only includes remains for which a DNA match has been recorded on the 2009 ICMP List of Deceased, because without identification, Janc could not be sure that the remains belonged to individuals associated with the events following the fall of Srebrenica.²³⁵⁴

652. Janc identified three of the Srebrenica Related Graves as “mixed graves”, because they contain remains of individuals in relation to whom there is evidence that the circumstances of their death was unrelated to the events following the fall of Srebrenica.²³⁵⁵ When calculating the total number of persons buried in the Srebrenica Related Graves,²³⁵⁶ Janc did not include persons in relation to whom there was evidence that their death was not related to the events following the fall of Srebrenica.²³⁵⁷

(b) Connections Between the Primary and Secondary Graves

653. Janc’s report details links established between graves based upon DNA connections (established when the remains of one individual are found in at least two different graves) and forensic connections (established when a link exists between forensic evidence found in at least two different graves).²³⁵⁸ Where a DNA connection is established between a primary grave and a

²³⁵² Dušan Janc, T. 33507 (1 May 2009); Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, p. 2. The number 5,358 includes 294 “unique” DNA profiles, which means that a DNA profile has been established, however there is no donor matching those remains and thereby positively identifying the individual to whom they belong. Dušan Janc, T. 33507 (1 May 2009). Janc did not include in this total people who had been identified but for whom information exists that their death was not related to the events following the fall of Srebrenica. *See supra*, para. 652.

²³⁵³ Dušan Janc, T. 33513–33516 (1 May 2009); Ex. P04490, “Summary of forensic evidence by Dušan Janc, 13 March 2009”, Annex B. Janc’s conclusion was based upon information obtained from the BiH Commission on Missing Persons regarding surface remains collected between 1996 and 2008. Ex. P03609, “BiH Federal Commission for Missing Persons – Information on locations of identified mortal remains, 28 December 2007”; Ex. P04501, “Institute for missing persons, Tuzla Unit – Table of exhumations in 2008”. *See also* Ex. P03901, “Maps of surface remains in the wider area of Srebrenica from July 1995” (depicting the areas in which surface remains have been found, including Snagovo and Baljkovica).

²³⁵⁴ Dušan Janc, T. 33517–33518 (1 May 2009); Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, p. 5.

²³⁵⁵ Dušan Janc, T. 33508–9, 33519–33521, 33525–33526 (1 May 2009); T. 33640–33644, 33648–33649 (4 May 2009); Ex. P04492, “Corrigendum to the ‘Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc’, 9 April 2009”. The mixed graves are Glogova, Bljeceva 1 and Liplje 8. *Ibid*.

²³⁵⁶ *See supra*, para. 650.

²³⁵⁷ Dušan Janc, T. 33508–33509, 33526–33527 (1 May 2009). For details on exclusions from the Glogova grave, see *supra*, para. 443.

²³⁵⁸ Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex C, p. 65.

secondary grave, unless he had evidence before him to indicate the contrary,²³⁵⁹ Janc concluded that all of the bodies buried in the secondary grave could be linked to the execution with which the primary grave is associated.²³⁶⁰

654. Janc emphasised that where a DNA connection was established between graves, that individual was only counted once in his conclusion as to the total number of persons found in the Srebrenica Related Graves. Janc emphasised that the total number includes only “main cases”, that is to say, individuals who have been identified via DNA analysis.²³⁶¹ When separate body parts are collected, they are categorized as re-associations (linked to other body parts found in a separate grave), and are not added to the total number of victims in order to avoid duplication.²³⁶² Janc compiled a table setting out the number of forensic and DNA connections established between each of the primary and secondary Srebrenica Related Graves.²³⁶³ This table is set out at the end of this Judgement.

655. Dušan Dunjić, a professor of forensic medicine who appeared as an expert witness for the Defence, challenged Janc’s conclusions regarding the DNA connections between primary and secondary graves, arguing that only those bodies for which a DNA connection exists can be considered to have originated from the primary grave with which the connection has been established.²³⁶⁴ Analysing Janc’s report, Dunjić calculated that only 307 DNA connections had been established between primary graves and secondary graves. Dunjić did not have evidence of the forensic connections between the graves before him, and erroneously interpreted Janc’s report to mean that the DNA connections were the sole basis upon which Janc concluded that all of the 4,049 bodies from the secondary graves originated from primary mass graves.²³⁶⁵ This is clearly not the case. The Trial Chamber emphasises that in addition to the DNA connections, all but one of the primary graves are also linked to secondary graves through forensic connections (including soil samples, pollen samples, blindfolds, ligatures, glass and shell cases).²³⁶⁶

656. Dunjić went on to criticise Janc’s classification of the graves as secondary. In Dunjić’s opinion, “a large number” of bodies found in the secondary graves had, in fact, been buried only

²³⁵⁹ See, for example, Ex. P04492, “Corrigendum to the ‘Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc’, 9 April 2009” (stating that the remains of 12 individuals returned from Serbia were buried in the Glogova 1-grave).

²³⁶⁰ Dušan Janc, T. 33534–33543 (1 May 2009).

²³⁶¹ *Ibid.*, T. 33540–33543 (1 May 2009).

²³⁶² *Ibid.*

²³⁶³ Ex. P04490, “Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc”, Annex C, p. 65.

²³⁶⁴ Dušan Dunjić, Ex. 1D01447, “92 bis statement” (10 May 2009), paras. 42–44, 58–59.

²³⁶⁵ *Ibid.*, paras. 77–85.

once.²³⁶⁷ According to Dunjić, this conclusion is supported by forensic evidence showing the different stages of putrefaction and skeletonisation of the corpses.²³⁶⁸ Given the compelling evidence of the re-association of bodies in Janc's report, Dunjić's argument cannot raise a reasonable doubt as to the established connections between the gravesites. The Trial Chamber considers Dunjić's observations in this regard to be speculative at best, noting that there are many factors which may influence the level of putrefaction and skeletonisation of corpses.²³⁶⁹ The Trial Chamber is of the opinion that Dunjić's general observation on the different stages of decomposition of corpses in the secondary graves, particularly in contrast to the compelling evidence of association, does not raise a reasonable doubt as to the reburial of those remains.

657. No DNA connection has been established for the secondary graves at Čančari Road 1, Čančari Road 4 and Čančari Road 8.²³⁷⁰ Janc explained that the Čančari Road 1 grave has not yet been exhumed, and the graves at Čančari Road 4 and 8 were only recently exhumed and the Prosecution does not yet have all of the information on these exhumations.²³⁷¹ A forensic connection has been established linking the Čančari Road 8 grave to the grave at Branjevo Military Farm.²³⁷² The Trial Chamber notes that Janc counted 10 identified individuals from the Čančari Road 4 grave in his estimate.²³⁷³ As there is no evidence before the Trial Chamber that the Čančari Road 4 grave is connected to any of the primary graves, the Trial Chamber will exclude these 10 individuals from its estimate.

658. Where there is evidence that the remains of individuals unrelated to the fall of Srebrenica have been buried in a grave, the Trial Chamber endorses Janc's approach that these individuals (whether they are found in a primary or a secondary grave) cannot be counted in the total number of deceased following the fall of Srebrenica. The Trial Chamber acknowledges that, even in the absence of specific evidence, there always exists a possibility that individuals who died in

²³⁶⁶ Ex. P04490, "Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc", Annex C, p. 65. Of the seven primary graves, Glogova 1 is the only one without a forensic connection to a secondary grave. *Ibid.*

²³⁶⁷ Dušan Dunjić, Ex. 1D01447, "92 bis statement" (10 May 2009), para. 76.

²³⁶⁸ *Ibid.* For more on Dunjić's criticisms based on varying degrees of putrefaction between corpses, *see supra*, paras. 610–611.

²³⁶⁹ Dušan Dunjić, T. 22787 (25 June 2008) (stating "Several factors influence the putrefaction process, the environment, the manner of death, the wounds, where it was [...] From the stage of putrefaction, changes are based on the stage of putrefaction, we can estimate the time of death. That's number 1. What external factors contributed to the fact that some parts of the body putrefy faster and the others putrefy slower? The first thing that's important here is this: What was the situation of the body before it was buried? And whether the putrefaction changes that were stated occurred exclusively in the grave from which the body was excavated").

²³⁷⁰ Dušan Janc, T. 33621 (4 May 2009); Ex. P04490, "Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc", Annex C, p. 65.

²³⁷¹ Dušan Janc, T. 33621 (4 May 2009).

²³⁷² Dušan Janc, T. 33503–3505, 3505 (private session) (1 May 2009); Ex. P04504, "Record on exhumation (Kamenica locality - KAM08ZVO), 20 October 2008", p. 7; Ex. P04491 (confidential), p. 23.

²³⁷³ Ex. P04490, "Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009 by Dušan Janc", p. 3.

circumstances unrelated to the Srebrenica events were added to the secondary graves. However, given that this possibility is very slight, the Trial Chamber is satisfied that forensic and/or a DNA connection between the gravesites is a compelling basis on which to conclude that the victims buried in the secondary grave can be linked to the incident associated with the primary grave and the Trial Chamber so finds.

7. Conclusion

659. According to the Prosecution, “DNA evidence shows that as of March 2009, at least 6,006 persons [...] have been identified from Srebrenica related graves or surface remains”.²³⁷⁴ The Prosecution arrives at this figure by adding the persons identified in the Srebrenica Related Graves (5,358) with those identified among the surface remains (648).²³⁷⁵ The Prosecution also suggests that due to ongoing investigations, the figure is destined to grow and an estimate of the total number would be higher.²³⁷⁶ In the Prosecution’s submission, the minimum number of persons that went missing or died following the fall of Srebrenica can be estimated to be 7,826.²³⁷⁷ This figure is calculated by adding the number of persons on the 2005 List of Missing (7,661) with additional individuals who had not been reported missing in the ICRC or PHR data (165).²³⁷⁸

660. As stated above, the Trial Chamber is satisfied as to the reliability of Janc’s expert report. Janc acknowledged the possibility that some individuals counted in his expert report could have died as a result of land mines, suicide or legitimate combat operations, and stated that such cases were most likely to be found among the surface remains. The Trial Chamber therefore will not include the surface remains in its estimate.

661. In addition, the Trial Chamber will not include the ten persons identified in the Čančari Road 4 grave in its estimate, given that no connection has been established between this grave and any of the other Srebrenica Related Graves.

662. Moreover, the Trial Chamber notes that Janc’s calculation of 5,358 individuals identified in the Srebrenica Related Graves includes persons whom Janc wrongly thought to be victims of the Kravica Warehouse execution, addressed in the corrigendum to his report and in the Kravica Warehouse section of this judgement.²³⁷⁹ These wrongly included persons include twelve who were returned to the VRS from Serbia, 80 from in or around the Vuk Karadžić School, 6–7 from

²³⁷⁴ Prosecution Final Brief, para. 1130.

²³⁷⁵ *Ibid.*, para. 1143.

²³⁷⁶ *Ibid.*, paras. 1130, 1143.

²³⁷⁷ *Ibid.*, para. 1134.

²³⁷⁸ *Ibid.* See also Ex. P03159a (confidential), p. 2.

Potočari, 10–15 from near Konjević Polje and “one truckload” from the area along the Konjević Polje Road. The Trial Chamber notes that with the exception of the 12 individuals returned to the VRS, the circumstances surrounding the death of these individuals indicate that they died in the events following the fall of Srebrenica. Therefore, in addition to deducting the 10 individuals from Čančari Road 4, the Trial Chamber will also deduct these 12 individuals from Janc’s calculation of 5,358.

663. Considering the mass executions following the fall of Srebrenica, the burial operation, the reburial operation, the extensive amount of forensic evidence and demographic data on missing persons, as well as the established forensic and DNA connections between the gravesites, the Trial Chamber accepts the evidence of Janc concerning the links between the Srebrenica Related Graves.

664. The Trial Chamber is satisfied beyond reasonable doubt that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica.²³⁸⁰ The Trial Chamber also notes that the evidence before it is not all encompassing. Graves continue to be discovered and exhumed to this day, and the number of identified individuals will rise. The Trial Chamber therefore considers that the number could well be as high as 7,826.²³⁸¹

K. Žepa

1. Situation in Žepa in 1995

665. While the living conditions in Žepa were difficult, its humanitarian situation was less desperate than in Srebrenica in 1995.²³⁸² In January 1995, however, the ABiH reported that the number of Bosnian Muslims “illegally” leaving the area of the responsibility of the ABiH Žepa Brigade was increasing.²³⁸³ The ABiH suspected the VRS were assisting this movement.²³⁸⁴

666. Following the UN Security Council declaring Žepa a safe area in 1993, the enclave, like Srebrenica, was never completely demilitarised.²³⁸⁵ In mid-February 1995, as military activities on

²³⁷⁹ Ex. P04492, “Corrigendum to the Update to the Summary of Forensic Evidence – Exhumation of the Graves Related to Srebrenica – March 2009, by Dušan Janc 9 April 2009”. *See supra*, para. 443.

²³⁸⁰ As explained at *supra*, para. 662, this number is calculated as follows: 5,358 – 12 – 10 = 5,336.

²³⁸¹ This estimate being the number of individuals reported missing following the fall of Srebrenica (7,661) and the additional number of unique DNA profiles identified but not matched to persons reported missing (165). Ex. P03159a (confidential), p. 2.

²³⁸² Meho Džebo, Ex. P02486, “92 *ter* statement” (23 Mar 2007), p. 2 (stating that people in Žepa still “had better food supplies than Srebrenica and that people from Srebrenica would walk to Žepa to get food”).

²³⁸³ Ex. 6D00097, “Order from the ABiH Srebrenica 8th Operations Group Security Organ, 30 January 1995”; Meho Džebo, T. 9616–9617 (28 Mar 2007).

²³⁸⁴ Ex. 6D00097, “Order from the ABiH Srebrenica 8th Operations group Security Organ, 30 January 1995”.

²³⁸⁵ Exs. P02502, P02875, “UNPROFOR Sarajevo Sector Weekly Situation Report, 15 July 1995”, p. 3. *See also* Meho Džebo, T. 9599 (28 Mar 2007); Hamdija Torlak, T. 9819 (2 Apr 2007). Palić testified that while in 1992 two

both sides increased, the VRS requested UNPROFOR command to declare Žepa a “non-demilitarised zone” due to the activities of the ABiH, otherwise they would start offensive combat operations.²³⁸⁶ The ABiH Žepa Brigade was ordered to increase its combat readiness “to the highest level”.²³⁸⁷ The VRS Main Staff anticipated that the ABiH would launch an offensive to link the Žepa and Srebrenica enclaves, and therefore ordered the Drina Corps, and the 65th Protection Regiment, to send their troops towards the enclaves.²³⁸⁸ In March 1995, the shelling of outlying areas re-commenced, and in June 1995 “the shelling started in earnest”, resulting in civilian casualties.²³⁸⁹

667. At the beginning of May 1995, the Žepa War Presidency²³⁹⁰ informed the BiH leadership in Sarajevo, through the ABiH Žepa Brigade,²³⁹¹ that a part of the Bosnian Muslim population in Žepa was demanding their evacuation to other ABiH-held territories.²³⁹² During the war, at least two thirds of the population were refugees from the towns and villages surrounding Žepa.²³⁹³ The Žepa War Presidency asked the BiH leadership whether, in its view, the “welfare evacuation” of this group of people was justified in the current military and political situation.²³⁹⁴ The Žepa War Presidency also sought the BiH leadership’s view on whether it could negotiate the “welfare evacuation” with Milan Pećanac, the VRS Security Officer.²³⁹⁵ The ABiH Žepa Brigade also expressed its concern to the ABiH General Staff about a possible “unauthorised and illegal” escape

offensives were launched against Žepa accompanying by shelling and air strikes, from May 1993 to March 1995, the shelling ceased. Esma Palić, T. 6910–6911 (6 Feb 2007).

²³⁸⁶ Ex. 5D00228, “ABiH Order to raise the level of combat readiness in units signed by Enver Hadžihasanović, 17 February 1995”, p. 1 (Hadžihasanović stated that the VRS filed this request on the grounds that “[ABiH] helicopter flights supplying weapons and ammunition have been registered; movements of the [ABiH] have been registered in the Žepa sector; accusing members of the [UKRCoy] that they are covering up for the activities and intentions of [ABiH], which is why they no longer guarantee safety; on the night between 15 and 16 February 1995, [ABiH’s] helicopters were seen flying over and infantry fire was opened on them.”). See also Ex. 6D00073, “ABiH Order signed by Sead Delić, 17 February 1995”.

²³⁸⁷ Ex. 5D01356, “Order to the ABiH Žepa Brigade signed by Naser Orić, 18 February 1995”. See also Slobodan Kosovac, T. 30141–30142 (15 Jan 2009).

²³⁸⁸ Ex. 5D01055, “VRS Main Staff Order by Manojlo Milovanović, 28 February 1995”. See also Slobodan Kosovac, T. 30143–30144 (15 Feb 2009).

²³⁸⁹ Esma Palić, T. 6911 (6 Feb 2007). See also *ibid.*, T. 6914 (6 Feb 2007).

²³⁹⁰ Torlak testified that in 1993 the Žepa War Presidency was established and the President was Benjamin Kulovac, who was succeeded by Mehmed Hajrić in 1995. Hamdija Torlak, T. 9713, 9716–9717 (29 Mar 2007).

²³⁹¹ Torlak testified that the document was sent by the ABiH Žepa Brigade because from mid-1994 onwards, the only communication system was under the control of the ABiH and thus every document could only sent to Sarajevo via the ABiH Žepa Brigade. Hamdija Torlak, T. 9846–9847 (2 Apr 2007).

²³⁹² Ex. 5D00259, “Žepa War Presidency Request to the ABiH leadership, 5 May 1995”, p.1 (noting that “[o]f the total number of inhabitants of Žepa, 65% are refugees who arrived mainly from Han-Pijesak, Rogatica, Višegrad and Vlasenica municipalities. [...] This part of the population is continually pressuring the municipal authorities in Žepa with the demand that they be evacuated to other parts of the Republic of BH where their relatives live”; those who demanded the evacuation amounted to about 150).

²³⁹³ Esma Palić, T. 6909–6910 (6 Feb 2007).

²³⁹⁴ Ex. 5D00259, “Žepa War Presidency Request to the ABiH leadership, 5 May 1995”, pp. 1–2.

²³⁹⁵ Ex. 5D00259, “Žepa War Presidency Request to the ABiH leadership, 5 May 1995”, pp. 1–2 (noting that the negotiation was proposed for 10 May 1995). See also Hamdija Torlak, T. 9846 (2 Apr 2007). Torlak testified that in all parts of BiH there were no negotiations at the local levels without consent of the higher authorities. *Ibid.*, T. 9846–9867 (2 Apr 2007).

of the Bosnian Muslims in Žepa, including “civilians, women, children and [ABiH members]”, to ABiH-held territories.²³⁹⁶ In response, ABiH General Staff Brigadier Enver Hadžihasanović instructed Commander Palić of the Žepa ABiH Brigade to “prevent certain civilians and any members of the [ABiH] from leaving the territory of Žepa without permission and illegally”.²³⁹⁷

668. During this period, the VRS believed that the ABiH was preparing offensive operations in the greater area of Tuzla, Kladanj, Srebrenica and Žepa with the aim of dividing VRS-held territories.²³⁹⁸ The Drina Corps ordered reinforced defence of the front around Žepa.²³⁹⁹ It reported that the “closing off” of the Žepa enclave was gradually being completed.²⁴⁰⁰

669. On 2 June 1995, the ABiH 28th Division ordered the ABiH Žepa Brigade not to allow UKRCoy soldiers to leave; to disarm and capture UKRCoy soldiers if they attempted to leave; and to inform UKRCoy that the ABiH was prepared to defend UKRCoy.²⁴⁰¹ In mid-June 1995, the ABiH Žepa Brigade carried out an attack outside the Žepa enclave with a view to lifting the pressure off the Sarajevo sector.²⁴⁰² Immediately after this attack, the VRS launched a counter-offensive against the enclave.²⁴⁰³ Towards the end of June 1995, VRS mortars targeted UKRCoy

²³⁹⁶ Ex. 5D00224, “Žepa Brigade Report to the ABiH General Staff signed by Salih Hasanović, 25 May 1995”. When shown this document, Torlak confirmed that he knew Salih Hasanović and that he was an officer in charge of the security of the Žepa Brigade. He further testified that what the ABiH Žepa Brigade did not want was the escape of the ABiH members. Hamdija Torlak, T. 9847–9849 (2 Apr 2007).

²³⁹⁷ Ex. 6D00039, “ABiH General Staff Instruction to the Žepa Brigade signed by Enver Hadžihasanović, 26 May 1995”, p. 1. *See also* Ex. 5D00244, “ABiH 28th Division Order to Žepa Brigade signed by Ramiz Bečirović, 27 May 1995” (noting that, “The commands of all units of the 28th Division must take all measures to prevent Army members and civilians from leaving the demilitarised zones of Srebrenica and Žepa without prior permission obtained from the Division Command or unit commands. This shall apply to persons intending to go from one demilitarised zone to the other or to leave a demilitarised zone and go to other free territories in the Republic of BH or towards Serbia”). *See also* Ex. 5D00235, “ABiH 28th Division Order to Žepa Brigade signed by Ramiz Bečirović, 17 June 1995” (noting that, “Despite issuing orders preventing military personnel and civilians from leaving the demilitarised zones of Srebrenica and Žepa, individuals and small organised groups keep leaving these areas more and more frequently for Kladanj and Tuzla without the appropriate papers.”); Ex. 4D00301, “ABiH 2nd Corps Command Document, signed by Sead Delić, 28 June 1995”. When asked if he attempted to stop able-bodied men leaving the Žepa enclave, Torlak stated that “everybody as a rule wanted to get out of Žepa, but there was no way that this could be done. It just couldn’t be done”. Hamdija Torlak, T. 9781 (30 Mar 2007).

²³⁹⁸ Ex. P00204, “Drina Corps Order type-signed Radislav Krstić, 15 May 1995”.

²³⁹⁹ *Ibid.* *See also* Ex. P00205, “Drina Corps Order type-signed Radislav Krstić, 16 May 1995”; Ex. 5D01257, “Rogatica Brigade Report to Drina Corps signed by Rajko Kušić, 18 May 1995”.

²⁴⁰⁰ Ex. 5D01237, “Drina Corps Order signed by Radislav Krstić, 18 May 1995”, p. 1.

²⁴⁰¹ Ex. 6D00075, “ABiH 28th Division Order to the Žepa Brigade, 2 June 1995”.

²⁴⁰² Hamdija Torlak, T. 9722–9723 (30 Mar 2007). Torlak testified that the attacks were counter-productive because they only provided an excuse for the VRS to attack Žepa. *Ibid.*, T. 9820–9821 (2 Apr 2007). *See also* Ex. 5D00229, “ABiH General Staff Order to the 28th Division signed by Sulejman Budaković, 17 June 1995”; Ex. 5D00227, “ABiH Žepa Brigade Combat Report to the 2nd Corps and 28th Division signed by Avdo Palić, 28 June 1995”; Ex. P02970, “Sarajevo Sector Weekly Situation Report, 2 July 1995”. The ABiH Žepa Brigade members acting in large sabotage groups killed civilians in the surrounding RS territory and received instructions from the 2nd Corps of the ABiH to engage the VRS in order to move them away from Sarajevo. Milan Vojinović, T. 23694–23695 (21 Jul 2008).

²⁴⁰³ Hamdija Torlak, T. 9821 (2 Apr 2007).

checkpoints and the UKRCoy base.²⁴⁰⁴ The local VRS commander told UKRCoy that the attacks would continue until it agreed to leave the enclave.²⁴⁰⁵

670. In 1995, there were 6,500 to 8,000 people living in Žepa.²⁴⁰⁶ In July 1995, 1,200²⁴⁰⁷ to 2,000²⁴⁰⁸ of the inhabitants were able-bodied men albeit it was difficult to distinguish between the civilians and the army.²⁴⁰⁹ According to Torlak, of these 1,200 men, 600 to 700 were ABiH Žepa Brigade soldiers, commanded by Palić.²⁴¹⁰

671. At the beginning of July, the VRS reported that the ABiH was vigorously carrying out attacks against Drina Corps units in the Žepa and Srebrenica enclaves.²⁴¹¹ Both the Drina Corps and the Bratunac Brigade issued orders to their respective units to continue active defence around the enclaves.²⁴¹² On 9 July 1995, Palić reported to the ABiH General Staff that the VRS's five-day attack had been repulsed successfully; civilians had been wounded by mortar shelling; 30 houses had been destroyed in the surrounding villages and the villages had been evacuated.²⁴¹³ In response to an ABiH demand, UKRCoy released to the ABiH 127 weapons seized following the demilitarisation agreement of 1993, which UNPROFOR considered to be of no significant military value.²⁴¹⁴

672. On 10 July 1995, Mladić ordered the Drina Corps and the 65th Protection Regiment to launch offensive combat activities on 12 July against the Žepa enclave.²⁴¹⁵ On the same day, Palić

²⁴⁰⁴ Ex. P02970, "Sarajevo Sector Weekly Situation Report, 2 July 1995", p. 4. UNPROFOR reported that on 30 June, an UKRCoy APC was destroyed. Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 3.

²⁴⁰⁵ Ex. P02970, "Sarajevo Sector Weekly Situation Report, 2 July 1995", p. 4 (reporting that "harassment of UNPROFOR may be a prelude to a general assault on the enclave").

²⁴⁰⁶ Esma Palić, T. 6910 (6 Feb 2007) (testifying that 8,000 people lived in Žepa); Hamdija Torlak, T. 9718 (29 Mar 2007) (testifying that there were about 7,000 inhabitants in Žepa); Ex. 1D00019, "ABiH General Staff Report to the ABiH Commander, 23 February 1995", p. 5 (indicating that 6,500 people were living in Žepa).

²⁴⁰⁷ Hamdija Torlak, T. 9721 (30 Mar 2007).

²⁴⁰⁸ Ex. P03523 "RS MUP State Security Service Report, type-signed Dragan Kijac, 28 July 1995", p. 1.

²⁴⁰⁹ Hamdija Torlak, T. 9832 (2 Apr 2007).

²⁴¹⁰ *Ibid.*, T. 9721 (30 Mar 2007).

²⁴¹¹ Ex. P00107, "Drina Corps Command Order 04/156-2, Operations Order No.1 Krivaja-95, 2 July 1995"; Ex. P03025, "Order for active combat operations from Command of the Bratunac Brigade to Commands of the 1st, 2nd, 3rd and 4th Battalions signed by Blagojević, 5 July 1995". See also Exs. 1D00382, 4D00377, 4D00378, "Drina Corps Order signed by Milenko Živanović, 2 July 1995"; Ex. 4D00326, "ABiH 2nd Corp Command report, signed by Sead Delić, 8 July 1995".

²⁴¹² Ex. P00107, "Drina Corps Command Order, Operations Order No.1 Krivaja-95, 2 July 1995"; Ex. P03025, "Order for Active Combat Operations from Command of the Bratunac Brigade to Commands of the 1st, 2nd, 3rd and 4th Battalions signed by Blagojević, 5 July 1995". See also Exs. 1D00382, 4D00377, 4D00378, "Drina Corps Order signed by Milenko Živanović, 2 July 1995".

²⁴¹³ Ex. P02951, "ABiH Žepa Brigade Report signed by Avdo Palić, 9 July 1995" (further noting that, "[I]f this situation continues, we have the approval of the commander of the Ukrainian unit to take back from them the weapons that we surrendered.").

²⁴¹⁴ Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 2. See also Louis Fortin, T. 18273 (27 Nov 2007); Meho Džebo, T. 9599-9600 (28 Mar 2007).

²⁴¹⁵ Ex. P00181, "VRS Main Staff Order to the Drina Corps and the 65th Protection Motorised Regiment signed by Ratko Mladić, 10 July 1995", p. 5.

threatened to seize UKRCoy's combat equipment and take their soldiers hostage in the event of a VRS attack.²⁴¹⁶ UNPROFOR reported that following the fall of Srebrenica, the mood in Žepa was "one of panic" and that Mladić had stated he expected "Muslim paramilitary forces" in the enclave to surrender within 48 hours.²⁴¹⁷ The VRS continued attacking UKRCoy checkpoints.²⁴¹⁸ There was also sporadic artillery, mortar, and heavy machine gun fire directed at Žepa town and the surrounding villages.²⁴¹⁹ The majority of the Bosnian Muslim population in Žepa had retreated to the surrounding forests and caves.²⁴²⁰

673. On 12 July 1995, **Pandurević** reported to Bojna and attended a meeting where Trivić, Colonel Andrić, Colonel Vičić, and Krstić were present.²⁴²¹ The VRS units received the tasks—to head towards Srebrenica-Viogor-Sučeska in the direction of Žepa and to move "as a reserve" along the axis, whereas two combat units from the Romanija Brigade and the Birać Brigade would search the terrain for elements of the ABiH 28th Division.²⁴²² The VRS advanced as planned towards Žepa.²⁴²³

674. In the evening of 12 July 1995, a meeting was held at the Bratunac Brigade Command,²⁴²⁴ where Mladić ordered Krstić to prepare for the liberation of Žepa.²⁴²⁵ During the meeting, Trivić and **Pandurević** requested replacement troops to carry out the Žepa operation, as their soldiers needed rest, but Mladić denied the request.²⁴²⁶ They then requested that Mladić address their troops to raise morale.²⁴²⁷ Mladić agreed to do this on 13 July before the move to Žepa.²⁴²⁸ On the next morning, Mladić and Krstić went to Viogor.²⁴²⁹ Mladić addressed the units and commanders,

²⁴¹⁶ Ex. P00076, "VRS MUP State Security Department Report signed by Dragan Kijac, 12 July 1995", pp. 1–2.

²⁴¹⁷ Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 2. On 11 July, it was reported that, "Any eventual withdrawal of [DutchBat] from Srebrenica will have serious implications for UNPROFOR troops in Žepa and Goražde: i) the governments contributing those forces may wish them to be withdrawn as well; ii) the viability of their continued presence will be cast into doubt in the event of a Dutch withdrawal, in the eyes of the warring parties, as well as the population of the enclaves; iii) a Serb attack on one or both of Žepa and Goražde would obviously place at grave risk the safety of the UN forces there". Ex. 5D00040, "UNPF Policy and Information for the Security Council, 11 July 1995", pp. 2–3.

²⁴¹⁸ Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", pp. 2–3; Ex. 6D00204, "UNPF Situation Report, 10 July 1995", p. 3.

²⁴¹⁹ Exs. P02502, P02875, "Sarajevo Sector Weekly Situation Report, 15 July 1995", p. 2.

²⁴²⁰ Ex. P00076, "VRS MUP State Security Department Report signed by Dragan Kijac, 12 July 1995" p. 1.

²⁴²¹ See *infra*, para. 1853.

²⁴²² Vinko Pandurević, T. 30897–30900 (30 Jan 2009). See also Mirko Trivić, T. 11835–11836 (21 May 2007).

²⁴²³ Vinko Pandurević, T. 30899–30901 (30 Jan 2009); Ex. P00886, "Document from the Zvornik CJB to the RS MUP type-signed Vasić, 13 July 1995". The ABiH was preparing for the VRS advances. Ex. 4D00013, "ABiH General Staff Interim Report, 13 July 1995". On the same day, the 5th Podrinje Brigade sent a combat report to the Drina Corps Command, reporting that the brigade carried out tasks "in accordance with the plan". Ex. P02902, "5th Podrinje Brigade Combat Report signed by Radomir Furtula, 12 July 1995".

²⁴²⁴ See *supra*, para. 376.

²⁴²⁵ *Ibid.*

²⁴²⁶ *Ibid.*

²⁴²⁷ *Ibid.*

²⁴²⁸ *Ibid.*

²⁴²⁹ *Ibid.*

including **Pandurević** and Trivić.²⁴³⁰ Mladić also announced that Krstić was now in command of the Drina Corps.²⁴³¹ Mladić ordered the tactical groups to be ready to march towards Žepa pursuant to the task of taking the Žepa enclave.²⁴³²

2. The First Round of Negotiations (13 July 1995)

675. On the evening of 12 July 1995, following the VRS's rapid advances towards Žepa, the VRS contacted Palić through the UKRCoy Commander, Semjon Dudnik, informing him that they were interested in holding discussions.²⁴³³ The Žepa War Presidency first sought permission from the ABiH General Staff and the BiH political leadership in Sarajevo to engage in such discussions.²⁴³⁴ The BiH political leadership was reluctant to authorise the Žepa War Presidency to undertake negotiations with the VRS, instead encouraging an organised resistance.²⁴³⁵ The VRS later demanded that a meeting take place at the latest by 11 a.m. on 13 July 1995, or else combat activities and the advance towards Žepa would continue.²⁴³⁶ The Žepa War Presidency ultimately received approval from Sarajevo on the condition that they would not sign anything.²⁴³⁷

²⁴³⁰ Vinko Pandurević, T. 20904–30905 (30 Jan 2009). *See also* Mirko Trivić, T. 11853–11854 (21 May 2007).

²⁴³¹ Vinko Pandurević, T. 30905 (30 Jan 2009).

²⁴³² Miodrag Dragutinović, T. 12587 (13 June 2007); Ex. 7D00941, "Zvornik Brigade Order signed by Vinko Pandurević, 13 July 1995", pp. 1–2. **Pandurević** testified that he issued his order orally and saw the written order prepared by Dragutinović for the first time in court. The exhibit also contains **Pandurević's** signature but he testified that he did not think that he had signed it. Vinko Pandurević, T. 30906–30907 (30 Jan 2009). *See also* Mirko Trivić, T. 11862–11863 (21 May 2007) (testifying that on the morning of 13 July 1995, Trivić had already been given the assignment to act as a backup force to elements of the Zvornik Brigade that were under the command of **Pandurević** in the Žepa operation). **Pandurević** testified that around midnight, they stopped in Vlasenići to refuel and then continued moving, first towards Han Pijesak and then stopped at around 2 a.m. on 14 July in the village of Rijeka to sleep for a few hours. Vinko Pandurević, T. 30908–30911 (30 Jan 2009); Ex. 7D00091, "Vehicle Logbook of July 1995", p. 2. *See also infra*, para. 1856.

²⁴³³ Hamdija Torlak, T. 9723 (30 Mar 2007), T. 9794–9795 (2 Apr 2007); Ex. P02745, "Drina Corps Report signed by Milenko Živanović, 13 July 1995", p. 1.

²⁴³⁴ Hamdija Torlak, T. 9723 (30 Mar 2007), T. 9794–9795 (2 Apr 2007). Torlak testified that an agreement was required in order for the Bosnian Muslims in Žepa to negotiate locally. *Ibid.*, T. 9795 (2 Apr 2007).

²⁴³⁵ Ex. 5D00275, "ABiH General Staff Letter to the Žepa Brigade signed by Enver Hadžihasanović, 13 July 1995", p. 1 (showing that Enver Hadžihasanović, Chief of Staff of the ABiH, informed the President of the Žepa War Presidency of the following: "[T]here should be no negotiations with the aggressor. You can expect unconditional ultimatums and requests for surrender from the aggressor. The people and fighters of Žepa should continue preparations for an organised resistance against the aggressor and prevent any emergence of panic by their resolute conduct convincing the people of the possibility of success in resisting the aggressor. The Presidency and the Government of [BiH] are investing the utmost effort at international military and political level."). *See also* Ex. 6D00104, "ABiH General Staff Letter signed by Rasim Delić, 13 July 1995", reporting that the ABiH had conveyed the BiH Government's view to the Žepa War Presidency, namely, "there should not be negotiations and [...] Žepa would be helped militarily and politically." When asked if he knew that Hadžihasanović was against the fact he would participate in the negotiations, Torlak testified that "[a]s far as I remember, on that day, the 13th of July, in the morning, and let me repeat, all communication went via the communications centre held by the army. So most of those things we received orally, without any documents. As far as I remember, it was from two different places at our request that two opposing answers arrive. One in favour of us going, and the other, I don't know whether that was the military one, that was against, or whether it was the other way around. Which side was against and which side was in favour, but we decided to go and attend those talks anyway". Hamdija Torlak, T. 9851–9852 (2 Apr 2007).

²⁴³⁶ Ex. P02745, "Drina Corps Report signed by Milenko Živanović, 13 July 1995", p. 2. *See also* Ex. P00077, "RS MUP State Security Department Report signed by Dragan Kijac, 13 July 1995", p. 1 (noting that "[s]ome indicators

676. In the Drina Corps report dated 13 July, it was stated that Palić had repeatedly postponed meeting with the VRS because of ongoing consultation with the BiH political leadership.²⁴³⁸ It was noted that: “[T]he Žepa leadership is ready for evacuation but [the BiH political] leadership in Sarajevo is having a negative influence on their decision.”²⁴³⁹ Živanović considered that the Bosnian Muslims were using the same tactics as in Srebrenica—the Bosnian Muslim women and children would be evacuated in an organised manner and the able-bodied men would “cross illegally” to the ABiH-held territory.²⁴⁴⁰ Živanović believed that in avoiding meeting with the VRS, the Bosnian Muslims in Žepa were buying time to evacuate the able-bodied men out of Žepa.²⁴⁴¹ He ordered that all measures for combat support be taken to prevent the ABiH formations from crossing the VRS-held territory.²⁴⁴²

677. At noon on 13 July 1995,²⁴⁴³ a meeting was held at UKRCoy Checkpoint 2 in Bokšanica.²⁴⁴⁴ Hamdija Torlak, the President of the Executive Board in Žepa and a member of the Žepa War Presidency,²⁴⁴⁵ and Mujo Omanović, a member of the Executive Board,²⁴⁴⁶ represented the Bosnian Muslims of Žepa.²⁴⁴⁷ The VRS was represented by Tolimir and Colonel Rajko Kušić, the Commander of the Rogatica Brigade.²⁴⁴⁸ Tolimir, who dominated most of the meeting, said: “Srebrenica had fallen and that it was Žepa’s turn now”.²⁴⁴⁹

678. The Bosnian Muslim representatives requested the VRS:

1. To enable them within three days to consult with the population of Žepa and the leadership in Sarajevo about the decision to leave Žepa and move to the destination of their own choosing;
2. To enable them to relocate all civilians and able-bodied population;
3. To carry out the evacuation from Žepa in the presence of UNPROFOR, UNHCR, ICRC and military observers;

suggest that the Muslim leadership of Žepa is ready to accept calls from the [RS] authorities for a peaceful surrender.”).

²⁴³⁷ Hamdija Torlak, T. 9794–9795 (2 Apr 2007). *See also ibid.*, T. 9851–9852 (2 Apr 2007).

²⁴³⁸ Ex. P02745, “Report on Žepa signed by Milenko Živanović, 13 July 1995”, p. 1.

²⁴³⁹ *Ibid.*

²⁴⁴⁰ *Ibid.*

²⁴⁴¹ *Ibid.*

²⁴⁴² *Ibid.*, pp. 1–2.

²⁴⁴³ Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 1. *See also* Hamdija Torlak, T. 9723–9724 (30 Mar 2007).

²⁴⁴⁴ Hamdija Torlak, T. 9723–9724 (30 Mar 2007).

²⁴⁴⁵ *Ibid.*, T. 9713 (29 Mar 2007).

²⁴⁴⁶ *Ibid.*, T. 9724 (30 Mar 2007).

²⁴⁴⁷ *Ibid.*, T. 9723–9724, 9729 (30 Mar 2007); Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, p. 1. Torlak testified that Avdo Palić did not attend the meeting because he was afraid. Hamdija Torlak, T. 9729 (30 Mar 2007).

²⁴⁴⁸ Hamdija Torlak, T. 9723–9724 (30 Mar 2007). *See also supra*, para. 135. Mladić and Tolimir arrived at the command post of the Protection Regiment in Borike on 23 June 1995 and Tolimir was still there on 14 July. Milomir Savčić, T. 15243, 15247 (12 Sept 2007).

²⁴⁴⁹ Hamdija Torlak, T. 9725 (30 Mar 2007). *See also ibid.*, T. 9850–9851 (2 Apr 2007).

4. To have guarantees from the RS and VRS Main Staff leadership for the safe transportation via RS territory;

5. To enable them to stay in the territory – for the persons who choose to do so.²⁴⁵⁰

679. The VRS accepted all the requests except the first, insisting that the Bosnian Muslim representatives of Žepa should conclude all necessary consultations by 3 p.m., when the evacuation of all the Bosnian Muslim civilians and the able-bodied men who surrender their weapons would start.²⁴⁵¹ They were to be evacuated in buses from Žepa to Olovo or Kladanj.²⁴⁵² The VRS presented two alternatives: either complete evacuation of the entire population of Žepa or a military solution.²⁴⁵³ The VRS also stipulated that all able-bodied men must be registered and exchanged with the Bosnian Serb prisoners of war detained by the ABiH.²⁴⁵⁴

680. Following this meeting, the Bosnian Muslim representatives of Žepa conferred with the rest of the Žepa War Presidency. After lengthy discussions, Palić informed the VRS, through Dudnik from UKRCoy, that the Bosnian Muslims in Žepa would not accept the VRS request.²⁴⁵⁵ There was general fear that the proposed evacuation might not be carried out in the manner agreed.²⁴⁵⁶ By that time, Srebrenica had fallen but news of what had happened to the Bosnian Muslim population in Srebrenica had not yet reached Žepa.²⁴⁵⁷ The Bosnian Muslims in Žepa requested a postponement of their decision until noon on 14 July 1995.²⁴⁵⁸ Tolimir reported to the VRS Main Staff and the Drina Corps Command that the VRS did not accept this request and noted that:

We did not let them change the deadline for the decision and requested a new contact and we are expecting it. We plan to offer them evacuation of all civilians and military aged men if they agree to do it today. If they continue postponing the deadline for evacuation we will demand to keep some able bodied men. According to our information, they postponed the decision making under pressure from the Sarajevo leadership, because they are promising them protection by the rapid reaction forces. We believe that with our proposal for evacuation we created disorganization in their ranks. All refugees in Žepa, as well as some local residents chose the evacuation. We expect

²⁴⁵⁰ Ex. P00188, "Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995", p. 2 (Tolimir also stated that he had guaranteed the safety for the Bosnian Muslim civilians who decide to stay and accept the RS authority). *See also* Hamdija Torlak, T. 9730 (30 Mar 2007), T. 9801–9802 (2 Apr 2007).

²⁴⁵¹ Ex. P00188, "Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995", p. 2.

²⁴⁵² Hamdija Torlak, T. 9725 (30 Mar 2007).

²⁴⁵³ Hamdija Torlak, T. 9724 (30 Mar 2007); Ex. P00188, "Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995", p. 2.

²⁴⁵⁴ Ex. P00188, "Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995", p. 2 (Tolimir stated that this demand "was a tactical move so that during the follow-up discussions, which they conditioned with consultation with their leadership in Sarajevo, we could turn down any possible counter-argument.").

²⁴⁵⁵ Hamdija Torlak, T. 9726 (30 Mar 2007). The discussions was held between the President of the War Presidency, Mehmed Hajrić, who was sometimes referred to as "mayor" of Žepa. By profession Hajrić was also a religious cleric, or "hodža". *Ibid.*, T. 9717 (29 Mar 2007). *See also* Thomas Dobb, T. 16287–16288 (15 Oct 2007) (testifying that the hodža was not a fighter, but associated with the mosque).

²⁴⁵⁶ Hamdija Torlak, T. 9726 (30 Mar 2007). *See also ibid.*, T. 9862 (3 Apr 2007).

²⁴⁵⁷ *Ibid.*, T. 9726–9727 (30 Mar 2007).

²⁴⁵⁸ Ex. P00188, "Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995", p. 2.

that some Muslim soldiers are going to desert their defence lines in order to organize their families for evacuation.²⁴⁵⁹

Shortly after the 13 July negotiations failed, the VRS attacked the Žepa enclave, conducting infantry assaults and shelling ABiH defence lines as well as inhabited areas.²⁴⁶⁰ The ABiH organised resistance to meet these attacks.²⁴⁶¹

681. Also on 13 July, Krstić gave the order to subordinate units including the Bratunac, Rogatica and Zvornik Brigades, to commence “*Stupčanica-95*”, the military operation against the Žepa enclave.²⁴⁶² In his order, Krstić stated that around 1,200 soldiers of the ABiH Žepa Brigade had organised the defence of the Žepa enclave and that

“[A]bout 700 to 1,000 soldiers from units that were routed in the Srebrenica enclave withdrew to Žepa and will probably join the defence of the Žepa enclave. [...] Benefiting from the outcome of the activities in the Srebrenica enclave, I have decided to immediately move onto the offensive and rout the enemy in the Žepa enclave in order to liberate and clear the Serbian Podrinje of Muslim forces and eliminate the enclaves.”²⁴⁶³

Krstić set 8 a.m. on 14 July as the time for combat readiness.²⁴⁶⁴ Krstić further noted that the Bosnian Muslim civilian population and UNPROFOR were not targets of the operations, adding an instruction to “[c]ollect them together and keep them under guard, but crush and destroy armed Muslim groups.”²⁴⁶⁵

²⁴⁵⁹ Ex. P00188, “Rogatica Brigade Report type-signed Zdravko Tolimir, 13 July 1995”, pp. 2–3.

²⁴⁶⁰ Hamdija Torlak, T. 9727 (30 Mar 2007) (testifying that everything was shelled, including the “defence lines, the houses, the inhabited areas, the villages.”). In his report to the VRS Main Staff, Tolimir stated that if the Bosnian Muslims “reject the evacuation under already set conditions, we are planning to start with combat activities.” Ex. P00187, “Rogatica Brigade Report on Žepa type-signed Zdravko Tolimir, 13 July 1995”, p. 2.

²⁴⁶¹ Hamdija Torlak, T. 9728 (30 Mar 2007). On the same day, the ABiH Commander Rasim Delić informed the ABiH President that material and technical equipment had been delivered to Srebrenica and Žepa. Ex. 1D00464, “ABiH General Staff Interim Report signed by Rasim Delić, 13 July 1995”, p. 1.

²⁴⁶² Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Radislav Krstić, 13 July 1995”, p. 1.

²⁴⁶³ *Ibid.* Trivić testified that he was given an estimate that there were around 1,500 to 2,000 armed members of the ABiH forces in the Žepa area, that they were organised, and that another 500 to 700 people had arrived from Srebrenica after its fall to the VRS. Mirko Trivić, T. 11903 (22 May 2007). *See also* Ex. P6D00165 (confidential), pp. 119–120 (noting that, on 12 July “[t]he Bosnian forces [in Žepa], one brigade with five battalions and 2,000 soldiers, G2 [information officer at sector level] says 1,000, plus a battalion at Luka. The commander of the brigade is the same as in Srebrenica”). *See also* Louis Fortin, T. 18412 (28 Nov 2007).

²⁴⁶⁴ Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Radislav Krstić, 13 July 1995”, p. 1. *See also* Milenko Jevđević, T. 29611–29612 (12 Dec 2008) (testifying that this order was drafted by Colonel Vičić); Vinko Pandurević, T. 30914 (30 Jan 2009). With regard to the Zvornik Brigade, Krstić ordered it to “attack the enemy along the village of Purčić – village of Čavčić – Žepa axis in order to crush the enemy along the line of attack, reach the Palež-Borak line and continue the advance. The next task is to reach Žepa.” Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995”, p. 2. Kosovac testified that the Main Staff Department for Operations and Training did not receive nor did it have any role in the issuance of this order and that the parts relevant to the attack on the Žepa enclave from the 13 July 1995 contained no elements leading to the conclusion that it implied displacement of the Bosnian Muslim population or any activities against them. Slobodan Kosovac T. 30172–30173 (15 Jan 2009).

²⁴⁶⁵ Ex. P00114, “Order from Drina Corps Command regarding Žepa, signed by Radislav Krstić, 13 July 1995”, p. 4. Krstić informed the VRS Main Staff that preparations for Žepa had reached their final phase. Ex. P00136, “Drina Corps Regular Combat Report signed by Radislav Krstić, 13 July 1995”, p. 1. The VRS Main Staff issued a report,

3. VRS's Military Attack on Žepa pursuant to *Stupčanica-95* (14–19 July 1995)

682. On the morning of 14 July 1995, Tolimir reported, *inter alia*, to the Drina Corps command and to Krstić that the ABiH soldiers were at the front line and the civilian population had taken refuge outside the inhabited area in Žepa.²⁴⁶⁶ Tolimir further reported that all units of the Rogatica Brigade and elements of the 65th Protection Regiment had been in readiness since 8 a.m.²⁴⁶⁷ Around this time, at the Krivače IKM of the Drina Corps located between Han Pijesak and Žepa,²⁴⁶⁸ Krstić ordered **Pandurević** to mount an attack from Podžeplje²⁴⁶⁹ in the direction of Žepa.²⁴⁷⁰ The attack lasted the whole day.²⁴⁷¹

683. On 14 July 1995, the VRS demanded that UKRCoy withdraw from its checkpoints as they would be attacked at 2 p.m.²⁴⁷² Shortly after 3 p.m., the VRS commenced infantry assaults and shelling against both UKRCoy and ABiH Žepa Brigade.²⁴⁷³ The ABiH Žepa Brigade organised

which was signed by **Miletić**, forwarding this information to the RS President. Ex. P00047, "Main Staff Report signed by Radivoje Miletić, 13 July 1995", p. 3.

²⁴⁶⁶ Ex. P00189, "Rogatica Brigade Report type-signed by Zdravko Tolimir, 14 July 1995", pp. 1–2 (noting that the Bosnian Muslim representatives refused to come to a meeting scheduled that morning on the ground that the Sarajevo leadership did not approve evacuation. Tolimir also noted that he informed the UKRCoy of the Bosnian Muslim plans to block UKRCoy checkpoints and proposed that the UKRCoy set up two command posts so that the VRS could "control the work and the reports that UNPROFOR is making to their superior command.").

²⁴⁶⁷ Ex. P00189, "Rogatica Brigade Report type-signed Zdravko Tolimir, 14 July 1995", p. 2.

²⁴⁶⁸ Ex. 7DIC00126, "Ex. 7D00624 marked by Miodrag Dragutinović"; Miodrag Dragutinović, T. 12696 (15 June 2007); Milenko Jevđević, T. 29610 (12 Dec 2008). The Krivače IKM started functioning at 6 p.m. on 13 July 1995. Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995", p. 4.

²⁴⁶⁹ As for the location of Podžeplje, see Ex. 7DIC00126, "Ex. 7D00624 marked by Miodrag Dragutinović".

²⁴⁷⁰ Miodrag Dragutinović, T. 12592 (13 June 2007) (testifying that **Pandurević** was ordered to attack on the Podžeplje-Brložnik-Purtići axis).

²⁴⁷¹ Miodrag Dragutinović, T. 12592–12593 (13 June 2007) (testifying that **Pandurević**'s units took Brložnik and arrived above Purtići). As to the locations of Brložnik and Purtići, see Ex. 7DIC00126, "Ex. 7D00624 marked by Miodrag Dragutinović". Savčić, Commander of the VRS Main Staff 65th Protection Regiment, testified that on 14 July 1995 he received a task in the Sjeversko sector to report to "Barrier 01"—a code name for Mladić—in the Laze sector. On his way to Laze, Savčić came across Colonel Svetozar Andrić, who told him that the Drina Corps had received an assignment to make sure that the boundaries of Žepa were brought to the "limits envisaged by the agreement." Savčić also met the Bratunac Brigade Commander Vidoje Blagojević on that day and Krstić during this period in the same area. Milomir Savčić, T. 15246, 15278–15279, 15284 (12 Sept 2007). In Laze, Mladić ordered Savčić to launch an attack on the Laze-Gusinac-Brezova Ravan axis, to break up the combat security of the ABiH Žepa Brigade in the Gusinac sector, and to take the Brezova Ravan sector. *Ibid.*, T. 15246–15247 (12 Sept 2007). Savčić requested the Drina Corps Command to form two firing groups—one group of mortars of 120 millimetres from the Bratunac Brigade and another firing group of B-1 cannons from the Rogatica Brigade. These firing groups were set up at 4 p.m. next day. *Ibid.*, T. 15279 (12 Sept 2007), T. 15327, 15370 (13 Sept 2007). On the same day, 14 July, Blagojević sent a daily combat report to the Drina Corps Command, stating that the Red Berets platoon, which was part of the Bratunac Brigade, was sent at 10 a.m. to the area of Milići to join the task in the direction of Žepa. Ex. 4D00088, "Daily Combat Report signed by Vidoje Blagojević, 14 July 1995"; Dragoslav Trišić, T. 27086–27087 (20 Oct 2008). On the same day, Krstić informed the VRS Main Staff of its decision that "in order to liberate the Žepa enclave part of the forces will block the Žepa enclave and force the enemy to surrender". Ex. 4D00084, "Drina Corps Regular Combat Report, type-signed Radislav Krstić, 14 July 1995", p. 2.

²⁴⁷² Exs. P02502, P02875, "Sarajevo Sector Situation Report, 15 July 1995", p. 2; Ex. 1D00373, "UNPROFOR Letter to UN Secretary General, 14 July 1995", p. 2.

²⁴⁷³ *Ibid.* On the same day, Tolimir sent a request to the Main Staff and to **Miletić** in particular, asking for radio and encryption equipment that would allow him to monitor radio communications of the formations engaged in military activities around Žepa. Ex. P00183, "Rogatica Brigade Report to the VRS Main Staff type-signed Zdravko Tolimir, 14 July 1995".

resistance²⁴⁷⁴ mainly around the UKRCoy checkpoints.²⁴⁷⁵ By 15 July, the VRS had taken control of the UKRCoy Checkpoint 2 at Bokšanica.²⁴⁷⁶

684. On 15 July 1995, the VRS reported that ABiH had opened mortar fire against the Drina Corps units in the enclave.²⁴⁷⁷ UNPROFOR reported, on the same day, that it was likely Žepa would fall “very soon” and that around 10,000 Bosnian Muslims in Žepa would be “relocated by the Serbs, as the people of Srebrenica have been.”²⁴⁷⁸

685. The fierce fighting between the ABiH and the VRS continued around the UKRCoy checkpoints.²⁴⁷⁹ During the night of 15 and 16 July,²⁴⁸⁰ ABiH soldiers took a UKRCoy soldier hostage, demanding that UKRCoy surrender all weapons, equipment and ammunition to ABiH, and threatening that they would otherwise kill him.²⁴⁸¹ After their discussions failed, the ABiH penetrated the UKRCoy base in Žepa and took all weapons, military equipment, vehicles and medicine.²⁴⁸² The VRS also threatened to kill UKRCoy soldiers at their checkpoints in the event of NATO air strikes.²⁴⁸³

²⁴⁷⁴ Hamdija Torlak, T. 9728 (30 Mar 2007), testifying that the attacks lasted until 19 July 1995. The ABiH had small arms, infantry and anti-armour weapons and light rocket launchers. Milomir Savčić, T. 15327–15328 (13 Sept 2007). Savčić confirmed that when he reached Žepa, the Bosnian Muslim population had left the Žepa village and had gone up in the mountains to take refuge. *Ibid.*, T. 15331–15332 (13 Sept 2007).

²⁴⁷⁵ Exs. P02503, P02671, “Rogatica Brigade Interim Combat Report type-signed Rajko Kušić, 14 July 1995”, p. 1.

²⁴⁷⁶ Ex. P02799, “Rogatica Brigade Report signed by Zdravko Tolimir, 14 July 1995”, pp. 1–2 (Tolimir reported on 14 July that the VRS had taken full control over the UKRCoy Checkpoint 2 at Bokšanica, which would remain operational as if it was not “blocked and surrounded by [VRS] forces”; that the VRS had instructed the UKRCoy at Checkpoint 2 to issue orders not to open fire at VRS units and instead “simulate the action by shooting in the air if forced to do so by the Muslims”; and that the UKRCoy checkpoints would be kept to prevent any NATO air strike on the VRS combat formation.). *See also* Exs. P02503, P02671, “Rogatica Brigade Interim Combat Report type-signed Rajko Kušić, 15 July 1995”, p. 1. On 15 July 1995, Tolimir issued an order to the Security Department of the 1st Krajina Corps to transport a 5,000 Watts loudspeaker to the Rogatica Garrison. Ex. P02788, “Order regarding Transportation of Loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Zdravko Tolimir, 15 July 1995”.

²⁴⁷⁷ Ex. P00049, “VRS Main Staff Daily Combat Report 03/3-196, type-signed Radivoje Miletić, 15 July 1995”, p. 3.

²⁴⁷⁸ Exs. P02502, P02875, “Sarajevo Sector Situation Report, 15 July 1995”, p. 2.

²⁴⁷⁹ *See* Exs. P02502, P02875, “Sarajevo Sector Situation Report, 15 July 1995”, p. 3; Ex. P02958, “UNPF Situation Report, 16 July 1995”; Hamdija Torlak, T. 9797 (2 Apr 2007) (testifying that the fighting in Žepa was at its fiercest on 18 July).

²⁴⁸⁰ On 16 July, Blagojević informed the Drina Corps Command that part of the Bratunac Brigade units of 400 most qualified soldiers was engaged in four locations, including Žepa. Dragoslav Trišić, T. 27092 (20 Oct 2008); Ex. 4D00596, “Bratunac Brigade Request to the Drina Corps signed by Vidoje Blagojević, 16 July 1995”, p. 1.

²⁴⁸¹ Ex. 6D00132, “DutchBat Situation Report, 17 July 1995”, p. 1.

²⁴⁸² *Ibid.*, (noting that the ABiH also threatened to use UKRCoy soldiers as human shields against the VRS attacks). *See also* Rupert Smith, T. 17765 (9 Nov 2007); Ex. 5D01112, “Drina Corps Interim Combat Report signed by Radislav Krstić, 19 July 1995”; Ex. P02958, “UNPF Situation Report, 16 July 1995”. Avdo Palić reported to the ABiH Main Staff that he and his soldiers were “disarming UNPROFOR in accordance with the directive we received earlier.” Ex. 6D00034, “Letter from the Žepa Brigade to Asim Dzambasović signed by Avdo Palić, 16 July 1995”.

²⁴⁸³ Ex. P02958, “UNPF Situation Report, 16 July 1995”, p. 2; Ex. P02959, “UNPROFOR Situation Report, 16 July 1995”; Ex. P02340f, “Intercept, 16 July 1995, 17:31 hours”. *See also* Hamdija Torlak, T. 9879–9880 (3 Apr 2007).

686. Meanwhile, the VRS continued its attacks against Žepa.²⁴⁸⁴ Brezova Ravan, where UKRCoy Checkpoint 1 was located,²⁴⁸⁵ and Vratar village, located behind Žepa,²⁴⁸⁶ were taken by the VRS sometime between 15 and 25 July.²⁴⁸⁷

687. On 19 July 1995, in the midst of the operations,²⁴⁸⁸ Mladić radioed an order to all the VRS units to discontinue fighting.²⁴⁸⁹ Around noon on that day, accompanied by Tolimir and Lieutenant-Colonel Milenko Indić, Mladić met with General Smith from UNPROFOR at the Jela Restaurant in Han Pijesak,²⁴⁹⁰ where the logistical (rear) command post of the VRS Main Staff was located.²⁴⁹¹ They discussed Srebrenica, including the withdrawal of DutchBat, and the freedom of movement for UNHCR and UNPROFOR in Srebrenica and Žepa.²⁴⁹² According to an UNPROFOR report,

²⁴⁸⁴ Marinko Jevđević, a member of the Military Police Battalion of the Protection Regiment of the VRS Main Staff, testified that on 16 July 1995, his Commander Zoran Malinić informed him that Savčić, Commander of the 65th Protection Regiment, had left a message that his “package”—frequently referred to soldiers—was to set out at dawn toward the Žepa area and that on 17 July 1995, Mladić ordered Jevđević in Godenje to take his troops towards the Ljubomislje village. Marinko Jevđević, T. 23853, 23855 (23 July 2008). That evening, Jevđević joined a platoon under the command of Lieutenant Stojan Maksivović in accordance with Savčić’s order and attempted an attack in Brezova Ravan. *Ibid.*, T. 23857 (23 July 2008). The Drina Corps units, the Bratunac Brigade Battalion and elements of 2nd Romanija Brigade as well as of the Birač Brigade were also deployed around Žepa. *Ibid.*, T. 23860 (23 July 2008).

²⁴⁸⁵ Marinko Jevđević, T. 23868 (23 July 2008). As to the location of UKRCoy Checkpoint 1, see Ex. P02799, “Rogatica Brigade signed by Zdravko Tolimir, 14 July 1995”, p. 1; Ex. PIC00082, “Map of Žepa and surrounding area (Brezova Ravan and Bokšanica), marked by Hamdija Torlak”; Hamdija Torlak, T. 9741–9742 (30 Mar 2007).

²⁴⁸⁶ Milomir Savčić, T. 15333 (13 Sept 2007).

²⁴⁸⁷ Marinko Jevđević, T. 23859–23860 (23 July 2008) (testifying that they took Brezova Ravan later on the morning of 18 July 1995. On cross-examination by the Prosecution, Jevđević reasserted that he took Brezova Ravan on that day, contrary to testimony of Savčić who said that it took approximately ten days—from 15 July until 25 July—to take the location. *Ibid.*, T. 23868 (23 Jul 2008); Milomir Savčić, T. 15280 (12 Sept 2007), T. 15333 (13 Sept 2007) (testifying that on 15 July 1995, his unit captured the Gusinac area and from that day to 25 July 1995, there was fierce combat to capture the feature of Brezova Ravan, which was eventually captured either on 24 or 25 July 1995); Meho Džebo, T. 9650 (29 Mar 2007) (testifying that Brezova Ravan fell into the hands of the Bosnian Serbs a day or two before the Bosnian Muslim population were evacuated); Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 5 (noting that on 23 July 1995, the VRS took the Brezova Ravan feature). From Vratar, Marinko Jevđević saw large numbers of Bosnian Muslim civilians coming from the surrounding villages to Žepa. Marinko Jevđević, T. 23861–23863 (23 July 2008).

²⁴⁸⁸ On 19 July 1995, the 1st Battalion led by Blagojević carried out combat activities in the wider area of Žepa. Ex. 4DP00263, “Bratunac Brigade Daily Combat Report signed by Vidoje Blagojević, 19 July 1995”. *See also* Ex. 4D00592, “Bratunac Brigade Report signed by Dragomir Eskić, 19 July 1995”, p. 1.

²⁴⁸⁹ Marinko Jevđević, T. 23860 (23 July 2008). *See also* Hamdija Torlak, T. 9798 (2 Apr 2007) (testifying that on 19 July 1995, the fighting stopped and Mladić asked for a negotiation with the Bosnian Muslims of Žepa); Ex. 5D01439, “Video Excerpt and Transcript of Meeting in Bokšanica”, p. 5 (in discussing the transportation of the Bosnian Muslims in Žepa on 19 July 1995, Mladić said that he had halted operations).

²⁴⁹⁰ Rupert Smith, T. 17534 (6 Nov 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 2. On 15 July 1995, Smith met with Milošević and Mladić in Belgrade. An UNPROFOR report describes that an informal agreement on a number of points was reached, which would be confirmed at a meeting between Smith and Mladić scheduled for 19 July and this should be kept confidential due to “the highly sensitive nature of the presence of Mladić at the meeting”. Ex. P02942, “Outgoing Code Cable - Meeting in Belgrade between UNPROFOR, Milošević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 - sent from UNPROFOR HQ Zagreb to Annan”, pp. 1–3.

²⁴⁹¹ *See supra*, para. 104.

²⁴⁹² Rupert Smith, T. 17537 (6 Nov 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 2.

Mladić had a “clear intent” to sign an agreement on these issues;²⁴⁹³ an agreement was reached at the end of the meeting.²⁴⁹⁴ Mladić told Smith that Žepa had effectively fallen at about 1:30 p.m. on that day,²⁴⁹⁵ but that was not actually the case, although the town was encircled by the VRS.²⁴⁹⁶ Mladić also informed Smith that he had arranged a meeting with the Bosnian Muslim representatives of Žepa and Dudnik from UKRCoy to arrange the “evacuation of refugees” from the Žepa enclave.²⁴⁹⁷

688. The BiH political leadership in Sarajevo was in contact with the ABiH and the Žepa War Presidency regarding the negotiations on the transportation of the Bosnian Muslim population in Žepa.²⁴⁹⁸ In a letter dated 18 July 1995 to the ABiH Commander Rasim Delić, the BiH President Izetbegović stated that Smith had said UNPROFOR could evacuate women, children and the elderly.²⁴⁹⁹ Izetbegović further noted that a brigade or battalion of soldiers could be sent to Žepa in order to continue the combat, saying that between 500 and 1,000 volunteers could be found.²⁵⁰⁰ In another letter dated 19 July 1995 to the President of Žepa War Presidency Mehmed Hajrić, Izetbegović proposed a plan to move out as many civilians as possible while the troops continue to

²⁴⁹³ Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 2. The agreement reached between the parties concerning Žepa includes: “4. A positive answer will be given to the request for logistic convoys assigned to UNPROFOR in Potočari and to Žepa, Goražde and Sarajevo. The convoy routes for the present will be: a. To Žepa – from Belgrade through Visegrad and Rogatica. [...] 6. A positive answer will be given to the UNHCR request for humanitarian aid convoys, according to assessed needs, to Goražde and Sarajevo, as well as to Srebrenica and Žepa.” *Ibid.*, p. 5.

²⁴⁹⁴ *Ibid.*, pp. 5–6; Ex. P02265, “Agreement between Smith and Mladić, 19 July 1995”, pp. 1–2 (same as pp. 5–6 of Ex. P02943).

²⁴⁹⁵ Rupert Smith, T. 17536 (6 Nov 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 4. *See also* Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2.

²⁴⁹⁶ Rupert Smith, T. 17537–17538 (6 Nov 2007). An UNPROFOR report also notes that the BiH leadership in Sarajevo also denied that Žepa had surrendered. Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. Smith testified that he did not trust Mladić’s remark because the Bosnian Muslim side was not present at the meeting and that “it struck us that the besiegers had, as it were, got one group of people, the civilians, to start to negotiate with before they’d actually dealt with the military.” Rupert Smith, T. 17538 (6 Nov 2007).

²⁴⁹⁷ Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 4; Rupert Smith, T. 17537 (6 Nov 2007). Commander Palić received a request to meet with Mladić through UKRCoy’s radio at OP-2 in Bokšanica. Hamdija Torlak, T. 9728–9729 (30 Mar 2007). *See also* Edward Joseph, T. 14155 (22 Aug 2007). UNPROFOR reported on 20 July 1995 that this meeting was held at around 4 p.m. and was arranged to make the first steps towards the evacuation of the Bosnian Muslim civilian population in Žepa “as a result of the VRS capture of Žepa.” Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 1. *See also* Ex. 6D00103, “ABiH Žepa Brigade Report, 20 July 1995”, p. 1.

²⁴⁹⁸ Meanwhile, on 17 July 1995, Izetbegović tried to negotiate with the VRS through Smith on the conditions for the safe evacuation of the civilian population of Žepa. Mladić demanded a meeting with the BiH together with Smith but the BiH Government eventually declined to send any representatives with Smith for the reason that a meeting should take place on UN controlled or neutral territory. Mladić sent a new proposal to Smith that “there would have to be an unconditional surrender [by the ABiH in Žepa] and then discussions could take place to sort out the mechanics of the evacuation of civilians and any other details.” The BiH Government refused Mladić’s conditions. Ex. P03058, “UNPROFOR Notes on Negotiations with Bosnian Serbs on Movement of Civilians from Žepa, 17 July 1995”. In his letter of 17 July 1995, the RBiH Foreign Minister approached the UN Security Council with the request for the civilian population to be evacuated from Žepa. Ex. 5D01350, “Statement of the President of the UN Security Council, 20 July 1995”.

²⁴⁹⁹ Ex. 6D00107, “Letter from Izetbegović to Delić, 18 July 1995”.

²⁵⁰⁰ *Ibid.*

resist,²⁵⁰¹ or a joint withdrawal (of the Bosnian Muslim civilians and the soldiers).²⁵⁰² Torlak testified that he was unaware of the plans of the BiH political leadership in Sarajevo, that the situation on the ground was quite different from the way it was interpreted in Sarajevo and that he and the Bosnian Muslims negotiating in Žepa had to make their own decisions.²⁵⁰³

4. The Second Round of Negotiations (19 July 1995)

689. At 4 p.m. on 19 July 1995, Mladić, Tolimir and Kušić met at UKRCoy Checkpoint 2 in Bokšanica with Torlak and Benjamin Kulovac, another member of the Žepa War Presidency, who were accompanied by Dudnik from UKRCoy.²⁵⁰⁴ Torlak thought that, under the circumstances, “the best way to resolve the question of Žepa [was] for the entire population to leave the Žepa zone”.²⁵⁰⁵ Mladić said that the VRS “would enable, according to the free choice of the population, their safe passage through [VRS] held territory”²⁵⁰⁶ and would provide buses and trucks for the transportation with UNPROFOR escort.²⁵⁰⁷ He then specified that the first convoy with the wounded and sick would leave for Kladanj at 10 a.m. on 20 July; and the convoy with the women and children would leave at 2 p.m. on the same day.²⁵⁰⁸ When asked by Mladić how many people wanted to remain in Žepa, the Bosnian Muslim representatives replied that at least ten families wished to stay.²⁵⁰⁹

²⁵⁰¹ Ex. 6D00036, “Letter from Izetbegović to Hajrić, 19 July 1995” (noting that “We will do all to help you (1) by supplying material and technical equipment, (2) volunteers and (3) offensive action in your direction (I believe this is starting today). If we do not succeed in this, you try to push on those roads [...] but now without the burden of women and children who would in the meantime be taken out.”).

²⁵⁰² Ex. 6D00036, “Letter from Izetbegović to Hajrić, 19 July 1995” (Izetbegović asked Hajrić “which plan to push”). On the same day, at 2:30 p.m., Hajrić wrote a letter to Izetbegović, in which he raised some questions (“(1) What was the Security Council discussing, and can the UN compel the Chetniks to allow the entire population to be evacuated, perhaps by helicopter? (2) Has a request to ensure such an evacuation been offered to the Security Council? (3) Do you have any Chetnik prisoners who could be used as a kind of ransom?”) and noted that “I do not know what to say about your plan. In any event, it is better to save someone than no one. But keep insisting that the evacuation of the whole population be ensured. We are aware of the situation. We have no choice, we must fight to the last.”. Ex. 5D01366, “Letter from Hajrić to Izetbegović, 19 July 1995”. Kosovac, a military expert, testified that this document indicated that “there was antagonism between the local authorities and the authorities of the Republic of [BiH]. [...] The state authorities always insisted that the local population should remain in Žepa, and in this way they would achieve their goals, whereas the local authorities always insisted that they leave Žepa.” Slobodan Kosovac, T. 30173–30174 (15 Jan 2009).

²⁵⁰³ Hamdija Torlak, T. 9797–9799 (2 Apr 2007).

²⁵⁰⁴ *Ibid.*, T. 9728–9729 (30 Mar 2007); Ex. P02943, “Code Cable - Meeting between Smith and Mladić, 19 July 95 - from Smith to HQ UNPROFOR Zagreb, 19 July 1995”, p. 4. Torlak testified that the meeting was filmed. Hamdija Torlak, T. 9753–9758 (30 Mar 2007); Ex. P02489 (confidential); Ex. 5D01439, “Video Excerpt and Transcript of Meeting at Bokšanica on 19 July 1995”.

²⁵⁰⁵ Ex. 5D01439, “Video Excerpt and Transcript of Meeting in Bokšanica”, p. 1.

²⁵⁰⁶ *Ibid.*; Ex. 6D00103, “ABiH Žepa Brigade Report, 19 July 1995”, pp. 1–2.

²⁵⁰⁷ Ex. 5D01439, “Video Excerpt and Transcript of Meeting in Bokšanica”, p. 2; Ex. 6D00103, “ABiH Žepa Brigade Report, 19 July 1995”, pp. 1–2. *See also* Hamdija Torlak, T. 9730 (30 Mar 2007), testifying that Mladić stipulated that the wounded, women, children and the elderly would be transported to Olovo or Kladanj and buses would be provided the following day; Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 1.

²⁵⁰⁸ Ex. 6D00103, “ABiH Žepa Brigade Report, 19 July 1995”, p. 2. *See also* Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 1 (reporting that the elderly would also be evacuated with women and children using 50 buses and that three UKRCoy trucks would evacuate the wounded to Sarajevo).

²⁵⁰⁹ Ex. P02490 (confidential).

690. Mladić also demanded that the Bosnian Muslim men between the ages of 18 and 55 lay down their weapons and go to the UKRCoy base in Žepa, where they would be taken to a detention centre in order to be exchanged for captured VRS soldiers.²⁵¹⁰ The Bosnian Muslim representatives from Žepa agreed to Mladić's demands, on condition that the ABiH soldiers in the Žepa enclave accepted.²⁵¹¹ Torlak testified that there was no choice but to accept Mladić's demands and an outstanding, unresolved, issue at the time was the fate of the Bosnian Muslim men in Žepa,²⁵¹² who did not want to surrender due to fear for their lives because of what happened in Srebrenica.²⁵¹³

691. After the meeting, the Bosnian Muslim representatives conveyed Mladić's demands to the BiH political leadership in Sarajevo and asked them to find a way to ensure that the Bosnian Muslim men would be exchanged with the captured VRS soldiers.²⁵¹⁴ Later that evening, the Žepa War Presidency and the ABiH Žepa Brigade sent a request to the BiH political leadership in Sarajevo and Delić. The request was to provide 400 VRS soldiers for exchange²⁵¹⁵ and to arrange the helicopter transport of the Bosnian Muslim population, out of Žepa, excluding the wounded, sick and elderly.²⁵¹⁶

692. At 6:15 p.m. on 19 July 1995, Delić issued an order to the 2nd Corps Command and the ABiH Žepa Brigade to organise defence and to continue "decisive action along with carrying out surprise attacks [...] and setting up ambushes".²⁵¹⁷ Torlak testified that he was unaware of this order as he was at the negotiations and there was a general sense that ABiH Žepa Brigade members would not surrender as they feared for their lives.²⁵¹⁸

693. Late in the evening of 19 July 1995, Smith received a letter from Mladić, notifying him that Žepa had "surrendered" and that the Bosnian Muslim representatives had "accepted the surrender conditions."²⁵¹⁹ Mladić further asked Smith to send 50 trucks to transport the Bosnian Muslim

²⁵¹⁰ Hamdija Torlak, T. 9730–9731 (30 Mar 2007) (testifying that "the military-aged men from Žepa were not supposed to go to UNPROFOR and surrender there, but they were supposed to be taken out of the enclave by helicopter and then exchanged for the Serb soldiers who had been captured."), T. 9801–9802 (2 Apr 2007). *See also* Ex. P02944, "UNPROFOR Code Cable, 20 July 1995", p. 1; Ex. 6D00103, "ABiH Žepa Brigade Report, 19 July 1995," p. 2.

²⁵¹¹ Ex. P02944, "UNPROFOR Code Cable to Secretary General, 20 July 1995", p. 1.

²⁵¹² Hamdija Torlak, T. 9730–9731 (30 Mar 2007).

²⁵¹³ *Ibid.*, T. 9799, 9854 (2 Apr 2007). *See also ibid.*, T. 9862–9863 (3 Apr 2007).

²⁵¹⁴ *Ibid.*, T. 9731 (30 Mar 2007), T. 9802–9803 (2 Apr 2007).

²⁵¹⁵ Ex. 6D00102, "Transcript of conversation between Amor Mašović and 'Žepa', 20 July 1995", p. 1.

²⁵¹⁶ Ex. 6D00103, "ABiH Žepa Brigade Report, 19 July 1995", p. 2 (also noting that this arrangement had to be made with the VRS by 6 a.m. on 20 July 1995 and that "[t]he fate of 7,000 people from Žepa, including 2,000 men fit for military service, is at stake.").

²⁵¹⁷ Ex. 5D00270, "ABiH General Staff Order, signed by Rasim Delić, 19 July 1995".

²⁵¹⁸ Hamdija Torlak, T. 9853–9854 (2 Apr 2007).

²⁵¹⁹ Ex. P02944, "UNPROFOR Code Cable, 20 July 1995", p. 3. *See also* Rupert Smith, T. 17537 (6 Nov 2007) (testifying that he must have seen the letter on the morning of 20 July).

population and five fuel trucks for UKRCoy.²⁵²⁰ The Main Staff was preparing to secure the necessary vehicles and taking measures to control the looting and seizure of war booty from the Žepa enclave.²⁵²¹ Smith testified that at the time, Žepa had not yet surrendered, and that “the whole arrangement was conditional” upon the ABiH agreeing to it.²⁵²²

694. At 2 p.m. on 20 July, upon Mladić’s request, a meeting was held at Sarajevo Airport between Lieutenant Colonel Indić, representing the VRS, and Amor Mašović, the President of the State Commission for the Exchange of Prisoners of War for the Bosnian Muslims, representing the BiH Government.²⁵²³ Both sides agreed on an all-for-all prisoner exchange,²⁵²⁴ namely 1,500 to 2,000 Bosnian Muslim able-bodied men in Žepa in exchange for VRS prisoners of war held by BiH.²⁵²⁵ However, the agreement was not signed because of a dispute over the lists of Bosnian Muslim prisoners taken from Srebrenica.²⁵²⁶ In the meantime, the VRS Main Staff authorised

²⁵²⁰ Ex. P02944, “UNPROFOR Code Cable, 20 July 1995”, p. 3 (Mladić further stated, “Injured people will be transported by UNPROFOR vehicles to Sarajevo at 1000 hours. The rest of them will be transported to Kladanj, starting from 1400 hours in accordance with the prepared schedule.”).

²⁵²¹ Exs. P03065, 5D01113, “VRS Main Staff Logistics Sector Order on the Transport of Civilians from Žepa, 19 July 1995”, pp. 1–2 (the Logistics sector of the VRS Main Staff issued an order, which could have signed by Ratko Mijanović, to its Logistic Base Command, Drina Corps Command, the assistant commander for Logistics, and the chief of the Department for Operations and Logistics for “the transport of people and the pull-out of war booty from Žepa”). Mijanović testified that he probably signed and was responsible for this order, which provides: “1. The Chief of the Construction Services of the Main Staff of the VRS shall secure that the following is in Sjeversko village in Bokšanica on 20 July 1995: one bus for the transportation of the sick and wounded; at 1000 hours; 50 buses for the transport of people (women and children); at 1300 hours. [...] 2. The Chief of the Medical Service of the Main Staff of the VRS shall secure a medical team with an ambulance and all necessary medications and medical supplies. The team shall report to Sjeversko village at 1000 hours on 20 July 1995. 3. The 27th PoB [anti-armour combat] Command shall set up a team with the necessary number of vehicles to collect and pull out war booty. Assets and animals (cattle) from war booty shall be appropriately stored, entered into the material records and treated as material assets obtained through regular supply line. A report shall be submitted to the Main Staff of the VRS. 4. Colonel Milisav Jovanović shall be in charge of the collection and pull-out of war booty on behalf of the Main Staff of the VRS. If need be, he shall secure a police unit through the Chief of the Operations and Training Administration of the Main Staff of the VRS. 5. The Drina Corps Command shall order unit commands in the Žepa sector to provide all necessary assistance to the team charged with pulling out war booty.” Mijanović testified that he did not know of any plan for transporting the Bosnian Muslim population out of Žepa on 19 July. Ratko Mijanović, T. 28938–28942 (27 Nov 2008), T. 28984–28988 (28 Nov 2008). *See also* Ex. P01271d, “Intercept 19 July 1995, at 21:16 hours” (participants were talking about the organisation of vehicles that were to be sent to the Sjeversko sector); Ex. P03015, “Drina Corps Command document Requesting the Engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995”.

²⁵²² Rupert Smith, T. 17538 (6 Nov 2007).

²⁵²³ Ex. P02499, “UNPROFOR Sarajevo Sector Memo, 20 July 1995”, p. 2; Ex. P02871, “Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995”, p. 1; Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1; Hamdija Torlak, T. 9803 (2 Apr 2007).

²⁵²⁴ *Ibid.*

²⁵²⁵ *See* Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 3.

²⁵²⁶ Ex. P02499, “UNPROFOR Sarajevo Sector Memo, 20 July 1995”, p. 2; Ex. P02871, “Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995”, p. 1; Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1. The agreement included the release of all the ABiH soldiers detained in Bosnian Serb prisons and camps including some new captives from Srebrenica, and Bosnian Muslim civilians captured therein, and the evacuation of Bosnian Muslim population who wished to leave Žepa. Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 2. UNPROFOR reported that “[t]he Serbs worked from the assumption that [evacuations] would include everybody, including soldiers. The Bosnians worked from the assumption, put forward by President Izetbegović, that it should include only ‘vulnerable’ members of the population. These negotiations continued without any real progress through the weekend.” Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. UNPROFOR reported that at about the same time,

movement of an ICRC team in light of the need for “[u]rgent medical evacuation of the wounded and sick from Žepa” as well as movement of an UNPROFOR team on Sarajevo-Rogatica-Žepa route.²⁵²⁷

695. On the same day, UNPROFOR Civil Affairs officers Joseph and Bezrouchenko²⁵²⁸ met Mladić and Tolimir on the perimeter of UKRCoy Checkpoint 2 in Bokšanica.²⁵²⁹ Mladić reiterated his conditions for the “evacuation” of the Žepa enclave²⁵³⁰ and stated that VRS forces would resume their attack against the enclave at 7 p.m. on that day if the Bosnian Muslims failed to agree to his conditions.²⁵³¹ Loudspeakers were broadcasting a message in the background that there was no chance for the Bosnian Muslim population and that the area was “controlled by General Mladić”.²⁵³² Torlak testified that “these [delay] tactics and failure to create the conditions for the evacuation as requested by General Mladić”, were considered by the VRS as a refusal of its demand.²⁵³³

UNPROFOR representatives with international agencies made contact with the Bosnian Muslim representatives from Žepa, who agreed to the evacuation, whereas the ABiH Commander in Žepa, presumably Avdo Palić, contended that any evacuation would not take place unless he received direct orders to that effect from the BiH leadership in Sarajevo. Ex. P02871, “UNPROFOR Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995”, p. 1.

²⁵²⁷ Ex. 5D01114, “Drina Corps Notification re Approved Movement ICRC for Medical Evacuation to Romanija Brigade and Rogatica Brigade, signed by Krstić, 20 July 1995”; Ex. 5D01115, “Drina Corps notification re UNPROFOR convoy sent to the Romanija Brigade and the Rogatica Brigade, signed by Krstić, 20 July 1995”.

²⁵²⁸ Joseph testified that Mladić requested the presence of the representatives of UNPROFOR Civil Affairs and that representatives of UNHCR and ICRC were also present. Edward Joseph, T. 14154 (22 Aug 2007), T. 14160 (23 Aug 2007). *See also* Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2.

²⁵²⁹ Edward Joseph, T. 14154–14155 (22 Aug 2007), T. 14160 (23 Aug 2007); Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, p. 1; Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. Joseph testified that this meeting was filmed, which gave an impression that it was held for propaganda purposes. Edward Joseph, T. 14161 (23 Aug 2007).

²⁵³⁰ Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, pp. 1–2.

²⁵³¹ Edward Joseph, T. 14165–14166 (23 Aug 2007); Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, p. 2. In a phone conversation between Amor Mašović, the President of the State Commission for the Exchange of Prisoners of War and an unknown person in Žepa recorded at around 10 p.m. on 20 July, Mašović said that after having learnt about the ultimatum at 7 p.m., he made an offer to Lieutenant-Colonel Indić to inform Mladić that the Bosnian Muslims were ready to implement the first phase of the agreement from 21 July and that he did not get a reply from the Bosnian Serbs at that time. Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1.

²⁵³² Edward Joseph, T. 14162 (23 Aug 2007). *See also* Esma Palić, T. 6912, 6951–6952 (6 Feb 2007) (testifying that a few days after the fall of Srebrenica from her house she heard a loudspeaker from the north-west—an area called Borovačke Sijene where Serb army positions were located—: “[t]he people of Žepa, this is Ratko Mladić speaking to you. You cannot stay in Žepa. Take white flags and move to Brezova Ravan where buses are awaiting [...] to take you to the territory controlled by Alija Izetbegović. Don’t listen to crazy Avdo. You are his hostages. He will take you to your deaths.”). Joseph also testified that during the meeting, he heard cannon and munitions firing from the VRS positions nearby and directed downwards at Žepa and that upon the onset of munitions fire Mladić suddenly became very serious with his demeanour changing from friendly to dismissive. *Ibid.*, T. 14162–14166 (23 Aug 2007). *See also* Ex. P02871, “UNPROFOR Memo on Žepa Negotiations, 20 July 1995”, p. 2.

²⁵³³ Hamdija Torlak, T. 9731 (30 Mar 2007).

5. Resumed Fighting (20–24 July 1995)

696. Subsequently, the VRS intensified its attack against Žepa, targeting defence lines, buildings and houses, as well as UKRCoy.²⁵³⁴ The ABiH also fired at UKRCoy positions.²⁵³⁵ Around this period, **Miletić** issued an urgent report to the Main Staff's subordinate corps and Karadžić, indicating that part of the Drina Corps forces were carrying out combat tasks around the Žepa enclave.²⁵³⁶

697. At 11 a.m. on 21 July 1995, a meeting was held between the prisoner exchange commissions of each party, during which the Bosnian Serbs reiterated Mladić's demand that there could be no progress until the "Bosnian Muslim military commander" accepted the capitulation agreement reached two days earlier.²⁵³⁷ An UNPROFOR report described the situation in Žepa as follows:

²⁵³⁴ Hamdija Torlak, T. 9731–9732 (30 Mar 2007) (testifying that the UKRCoy headquarters was attacked); Ex. P02871, "UNPROFOR Memo on Žepa Negotiations, 20 July 1995", p. 2 (noting that the VRS resumed heavy bombardment of Žepa, and the UN convoy that had been sent to assist in transportation of the wounded was sent back to Sarajevo). *See also* Ex. 6D00133, "UNPROFOR Report, 20 July 1995" (noting that fighting between the VRS and the ABiH began that day); Ex. P02874, "UNPROFOR Sarajevo Sector Memo on Draft Demilitarization Agreement, 19 July 1995" (noting that the VRS continued to bombard Žepa and its civilian population with heavy weapons and that the VRS also targeted UKRCoy soldiers). Trivić testified that his unit was ordered to cease hostilities on 19 July, but soon after he was told that combat should resume as of the next day. Mirko Trivić, T. 11868 (21 May 2007). Marinko Jevđević testified that after the ceasefire on 19 July, his troops did not open fire and they were not fired upon, but there was fighting in the area around Žepa mountain and Zlovrh where the ABiH was trying to break through the front lines. Marinko Jevđević, T. 23867–23868 (23 Jul 2008). On 19 July, Krstić reported: "Pursuant to the order by the Commander of the Main Staff of the Army of [RS], I have decided to observe the cease-fire and the agreed manner of evacuating Muslims from Žepa. In the event that the Muslims violate the agreed procedure, commence combat operations, enter Žepa and smash the Muslim armed formations". Ex. 5D01112, "Drina Corps Interim Combat Report signed by Krstić, 19 July 1995". *See also* Ex. 5D01350, "Statement of the President of the UN Security Council, 20 July 1995" (condemning "in the strongest possible terms the offensive by the Bosnian Serb forces against the safe area.").

²⁵³⁵ Ex. 6D00091, "UNPROFOR Situation Report, 20 July 1995" at 8:45 p.m. reads: "3 mortar rounds directly targeted the barracks of UKRCoy. Numerous explosions registered in the UKRCoy enclose. Also UKRCoy camp has been hit with SA and HMG. Origin of fire is ABiH"; Ex. 6D00092, "UNPROFOR Situation Report, 20 July 1995" at 8:55 p.m. reads: "ABiH is firing at UKRCoy camp with HMGs. Bosnian soldiers had thrown several grenades into the UKRCoy enclose. Ukrainian personnel took its defensive positions but didn't respond yet. Situation is extremely critical". *See also* Ex. P02871, "Sarajevo Sector Memo on Žepa Negotiations, 20 July 1995", p. 2; Ex. P6D00165 (confidential), p. 139. Torlak was sceptical about the information contained in Ex. 6D00091 and stated that at the time the ABiH in Žepa did not have mortar rounds, but mostly infantry weapons and a couple of anti-armour weapons, and that he saw the UNPROFOR compound being hit by the Bosnian Serbs when he was there. Hamdija Torlak, T. 9805–9806, 9821 (2 Apr 2007). According to UNPROFOR, the BiH Prime Minister Haris Silajdžić informed UNPROFOR that he had spoken to Avdo Palić, ordering him to stop firing at the UKRCoy base in Žepa. Silajdžić also said that most of the shooting came from a VRS tank bombarding the Žepa town. Ex. 5D00413, "Sarajevo Sector Memo on Žepa negotiations, 21 July 1995", p. 1. In light of evidence presented, the Trial Chamber finds that the ABiH fired at UKRCoy positions.

²⁵³⁶ Ex. P03020, "VRS Main Staff Report by Radivoje Miletić, 21 July 1995", p. 4. On 20 July 1995 at 10:30 a.m., Krstić sent a request to **Miletić** personally in the Main Staff. Krstić requested that the Military Police Battalion of the Protection Regiment be deployed in order to prevent the looting of materials in Žepa after it was liberated by the VRS. Ex. P03015, "Drina Corps Command document requesting the engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995".

²⁵³⁷ Ex. 5D00413, "Sarajevo Sector Memo on Žepa negotiations, 21 July 1995", p. 2. On the afternoon of the same day, a meeting at Sarajevo airport on the exchange of prisoners and the evacuation of Žepa failed. Ex. P03251, "Collection of memoranda from David Harland, 20 July 1995–3 August 1995", tab 4, p. 2. The report states: "As

It seems that there is a stand-off on the Žepa issue for the moment. The Serbs want a complete capitulation of the Bosnian forces in Žepa, and are willing to give very little in return. They will not negotiate any deal with the Bosnian commander in the [Žepa] pocket, and do not want UNPROFOR or anyone else to act as intermediaries. The Bosnian leadership in Sarajevo does not feel inclined to sanctify a Serb take-over with an agreement, and want their people to fight on. Caught in the middle are the people of Žepa, who seem desperate to make a deal – but not yet so desperate that they will defy Sarajevo. It is unlikely that there will be any evacuation of Žepa in the next day or two. Most likely, the Serbs will now intensify their military pressure on the pocket in an effort to force the local military commander to accept Serb terms. This might take several days, given that they seem reluctant to commit their infantry until the Bosnians are broken by bombardment.²⁵³⁸

698. The level of anxiety among Bosnian Muslims in Žepa was extremely high at the time; Palić threatened that should UN representatives fail to arrive by 8 a.m. on 21 July 1995,²⁵³⁹ the ABiH would kill UKRCoy soldiers.²⁵⁴⁰ The frustration was also visible on the VRS side. In a report to the VRS and personally to **Miletić**, Tolimir suggested that destroying the Bosnian Muslims with chemical weapons or aerosol grenades and bombs would force them to surrender quickly.²⁵⁴¹ Tolimir further noted that “[w]e believe that we could force Muslims to surrender sooner if we would destroy groups of Muslims refugees fleeing from the direction of Stublić, Radava and Brloška Plania.”²⁵⁴²

699. On 22 July 1995, UNPROFOR proposed to the warring sides that they agree to a total demilitarisation of the Žepa enclave.²⁵⁴³ At a meeting held at Sarajevo Airport, on the same day, the Bosnian Muslims wanted to discuss the modalities of an evacuation of the wounded and others from

the meeting ended, the Serbs confirmed that there could be no evacuation from Žepa, even for wounded, until the all-for-all prisoner agreement was signed, and until the Bosnian military representatives in the Žepa pocket had accepted the capitulation agreement signed by General Mladić and Žepa civilian leadership two days ago.”

²⁵³⁸ Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 4, p. 3.

²⁵³⁹ Ex. 6D00087, “UKRBat Situation Report, 20 July 1995”.

²⁵⁴⁰ *Ibid.* See also Ex. P6D00165 (confidential), p. 140. An UNPROFOR report dated 23 July 1995 also indicates that on 21 July the ABiH in Žepa threatened to kill UKRCoy soldiers in the main base if UNPROFOR did not arrange a meeting between the local Bosnian Muslim commander and the Bosnian Serbs. It further notes that although intervention with Prime Minister Silajdžić calmed down the situation, the relationship between UKRCoy soldiers and the Bosnian Muslim locals remained very tense and “could deteriorate at any time.” Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 2. Torlak testified that he was unaware of ABiH attack against UKRCoy and Avdo Palić’s threat. Hamdija Torlak, T. 9806 (2 Apr 2007). However, another UNPROFOR report notes that responding to UNPROFOR’s demand, the BiH Prime Minister Silajdžić said: “[T]here was a disinformation campaign going on, that there were no threats against the Ukrainians in Žepa”. Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 4, p. 2.

²⁵⁴¹ Ex. P02794, “Rogatica Brigade Report type-signed Zdravko Tolimir, 21 July 1995”.

²⁵⁴² Ex. P02794, “Rogatica Brigade Report type-signed Zdravko Tolimir, 21 July 1995”. Savčić testified that at that time the ABiH Žepa Brigade was between the Bosnian Muslim population and the VRS forces and thus the VRS was unable to reach the fleeing Bosnian Muslim civilians. Milomir Savčić, T. 15371–15373 (13 Sept 2007).

²⁵⁴³ Ex. 6D00135, “UNPROFOR Situation Report, 23 July 1995”, p. 3 (noting that “[t]his arrangement would save the [Bosnian Muslims] a humanitarian disaster, as occurred in Srebrenica. It would also leave them with a piece of territory in eastern Bosnia, perhaps as a basis for future territorial claims.”). See also Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 5, p. 2. According to an UNPROFOR report, this demilitarisation proposal was first made on 19 July. See Ex. P02874, “Sarajevo Sector Memo on Draft Demilitarisation Agreement, 19 July 1995”. UNPROFOR reported on 21 July 1995 that there was a meeting between UNPROFOR Civil Affairs officers and Tolimir, who indicated some interest in a radical demilitarisation proposal. Ex. 5D00413, “Sarajevo Sector Memo on Žepa negotiations, 21 July 1995”, p. 2. This proposal was eventually withdrawn. Edward Joseph, T. 14271 (24 Aug 2007) (testifying that there was a military situation that had quickly overtaken the possibility of a demilitarisation agreement”).

Žepa while the Bosnian Serbs “seemed to see the operation as being contingent on Bosnian acceptance of the capitulation agreement [reached] by the Bosnian civilian authorities in Žepa on 19 July.”²⁵⁴⁴

700. On 23 July 1995, another meeting was held between the Bosnian Muslim delegation headed by Mašović and the Bosnian Serb delegation headed by Dragan Bulajić at Sarajevo Airport.²⁵⁴⁵ The Bosnian Serb delegation was informed of the position of the BiH political leadership in Sarajevo: there would be neither surrender nor total evacuation of the Žepa enclave; there should be an arrangement to allow for the limited evacuation of those who wish to withdraw; and there should be an all-for-all prisoner exchange to induce the Bosnian Serbs to accept the proposed evacuation.²⁵⁴⁶ The Bosnian Serbs responded that a total evacuation could be avoided in exchange for demilitarisation and acceptance of “Serb rule”.²⁵⁴⁷

701. On the same day, fighting between the VRS and the ABiH intensified in the area of UKRCoy Checkpoint 1 at Brezova Ravan.²⁵⁴⁸ The VRS established new lines that were close to the centre of Žepa; the ABiH could no longer defend the centre of Žepa.²⁵⁴⁹ The ABiH ceased its organised defence.²⁵⁵⁰ Through UNPROFOR, Mladić requested that the Bosnian Muslims of Žepa renew negotiations.²⁵⁵¹

²⁵⁴⁴ Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 5, p. 3.

²⁵⁴⁵ Ex. 5D00416, “Sarajevo Sector Memo on Žepa negotiations, 23 July 1995”, p. 2. Dragan Bulajić was a representative of the RS Exchange Commission, which was a civilian authority. Ex. 6D00102, “Transcript of conversation between Amor Mašović and ‘Žepa’, 20 July 1995”, p. 1; Edward Joseph, T. 14270 (24 Aug 2007). Joseph testified that while negotiations were led in Sarajevo, very little was known about the fate of the men from Srebrenica. Edward Joseph, T. 14172–14173 (23 Aug 2007).

²⁵⁴⁶ Ex. 5D00416, “UNPROFOR Sarajevo Sector Memo on Žepa negotiations, 23 July 1995”, p. 2. At 7:30 p.m. of the same day, Smith met with the BiH Minister Muratović, who said that they “would never allow the civilian population of Žepa to be transported out of the enclave in buses and trucks as [had] happened in Srebrenica, as segregation and more atrocities would follow.” Rupert Smith, T. 17540–17541 (6 Nov 2007); Ex. P02945, “UNPROFOR Report on Meetings between Smith and Sacirbey and Muratović, 23 July 1995”, p. 2. Muratović further stated: “[T]he Bosnian Government was ready for an all-for-all POW exchange in a package for the demilitarisation of Žepa, using the [UNPROFOR] Civil Affairs proposal as a base document. The declared interests of the Bosnian Government were firstly the evacuation of vulnerable people (the wounded and sick, the elderly, the women and children), and secondly, to stop the fighting in Žepa until such time as a peace accord is signed. Their condition is that the [VRS] allow all those who wish to leave the enclave to do so by helicopter and that the remainder are permitted to live within the demilitarised zone. [...] Muratović declared that he was ready to meet either Koljević or Krajišnik to discuss the demilitarisation of Žepa. He asked Gen Smith to contact the Bosnian Serbs to arrange this meeting and stated that he could be accompanied by a[n] ABiH representative if required. Gen Smith replied that he would arrange a meeting with Mladić to broker this proposal.” Ex. P02945, “UNPROFOR Report on Meetings between Smith and Sacirbey and Muratović, 23 July 1995”, pp. 2–3.

²⁵⁴⁷ Ex. 5D00416, “UNPROFOR Sarajevo Sector Memo on Žepa negotiations, 23 July 1995”, p. 2.

²⁵⁴⁸ Ex. 6D00134, “UNPROFOR Report, 23 July 1995”, p. 1.

²⁵⁴⁹ Hamdija Torlak, T. 9732 (30 Mar 2007).

²⁵⁵⁰ Milomir Savčić, T. 15280 (12 Sept 2007).

²⁵⁵¹ Hamdija Torlak, T. 9732 (30 Mar 2007). On the same day Colonel Baxter, Military Assistant to Smith, called **Gvero** to set up a meeting with Mladić to discuss Žepa. **Gvero** replied that he would convey the message to Mladić. Ex. P01320d, “Intercept, 23 July 1995 at 21:20 hours”.

6. The Third Round of Negotiations (24 July 1995)

702. On 24 July, the third meeting was held between the Bosnian Muslims of Žepa and the VRS at UKRCoy Checkpoint 2 in Bokšanica.²⁵⁵² Only Torlak represented the Bosnian Muslims, with Mladić and Tolimir representing the VRS.²⁵⁵³ Mladić was angry, insisting that Torlak sign an agreement and that there was no alternative solution.²⁵⁵⁴ Torlak testified that it was the goal of the Bosnian Muslims at the time to start evacuating the civilian population because it was impossible to defend Žepa.²⁵⁵⁵

703. Mladić showed Torlak a document indicating the terms of the transportation of the Bosnian Muslim population out of Žepa²⁵⁵⁶ and the surrender of Bosnian Muslim men (“24 July 1995 Agreement”),²⁵⁵⁷ which stipulated the following:

Para 1 There shall be an immediate cease-fire between the parties to the conflict.

Para 2 Avdo Palić shall immediately issue an order to his troops to withdraw from the defence lines and to move, together with the civilian population, into the centres of populated areas-villages; they shall not attempt any illegal crossings through the territory of “Republic of Srpska”.

Para 3 The civilian population and all the military-able population shall concentrate around UNPROFOR’s bases in Žepa. This will represent a signal for the [VRS] that the units under the command of Avdo Palić have accepted the Agreement and that they will not abuse it.

Para 4 All members of UNPROFOR in Žepa shall be immediately released and deblocked. All their weapons and equipment shall be returned to them so that they may mediate in the implementation of the agreement.

Para 5 Avdo Palić shall immediately proceed with the disarmament of his units. All weapons from [the] Žepa enclave shall be handed over to the representatives of the [VRS] in UNPROFOR’s base in Žepa.

Para 6 Avdo Palić shall mark mined areas both on the map and on the ground. De-mining of the above areas shall be done in the presence of a joint commission and UNPROFOR.

Para 7 The civilians from Žepa shall enjoy freedom of choice of place of living and residence in accordance with the Geneva conventions of 12 August 1949 and the additional protocols from 1977.

²⁵⁵² Hamdija Torlak, T. 9732–9733 (30 Mar 2007).

²⁵⁵³ *Ibid.*, T. 9732–9733 (30 Mar 2007). See Esma Palić, T. 6918 (6 Feb 2007).

²⁵⁵⁴ Hamdija Torlak, T. 9733 (30 Mar 2007). Smith testified that he understood that Torlak had found himself “between a rock and a hard place, and [...] the solution to this was to sign the document that was put in front of him.” Rupert Smith, T. 17549–17550 (6 Nov 2007).

²⁵⁵⁵ Hamdija Torlak, T. 9733 (30 Mar 2007).

²⁵⁵⁶ The Bosnian Muslim population included the wounded, the sick, women, children and men under 18 or over 55 years of age. Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3; Hamdija Torlak, T. 9814 (2 Apr 2007), T. 9861 (3 Apr 2007). Furthermore, according to the agreement, injured men could leave Žepa freely. Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3; Hamdija Torlak, T. 9814 (2 Apr 2007).

²⁵⁵⁷ Hamdija Torlak, T. 9733 (30 Mar 2007), T. 9861 (3 Apr 2007). Torlak testified that the “military-aged” men included members of the ABiH Žepa Brigade as well as other men who were not members of the brigade. *Ibid.*, T. 9865 (3 Apr 2007).

Para 8 All military-able population of Žepa shall be registered and accommodated in the collective centre under the control of the [VRS] and the ICRC, and remain there until the all [sic] captured [VRS] members and the Serbs from prisons in the territories controlled by the army under the control of Rasim Delić are released.

Para 9 The ICRC shall transport all military-able individuals from the collective centres to the territory controlled by the army under the command of Rasim Delić simultaneously with the release and transport to the "RS" territory of all captured [VRS] members and the Serbs from prisons in the territories controlled by the army under the control of Rasim Delić.

Para 10 UNPROFOR, ICRC and other international humanitarian organisations, in cooperation with the [VRS], shall enable transport of the civilian population from Žepa to the territory controlled by the army of Rasim Delić, or to third countries of their choice, and in accordance with the Geneva conventions from 12 August 1949.

Para 11 The Agreement shall come into effect immediately after signing.²⁵⁵⁸

704. Torlak told Mladić that with regard to the surrender of the Bosnian Muslim able-bodied men, he was not authorised to sign anything on behalf of the ABiH.²⁵⁵⁹ Mladić said that the "evacuation" would be organised and carried out in the centre of Žepa by Tolimir and Palić.²⁵⁶⁰ There was no discussion about freedom of choice of place of living and residence.²⁵⁶¹ At 6:30 p.m., Torlak, Mladić and Kušić from the VRS and Dudnik from UKRCoy signed the 24 July 1995 Agreement.²⁵⁶² Its implementation depended on whether the ABiH soldiers would lay down their weapons and accept prisoner status, and whether the BiH political leadership in Sarajevo would accept the conditions for the prisoner exchange.²⁵⁶³

705. Following the 24 July 1995 Agreement, Tolimir issued a report to the Main Staff, which was personally addressed to "Miletić or Gvero", noting that they had received the text of the agreement.²⁵⁶⁴ Tolimir also reported that there was a risk that should UNPROFOR send a general

²⁵⁵⁸ Exs. 5D01440, 6D00030, "Agreement on Disarmament of the Military-able Population in the enclave of Žepa, 24 July 1995"; Ex. P02800, "Rogatica Brigade Report, 24 July 1995". See also Ex. 6D00108, "UNPROFOR Report by J.R.J Baxter, 26 July 1995", p. 2; Exs P02872, 5D00417, "UNPROFOR Sarajevo Sector Memo regarding Žepa Negotiations, 25 July 1995", pp. 1–2.

²⁵⁵⁹ Hamdija Torlak, T. 9733 (30 Mar 2007), T. 9811, 9823 (2 Apr 2007).

²⁵⁶⁰ *Ibid.*, T. 9736 (30 Mar 2007). Torlak was supposed to go to UKRCoy Checkpoint 2 and remain there for the entire period of time in order to guarantee for Tolimir's security because VRS soldiers had not entered the centre of Žepa. *Ibid.*, T. 9736–9737, 9764–9765 (30 Mar 2007).

²⁵⁶¹ Hamdija Torlak, T. 9736 (30 Mar 2007) (testifying that "this was not discussed at all as things progressed. No one, in fact, even mentioned this possibility. But I do have to say that [...] the atmosphere there was quite specific among the people in Žepa. There was this fear. [...] [T]his paragraph was there. It was put on the paper, but at that time and at that place it didn't really mean anything.").

²⁵⁶² Hamdija Torlak, T. 9733 (30 Mar 2007), T. 9823 (2 Apr 2007); Ex. 6D00030, "Agreement on Disarmament in the Žepa Enclave, 24 July 1995", p. 2. See also Ex. P02800, "Rogatica Brigade Report, 24 July 1995".

²⁵⁶³ Hamdija Torlak, T. 9814–9815 (2 Apr 2007); Ex. 6D00108, "UNPROFOR Report by J.R.J Baxter, 26 July 1995", p. 1. Torlak confirmed that he told Smith that he had no details about the handing over of weapons and it should have been checked with Avdo Palić and that if the Bosnian Muslims in the Žepa enclave were more confident that the BiH government would agree to the prisoner exchange, the mood of fear would alter. Torlak testified that around 26 July 1995, it became clear that the BiH Government was not going to fulfil its part concerning the Bosnian Muslim men. Hamdija Torlak, T. 9814–9815 (2 Apr 2007).

²⁵⁶⁴ Ex. P00191, "Document re Agreement on Disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995", pp. 1–2. See also Ex. P6D00183, "Statement of Rupert Smith, 13 July 2006", p. 26.

instead of a colonel to Žepa, there might be a repeat of the spring of 1993: the VRS had agreed to allow UN presence in Srebrenica in order to facilitate the removal of the Bosnian Muslim civilians, which resulted in the creation of a permanent safe area.²⁵⁶⁵

706. Torlak conveyed the 24 July 1995 Agreement to the Žepa War Presidency and the BiH political leadership in Sarajevo.²⁵⁶⁶ The Bosnian Muslim population were also informed that “those who wanted to could appear on the following day, on the 25th of July, in the centre of Žepa in order to be registered before entering buses and before being moved to territory outside of Žepa, to Kladanj or Olovo, to the places that had been agreed upon.”²⁵⁶⁷ Due to shelling, some of the Bosnian Muslims of Žepa had already left for the mountains or to an area located some kilometres away from the centre while the rest of the population remained in their homes.²⁵⁶⁸ By that time rumours were circulating about the “terrible events” which had occurred in Srebrenica, adding general fears among the population.²⁵⁶⁹ The overall atmosphere in Žepa was close to panic.²⁵⁷⁰

707. Meanwhile, Krstić assessed the situation in Žepa as follows:

[T]he largest part of the unarmed population will start organised evacuation from Žepa to Kladanj, as has been regulated and detailed at negotiations [...]. Part of the armed formations will probably agree to disarm and organised evacuation and part of the soldiers (500-700) will break through the enclave in an organised fashion, probably toward Kladanj, and other directions are not ruled out either. Smaller parts of the armed formations will stay in the former enclave and put up armed resistance.”²⁵⁷¹

In light of this, Krstić issued an order to the Drina Corps brigades to search and “mop up” the terrain in Žepa.²⁵⁷²

²⁵⁶⁵ Ex. P00191, “Document re Agreement on Disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, pp. 1–2. *See also* Ex. P6D00183, “Statement of Rupert Smith, 13 July 2006”, p. 26.

²⁵⁶⁶ Hamdija Torlak, T. 9737 (30 Mar 2007). Also Kulovac was informed of the 24 July 1995 Agreement and on the next day, he organised the transportation for the wounded that had on 13 or 14 July 1995, moved out of the centre of Žepa. *Ibid.*, T. 9738 (30 Mar 2007).

²⁵⁶⁷ Hamdija Torlak, T. 9737 (30 Mar 2007).

²⁵⁶⁸ *Ibid.*, T. 9733, 9744–9745 (30 Mar 2007); Esmā Palić, T. 6916–6918, 6953–6955 (6 Feb 2007) (testifying that approximately 2,500 Bosnian Muslim civilians from Žepa—mostly women, children and elderly people—had started moving towards the mountains). PW-155 testified that throughout the intense shelling attacks on Žepa, he participated in the defence at the Stublić checkpoint on a voluntary basis. He was monitoring the Drina Canyon, very close to the Serb lines—20 to 50 metres away—“to see whether Chetniks would go through the canyon and enter the village and slaughter all the inhabitants.” The Serbs were taunting the Bosnian Muslims with words such as: “We’ll come to your village; we’ll rape all your women; we will kill you, you will have to look at us as we do all that, you Balijas.” PW-155, T. 6831–6853 (5 Feb 2007). Lieutenant-Colonel Svetozar Kosorić from the Department of Intelligence and Security of the Drina Corps Command reported on 24 July 1995 that for four days the ABiH fired heavy anti-aircraft machine-guns against the VRS and used seized UNPROFOR equipment and weaponry and that the ABiH moved the Bosnian Muslim population out of the combat area of the VRS forces. Mirko Trivić, T. 11905–11906 (22 May 2007); Ex. 6D00082, “Document regarding Intelligence information on the Enemy in the Žepa and Goražde Enclaves from the Command of Drina Corps, Department for Intelligence and Security to the Main Staff of VRS signed by Svetozar Kosorić, 24 July 1995”, pp. 1–2.

²⁵⁶⁹ Hamdija Torlak, T. 9733–9734 (30 Mar 2007). *See also* *ibid.*, T. 9812–9814, 9821–9822 (2 Apr 2007).

²⁵⁷⁰ *Ibid.* T. 9734 (30 Mar 2007).

²⁵⁷¹ Ex. P02789, “Drina Corps Order type-signed Radislav Krstić, 24 July 1995”, p. 1.

²⁵⁷² *Ibid.*, pp. 1–2.

708. Following the signing of the 24 July 1995 Agreement, major fighting ceased.²⁵⁷³ The next morning, UNPROFOR contacted the BiH Minister Muratović, asking whether the BiH Government had accepted the 24 July 1995 Agreement as valid.²⁵⁷⁴ Muratović denied that Torlak had the authority to negotiate on behalf of the BiH Government and contended that the government would accept “a total evacuation” provided UNPROFOR performed it.²⁵⁷⁵

709. At 12:30 p.m. on 25 July 1995, Smith met with Mladić, Gvero and Tolimir at the Jela Restaurant in Han Pijesak.²⁵⁷⁶ Smith, who saw that his role was “to try and ameliorate the consequences of the collapse” of the enclave,²⁵⁷⁷ asked Mladić whether the signatories of the 24 July 1995 Agreement had spoken for the entire population with the authority of the BiH Government.²⁵⁷⁸ Mladić responded that he was not prepared to deal with the BiH Government and that he was confident that the signatories would do their utmost “to deliver” the Bosnian Muslim population.²⁵⁷⁹

7. Transportation of Bosnian Muslim Civilians out of Žepa

710. On 25 July, a team comprising UNPROFOR officers was sent to Žepa to monitor the transportation.²⁵⁸⁰ The group arrived at UKRCoy Checkpoint 2 in Bokšanica where Mladić and

²⁵⁷³ Hamdija Torlak, T. 9767 (30 Mar 2007). *See also* Ex. P03021, “VRS Main Staff Document signed by Radivoje Miletić, 25 July 1995”, p. 3 (“[o]perations around Žepa have ceased for the moment as an agreement was signed on the surrender of the Muslims.”).

²⁵⁷⁴ Exs. P02872, 5D00417, “Sarajevo Sector Memo regarding Žepa negotiations, 25 July 1995”, p. 2.

²⁵⁷⁵ *Ibid.* Minister Muratović also noted on 25 July 1995 that “the agreement was probably ‘another Serb trick, like last week, when they told General Smith at his last meeting that Žepa had surrendered.’” On the afternoon of 25 July 1995, a meeting was held at the higher level at Sarajevo airport on the evacuation of Žepa, in which both sides made a tentative agreement on the evacuation of Žepa and on the exchange of prisoners of war “throughout the country.” *See* Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 8, p. 2.

²⁵⁷⁶ Rupert Smith, T. 17713 (8 Nov 2007); Ex. P02747, “UN Report of meeting between Smith and Mladić, 25 July 1995”, p. 1; Emma Sayer, T. 21117, 21119 (6 Feb 2008). Smith’s interpreter Sayer was also present at the meeting. *Ibid.*, T. 21081, 21117 (6 Feb 2008). *See also* Ex. 6D00108, “UN Document re situation in Žepa by J.R.J. Baxter”, p. 2. *See also infra*, para. 1785.

²⁵⁷⁷ Rupert Smith, T. 17556 (6 Nov 2007).

²⁵⁷⁸ Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J. Baxter, 26 July 1995”, p. 2.

²⁵⁷⁹ Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J. Baxter, 26 July 1995”, p. 2 (further noting that Mladić “expressed some irritation with the tactics of the [BiH] Government and in particular Minister Muratović who he claimed was attempting to misrepresent his position and his good intentions towards the people of Žepa.”).

²⁵⁸⁰ Thomas Dibb, T. 16272, 16276, 16327, 16340–16341, 16354 (15 Oct 2007); Edward Joseph, T. 14173–14174, 14181–14182 (23 Aug 2007). Dibb testified that he believed that the aim of the mission was to make sure things went differently from how they had gone in Srebrenica, but he was not sure whether this was his supposition afterwards or whether he was briefed at the time. Thomas Dibb, T. 16275–16276 (15 Oct 2007). *See also* Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J. Baxter, 26 July 1995”, p. 1, which reads in part: “UNPROFOR are carrying out the following actions: a. UNPROFOR has developed a joint civil/military liaison party, reinforced the [UKRCoy] with soldiers from Sector Sarajevo and arranged for ICRC and media presence in the pocket in order to observe and by our presence deter any excesses by the Bosnian Serbs. b. Recognise a ‘fait accompli’ by Mladić and to register and provide escorts for those refugees who wish to leave the pocket. c. UNPROFOR will continue to act as a go between for the factions to try and facilitate the POW exchange required by the [24 July 1995] Agreement”.

Tolimir as well as ICRC staff were present.²⁵⁸¹ Having met at the Jela Restaurant on that day, Mladić and Smith travelled separately to Žepa and saw each other again at Checkpoint 2 at around 4 p.m.²⁵⁸² They met with the ICRC and the UNPROFOR Civil Affairs officers, the UNPROFOR liaison team and UKRCoy to discuss the situation on the ground and to oversee the transportation of the wounded.²⁵⁸³ After receiving permission from Mladić, the ICRC staff and the UNPROFOR group descended towards the centre of Žepa.²⁵⁸⁴ In the centre of Žepa, Palić and Tolimir were discussing some technical details of the transportation.²⁵⁸⁵ Some VRS soldiers were also present.²⁵⁸⁶

711. Approximately 50 to 80 Bosnian Muslim civilians gathered outside of the UKRCoy base in Žepa; no Bosnian Muslim able-bodied men were amongst them.²⁵⁸⁷ Around noon on 25 July, the first buses arrived in Žepa.²⁵⁸⁸ Only a few civilians had decided to leave Žepa that day.²⁵⁸⁹ The first

²⁵⁸¹ Thomas Dibb, T. 16277 (15 Oct 2007). *See also* Ex. P03074, “Drina Corps Regular Combat Report signed by Radislav Krstić, 25 July 1995”, p. 2 (reporting that UNPROFOR vehicles and soldiers, UNPROFOR civilian sector officers, ICRC personnel, General Smith went to Bokšanica). On 25 July, Krstić informed the relevant brigades that the Main Staff authorised movement of UNPROFOR representatives and convoys on the Sarajevo-Podromanija-Rogatica-Žepa route. Ex. 5D01117, “Drina Corps Report to the Romanija Motorised Brigade and the 1st Rogatica Brigade signed by Radislav Krstić, 25 July 1995”; Ex. 5D01118, “Drina Corps Notification re Authorized Movement of an UNPROFOR Team sent to Romanija Brigade and Rogatica Brigade, signed by Radislav Krstić, 25 July 1995”.

²⁵⁸² Rupert Smith, T. 17544–17545 (6 Nov 2007); Ex. P02747, “UN Report of Meeting between Smith and Mladić, 25 July 1995”, p. 1; Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 2.

²⁵⁸³ Rupert Smith, T. 17544–17546 (6 Nov 2007). *See also ibid.*, T. 17713 (8 Nov 2007); Ex. P02747, “UN Report of Meeting between Smith and Mladić, 25 July 1995”, p. 1; Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 2.

²⁵⁸⁴ Thomas Dibb, T. 16278–16279 (15 Oct 2007). *See also* Hamdija Torlak, T. 9738, 9765, 9767–9768 (30 Mar 2007).

²⁵⁸⁵ Hamdija Torlak, T. 9738, 9764 (30 Mar 2007). Torlak identified Avdo Palić (wearing a military shirt) in Ex. P02491 (confidential). *Ibid.*, T. 9757 (30 Mar 2007).

²⁵⁸⁶ Esma Palić, T. 6919 (6 Feb 2007). Dibb testified that on his way down to Žepa town from UKRCoy Checkpoint 2 on 25 July 1995, he saw many VRS soldiers on the road and a tank with empty ammunition next to it facing into the valley and “lots of old money drifting about”; there was a barrier on the road, which appeared to be the limit that the VRS soldiers were allowed into the village because once he passed the barrier, there were no VRS soldiers in the village itself; Dibb did not know who prohibited the VRS soldiers to enter the town. Thomas Dibb, T. 16279–16280 (15 Oct 2007).

²⁵⁸⁷ Thomas Dibb, T. 16281–16282 (15 Oct 2007). PW-155 testified that when the defence lines of the ABiH around Žepa broke, he heard that an “evacuation” by UNPROFOR or the ICRC, together with UNHCR, would take place. He and his family went to the village of Šitkov Do, north of Žepa, where around 1,000 women, children, and elderly had already gathered. PW-155, T. 6832–6833 (5 Feb 2007). PW-155 denied that in his statement given to the Prosecution he had said that “there was a planned evacuation for the elderly, children, and certain age of women.” What he meant was that “[t]he UNHCR and the Red Cross [...] would do the evacuation, but this is not something that they did of their own free will. I don’t think that the plan was theirs, the plan for this evacuation. It was a plan concocted by the Chetniks to do this forcible evacuation, because they actually dictated the terms to everybody, to UNPROFOR, to UNHCR in the field.” *Ibid.*, T. 6858–6860 (5 Feb 2007). *See also ibid.*, T. 6889 (5 Feb 2007) (testifying that he assumed that the transportation would take place with the assistance of the international organisations, adding that “but I wasn’t sure, since everything was under the control of the Chetniks; the UNHCR, the Red Cross, the UNPROFOR, everything.”).

²⁵⁸⁸ Hamdija Torlak, T. 9738 (30 Mar 2007), T. 9866 (3 Apr 2007); Thomas Dibb, T. 16288–16289, 16291 (15 Oct 2007). The Trial Chamber notes that there is evidence to the contrary. Meho Džebo gave evidence that the evacuation of the population started on 24 July and continued until 27 July 1995. Meho Džebo, Ex. P02486, “92 ter statement” (23 Mar 2007), p. 3; Meho Džebo, T. 9679 (29 Mar 2007). Esma Palić also stated that the bus that she boarded left Žepa in the evening of 24 July. Esma Palić, T. 6920–6923, 6964 (6 Feb 2007). Having considered the totality of evidence, and in particular Torlak’s direct involvement in the negotiations with the VRS, the Trial Chamber is, however, satisfied that the transportation started on 25 July 1995.

²⁵⁸⁹ Hamdija Torlak, T. 9745 (30 Mar 2007).

convoy carrying the wounded and accompanied by Dr. Kulovac went to Sarajevo²⁵⁹⁰ and the second convoy took the civilians to Kladanj.²⁵⁹¹ About 20 vehicles with civilians left Žepa that day.²⁵⁹² Palić was with Tolimir in a vehicle, escorting the last convoy; Palić's wife and his daughters were on the convoy.²⁵⁹³

712. All the vehicles necessary for the transportation—civilian buses and trucks—had been procured by the VRS.²⁵⁹⁴ The names of the people boarding the vehicles were recorded in a list, which was given to the ICRC staff.²⁵⁹⁵ The ICRC refused to assist in recording those who were being transported because they would be “seen as participating in ethnic cleansing”.²⁵⁹⁶ UNHCR also refused to participate in the transportation for the same reason.²⁵⁹⁷ UNPROFOR soldiers were assisting in the transportation, whereas VRS soldiers neither participated nor assisted in the process on that day.²⁵⁹⁸ UNPROFOR soldiers also boarded the vehicles, following the Bosnian Muslims' demand for guarantees of their safety.²⁵⁹⁹

²⁵⁹⁰ Hamdija Torlak, T. 9745 (30 Mar 2007), T. 9812 (2 Apr 2007); Thomas Dibb, T. 16283 (15 Oct 2007); Ex. 6D00108, “UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995”, p. 4. *See also* Esma Palić, T. 6921, 6964 (6 Feb 2007); Ex. 6D00029, “UNPROFOR Sarajevo Sector Report, 26 July 1995”, p. 1. Tolimir gave permission to move the wounded out in UKRCoy APCs accompanied by Kulovac, a medical doctor and a member of the Žepa War Presidency. In the absence of Dr. Kulovac, the “hodža” served as a point of contact with the civilian population and assisted with the preparation of people who were leaving. Thomas Dibb, T. 16287–16288 (15 Oct 2007). The Trial Chamber believes that the “hodža” was Mehmed Hajrić. *See supra*, para. 680.

²⁵⁹¹ Hamdija Torlak, T. 9745 (30 Mar 2007). *See also* Esma Palić, T. 6921, 6964 (6 Feb 2007); Ex. 6D00029, “Sarajevo Sector Report, 26 July 1995”, p. 2. The Bosnian Muslim civilians were transported out of Žepa in buses and open lorries to Checkpoint 2 at Bokšanica; then those who were in the open lorries were put onto buses, and all of them were transferred in buses in the direction of Kladanj. Hamdija Torlak, T. 9740–9741, 9747, 9764 (30 Mar 2007).

²⁵⁹² Thomas Dibb, T. 16284 (15 Oct 2007).

²⁵⁹³ Hamdija Torlak, T. 9739, 9768 (30 Mar 2007); Esma Palić, T. 6921–6922 (6 Feb 2007). Esma Palić testified that “Avdo [Palić] didn't believe that the evacuation was safe, [and so] Tolimir told him to get with him into his car, to sit on the back seat, and for Avdo to keep his pistol; and that if he found anything suspicious, he could fire directly into his head and that they would be at the head of the column of civilians.” Esma Palić cautioned Avdo Palić not to trust Tolimir, but he said that it was necessary to save the civilians. Esma Palić, T. 6919–6920 (6 Feb 2007). At 4 a.m. on the next day, Avdo Palić's family and the others in the convoy separated from Avdo Palić who returned to Žepa and they continued on foot until they reached Kladanj. Esma Palić, T. 6921–6923, 6945 (6 Feb 2007); Hamdija Torlak, T. 9739 (30 Mar 2007).

²⁵⁹⁴ Hamdija Torlak, T. 9740 (30 Mar 2007); Thomas Dibb, T. 16286 (15 Oct 2007) (testifying that he thought that the drivers were civilians).

²⁵⁹⁵ Hamdija Torlak, T. 9738–9739 (30 Mar 2007).

²⁵⁹⁶ Thomas Dibb, T. 16282–16283, 16303–16304 (15 Oct 2007).

²⁵⁹⁷ Joseph testified that before going to Žepa, he and Bezruchenko first visited UNHCR in Pale in order to try to ascertain why UNHCR would not participate in the transportation of the population out of Žepa and to obtain guidance as to how to proceed. UNHCR explained that they did not want to be accused of assisting in the ethnic cleansing of Žepa. UNHCR advised Joseph and Bezruchenko that, in order to establish whether the population was forcibly displaced, UNPROFOR should determine whether the Bosnian Muslim civilians in Žepa were leaving of their own volition. Edward Joseph, T. 14174–14176 (23 Aug 2007).

²⁵⁹⁸ Hamdija Torlak, T. 9740 (30 Mar 2007).

²⁵⁹⁹ *Ibid.*, T. 9860 (3 Apr 2007), T. 9808–9809 (2 Apr 2007). The UNPROFOR soldiers stayed there during the whole transportation period. *Ibid.*, T. 9765 (30 Mar 2007). *See also* Esma Palić, T. 6958–6959 (6 Feb 2007) (further testifying that she did not see the ICRC or the UNHCR vehicles).

713. According to Torlak, the transportation went smoothly and in accordance with the 24 July 1995 Agreement.²⁶⁰⁰ Dibb testified that no one was forced to board buses and that the evacuation was well-organised, given the circumstances.²⁶⁰¹ There was no sign of active intimidation in Žepa during the process of transportation.²⁶⁰² There was no mistreatment of the Bosnian Muslims who boarded the vehicles but the process was emotional.²⁶⁰³ Those who were to be transported out of Žepa feared what would happen to the men left behind.²⁶⁰⁴

714. Esma Palić, who was transported out of Žepa, testified that she believed that the Bosnian Muslim civilians had only two options: “to leave Žepa under very cruel and humiliating circumstances [...] [or] to remain and then either be killed or be subjected to suffering.”²⁶⁰⁵ PW-155’s wife told him that when she was transported out of Žepa,²⁶⁰⁶ the situation was “chaotic”.²⁶⁰⁷ PW-155 stated that he and his family did not leave Žepa freely.²⁶⁰⁸ Dibb testified that there was more fear of what would happen in Žepa once the fighting stopped than of the fighting itself.²⁶⁰⁹ Torlak stated that:

Civilians left Žepa because they were afraid for their lives if they stayed behind. And that is the only reason for their departure. [...] The situation was such that you couldn’t have any influence over any individual when it came to making that choice, and I claim, with full responsibility, that there was no coercion in the sense of forcing everyone to leave Žepa. Because, from the beginning of the evacuation on the 25th, out of fear of boarding buses and crossing territory and Bosnian Serb control, to use those terms, people were afraid of doing that [...]. And the actual fact that on the 25th everything was carried out successfully, and there was information received that there was no mistreatment, that everything was successful, then there was a great deal of pressure on the part of the entire civilian population to leave Žepa as soon as possible. [...] [P]eople were informed about the agreement reached, and it was up to each and every one to decide what they would do. All I know is the emotions and fear people felt, if they were to stay behind, and I think the option of staying behind in people’s mind did not exist at all at that period of time in Žepa.²⁶¹⁰

²⁶⁰⁰ Hamdija Torlak, T. 9746 (30 Mar 2007). *See also* Thomas Dibb, T. 16313–16314 (15 Oct 2007).

²⁶⁰¹ Thomas Dibb, T. 16313–16314 (15 Oct 2007). Dibb contrasted the situation of the transportation in Žepa with Grozny in 1999 and Lebanon in 2006, and stated that generally people leave in the last safe moment, which in the cases of Grozny and South Lebanon was before the place was captured, but in the case of Žepa this was when the fighting had actually stopped and the VRS was poised to enter the village. *Ibid.*, T. 16285–16286 (15 Oct 2007).

²⁶⁰² Thomas Dibb, T. 16310–16312 (15 Oct 2007). The Bosnian Muslim civilians were not fired upon when waiting to be transported out of Žepa. *Ibid.*, T. 16309 (15 Oct 2007).

²⁶⁰³ Hamdija Torlak, T. 9740, 9746, 9764–9765 (30 Mar 2007).

²⁶⁰⁴ *Ibid.*, T. 9746 (30 Mar 2007). Torlak further testified that some of the Bosnian Muslim military-aged men who were armed came to bid farewell to their families. *Ibid.*, T. 9766–9767 (30 Mar 2007).

²⁶⁰⁵ Esma Palić, T. 6923 (6 Feb 2007).

²⁶⁰⁶ PW-155, T. 6844 (5 Feb 2007).

²⁶⁰⁷ *Ibid.*, T. 6844 (5 Feb 2007).

²⁶⁰⁸ *Ibid.*, T. 6845 (5 Feb 2007) (testifying that, “It was forcible departure. It was finishing up the ethnic cleansing. Žepa was a protected zone, and the Chetniks burned the surrounding villages and occupied the territory. There was no way that we could stay. I don’t think that any of those people, the women who were transported, said anything about people asking them if they wanted to stay or not. There was no question of that. There were a lot of people who were killed. This was forcible transfer of those who had survived from other parts of Bosnia and Herzegovina.”).

²⁶⁰⁹ Thomas Dibb, T. 16311 (15 Oct 2007).

²⁶¹⁰ Hamdija Torlak, T. 9821–9822 (2 Apr 2007). *See also* *ibid.*, T. 9812–9813 (2 Apr 2007) (testifying that “people [who were] afraid for their lives chose the path they felt was safer, and that was to leave the area. [...] I’m quite sure that people, on the basis of their intuition, felt [...] that nothing bad would have happened to them, they would

715. On the morning of 26 July 1995,²⁶¹¹ Torlak met Avdo Palić in Žepa town, who had returned from escorting the convoy to Kladanj the night before.²⁶¹² Women, children and elderly men²⁶¹³ came into town in larger numbers the following day, probably being more confident due to the successful transportation the day before.²⁶¹⁴ Tolimir came into the town centre and oversaw the boarding of the buses. Torlak travelled with the first convoy to the Bokšanica checkpoint in order to guarantee Tolimir's safety.²⁶¹⁵ Most of the transportation took place on 26 July.²⁶¹⁶

716. Torlak described the atmosphere as "relaxed" during the transportation throughout the day of 26 July.²⁶¹⁷ According to Joseph, it was clear that the issue of choice was already "well passed" and the women were leaving under duress.²⁶¹⁸ UNPROFOR officers helped the Bosnian Muslim women board buses and kept lists of their names.²⁶¹⁹ When asked by UNPROFOR officers, approximately 15 to 19 women said that they were leaving of their own choice,²⁶²⁰ but one woman said: "No, I'm not leaving of my own free will. I want to stay, [...] but who will protect me?"²⁶²¹ The women were terrified that they would be killed if they stayed in Žepa.²⁶²² A VRS vehicle carrying a "Serb" flag would periodically drive through the town, which instilled fear in the Bosnian Muslim population.²⁶²³

have stayed. But people react according to their feelings and intuition"), T. 9863 (3 Apr 2007) (testifying that, "At the time the evacuation started this issue [whether to leave or to stay] was no longer an issue. Whether it was sincere or not, it is a fact that at that point in time there was no possibility of anyone staying to live on in Žepa. That was the real situation, and this was the consequence of all the prior events, the resistance, et cetera. So the moment the evacuation started on the 25th of July, this was no longer a realistic option, nor did anyone give it any more thought").

²⁶¹¹ On 26 July, Karadžić authorised UNHCR to pass through to Žepa "for the purpose of evacuating civilian population", noting that, "This is the best interest of [RS] because the evacuation will then be carried out under the auspices of UNHCR as the only responsible international institution. Ex. 5D00478, "VRS Main Staff Order, signed by Radovan Karadžić, 26 July 1995".

²⁶¹² Hamdija Torlak, T. 9744 (30 Mar 2007).

²⁶¹³ Dibb testified that he did not remember seeing any men from the teens to the 50s. Thomas Dibb, T. 16281 (15 Oct 2007).

²⁶¹⁴ Thomas Dibb, T. 16284–16285, 16287 (15 Oct 2007). *See also* Hamdija Torlak, T. 9744 (30 Mar 2007); Edward Joseph, T. 14183 (23 Aug 2007). Torlak testified that the civilians decided to leave not because the BiH leadership in Sarajevo forced them to do so, but because they had seen that the transportation was carried out smoothly on 25 July 1995. Hamdija Torlak, T. 9822 (2 Apr 2007).

²⁶¹⁵ Hamdija Torlak, T. 9744 (30 Mar 2007); Ex. P04537, "Bokšanica Footage – Video at the UN checkpoint at Bokšanica on 26 July 1995".

²⁶¹⁶ Hamdija Torlak, T. 9745 (30 Mar 2007).

²⁶¹⁷ *Ibid.*, T. 9747 (30 Mar 2007).

²⁶¹⁸ Edward Joseph, T. 14290 (24 Aug 2007).

²⁶¹⁹ *Ibid.*, T. 14186 (23 Aug 2007).

²⁶²⁰ *Ibid.*, T. 14184 (23 Aug 2007).

²⁶²¹ *Ibid.*, T. 14184 (23 Aug 2007) (testifying that the woman started crying and then all the women around her did so too, after which Joseph and Bezruchenko ceased their inquiry). *See also* *ibid.*, T. 14336 (24 Aug 2007).

²⁶²² *Ibid.*, 14184 (23 Aug 2007), T. 14291–14295, 14318, 14336 (24 Aug 2007).

²⁶²³ *Ibid.*, T. 14184–14185 (23 Aug 2007).

717. UKRCoy and VRS soldiers²⁶²⁴ drove the vehicles transporting the Bosnian Muslims,²⁶²⁵ some of which were escorted by French UNPROFOR.²⁶²⁶ Mladić, **Gvero**, **Pandurević**, Krstić, Kušić and Dudnik from UKRCoy were present at Checkpoint 2 at Bokšanica while the buses were stopped there.²⁶²⁷ Mladić²⁶²⁸ entered each single bus that arrived at Checkpoint 2 at Bokšanica, repeatedly boasting in front of the Bosnian Muslims that he saved their lives and allowed them to leave the enclave.²⁶²⁹ After the departure of the buses, Mladić, **Gvero** and Krstić met with Torlak.²⁶³⁰

718. Seriously wounded Bosnian Muslim men were transported by French UNPROFOR and the ICRC.²⁶³¹ The ICRC registered the wounded, and gave them cards and told them that they were POWs.²⁶³² However, Palić ordered them to rip up the cards and told them that they still could not be transported.²⁶³³ When UNPROFOR APCs tried to leave with more wounded, the Bosnian Muslim

²⁶²⁴ A VRS Main Staff report signed by Standing-in-for the Chief of Staff **Miletić** informed Karadžić and VRS Main Staff Corps of the situation in the area of responsibility of the Drina Corps, noting that “[u]nits engaged in Žepa are securing the evacuation of the Muslim population”. Ex. P03022, “VRS Main Staff Situation Report to the RS President signed by Radivoje Miletić, 26 July 1995”, p. 4.

²⁶²⁵ Joseph testified that they were not just buses, but any type of vehicle that could transport people. Edward Joseph, T. 14188 (23 Aug 2007).

²⁶²⁶ Edward Joseph, T. 14188 (23 Aug 2007). An UNPROFOR French military contingent arrived in Žepa later that day. *Ibid.*, T. 14185–14186 (23 Aug 2007). Fortin testified that at one point, a truck with 50 people consisting of both young and old was stopped by UNPROFOR because there was no UNPROFOR soldier on board. After some tense negotiation with the VRS soldiers, it was decided that a UKRCoy soldier would also board the truck. Louis Fortin, T. 18278–18279 (27 Nov 2007). Fortin was assigned to go to Žepa to ensure that each bus had a UN soldier on board. This was to ensure that the transported people were not pulled off the buses by the Serbs before reaching Kladanj, because UNPROFOR had information “that many thousands [of] Bosnian males [from Srebrenica] had disappeared and [had] been killed.” *Ibid.*, T. 18243–18244 (26 Nov 2007), T. 18277–18278 (27 Nov 2007). On cross-examination, Fortin conceded that he could not recall how he got that information about Srebrenica, or when he started getting it. *Ibid.*, T. 18330 (27 Nov 2007).

²⁶²⁷ Ex. P04537, “Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”.

²⁶²⁸ Dibb testified that Mladić was the senior officer on site and was in control of what was happening in Žepa at that time. Thomas Dibb, T. 16278–16279 (15 Oct 2007).

²⁶²⁹ Hamdija Torlak, T. 9747–9748 (30 Mar 2007). *See also* Ex. P04537, “Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”, p. 11 (Mladić said, “I saved you and your children and your people did not save ours in 1992.”), pp. 13–14 (Mladić said, “I am saving you and your children. And our children were killed in 1992 in the Žepa canyon. [...] You who are of military age don’t go to the front again! No more forgiveness. Now I am giving you your life as a gift. [...] I am General Mladić. There are able-bodied among you who shot at me before. I forgive you all and I am giving you life as a present. Don’t come before me at the front. Next time there won’t be any forgiveness. [...] I have mercy for you and you did not have mercy for our children in 1992 in the Žepa canyon. [...]”). *See also ibid.*, pp. 15–16.

²⁶³⁰ Hamdija Torlak, T. 9747–9748 (30 Mar 2007); Ex. P04537, “Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”.

²⁶³¹ Edward Joseph, T. 14186–14188, 14234 (23 Aug 2007). ICRC teams went to Checkpoint 2 at Bokšanica also on 26 July 1995. Ex. P03075, “Drina Corps Regular Combat Report signed by Radislav Krstić, 26 July 1995”.

²⁶³² PW-111, T. 7019, 7066 (private session) (7 Feb 2007).

²⁶³³ Bokšanica video footage from the UN checkpoint at Bokšanica on 26 July 1995”, T. 7019 (7 Feb 2007). PW-111 also testified that Avdo Palić was negotiating about the transportation of the wounded. On the same day, Avdo Palić and Tolimir were at the UKRCoy base in Žepa. Tolimir asked Avdo Palić to order his soldiers to hand over their weapons so that they would be transferred to Tuzla by helicopter. But Avdo Palić disagreed with this. *Ibid.*, T. 7018 (7 Feb 2007). Before PW-111 was transported out of Žepa, Palić said to him that he did not want to leave until the last civilians and the last wounded had left Žepa and that he was ready to be arrested and killed. *Ibid.*, T. 7020–7021 (7 Feb 2007).

civilians blocked them fearing that the UN itself was leaving.²⁶³⁴ Mladić was requested to send down another group of vehicles to show that this was not the last transportation.²⁶³⁵

719. The transportations continued. Most of the Bosnian Muslim civilians had been transported out of Žepa by 27 July.²⁶³⁶ Around 4,000 or 5,000 Bosnian Muslim civilians and wounded were transported out of Žepa.²⁶³⁷

720. On 27 July 1995, twelve wounded and sick Bosnian Muslim men were transported on the last bus that left Žepa.²⁶³⁸ Two VRS military policemen were on this bus,²⁶³⁹ escorted by French UNPROFOR and UKRCoy.²⁶⁴⁰ The bus was first stopped at Checkpoint 2 at Bokšanica, where Mladić entered the bus, asking some of the passengers for names.²⁶⁴¹ The bus eventually departed late that evening, arriving in Tišća early in the morning of 28 July where the men were asked to board a bus with the elderly.²⁶⁴² They were then taken to the Rasadnik prison camp on the outskirts of Rogatica.²⁶⁴³ At the camp,²⁶⁴⁴ the Bosnian Muslim men were told that their further transportation

²⁶³⁴ Thomas Dibb, T. 16285, 16287 (15 Oct 2007). *See also* Edward Joseph, T. 14187 (23 Aug 2007).

²⁶³⁵ Thomas Dibb, T. 16287 (15 Oct 2007).

²⁶³⁶ Exs. P02873, 5D00419, "UNPROFOR Sarajevo Sector Report, 27 July 1995", p. 1; Ex. 6D00089, "UNPF Situation Report, 28 July 1995", p. 3 (reporting that, "It seems there are no more people in Žepa to be evacuated. The BiH troops (approximately 1500) remain."); Ex. 5D00468, "UNPF Memorandum, 26–27 July 1995" (reporting that most of the civilian population was evacuated on 27 July). *See also* Esma Palić, T. 6964–6965 (6 Feb 2007) (testifying that the transportation ended on 27 July). Joseph testified that at the time of his departure on 27 July there were no more Bosnian Muslims in the Žepa enclave apart from the men of Žepa who were in the hills. Edward Joseph, T. 14209–14210 (23 Aug 2007). On 27 July 1995, Vlado Marković from the Rogatica SJB (Public Security Station) informed the Sarajevo CJB (Public Security Centre) that "from 26 July 1995 at 0700 hours to 27 July 1995 at 0700 hours five convoys evacuating civilians and the wounded from the Žepa enclave passed safely through our territory. There were a total of forty buses, eight trucks and seven UN trucks in these convoys. Today the evacuation of inhabitants of the Žepa enclave will continue". Ex. 5D01381, "Rogatica Public Security Station Report to Sarajevo Public Security Centre signed by Vlado Marković, 27 July 1995".

²⁶³⁷ Ex. 6D00089, "UN Situation Report on land operations, 28 July 1995", p. 3; Thomas Dibb, T. 16288–16289, 16291 (15 Oct 2007) (testifying that 4,000 Bosnian Muslim civilians were transported during 26 and 27 July 1995 and that 400 Bosnian Muslim civilians were transported on 28 July). *See also* Ex. 5D00468, "UNPF Memorandum, 26–27 July 1995" (reporting that on 27 July "about 5000 people are now evacuated (Number TBC)").

²⁶³⁸ Meho Džebo, Ex. P02486, 23 March 2007, p. 3. PW-111 testified that prior to his transportation, he and other wounded were first examined and registered by a French doctor and a VRS doctor wearing a camouflage uniform at the UNPROFOR compound in Žepa. There were VRS soldiers in Žepa, evacuating many women, children and elderly, who were constantly arriving from the surrounding villages. The Bosnian Muslim civilians were evacuated by buses and trucks to Kladanj. After being examined by both doctors, PW-111 boarded a bus with other wounded to be transported. But, the VRS doctor came onto the bus and told PW-111 to leave the bus and that he would be transported by helicopter. PW-111 assumed that he was taken off from the bus because he was wearing camouflage pants that he found in the woods outside of the Kravica Warehouse. Thereafter PW-111 waited in Žepa for two more nights before he was transported. PW-111, T. 7016–7018, 7020, 7022 (7 Feb 2007).

²⁶³⁹ Meho Džebo, Ex. P02486, "92 ter statement" (23 March 2007), p. 3, stating that one of the military policemen was "Djordjo Samardžić from Rogatica." *See also* PW-111, T. 7024 (7 Feb 2007).

²⁶⁴⁰ PW-111, T. 7024 (7 February 2007), 7068 (7 Feb 2007).

²⁶⁴¹ Meho Džebo, Ex. P02486, "92 ter statement" (23 March 2007), p. 3. *See also* PW-111, T. 7022 (7 Feb 2007). Kušić, the commander of the Rogatica Brigade, also came onto the bus, asking their names and other personal details. He also asked the older people if they had sons and where they were. *Ibid.* *See also* PW-111, T. 7022–7023 (7 Feb 2007).

²⁶⁴² Meho Džebo, Ex. P02486, "92 ter statement" (23 March 2007), pp. 3–4.

²⁶⁴³ *Ibid.*, p. 4. *See also* PW-111, T. 7024 (7 Feb 2007).

²⁶⁴⁴ At the prison camp Džebo saw, among others, Hamdija Torlak, Hodža Mehmed Hajrić and Amir Imamović. Meho Džebo, Ex. P02486, "92 ter statement" (23 Mar 2007), p. 5.

was conditional upon the release of some 48 VRS prisoners from Tuzla.²⁶⁴⁵ They were registered by the ICRC and only exchanged in January 1996.²⁶⁴⁶

721. As the last bus with Bosnian Muslim civilians left Žepa on 27 July,²⁶⁴⁷ VRS infantry quickly moved into Žepa town and the surrounding hills.²⁶⁴⁸ Two VRS soldiers took Commander Palić from the UKRCoy base, saying that Mladić wanted to speak to him.²⁶⁴⁹ The following morning, UNPROFOR Civil Affairs officer Joseph radioed Mladić about Palić and he understood Mladić to say that Palić “got away and was killed”.²⁶⁵⁰ At a meeting between Tolimir and UNPROFOR that day, Tolimir was asked whether Mladić’s remark about Palić’s death was true.²⁶⁵¹ He responded that the information was propaganda to affect the morale of the enemy.²⁶⁵² Vojanović testified that he interrogated Palić twice over the course of a few days in late July or early August 1995 at the Borika Hotel in Rogatica.²⁶⁵³ Palić has been missing since.²⁶⁵⁴

722. On 28 July 1995, Tolimir had a meeting with UNPROFOR.²⁶⁵⁵ Regarding the wounded, sick and elderly who were detained in Rasadnik prison camp on 27 July, Tolimir told UNPROFOR that they were able-bodied men who had lied about their age in order to escape from Žepa.²⁶⁵⁶

²⁶⁴⁵ Meho Džebo, Ex. P02486, “92 *ter* statement” (23 Mar 2007), p. 4.

²⁶⁴⁶ *Ibid.*, pp. 4–5; PW-111, T. 7025 (7 Feb 2007).

²⁶⁴⁷ On 27 July 1995, Krstić reported to the commands of the Romanija Motorised Brigade and the Rogatica Brigade that the VRS Main Staff authorised the movement of an UNPROFOR convoy to the Sarajevo-Žepa route. Ex. 5D01120, “Drina Corps Report to the Romanija Motorised Brigade and the Rogatica Brigade signed by Radislav Krstić, 27 July 1995”. Kosovac testified that there was continuity in the implementation of the UN Security Council decisions relating to UNPROFOR, UNHCR, and ICRC. Slobodan Kosovac, T. 30177 (15 Jan 2009). *See also* Ex. 5D00468, “UNPF Memorandum, 26–27 July 1995”, p. 2 (reporting that convoy entered Žepa).

²⁶⁴⁸ Edward Joseph, T. 14197 (23 Aug 2007).

²⁶⁴⁹ *Ibid.*, T. 14197–14198 (23 Aug 2007).

²⁶⁵⁰ *Ibid.*, T. 14207 (23 Aug 2007) (testifying that he was however not certain whether Mladić used the Serb word for “killed” or “escaped” and that he inquired with Mladić’s interpreter, who confirmed that Mladić said “killed”). Joseph also stated that to kill, “poginuti”, and to escape, “pobjeci” were similar. *Ibid.* *See also* Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 12, p. 2.

²⁶⁵¹ Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 5. A report from Tolimir dated 28 July indicates that he had spoken with Avdo Palić about locations of mines laid by the ABiH Žepa Brigade. Ex. P02793, “Rogatica Brigade Report, type-signed Zdravko Tolimir, 28 July 1995”.

²⁶⁵² Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 5.

²⁶⁵³ Milan Vojinović, T. 23728, 23730–23731 (21 July 2008). *See also* Ex. P03523 “RS MUP State Security Service report type-signed Dragan Kijac, 28 July 1995” (which contains information on the interview conducted by Vojinović with Palić). During the interviews, Palić said that he had received orders from Sarajevo to break through RS territory in order to link up with other brigades of the ABiH. Milan Vojinović, T. 23730–23731, 23742–23743 (21 July 2008). *See also* Ex. P03523 “RS MUP State Security Service report type-signed Dragan Kijac, 28 July 1995” (which discussed the number of military aged men in the Žepa enclave, how many were armed and the planned breakthrough but nothing about a war crimes investigation).

²⁶⁵⁴ Vojinović testified that he received informal information that Palić would be exchanged for a high-ranking VRS officer held by the ABiH, but did not know what happened to Palić after the interviews. Milan Vojinović, T. 23729, 23732, 23746 (21 July 2008). Esma Palić testified that Avdo Palić was last seen “in various prisons”. Esma Palić, T. 6924, 6961 (6 Feb 2007).

²⁶⁵⁵ Louis Fortin, T. 18289 (27 Nov 2007); Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 1.

²⁶⁵⁶ Louis Fortin, T. 18289–18290 (27 Nov 2007); Ex. P02969, “Notes of Meeting between Gobilliard and Tolimir, 28 July 1995”, p. 2. Tolimir also said that they would be taken to Rogatica, registered by the ICRC, and exchanged as POWs. *Ibid.* On the morning on 28 July, Tolimir agreed that another group of wounded Bosnian Muslim men could

723. During the period of transportation, some VRS soldiers participated in looting²⁶⁵⁷ and burning of houses in Žepa.²⁶⁵⁸ The mosque in Žepa was also destroyed.²⁶⁵⁹ Conversely, it was reported that the Bosnian Muslims also apparently burnt houses in the surrounding hills.²⁶⁶⁰

724. While Žepa was not shelled during the transportation,²⁶⁶¹ there is evidence that fighting continued in the Žepa area after the signing of the 24 July 1995 Agreement and after the transportation of the Bosnian Muslim civilians and wounded.²⁶⁶²

leave from Žepa, but he did not allow one man to leave together with the Bosnian Muslim civilians because he was military-aged. Thomas Dobb, T. 16291–16292, 16297 (15 Oct 2007).

²⁶⁵⁷ Thomas Dobb, T. 16292–16295 (15 Oct 2007) (testifying that he saw Kušić, Commander of the Rogatica Brigade participate in the looting on 25 July, noting that “a series of vehicles [were] going up and down the hill from [Checkpoint] 2 into the village of Žepa itself, with Mr. Kušić himself going up and down accompanying the vehicles that were coming back up loaded with cattle, furniture and whatever else.”); Louis Fortin, T. 18285–18286 (27 Nov 2007) (testifying that on 27 July, he saw “trucks go by with fridges, with cows in the back” and he guessed that VRS soldiers were “going around the houses and taking whatever was worth taking.”); Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 16, p. 1 (reporting that as of 2 August 1995, the village of Žepa “has been looted by Serb soldiers (who were seen carting off refrigerators, domestic animals etc), and most of the houses have been burnt.”). During cross-examination, Gvero showed Dobb Mladić’s order dated 30 July 1995, in which Mladić prohibited taking material goods out of the war zones without special permission from the logistics organ of the corps commands, and the slaughtering or taking cattle out of the war zones. The order further states that criminal proceedings before the appropriate military court shall be instituted against persons who do not carry out their duties pursuant to this order. Ex. 6D00166, “Order on the obligations of commands, units and institutions of the VRS in conditions of a proclaimed state of war in the RS to the Drina Corps signed by Mladić, 30 July 1995”. Dobb reiterated that looting had occurred. *Ibid.*, T. 16343–16346 (15 Oct 2007).

²⁶⁵⁸ Thomas Dobb, T. 16292 (testifying that the burning continued throughout the period of the evacuation in the Žepa area), T. 16347–16348 (15 Oct 2007) (testifying that VRS soldiers told Dobb that they set fire to houses in Žepa because the fighting was over). Dobb testified that on 25 July, one soldier asserted that the sound of fire crackling and wood popping was due to mines in the houses, which Dobb described as complete nonsense. Dobb could see no tactical reason for burning the houses. According to Dobb, it was absolutely inconceivable that the houses were burnt by the retreating Bosnian Muslims. *Ibid.*, T. 16348–16350 (15 Oct 2007). On 28 July, Dobb did not see anyone starting a fire, but he said that it was “crystal clear” that VRS soldiers were doing this, and that it was quite certain that all Bosnian Muslim civilians had already left at that time. *Ibid.*, T. 16292–16293 (15 Oct 2007). Esma Palić denied that the Bosnian Muslims set ablaze their houses before leaving Žepa. Esma Palić, T. 6944 (6 Feb 2007). PW-155 stated: “All the villages [in the Žepa enclave] were burnt, and those people who were left behind in the enclave after the fall, they were all killed. A lot of people were killed. So it was a plan on the part of the Chetniks to kill and to remove all the non-Serb population from the territory of Eastern Bosnia.” PW-155, T. 6860 (5 Feb 2007). PW-155 further stated that upon leaving the Žepa enclave, the Bosnian Muslims did not cause any destruction to their properties with a view to prevent plunder by Bosnian Serbs and that his parents’ house was destroyed by the “Chetniks”. *Ibid.*, T. 6868–6869 (5 Feb 2007). Fortin, when asked to describe the looting he saw, testified that he saw houses burning and heard the occasional shot in the background. Louis Fortin, T. 18286 (27 Nov 2007) (regarding 27 July 1995).

²⁶⁵⁹ Hamdija Torlak, T. 9867 (3 Apr 2007); Thomas Dobb, T. 16297–16298 (15 Oct 2007). Dobb raised the issue with Indić, who was Dobb’s contact person for the VRS and who replied flippantly that it was destroyed because it looked like a missile in aerial photography, which Dobb took to mean that Indić questioned whether any justification was needed. *Ibid.*, T. 16298–16299 (15 Oct 2007).

²⁶⁶⁰ Ex. 6D00029, “UNPROFOR Sarajevo Sector Report, 26 July 1995”, p. 1 (“Bosnians—other than men of military age—were coming down from their hamlets in their hills, into the Serb-controlled villages, and were waiting to be moved by Serb buses to the confrontation line near Kladanj. Many houses in the hills were burning, apparently torched by departing Bosnians”).

²⁶⁶¹ Thomas Dobb, T. 16309 (15 Oct 2007). According to an interim combat report signed by Krstić and dated 25 July 1995, there was “no enemy activity today, except by small individual groups. [...] 2. Our forces did not conduct combat operations today. They abided by the order on ceasefire to enable organised evacuation of the enemy’s wounded and the inhabitants of Žepa in the spirit of the agreement reached between representatives of the Muslim Army, the Army of RS and UNPROFOR. 3. Decision for further operations: Create conditions for the evacuation of civilians and enemy soldiers who surrender their weapons. After that, conduct searches and mopping up

8. The Fate of Bosnian Muslim Able-Bodied Men in Žepa

725. On the evening of 25 July 1995, there was a meeting between Mladić, Torlak and Smith.²⁶⁶³ Torlak expressed his concern to Smith about the implementation of the 24 July 1995 Agreement to move the Bosnian Muslim men out of the Žepa enclave as part of an all-for-all prisoner exchange.²⁶⁶⁴ At this time, UNPROFOR reported that “the [Bosnian Muslims] will negotiate seriously and quickly on an all-for-all prisoner exchange, or Žepa’s men of military age will be killed or captured.”²⁶⁶⁵ However, Torlak stated that he did not know whether the BiH Government would agree to the all-for-all prisoner exchange.²⁶⁶⁶ Mladić said that he could not be held

operations in the former enclave of Žepa from remnants and armed enemy soldiers.” Ex. 5D01116, “Drina Corps Interim Combat Report signed by Radislav Krstić, 25 July 1995”. See also Ex. P03074, “Drina Corps Regular Combat Report signed by Radislav Krstić, 25 July 1995”, p. 2 (reporting that the Drina Corps forces who had been conducting offensive operations in the direction of Žepa were halted at the positions reached “because of the surrender and transport of Muslim civilians from that area to the territory under Muslim control.”). Marinko Jevđević testified that while he was in the Žepa area until 25 or 26 July 1995, he did not receive further orders for combat. Marinko Jevđević, T. 23862–23863 (23 July 2008).

²⁶⁶² Mirko Trivić, T. 11908–11910 (22 May 2007), T. 11968 (23 May 2007) (testifying that Trivić’s unit was given a mission to break through to Žepске Kolibe and he was wounded on 29 July 1995 near the communications centre at Zlovrh); Milenko Jevđević, T. 29556–9557 (11 Dec 2008) (testifying that after the transportation the VRS was again in a position to continue with combat operations and that there was a fierce resistance in Zlovrh and Žepске Kolibe and Trivić was wounded in the fighting there); Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 6 (noting that on 30 July 1995, the VRS penetrated the ABiH Žepa Brigade defence lines on Mount Žepa from the direction of Bukovik and took control of the Zlovrh elevation); Ex. P03075, “Drina Corps Regular Combat Report signed by Radislav Krstić, 26 July 1995” (reporting that the Drina Corps units engaged in the combat operations in Žepa “are disarming enemy forces and securing the safe evacuation of Muslim civilians” and ordering the units engage in the task to continue its combat task).

²⁶⁶³ Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3. The Trial Chamber notes that while this report’s date is 26 July, as Gvero explained, it reflects the events that occurred on 25 July. See Rupert Smith, T. 17548 (6 Nov 2007). On the same evening, the Main Staff Sector for Intelligence and Security sent a report to the Rogatica Brigade and Tolimir personally, which reported that the RS Exchange Commission attended a meeting with the Bosnian Muslim side at Sarajevo Airport; that the Bosnian Muslim Government accepted the “proposed (signed) agreement in its entirety on condition that both civilians and able-bodied men are evacuated together from the enclave of Žepa”; and that “it is important that civilians, disarmed soldiers and able-bodied men are evacuated together from Žepa and they demand guarantees that they are not going to be killed”. The report further noted that Miletić and Lieutenant Colonel Jovica Karanović from the Sector for Intelligence and Security had a conversation with Bulajić from the RS Exchange Commission and Bulajić was told that “we are not going to vary from agreement between Kušić and Muslim side, although Muslim delegation told Bulajić that they did not know who Torlak was. Bulajić said that during the meeting he did not vary from already signed agreement but that the Muslims asked for guarantees that the captured soldiers are not going to be killed. We explained to Bulajić once more time that we are not going to vary from the signed agreement and that disarmament and registration would be carried out under UNPROFOR and ICRC supervision, as it was specified in the agreement”. Ex. P00190, “VRS Main Staff Intelligence and Security Report, type-signed Jovica Karanović, 25 July 1995”. See also Richard Butler, T. 19942 (17 Jan 2008).

²⁶⁶⁴ Hamdija Torlak, T. 9813–9814 (2 Apr 2007); Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3.

²⁶⁶⁵ Ex. 6D00029, “Sarajevo Sector Report, 26 July 1995”, p. 1; Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 9, p. 3.

²⁶⁶⁶ Hamdija Torlak, T. 9814–9815 (2 Apr 2007); Ex. 6D00108, “UNPROFOR Report by J.R.J Baxter, 26 July 1995”, p. 3. Sayer testified that asked by Smith whether anybody wished to remain in Žepa, Torlak stated that nobody wanted to stay in the enclave because they were afraid. Emma Sayer, T. 21084 (6 Feb 2008).

responsible if the Bosnian Muslim men tried to cross the Drina River and break out of the enclave.²⁶⁶⁷

726. Later that evening, Smith met with the BiH President Izetbegović, Minister Muratović and Amor Mašović, the President of the State Commission for the Exchange of Prisoners of War for the Bosnian Muslims.²⁶⁶⁸ Izetbegović said that the BiH Government was ready to exchange 500 VRS POWs for 2,000 Bosnian Muslim able-bodied men from Žepa, but he feared that Mladić would not adhere to this part of the agreement.²⁶⁶⁹ Muratović protested that UNPROFOR had helped the transportation of civilians without the permission of the BiH Government and that they should be responsible for compiling lists of the refugees on the buses, escorting them safely to Kladanj and comparing the figures and names on arrival in Kladanj.²⁶⁷⁰

727. On 26 July 1995,²⁶⁷¹ Torlak met Smith at UKRCoy Checkpoint 2 at Bokšanica to discuss different options concerning the Bosnian Muslim able-bodied men.²⁶⁷² Torlak testified that after the meeting with Smith, he realised that although he had hoped that the BiH political leadership in

²⁶⁶⁷ Ex. 6D00108, "UNPROFOR Report by J.R.J Baxter, 26 July 1995", p. 3. On the same day, Mladić issued an order concerning prevention of leakage of confidential military information in the area of combat operations. He ordered: "1. By means of organised and complete control prevent the entry of all uninvited individuals to the area of combat operations in the wider area of Žepa. [...] 3. Ban and prevent the giving of information, the making of announcements and statements to the media regarding the course, situation and results of combat operation in this area and the overall activities in this area, particularly on prisoners of war, evacuated civilians, escapees and similar." Ex. P00182, "VRS Main Order signed by Ratko Mladić, 25 July 1995", p. 1.

²⁶⁶⁸ Rupert Smith, T. 17550–17551 (6 Nov 2007); Ex. 6D00108, "UNPROFOR Report on Žepa by J.R.J Baxter, 26 July 1995", pp. 3–4. The report states: "[General] Smith emphasised that his two most critical requirements had been to get UN agencies and personnel on the ground to monitor the situation, which he had achieved, and to establish what agreement could be reached concerning the POW exchange." *Ibid.*, p. 4.

²⁶⁶⁹ Ex. 6D00108, "UNPROFOR Report by J.R.J Baxter, 26 July 1995", p. 4.

²⁶⁷⁰ *Ibid.*

²⁶⁷¹ On the same day, a separate meeting was held at the higher level at Sarajevo Airport, in which both warring sides "announced that they had not reached [an] agreement, but that they were very close, and hoped to sign an agreement in the morning. [...] The Bosnians will not agree, however, that the men of Žepa should ever fall into Serb hands. They accept that they could be registered by the ICRC as prisoners, but that, in implementation of the all-for-all exchange, they would leave the pocket before they ever entered Serb custody." Ex. P03251, "Collection of memoranda from David Harland, 20 July 1995–3 August 1995", tab 10, p. 2.

²⁶⁷² Hamdija Torlak, T. 9747 (30 Mar 2007). Torlak marked the location of the meeting with Smith on a map. Ex. PIC00082 "Map of Žepa and surrounding area (Brezova Ravan and Bokšanica), marked by Hamdija Torlak"; Hamdija Torlak, T. 9742 (30 Mar 2007). Dobb testified that on one or two occasions when he went to Checkpoint 2, Smith and Avdo Palić and the Bosnian Serbs were discussing the issue of prisoner exchanges of the purported 2,000 ABiH soldiers in the hills with 500 VRS soldiers being held by Bosnian Muslims, that it appeared that Avdo Palić would have been happy with a local prisoner exchange, while Sarajevo was more interested in a large prisoner exchange, and that it was clear in his mind that Minister Muratović was the "stumbling block." Dobb was in Žepa from 25 July to 2 August 1995. Thomas Dobb, T. 16305, 16354 (15 Oct 2007), T. 16371–16373 (16 Oct 2007).

Sarajevo would agree to the prisoner exchange,²⁶⁷³ an agreement would never be reached.²⁶⁷⁴ At that time, the Bosnian Muslim able-bodied men were still in the mountains around Žepa town.²⁶⁷⁵

728. On 27 July 1995, another meeting was held between Mladić and three Bosnian Muslim representatives of Žepa, namely, Torlak, “Hodža” Mehmed Hajrić²⁶⁷⁶ and Amir Imamović.²⁶⁷⁷ The Bosnian Muslim representatives were now negotiating a “surrender agreement” with Mladić without consultation with the BiH political leadership in Sarajevo.²⁶⁷⁸ There were “veiled threats” to the Bosnian Muslim representatives during the meeting.²⁶⁷⁹ Smith arrived at the meeting and took the Bosnian Muslim representatives aside to tell them not to sign because UNPROFOR could not offer some of the guarantees contained within the proposed arrangement.²⁶⁸⁰ The key terms were:

1. All men aged 18-55 years will surrender their weapons to the [VRS].
2. ICRC will register them[;] then they will be guarded by [VRS] troops in the presence of UNPROFOR until the exchange agreement is signed.
3. After the POW [Prisoners of War] exchange agreement is signed and the POWs exchanged, the detained men in Žepa will be evacuated, under UNPROFOR[’s] escort to the territory of their choice.²⁶⁸¹

729. The agreement was nonetheless signed.²⁶⁸² Smith warned Mladić that the BiH political leadership was unlikely to accept this agreement as they had had no direct involvement in it and that

²⁶⁷³ Hamdija Torlak, T. 9816–9817 (2 Apr 2007).

²⁶⁷⁴ *Ibid.*, T. 9817–9818 (2 Apr 2007). *See also* Ex. 6D00098, “ABiH Document, 26 July 1995”.

²⁶⁷⁵ Ex. 6D00029, “Sarajevo Sector Report, 26 July 1995”, p. 1 (noting that “[t]he Bosnian men of military age were still in the hills, and were apparently awaiting assurances that they would be able to escape to join their families.”). *See also* Hamdija Torlak, T. 9766–9767 (30 Mar 2007).

²⁶⁷⁶ Torlak identified Hodža Mehmed Hajrić (wearing a blue shirt) in Ex. P02491 (confidential); Hamdija Torlak, T. 9757–9758 (30 Mar 2007). Joseph identified Torlak and Hajrić on Ex. P02489 (confidential) and Ex. P02491 (confidential); Edward Joseph, T. 14210, 14212 (23 Aug 2007). Joseph testified that at some point, Hajrić and two other Bosnian Muslim representatives were taken by the VRS soldiers for “a meeting” and that after that, Hajrić went missing. *Ibid.*, T. 14206, 14208–14209, 14212–14213 (23 Aug 2007).

²⁶⁷⁷ Louis Fortin, T. 18282–18283 (27 Nov 2007); Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

²⁶⁷⁸ Edward Joseph, T. 14204–14205 (23 Aug 2007); Exs P02873, 5D00419, “Sarajevo Sector Report, 27 July 1995”, p. 2. Joseph questioned whether the Bosnian Muslim civilian leaders, instead of military leaders, could effect a surrender and drew this to the attention of Smith. Edward Joseph, T. 14205–14206 (23 Aug 2007).

²⁶⁷⁹ Louis Fortin, T. 18282–18283 (27 Nov 2007).

²⁶⁸⁰ Rupert Smith, T. 17553–17554 (6 Nov 2007); Louis Fortin, T. 18285 (27 Nov 2007). *See also* Ex. P02946, “Memo on the situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. Smith told both Mladić and the three Bosnian Muslim representatives of Žepa that UNPROFOR could not be written into the agreement in any way as a participant or as a guarantor. Ex. P02946, “Memo on the situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. In this regard, Smith testified that he was not “about to accept responsibility for delivering on any of these agreements either. I had no power to do so, or we wouldn’t have got into the position we were in Žepa if I had the power. So to sign on to deliver something else when neither party was in any way likely to, you know, in any agreement with each other wasn’t something I was prepared to do.” Rupert Smith, T. 17556 (6 Nov 2007).

²⁶⁸¹ Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. *See also* Ex. 6D00089, “UNPF Situation Report, 28 July 1995”, p. 3.

²⁶⁸² Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1. *See also* Ex. 5D00468, “UNPF Memorandum, 26–27 July 1995”, p. 2.

it was the BiH political leadership who ultimately held the VRS POWs.²⁶⁸³ Mladić replied that Minister Muratović had repeatedly refused offers to meet with him and asked Smith to inform the BiH political leadership that the agreement had been signed, and that those who refused to surrender their weapons by 6 p.m. of 27 July would be “liquidated”.²⁶⁸⁴ Smith talked with the three Bosnian Muslim representatives of Žepa, who “expressed their disappointment that the [BiH] Government had had 13 or 14 days in which to conclude the POW exchange negotiations and yet had failed to do so.”²⁶⁸⁵ At that time, the VRS had maintained their position that the men of Žepa must surrender their weapons and then an all-for-all POW exchange would take place whereas the BiH Government’s position remained that “an all-for-all POW exchange should occur but that the men of Žepa should be immediately evacuated after surrendering their weapons without ever actually falling into Serb hands.”²⁶⁸⁶ The agreement was not implemented.²⁶⁸⁷ At this point approximately 1,500 ABiH soldiers remained in the woods around Žepa town.²⁶⁸⁸

730. Torlak, Hajrić, and Imamović—the Bosnian Muslim representatives of Žepa—were in the last convoy that left on 27 July 1995.²⁶⁸⁹ Mladić refused to let the convoy pass through Checkpoint 2 at Bokšanica until “the [ABiH] troops surrender”, demanding that one of the Bosnian Muslim representatives go to the mountains near Žepa where the Bosnian Muslim men of “military age” were gathered and tell them to surrender.²⁶⁹⁰ Hajrić was assigned to this task.²⁶⁹¹ Later that evening, Torlak and Imamović were taken to a room with UNPROFOR soldiers at the UNPROFOR compound in Žepa.²⁶⁹² In the presence of four or five UNPROFOR soldiers and the UKRCoy Commander Dudnik, VRS soldiers handcuffed Torlak and Imamović and told them that they were POWs.²⁶⁹³ The next morning, Torlak and Imamović were taken back to Bokšanica where Torlak saw Mladić and was questioned by security officers.²⁶⁹⁴ Soon after, Torlak and Imamović were put back into a VRS vehicle and were taken again to the hotel in Borike where they spent the next few days.²⁶⁹⁵ Dibb witnessed that Hajrić was not allowed to leave and that he was taken away at

²⁶⁸³ Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

²⁶⁸⁴ Rupert Smith, T. 17555 (6 Nov 2007) (testifying that “we are coming to the culmination of a series of [...] this negotiation when the parties who can actually deliver on it aren’t actually being party to the consultation.”); Emma Sayer, T. 21085 (6 Feb 2008); Ex. P02946, “Memo on the Situation in Žepa by J.R.J. Baxter, 28 July 1995”, p. 1.

²⁶⁸⁵ Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

²⁶⁸⁶ Ex. P02946, “Memo on the Situation in Žepa signed by J.R.J. Baxter, 28 July 1995”, p. 1.

²⁶⁸⁷ Hamdija Torlak, T. 9819–9819 (2 Apr 2007).

²⁶⁸⁸ Ex. 6D00089, “UN situation report on land operations, 28 July 1995”, p. 3. Torlak confirmed this information and added that probably not all of the ABiH soldiers were armed. *See also* Hamdija Torlak, T. 9818–9819 (2 Apr 2007).

²⁶⁸⁹ Hamdija Torlak, T. 9748–9749 (30 Mar 2007).

²⁶⁹⁰ *Ibid.*, (testifying that Mladić demanded that the “troops” surrender).

²⁶⁹¹ *Ibid.*, T. 9749 (30 Mar 2007).

²⁶⁹² *Ibid.*, T. 9748–9752 (30 Mar 2007).

²⁶⁹³ *Ibid.*, T. 9749–9750 (30 Mar 2007).

²⁶⁹⁴ *Ibid.*, T. 9750–9751 (30 Mar 2007).

²⁶⁹⁵ *Ibid.*, T. 9749–9750, 9751–9752 (30 Mar 2007).

Checkpoint 2 at Bokšanica.²⁶⁹⁶ Around 30 July, Torlak and Imamović, who were under “VRS military police guard”, and Hajrić, were put in the same cell at a prison in Rogatica.²⁶⁹⁷ In mid-August 1995, Imamović and Hajrić were taken out of the cell.²⁶⁹⁸ Torlak later learnt that Hajrić and Imamović had been killed and that their bodies were later found in Vragolovi.²⁶⁹⁹

731. On 29 July 1995,²⁷⁰⁰ Minister Muratović informed UNPROFOR of his intention to resume negotiations over the remaining Bosnian Muslim able-bodied men of Žepa.²⁷⁰¹ The VRS first agreed to meet with the Bosnian Muslim side at Sarajevo Airport but later called off the meeting.²⁷⁰² The VRS told UNPROFOR that the Bosnian Muslims should accept the 24 July 1995 Agreement concerning the Bosnian Muslim men in Žepa; only then would the VRS be willing to consider discussing the fate of the men of Žepa.²⁷⁰³ That day, **Miletić** reported to the Main Staff’s subordinate units and Karadžić that the Bosnian Muslim men of Žepa were trying to break through to Donje Štitarevo in order to reach Serbia.²⁷⁰⁴ Tolimir passed on instructions to ensure that combat

²⁶⁹⁶ Thomas Dobb, T. 16291–16292, 16297 (15 Oct 2007).

²⁶⁹⁷ Hamdija Torlak, T. 9748–9752 (30 Mar 2007).

²⁶⁹⁸ *Ibid.*, T. 9748–9752 (30 Mar 2007). Milan Vojinović, who worked in the State Security Service of the RS MUP during the war, testified that in late July 1995 he conducted an interview at Rogatica with Hamdija Torlak to get information about the armed formations that fled Žepa and threatened the security of civilians in the surrounding village. Milan Vojinović, T. 23727–23728 (21 July 2008).

²⁶⁹⁹ Hamdija Torlak, T. 9751–9752 (30 Mar 2007) (testifying that he was released in 1996). *See also* Ex. P04494 (confidential); Ex. P03479 (confidential).

²⁷⁰⁰ UNPROFOR reported that there was intensive shelling in Žepa on 29 July 1995. Ex. 6D00136, “UNMO Sector Situation Report, 30 July 1995”, p. 3 (“Team reported hearing intensive shelling on 29 JUL (23 explosions, 8 HMG bursts and 4-6 outgoing mortar rounds) but could not confirm firing points and impact areas.”).

²⁷⁰¹ Ex. P02498, “UNPROFOR memorandum regarding negotiations on Žepa, 29 July 1995”, p. 1.

²⁷⁰² Ex. P02498, “UNPROFOR memorandum regarding negotiations on Žepa, 29 July 1995”, p. 1.

²⁷⁰³ *Ibid.* Torlak testified that the Bosnian Serb’s position was not in accordance with the 24 July 1995 Agreement that required that the Bosnian Muslim men be handed over to UNPROFOR and immediately registered by the ICRC. Hamdija Torlak, T. 9870, 9873 (3 Apr 2007). Later that day, UNPROFOR reported that the VRS was planning to capture Bosnian Muslim soldiers and that “the Serbs seemed to be using UNPROFOR to entice the Bosnians to give up their weapons, and were perhaps using UNPROFOR to give the Bosnians a false sense of security.” Ex. P02498, “UNPROFOR memorandum regarding negotiations on Žepa, from David Harland, 29 July 1995”, p. 2.

²⁷⁰⁴ Ex. P03023, “VRS Main Staff Document, signed by Radivoje Miletić, 29 July 1995”, p. 4 (noting that “this formation was encircled, rooted and destroyed”). *See also* Ex. P03024, “VRS Main Staff Document, signed by Radivoje Miletić, 31 July 1995”, p. 4 (“[W]e received information that the enemy were building rafts in the Crni Potok sector and escaping to the right Drina bank.”). On the same day, Captain Dragomir Pećanac sent a report to, among others, Tolimir and Krstić, which reiterated the information **Miletić** had sent that same day. Ex. P02792, “Prodrinje Brigade Report to the VRS Main Staff regarding a meeting with UNPROFOR concerning evacuation of Civilians from Žepa, type-signed Dragomir Pećanac, 29 July 1995”, p. 5 (“I have unconfirmed information that the elements of the Muslim military forces from the former enclave of Žepa are trying to break through on the right bank of the Drina River, in the area of the village of Jagoštica and the village of Zemljice probably with intention to surrender to the forces of the Serbian MUP”). *See also* Richard Butler, T. 19945 (17 Jan 2008). Torlak testified that he heard that part of the Bosnian Muslim soldiers in Žepa managed to leave with their weapons and to reach Olovo and Kladanj through territory held by Bosnian Serbs. Others reached Serbia, in which they were treated as POWs and were later released or exchanged and allowed to go to third countries. Hamdija Torlak, T. 9824–9825 (2 Apr 2007).

operations against the ABiH Žepa Brigade would continue “until the Muslims make the exchange and carry out the agreement from the 24 July related to their disarmament and surrender.”²⁷⁰⁵

732. An ABiH General Staff report noted that on or about 30 July 1995, after the VRS had penetrated the defence lines, all the units of the ABiH Žepa Brigade gathered in the Vukolin Stan Sector.²⁷⁰⁶ Ramo Čardaković, Chief of Staff of the ABiH Žepa Brigade, suggested that the troops set off in the direction of Poljanice where they would cross the Drina River into Serbia and surrender to the authorities there.²⁷⁰⁷ The report went on to note that “about 700 or 800 soldiers agreed to this suggestion and, led by Čardaković and the brigade assistant commander for security, Salih Hasanović, set off in this direction.”²⁷⁰⁸ The report further noted that these soldiers surrendered to the Serbian authorities and members of the JNA.²⁷⁰⁹ It also stated that:

[A]ccording to statements from some of the Brigade Command officer corps who managed to break through to free territory with a group of about 150 soldiers on 2 August 1995, Brigade Chief of Staff Ramo Čardaković did not give the axes of withdrawal to this part of the Brigade Command even though he had received instructions regarding this from the 2nd Corps Command. Following this decision by the Brigade Chief of Staff, a chaotic situation ensued in the unit. It broke down into small groups which each decided for itself the direction it would attempt to break through to the nearest free territory. A large group of 200 soldiers, led by Hurem Šahić, decided to break through to Kladanj (the group managed to reach Kladanj on 2 August 1995), and a second group of about 50 soldiers, originally from Višegrad and led by Samir Cocalić, set off towards Goražde or Priboj in Serbia. A third group of between 250 and 300 soldiers from Srebrenica, who had come to Žepa after the fall of Srebrenica, set off towards Srebrenica with the intention of using the same route as the 28th Division to withdraw to Tuzla. A fourth group, the equivalent of a company, led by Šefko Zejnilović, set off in the direction of Sušica in the Crni Potok sector, where they intended to stay for a while since they had hidden large stocks of food there. A small group of seven soldiers managed to break through to free territory in the 2nd Corps 243rd Muslim Infantry Brigade zone of responsibility on 2 August 1995, and a second group of 14 soldiers managed to reach Goražde on 3 August 1995. According to soldiers from this group, they did not have any major problems on the road to Goražde and did not encounter the Chetniks.²⁷¹⁰

²⁷⁰⁵ Ex. P00186, “VRS Main Staff Intelligence and Security Report type-signed Zdravko Tolimir, 29 July 1995”, p. 2 (further noting that, “[t]ake all necessary measures to prevent them from leaving the encirclement. Do not register persons you capture before cessation of fire and do not report them to international organizations. We are going to keep them for exchange in case the Muslim do not carry out the agreement or they manage to break through from the encirclement.”). Obradović testified that this paragraph amounted to an order by Tolimir. Ljubomir Obradović, T. 28292–28293 (17 Nov 2008). Kosovac testified that the term “break through from the encirclement” was not a military term and that what Tolimir meant by saying “breaking through the circle” was an instruction or a request sent to the commander in order to resolve the problem within the encirclement with his own unit. Kosovac also stated that the paragraph did not concern the civilian population but exclusively military personnel. Slobodan Kosovac, T. 30183–30184 (15 Jan 2009).

²⁷⁰⁶ Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 6.

²⁷⁰⁷ *Ibid.*

²⁷⁰⁸ Ex. 1D00019, “ABiH General Staff Report to the ABiH Commander, 23 February 1996”, p. 6.

²⁷⁰⁹ *Ibid.*

²⁷¹⁰ *Ibid.*, pp. 6–7. See also Ex. 4D00010, “ABiH General Staff Interim Report, 4 August 1995”, pp. 1–2 (reporting that “a meeting was held on 29 July 1995 between the Command and company commanders of the [ABiH Žepa Brigade], where it was decided that officers and soldiers should split into smaller groups and launch a breakthrough towards Goražde, Sarajevo, Kladanj and Tuzla.”).

733. On 31 July 1995, a meeting between Smith, **Gvero** and Mladić was held in the Balkana Hotel in Mrkonjić Grad near Banja Luka.²⁷¹¹ By this time, the entire VRS command, including Mladić, **Gvero**, Milovanović and Tolimir, had moved from the Srebrenica and Žepa area to Banja Luka.²⁷¹² At the meeting, Mladić claimed that the Bosnian Muslim men in the hills around the Žepa town were attempting to break out in three directions—towards Kladanj, Serbia over the Drina River, and Goražde”.²⁷¹³ Smith testified that he became aware, around that time, that the Bosnian Muslim able-bodied men broke out over the Drina River, instead of the other two directions and that Carl Bildt, the European Union’s Special Envoy to the former Yugoslavia, was making arrangements for their suitable reception when they crossed the river.²⁷¹⁴

734. UNPROFOR reported that as of 31 July 1995 negotiations concerning the Bosnian Muslim able-bodied men in Žepa appeared to have stopped at all levels, which “seems to imply that the Serbs have abandoned the idea of a negotiated evacuation, and intend to ‘mop up’ at their own pace.”²⁷¹⁵ A report dated 1 August from the Organ for Security and Intelligence of the Bratunac Brigade to the Intelligence Administration and Security Administration of the Main Staff, **Miletić** and others, stated that “another 100 balija” were expected in Bajina Bašta, and that “the largest group of balija” (around 1,000 men) were attempting to cross over to the right bank of the Drina in the area of Crni Potok.²⁷¹⁶

735. An intercepted conversation dated 1 August 1995 between “Jevtić from Serbia”, Stevo and later **Beara**²⁷¹⁷ shows a discussion about the escape of Bosnian Muslim men across the Drina River.²⁷¹⁸ Two intercepted conversations dated 2 August 1995 show that Krstić gave instructions to **Popović** to go to Serbia to handle the issue of the Bosnian Muslim men from Žepa.²⁷¹⁹ In the

²⁷¹¹ Rupert Smith, T. 17558 (6 Nov 2007); Emma Sayer, T. 21090, 21136 (6 Feb 2008); Ex. P02947, “UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995”, p. 1.

²⁷¹² Ex. P02948, “Sarajevo Sector Memo, 31 July 1995”, p. 3.

²⁷¹³ *Ibid.* See also Ex. P02947, “UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995”, p. 2.

²⁷¹⁴ Rupert Smith, T. 17560 (6 Nov 2007).

²⁷¹⁵ Ex. P02948, “Sarajevo Sector Memo, 31 July 1995”, p. 2.

²⁷¹⁶ Ex. P03036, “Document to VRS Main Staff, Miletić, Krstić, and Drina Corps concerning movement of enemy groups in the Žepa enclave, type-signed Zoran Carkić, 1 August 1995”, p. 2. Butler testified that the 1,000 men were military-aged men and “may very well even” be members of the Žepa Brigade. Richard Butler, T. 19948 (17 Jan 2008). Kosovac testified that Carkić referred to the ABiH members throughout this document. He further stated that the Administration for Operations and Training had no bearing on intelligence activities or prisoners. Slobodan Kosovac, T. 30184–30187 (15 Jan 2009). In light of the vicinity of Mt. Brloška to Žepa and the events and reports of that day, the Trial Chamber is convinced that the conversation concerns the fleeing of Bosnian Muslims from the Žepa area and that Panorama is **Miletić**.

²⁷¹⁷ Ex. P01378a, (confidential).

²⁷¹⁸ *Ibid.* In another intercepted conversation, **Beara** was discussing the activities of the Serbian MUP. Ex. P01380a (confidential). About 20 minutes after this conversation, **Beara** had a conversation with Stevo, who told **Beara** about drafting a request for the Serb authorities. **Beara** tells him that the Serb authorities have told him he has come to Serbia for nothing because the order regarding the Muslims has come “‘From the highest’, and you know who their highest is”. Ex. P01381a (confidential). See also *infra*, para. 1291.

²⁷¹⁹ Ex. P01392d, “Intercept, 2 August 1995, 12:40 hours”; Ex. P01395g, “Intercept, 2 August 1995, 13:00 hours”. See also *infra*, para. 1292.

second conversation at 1 p.m., **Popović** said to Krstić that **Beara** just called **Popović** and told him that **Beara** had reported to **Miletić** that there are 500 to 600 Bosnian Muslims in Serbia, but that the Serb authorities would not allow anyone to speak to them.²⁷²⁰ UNPROFOR reported on 2 August that Žepa was empty save for a few VRS soldiers,²⁷²¹ and that some of the Bosnian Muslim able-bodied men had crossed the Drina River.²⁷²²

736. On 2 August 1995, the ABiH State Security Service in the Goražde Sector reported that certain groups of ABiH soldiers from Žepa had crossed the border into Serbia and an order was issued to the border police to maintain maximum mobility as “armed groups were allegedly expected to arrive from Žepa”.²⁷²³ An ABiH General Staff report on 4 August 1995 stated that “there were about 1260 soldiers and 250 able-bodied civilians in Žepa, as well as 650 soldiers from Srebrenica. Up to date, 163 soldiers have arrived in the free territory of Kladanj, whereas 14 soldiers have arrived in the area of responsibility of the 81st Army Division [in] Goražde. Around 1000 soldiers are still in the mountains around Žepa and are waiting for favourable conditions for retreating.”²⁷²⁴ Some Bosnian Muslim men, who were trying to reach ABiH-controlled territory, were killed by the VRS.²⁷²⁵

²⁷²⁰ Ex. P01395g, “Intercept, 2 August 1995, 13:00 hours”.

²⁷²¹ Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 16, p. 1. *See also ibid.*, tab 17, p. 3 (noting that “the remaining population of Žepa will have to fend for themselves. Most will presumably try to flee. And most of those are likely to be killed or captured”).

²⁷²² UNPROFOR reported that according to unconfirmed information from the VRS, Bosnian Muslims, UNHCR and ICRC, “groups of Bosnians have been attempting to flee the [...] Bosnian enclave. There were reports yesterday of a group of up to 600 attempting to make its way towards Bosnian-controlled territory in central Bosnia. There was a report of a group being intercepted near Luka as they attempted to leave the pocket. There was a report of a group of perhaps 250 people making their way across the Drina to Serbia.” Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 16, p. 1. Another UNPROFOR report dated 3 August 1995 noted that it received information from the FRY authorities through UNHCR that “a group of about 500 Bosnian men from the Žepa area, many of them in uniform, had crossed the Drina into Serbia. [...] FRY considered this to be a military matter, but that UNHCR would be allowed into the area to register the men refugees.” Ex. P03251, “Collection of memoranda from David Harland, 20 July 1995–3 August 1995”, tab 18, p. 1.

²⁷²³ Ex. 5D01373, “ABiH State Security Service Sector Report, signed by Midhat Sehović, 2 August 1995”, p. 2. Kosovac testified that “some of our groups of fighters” stated in this report implied that this referred “exclusively to soldiers” of the ABiH. When asked if the soldiers posed a danger for the VRS and for the civilian population in the RS territory, Kosovac testified: “this refers primarily to broken-up groups of fighters, are a threat to every army and the entire population because their behaviour, as a rule, is uncontrolled, undirected, and they are armed and have military equipment. [...] In all such situations, first all the organs on the ground are warned, all the commands of the army units. Then the MUP and all the MUP units are warned, and the local authorities are warned who can take action, such as, for example, disseminating information. All the forces on the ground attempt to register such groups and to capture them and disarm them and then hand them over to the competent authorities. Such groups are treated with great caution because one never knows what they will do.” Slobodan Kosovac, T. 30187–30189 (15 Jan 2009). *See also* Mirko Trivić, T. 11868–11869 (21 May 2007), T. 11997 (23 May 2007) (testifying that part of the ABiH Žepa Brigade withdrew in an organised manner by swimming across the Drina River and other parts went in the direction of Kladanj).

²⁷²⁴ Ex. 4D00010, “ABiH General Staff Interim Report, 4 August 1995”, pp. 1–2 (the report also refers to a meeting held on 29 July between the ABiH Žepa Brigade Command and company commanders, in which it was decided that “officers and soldiers should split into smaller groups and launch a breakthrough towards Goražde, Sarajevo, Kladanj and Tuzla.”).

²⁷²⁵ Ex. P00209, “Rogatica Brigade Daily Combat Report type-signed Rajko Kušić, 8 August 1995”, p. 1 (reporting that, “On 7 August 1995 in the afternoon, in the canyon of the Prača River, five remaining Balijas who were after

737. In mid-August 1995, POWs at a prison in Foča—former ABiH Žepa Brigade soldiers—were interviewed in connection with investigations on war crimes committed in the RS territory.²⁷²⁶ According to the interviews, after the fall of the Žepa enclave 800 to 1,000 ABiH Žepa Brigade soldiers decided to surrender to the JNA by crossing the Drina River into Serbia, and 400 to 500 soldiers decided to break through the RS territory to link up with the ABiH.²⁷²⁷

738. PW-155 swam across the Drina River with a large group of the Bosnian Muslim men and was captured in Serbia around 2 August 1995.²⁷²⁸

the fall of Žepa travelling along the following route: Luka—crossed the Drina River by boat—Kamenički Potok—Babina Gora—Gradina—Kapetanovići—crossed the Drina River on the logs,—Crni Vrh—Kopito—above Mededa—Ustiprača—went down to the railroad tracks at Dub and tried to reach Renovica walking on the railroad tracks, were liquidated. The group was separate and it travelled for 10 days. On the same day, in the vicinity of Luke, an unarmed Ustasha, born in Srebrenica, 24 years old, was liquidated. Before he died he said he fell behind the others and he was looking for food.”).

²⁷²⁶ Milan Vojinović, T. 23684–23685 (21 July 2008).

²⁷²⁷ *Ibid.*, T. 23687–23688 (21 July 2008). *See also* Ex. 2D00524 “Information on Muslim Armed Forces of at the Mitrovo Polje and Branesko Polje collection centres, 8 March 1996” (noting that “[i]n the period from 31 July–25 October 1995, violating the FRY state border, larger and smaller groups of the [Muslim Armed Forces] were entering from the Žepa area, numbering a total of 799 persons. They crossed the state border in the sector of the village of Jagoštica, municipality of Bajina Bašta, and from the direction of Crni Potok, in former BiH territory, crossing the Drina river by boat, makeshift rafts, etc.”). Vojinović testified that some of the individuals identified as having been involved in crimes against humanity and war crimes were not detained there and the investigating team concluded that they had either broken through to ABiH-controlled territory or crossed into Serbia and surrendered to the JNA. The VRS Security Administration subsequently filed with the Military Prosecutor’s Office in Bijeljina criminal reports against 149 individuals involving crimes against humanity and war crimes. Milan Vojinović, T. 23696–23699, 23725–23726 (21 July 2008). *See also* Ex. 2D00528, “VRS Main Staff Intelligence and Security Sector Criminal report, 23 August 1995” (which include a criminal report against Avdo Palić). According to Vojinović, the group that crossed the Drina River into Serbia after the fall of the enclave was composed entirely of soldiers. Milan Vojinović, T. 23703, 23706–23708, 23711, 23748–23749 (21 July 2008).

²⁷²⁸ PW-155, T. 6836–6838 (5 Feb 2007). PW-155 marked the location where he crossed the Drina River. Ex. PIC00061, “Map marked by PW-155”; PW-155, T. 6841 (5 Feb 2007). The Trial Chamber notes **Gvero**’s submission that PW-155’s testimony cannot be relied upon to establish beyond reasonable doubt a civilian component among the men allegedly deported. **Gvero** Final Brief, paras. 122–123. In light of the legal findings on forcible transfer and deportation, however, the Trial Chamber considers it unnecessary to determine the status of PW-155. *See infra*, paras. 906–913; *but see* Judge Kwon’s Dissenting Opinion, *infra*, fn. 6416.

IV. LEGAL FINDINGS

A. Article 3: General Requirements

1. Applicable Law

739. Article 3 of the Statute addresses all serious violations of the laws or customs of war. It also serves as a residual clause which covers all serious violations of humanitarian law not covered by Articles 2, 4, or 5 of the Statute.²⁷²⁹ There are two preliminary requirements for the application of Article 3: there must be a state of armed conflict, and the alleged crime must be closely related to that armed conflict (“the nexus requirement”).²⁷³⁰ In addition, as discussed in more detail below, four conditions set out in the *Tadić* Jurisdiction Decision (“the four *Tadić* conditions”) must also be satisfied before a crime will fall within the Tribunal’s jurisdiction under Article 3.²⁷³¹

740. With regard to the preliminary requirement that there be a state of armed conflict, the Appeal Chamber has held that:

[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.²⁷³²

When an accused is charged with a violation of the laws or customs of war under Article 3 of the Statute, it is immaterial whether the armed conflict was international in nature or not.²⁷³³

741. With regard to the nexus requirement, the Appeals Chamber has held that:

The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.²⁷³⁴

This requirement is fulfilled if the alleged crime was committed in furtherance of, or at least under the guise of, the situation created by the armed conflict.²⁷³⁵

²⁷²⁹ *Tadić* Jurisdiction Decision, para. 91. See also *Kunarac et al.* Appeal Judgement, para. 68; *Čelebići* Appeal Judgement, para. 125.

²⁷³⁰ *Tadić* Jurisdiction Decision, paras. 67–70. See also *Stakić* Appeal Judgement, para. 342; *Kunarac et al.* Appeal Judgement, para. 55.

²⁷³¹ *Tadić* Jurisdiction Decision, para. 94. See also, e.g., *Kunarac et al.* Appeal Judgement, para. 66.

²⁷³² *Tadić* Jurisdiction Decision, para. 70. See also *Kordić and Čerkez* Appeal Judgement, para. 341.

²⁷³³ *Tadić* Jurisdiction Decision, para. 137. See also *Galić* Appeal Judgement, para. 120.

²⁷³⁴ *Kunarac et al.* Appeal Judgement, para. 58. In determining whether an act is sufficiently related to an armed conflict, the Trial Chamber may take into account, *inter alia*, whether the perpetrator was a combatant, whether the victim was a non-combatant, whether the victim was a member of the opposing party, whether the act may be said to have served the ultimate goal of a military campaign, and whether the crime is committed as part of or in the context of the perpetrator’s official duties. *Kunarac et al.* Appeal Judgement, para. 59.

²⁷³⁵ *Kunarac et al.* Appeal Judgement, paras. 58–59.

742. In addition to the requirements discussed above, the four *Tadić* conditions must also be satisfied before a crime will fall under the scope of Article 3 of the Statute. The Appeals Chamber in *Tadić* held that:

- (i) the violation must constitute an infringement of a rule of international humanitarian law;
- (ii) the rule must be customary in nature or, if it belongs to treaty law, the treaty must be unquestionably binding on the parties at the time of the alleged offence and not in conflict with or derogating from peremptory norms of international law;
- (iii) the violation must be serious, that is to say that it must constitute a breach of a rule protecting important values and the breach must involve grave consequences for the victim;
- (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule.²⁷³⁶

743. The charges of murder under Article 3 in the present case are based upon Common Article 3 of the 1949 Geneva Conventions (“Common Article 3”). Where a crime punishable under Article 3 is based upon Common Article 3, the victims of the alleged violation of the laws and customs of war must have taken no active part in the hostilities at the time the crime was committed.²⁷³⁷ Such victims include members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.²⁷³⁸ In addition, the Trial Chamber must be satisfied that “the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed”.²⁷³⁹

²⁷³⁶ See *Tadić* Jurisdiction Decision, paras. 94 and 143. See also *Kunarac et al.* Appeal Judgement, para. 66; *Aleksovski* Appeal Judgement, para. 20.

²⁷³⁷ *Čelebići* Appeal Judgement, para. 420.

²⁷³⁸ Common Article 3 provides, in the relevant part:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely [...].

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular *murder* of all kinds, mutilation, cruel treatment and torture;

[...]” (emphasis added)

See also *Čelebići* Appeal Judgement, para. 420.

²⁷³⁹ *Boškoski and Tarčulovski* Appeal Judgement, para. 66.

2. Findings

744. The Trial Chamber has heard evidence that an armed conflict existed in Eastern Bosnia between the Republic of Bosnia and Herzegovina and its forces on the one hand, and the Republika Srpska and its forces on the other.²⁷⁴⁰ Based on the evidence set out above regarding the factual background to this case,²⁷⁴¹ the Trial Chamber finds that there was an armed conflict in Eastern Bosnia during the period relevant for the Indictment.

745. The alleged victims of murder in this case were Bosnian Muslims captured by Bosnian Serb Forces in the course, or aftermath, of combat activity.²⁷⁴² Based on the evidence set out above regarding the alleged capture, detention and killing of Bosnian Muslim men,²⁷⁴³ the Trial Chamber finds that the underlying crimes with which the Indictment is concerned were closely related to the armed conflict.

746. According to the consistent case law of the Tribunal, violations of Common Article 3 of the 1949 Geneva Conventions fall within the scope of Article 3 of the Statute. The Appeals Chamber has held that Common Article 3 forms part of customary international law, and that where those violations are serious, the four *Tadić* conditions will at once be satisfied.²⁷⁴⁴ Given that the Trial Chamber has found murder on a massive scale,²⁷⁴⁵ the Trial Chamber finds that the four *Tadić* conditions have been satisfied.

747. The alleged victims of murder were persons taking no active part in hostilities at the time the relevant crimes were committed.²⁷⁴⁶ Based on the evidence set out above regarding the capture, detention and killing of Bosnian Muslim men,²⁷⁴⁷ the Trial Chamber finds that this additional requirement under Common Article 3 is fulfilled.

748. The Trial Chamber therefore finds that the general requirements of Article 3 have been met.

²⁷⁴⁰ See *supra*, Chapter III, Sections A, C and D. See also Prosecution Adjudicated Facts Decision, Annex, Facts 8, 17, 19, 21, 46, 50, 65–68, 93, 97, 100–101, 103, 106–107, 109; Popović Adjudicated Facts Decision, Annex, Facts 20–22, 36, 40, 44, 47. Pandurević has acknowledged that a state of war existed in Bosnia and Herzegovina at all times material to the Indictment. Pandurević Pre-Trial Brief, para. 14.

²⁷⁴¹ See *supra*, Chapter III, Sections A, C and D.

²⁷⁴² See *supra*, Chapter III, Sections E, F, G, and H.

²⁷⁴³ See *supra*, Chapter III, Sections E, F, G, and H.

²⁷⁴⁴ *Kunarac et al.* Appeal Judgement, para. 68. See also *Čelebići* Appeal Judgement, paras. 133–136.

²⁷⁴⁵ See *infra*, paras. 793–796.

²⁷⁴⁶ See *supra*, Chapter III, Sections E, F, G, and H.

²⁷⁴⁷ See *supra*, Chapter III, Sections E, F, G, and H.

B. Article 5: General Requirements

1. Applicable Law

749. Article 5 of the Statute addresses various specified crimes “when committed in armed conflict, whether international or internal in character, and directed against any civilian population”.

750. The requirement that the crimes be “committed in armed conflict” is a jurisdictional prerequisite,²⁷⁴⁸ which requires proof that there was an armed conflict and that, objectively, the acts of the accused are linked geographically as well as temporally with the armed conflict.²⁷⁴⁹

751. The general elements required for the application of Article 5 are that: (1) there must be an attack; (2) the attack must be directed against a civilian population; (3) the attack must be widespread or systematic; (4) the acts of the perpetrator must be part of the attack; and (5) the perpetrator must know that his or her acts constitute part of a widespread or systematic attack directed against a civilian population.²⁷⁵⁰

(a) There Must Be an Attack

752. The Appeals Chamber has explained that in the context of a crime against humanity, an ‘attack’ is not limited to the use of armed force, but also encompasses any mistreatment of the civilian population.²⁷⁵¹ The concepts “attack on a civilian population” and “armed conflict” are separate.²⁷⁵² The attack could precede, outlast, or continue during the armed conflict, but it need not be a part of it.²⁷⁵³ When determining whether there has been an attack upon a particular civilian population, any similar attack by an opponent in the conflict will be irrelevant.²⁷⁵⁴

(b) The Attack Must Be Directed Against a Civilian Population

753. An attack may be considered to have been directed against a civilian population if the civilian population was the “primary rather than an incidental target of the attack”.²⁷⁵⁵ The *Kunarac* Appeals Chamber affirmed that “the use of the word ‘population’ does not mean that the entire population of the geographical entity in which the attack is taking place must have been subjected

²⁷⁴⁸ *Tadić* Appeal Judgement, para. 249; *Kunarac et al.* Appeal Judgement, para. 83.

²⁷⁴⁹ *Kunarac et al.* Appeal Judgement, para. 83. Cf. *Tadić* Appeal Judgement, paras. 249, 251.

²⁷⁵⁰ *Kunarac et al.* Appeal Judgement, para. 85.

²⁷⁵¹ *Ibid.*, para. 86.

²⁷⁵² *Tadić* Appeal Judgement, para. 251.

²⁷⁵³ *Kunarac et al.* Appeal Judgement, para. 86.

²⁷⁵⁴ *Ibid.*, para. 87, approving *Kunarac et al.* Trial Judgement, para. 580.

²⁷⁵⁵ *Kunarac et al.* Appeal Judgement paras. 91–92. See *Kunarac et al.* Trial Judgement, para. 421.

to [the] attack”.²⁷⁵⁶ It is sufficient if the Trial Chamber is satisfied that enough individuals were targeted in the course of an attack or that they were targeted in a manner that indicates that the attack was against the civilian population, “rather than against a limited and randomly selected number of individuals”.²⁷⁵⁷

754. In order to qualify as a civilian population for the purposes of Article 5, the target population must be of a *predominantly* civilian nature.²⁷⁵⁸ The jurisprudence has established that the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.²⁷⁵⁹

755. Article 50(1) of Additional Protocol I provides: “A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A(1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol.”²⁷⁶⁰ On the basis of this, the Appeals Chamber has held that members of the armed forces, and members of the militias or volunteer corps forming part

²⁷⁵⁶ *Kunarac et al.* Appeal Judgement, para. 90.

²⁷⁵⁷ *Kordić and Čerkez* Appeal Judgement, para. 95; *Blaškić* Appeal Judgement, para. 105; *Kunarac et al.* Appeal Judgement, para. 90.

²⁷⁵⁸ *Limaj et al.* Trial Judgement, para. 186; *Galić* Trial Judgement, para. 143; *Naletilić and Martinović* Trial Judgement, para. 235; *Kordić and Čerkez* Trial Judgement, para. 180; *Kunarac* Trial Judgement, para. 425; *Tadić* Trial Judgement, para. 638.

²⁷⁵⁹ *Mrkšić and Šljivančanin* Appeal Judgement, para. 31; *Kordić and Čerkez* Appeal Judgement, para. 50. See also *Limaj et al.* Trial Judgement, para. 186; *Naletilić and Martinović* Trial Judgement, para. 235; *Kordić and Čerkez* Trial Judgement, para. 180; *Kunarac et al.* Trial Judgement, para. 425; *Jelisić* Trial Judgement, para. 54; *Tadić* Trial Judgement, para. 638. See *Blaškić* Trial Judgement, para. 214; *Kupreškić et al.* Trial Judgement, para. 549. The Appeals Chamber has noted that the presence of resistance groups, or former combatants, who have laid down their arms, does not alter the civilian character of the population. *Blaškić* Appeal Judgement, para. 113.

²⁷⁶⁰ Article 4(A) of Geneva Convention III provides that prisoners of war, in the sense of the Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power. [...]

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Article 43 of Additional Protocol I provides:

(1) The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.

(2) Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

(3) Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

of such armed forces, cannot claim civilian status.²⁷⁶¹ The specific situation of the victim at the time of the crimes may not be determinative of civilian or non-civilian status and a member of an armed organisation is not accorded civilian status by the fact that he or she is not armed or in combat at the time of the commission of the crimes.²⁷⁶² The term “civilian” should not be defined expansively so as to include persons *hors de combat*.²⁷⁶³ Yet, while the term “civilian” should be given a restrictive definition, a person *hors de combat* may still be a victim of an act amounting to a crime against humanity, provided that all the other necessary conditions are met, in particular that the act in question is part of a widespread or systematic attack against a civilian population.²⁷⁶⁴ It is in fact now established in the jurisprudence of the Appeals Chamber that it is neither a requirement nor an element of crimes against humanity that the victims of the underlying crimes should be civilians.²⁷⁶⁵

(c) The Attack Must Be Widespread or Systematic

756. The jurisprudence establishes that the attack must be either widespread or systematic.²⁷⁶⁶ The term “widespread” refers to the large-scale nature of the attack and the number of victims, while the term “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.²⁷⁶⁷ A systematic attack is commonly expressed as a pattern of crimes involving the “non-accidental repetition of similar criminal conduct on a regular basis”.²⁷⁶⁸ Proof of the existence of a plan or policy behind the attack may serve an evidentiary purpose in proving that it was directed against a civilian population or that it was widespread or systematic, but a plan or policy is not a legal element of Article 5.²⁷⁶⁹ A single act or a limited number of acts can qualify as a crime against humanity provided that they may not be said to be isolated or random and all other conditions are met.²⁷⁷⁰

(d) The Acts of the Perpetrator Must Be Part of the Attack

757. The acts of the accused must be part of the attack on the civilian population, though they need not be committed in the midst of that attack.²⁷⁷¹ This requirement is sometimes expressed in

²⁷⁶¹ *Kordić and Čerkez* Appeal Judgement, para. 50; *Blaškić* Appeal Judgement, para 113.

²⁷⁶² *Blaškić* Appeal Judgement, para 114.

²⁷⁶³ *Martić* Appeal Judgement, para. 302; *Galić* Appeal Judgement, para. 144.

²⁷⁶⁴ *Martić* Appeal Judgement, para. 313.

²⁷⁶⁵ *Mrkšić and Šljivančanin* Appeal Judgement, para. 32. See also *Martić* Appeal Judgement, para. 307.

²⁷⁶⁶ *Kunarac et al.* Appeal Judgement, para. 93.

²⁷⁶⁷ *Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

²⁷⁶⁸ *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

²⁷⁶⁹ *Blaškić* Appeal Judgement, para. 120; *Kunarac et al.* Appeal Judgement, paras. 98, 101.

²⁷⁷⁰ *Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 96.

²⁷⁷¹ *Kunarac et al.* Appeal Judgement, para. 100.

terms of a nexus between the acts of the accused and the attack.²⁷⁷² A crime which is committed before or after the main attack on the civilian population or away from it could still, if sufficiently connected, be part of that attack.²⁷⁷³ If, however, the act is so far removed from the attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack, it will not amount to a crime under Article 5.²⁷⁷⁴

(e) Mens Rea and State of Knowledge

758. To be guilty of a crime under Article 5, the accused must have the requisite intent, to commit the underlying offence(s) with which he or she is charged, and he or she must know that there is an attack on the civilian population and that his or her acts comprise part of that attack.²⁷⁷⁵ The accused need not have knowledge of the details of the attack.²⁷⁷⁶ The motives of the accused for taking part in the attack are not relevant.²⁷⁷⁷ The accused need not share the purpose or the goal behind the attack, and may commit a crime against humanity for purely personal reasons.²⁷⁷⁸

2. Findings

(a) Armed Conflict

759. The Trial Chamber recalls its finding there was an armed conflict in Eastern Bosnia during the period relevant for the Indictment.²⁷⁷⁹ The Trial Chamber further finds that the alleged acts were committed in this armed conflict.

(b) A Widespread or Systematic Attack Directed Against a Civilian Population, of which the Acts of the Perpetrators Must Be a Part

760. The Trial Chamber finds that it has been established beyond reasonable doubt that there was a widespread and systematic attack directed against the Bosnian Muslim civilian populations of Srebrenica and Žepa, commencing with the issuance of Directive 7. This attack had various components,²⁷⁸⁰ including the strangulation of the enclaves through the restriction of humanitarian supplies, the gradual weakening and disabling of UNPROFOR, and a planned military assault on

²⁷⁷² *Kunarac et al.* Appeal Judgement, paras. 99, 101.

²⁷⁷³ *Ibid.*, para. 100.

²⁷⁷⁴ *Ibid.*

²⁷⁷⁵ *Kordić and Čerekez* Appeal Judgement, para. 99; *Blaškić* Appeal Judgement, para. 124. Cf. *Kunarac et al.* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 248.

²⁷⁷⁶ *Kunarac et al.* Appeal Judgement, para. 102.

²⁷⁷⁷ *Kunarac et al.* Appeal Judgement, para. 103.

²⁷⁷⁸ *Kunarac et al.* Appeal Judgement, para. 103. Cf. *Tadić* Appeal Judgement, paras. 248, 252.

²⁷⁷⁹ See *supra*, para. 744.

²⁷⁸⁰ An “attack” in the context of a crime against humanity can have various components. *Blagojević and Jokić* Trial Judgement, paras. 550-552; *Krstić* Trial Judgement, para. 482; *Kunarac et al.* Trial Judgement, paras. 570-578.

the enclaves, and culminated in the removal of thousands of people from Srebrenica and Žepa. This attack was widespread because of its large scale and number of victims; and it was systematic because of the organised nature of the actions taken against the victims and the improbability of their random occurrence.²⁷⁸¹

761. The attack in its various components was directed against United Nations protected enclaves, the *raison d'être* for which was the establishment of a safe area for civilian residents.²⁷⁸² There can thus be no doubt that the populations of these enclaves were predominantly and in fact overwhelmingly civilian and the Trial Chamber so finds.²⁷⁸³ While the Trial Chamber has found members of the ABiH were present in the enclaves prior to and during the attack,²⁷⁸⁴ this does not in any way affect the fundamental civilian status of the enclaves.

(i) Commencement of the Attack – Plan to Forcibly Remove the Bosnian Muslim Populations from the Enclaves

762. Directive 7 marked the commencement of the attack against the civilian population. In furtherance of the VRS objective to win the war and create a Serbian state, Directive 7 tasked the Drina Corps with creating “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.²⁷⁸⁵ The Trial Chamber observes that, while the Directive contains legitimate military goals, it clearly denotes at the same time an illegal plan for an attack directed against a civilian population taking the form of measures aimed at forcing the populations of Srebrenica and Žepa to leave the enclaves.

763. The Trial Chamber recalls that Main Staff Directive 7/1 does not repeat the language of Directive 7 on the creation of an unbearable situation for the population of Srebrenica and Žepa. The Trial Chamber has heard evidence that the part of Directive 7 giving the task to the Drina Corps to “create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa” was “illogical” and “not a military task”.²⁷⁸⁶ By issuing Directive 7/1, the Commander of the VRS assigned the Drina Corps a different task that could be

²⁷⁸¹ *Kordić and Čerkez* Appeal Judgement, para. 94; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

²⁷⁸² *See supra*, paras. 92–95.

²⁷⁸³ *See supra*, paras. 213, 667, 670.

²⁷⁸⁴ *See supra*, paras. 204, 209, 246, 666, 670.

²⁷⁸⁵ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10. Cf. Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6. *See also supra*, para. 199.

²⁷⁸⁶ Slobodan Kosovac, T. 30473-30474 (21 Jan 2009). *See also ibid.*, T. 30100-30101 (14 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, para. 139.

carried out in a military manner²⁷⁸⁷ and it is argued that the tasks given to the Drina Corps in Directive 7 were as a result corrected and made null and void.²⁷⁸⁸

764. The Trial Chamber has considered this evidence but does not accept the suggested interpretation for the following reasons. With regard to the tasks for the Drina Corps, Directive 7 is consistent with the policy set out in earlier documents, including Main Staff Directive 4 which also includes a reference to the removal of the Bosnian Muslim population from the Srebrenica and Žepa enclaves.²⁷⁸⁹ The Trial Chamber finds that Directive 7 elaborates on this task and gave instructions as to how this task was to be accomplished, *i.e.* by creating “an unbearable situation of total insecurity with no hope of further survival or life for inhabitants of Srebrenica and Žepa”.²⁷⁹⁰ The Trial Chamber also notes that Directive 7/1 does not include any passage stating that it replaced Directive 7, rather it directly refers to Directive 7. This includes stating that Directive 7 provides the basis for the tasks of the VRS.²⁷⁹¹ Furthermore, the language of Directive 7 relating to the tasks of the Drina Corps was adopted by the Drina Corps itself through the 20 March Drina Corps order for defence and active combat operations, Operative No. 7, signed by Živanović.²⁷⁹²

765. Based on this evidence, the Trial Chamber is satisfied that Directive 7 continued to be authoritative and applicable in terms of setting out the VRS objectives and strategies, including the plan for forcing out the populations of Srebrenica and Žepa. Viewed in this context, Directive 7/1 was simply a further step in the attack against the civilian populations of Srebrenica and Žepa. Also the 20 March Drina Corps order, which repeated the incriminatory language of Directive 7,²⁷⁹³ in and of itself was a further step in terms of the implementation of the attack and constituted another component.

(ii) Restrictions on Humanitarian Aid to the Enclaves and Re-Supply of UNPROFOR

766. As found above, the plan to force the populations of Srebrenica and Žepa to leave the enclaves was set out in Directive 7. The Directive spelled out that this be done through, *inter alia*, “the planned and unobtrusively restrictive issuing of permits” so as to “reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim

²⁷⁸⁷ Slobodan Kosovac, T. 30473-30474 (21 Jan 2009).

²⁷⁸⁸ *Ibid.*, T. 30483 (21 Jan 2009). *See also* Manojlo Milovanović, T. 12277 (30 May 2007) (who testified that Directive 7/1 did not “adopt the tasks of the Drina Corps in the way they were defined by the Supreme Command” and that Mladić “changed the decision of the Supreme Commander”); Mirko Trivic, T.11929 (22 May 2007) (testifying that all directives, including Directive 7, were not binding documents but merely guidelines and food for thought about certain parts of the battlefields, suggesting problems to be solved).

²⁷⁸⁹ *See supra*, para. 91.

²⁷⁹⁰ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10.

²⁷⁹¹ Ex. 5D00361, “VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995”.

²⁷⁹² *See supra*, para. 201.

²⁷⁹³ *Ibid.*

population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion”.²⁷⁹⁴ The Trial Chambers finds this constituted a clear policy on the part of the VRS to restrict aid to the enclaves with the ultimate aim to force the Bosnian Muslims to leave. The Trial Chamber is also satisfied that this included restricting re-supply of UNPROFOR, with the aim of preventing UNPROFOR from performing its tasks, which was centrally to protect these enclaves.

767. The Trial Chamber is satisfied that following the issuance of Directive 7, the humanitarian situation in the enclaves deteriorated. The evidence is not conclusive with regard to when the situation in the enclaves worsened. For example, according to DutchBat, fewer and fewer convoys were approved and the situation deteriorated from March whereas UNHCR data show that between March and May the aid delivery was rather consistent.²⁷⁹⁵ However, in light of all the evidence before it, the Trial Chamber is convinced that at least from June the aid supply decreased significantly, resulting in a very dire humanitarian situation in the Srebrenica and Žepa enclaves. The Trial Chamber is satisfied that this happened as a result of restrictions of aid convoys by the VRS in accordance with the plan set out in Directive 7.²⁷⁹⁶ The Trial Chamber is equally satisfied that the VRS restricted the re-supply of UNPROFOR in accordance with the policy set out in Directive 7. The Trial Chamber is further satisfied that these restrictions on humanitarian aid formed a component of the attack against the civilian population.

(iii) Military Action Leading to the Fall of the Enclaves

768. The Trial Chamber notes that before *Krivaja-95*, sometimes the civilian populations of Srebrenica and Žepa were randomly targeted and incurred casualties.²⁷⁹⁷ Notably, on 25 May 1995, in response to the NATO bombing of the VRS positions in Pale, the Bratunac Brigade shelled the Srebrenica enclave upon orders from the Drina Corps.²⁷⁹⁸ Furthermore, while not targeted directly at the population of the Srebrenica enclave, the Trial Chamber notes that DutchBat, the UN force tasked to protect the civilian population of Srebrenica, was attacked on 3 June 1995, when the VRS took over by force the DutchBat OP Echo at Zeleni Jadar, following orders from Živanović.²⁷⁹⁹

²⁷⁹⁴ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 14.

²⁷⁹⁵ See *supra*, Chapter III, Section C.5.

²⁷⁹⁶ See *supra*, para. 199. The Trial Chamber notes the time lapse between the issuing of Directive 7 and the increase of convoy restrictions. It finds that this corroborates the imposition of the convoy restrictions in accordance with the policy set out in Directive 7 which stated that the reduction of aid to the population and supply to UNPROFOR be done through the planned and “unobtrusively” restrictive issuing of permits to avoid international condemnation. Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 14. The Trial Chamber therefore concludes that the restriction of aid to the enclaves by the VRS formed part of the attack against the civilian population.

²⁷⁹⁷ See *supra*, paras. 210, 666.

²⁷⁹⁸ See *supra*, para. 207.

²⁷⁹⁹ See *supra*, para. 208.

Meanwhile, from June 1995, the VRS intensified its sporadic shelling of the Žepa enclave, causing civilian casualties and the destruction of some villages in the enclave.²⁸⁰⁰

(iv) Military Attack on the Enclaves

769. On 2 July, Živanović issued the *Krivaja-95* orders, which marked the commencement of the military attack on the enclaves.²⁸⁰¹ The objective was “a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”.²⁸⁰² Both orders specifically refer to Directive 7 and Directive 7/1 when defining the Drina Corps tasks.²⁸⁰³ The combat order notes that one objective of the attack was “to create conditions for the elimination of the enclaves”.²⁸⁰⁴ On 9 July Karadžić issued an order extending the operations to include the capture of Srebrenica town.²⁸⁰⁵ The VRS took Srebrenica town on 11 July.²⁸⁰⁶

770. In the course of this military operation, the VRS attacked and disabled the UNPROFOR forces tasked to protect the civilian population and indiscriminately fired upon and shelled the enclave, including in the final stages, Srebrenica town.²⁸⁰⁷ By example, on the morning of 10 July, two heavy shells, probably 155mm artillery shells, hit the direct surroundings of the hospital in Srebrenica town, where 2,000 civilians had gathered for refuge, and six of them were killed.²⁸⁰⁸ On 11 July, the DutchBat Bravo Company Compound in Srebrenica town and the DutchBat Compound in Potočari were shelled when large numbers of Bosnian Muslims were seeking protection there.²⁸⁰⁹ The Trial Chamber also recalls its finding that the Bosnian Serb Forces shot at and shelled the Bosnian Muslims even as they fled from their homes along the road from Srebrenica to Potočari.²⁸¹⁰ There can be no doubt and the Trial Chamber finds that this military attack by the VRS was directed against a civilian population.

²⁸⁰⁰ See *supra*, para. 666.

²⁸⁰¹ See *supra*, paras. 244–245.

²⁸⁰² Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

²⁸⁰³ Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”, p. 1; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 3.

²⁸⁰⁴ Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 3.

²⁸⁰⁵ See *supra*, para. 252.

²⁸⁰⁶ See *supra*, para. 260.

²⁸⁰⁷ See *supra*, paras. 249–251, 253, 255, 257.

²⁸⁰⁸ Prosecution Adjudicated Facts Decision, Annex, Fact 106; Joseph Kingori, T. 19223–19224 (13 Dec 2007); Ex. P00501, “UNMO Report, 10 July 95, 10:25”. Cf. Robert Franken, T. 2646–2647 (18 Oct 2006) (Asked by Counsel for Miletić whether it was possible that the ABiH soldiers and the headquarters of the ABiH 28th Division were the target of the VRS shelling of Srebrenica town on 10 July, Robert Franken responded: “Yes, it is possible, but I have to make one remark: Then they were very poor gunners because they hit the whole city instead of those two locations.”).

²⁸⁰⁹ See *supra*, paras. 257, 266.

²⁸¹⁰ See *supra*, paras. 257, 265. But see Judge Kwon’s Separate Opinion, *supra*, fn. 849.

771. Emboldened by success in Srebrenica, the Bosnian Serb Forces proceeded steadily to Žepa.²⁸¹¹ After the failure of the first round of negotiations, the VRS commenced similar military actions against the Žepa enclave.²⁸¹² Two more rounds of negotiations followed, but also at the second juncture, the VRS carried out further military attacks against the enclave.²⁸¹³ Following the third round of negotiations, the 24 July Agreement was signed, after which major fighting ceased.²⁸¹⁴

772. As in Srebrenica, the civilian population in the Žepa enclave was subjected to the VRS military attack. In early July, in a five day action by the VRS, civilians were wounded by mortar shelling and houses in the surrounding villages were destroyed.²⁸¹⁵ There was also sporadic artillery, mortar, and heavy machine gun fire directed at Žepa town and the surrounding villages.²⁸¹⁶ Shortly after the first round of negotiations, the VRS attacked the Žepa enclave again and this action included the shelling of inhabited areas.²⁸¹⁷ After the second round of negotiations failed, the VRS intensified its attack against Žepa, during which buildings and houses were also targeted.²⁸¹⁸ Again there can be no doubt and the Trial Chamber finds that this series of VRS military attacks on Zepa was directed against a civilian population.

773. The actions against Srebrenica and Žepa formed part of the same attack. The actions taken against both enclaves were factually, temporally, and geographically closely related. Directive 7 specifically addressed Srebrenica and Žepa, and a similar strategy was implemented against both enclaves after the issuance of Directive 7.²⁸¹⁹

774. The Trial Chamber notes that it is uncontested that the Srebrenica and Žepa enclaves were never properly demilitarised.²⁸²⁰ Furthermore, evidence was adduced that in Srebrenica, the ABiH used some “civilian” locations for housing command and other military purposes²⁸²¹ and that it carried out military strikes against surrounding villages from the enclave.²⁸²² In addition there is evidence before the Trial Chamber that the enclaves were of significant strategic importance to the

²⁸¹¹ See *supra*, para. 672–674. See also Ex. P00114, “Order from the Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995”, p. 1 (“Benefiting from the outcome of the activities in the Srebrenica enclave, I have decided to immediately move onto the offensive and rout the enemy in the Žepa enclave...”); Mirko Trivić, T. 11841–11842, 11876–11877 (21 May 2007); Vinko Pandurević, T. 30883–30885 (30 Jan 2009).

²⁸¹² See *supra*, Chapter III, Sections K.2–3.

²⁸¹³ See *supra*, Chapter III, Sections K.4–5.

²⁸¹⁴ See *supra*, Chapter III, Section K.6.

²⁸¹⁵ See *supra*, para. 671.

²⁸¹⁶ See *supra*, para. 672.

²⁸¹⁷ See *supra*, para. 680.

²⁸¹⁸ See *supra*, para. 696.

²⁸¹⁹ See *supra*, para. 199; Chapter III, Sections C.5, D, K.

²⁸²⁰ Prosecution Final Brief, para. 98. See also Prosecution Adjudicated Fact Decision, Annex, Facts 49–50. See also *supra*, paras. 197, 204, 666.

²⁸²¹ See *supra*, para. 246.

²⁸²² See *supra*, para. 204.

VRS.²⁸²³ Because of these circumstances, it is also accepted by the Prosecution that there was a “dual purpose” in the military attacks against the enclaves, with legitimate military aims being one of these purposes.²⁸²⁴

775. It is however not necessary for the Trial Chamber to speculate as to what military action on the part of the VRS may have been justified in relation to the enclaves in fulfilment of these legitimate military aims. Whatever those measures might have been, the full scale, indiscriminate and disproportionate attack levelled by the VRS against these United Nations protected civilian enclaves,²⁸²⁵ was not amongst them. The Trial Chamber is satisfied that the circumstances of the military action, as outlined previously,²⁸²⁶ were such that it alone constituted an illegal attack against a civilian population of a widespread and systematic nature. At the same time, the military assault on the enclaves also formed part of the broader attack initiated against the civilian populations of Srebrenica and Zepa by Directive 7.

(v) Departure of the Woman, Children, and the Elderly from the Enclaves

776. The departure of the women, children, and the elderly from Potočari on 12 and 13 July was rooted in their prior mistreatment by Bosnian Serb Forces, that is, the restriction of humanitarian supplies, the military action, the taking of the Srebrenica enclave, the dire humanitarian situation, and the acts of intimidation that had been taken against them.²⁸²⁷ These factors leading to the departure of the women, children, and the elderly from Potočari were part of the widespread and systematic attack directed against the civilian population that began with the issuance of Directive 7. Further, the physical transportation of the women, children and the elderly from Srebrenica was the culmination and formed part of the widespread and systematic attack.

777. The population in Žepa was subjected to conditions comparable to those inflicted upon the population in Srebrenica, including restrictions on humanitarian aid and re-supply of UNPROFOR, the terrorising of the population, and the military actions and taking of the enclave.²⁸²⁸ In addition, at the time of the third round of negotiations, rumours about the “terrible events” that had occurred in Srebrenica were circulating in Žepa.²⁸²⁹ As found, these conditions cumulatively resulted in the

²⁸²³ Ex. P03307, “Minutes and Tape recording of the 53rd session of the Republika Srpska National Assembly, 28 August 1995”, p. 69 (where Karadžić stated that certain areas, including Srebrenica, Zvornik, Vlasenica, and Rogatica, “had to become ours” “due to strategic importance”).

²⁸²⁴ See Prosecution Final Brief, para. 279.

²⁸²⁵ See *supra*, Chapter III, Sections D.1–3, K.1–6.

²⁸²⁶ See *supra*, Chapter III, Sections D.1–3, K.1–6.

²⁸²⁷ See *infra*, Chapter IV, Section G.2.(a)(i).

²⁸²⁸ See *supra*, Chapter III, Sections C.5., K.

²⁸²⁹ Hamdija Torlak, T. 9733–9734 (30 Mar 2007). See also *ibid.*, T. 9812–9814, 9821–9822 (2 Apr 2007).

departure of the women, children, and the elderly from Žepa from 25 to 27 July, which was part of the widespread and systematic attack.²⁸³⁰

778. The following discussion will address the nexus between this attack against the civilian population and subsequent actions taken against members of the Bosnian Muslim population of Srebrenica and Žepa.

(vi) The Separation of the Men and Boys and their Subsequent Execution

779. The Trial Chamber recalls that in Potočari, the men aged between around 15 and 65 years were separated, transported and detained under unbearable conditions, and later executed.²⁸³¹ Given that the members of the ABiH and the vast majority of the able-bodied men were not in Potočari but rather had left in the column heading towards Tuzla,²⁸³² the Trial Chamber is satisfied that these men were predominantly civilians and included boys and elderly males. Like the women, children and the elderly, these men had sought refuge in Potočari directly as a consequence of the military attack against the enclave. These men and boys were not selected based on their perceived involvement in the ABiH or any armed force²⁸³³ nor was there any genuine effort to screen for or limit the separations to war criminals.²⁸³⁴ The Trial Chamber finds therefore that the acts committed against these men and boys were intrinsically linked to and formed part of the widespread and systematic attack against the civilian population.

(vii) Departure of the Men from Srebrenica in the Column and Acts Carried out Against them

780. In the wake of the military attack on the enclave, the men from Srebrenica, like the rest of the population, fled their homes.²⁸³⁵ By the evening of 11 July, most of the men had gathered in Šušnjari, where it became evident that they could no longer return to Srebrenica.²⁸³⁶ Late that same evening, the column of Bosnian Muslim men was formed and started advancing towards Tuzla at around midnight.²⁸³⁷

²⁸³⁰ See *infra*, Chapter IV, Section G.2.(b)(ii).

²⁸³¹ See *supra*, Chapter III, Sections E.6.(a)–(b), (d), E.7.(a)–(b), F.5., F.6(b)(v)d., G. See also *infra*, Chapter V, Section B.1.

²⁸³² See *supra*, Chapter III, Section D.4.

²⁸³³ See *supra*, Chapter III, Section E.6.(a)–(b), (d). There is evidence that boys as well as men were separated at Potočari. Joseph Kingori, T. 19245, 19248 (13 Dec 2007); Leendert van Duijn, T. 2289, 2291 (27 Sept 2006), T. 2347 (28 Sept 2006); Paul Groenewegen, Ex. P02196, “92 *ter* transcript”, BT. 1025–1026 (10 July 2003), T. 3001–3002 (25 Oct 2006); Peter Boering T. 2010, 2012 (22 Sept 2006). Some of the men separated included disabled men and men with walking sticks. PW-169, T. 17313 (1 Nov 2007).

²⁸³⁴ See *supra*, Chapter III, Section E.6.(a)–(b), (d).

²⁸³⁵ See *supra*, para. 267.

²⁸³⁶ See *supra*, paras. 267–268; see *infra*, paras. 926–930

²⁸³⁷ See *supra*, para. 269.

781. As elaborated before, the column was mixed as to its composition and consisted of a civilian and a military component.²⁸³⁸

782. The same conditions that prompted the women, children, and the elderly to flee to Potočari, including the catastrophic humanitarian situation due to the restrictions of humanitarian aid and the military attack against the enclave, similarly compelled the formation of the column and the departure of the men.²⁸³⁹ It therefore also formed an intrinsic part of the widespread and systematic attack against the civilian population. In the case of the military component of the column, albeit their flight with the column has not been found to constitute a part of the forcible transfer,²⁸⁴⁰ the Trial Chamber finds it was undoubtedly the direct consequence of the military assault on the enclave by the VRS, which in and of itself constituted a widespread and systematic attack against a civilian population.

783. Almost immediately after discovering the existence of this departing column, the Bosnian Serb Forces began a vigorous pursuit of the column members with a view to their capture or enticed surrender, with an ultimate aim of murder.²⁸⁴¹ On the facts of this case, there is no evidence the Bosnian Serb Forces applied any selection procedure with regard to those who were captured or surrendered as to perceived involvement in the Bosnian Muslim Forces. By contrast with the facts in the *Mrkšić and Šljivančanin* case,²⁸⁴² all members of the column were targeted indiscriminately, with no effort being made to establish whether or not the victims were members of the armed forces (or had taken part in hostilities) or civilians.²⁸⁴³ In this regard, there is also no evidence that the members of the Bosnian Serb Forces involved were operating under an assumption that they were taking custody of soldiers only. To the contrary, anyone who saw those men coming down from the hills or in the various locations where they were held could have been under no misapprehension to that effect.²⁸⁴⁴ That there was a large component of civilians amongst those who were captured or surrendered was evident to all. In these circumstances, in particular taking into consideration the immediate temporal and close geographic link to the events in Srebrenica, the Trial Chamber is

²⁸³⁸ See *supra*, paras. 270–271.

²⁸³⁹ See *infra*, paras. 926–930. With regard to the civilian component of the column, the Trial Chamber has found, by majority, Judge Kwon dissenting, that it was a part of the forcible transfer of the population of Srebrenica. See *infra*, paras. 926–931. See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

²⁸⁴⁰ See *infra*, para. 927.

²⁸⁴¹ See *supra*, Chapter III, Section F. See also *infra*, para. 1055.

²⁸⁴² *Mrkšić and Šljivančanin* Appeal Judgement, paras. 35–44. (The *Mrkšić and Šljivančanin* Appeals Chamber concurred with the *Mrkšić and Šljivančanin* Trial Chamber that the victims of the crimes in Ovčara were selected on the basis of their perceived involvement in the Croatian armed forces, and as such were treated differently from the civilian population.)

²⁸⁴³ The evidence that in a few instances, civilians were allowed to leave from Sandići does not take away the indiscriminate nature of the attack, especially in light of the massive numbers of victims involved. See *supra*, para. 385.

²⁸⁴⁴ See Ex. P02011, "Video by Zoran Petrović, Studio B Version", at 12:43–14:48. See also *supra*, Chapter III, Section F.3.

satisfied that the acts carried out against these men from the column constituted part of the continuing widespread and systematic attack against the civilian population of the Srebrenica enclave.

(viii) Departure of Able-Bodied Men from Žepa

784. The able-bodied men of Žepa started fleeing the enclave into the surrounding woods while the forced busing of the Bosnian Muslim civilians proceeded.²⁸⁴⁵ The men had faced the same living conditions and the same military attacks as the others in the enclave.²⁸⁴⁶ Furthermore, during the different rounds of negotiations, the VRS consistently refused to permit any able bodied men—civilian or soldier—to be transferred out of the enclave together with the rest of the population.²⁸⁴⁷ The Trial Chamber, by majority, Judge Kwon dissenting,²⁸⁴⁸ is therefore satisfied that the flight of the men from Žepa, some across the Drina River, was the direct result and continuation of the attack against the civilian populations of Srebrenica and Žepa.

(ix) Conclusion

785. Based on all the above, the Trial Chamber finds that the crimes alleged in the Indictment meet the nexus requirement under Article 5 of the Statute.

(c) The Knowledge Requirement for a Crime under Article 5 of the Statute

786. The Trial Chamber will consider whether the individual Accused knew of the widespread and systematic attack and that their acts formed part of it, as necessary, in the section on Individual Criminal Responsibility.

²⁸⁴⁵ See *supra*, paras. 732–738.

²⁸⁴⁶ See *supra*, Chapter III, Sections C.5., K.1.–6. See also *infra*, para. 955.

²⁸⁴⁷ See *supra*, Chapter III, Sections K.2., 4., 6. See also *infra*, para. 955.

²⁸⁴⁸ See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

C. Murder

(a) Applicable Law

787. The elements of murder are the same under both Articles 3 and Article 5:²⁸⁴⁹ the death of the victim, the causation of the death of the victim by the accused and the *mens rea* of the perpetrator.²⁸⁵⁰

788. Murder may occur where the death of the victim is caused by an omission as well as an act of the accused or of one or more persons for whom the accused is criminally responsible.²⁸⁵¹ Murder may be established where the accused's conduct contributes substantially to the death of the victim.²⁸⁵² The *mens rea* for murder may take the form of an intention to kill,²⁸⁵³ or an intention to cause serious bodily harm which the accused should reasonably have known might lead to death.²⁸⁵⁴

789. To establish the death of the victim, the Prosecution need not prove that the body of the dead person has been recovered.²⁸⁵⁵ It may instead establish a victim's death by circumstantial evidence, provided that the only reasonable inference that can be drawn is that the victim is dead.²⁸⁵⁶

(b) Charges

790. Under counts 4 and 5 of the Indictment, the Prosecution charges all seven Accused with murder as a crime against humanity and a violation of the laws or customs of war, pursuant to Articles 3 and 5 (a) of the Statute.

791. The allegations against the Accused comprise large-scale and systematic killings that occurred in the Bratunac and Zvornik area between 13 and 16 July,²⁸⁵⁷ near Nežuk and Snagovo between 19 and about 22 July 1995,²⁸⁵⁸ and near Trnovo sometime in July or August.²⁸⁵⁹ The charges include the killing of Bosnian Muslims who were held by the Zvornik Brigade at the

²⁸⁴⁹ *Blagojević and Jokić* Trial Judgement, para. 556, citing *Krnjelac* Trial Judgement, para. 323; *Naletilić and Martinović* Trial Judgement, para. 248.

²⁸⁵⁰ *Kvočka et al.* Appeal Judgement, para. 261; *Kordić and Čerkez* Appeal Judgement, para. 37.

²⁸⁵¹ *Kvočka et al.* Appeal Judgement, para. 260; *Galić* Appeal Judgement, para. 149. For example, murder may result from the wilful omission to provide medical care. *Kvočka et al.* Appeal Judgement, para. 270.

²⁸⁵² *Brđanin* Trial Judgement, para. 382; *Čelebići* Trial Judgement, para. 424.

²⁸⁵³ *Kvočka et al.* Appeal Judgement, para. 261; *Kordić and Čerkez* Appeal Judgement, para. 37; *Čelebići* Appeal Judgement, para. 423.

²⁸⁵⁴ *Kvočka et al.* Appeal Judgement, para. 261

²⁸⁵⁵ *Ibid.*, para. 260.

²⁸⁵⁶ *Kvočka et al.* Appeal Judgement, para. 260.

²⁸⁵⁷ Indictment, paras. 30.1–30.12.

²⁸⁵⁸ *Ibid.*, paras. 30.13, 30.15.1.

²⁸⁵⁹ *Ibid.*, para. 30.16.

Standard Barracks and subsequently “disappeared”, namely, four survivors of the alleged Branjevo Military Farm execution and patients from the Milići Hospital.²⁸⁶⁰ Killings which the Prosecution refers to as “opportunistic” killings are alleged to have occurred in Potočari, Bratunac town, in the Kravica Supermarket and the Petkovci School between 12 and 15 July 1995.²⁸⁶¹ Although Radivoje Miletić and Milan Gvero are not charged with responsibility for large-scale and systematic killings, the Prosecution alleges they were responsible for the aforementioned “opportunistic” killings.

792. Below, the Trial Chamber considers whether the murders were committed as charged. Whether the Accused incur criminal responsibility for these murder charges is set out in detail for each accused individually.

(c) Findings

793. The Trial Chamber has found that, from 12 July until late July 1995, several thousand Bosnian Muslim men were executed.²⁸⁶²

794. The Trial Chamber finds that the following killings were perpetrated by Bosnian Serb Forces.²⁸⁶³ Further, the Trial Chamber finds that the victims of these killings were Bosnian Muslim men who had surrendered or been captured from the column of men retreating from the Srebrenica enclave or had been separated at Potočari.

1. On 12 and 13 July 1995, between 40 and 80 Bosnian Muslim prisoners were taken from a hangar behind the Vuk Karadžić elementary school in Bratunac and killed.²⁸⁶⁴
2. On 13 July 1995, nine Bosnian Muslim men were killed in a field near a stream at about 500 metres distance from the DutchBat compound in Potočari,²⁸⁶⁵ and one Bosnian Muslim man was taken behind a building near the “White House” at Potočari and killed.²⁸⁶⁶
3. On 13 July 1995, 15 Bosnian Muslims were killed at Jadar River,²⁸⁶⁷ 150 Bosnian Muslims were killed at Cerska Valley,²⁸⁶⁸ 10 to 15 Bosnian Muslims were killed at Sandići Meadow²⁸⁶⁹ and approximately 22 Bosnian Muslims, who had been detained at Luke School, were taken to a meadow at Rašića Gaj and shot.²⁸⁷⁰ At some time on or after 13 July

²⁸⁶⁰ Indictment, paras. 30.14-30.15.

²⁸⁶¹ *Ibid.*, paras. 31.1-31.4.

²⁸⁶² The Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica, and this number could well be as high as 7,826. *See supra*, para. 664.

²⁸⁶³ *See supra*, Chapter III.

²⁸⁶⁴ *See supra* paras. 452-455.

²⁸⁶⁵ *See supra* paras. 354-359.

²⁸⁶⁶ *See supra* paras. 360-361. The Trial Chamber notes that the Prosecution dropped two murder charges regarding killings in Potočari as listed under paras. 31.1.b and 31.1.c of the Indictment. *See* Corrigendum to Prosecution Final Trial Brief, para. 8.

²⁸⁶⁷ *See supra* paras. 408-409.

²⁸⁶⁸ *See supra* paras. 410-414.

²⁸⁶⁹ *See supra* paras. 421-423.

²⁸⁷⁰ *See supra* paras. 351-353.

1995, five Bosnian Muslim men were killed after they had been interrogated at the Bratunac Brigade Headquarters.²⁸⁷¹

4. On 13 July 1995, a Bosnian Muslim man who was mentally handicapped was taken off a bus parked in front of the Vuk Karadžić School and killed.²⁸⁷²
5. Between 13 and 14 July 1995, at least 1,000 Bosnian Muslims were killed at the Kravica Warehouse.²⁸⁷³
6. Between 13 and 14 July 1995, an unknown number of Bosnian Muslim prisoners detained on trucks near the Kravica Supermarket were killed.²⁸⁷⁴
7. Between 13 and 15 July 1995, an unknown number of Bosnian Muslim men were killed inside and outside the Vuk Karadžić School in Bratunac.²⁸⁷⁵
8. On 14 July 1995, between 800 and 2,500 Bosnian Muslims were killed at Orahovac.²⁸⁷⁶
9. On 14 July 1995, several Bosnian Muslim men detained at the Petkovci School were killed.²⁸⁷⁷
10. On 15 July 1995, Bosnian Muslim men detained at the Petkovci School were brought to the Petkovci Dam where over 800 Bosnian Muslims were killed.²⁸⁷⁸
11. On 15 July 1995, over 1,000 Bosnian Muslims were killed at Kozluk.²⁸⁷⁹
12. Between 14 and 15 July 1995, ten Bosnian Muslim men detained at the Kula School near Pilica were killed.²⁸⁸⁰
13. On 16 July, between 1,000 and 2,000 Bosnian Muslims were killed at the Pilica Cultural Centre and the Branjevo Military Farm.²⁸⁸¹
14. On 19 July 1995, four Bosnian Muslims were killed at Baljkovica, near Nežuk.²⁸⁸²
15. Sometime after 23 July 1995, four survivors of the Branjevo Military Farm executions were detained in the Standard Barracks, where they were in the custody of the Zvornik Brigade and the VRS. Subsequently, they were taken away and have never been seen again since. The Trial Chamber is satisfied, particularly in light of the circumstances surrounding their disappearance, that the only reasonable inference on the evidence is that they were killed.²⁸⁸³ The Trial Chamber recalls in this respect that no proof is required that their bodies be recovered.²⁸⁸⁴

²⁸⁷¹ See *supra* paras. 450–451. **Judge Kwon’s Separate Opinion:** I am afraid that this statement would amount to a double-finding. As the Trial Chamber has already found, these five Bosnian Muslim men were taken to the Vuk Karadžić School in Bratunac, after their interrogation at the Bratunac Brigade Headquarters on 13 July. See *supra*, para. 391. In my view, the killings of these five men have been reflected in one of the mass-killings as found hereinafter, most likely in the killing at Kozluk on 15 July, given that their remains were found in the primary gravesite at Kozluk and secondary gravesites associated with it. See *supra*, paras. 450–451; *infra*, para 794-11.

²⁸⁷² See *supra* paras. 456–457.

²⁸⁷³ See *supra* paras. 424–445.

²⁸⁷⁴ See *supra* paras. 446–449. But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46. The Trial Chamber notes that the Prosecution dropped the murder charge regarding the execution of a man near the Kravica Supermarket as listed under para. 31.3 of the Indictment. See Corrigendum to Prosecution Final Trial Brief, para. 9.

²⁸⁷⁵ See *supra* paras. 460–463.

²⁸⁷⁶ See *supra* paras. 479–492.

²⁸⁷⁷ See *supra* paras. 494–498.

²⁸⁷⁸ See *supra* paras. 499–503.

²⁸⁷⁹ See *supra* paras. 517–524.

²⁸⁸⁰ See *supra* paras. 527–531.

²⁸⁸¹ See *supra* paras. 532–550.

²⁸⁸² See *supra* paras. 565–569.

²⁸⁸³ See *supra* paras. 584–589.

²⁸⁸⁴ See *supra* paras. 789.

16. On or shortly after 23 July 1995, ten injured Bosnian Muslims who had been taken from Milići Hospital and put in the custody of the Zvornik Brigade and the VRS at the Standard Barracks were taken away and “disappeared”, and have never been seen again since. Particularly in light of the circumstances of their disappearance, the Trial Chamber concludes that the only reasonable inference on the evidence is that they were killed.²⁸⁸⁵
17. On or about 22 July 1995, five Bosnian Muslim men were killed near Snagovo.²⁸⁸⁶
18. Sometime in July 1995, six Bosnian men and boys were killed near Trnovo town.²⁸⁸⁷

795. The Trial Chamber is satisfied that the killings were intentional. The Bosnian Muslim men, who had surrendered or been captured from the column of men retreating from the Srebrenica enclave or had been separated at Potočari, were detained. Subsequently, they were killed at the place of their detention, or taken to an execution site, where they were lined up and shot. Many of the executions occurred at point blank range. At many of the execution sites heavy equipment was used to dig a hole in the ground to dispose of the bodies before, during or after such executions. On at least one of the execution sites it took hours to kill all the prisoners.

796. The Trial Chamber has already found that all of the aforementioned killings formed part of a widespread and systematic attack against the civilian population.²⁸⁸⁸ The victims of these killings did not take an active part in the hostilities at the time that they were killed and this was apparent to those involved.²⁸⁸⁹ The Trial Chamber is satisfied that the aforementioned killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.²⁸⁹⁰ The responsibility of each Accused for these crimes is discussed in section V of this Judgement.

797. As stated above, the Trial Chamber was not presented with sufficient evidence to conclude beyond reasonable doubt that on 14 July 1995, two Bosnian Muslim men who were taken off a truck in Bratunac were killed in a nearby garage.²⁸⁹¹

798. The Trial Chamber is also not satisfied that the evidence presented on killings occurring near Nova Kasaba corresponds to the incident described in the Indictment under

²⁸⁸⁵ See *supra*, paras. 570–577. The Trial Chamber finds that the Milići patients were wounded as a result of the attack on Srebrenica. Ex. 6DP01880, “Note regarding transfer of wounded from Milići Hospital to Zvornik Hospital, signed by Radomir Davidović, 20 July 1995”. The report is entitled: “Medical support for operations Srebrenica ’95” and reads “Eighteen wounded enemy/soldiers/ have undergone surgery and have been transferred to the hospital in Zvornik on the orders of the Main Staff, *ibid*, p. 2; Ex. P03159a (confidential); See also P00693. “Chapter Eight Analytical Addendum to Srebrenica Military Narrative (revised)”. See *supra* para. 570–577.

²⁸⁸⁶ See *supra* paras. 578–583.

²⁸⁸⁷ See *supra* paras. 597–599. This killing was found to have been committed by members of the Scorpions Unit.

²⁸⁸⁸ See *supra* paras. 760–761.

²⁸⁸⁹ See *supra* paras. 747.

²⁸⁹⁰ See Indictment, paras. 46–47.

²⁸⁹¹ See *supra* paras. 458–459. Indictment, para. 31.2.(b).

paragraph 30.3.1.²⁸⁹² Accordingly, it is not satisfied this incident is proven beyond reasonable doubt.

D. Extermination

1. Applicable Law

799. The crime of extermination shares core elements with the crime of murder.²⁸⁹³

800. The *actus reus* of extermination consists of “any act, omission or combination thereof which contributes directly or indirectly to the killing of a large number of individuals”,²⁸⁹⁴ but a “vast scheme of collective murder” is not an element of the crime.²⁸⁹⁵ It is well-established that while extermination requires killing to be on a massive scale, it does not imply a numerical minimum number of victims.²⁸⁹⁶ The element of massive scale should be assessed on a case-by-case basis.²⁸⁹⁷

801. The *mens rea* required for extermination is that “the accused intended, by his acts or omissions, either killing on a large scale, or the subjection of a widespread number of people, or the systematic subjection of a number of people, to conditions of living that would lead to their deaths.”²⁸⁹⁸ It does not require intent to kill a certain threshold number of victims,²⁸⁹⁹ nor need the accused have “intended to destroy the *group* or part of the group to which the victims belong.”²⁹⁰⁰

2. Findings

802. The Indictment charges the Accused with extermination, a crime against humanity, through the murder of thousands of Bosnian Muslim men and boys from the Srebrenica enclave.²⁹⁰¹

803. The Trial Chamber has found that the Bosnian Serb Forces killed thousands of Bosnian Muslim able-bodied males in the areas of Srebrenica, Potočari, Bratunac and Zvornik.²⁹⁰² The killings were committed in the context of a widespread and systematic attack against the civilian

²⁸⁹² See *supra* paras. 415–420. Indictment, para. 30.3.1.

²⁸⁹³ *Krajišnik* Trial Judgement, para. 716; *Blagojević and Jokić* Trial Judgement, para. 571.

²⁸⁹⁴ *Seromba* Appeal Judgement, para. 189, citing *Brđanin* Trial Judgement, para. 389; *Vasiljević* Trial Judgement, para. 229.

²⁸⁹⁵ *Stakić* Appeal Judgement, para. 258. Cf. *Krstić* Appeal Judgement, para. 225.

²⁸⁹⁶ *Brđanin* Appeal Judgement, para. 471; *Stakić* Appeal Judgement, para. 260, citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 516..

²⁸⁹⁷ *Blagojević and Jokić* Trial Judgement, para. 573; *Stakić* Trial Judgement, para. 640.

²⁸⁹⁸ *Stakić* Appeal Judgement, para. 259, citing *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 522.

²⁸⁹⁹ *Stakić* Appeal Judgement, para. 260.

²⁹⁰⁰ *Stakić* Trial Judgement, para. 639; *Vasiljević* Trial Judgement, para. 227.

²⁹⁰¹ Indictment, p. 45.

²⁹⁰² See *supra*, Chapter III, Sections E–J.

population.²⁹⁰³ These killings were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it.

804. The systematic manner in which the Bosnian Serb Forces carried out the killings is patently demonstrated by the organised pattern in which they occurred. After the military take-over of the Srebrenica enclave, the Bosnian Serb Forces rapidly started to capture Bosnian Muslim able-bodied males. Those in Potočari were separated and held in detention.²⁹⁰⁴ Many of those in the column were captured and held in detention along the Bratunac-Milići road, where some were killed.²⁹⁰⁵ Large numbers in both groups were eventually brought to Bratunac, from where they were transported to detention sites in the Zvornik area.²⁹⁰⁶ From these locations, they were transported to other sites nearby where they were executed. Their graves were dug before, during and after the executions.²⁹⁰⁷ Within a matter of a few days, thousands had been executed by the Bosnian Serb Forces.²⁹⁰⁸

805. In light of the temporal and geographical proximity of the killings, the similarities between them and the organized and coordinated manner in which the Bosnian Serb Forces conducted them, the Trial Chamber finds that they formed part of a single operation. It is clear from the evidence that the Bosnian Serb Forces intended to kill Bosnian Muslim able-bodied males from Srebrenica on a massive scale.

806. The Trial Chamber is, therefore, satisfied that the crime of extermination was committed against the Bosnian Muslim able-bodied males who had been separated at Potočari or had surrendered or been captured from the column of men retreating from the Srebrenica enclave.

E. Genocide

1. Applicable Law

807. The crime of genocide is punishable under Article 4 of the Statute, which adopts the definition of genocide and list of punishable acts in Articles II and III of the Genocide Convention.²⁹⁰⁹ These articles of the Genocide Convention are widely accepted as customary

²⁹⁰³ See *supra*, paras 760–761.

²⁹⁰⁴ See *supra*, Chapter III, Section E.

²⁹⁰⁵ See *supra*, Chapter III, Section F, 1–4.

²⁹⁰⁶ See *supra*, Chapter III, Sections F–G.

²⁹⁰⁷ See *supra*, Chapter III, Section G.

²⁹⁰⁸ See *supra*, Chapter III, Section G–J.

²⁹⁰⁹ Compare Article 4(2)–(3) of the Statute with the Genocide Convention, Articles II, III. See also *Jelisić Appeal Judgement*, para. 45.

international law.²⁹¹⁰ Genocide was therefore a punishable offence under customary international law at the time of the acts alleged in the Indictment.²⁹¹¹

808. Like the Genocide Convention, Article 4(2) of the Statute provides that the following underlying acts constitute genocide when 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.²⁹¹²

Proof of the specific genocidal intent to destroy the targeted group in whole or in part is required in addition to proof of intent to commit the underlying act.²⁹¹³

(a) The Targeted Group

809. Both the *actus reus* and the *mens rea* provisions of Article 4 refer to the targeting of a protected group. Genocide was “originally conceived as the destruction of a race, tribe, nation, or other group with a particular positive identity; not as the destruction of various people lacking a distinct identity.”²⁹¹⁴ The Genocide Convention’s definition of the group, reflected in Article 4, adopts the understanding that genocide is the destruction of distinct human groups with particular identities, such as “persons of a common national origin” or “any religious community united by a single spiritual ideal.”²⁹¹⁵ A group is defined by “particular positive characteristics—national,

²⁹¹⁰ ICJ Bosnia Judgment, paras. 142, 161 (tracing prior opinions of the International Court of Justice recognizing that “the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation” and “that the norm prohibiting genocide was assuredly a peremptory norm of international law (*jus cogens*)”) (quoting *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Advisory Opinion, p. 23 and citing *Armed Activities on the Territory of the Congo (New Application 2002)*, ICJ Judgement, para. 64).

²⁹¹¹ See *Krstić Trial Judgement*, para. 541 (surveying the state of customary international law at the time of the 1995 Srebrenica killings); Genocide Convention, Articles I, III-V; ICJ Bosnia Judgment, paras. 142, 161. See also United Nations General Assembly Resolution 96(I), adopted 11 December 1946; *United States v. Altstoetter et al.* (1947), United States Military Tribunal III, Opinion and Judgment, in *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, vol. III (U.S. Government Printing Office 1951).

²⁹¹² Article 4(2)(a)-(e) of the Statute.

²⁹¹³ *Krstić Appeal Judgement*, para. 20. See also ICJ Bosnia Judgment, para. 186.

²⁹¹⁴ *Stakić Appeal Judgement*, para. 21.

²⁹¹⁵ See *Stakić Appeal Judgement*, paras. 22, 24 (analyzing the drafting history of the Genocide Convention and quoting the interpretation of the Genocide Convention’s protections in the UN Economic and Social Council’s 1978 Genocide Study, paras. 59, 78).

ethnic, racial or religious—and not the lack of them.”²⁹¹⁶ A negatively defined group—for example all “non-Serbs” in a particular region—thus does not meet the definition.²⁹¹⁷

(b) Underlying Acts

(i) Article 4(2)(a): Killing Members of the Group

810. The elements of killing, which are equivalent to the elements of murder, are detailed in Chapter IV, Section C(a).²⁹¹⁸

(ii) Article 4(2)(b): Causing Serious Bodily or Mental Harm to Members of the Group

811. Article 4(2)(b) refers to an intentional act or omission that causes “serious bodily or mental harm” to members of the targeted group. The acts in Article 4(2)(b)—similarly to Article 4(2)(a)—require proof of a result.²⁹¹⁹ The harm must go “beyond temporary unhappiness, embarrassment or humiliation” and inflict “grave and long-term disadvantage to a person’s ability to lead a normal and constructive life.”²⁹²⁰ The harm need not be “permanent and irremediable” to meet the standard of constituting serious harm.²⁹²¹ In the *Seromba* Appeals Judgement, it was held that “[t]o support a conviction for genocide, the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part”.²⁹²² The determination of what constitutes serious harm depends on the circumstances.²⁹²³ The harm must be inflicted intentionally to meet the *mens rea* requisite for the underlying offence.²⁹²⁴

812. Examples of acts causing serious bodily or mental harm include “torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or serious injury to members of the targeted national, ethnic, racial or religious group.”²⁹²⁵

²⁹¹⁶ ICJ Bosnia Judgment, para. 193. *Accord Stakić* Appeal Judgement, para. 21.

²⁹¹⁷ *Stakić* Appeal Judgement, paras. 19–20, 28.

²⁹¹⁸ See *supra*, paras. 787–789. See also *Krajišnik* Trial Judgement, para. 859(i); *Blagojević and Jokić* Trial Judgement, para. 642; *Jelišić* Trial Judgement, para. 63. See also *Seromba* Trial Judgement, para. 317; *Semanza* Trial Judgement, para. 319; *Musema* Trial Judgement, para. 155.

²⁹¹⁹ *Brđanin* Trial Judgement, para. 688; *Stakić* Trial Judgement, para. 514.

²⁹²⁰ *Krstić* Trial Judgement, para. 513; see also *Blagojević and Jokić* Trial Judgement, para. 645.

²⁹²¹ *Krstić* Trial Judgement, para. 513; see also *Stakić* Trial Judgement, para. 516; *Muvunyi* Trial Judgement, para. 487; *Ntagerura et al.* Trial Judgement, para. 664; *Kamuhanda* Trial Judgement, para. 634; *Bagilishema* Trial Judgement, para. 59; *Kayishema and Ruzindana* Trial Judgement, para. 108; *Akayesu* Trial Judgement, para. 502.

²⁹²² *Seromba* Appeal Judgement, para. 46. See also *Krajišnik* Trial Judgement, para. 862.

²⁹²³ *Blagojević and Jokić* Trial Judgement, para. 646; *Krstić* Trial Judgement, para. 513.

²⁹²⁴ *Blagojević and Jokić* Trial Judgement, para. 645; *Brđanin* Trial Judgement, para. 690; *Muvunyi* Trial Judgement, para. 487; *Kayishema and Ruzindana* Trial Judgement, para. 112.

²⁹²⁵ *Brđanin* Trial Judgement, para. 690. See also ICJ Bosnia Judgment, para. 319 (finding that systematic “massive mistreatment, [including] beatings, rape and torture causing serious bodily and mental harm during the [Bosnian]

813. The Appeals Chamber has held that forcible transfer “does not constitute in and of itself a genocidal act”.²⁹²⁶ However, in some circumstances forcible transfer can be an underlying act that causes serious bodily or mental harm, in particular if the forcible transfer operation was attended by such circumstances as to lead to the death of the whole or part of the displaced population.²⁹²⁷

(iii) Article 4(2)(c): Deliberately Inflicting on the Group Conditions of Life Calculated to Bring about its Physical Destruction in Whole or in Part

814. Article 4(2)(c) covers methods of destruction that “do not immediately kill the members of the group, but, which, ultimately, seek their physical destruction”.²⁹²⁸ The methods of destruction covered by Article 4(2)(c) are those seeking a group’s physical or biological destruction.²⁹²⁹ In contrast to the underlying acts in Article 4(2)(a) and (b), which require proof of a result, this provision does not require proof that a result was attained.²⁹³⁰

815. Examples of methods of destruction frequently mentioned in Trial Judgements include denying medical services and “the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing and hygiene or excessive work or physical exertion.”²⁹³¹ “[S]ystematic expulsion from homes” has also been cited as a potential means of inflicting conditions of life calculated to bring about destruction.²⁹³²

conflict and, in particular, in the detention camps” fulfil the material element of Article II(b) of the Genocide Convention, which language is reproduced in Article 4(2)(b) of the Statute).

²⁹²⁶ *Krstić* Appeal Judgement, para. 33; *see also Blagojević and Jokić* Appeal Judgement, para. 123. The International Court of Justice has held that neither the intent to render an area ethnically homogenous nor operations to implement the policy “can *as such* be designated as genocide: the intent that characterizes genocide is to ‘destroy, in whole or in part,’ a particular group, and deportation or displacement of the members of a group, even if effected by force, is not necessarily equivalent to destruction of that group”. ICJ Bosnia Judgement, para. 190 (emphasis in original).

²⁹²⁷ Draft Genocide Convention, U.N. Doc. E/447; *Blagojević and Jokić* Trial Judgement, paras. 650, 654. *See also Eichmann* Jerusalem District Court Judgement, para. 186.

²⁹²⁸ *Akeyesu* Trial Judgement, para. 505; *see also Brdanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, paras. 517–518; *Musema* Trial Judgement, para. 157; *Rutaganda* Trial Judgement, para. 52.

²⁹²⁹ *Krstić* Trial Judgement, para. 580. *Accord* ICJ Bosnia Judgment, para. 344 (Interpreting Article II(c) of the Genocide Convention, which Article 4(2)(c) of the Statute tracks, the International Court of Justice ruled that “the destruction of historical, cultural and religious heritage cannot be considered to constitute the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group”).

²⁹³⁰ *Brdanin* Trial Judgement, paras. 691; *Stakić* Trial Judgement, para. 517. The distinction traces back to the District Court of Jerusalem’s *Eichmann* Judgement, which limited the charge of imposing living conditions upon Jews calculated to bring about their physical extermination to persecution of Jews who had survived the Holocaust and ruled that Jews who were not saved should not be included “as if, in their case, there were two separate actions: first, subjection to living conditions calculated to bring about their physical destruction, and later the physical destruction itself.” *Eichmann* Jerusalem District Court Judgement, para. 196. *See also Brdanin* Trial Judgement, para. 905).

²⁹³¹ *See, e.g., Brdanin* Trial Judgement, paras. 691, 906; *Stakić* Trial Judgement, para. 517; *Musema* Trial Judgement, para. 157; *Kayishema and Ruzindana* Trial Judgement, paras. 115–116.

²⁹³² *See, e.g., Brdanin* Trial Judgement, para. 691; *Stakić* Trial Judgement, para. 517; *Akeyesu* Trial Judgement, para. 506.

816. Absent direct evidence of whether “conditions of life” imposed on the targeted group were calculated to bring about its physical destruction, Trial Chambers have “focused on the objective probability of these conditions leading to the physical destruction of the group in part” and assessed factors like the nature of the conditions imposed, the length of time that members of the group were subjected to them and characteristics of the targeted group like vulnerability.²⁹³³

817. The *mens rea* standard for the underlying offence of “[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” is explicitly specified by the adjective “deliberately”.²⁹³⁴

(iv) Article 4(2)(d): Imposing Measures Intended to Prevent Births within the Group

818. Trial Judgements have held that measures intended to prevent births include acts such as the forced separation of males and females.²⁹³⁵ Further, measures intended to prevent births within the group may be physical, but can also be mental.²⁹³⁶

819. To amount to a genocidal act, the evidence must establish that the acts were carried out with intent to prevent births within the group and ultimately to destroy the group as such, in whole or in part.²⁹³⁷

(c) Genocidal Intent

820. What distinguishes genocide is genocidal intent – the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.²⁹³⁸ Whether there was genocidal intent is assessed based on “all of the evidence, taken together”.²⁹³⁹

²⁹³³ *Brdanin* Trial Judgement, para. 906; *Kayishema and Ruzindana* Trial Judgement, paras. 115, 548; *Akayesu* Trial Judgement, para. 505. The *Krajišnik* Trial Chamber held that “[l]iving conditions, which may be inadequate by any number of standards, may nevertheless be adequate for the survival of the group”. *Krajišnik* Trial Judgement, para. 863.

²⁹³⁴ See ICJ Bosnia Judgment, para. 186 (“Mental elements are made explicit in paragraphs (c) and (d) of Article II by the words ‘deliberately’ and ‘intended’ [. . .]. The acts, in the words of the ILC [International Law Commission], are by their very nature conscious, intentional or volitional acts”).

²⁹³⁵ *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 507.

²⁹³⁶ *Rutaganda* Trial Judgement, para. 53; *Akayesu* Trial Judgement, para. 508.

²⁹³⁷ Cf. ICJ Bosnia Judgment, paras. 355–356, 361. In response to the Applicant’s claims, including that “forced separation of male and female Muslims in Bosnia and Herzegovina, as systematically practiced when various municipalities were occupied by the Serb forces... in all probability entailed a decline in birth rate of the group, given the lack of physical contact over many months”, and that “rape and sexual violence against women led to physical trauma which interfered with victims’ reproductive functions and in some cases resulted in infertility”, the International Court of Justice found that no evidence was provided as to “enable it to conclude that Bosnian Serb forces committed acts which could be qualified as imposing measures to prevent births in the protected group within the meaning of Article II (d) of the Convention”. *Ibid.*

²⁹³⁸ See, e.g., *Krstić* Appeal Judgement, para. 134.

(i) Intent to Destroy the Targeted Group as Such

821. The words “as such” underscore that something more than discriminatory intent is required for genocide; there must be intent to destroy, in whole or in part, the protected group²⁹⁴⁰ “as a separate and distinct entity.”²⁹⁴¹ The ultimate victim of the crime of genocide is the group.²⁹⁴²

822. The term “destroy” in customary international law means physical or biological destruction and excludes attempts to annihilate cultural or sociological elements.²⁹⁴³ However, attacks on cultural and religious property and symbols of the targeted group often occur alongside physical and biological destruction and “may legitimately be considered as evidence of an intent to physically destroy the group.”²⁹⁴⁴

823. “By its nature, intent is not usually susceptible to direct proof” because “[o]nly the accused himself has first-hand knowledge of his own mental state, and he is unlikely to testify to his own genocidal intent.”²⁹⁴⁵ Absent direct evidence, the intent to destroy may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.²⁹⁴⁶ Further, proof of the mental state with respect to the commission of the underlying act can serve as evidence from which to draw the further inference that the accused possessed the specific intent to destroy.²⁹⁴⁷

²⁹³⁹ *Stakić* Appeal Judgement, para. 55. The inquiry concerning genocidal intent should not be compartmentalized into separately considering whether there was specific intent to destroy through each of the genocidal acts specified at Article 4(1)(a), (b), and (c). *Ibid.*

²⁹⁴⁰ *See, e.g., Niyitegeka* Appeal Judgement, para. 53; ICJ Bosnia Judgment, para. 187.

²⁹⁴¹ *See, e.g., Brdanin* Trial Judgement, para. 698; *Blagojević and Jokić* Trial Judgement, para. 665.

²⁹⁴² *See, e.g., Blagojević and Jokić* Trial Judgement, paras. 656, 665; *Stakić* Trial Judgement, para. 521, referring to *Sikirica et al.* Judgement on Motions to Acquit, para. 89; *Akayesu* Trial Judgement, paras. 485, 521. *See also Jelisić* Trial Judgement, para. 108.

²⁹⁴³ *Krstić* Appeal Judgement, para. 25 & n. 39. *See also* ICJ Bosnia Judgment, para. 344.

²⁹⁴⁴ *Krstić* Trial Judgement 580. *See also* ICJ Bosnia Judgment, para. 344.

²⁹⁴⁵ *Gacumbitsi* Appeal Judgement, para. 40. *See also Kayishema and Ruzindana* Appeal Judgement, para. 159; *Rutaganda* Appeal Judgement, para. 525.

²⁹⁴⁶ *Jelisić* Appeal Judgement, para. 47. *See also Blagojević and Jokić* Appeal Judgement, para. 123 (noting that genocidal intent may be inferred from “evidence of other culpable acts systematically directed against the same group” and therefore “the forcible transfer operation, the separations, and the mistreatment and murders in Bratunac town are relevant considerations in assessing whether the principal perpetrators had genocidal intent”); *Krstić* Appeal Judgement, paras. 33, 35 (affirming consideration of other culpable acts systematically directed against the same group, including forcible transfer, and ruling that the scale of the killing in the area of Srebrenica, “combined with the VRS Main Staff’s awareness of the detrimental consequences it would have for the Bosnian Muslim community of Srebrenica and with the other actions the Main Staff took to ensure that community’s physical demise”, permitted the inference that the killing of the Bosnian Muslim men of Srebrenica was done with genocidal intent); *Muhimana* Appeal Judgement, para. 31; *Semanza* Appeal Judgement, para. 262.

²⁹⁴⁷ *Krstić* Appeal Judgement, para. 20.

824. Forcible transfer alone is an insufficient basis from which to infer the intent to destroy.²⁹⁴⁸ The intent to displace a group from a given area is distinct from the intent to destroy, and forcible transfer may evince intent to displace rather than destroy.²⁹⁴⁹ However, forcible transfer is nonetheless a relevant consideration when assessing genocidal intent.²⁹⁵⁰ Opportunistic killings similarly provide a very limited basis for inferring genocidal intent.²⁹⁵¹

825. The existence of a personal motive must be distinguished from intent and does not preclude a finding of genocidal intent.²⁹⁵² The reason why an accused sought to destroy the victim group “has no bearing on guilt”.²⁹⁵³

826. **Nikolić** submits that a state policy is a required element of the crime of genocide.²⁹⁵⁴ **Nikolić** bases his submission on an article written by Professor William A. Schabas, attached as an Annex to his Final Brief.²⁹⁵⁵ By refuting the theoretical possibility of an individual committing genocide “without the support of an overarching State policy” (theory of the “lone *génocidaire*”), Professor Schabas challenges the ICTY jurisprudence, which held that “the preparatory work of the Convention of 1948 brings out that premeditation was not selected as a legal ingredient of the crime of genocide” and “[i]t ensues from this omission that the drafters of the Convention did not deem the existence of an organisation or a system serving genocidal objective as a legal ingredient of the crime.”²⁹⁵⁶ Professor Schabas claims this is an erroneous interpretation of the Convention, as the

²⁹⁴⁸ *Blagojević and Jokić* Appeal Judgement, para. 123.

²⁹⁴⁹ See *Krstić* Appeal Judgement, para. 133 (ruling that Krstić harboured no genocidal intent because his intent was limited to forcibly displace, whereas others “harboured the same intent to carry out forcible displacement, but viewed this displacement as a step in the accomplishment of their genocidal objective”); *Eichmann* Jerusalem District Court Judgement, para. 186 (“With regard to the expulsion of Jews, in the organization of which the accused was engaged [. . .]: We have found that these were organized by the Accused with complete disregard for the health and lives of the deported Jews. So, too, the deaths of many Jews have been proved to be a result of the expulsions from Nisko, Stettin and the Warthe district. There is no doubt that here, there was cruelty which bordered on deliberate brutality, and we have pondered very carefully whether or not the accused foresaw the murderous consequences of these deportations and desired them. But ultimately a doubt remains in our minds whether there was here that specific intention to exterminate, required for proof of a crime against the Jewish People, and we shall therefore deal with these inhuman acts as being crimes against humanity.”)

²⁹⁵⁰ *Blagojević and Jokić* Appeal Judgement, para. 123. See also *Krstić* Appeal Judgement, para. 33.

²⁹⁵¹ *Blagojević and Jokić* Appeal Judgement, para. 123.

²⁹⁵² *Jelisić* Appeal Judgement, para. 49. See also *Niyitegeka* Appeal Judgement, para. 52–53; *Kayishema and Ruzindana* Appeal Judgement, para. 161. See generally *Tadić* Appeal Judgement, paras. 268–269 (noting the irrelevance of motive in criminal law).

²⁹⁵³ *Stakić* Appeal Judgement, para. 45.

²⁹⁵⁴ **Nikolić** Final Brief, para. 77.

²⁹⁵⁵ **Nikolić** Final Brief, Annex E, “State Policy as an Element of the Crime of Genocide, by Professor William A. Schabas, 30 April 2008” (“Schabas Article”), pp. 10–17.

²⁹⁵⁶ Schabas Article, p. 11, referring to *Jelisić* Trial Judgement, para. 100. See also **Nikolić** Final Brief, para. 77, 80–84. **Nikolić** further submits that the Appeals Chamber’s endorsement of the Trial Chamber’s finding “did not provide any more substantial analysis or insight into the question”. **Nikolić** Final Brief, para. 83; Schabas Article, p. 13, referring to *Jelisić* Appeal Judgement, para. 48. **Nikolić** also argues that the only ICTR Appeals Chamber decision supporting the Appeals Chamber’s endorsement in *Jelisić* is an indication of the “importance of a State policy in a judicial inquiry into genocide, rather than authority that it is not an ‘element’”. **Nikolić** Final Brief, para. 83, referring to Schabas Article, pp. 14–15.

drafters of the Convention never directly addressed the issue of State policy as an element of the crime of genocide because they believed the matter to be self-evident.²⁹⁵⁷

827. Furthermore, according to Professor Schabas, the language of the Elements of Crimes of the ICC Statute (“ICC Elements of Crimes”) – requiring for genocide that “the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction” – implicitly supports the State policy requirement, thus rejecting the lone *génocidaire* theory.²⁹⁵⁸ Professor Schabas also contends the additional requirement of “manifest pattern” spelled out in the ICC Elements of Crimes “is strong evidence that it is implicit in customary international law”.²⁹⁵⁹

828. The Trial Chamber notes that, in support of his assertion that a State policy is a required element of the crime of genocide, **Nikolić** is offering arguments that have already been considered by the jurisprudence of the ICTY and the ICTR. This jurisprudence has made it clear that a plan or policy is not a statutory element of the crime of genocide.²⁹⁶⁰ The Trial Chamber recalls the Appeals Chamber’s ruling in *Krstić* that “the offence of genocide, as defined in the Statute and in international customary law, does not require proof that the perpetrator of genocide participated in a widespread and systematic attack against the civilian population”.²⁹⁶¹ Furthermore, the Trial

²⁹⁵⁷ Schabas Article, pp. 12–13; Nikolić Final Brief, paras. 80–82. Professor Schabas refers to a debate that took place in the Sixth Committee of the General Assembly, concerning whether reference to premeditation should figure in the definition of genocide; it was eventually agreed to exclude the concept. He mentions the positions taken by Belgium (saying that premeditation should not figure in the definition because the notion of intent was sufficient) and Haiti (saying that premeditation was implicit because preparatory acts would always be involved in the commission of genocide). Professor Schabas asserts that “[t]he final wording of the *Convention* represents a compromise aimed at generating consensus between States with somewhat different conceptions of the purposes of the convention.” *Ibid.*, p. 13.

²⁹⁵⁸ Schabas Article, pp. 15–16, referring to Elements of Crimes of the Rome Statute of the International Criminal Court, entered into force 9 Sept 2002, UN Doc. ICC-ASP/1/3 (part II-B), Art. 6 (a), Element 3 (“ICC Elements of Crimes”); see also Nikolić Final Brief, para. 84. Professor Schabas contends that “manifest pattern of similar conduct” is intended as a “contextual circumstance”, which the accused is required by Article 30 of the ICC Statute to have knowledge of. Schabas Article, pp. 15–16. In support of his theory, Professor Schabas also refers to the 2005 Darfur Report and the 2007 ICJ Bosnia Judgement, stating that they involved “an inquiry into the existence of State policy, rather than a search for the lone individual with genocidal intent.” *Ibid.*, pp. 24–29, referring to Report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur, 25 January 2005, UN Doc. S/2005/60; ICJ Bosnia Judgment; see also Nikolić Final Brief, paras. 88–90.

²⁹⁵⁹ Schabas Article, p. 17. Professor Schabas criticised the *Krstić* Appeals Chamber’s ruling that the definition of genocide adopted in the Elements of Crimes “did not reflect customary international law as it existed at the time *Krstić* committed his crimes”. *Ibid.*, p. 16, referring to *Krstić* Appeal Judgement, para. 224. Professor Schabas argues that confusion exists between customary international law and a literal reading of Article 2 of the Genocide Convention. He also mentions the fact that the Preparatory Commission to the Genocide Conventions agreed that the text of the ICC Elements of Crimes should be taken as a useful guide to the interpretation of the Convention as well as an indication of the substance of customary international law. *Ibid.* Professor Schabas recognises, however, that neither the Genocide Convention or the ICC Elements of Crimes do provide support for a State policy element. *Ibid.*

²⁹⁶⁰ See *Krstić* Appeal Judgement, para. 223; *Jelisić* Appeal Judgement, para. 48. See also *Kayishema and Ruzindana* Appeal Judgement, para. 138.

²⁹⁶¹ *Krstić* Appeal Judgement, para. 223.

Chamber dismisses as speculation Professor Schabas' view that the issue of State policy was not addressed by the drafters of the Convention because it was self-evident.

829. The Trial Chamber notes that Article 6 of the ICC Statute, which defines genocide, does not prescribe the requirement of "manifest pattern" introduced in the ICC Elements of Crimes.²⁹⁶² The Trial Chamber acknowledges that the language of the ICC Elements of Crimes, in requiring that acts of genocide must be committed in the context of a manifest pattern of similar conduct, implicitly excludes random or isolated acts of genocide.²⁹⁶³ However, the Trial Chamber notes that the Appeals Chamber in *Krstić* held that "reliance on the definition of genocide given in the ICC's Elements of Crimes is inapposite".²⁹⁶⁴ The Appeals Chamber further clarified that the ICC Elements of Crimes "are not binding rules, but only auxiliary means of interpretation" of the Statute.²⁹⁶⁵ Finally, it has been clearly established by jurisprudence that the requirement that the prohibited conduct be part of a widespread or systematic attack "was not mandated by customary international law."²⁹⁶⁶

830. In light of the foregoing, the Trial Chamber finds that a plan or policy is not a legal ingredient of the crime of genocide and thus rejects **Nikolić's** submission.²⁹⁶⁷ However, the Trial Chamber considers the existence of a plan or policy can be an important factor in inferring genocidal intent. When the acts and conduct of an accused are carried out in accordance with an existing plan or policy to commit genocide they become evidence relevant to the accused's knowledge of the plan; such knowledge constitutes further evidence supporting an inference of intent.

(ii) Substantiality of Part of Targeted Group

831. If a group is targeted "in part", the portion targeted must be a substantial part of the group because it "must be significant enough to have an impact on the group as a whole."²⁹⁶⁸

²⁹⁶² ICC Statute, Article 6 ("For the purpose of this Statute, 'genocide' means any of the following acts, committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such"). See also *Krstić* Appeal Judgement, para. 224, fn. 366.

²⁹⁶³ ICC Elements of Crimes, Article 6.

²⁹⁶⁴ *Krstić* Appeal Judgement, para. 224.

²⁹⁶⁵ *Ibid.*, para. 224, fn. 366.

²⁹⁶⁶ *Ibid.*, para. 224.

²⁹⁶⁷ See *Krstić* Appeal Judgement, para. 225; *Jelisić* Appeal Judgement, para. 48. See also *Kayishema and Ruzindana* Appeal Judgement, para. 138.

²⁹⁶⁸ *Krstić* Appeal Judgement, para. 8. Accord ICJ Bosnia Judgment, para. 198 ("In the first place, the intent must be to destroy at least a substantial part of the particular group. That is demanded by the very nature of the crime of genocide: since the object and purpose of the Convention as a whole is to prevent the intentional destruction of groups, the part targeted must be significant enough to have an impact on the group as a whole.").

832. The numeric size of the part of the group targeted, evaluated in absolute terms and relative to the overall group size, “is the necessary and important starting point” in assessing whether the part targeted is substantial enough – but is “not in all cases the ending point of the inquiry.”²⁹⁶⁹ Other considerations that are “neither exhaustive nor dispositive” include the prominence within the group of the targeted part, whether the targeted part of the group “is emblematic of the overall group, or is essential to its survival” and the area of the malefactors’ activity and control and limitations on the possible extent of their reach.²⁹⁷⁰ Which factors are applicable, and their relative weight, will vary depending on the circumstances of the case.²⁹⁷¹

833. The targeted group can include military personnel: “the intent requirement of genocide is not limited to instances where the perpetrator seeks only to destroy civilians.”²⁹⁷² A genocide conviction is possible, for example, “where the perpetrator killed detained military personnel belonging to a protected group because of their membership in that group” so long as the intent and substantiality requisites are met.²⁹⁷³

2. Charges

834. The Indictment alleges that **Pandurević, Beara, Popović, Nikolić and Borovčanin**:

[W]ith the intent to destroy a part of the Bosnian Muslim people as a national, ethnical, or religious group:

a. killed members of the group by summary execution, including both planned and opportunistic summary executions, as described in this Indictment; and,

b. caused serious bodily or mental harm to both female and male members of the Bosnian Muslim populations of Srebrenica and Žepa, including but not limited to the separation of able-bodied men from their families and the forced movement of the population from their homes to areas outside the RS.²⁹⁷⁴

835. The Indictment further alleges that:

The forcible transfer of women and children from Srebrenica and Žepa as described in this Indictment created conditions known to the Accused that would contribute to the destruction of the entire Muslim population of Eastern Bosnia, including but not limited to the failure of the population to live and reproduce normally.²⁹⁷⁵

836. The Indictment therefore alleges that genocide was committed through killings and the infliction of serious bodily or mental harm, as well as through the acts enumerated in Article 4(2)(c)

²⁹⁶⁹ *Krstić Appeal Judgement*, para. 12.

²⁹⁷⁰ *Ibid.*, para. 12; *see also* paras. 13–14.

²⁹⁷¹ *Ibid.*, para. 14.

²⁹⁷² *Ibid.*, para. 226.

²⁹⁷³ *Ibid.*, para. 226.

²⁹⁷⁴ Indictment, para. 26.

²⁹⁷⁵ Indictment, para. 33.

and Article 4(2)(d) of the Statute. The Trial Chamber notes that the factual allegations underlying the charges in paragraph 33 of the Indictment are limited to the forcible transfer of the women and children from Srebrenica and Žepa.

3. Findings

837. Over the course of a few days, the Bosnian Serb Forces systematically executed several thousand Bosnian Muslim males, of whom 5,336 have been identified.²⁹⁷⁶ These executions were the culmination of a prolonged period of terror for the population of Srebrenica and Žepa. As the war encroached on their towns and villages, the Muslim population of Eastern Bosnia retreated to the enclaves hoping for protection; after the enclaves fell, the population found themselves at the mercy of the Bosnian Serb Forces.

838. The Prosecution alleges that a decision was taken to destroy the Muslim population of Eastern Bosnia, which was implemented primarily by separating, forcibly transferring and ultimately killing members of this group.²⁹⁷⁷ Although the Trial Chamber has considered all of the relevant evidence in its totality in order to determine whether genocide was committed, it will only repeat the most pertinent as part of this analysis below.

(a) The Group

839. As stated in the Indictment and further clarified in the Prosecution's closing arguments, the Prosecution alleges that the targeted group is the "Muslims of Eastern Bosnia", as "part" of the Bosnian Muslim people.²⁹⁷⁸

840. The Trial Chamber notes that Bosnian Muslims were recognized as a "nation" by the Yugoslav Constitution of 1963,²⁹⁷⁹ and that other Chambers have considered that Bosnian Muslims are a protected group within the meaning of Article 4 of the Statute.²⁹⁸⁰ The Trial Chamber agrees with this analysis and accepts the conclusion.

²⁹⁷⁶ See *supra*, para. 664.

²⁹⁷⁷ Indictment, paras. 26, 27, 33, 34; Prosecution Pre-Trial Brief, para. 20; Prosecution Final Brief, paras. 461, 500.

²⁹⁷⁸ Indictment, paras. 26, 33; Prosecution Closing Arguments, T. 34276 (4 Sept 2009) (explaining that "the group is the Muslims of Eastern Bosnia, and those are defined as the Muslims of Srebrenica and Žepa, and should include Goražde, but primarily Srebrenica and Žepa, though Goražde is also part of Eastern Bosnia and they were also the focus of the ethnic cleansing campaign").

²⁹⁷⁹ *Krstić* Trial Judgement, para. 559.

²⁹⁸⁰ *Blagojević and Jokić* Trial Judgement, para. 667; *Krstić* Trial Judgement, para. 560. See also *Krstić* Appeal Judgement, para. 15.

(b) Underlying Acts(i) Killing Members of the Group

841. The Trial Chamber has found that several thousand Bosnian Muslims, initially residing or taking refuge in Srebrenica, were killed by Bosnian Serb Forces from 12 July until late July 1995.²⁹⁸¹ The allegation that members of a protected group were killed is therefore proven beyond reasonable doubt.

(ii) Causing Serious Bodily or Mental Harm to Members of the Group

842. The Prosecution alleges that serious bodily and mental harm was caused to the Muslims of Eastern Bosnia, including from the separation of the able-bodied men from their families and the forced movement of the population from their homes to areas outside of the RS.²⁹⁸²

843. The Trial Chamber recalls that forcible transfer does not constitute in and of itself an underlying act of genocide.²⁹⁸³ The Trial Chamber notes that the Prosecution has alleged that the forcible removal of the population and the murder operation were carried out through two distinct JCEs and not all of the Accused are alleged to have been participants in each JCE. The Trial Chamber considers that reasons of fairness require it to constrain its findings on genocide generally in a manner which respects those distinctions and yet still conforms to the jurisprudence of the Tribunal. Consequently, the Trial Chamber will restrict itself to an analysis of the serious bodily and mental harm caused by the killing operation.²⁹⁸⁴

844. The Trial Chamber finds that the killing operation inflicted serious bodily and mental harm on the Muslims of Eastern Bosnia. The males in Potočari first had to endure a painful separation process and the anxiety that followed from not knowing what would happen to their families. Once detained, the men had their personal property – including identification cards and passports²⁹⁸⁵ – removed and uncertainty as to their ultimate fate turned to fear and terror. They were detained in intolerable conditions of overcrowded facilities with no food, little if any water and abhorrent sanitary conditions.²⁹⁸⁶ In many instances they were subjected to taunting and physical abuse.²⁹⁸⁷ Similar rudimentary and cruel conditions awaited the men who were captured from the column.²⁹⁸⁸

²⁹⁸¹ The Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica, and this number could well be as high as 7,826. *See supra*, paras. 664, 793–796.

²⁹⁸² Indictment, paras. 26–27; Prosecution Final Brief, paras. 1106, 1128.

²⁹⁸³ *See supra*, para. 813.

²⁹⁸⁴ For clarity, the Trial Chamber is not considering the forcible transfer in Srebrenica or Žepa.

²⁹⁸⁵ *See supra*, para. 331.

²⁹⁸⁶ *See supra*, paras. 329–330, 400–403.

²⁹⁸⁷ *See supra*, paras. 326–328.

²⁹⁸⁸ *See supra*, paras. 385, 389, 393, 398, 473, 478, 496, 529.

For all of them, any hope of survival was extinguished in the terrifying moments when they were brought to execution sites, in many instances already filled with bodies, and realized their fate.²⁹⁸⁹ The Trial Chamber finds that through the operation to detain and kill, serious bodily and mental harm was inflicted on the males who were the subject of this murderous enterprise.

845. The Trial Chamber also finds that serious bodily and mental harm was caused to those who survived the killing operation. Those few who lived were often physically injured and all endured the extreme anguish and terror of a close encounter with violent death. Several were forced by circumstance to pretend to be dead and to hide under the cover of and surrounded by the bodies of those killed around them.²⁹⁹⁰ They then endured harrowing circumstances in order to escape.²⁹⁹¹ The Trial Chamber has no doubt as to the intense physical suffering and mental anguish endured by these survivors as a direct result of the implementation of the plan to murder.

846. The Trial Chamber further finds that the killing operation and executions inflicted serious mental harm on the surviving family members and loved ones of those killed. These survivors also had to endure the separation process at Potočari with the heightened anxiety it created among the Bosnian Muslim population.²⁹⁹² The women, children and the elderly – who had been torn from their homes and all which was familiar to them – then had their brothers, fathers, husbands and sons taken from them. They were left with uncertainty about their future and fear about the fate of those they loved.

847. The evidence further demonstrates the profound impact that the murders had on the women, children and the elderly. The refugees who arrived in Tuzla around 12 or 13 July were overwhelmed with distress concerning the fate of the males;²⁹⁹³ many continue to exist in a state of perpetual uncertainty. The Trial Chamber has received the evidence of survivors who struggle to achieve long-term recovery. In addition to grief and loss, the survivors endure the terrible psychological trauma of not knowing for certain what happened to the males. Many survivors suffer from guilt and engage in self-destructive behaviour; some would prefer to have died with the males.²⁹⁹⁴ The Trial Chamber is satisfied that these survivors suffered profound physical and psychological harm as a result of the murder operation.

²⁹⁸⁹ See *supra*, paras. 484, 500, 519, 538.

²⁹⁹⁰ See *supra*, paras. 485, 500, 539..

²⁹⁹¹ See *supra*, paras. 408, 435.

²⁹⁹² See *supra*, paras. 316–324.

²⁹⁹³ Edward Joseph, T. 14151–14152 (22 Aug 2007).

²⁹⁹⁴ See Hafiza Salcihović, Ex. P03232, “92 *bis* statement” (17 June 2000); Witness DD, Ex. P02226, “under seal – 92 *bis* transcript” (26 July 2000); Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000); Rahima Maklić, Ex. P03229, “92 *bis* statement” (17 June 2000).

(iii) Deliberately Inflicting on the Group Conditions of Life Calculated to Bring about its Physical Destruction in Whole or in Part & Imposing Measures Intended to Prevent Births within the Group

848. The Prosecution submissions concerning the commission of the underlying acts provided in Article 4(2)(c) and 4(2)(d) of the Statute overlap to a significant extent, and therefore the Trial Chamber will consider them together.

849. The Trial Chamber recalls that the Prosecution's allegations in relation to Article 4(2)(c) and 4(2)(d) of the Statute are explicitly limited to the forcible transfer of the women and children from Srebrenica and Žepa.²⁹⁹⁵ Thus, in considering whether these particular underlying acts have been established, the Trial Chamber is restricted to an analysis of the circumstances resulting from the forcible transfer alone and not the combined effects of the killings and forcible transfer; the Trial Chamber's conclusion must be viewed in this context.

850. The Prosecution submits that the forcible transfer of the women and children created conditions which contributed to the destruction of the Muslims of Eastern Bosnia, including the failure of the population to live and reproduce normally.²⁹⁹⁶

851. The Prosecution specifies that the Bosnian Muslim communities of Srebrenica and Žepa were traditional patriarchal communities in which men took leadership roles in both the public and private spheres. The men generally had higher levels of education than women and served as providers, protectors, and decision-makers for their families.²⁹⁹⁷ Consequently, removing the male members of the community and simultaneously uprooting the women, children, and elderly from their homes resulted in the "complete destruction of the pre-war familial and community structure of the Srebrenica Muslims."²⁹⁹⁸ In support of these allegations, the Prosecution refers to the testimony of survivors who continue to struggle with the consequences of the forcible transfer, some have an indeterminate marital status; experience difficulty in caring for their surviving children; live in conditions of abject poverty; and suffer from unemployment.²⁹⁹⁹

852. The Prosecution asserts that, as a consequence, the birth rate in the community "appears to be decreasing."³⁰⁰⁰ Further, survivors often cannot or will not return to their former homes because

²⁹⁹⁵ See *supra*, para. 836; Indictment, para. 33.

²⁹⁹⁶ Indictment, para. 33; Prosecution Final Brief, paras. 1105, 1128.

²⁹⁹⁷ Prosecution Final Brief, para. 1116.

²⁹⁹⁸ *Ibid.*, para. 1117.

²⁹⁹⁹ Prosecution Final Brief, paras. 1118–1124.

³⁰⁰⁰ *Ibid.*, para. 1120.

their property was destroyed as they were forcibly transferred, or because they cannot face the trauma of returning to where their loved-ones disappeared.³⁰⁰¹

853. According to the Prosecution, **Pandurević, Beara, Popović, Nikolić and Borovčanin** were aware of the social structure of the Muslims of Eastern Bosnia, they understood the essential role occupied by men in the Bosnian Muslim family, and therefore had to have known that the effect of their actions would be the destruction of the group.³⁰⁰²

854. The essence of the Prosecution's allegation appears to be that the destruction of the social structure of the community and the inability of those who were forcibly transferred to reconstruct their lives constitutes the conditions of life deliberately imposed in order to bring about the physical destruction of the group. The Trial Chamber, however, is not satisfied that these are the kinds of conditions intended to be prohibited by Article 4(2)(c) of the Statute.³⁰⁰³ Moreover, the Trial Chamber notes that the Prosecution's allegation does not include the effect of the killings on the Bosnian Muslim social structure and is therefore not satisfied that the conditions that resulted from the forcible transfer alone were deliberately imposed in order to bring about the physical destruction of the group; indeed, the Trial Chamber cannot find that it is objectively probable that such conditions would lead to the destruction of the group.³⁰⁰⁴ Similarly, the Trial Chamber is not satisfied that the Prosecution has established that the forcible transfer itself was a measure intended to prevent births within the group.

855. In light of the discussion above, the Trial Chamber finds the evidence insufficient to conclude that the forcible transfer created conditions of life calculated to bring about the destruction of the Muslim population of Eastern Bosnia, or the failure of that population to live and reproduce normally.

(c) Genocidal Intent

856. The Trial Chamber has found that several thousand Bosnian Muslim males were killed by members of the Bosnian Serb Forces.³⁰⁰⁵ The scale and nature of the murder operation, the targeting of the victims, the systematic and organized manner in which it was carried out, and the plain intention to eliminate every Bosnian Muslim male who was captured or surrendered proves beyond

³⁰⁰¹ Prosecution Final Brief, paras. 1123–1125.

³⁰⁰² *Ibid.*, para. 1127.

³⁰⁰³ *See supra*, para. 815.

³⁰⁰⁴ *See Krajišnik* Trial Judgement, para. 863 (stating that “[l]iving conditions, which may be inadequate by any number of standards, may nevertheless be adequate for the survival of the group”).

³⁰⁰⁵ *See supra*, para. 664.

reasonable doubt that members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Branch, intended to destroy the Muslims of Eastern Bosnia as a group.

857. The evidence demonstrates that from the inception of the plan to murder the able-bodied men gathered in Potočari, the scope and the scale of the murder operation steadily escalated.³⁰⁰⁶ The victims targeted by the operation expanded from those separated out in Potočari to those who surrendered or were captured after being pursued by Bosnian Serb Forces as they tried to flee to Bosnian Muslim territory.³⁰⁰⁷ An escalation in the plans and intentions of members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Branch, is evident as thousands of Bosnian Muslim males came under their control and events progressed.

858. The Trial Chamber recalls that before their execution, the men were detained in a number of locations around Potočari, Bratunac and Zvornik and were likewise killed in a number of different places.³⁰⁰⁸ Very often, the men were moved from their place of detention to a different site for execution, indicating that the killings were not by any means spontaneous. The executions were carried out by many different people, belonging to various units of the Bosnian Serb Forces.³⁰⁰⁹ That the organization was designed to maximize the number of victims is further evidenced by the conditions of detention which generally disregarded even basic needs for survival such as food and water.³⁰¹⁰

859. A staggering number of killings occurred on 13 July in particular, indicating co-ordination rather than coincidence. On 13 July alone, Bosnian Muslim prisoners were killed at Jadar River, at Cerska Valley, at the Kravica Warehouse, at Sandići Meadow, and at Luke School.³⁰¹¹ The killings carried on for a number of days, displaying a grim determination to ensure that each and every prisoner would be killed, at Orahovac, at Petkovci Dam, at Ročević School, at Kula School, at Kozluk, at Branjevo Military Farm, at Pilica Cultural Centre, at Baljkovica (near Nežuk), from Milići Hospital, at Snagovo and at Trnovo.³⁰¹²

860. The Trial Chamber finds that the evidence establishes that the killing of the Bosnian Muslim males was not the result of panic upon the capture of thousands of men, nor was it a response to any military threat the men posed; indeed, the men targeted were those who had already surrendered. It

³⁰⁰⁶ See *supra*, Chapter V, Section B.1.(d).

³⁰⁰⁷ See *supra*, paras. 380–382. See also *supra*, Chapter V, Section B.1.(d).

³⁰⁰⁸ See *supra*, Chapter III, Section E.6(b) and 7; Chapter III, Section F.4, 5, 6; Chapter III, Section G.3; Chapter III, Section H.3.5. See *infra*, Chapter V, Section B.1.(d).

³⁰⁰⁹ See *supra*, Chapter III, Section E.7; Chapter III, Section F.6; Chapter III, Section G.3; Chapter III, Section H.3.5. See *infra*, Chapter V, Section B.1.(d).

³⁰¹⁰ See *supra*, paras. 330, 385, 389, 393, 398, 473, 478, 496, 529. See *infra*, para. 1053.

³⁰¹¹ See *supra*, paras. 353, 409, 414, 423, 445.

is clear that the males were targeted by virtue of their membership in the Bosnian Muslim group. Further, not even a cursory attempt was made to distinguish between civilian and soldier and the Trial Chamber notes that some children, elderly and infirm were also killed.³⁰¹³ Searches were conducted in the days that followed the fall of Srebrenica to ensure that no Bosnian Muslim male escaped the grasp of the VRS Main Staff and Security Branch.³⁰¹⁴

861. The Trial Chamber finds that the murder operation – from the separations to detention to execution and burial – was a carefully orchestrated strategy to destroy aimed at the Muslim population of Eastern Bosnia. As found earlier, through this murderous enterprise, the underlying acts of killing and the infliction of serious bodily and mental harm were committed. The Trial Chamber is satisfied beyond all reasonable doubt that these acts were perpetrated with genocidal intent.

862. The Trial Chamber draws further support for its conclusion from “the other culpable acts systematically directed against the same group”³⁰¹⁵ in the same time period, notably the forcible transfer operation and its accompanying circumstances aimed at the population in Potočari. The frenzied efforts to forcibly remove the remainder of the population, while the male members of the community were targeted for murder, provides further evidence that the intent was to destroy.

863. Thus the Trial Chamber is satisfied that genocide was committed by members of the Bosnian Serb Forces, including members of the VRS Main Staff the VRS Security Branch, such as **Popović** and **Beara**, against the Muslims of Eastern Bosnia, as part of the Bosnian Muslims.³⁰¹⁶

(i) Substantiality of Group

864. Having found that members of the Bosnian Serb Forces, including members of the VRS Main Staff and the Security Branch, possessed the intent to destroy a part of a protected group, the Trial Chamber must consider whether the targeted part is a substantial component of the protected group.³⁰¹⁷

865. The Trial Chamber finds that the Muslims of Eastern Bosnia constitute a substantial component of the entire group, Bosnian Muslims. As has been found by the Appeals Chamber, although the size of the Bosnian Muslim population in Srebrenica before its capture by the VRS

³⁰¹² See *supra*, paras. 492, 503, 524, 531, 550, 577, 583, 589, 599. Judge Kwon dissents with respect to the finding that the killings at Trnovo fall within the JCE to murder. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–39.

³⁰¹³ See *supra* paras. 320, 401, 405, 408, 413, 478, 490, 523, 543. See *infra*, para. 1053.

³⁰¹⁴ See *supra*, paras. 380–382, 562–564.

³⁰¹⁵ *Blagojević and Jokić* Appeal Judgement, para. 123.

³⁰¹⁶ See *infra*, paras. 1181, 1318.

³⁰¹⁷ *Krstić* Appeal Judgement, para. 8.

was a small percentage of the overall Muslim population of BiH at the time, the import of the community is not appreciated solely by its size.³⁰¹⁸ The Srebrenica enclave was of immense strategic importance to the Bosnian Serb leadership because (1) the ethnically Serb state they sought to create would remain divided and access to Serbia disrupted without Srebrenica; (2) most Muslim inhabitants of the region had, at the relevant time, sought refuge in the Srebrenica enclave and the elimination of the enclave would accomplish the goal of eliminating the Muslim presence in the entire region; and (3) the enclave's elimination despite international assurances of safety would demonstrate to the Bosnian Muslims their defencelessness and be "emblematic" of the fate of all Bosnian Muslims.³⁰¹⁹ The Chamber agrees with this analysis and adopts the conclusion.

866. The Trial Chamber also finds that the killing of all of the male members of a population is a sufficient basis to infer the intent to biologically destroy the entire group. The Trial Chamber notes that some young boys, elderly men and the infirm were amongst those killed and that no distinction was made between civilians and military men.³⁰²⁰ Thus, the scope of the killing was wider than simply the men who posed a military threat. Further, the extent of the killings undoubtedly has had a detrimental impact on the physical survival of the Muslims of Eastern Bosnia. The Chamber finds beyond reasonable doubt that the devastating impact on the community would have been evident to, and intended by, members of the Bosnian Serb Forces, including members of the VRS Main Staff and the Security Branch.³⁰²¹

F. Conspiracy to Commit Genocide

1. Applicable Law

867. The crime of conspiracy to commit genocide is punishable under Article 4(3)(b) of the Statute. Although this Tribunal has never addressed the crime of conspiracy to commit genocide, Chambers of the ICTR have dealt with it on several occasions.³⁰²²

868. The ICTR has defined conspiracy to commit genocide as "an agreement between two or more persons to commit the crime of genocide."³⁰²³ The act of entering into an agreement to

³⁰¹⁸ *Krstić* Appeal Judgement, para. 15.

³⁰¹⁹ *Ibid.*, paras. 15–16.

³⁰²⁰ *See supra*, paras. 320, 401, 405, 408, 413, 478, 490, 523, 543.

³⁰²¹ *See Krstić* Appeal Judgement, para. 27: "The killing of the military aged men was, assuredly, a physical destruction, and given the scope of the killings the Trial Chamber could legitimately draw the inference that their extermination was motivated by a genocidal intent."

³⁰²² *See Seromba* Appeal Judgement, paras. 207–225; *Nahimana et al.* Appeal Judgement, paras. 893–912; *Ntagerura et al.* Appeal Judgement, paras. 90–93; *Bagosora et al.* Trial Judgement, para. 2084–2113; *Zigiranyirazo* Trial Judgement, paras. 388–395; *Seromba* Trial Judgement, paras. 344–351; *Ntagerura et al.* Trial Judgement, paras. 49–52, 70; *Kajelijeli* Trial Judgement, paras. 785–798; *Nahimana et al.* Trial Judgement, paras. 1040–1055; *Niyitegeka* Trial Judgement, paras. 422–429; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 797–801, 838–841; *Musema* Trial Judgement, paras. 184–198, 937–941; *Kambanda* Trial Judgement, para. 40.

commit genocide constitutes the *actus reus* of the criminal act of conspiracy to commit genocide.³⁰²⁴ The individuals involved in the conspiracy must possess the same *mens rea* as genocide, namely, the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.³⁰²⁵ As an inchoate crime, it is the agreement itself that is punishable – the crime is completed at the time the agreement is concluded – regardless of whether genocide is actually committed as a result of the agreement.³⁰²⁶ The Trial Chamber agrees with the ICTR’s definition of the crime of conspiracy to commit genocide.

869. As to proof, “the existence of a formal or express agreement is not needed to prove the charge of conspiracy.”³⁰²⁷ The *actus reus* can be inferred from circumstantial evidence, as long as the existence of conspiracy to commit genocide is the only reasonable inference.³⁰²⁸ In particular, an agreement can be inferred from the concerted or coordinated actions of a group of individuals.³⁰²⁹ However, the evidence must establish beyond reasonable doubt a concerted agreement to act, and not merely similar conduct³⁰³⁰ or of a negotiation in progress.³⁰³¹

870. In his Final Brief, **Nikolić** submits that conspiracy to commit genocide is not a continuing crime.³⁰³² The Trial Chamber understands the thrust of his argument to be that once an agreement is concluded, participation in any ensuing genocide incurs criminal responsibility for involvement in the genocide, not for conspiring to commit genocide.³⁰³³ In particular, **Nikolić** posits that if a conspiracy to commit genocide was concluded on the evening of 11 July or morning of 12 July as charged in the Indictment, he could not subsequently join in that agreement.³⁰³⁴ The Prosecution

³⁰²³ *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, para. 894; *Ntagerura et al.* Appeal Judgement, para. 92; *Bagosora* Trial Judgement, para. 2087; *Kajelijeli* Trial Judgement, para. 787; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798; *Musema* Trial Judgement, para. 191.

³⁰²⁴ *Seromba* Appeal Judgement, paras. 218, 221; *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087; *Kajelijeli* Trial Judgement, para. 788.

³⁰²⁵ *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Bagosora* Trial Judgement, para. 2087; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.

³⁰²⁶ *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 193. The Trial Chamber notes the following statement of the ICTY Appeals Chamber: “Joint criminal enterprise and ‘conspiracy’ are two different forms of liability. Whilst conspiracy requires a showing that several individuals have agreed to commit a certain crime or set of crimes, a joint criminal enterprise requires [...] that the parties to that agreement took action in furtherance of that agreement.” *Ojdanić* Jurisdiction Appeal Decision, para. 23.

³⁰²⁷ *Nahimana et al.* Trial Judgement, para. 1045. Upheld by *Nahimana et al.* Appeal Judgement, para. 898.

³⁰²⁸ *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, para. 896. For the standard of proof applicable to circumstantial evidence, see *Stakić* Appeal Judgement, para. 219; *Krstić* Appeal Judgement, para. 41; *Vasiljević* Appeal Judgement, paras. 120, 131; *Čelebići* Appeal Judgement, para. 458; *Nahimana et al.* Appeal Judgement, para. 896; *Ntagerura et al.* Appeal Judgement, paras. 306, 399.

³⁰²⁹ *Nahimana et al.* Trial Judgement, para. 1045. Upheld by *Nahimana et al.* Appeal Judgement, para. 897.

³⁰³⁰ *Nahimana et al.* Appeal Judgement, para. 898.

³⁰³¹ *Kajelijeli* Trial Judgement, para. 787.

³⁰³² *Nikolić* Final Brief, paras. 322–325.

³⁰³³ See *Nikolić* Final Brief, paras. 158–162, 165–167, 325, 1598–1601; *Nikolić* Closing Arguments, T. 34549 (9 Sept 2009), 34830–34832 (14 Sept 2009).

³⁰³⁴ *Nikolić* Final Brief, paras. 163, 1602–1603; *Nikolić* Closing Arguments, T. 34538 (9 Sept 2009), 34831 (14 Sept 2009).

argues in response that even though criminal liability arises the moment an agreement to commit genocide is concluded, the conspiracy does not stop at that point and indeed others become liable if they join the agreement to commit genocide at a later point in the conspiracy.³⁰³⁵

871. There is little ICTY or ICTR jurisprudence on the issue. The *Nahimana* Trial Judgement held that conspiracy “has a continuing nature that culminates in the commission of the acts contemplated by the conspiracy.”³⁰³⁶ On appeal, the Appeals Chamber declined to review this finding,³⁰³⁷ but did overturn the Trial Chamber’s parallel finding that direct and public incitement to commit genocide was a continuing offence.³⁰³⁸ The Appeals Chamber noted that the notions “inchoate” and “continuing” are independent of one another,³⁰³⁹ and held that the Trial Chamber erred in finding that incitement continues in time until the completion of the acts contemplated. Instead, the Appeals Chamber held that the crime is “completed as soon as the discourse in question is uttered or published, even though the effects of incitement may extend in time.”³⁰⁴⁰

872. **Nikolić** argues that this holding of the ICTR Appeals Chamber supports a conclusion that, as an inchoate offence like direct and public incitement to commit genocide, conspiracy is not a continuing crime.³⁰⁴¹ The Trial Chamber notes, however, that this appears to be contrary to the common law position. In the United States, conspiracy is considered a continuing crime.³⁰⁴² Individuals are capable of joining a conspiracy even after the initial agreement, and may be held liable for such conspiracy as though they were an original conspirator.³⁰⁴³ The addition of new

³⁰³⁵ Prosecution Closing Arguments, T. 34172–34173 (3 Sept 2009).

³⁰³⁶ *Nahimana* Trial Judgement, para. 1044.

³⁰³⁷ *Nahimana* Appeal Judgement, para. 318.

³⁰³⁸ *Ibid.*, para. 723, referring to *Nahimana* Trial Judgement, para. 1017.

³⁰³⁹ *Nahimana* Appeals Judgement, paras. 720–721. The Appeals Chamber explained that “an inchoate crime penalizes the commission of certain acts capable of constituting a step in the commission of another crime, even if that crime is not in fact committed.” A continuing crime “implies an ongoing criminal activity.” The Appeals Chamber referred to Black’s Law Dictionary which states that a continuing crime is “1. A crime that continues after an initial illegal act has been consummated; a crime that involves ongoing elements [...] 2. A crime ... that continues over an extended period.” Brian A. Garner (ed.), *Black’s Law Dictionary*, 8th ed. (Saint Paul, Minnesota: Thompson West Publishing Company, 2004), p. 399.

³⁰⁴⁰ *Nahimana* Appeal Judgement, para. 723.

³⁰⁴¹ Nikolić Closing Arguments, T. 34830–34832 (14 Sept 2009).

³⁰⁴² See *United States v. Kissel*, 218 U.S. 601, 607 (1910) (“It is true that the unlawful agreement satisfies the definition of the crime, but it does not exhaust it. It also is true, of course, that the mere continuance of the result of a crime does not continue the crime. [...] But when the plot contemplates bringing to pass a continuous result that will not continue without the continuous cooperation of the conspirators to keep it up, and there is such continuous cooperation, it is a perversion of natural thought and of natural language to call such continuous cooperation a cinematographic series of distinct conspiracies, rather than to call it a single one.”) (Holmes, J.) (citations omitted). See also, e.g., *United States v. Noble*, 754 F.2d 1324, 1329 (7th Cir. 1985) (“parties may still be found guilty even though they join or terminate their relationship with the core conspirators at different times.”); *United States v. Knight*, 416 F.2d 1181, 1184 (9th Cir. 1969) (same).

³⁰⁴³ See, e.g., *United States v. Santos*, 541 F.3d 63, 73 (2nd Cir. 2008) (“a defendant need not have joined a conspiracy at its inception in order to incur liability for the unlawful acts of the conspiracy committed both before and after he or she became a member”); *United States v. Knight*, 416 F.2d 1181, 1184 (9th Cir. 1969) (“One may join a conspiracy already formed and in existence, and be bound by all that has gone on before in the conspiracy.”).

conspirators does not alter the status of the original conspirators, nor create a new conspiracy.³⁰⁴⁴ In the United Kingdom³⁰⁴⁵ and Canada,³⁰⁴⁶ the position is the same.

873. The Trial Chamber notes that the concept of criminal conspiracy incorporated into the Genocide Convention derived from the common law approach³⁰⁴⁷ and that Article 4(3) of the Statute was adopted directly from the Genocide Convention. Consequently, there is good reason to follow the common law interpretation of the crime of conspiracy.

874. The Trial Chamber finds the common law position to be persuasive. Inchoate crimes developed with the principal object of frustrating the commission of a contemplated crime by arresting and punishing the offenders before they commit the crime.³⁰⁴⁸ This justifies punishing a conspirator for his agreement before the commission of the crime; it does not follow that the crime of conspiracy comes to an end at that point.³⁰⁴⁹

875. The Trial Chamber also considers that the ICTR Appeals Chamber's analysis of direct and public incitement to commit genocide in *Nahimana* does not undermine this finding. The ICTR Appeals Chamber expressly distinguished the notions of inchoate and continuing offences, and its reasoning does not lead to a conclusion that every inchoate offence cannot also be a continuing one.

876. The Trial Chamber therefore concludes that conspiracy is a continuing crime and that, as such, an individual can join a conspiracy after the initial agreement is concluded.

³⁰⁴⁴ See, e.g., *Marino v. United States*, 91 F.2d 691, 696 (9th Cir. 1937) ("In the situation where a conspiracy has been formed, the joinder thereof by a new member does not create a new conspiracy, does not change the status of the other conspirators, and the new member is as guilty as though he was an original conspirator."); see also, e.g., *United States v. Bryant*, 364 F.2d 598, 603 (4th Cir. 1966) (same).

³⁰⁴⁵ See *DPP v. Doot*, [1973] A.C. 807 ("When there is agreement between two or more to commit an unlawful act all the ingredients of the offence are there and in that sense the crime is complete. But a conspiracy does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry out the design. [...] The fact that a man who later joins a conspiracy may be convicted of it shows that although the offence is complete in one sense when the conspiracy is made, it is nevertheless a continuing offence."). See also David Ormerod ed., *Smith and Hogan: Criminal Law*, 12th Edition, Oxford University Press, p. 403.

³⁰⁴⁶ See *Papalia v. R.*, [1979] 2 S.C.R. 256, pp. 276-277 ("Conspiracy is an inchoate or preliminary crime. [...] On a charge of conspiracy the agreement itself is the gist of the offence. [...] The *actus reus* is the fact of agreement. [...] The agreement reached by the co-conspirators may contemplate a number of acts or offences. Any number of persons may be privy to it. Additional persons may join the ongoing scheme while others may drop out. So long as there is a continuing overall, dominant plan there may be changes in methods of operation, personnel, or victims, without bringing the conspiracy to an end. The important inquiry is not as to the acts done in pursuance of the agreement, but whether there was, in fact, a common agreement to which the acts are referable and to which all of the alleged offenders were privy."). Cited with approval in *United States of America v. Dynar*, [1997] 2 S.C.R. 462, para. 87.

³⁰⁴⁷ See UN Doc E/AC. 25/SR.16. See also *Musema Trial Judgement*, para. 187.

³⁰⁴⁸ See *Liangsiriprasert v. United States Government*, [1991] 1 A.C. 225, per Lord Griffiths, citing with approval *Board of Trade v. Owen*, [1957] A.C. 602, 626.

³⁰⁴⁹ *Nahimana et al. Appeal Judgement*, Partly Dissenting Opinion of Judge Shahabuddeen, 28 Nov 2007, para. 32; *Ngeze and Nahimana v. The Prosecutor*, Case No. ICTR 97-27-AR72, Decision on the Interlocutory Appeals, Separate Opinion of Judge Shahabuddeen, 5 Sept 2000.

2. Charges

877. Count 2 of the Indictment alleges that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** conspired to commit genocide. The Prosecution specifies that these Accused entered into an agreement with several others, including Mladić, Živanović, and Krstić, to kill the able-bodied Muslim men from Srebrenica and to remove the remaining Muslim population of Srebrenica and Žepa from RS, with the intent to destroy those Muslims.³⁰⁵⁰ It is the Prosecution's case that the conspiracy has the same duration and the same underlying facts as the JCE to murder the men from Srebrenica.³⁰⁵¹

3. Preliminary Issue

878. **Nikolić** submits that the Prosecution charged a specific agreement to commit genocide concluded between identified conspirators at a specific place and time;³⁰⁵² namely, an agreement concluded between the evening of 11 July and the morning of 12 July in Bratunac, involving one or more of the Accused.³⁰⁵³ **Nikolić** argues that the evidence must establish that this particular agreement was concluded.³⁰⁵⁴ **Nikolić** submits that because the Prosecution alleges that **Nikolić's** involvement in the murder operation did not commence until the evening of 13 July,³⁰⁵⁵ the Prosecution has failed to properly charge his involvement in the conspiracy.³⁰⁵⁶

879. The Trial Chamber understands **Nikolić's** argument to be that a material fact in relation to a charge of conspiracy to commit genocide is the date on which the agreement was concluded. In essence, **Nikolić** argues that having alleged that his participation in the conspiracy commenced subsequent to the date of the alleged agreement, the Prosecution has failed to prove his criminal responsibility for conspiracy.

880. The Trial Chamber first notes that the Indictment alleges that the conspiracy began "on or about 12 July 1995"³⁰⁵⁷ and therefore finds that the discrepancy of dates between 12 and 13 July is not so material as to cause prejudice to **Nikolić** or the other Accused. Having plead the specific acts that the Prosecution alleges give rise to **Nikolić's** criminal responsibility for conspiracy to commit genocide,³⁰⁵⁸ the Trial Chamber finds that **Nikolić** was given adequate notice of the Prosecution's

³⁰⁵⁰ Indictment, para. 34.

³⁰⁵¹ T. 34172 (3 Sept 2009).

³⁰⁵² Nikolić Final Brief, para. 1607.

³⁰⁵³ *Ibid.*, paras. 1608–1612.

³⁰⁵⁴ *Ibid.*, para. 1612.

³⁰⁵⁵ Nikolić Final Brief, para. 1632. *See also*, Indictment, para. 42(a)(i).

³⁰⁵⁶ *See ibid.*, paras. 1614–1627.

³⁰⁵⁷ Indictment, para. 36.

³⁰⁵⁸ Indictment, para. 42.

allegations against him in relation to Count 2 of the Indictment. Further, in light of the finding that conspiracy to commit genocide is a continuing crime, **Nikolić's** argument that he could not subsequently join the conspiracy fails. **Nikolić's** individual criminal responsibility for conspiracy to commit genocide will be discussed further below.³⁰⁵⁹

4. Findings

881. The Trial Chamber has found that a large-scale murder operation to kill the Bosnian Muslim males in Potočari developed on 12 July, and expanded to include the males captured from the column on 13 July.³⁰⁶⁰ The Trial Chamber has also found that the ensuing execution of those Bosnian Muslim males was undertaken with genocidal intent.³⁰⁶¹

882. A fundamental aspect of the Trial Chamber's conclusion that the murder operation was undertaken with genocidal intent is the significant coordination with which the plan was carried out. On this point, the Trial Chamber recalls that the men were not simply killed upon capture; rather, a vast process was put into place. The men from Potočari were separated from the rest of the population, detained in the area, moved by bus to Bratunac, and again detained in various locations. These men were soon joined by men from the column. Although many men were executed in the Bratunac area, a large number were taken to Zvornik to be killed.³⁰⁶²

883. The evidence reveals a great deal of synchronization. The separations, transportation, detentions and killings were of such a large scale that they were carried out by many people from different units of the Bosnian Serb Forces and required significant resources such as vehicles, fuel, ammunition, and machines to bury the bodies.

884. Further, certain aspects of the operation were often carried out in a strikingly similar manner across various locations, by different individuals. For example, upon being detained, the vast majority of men were prevented from keeping their personal belongings, which were often dropped in central piles.³⁰⁶³ Further, and as noted below, the executions in Zvornik generally followed a pattern: trucks brought the prisoners from detention site to execution site, typically a secluded area close by; the geographically closest units of the Zvornik Brigade were mobilised to participate in the executions, along with other members of the Bosnian Serb Forces; throughout the operation, petrol and ammunition were sent to the detention sites.³⁰⁶⁴ The only reasonable inference to be

³⁰⁵⁹ See *infra*, para. 1416.

³⁰⁶⁰ See *infra*, paras. 1052, 1072.

³⁰⁶¹ See *supra*, para. 863.

³⁰⁶² See *supra*, Chapter III, Section F.6; Chapter III, Section G.2.3.

³⁰⁶³ See *supra*, paras. 331, 385, 389, 390, 392, 395, 401, 402, 427. See *infra*, para. 1056.

³⁰⁶⁴ See *infra*, paras. 1064, 1066.

made from this evidence is that the murder operation was being coordinated at a high level of the Bosnian Serb Forces, including the VRS Main Staff and the Security Organs.³⁰⁶⁵

885. This conclusion is supported by evidence concerning the activity of members of the Bosnian Serb Forces at the crucial time. The Trial Chamber recalls that, in the evening of 13 July, Mladić issued an order which suggests that members of the Bosnian Serb Forces were hoping to conceal all information regarding the prisoners from the outside world.³⁰⁶⁶ On the evening of 13 July, there were discussions concerning where to take the prisoners, where to execute them, and even where to bury those already dead.³⁰⁶⁷ These conversations demonstrate not only close coordination in order to achieve a common purpose, but also that the purpose must have been decided on previously.

886. In short, the Trial Chamber finds the organised and systematic manner in which the executions were carried out, over a number of days, and the targeting of victims, presupposes the existence of a concerted agreement to destroy the Muslims of Eastern Bosnia. The conduct of members the Bosnian Serb Forces was not merely similar, it was concerted and coordinated. This level of similarity of purpose and conduct could not be achieved but by prior agreement. Consequently, the Trial Chamber finds that the only reasonable inference to be drawn from the evidence is that, at least by 13 July 1995, members of the Bosnian Serb Forces, including members of the VRS Main Staff and Security Organs entered into an agreement and thus a conspiracy to commit genocide.

G. Forcible Transfer as an Inhumane Act and Deportation

887. The Indictment charges all seven Accused with forcible transfer as an underlying act of persecution, a crime against humanity pursuant to Article 5(h), an inhumane act, a crime against humanity pursuant to Article 5(i), and with deportation, a crime against humanity pursuant to Article 5(d).³⁰⁶⁸

1. Applicable Law

(a) Forcible Transfer as an Inhumane Act under Article 5(i)

888. The category of “other inhumane acts” contained in Article 5(i) functions as a residual category encompassing serious criminal acts, which are not exhaustively enumerated in Article

³⁰⁶⁵ See *infra*, paras. 1065, 1072.

³⁰⁶⁶ See *infra*, paras. 1057–1058.

³⁰⁶⁷ See *infra*, para. 1060.

³⁰⁶⁸ Indictment, Count 7, Inhumane Acts (Forcible Transfer), and Count 8, Deportation.

5.³⁰⁶⁹ The following elements are required for an act or omission to fall under the category of “other inhumane acts” under Article 5(i): (a) there was an act or omission of similar seriousness to the other enumerated crimes under Article 5; (b) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (c) the act or omission was performed by the accused or the perpetrator with the intent to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim(s), or with the knowledge that his or her act or omission was likely to cause such suffering or a serious attack upon human dignity.³⁰⁷⁰

889. Forcible transfer has been defined in the jurisprudence of the Tribunal as the forcible displacement of persons, which may take place within national boundaries.³⁰⁷¹ The Appeals Chamber has held that “specific acts of forcible transfer *may* be sufficiently serious as to amount to other inhumane acts”.³⁰⁷² It has therefore to be assessed on a case-by-case basis if the specific circumstances of the forcible transfer are sufficiently serious to amount to “other inhumane acts” pursuant to Article 5(i).³⁰⁷³

(b) Elements of Forcible Transfer and Deportation

(i) Actus Reus

890. The elements of the crimes of forcible transfer and deportation are substantially similar. The protected interests underlying the prohibition against these two crimes include the right of victims to stay in their home and community and the right not to be deprived of their property by being forcibly displaced to another location.³⁰⁷⁴

891. Forcible transfer and deportation are defined as (i) the forced displacement of persons by expulsion or other forms of coercion (ii) from an area in which they are lawfully present (iii) without grounds permitted under international law.³⁰⁷⁵

892. There is however an important distinction in the *actus reus* for the two crimes. The Appeals Chamber has determined that while forcible transfer may be carried out within national borders, for the crime of deportation the displacement of the persons must be across a *de jure* border between

³⁰⁶⁹ See e.g., *Stakić* Appeal Judgement, paras. 315–316.

³⁰⁷⁰ *Vasiljević* Appeal Judgement, para. 165; *Kordić and Čerkez* Appeal Judgement, para. 117.

³⁰⁷¹ *Stakić* Appeal Judgement, para. 317.

³⁰⁷² *Krajišnik* Appeal Judgement, para. 331; *Stakić* Appeal Judgement, para. 317. See also *Blagojević and Jokić* Trial Judgement, para. 629; *Krstić* Trial Judgement, para. 523.

³⁰⁷³ *Krajišnik* Appeal Judgement, para. 331; *Stakić* Appeal Judgement, para. 317; *Kordić and Čerkez* Appeal Judgement, para. 117.

³⁰⁷⁴ *Stakić* Appeal Judgement, para. 277.

two states or, in certain circumstances, a *de facto* border.³⁰⁷⁶ Thus, the Appeals Chamber has clearly delineated forcible transfer and deportation as two separate crimes, with deportation having an additional element. However, the actual effect of this difference, in terms of *actus reus*, has not been commented on beyond the fact that for deportation, the ultimate arrival point for the transferred person must be across a border.

893. The Trial Chamber finds that the very term *actus reus* is such that, in the case of deportation, not only must the victims end up across a border but it must be the act of the accused which determines that destination. Thus, whatever the form of forced displacement as discussed below, be it by physical force, coercion or creation of coercive conditions, it must be as a result of the force—the act of the accused—that the persons are displaced across a border. In other words, for the crime of deportation it is not sufficient to prove force on the part of the accused and the ultimate location of the victims across a border. The Prosecution must also establish the link between the two elements. To do otherwise is to leave a constituent element of the crime related not to the acts of the accused but to chance or, in many cases, to a choice made by a victim. This cannot be consistent with the concept of *actus reus* of a crime.

894. The Trial Chamber finds support for this analysis in the very word used to describe the criminal act of the accused—deport—the plain meaning of which clearly imports an action of movement across a border.

895. Therefore, the additional element of the crime of deportation is that the persons must be forcibly displaced by the accused across a *de jure* or *de facto* border.

a. Forced Character of the Displacement

896. It is a requirement for both forcible transfer and deportation that the displacement of persons is carried out by expulsion or other forms of coercion.³⁰⁷⁷ The forced character of the displacement is determined by the transferred persons' absence of genuine choice in their displacement.³⁰⁷⁸ While those displaced may consent to, or even request to be removed, that consent must be given voluntarily and as a result of the individual's free will, assessed in the light of the surrounding

³⁰⁷⁵ *Krajišnik* Appeal Judgement, para. 304; *Stakić* Appeal Judgement, paras. 278, 317; *Milutinović et al.* Trial Judgement, para. 164.

³⁰⁷⁶ *Stakić* Appeal Judgement, paras. 278, 289–300, 317; *Krajišnik* Appeal Judgement, para. 304. *See also, e.g., Naletilić and Martinović* Appeal Judgement, para. 152 (endorsing the finding in the *Stakić* Appeals Judgement).

³⁰⁷⁷ *Stakić* Appeal Judgement, para. 279; *Krnojelac* Appeal Judgement, para. 233. Although the Appeals Chamber referred to the crime of deportation, the Trial Chamber notes that the forced character of the displacement is a requirement also for the crime of forcible transfer. *See e.g., Krajišnik* Trial Judgement, para. 724.

³⁰⁷⁸ *Stakić* Appeal Judgement, para. 279; *Krnojelac* Appeal Judgement, paras. 229, 233.

circumstances.³⁰⁷⁹ The term “forced” is not restricted to physical force but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.³⁰⁸⁰ Acts of coercion include “the shelling of civilian objects, the burning of civilian property, and the commission of—or the threat to commit—other crimes ‘calculated to terrify the population and make them flee the area [...]’”.³⁰⁸¹

897. Furthermore, the jurisprudence of the Tribunal indicates that an agreement concluded by military commanders or other representatives of the parties in a conflict *per se* cannot make a displacement lawful.³⁰⁸² Such agreement *per se* “does not have any implications on the circumstances under which a transfer is lawful. Military commanders or political leaders cannot consent on behalf of the individual.”³⁰⁸³ In addition, the assistance by humanitarian agencies, such as UNPROFOR, ICRC, and NGOs, in facilitating displacements, does not of itself render an otherwise unlawful transfer lawful.³⁰⁸⁴

898. The determination as to whether a transferred person had a genuine choice is one to be made within the context of the particular case being considered.³⁰⁸⁵

b. Lawful Presence

899. As previously noted, it is an element of the crime that the victims must be “lawfully present” in the area from which the forcible removal takes place.³⁰⁸⁶ In this regard, **Beara** asserts that forcible transfer requires that a civilian population is displaced from an area in which they “lawfully reside”.³⁰⁸⁷ **Beara** submits that “it is possible to see that the practice has followed the rationale behind the prohibition on forced displacement as stipulated by Geneva Conventions and Additional Protocols—a desire to prevent dislocation of civilians from their homes and communities in which many of them and their families have resided for decades”.³⁰⁸⁸ The Prosecution submits that this

³⁰⁷⁹ *Stakić* Appeal Judgement, para. 279.

³⁰⁸⁰ *Krajišnik* Appeal Judgement, para. 319; *Stakić* Appeal Judgement, para. 281; *Krnjelac* Appeal Judgement, paras. 229, 233.

³⁰⁸¹ *Simić et al.* Trial Judgement, para. 126, referring to *Krstić* Trial Judgement, para. 147. See also *Milutinović et al.* Trial Judgement, para. 165.

³⁰⁸² *Simić* Trial Judgement, para. 127.

³⁰⁸³ *Naletilić* Trial Judgement, para. 523. See also *Simić et al.* Trial Judgement, para. 127.

³⁰⁸⁴ *Stakić* Appeal Judgement, para. 286; *Simić* Appeal Judgement, para. 180 (in the context of forcible transfer as an underlying act of persecution).

³⁰⁸⁵ See e.g., *Stakić* Appeal Judgement, para. 282.

³⁰⁸⁶ See *supra*, para. 891.

³⁰⁸⁷ *Beara* Final Brief, paras. 839 (with regard to forcible transfer), 871 (with regard to deportation).

³⁰⁸⁸ *Ibid.*, paras. 839–843, referring to, *inter alia*, *Simić et al.* Trial Judgement, para. 130, *Krstić* Trial Judgement, para. 523, and Commentary to Additional Protocol II, Art. 17, para 4847.

element imposes only the lesser requirement of lawful presence rather than the more onerous requirement of “residence”.³⁰⁸⁹

900. The Trial Chamber is of the view that the words “lawfully present” should be given their common meaning and should not be equated to the legal concept of lawful residence.³⁰⁹⁰ The clear intention of the prohibition against forcible transfer and deportation is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities. In that respect, whether an individual has lived in a location for a sufficient period of time to meet the requirements for residency or whether he or she has been accorded such status under immigration laws is irrelevant. Rather, what is important is that the protection is provided to those who have, for whatever reason, come to “live” in the community—whether long term or temporarily. Clearly the protection is intended to encompass, for example, internally displaced persons who have established temporary homes after being uprooted from their original community. In the view of the Trial Chamber, the requirement for lawful presence is intended to exclude only those situations where the individuals are occupying houses or premises unlawfully or illegally and not to impose a requirement for “residency” to be demonstrated as a legal standard.

c. Grounds Permitting Forced Displacement under International Law

901. International law recognises certain grounds permitting forced displacements/evacuation.³⁰⁹¹ Article 19 of Geneva Convention III provides for the evacuation of prisoners of war out of the combat zone and into internment facilities, subject to certain conditions.³⁰⁹² Article 49(2) of Geneva Convention IV³⁰⁹³ and Article 17(1) of Additional Protocol II³⁰⁹⁴ allow forced displacements of

³⁰⁸⁹ Prosecution Final Brief, para. 2900, fn. 6088.

³⁰⁹⁰ See in this regard Beara Final Brief, paras. 839–847.

³⁰⁹¹ *Stakić* Appeal Judgement, para. 284. See Art. 19 of Geneva Convention III and Art. 49 of Geneva Convention IV. Art. 17 of Additional Protocol II uses the term “displacement” to refer to this kind of removal of individuals.

³⁰⁹² Art. 19 of Geneva Convention III reads:

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger. Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone. Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

³⁰⁹³ Art. 49(2) and (3) of Geneva Convention IV provides that:

[...] the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

populations under limited circumstances, namely if they are carried out “for the security of the persons involved or for imperative military reasons”. Evacuation is therefore an exceptional measure which is permitted when, for example, an area is in danger as a result of military operations or is liable to be subjected to intense bombing, or when the presence of persons in an area hampers military operations.³⁰⁹⁵ It is unlawful to use evacuation measures based on imperative military reasons as a pretext to remove the population and effectuate control over a desired territory.³⁰⁹⁶ Article 49(2) of Geneva Convention IV requires that individuals who have been evacuated be transferred back to their homes as soon as hostilities in the area in question have ceased.³⁰⁹⁷

902. Both Geneva Convention IV and Additional Protocol II lay down certain humanitarian safeguards that the evacuating party must guarantee should an evacuation be conducted, such as ensuring that the civilian population, to the extent possible and practicable, is adequately provided with accommodation, hygiene, health, safety and nutrition.³⁰⁹⁸

Moreover, Art. 85 of Additional Protocol I prohibits “the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or part of the population of the occupied territory within or outside this territory in violation of Art. 49 of the Fourth Convention.”

³⁰⁹⁴ Art. 17 of Additional Protocol II provides that:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

According to the Commentary, this article prohibits forced displacements “for reasons related to the conflict”. In this respect, the Commentary to Additional Protocol II, p. 1473 states that “[i]n fact, displacement may prove to be necessary in certain cases of epidemics or natural disasters such as floods or earthquakes”. Commentary to Additional Protocol II, p. 1473.

³⁰⁹⁵ Commentary to Geneva Convention IV, p. 280 (regarding Art. 49), which also notes that evacuation is only permitted when overriding military consideration make it imperative; evacuation ceases to be legitimate if it is not imperative. *Ibid.*

³⁰⁹⁶ Commentary to Additional Protocol II, p. 1473 (regarding Art. 17) (“The situation should be scrutinized most carefully as the adjective “imperative” reduces to a minimum cases in which displacements may be ordered. Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective control over a dissident ethnic group”). See also *Blagojević and Jokić* Trial Judgement, para. 597.

³⁰⁹⁷ Geneva Convention IV, Art. 49(2); Commentary to the Geneva Convention IV, pp. 280–281 (regarding Art. 49). Evacuation must not involve the movement of individuals to places outside the occupied territory, unless it is physically impossible to do otherwise. Commentary to Geneva Convention IV, p. 280 (regarding Art. 49).

³⁰⁹⁸ See also Commentary to Geneva Convention IV, p. 280 (regarding Art. 49). While Art. 49(3) of the Geneva Convention IV provides that the evacuating party shall ensure that members of the same family are not separated to the greatest practicable extent, Art. 17 of Additional Protocol II does not contain the same provision. In this respect, the commentary of Art. 49(2) of Geneva Convention IV, p. 281 reads: “This clause naturally applies both to evacuation inside the territory and to cases where circumstances have made it necessary to evacuate the protected persons to a place outside the occupied territory.” See also *Blagojević and Jokić* Trial Judgement, para. 599 (where the Trial Chamber held that this general principle should be applicable also to non-international armed conflicts).

903. According to the Commentary of Article 17 of Additional Protocol II, displacement for humanitarian reasons, such as epidemics or natural disasters, is justifiable.³⁰⁹⁹ However, the displacement for such reasons is not justifiable if the humanitarian crisis that caused such displacement is itself the result of the physical perpetrator's or accused's own unlawful activity.³¹⁰⁰

(ii) Mens Rea

904. Given the different elements of the *actus reus* for forcible transfer and deportation, there is also a distinct *mens rea* for the two crimes. In the case of forcible transfer, as the ultimate location does not form part of the elements of the offence, the *mens rea* is established with proof of the intent to forcibly displace the person.³¹⁰¹ In the case of deportation, as displacement across a border is a constituent element, the *mens rea* for the offence must encompass this component of the crime. Thus, the Prosecution must establish that the accused intended to displace the victims across a *de jure* or *de facto* border.³¹⁰²

905. Finally, for both crimes, the accused does not need to intend to displace the individuals on a permanent basis.³¹⁰³

(c) Victims of Forcible Transfer or Deportation

906. **Nikolić** and **Gvero** put forward legal arguments concerning the status of the victims of forcible transfer or deportation. With regard to the forcible transfer of the Bosnian Muslim men from Srebrenica, **Nikolić** argues that, in law, the crime of forcible transfer cannot be committed against detainees in non-international armed conflict.³¹⁰⁴ Noting that the situation of detainees in non-international armed conflict may be compared to the situation of POWs in international armed conflict,³¹⁰⁵ **Nikolić** submits that while Article 49 of Geneva Convention IV prohibits the forcible transfer and the deportation of "protected persons", Article 46 of Geneva Convention III provides for the transfer of POWs from one location to another.³¹⁰⁶ He notes that Article 147 of Geneva Convention IV lists "unlawful deportation or transfer" as a grave breach, but Geneva Convention III, which deals with the protection of POWs, omits unlawful deportation or transfer from its list of grave breaches.³¹⁰⁷ In **Nikolić's** submission, in light of Article 5 of Additional Protocol II, which

³⁰⁹⁹ Commentary to Additional Protocol II, p. 1473. See also *Stakić* Appeal Judgement, para. 287; *Krajišnik* Appeal Judgement, para. 308, fn. 739; *Blagojević and Jokić* Trial Judgement, para. 600.

³¹⁰⁰ *Stakić* Appeal Judgement, para. 287; *Krajišnik* Appeal Judgement, para. 308, fn. 739.

³¹⁰¹ *Stakić* Appeal Judgement, para. 317. See also *Milutinović et al.* Trial Judgement, Vol. 1, para. 164.

³¹⁰² *Stakić* Appeal Judgement, para. 278, 300. See also *Milutinović et al.* Trial Judgement, Vol. 1, para. 164.

³¹⁰³ *Stakić* Appeal Judgement, paras. 278, 307, 317; *Brdanin* Appeal Judgement, para. 206.

³¹⁰⁴ *Nikolić* Final Brief, paras. 216–231.

³¹⁰⁵ *Ibid.*, para. 218.

³¹⁰⁶ *Ibid.*, para. 219.

³¹⁰⁷ *Ibid.*, para. 220.

sets minimum safeguards for “persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained”, the law applicable to non-international armed conflict makes no determination on the legality of such detention.³¹⁰⁸ In light of these arguments, **Nikolić** contends that, as is the case for POWs in international armed conflict, detainees who are justifiably detained for reasons linked to a non-international conflict cannot be considered victims of forcible transfer if they are moved between detention facilities.³¹⁰⁹ According to **Nikolić**, only civilians can be victims of forcible transfer.³¹¹⁰

907. With regard to the Bosnian Muslim able-bodied men in Žepa, **Nikolić** submits that they cannot be considered victims of the crime of deportation as long as they were “members of the ABiH or they participated directly in hostilities”.³¹¹¹ **Nikolić** advances the same argument with regard to the men in the column.³¹¹²

908. Drawing a similar comparison between Article 49 of Geneva Convention IV and Genève Convention III, **Gvero** argues that the prohibition of forced displacement for the purpose of Article 49 relates only to “civilians” and not to combatants or persons directly participating in hostilities.³¹¹³ **Gvero** also submits that Article 85 of Additional Protocol I and Article 17 of Additional Protocol II similarly only forbid forced displacement of the civilian population.³¹¹⁴ In his submission, the jurisprudence of the Tribunal also defines the prohibition of forced displacement as that of civilians.³¹¹⁵

909. **Gvero** further contends that the status of the victims as civilians or their entitlement to civilian protection is a constituent element of the crime of deportation; and that this element could be proved only if it is shown that the perpetrator was aware that the victims were civilians and that they were protected at the time in which the crime occurred.³¹¹⁶ Referring to the Appeals Chamber’s rulings in *Blaškić*, and *Kordić and Čerkez*, **Gvero** submits that the definition of civilians as applied by this Tribunal excludes combatants, as defined by international humanitarian law.³¹¹⁷

³¹⁰⁸ Nikolić Final Brief, para. 221.

³¹⁰⁹ *Ibid.*, para. 222.

³¹¹⁰ *Ibid.*, para. 222.

³¹¹¹ *Ibid.*, paras. 241-24 (referring to the *Mrkšić et al.* Trial Judgement, para. 458, in which the Trial Chamber stated that “deportation under Art. 5(d) cannot be committed against prisoners of war”).

³¹¹² Nikolić Final Brief, para. 231.

³¹¹³ Gvero Final Brief, para. 106.

³¹¹⁴ *Ibid.*

³¹¹⁵ *Ibid.*, (referring to *Stakić* Trial Judgement, para. 618 and *Mrkšić et al.* Trial Judgement, para. 458).

³¹¹⁶ *Ibid.*, para. 107. See also *ibid.*, para. 108.

³¹¹⁷ *Ibid.*, paras. 110-111 (referring, *inter alia*, to *Blaškić* Appeal Judgement, paras. 110, 104 and *Kordić and Čerkez* Appeal Judgement, paras. 51, 458, 461).

910. In the Trial Chamber's opinion, the arguments advanced by **Nikolić** and **Gvero**, which focus on the "status" of the victims, are misplaced.³¹¹⁸ While the Geneva Conventions and Additional Protocols evidence that the crime of deportation—and by analogy the crime of forcible transfer—relates to a civilian population, this is already recognised by the placement of these crimes within the Statute. Forcible transfer as an inhumane act and deportation are incorporated as crimes against humanity, which by definition must be directed against a civilian population. As the Appeals Chamber has recently clarified, it is through an assessment of the general requirements of Article 5 that the determination is made as to whether the alleged crime formed part of an attack against a civilian population so as to constitute a crime against humanity.³¹¹⁹ If this attack has been established and there is a sufficient nexus to the alleged crime, there is no additional requirement to prove that the actual victims were civilians. While this conclusion has been reached previously in the context of allegations of murder,³¹²⁰ there is no basis to treat the crimes of forcible transfer or deportation differently. Thus, contrary to the arguments of **Nikolić** and **Gvero**, the civilian status of the victims is not an element of the crime, which the Prosecution must prove beyond reasonable doubt.

911. This conclusion does not mean, however, that the status of the victims is not relevant to the overall determination as to whether forcible transfer or deportation as a crime against humanity has been proven. As the Appeals Chamber has noted for other crimes, the status of the victims may be relevant for the decision as to whether the general requirements of Article 5 have been met.³¹²¹ It may also be an important factor to consider in assessing whether the allegations factually meet the definition of the crime.

912. In the case of forcible transfer and deportation, because of the nature of these crimes, it may be that the evidence of "status of victims" is even more relevant than with respect to other crimes. That is, since the acts of detention and forced movement in some circumstances can be perfectly legitimate, the status of the victims may be very relevant to distinguish lawful acts from criminal ones. This is the case in some of the factual scenarios proffered by **Nikolić** and **Gvero**. The actions described would not constitute the crime of forcible transfer or deportation because the elements of the crime have not been established, rather than because of the "combatant" status of the victims.

913. Therefore, in the opinion of the Trial Chamber, there is no legal requirement for either forcible transfer or deportation as crimes against humanity that the victims of the crimes be civilian. However, on a case by case basis all of the facts—including evidence as to the status of the victims

³¹¹⁸ But see Judge Kwon's Dissenting Opinion, *infra*, fn. 6416.

³¹¹⁹ *Mrkšić and Šljivančanin* Appeal Judgement, paras. 42–43.

³¹²⁰ See *Mrkšić and Šljivančanin* Appeal Judgement, paras. 35–44; *Martić* Appeal Judgement, 272–314.

—will need to be assessed to determine if the chapeau requirements have been met and if the elements of the crimes alleged have been proved.

2. Findings

(a) Srebrenica

914. The Prosecution alleges that forcible transfer was committed in Srebrenica through (a) the forced busing of the Bosnian Muslim women, children and the elderly from Potočari to ABiH-held territory, (b) the forced flight of the column of Bosnian Muslim men who attempted to escape to ABiH-held territory,³¹²² and (c) the forced busing of the Bosnian Muslim men separated at Potočari, or who were captured or surrendered from the column up to Zvornik where they were ultimately executed.³¹²³

(i) The Forced Busing of the Bosnian Muslim Women, Children and the Elderly in Potočari

915. As previously described, the plan to forcibly displace the Bosnian Muslim population was already in existence and action had been taken by the VRS to execute it before the actual busing of the Bosnian Muslim women, children and the elderly in Potočari took place.³¹²⁴ The circumstances of 12 and 13 July were a culmination of that plan. Mladić's intercepted words on 12 July capture this clearly—"[...] we'll evacuate them all – those who want to [go] and those who don't want to".³¹²⁵ This belies his words in the Hotel Fontana meeting and to the Bosnian Muslims gathered in Potočari on 12 July, suggesting the Bosnian Muslim population still had a choice to stay.³¹²⁶

916. The real intention of the Bosnian Serbs Forces is also evident in their actions following the fall of Srebrenica. When in the late afternoon of 11 July, Mladić and other members of the VRS marched into Srebrenica town, members of the 10th Sabotage Detachment called on the few Bosnian Muslims still remaining there to leave their houses.³¹²⁷ Some 200 Bosnian Muslim civilians were driven out of their homes and sent towards the football field on the other side of Srebrenica town.³¹²⁸ A few days later, on 13 July, as the last of the Bosnian Muslim women,

³¹²¹ *Mrkšić and Šljivančanin* Appeal Judgement, paras. 35–44.

³¹²² Indictment, para. 56; Prosecution Pre-Trial Brief, para 145. *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

³¹²³ Indictment, para. 48(e).

³¹²⁴ *See supra*, paras. 762–775, 1085–1087.

³¹²⁵ Ex. P01113a, "Intercept, 12 July 1995, 12:50 hours".

³¹²⁶ *See supra*, paras. 290, 318.

³¹²⁷ *See supra*, para. 261.

³¹²⁸ *See supra*, para. 261. *See also* Nura Efendić, Ex. P03238, "92 bis statement" (21 June 2000), p. 2 (stating that in July 1995, members of the Bosnian Serbs Forces entered Efendić's village and ordered the villagers to go to the DutchBat compound in Potočari, which they had to do).

children and the elderly were boarding the vehicles in Potočari, orders were issued for the military police to go to Srebrenica to check if any Bosnian Muslims were still there.³¹²⁹ It is evident that the intent of the Bosnian Serb Forces was to ensure that no Bosnian Muslims remained in Srebrenica.³¹³⁰

917. The circumstances leading up to the busing of the Bosnian Muslim women, children and the elderly further evidence the compulsive nature of their departure. As a result of a military assault on the enclave, the population of Srebrenica fled their homes, eventually gathering for safety in Potočari. The situation and atmosphere there was marked by panic, fear, and despair.³¹³¹ There was shelling and shooting in the immediate vicinity of the DutchBat compound where the Bosnian Muslims were gathered throughout the day on 11 July.³¹³² Between 11 and 13 July, the humanitarian situation which had been dire became catastrophic.³¹³³ In the surrounding hills burning houses and haystacks could be seen.³¹³⁴ Instances of actual abuse—physical and mental—coupled with threats, mockery and persistent rumours of assault, rape and murder created an unbearable situation of terror for the population.³¹³⁵ The sense of hopelessness and vulnerability culminated as the Bosnian Muslims gathered in Potočari witnessed the disabling of DutchBat—the UN force designated to protect them.³¹³⁶ The Trial Chamber therefore finds that the conditions and atmosphere in Potočari were coercive to such an extent that the only option for the Bosnian Muslim women, children and the elderly was to leave.

918. Conditions of compulsion continued once the vehicles arrived and the physical movement of the Bosnian Muslim women, children and the elderly began. In addition to actual instances of the use of force to move people on to overcrowded buses, the entire boarding process was carried out in the presence and under the supervision of the feared Bosnian Serb Forces.³¹³⁷ The use of German shepherd dogs and other acts of intimidation enhanced the atmosphere of oppression.³¹³⁸ As they boarded the buses, the women, children and the elderly of Srebrenica also faced a forced and painful separation from their men.³¹³⁹ As a final act, the busing process on 12 and 13 July confirmed that no option remained for the civilian population of Srebrenica but to leave.³¹⁴⁰

³¹²⁹ See *supra*, para. 324.

³¹³⁰ See *supra*, paras. 1085–1087.

³¹³¹ See *supra*, paras. 312–315.

³¹³² See *supra*, paras. 266, 272.

³¹³³ See *supra*, paras. 309–311.

³¹³⁴ See *supra*, para. 303.

³¹³⁵ See *supra*, para. 303.

³¹³⁶ See *supra*, paras. 306–308.

³¹³⁷ See *supra*, paras. 316–324.

³¹³⁸ See *supra*, para. 317.

³¹³⁹ See *supra*, paras. 319–324.

³¹⁴⁰ See *supra*, paras. 1085–1087.

919. It is argued that the Bosnian Muslim population actually wanted to leave the enclave and that this negates the forcible transfer alleged.³¹⁴¹ There is evidence before the Trial Chamber that at various times, some of the population wanted to leave Srebrenica because of the living conditions.³¹⁴² The BiH authorities were opposed to this and there are examples of measures put in place to prevent it.³¹⁴³ However, while the BiH authorities continued to refuse to allow the population to leave the enclave even up to a few days before the fall of Srebrenica, the Srebrenica municipal authorities had already considered a possible evacuation as “the last unpopular step to save the population”.³¹⁴⁴

920. The wish of some Bosnian Muslims to leave the enclave in the months preceding the fall of Srebrenica, does not negate the forcible nature of the ultimate removal of the whole population. The mass exodus on 11 and 13 July was not the result of a voluntary request from the population, acceded to by the Bosnian Serb Forces. It was the consequence of a deliberate plan carried out over several months culminating in a military attack and the creation of disastrous conditions which compelled the entire population to abandon their homes.³¹⁴⁵ In the view of the Trial Chamber, the evidence that some wished to leave therefore raises no doubt as to the forcible nature of the transfer of the Bosnian Muslim population.

921. Similarly, Karremans’ comments at the Hotel Fontana meeting that it was the wish of Bosnian Muslims to leave the enclave do not raise doubt as to the forced nature of the subsequent removal.³¹⁴⁶ By the time his remarks were made, the plan to forcibly remove had come to near fruition. The population of Srebrenica had already fled to Potočari *en masse* and the conditions which ultimately compelled their departure were already present. Karremans simply put voice to the conclusion of the Bosnian Muslims that the circumstances were such that they had no option but to leave. Further, as mentioned, it is the consent of each individual and not of a collective group or official authorities deciding on behalf of a group, that determines the voluntariness or otherwise of a transfer.³¹⁴⁷

³¹⁴¹ See Nikolić Final Brief, paras. 136, 228; Borovčanin Final Brief, para. 113.

³¹⁴² Exs. 1D00495, 5D00509, “Report on meeting with Ken Biser sent by the ABiH 2nd Corps Command in Tuzla to Rasim Delić signed by Sead Delić, 9 Dec 1994”, pp. 2–3; Ex. 5D00244, “Order from the the ABiH 28th Division to the 285th Žepa Brigade, Ramiz Bećirović, 27 May 1995”.

³¹⁴³ See Ex. 5D00244, “Order from the ABiH 28th Division to the the 285th Žepa Brigade, Ramiz Bećirović, 27 May 1995”.

³¹⁴⁴ Ex. 4DP00009, “Report from the session of the Srebrenica Municipality Presidency held July 1995 signed by President of the Presidency Osman Suljić”, 9 July 1995; Ex. 1D00035, “Letter from Akashi (UNPF-HQ, Zagreb) to Annan on Situation of Srebrenica, 12 July 1995”, p. 2.

³¹⁴⁵ See *supra*, paras. 762–775, 1085–1087.

³¹⁴⁶ See *supra*, para. 275.

³¹⁴⁷ See *supra*, para. 897; *Simić et al.* Trial Judgement, para. 128.

922. The Bosnian Serb civilian and military authorities tried to give the forcible transfer of the Bosnian Muslim women, children and the elderly a veneer of legitimacy. The 17 July 1995 statement signed by Mandžić, Deronjić and Franken, stating that each Bosnian Muslim could have chosen to stay in or leave Srebrenica but they chose to be evacuated to Kladanj, was such an attempt.³¹⁴⁸ Considering it in the context of all the circumstances outlined above, the Trial Chamber is satisfied it did not reflect the reality of the situation and it casts no doubt on the forcible nature of the removal of the population.

923. With regard to the requirement of lawful presence, the Trial Chamber, as previously indicated, is satisfied that the population of Srebrenica was lawfully present and recalls that in mid-1995, the population in Srebrenica was approximately 42,000, 85 per cent of whom were internally displaced persons.³¹⁴⁹ The Trial Chamber finds that the population of Srebrenica was lawfully present there.

924. The Trial Chamber also finds that the forcible displacement took place after the heavy military action was over, negating any suggestion that this was for the civilians' own security or for imperative military reasons. It was triggered by the conflict and was not necessary for reasons of epidemics or because of natural disasters, for example. Furthermore, the humanitarian catastrophe was the result of the Bosnian Serbs' own unlawful activity in the months leading up to and during the attack on Srebrenica.³¹⁵⁰ No justification for the displacement can therefore be premised on conditions that were created by the Bosnian Serbs themselves. Lastly, the temporary requirement—that the persons evacuated be transferred back to their homes as soon as the hostilities cease—has not been met.³¹⁵¹

925. For the foregoing reasons, and for the reasons explained previously in the context of the discussion on Article 5, the Trial Chamber finds that the organised transportation of the Bosnian Muslim women, children and the elderly out of Potočari constitutes forcible transfer.³¹⁵²

³¹⁴⁸ See *supra*, para. 292.

³¹⁴⁹ See *supra*, paras. 899–900.

³¹⁵⁰ See *supra*, paras. 762–775.

³¹⁵¹ See Mevlida Bektić, Ex. P03245, “92 *bis* statement” (16 June 2000), p. 5 (stating that if it were possible they would go back to her village); Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), p. 7 (stating she would like to go back to her village); Salih Mehmedović, Ex. P03241, “92 *bis* statement” (15 June 2000), pp. 3, 5 (stating that he would like to return to his village). See also Senija Suljić, Ex. P03242, “92 *bis* statement” (17 June 2000), pp. 2–3 (stating she “can never go back to Srebrenica”); Amer Malagić, Ex. P03240, “92 *bis* statement” (15 June 2000), pp. 4–5 (stating that he is not planning to return to Bratunac).

³¹⁵² See *supra*, paras. 762–776.

(ii) The Bosnian Muslim Men in the Column Fleeing to ABiH-Held Territory

926. The factors that contributed to and constituted the plan to forcibly displace the Bosnian Muslim population were already in place by the evening of 11 July when the column began to move out of the Srebrenica enclave.³¹⁵³ The indiscriminate military attack on Srebrenica which prompted parts of the population to flee to Potočari, similarly compelled the departure of the men to the surrounding villages. The men who gathered around the villages of Šušnjari and Jagličići and ultimately left through the woods to ABiH-held territory in the evening of 11 July, were driven out of their homes just as the women, children and the elderly had been.³¹⁵⁴ However, the column, predominantly consisting of able-bodied men, was of a different nature in that it was mixed in composition—partly military and partly civilian.³¹⁵⁵ As indicated previously, there is no requirement at law to demonstrate that the victims of forcible transfer are civilians.³¹⁵⁶ However, in the opinion of the Trial Chamber there are separate factual considerations of relevance with respect to these two components of the column in terms of the constituent elements of forcible transfer.³¹⁵⁷

927. The Trial Chamber has assessed the testimony of various Bosnian Muslim witnesses indicating that the men in the column had no choice but to leave the enclave for fear of their lives.³¹⁵⁸ The Trial Chamber finds that the recollection of some of the Bosnian Muslim witnesses it has heard as to why they left Srebrenica on the night of 11 July has been understandably coloured by the horrific events which followed and the terrible fate of the men who remained, surrendered or were captured. With hindsight, the flight of the men was a question of life or death. But for the legal element of forcible transfer, the issue is whether at the time they did so by choice or because of force. Looking at the totality of the evidence before it, the Trial Chamber finds that the military component of the column, unlike the civilian component, had options other than fleeing. They had

³¹⁵³ See *supra*, paras. 762–775, 1085–1087.

³¹⁵⁴ See *supra*, para. 267–271, 780–783.

³¹⁵⁵ See *supra*, para. 270; See also Samila Salčinović, Ex. P03233, “92 *bis* statement” (18 June 2000), pp. 2–3 (stating that her husband, who was a soldier in the ABiH, told her that he had been ordered to leave before Srebrenica fell).

³¹⁵⁶ See *supra*, paras. 906–913.

³¹⁵⁷ But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

³¹⁵⁸ See Mevlida Bektić, Ex. P03245, “92 *bis* statement” (16 June 2000), p. 2; Hana Mehmedović, Ex. P03244, “92 *bis* statement” (17 June 2000), pp. 1–3; Salih Mehmedović, Ex. P03241, “92 *bis* statement” (15 June 2000), p. 1; Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000), p. 2 (stating that her son-in-law and his brother were afraid to get killed if they went to the DutchBat compound in Potočari and that indeed all the men who went to Potočari were killed); PW-119, Ex. P02272, “92 *ter* transcript”, KT. 3239 (23 May 2000) (stating that he left for the woods as, after the Bosnian Serbs took over Srebrenica town, the situation was chaotic and there was no way out, as they could only expect death in Potočari given they had no protection from DutchBat); See also Samila Salčinović, Ex. P03233, “92 *bis* statement” (18 June 2000), pp. 1–2 (stating that male members of her family were afraid to go to Potočari); PW-127, T. 3509, 3537 (2 Nov 2006) (stating that it was evident that the objective of the Bosnian Serbs was “to kill us all”. PW-127 concluded this “because of everything that had been happening from the beginning of the war, and all the shelling in Srebrenica.” He also stated “that because we were Muslims, they wanted to kill us.” That is why he left with the column); PW-111, T. 6972 (6 Feb 2007) (stating that the situation in Srebrenica was chaotic, the artillery and shelling attacks were intense, so they had to leave and he left with the column).

the choice to stay and fight, to surrender or to retreat. As the tragic events of Srebrenica were unprecedented in the conflict, the decision of the members of the ABiH and others who were active participants in the hostilities was a strategic one in a military context. While the risks of battle and the difficult conditions for prisoners of war may have motivated the decision to leave, it was in the end a choice made and cannot be categorized as a forcible transfer.

928. However, the Trial Chamber finds, by majority, Judge Kwon dissenting,³¹⁵⁹ that the situation is completely different for the large civilian component of the column. The prohibitions on deportation and forcible transfer are designed specifically to guard against forcing civilians from their homes. In the context of armed conflict, civilians—male or female—cannot be made to choose to fight, surrender or flee. For a civilian, it amounts to no choice at all. Thus, while the military men in the column voluntarily left the enclave that evening, the same cannot be said of the civilians who were with them.

929. As indicated, these civilians, primarily men, fled their homes under the same conditions of fear and panic which triggered the departure of the population generally from Srebrenica. Thus they had been forced from their homes by the military action levelled against the enclave by the VRS. However, this portion of the population—distinct from the women, children and the elderly—went to the surrounding villages to await further developments rather than proceeding to Potočari.³¹⁶⁰ As a result, they did not experience the catastrophic conditions which befell those taking shelter in Potočari and which contributed to the atmosphere of compulsion leading to the forced transfer of the women, children and the elderly. Nevertheless, these civilian men had been forced from their homes and were left without the choice to return to Srebrenica as they had no one to defend them. By the evening of 11 July, with the triumphant march through the town of Srebrenica by Mladić and others, followed by the clearing of any remaining residents by VRS forces, it was evident to all that the enclave and town had fallen under Bosnian Serb control and Bosnian Muslims would not be allowed to return to their homes there.³¹⁶¹ In these circumstances, in the context of the evident and irreversible fall of Srebrenica to the Bosnian Serb Forces, and the departure of the ABiH 28th Division, their last protection, the civilians were left with no other option but to leave their homes. The Trial Chamber, by majority, Judge Kwon dissenting,³¹⁶² is therefore satisfied that the civilian members of the column did not exercise a genuine choice to leave. Rather they were forced to

³¹⁵⁹ See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

³¹⁶⁰ See *supra*, para. 267–271.

³¹⁶¹ See *supra*, paras. 260–261.

³¹⁶² See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

abandon their homes and flee by the actions of the Bosnian Serb Forces in circumstances which amounted to forcible transfer.³¹⁶³

930. The Trial Chamber, by majority, Judge Kwon dissenting,³¹⁶⁴ therefore finds that the crime of forcible transfer was committed with reference to the civilian component of the column which fled Srebrenica on the evening of 11 July.

931. The Trial Chamber refers to its discussion above on the requirement of lawful presence and of whether the forcible transfer of the civilians in the column amounted to an evacuation permitted under international law. The same findings are applicable in this case.

(iii) The Forced Busing of the Bosnian Muslim Men Separated and Detained in Potočari or Those Surrendered or Captured from the Column to Bratunac and the Zvornik area

932. The Bosnian Muslim men separated from their families in Potočari on 12 and 13 July and those who surrendered or were captured along the Bratunac-Konjević Polje Road on 13 July, were transported to various temporary detention centres in Bratunac town.³¹⁶⁵ Subsequently, they were moved to other detention sites in the Zvornik area where they were ultimately murdered.³¹⁶⁶

933. As will be further discussed below, the Trial Chamber finds that the Bosnian Muslim men were detained and then moved, from one detention site to another, as part of the plan to murder them. The plan to kill the Bosnian Muslim men had already been conceived as of the morning of 12 July.³¹⁶⁷ Thus by the time the VRS transferred these men to Bratunac and then to the Zvornik area it was done in execution of the plan to murder. The Trial Chamber finds that the VRS's intent at that point was to murder the Bosnian Muslim men and not to forcibly transfer them.

934. Absent the requisite *mens rea*, the Trial Chamber cannot find that forcible transfer was committed against the Bosnian Muslim men who were detained in Potočari and those who surrendered or were captured along the Bratunac-Konjević Polje Road when they were transported to Bratunac and then to the Zvornik area.

935. Lastly, the Trial Chamber notes that **Nikolić's** argument that the factual requirement pleaded by the Prosecution—that these Bosnian Muslim men and those in the column be displaced to areas

³¹⁶³ See *supra*, Chapter III, Section C–D.

³¹⁶⁴ See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–14.

³¹⁶⁵ See *supra*, paras. 338, 340. The Bosnian Muslim men who surrendered or were captured along the Bratunac-Konjević Polje Road were first detained at various locations, including Sandići Meadow, Konjević Polje, and Nova Kasaba Football Field, before being transported to Bratunac. See *supra*, paras. 384–389, 392–395.

³¹⁶⁶ See *supra*, paras. 468, 472–473.

³¹⁶⁷ See *infra*, para. 1051.

outside the control of the RS—has not been proven.³¹⁶⁸ The Trial Chamber considers that as forcible transfer with reference to the detained men has not been found, it need not consider this argument. With regard to the civilian men in the column, although the allegation of the Prosecution with respect to movement outside the RS has not been proven beyond reasonable doubt, as this does not constitute an element of forcible transfer, it does not affect whether the crime has been established.

(iv) Conclusion

936. The Trial Chamber finds that the elements of the crime of forcible transfer with regard to the Bosnian Muslim women, children and the elderly who were transported out of Potočari have been met and that the crime of forcible transfer was committed against them. Further, the Trial Chamber, by majority, Judge Kwon dissenting,³¹⁶⁹ finds that the elements of the crime with regard to the civilians in the column have also been met, and that the crime of forcible transfer was similarly committed against them.

937. Furthermore, the Trial Chamber finds that the forcible transfer of the Bosnian Muslim women, children and the elderly and, by majority, Judge Kwon dissenting,³¹⁷⁰ the forcible transfer of the civilians in the column were of similar seriousness to other acts enumerated in Article 5, as they involved a mass transfer under duress and in terror. In the case of the women, children and the elderly, the mass transfer was also systematic. This happened in the context of an indiscriminate attack against the civilian population, under a cloud of great uncertainty, and with no guarantees of when and where they would be re-united with their families, with the consequent serious mental harm this caused. For the women, children and the elderly, this also happened in the context of the painful separations from their male family members. The Trial Chamber finds that these acts of forcible transfer are sufficiently serious to amount to “other inhumane acts” under Article 5(i) of the Statute.

³¹⁶⁸ Nikolić Final Brief, paras. 224, 231, 1023, 1025; Nikolić Closing Arguments, T. 34514 (9 Sept 2009). *See also* Prosecution 98 *bis* submission, T. 21432 (18 Feb 2008). Nikolić also argues that detainees in non-international armed conflict who are justifiably detained for reasons related to the armed conflict cannot be considered victims of forcible transfer if they are moved between detention facilities, similar to the case of prisoners of war in international armed conflict situations. According to Nikolić, only civilians can be victims of forcible transfer. Nikolić Final Brief, paras. 216–231; Nikolić Closing Arguments, T. 34508–34510 (9 Sept 2009). *See also* Borovčanin Final Brief, paras. 110, 509–518. The Trial Chamber refers to its discussion above on the merits of this argument. *See supra*, paras. 910–913.

³¹⁶⁹ *See* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

³¹⁷⁰ *See* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

(b) Žepa

938. The Prosecution alleges that the crime of forcible transfer was committed in Žepa through the forced busing of the Bosnian Muslim population to ABiH-held territory and the forced movement of the able-bodied men across the Drina River to Serbia, and that the crime of deportation was committed through the forced movement of the Bosnian Muslim men across the Drina River to Serbia.³¹⁷¹ The Prosecution charges all the Accused with the crime of forcible transfer as an inhumane act under Count 7 and the crime of deportation under Count 8.³¹⁷²

(i) Lead up to Military Attack in July 1995

939. Although in the first part of 1995 the humanitarian situation in Žepa was not as desperate as that in Srebrenica, the VRS increasingly refused or hindered the delivery of humanitarian aid to Žepa and blocked fuel transportation.³¹⁷³ About a month prior to the fall of Žepa, the humanitarian aid decreased.³¹⁷⁴ As a result, by July 1995, the living conditions were very difficult. Meanwhile, from June 1995, the VRS intensified its sporadic shelling of the enclave, causing civilian casualties and the destruction of some villages in the enclave.³¹⁷⁵

(ii) The Forced Busing of the Bosnian Muslim Civilians

940. Having forcibly removed the Bosnian Muslim population of Srebrenica, the VRS proceeded steadily to Žepa. The plan to forcibly remove the Bosnian Muslim population from the two enclaves culminated in the forced movement of the Bosnian Muslims from Žepa.

941. The VRS initiated discussions regarding the removal of the population of Žepa before their arriving militarily at the enclave. Three rounds of “negotiations” to discuss the transportation of the Bosnian Muslim population out of Žepa took place. In the Trial Chamber’s view, the atmosphere was coercive throughout.³¹⁷⁶ At each juncture, military force was the means used to compel concessions from the civilian population of Žepa. The first round of negotiations, held on 13 July 1995, was preceded by the fall of Srebrenica. These discussions began at the same time the VRS was marching towards Žepa. The prevailing tone is best captured by the ultimatum issued at that time: “complete evacuation of the entire population or a military solution”.³¹⁷⁷

³¹⁷¹ Indictment, paras. 48(e), 71, 84.

³¹⁷² *Ibid.*, paras. 71, 84.

³¹⁷³ *See supra*, paras. 237–241, 665.

³¹⁷⁴ *See supra*, paras. 234, 241, 767.

³¹⁷⁵ *See supra*, paras. 666, 671.

³¹⁷⁶ *See supra*, paras. 675–679, 689–690, 702–704.

³¹⁷⁷ *See supra*, para. 679.

942. When, after the first round, the Bosnian Muslim representatives in Žepa failed to accept the VRS's proposal to remove the population, the VRS mounted an indiscriminate attack on the protected UN enclave, comprised of infantry assaults and shelling,³¹⁷⁸ contrary to Krstić's order that the Bosnian Muslim civilian population and UNPROFOR should not be targets.³¹⁷⁹ UKRCoy checkpoints were assailed and at least one was taken over completely.³¹⁸⁰ Despite organised resistance from the ABiH, by 19 July it was evident to all that the Žepa enclave was about to fall in the wake of the military assault by the VRS. It was in these circumstances on 19 July that Mladić called for a halt of hostilities in order to open a second round of "negotiations".³¹⁸¹ By that stage, already the Bosnian Muslim representatives had no choice but to give in to Mladić's demand to move out the population from Žepa.³¹⁸² This reality was only reinforced when after the collapse of the second round of discussions the VRS intensified its attack on Žepa, targeting defence lines, buildings and houses, as well as UKRCoy.³¹⁸³

943. It was at this critical juncture that news about the fate of the Bosnian Muslims from Srebrenica began to circulate in Žepa.³¹⁸⁴ Rumours of atrocities, made even more terrifying by uncertainty, added to the anxiety of an already fearful population. Meanwhile in the enclave, loudspeakers were broadcasting a message that there was no chance for the Bosnian Muslim population as the area was controlled by Mladić.³¹⁸⁵

944. It was in this context that the last round of "negotiations" was held, leading to the signing of the 24 July 1995 Agreement. Having considered the totality of the circumstances, the Trial Chamber is satisfied beyond reasonable doubt that, at this point, the population of Žepa had no choice but to leave the enclave. Those who gathered to be transported away were there not by choice but through circumstances of compulsion. As one witness described, the choice was "to leave Žepa under very cruel and humiliating circumstances [...] or to remain and then either be killed or be subjected to suffering".³¹⁸⁶ Even as the transfer was being carried out, a VRS vehicle carrying a "Serb" flag would periodically drive through the town, emphasising to the frightened population the precarious nature of their circumstances.³¹⁸⁷ Thus, however orderly the physical

³¹⁷⁸ See *supra*, para. 680.

³¹⁷⁹ Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995", p. 4.

³¹⁸⁰ See *supra*, para. 683.

³¹⁸¹ See *supra*, paras. 683–687.

³¹⁸² See *supra*, para. 690.

³¹⁸³ See *supra*, para. 696.

³¹⁸⁴ The Trial Chamber is satisfied that reports of the Srebrenica events—forcible transfer and killings—had reached Žepa. See *supra*, para. 690.

³¹⁸⁵ See *supra*, para. 695.

³¹⁸⁶ See *supra*, para. 714.

³¹⁸⁷ See *supra*, para. 716.

transfer was,³¹⁸⁸ it cannot negate the relentless pressure brought by the VRS, which resulted in a forced movement of the population of Žepa.

945. There is evidence that during the course of the transfer UNPROFOR and ICRC were present. That, however, does not render the transportation lawful.³¹⁸⁹ Similarly, the Trial Chamber is satisfied that the 24 July 1995 Agreement, signed in the presence of the UKRCoy Commander, in no way altered the forcible nature of the transfer. An agreement reached by parties to the conflict, even with the participation of international organisations cannot *per se* make a forcible displacement lawful.³¹⁹⁰ Further, the accession to it by the “representatives” of the population in these particular circumstances cannot be categorised as a voluntary action and the agreement in no way reflected the reality of the circumstances. The Trial Chamber finds that the agreement represented nothing more than an attempt by the VRS to put a legitimate veneer on an otherwise unlawful forcible transfer.

946. There is also evidence that, in the first part of 1995, some of the Bosnian Muslims in Žepa wanted to leave the enclave but both the Bosnian Muslim political and military authorities put measures in place to prevent this movement.³¹⁹¹ It is argued by **Beara** and **Gvero** that this evidences that the ultimate evacuation of the population in July 1995 reflected the choice of the population and did not amount to forcible transfer.³¹⁹²

947. In the view of the Trial Chamber, the fact that some of the population wanted to leave Žepa is but one factor to be considered in assessing whether the circumstances in July 1995, considered in totality, amounted to forcible transfer. In the opinion of the Trial Chamber, the conditions created in July 1995 particularly by the military action overshadowed any previous inclination of segments of the civilian population to leave the enclave. This evidence is not sufficient to raise a doubt as to the involuntary nature of the transfer.

948. With regard to the requirement for lawful presence, the Trial Chamber recalls that in 1995, there were 6,500 to 8,000 people living in Žepa and 65% or two thirds of the population were internally displaced persons.³¹⁹³ There is no evidence indicating an unlawful presence and the Trial Chamber is satisfied that the Bosnian Muslim population was lawfully present in Žepa.

³¹⁸⁸ See *supra*, paras. 713, 716.

³¹⁸⁹ See *supra*, paras. 712, 716–718.

³¹⁹⁰ See *supra*, para. 897.

³¹⁹¹ See *supra*, para. 667.

³¹⁹² Beara Final Brief, paras. 834–838; Gvero Final Brief, para. 94.

³¹⁹³ See *supra*, paras. 667, 670.

949. Furthermore, the VRS undertook the transportation of the Bosnian Muslim civilians neither for the security of the population, nor for imperative military reasons. Following the signature of the 24 July 1995 Agreement, the Žepa enclave fell and the major fighting ceased.³¹⁹⁴ Therefore, no military threat existed following the fall of Žepa. Moreover, no humanitarian reasons justified the transportation of the Bosnian Muslim civilians out of Žepa. In fact, the humanitarian crisis in Žepa was induced by the VRS's conduct with the clear aim of driving the Bosnian Muslim population out of the enclave, as planned in Directive 7.³¹⁹⁵ While there is evidence that the Bosnian Muslims may also have burnt houses in the surrounding hills, this does not negate the fact that the VRS participated in the looting and burning of houses in Žepa.³¹⁹⁶ This conduct evidences that the VRS did not intend to return the transferred Bosnian Muslim civilians to where they lived after the end of hostilities.

950. The circumstances provide abundant evidence from which the requisite *mens rea* to forcibly remove the population of Žepa can be found. The negotiations between the Bosnian Muslim representatives and the VRS were initiated by the VRS and from the very beginning the stated purpose was to discuss the removal of the Bosnian Muslim population. The discussions were carried out in an intimidating fashion and under threat of military action. Every time the negotiations failed to produce the desired result, the VRS responded with escalated attacks on the enclave, targeting civilians and houses.³¹⁹⁷ Even before an agreement had been achieved, Mladić was seeking the assistance of Smith in arranging for vehicles for transportation.³¹⁹⁸ While the 24 July 1995 Agreement provided that the Bosnian Muslim civilians "shall enjoy freedom of choice of place of living and residence" in accordance with international humanitarian law, this option was never discussed.³¹⁹⁹ Furthermore, the VRS announced their intention for all to hear by broadcasting messages using loudspeakers, exhorting the population to leave the enclave.³²⁰⁰ The Trial Chamber is satisfied beyond all reasonable doubt of the intent of the VRS to remove the Bosnian Muslim population from the enclave.

951. In view of the forgoing reasons, the Trial Chamber therefore finds that the systematic transportation of the Bosnian Muslim civilians out of the Žepa enclave amounts to the crime of forcible transfer.

³¹⁹⁴ See *supra*, para. 708.

³¹⁹⁵ See *supra*, para. 199.

³¹⁹⁶ See *supra*, para. 723.

³¹⁹⁷ See *supra*, paras. 675–701.

³¹⁹⁸ See *supra*, para. 693.

³¹⁹⁹ See *supra*, paras. 703–704.

³²⁰⁰ See *supra*, para. 695.

(iii) The Forced Movement of the Bosnian Muslim Able-Bodied Men

a. Preliminary Issue: the Alleged Victims of Forcible Transfer and Deportation

952. The Trial Chamber first addresses a preliminary matter in respect of the Bosnian Muslim able-bodied men in the enclave and the charges in the Indictment.³²⁰¹

953. It is clear that under paragraph 84 the Indictment charges the Accused with the crime of deportation in relation to the Bosnian Muslim able-bodied men who fled to Serbia and this allegation has been addressed by all the Accused.³²⁰² However, in the view of the Trial Chamber, by majority, Judge Kwon dissenting,³²⁰³ it is also clear that alternatively the Prosecution has alleged that the same factual circumstances constitute forcible transfer as an inhumane act. This factual allegation can be found in paragraph 71 of the Indictment which reads as follows:

The Transportation of the women and children of Žepa began on 25 July 1995. On or about the same day, hundreds of mostly able-bodied Muslim men began to flee across the Drina River to Serbia where many of them were registered by the International Committee for the Red Cross (ICRC) and eventually released. The Muslim men fled to Serbia because they feared they would be harmed or killed if they surrendered to the VRS.³²⁰⁴

In the Trial Chamber's opinion by majority, Judge Kwon dissenting, the Indictment thus alleges that the able-bodied men who swam across the Drina River to Serbia were victims of the crimes of forcible transfer and deportation under Counts 7 and 8, respectively.

954. The Trial Chamber will now consider the facts related to the able-bodied men who fled across the Drina River to Serbia in relation to these counts.

b. Forcible Transfer or Deportation of the Able-Bodied Men

955. As previously described,³²⁰⁵ no determination as to the status of the Bosnian Muslim able-bodied men is necessary as an element of forcible transfer or deportation.³²⁰⁶ It may, however, have a factual effect in certain circumstances on the issue of whether the movement was forced or not. The able-bodied men of Žepa, including the soldiers, started fleeing the enclave once the forced

³²⁰¹ Though not specifically argued, the submissions of **Nikolić** raised the question as to whether the flight of the able-bodied men across the Drina River into Serbia has been charged both as deportation and forcible transfer. **Nikolić** Final Brief, paras. 233–237.

³²⁰² The Prosecution has not charged either forcible transfer or deportation in relation to the other able-bodied men of Žepa who fled within the territory of BiH.

³²⁰³ See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

³²⁰⁴ Indictment, para. 71.

³²⁰⁵ See *supra*, paras. 906–913.

³²⁰⁶ But see Judge Kwon Dissenting Opinion, *infra*, paras. 2–6, 15–20.

busing of the Bosnian Muslim civilians proceeded.³²⁰⁷ Like others in the population, these men had faced the same living conditions in Žepa and they had encountered the same military action against the enclave. Unlike Srebrenica, the ABiH soldiers on this occasion chose to remain in the woods around Žepa town and to resist the attack of the VRS militarily.³²⁰⁸ Once however it became clear that the enclave had fallen under Bosnian Serb control, the men of Žepa—civilian and military—were in a similar situation to those of Srebrenica. For the civilian men of Žepa, the stark refusal of the VRS during the negotiations to allow them to be transferred with the rest of the population made it even more apparent that they would not be allowed to remain in Žepa. Like the civilian men of Srebrenica, they had no option but to flee.

956. As for the military and those participating in hostilities, the circumstances were very different from those which their counterparts in Srebrenica had faced. The Trial Chamber is satisfied that, by 24 July 1995, these men would have been well aware of the reports of mass killing after the fall of Srebrenica.³²⁰⁹ Their decision to flee cannot be categorised as a strategic one taken in military terms. Simply, they fled the enclave in fear for their lives.³²¹⁰ That the majority chose to escape to Serbia to face surrender and detention as POWs evidences their desperation.³²¹¹ While the VRS maintained that those men who surrendered their weapons would be exchanged with the VRS POWs held by the ABiH,³²¹² it is clear that the able-bodied men had no faith in those words.³²¹³ The Trial Chamber is satisfied that the able-bodied men—civilian and military—fled the enclave because they had no other genuine choice but to do so. That was the only option left for them to survive.

957. Lastly, with regard to the requirement for lawful presence of the able-bodied men in Žepa, the Trial Chamber notes the submission by **Miletić** that the able-bodied men—“members of the Muslim armed forces”—were not legally present in the enclave, which was supposed to be demilitarised.³²¹⁴ In the Trial Chamber’s view, soldiers *per se* were not excluded from living in the enclave. Rather, it is the arms that were prohibited and thus it is not the case that the presence of the soldiers was unlawful *per se*. In July 1995, 1,200 to 2,000 of the inhabitants were able-bodied men.³²¹⁵ The Trial Chamber has no doubt that they were lawfully present there.

³²⁰⁷ See *supra*, paras. 732–738.

³²⁰⁸ See *supra*, paras. 724, 727, 729–730, 733.

³²⁰⁹ See *supra*, paras. 680, 690, 706.

³²¹⁰ See *supra*, paras. 690, 706.

³²¹¹ See *supra*, paras. 731–738.

³²¹² See *supra*, paras. 679–680, 689–690, 694, 697, 699–704, 725, 728–731.

³²¹³ See *supra*, paras. 690, 706.

³²¹⁴ Miletić Final Brief, paras. 607, 609.

³²¹⁵ See *supra*, para. 670.

958. The Trial Chamber therefore finds by majority, Judge Kwon dissenting,³²¹⁶ that the movement across the Drina River of able-bodied men from the Žepa enclave amounts to forcible transfer.

959. As noted previously, for the crime of deportation to be established, it is not sufficient to prove force on the part of the Accused and the ultimate location of the victims across a border.³²¹⁷ The Prosecution must also establish the link between the two elements. In this instance, while the able-bodied men ultimately ended up in Serbia, the evidence does not support that it was the acts of the accused which caused them to cross the border.³²¹⁸ In fact, while these men swam across the Drina River to Serbia, the evidence shows that there were others who fled to various areas within national borders such as Kladanj, Goražde, Tuzla and Sarajevo.³²¹⁹ In these circumstances, while the men were forced out of Žepa, those who fled to Serbia made the choice to flee across the border. It therefore cannot be said that they were deported.

960. Moreover, there is no evidence to show that the VRS had the intent to deport the men across a border. In fact, there is evidence to the contrary in that subsequently members of the VRS were anxious to secure the return of the men who had crossed into Serbia.³²²⁰ This negates the existence of any intent to deport them.

961. The Trial Chamber therefore finds that the forced movement of the able-bodied men from the Žepa enclave does not amount to the crime of deportation.

(iv) Conclusion

962. For the foregoing reasons, the Trial Chamber finds that the elements of the crime of forcible transfer under Count 7 are established in relation to the forced busing of the Bosnian Muslim civilians. In addition, it also finds, by majority, Judge Kwon dissenting,³²²¹ that the crime of forcible transfer is also established with regard to the able-bodied men who fled across the Drina River out of the Žepa enclave. Furthermore, the crime of forcible transfer in Žepa was sufficiently serious to amount to an inhumane act under Article 5(i). It caused serious mental suffering to the Bosnian Muslim civilians as they were forced to leave their homes against their will. Finally, the Trial Chamber finds that the elements of the crime of deportation under Count 8 are not established in relation to the able-bodied men who swam across the Drina River to Serbia.

³²¹⁶ See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

³²¹⁷ See *supra*, paras. 892–895.

³²¹⁸ See *supra*, paras. 731–738.

³²¹⁹ See *supra*, paras. 732–733, 736–737.

³²²⁰ See *supra*, para. 735.

³²²¹ See Judge Kwon's Dissenting Opinion, *infra*, paras. 2–6, 15–20.

H. Persecution on political, racial and religious grounds

963. The Indictment charges the Accused with persecution on political, racial and religious grounds, a crime against humanity through murder, cruel and inhuman treatment, terrorising the civilian population, destruction of personal property, forcible transfer and deportation, in violation of Article 5 of the Statute.³²²²

1. Applicable Law

(a) Elements of the Crime of Persecution

964. The crime of persecution is defined by the jurisprudence of the Tribunal as an act or omission that:

(1) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law;³²²³ and

(2) was carried out deliberately with the intention to discriminate on one of the listed grounds, specifically race, religion or politics.³²²⁴

(i) Underlying Acts or Omissions

965. The crime of persecution can be committed by either a single or a series of intentional act(s) or omission(s).³²²⁵ There is no comprehensive list of acts or omissions that may amount to persecution,³²²⁶ and the determination of whether the underlying acts constitute persecution needs to be done on a case-by-case basis.³²²⁷ However, although persecution is considered to be an “umbrella” crime,³²²⁸ the Prosecution must plead in the indictment the particular acts or omissions which it alleges amount to persecution.³²²⁹

³²²² Indictment, p. 26.

³²²³ On the interpretation given by the Appeals Chamber on the requirement to “discriminate in fact”, see *Krnojelac* Appeal Judgement para. 185.

³²²⁴ *Stakić* Appeal Judgement, para. 327 (referring to *Kordić and Čerkez* Appeal Judgement, para. 101; *Blaškić* Appeal Judgement, para. 131; *Vasiljević* Appeal Judgement, para. 113; *Krnojelac* Appeal Judgement, para. 185); *Nahimana et al.* Appeal Judgement, para. 985.

³²²⁵ *Blaškić* Appeal Judgement, para. 135 (quoting *Vasiljević* Appeal Judgement, para.113).

³²²⁶ *Lukić and Lukić* Trial Judgement, para. 993; *Brdanin* Trial Judgement, para. 994; *Stakić* Trial Judgement, para. 735; *Kordić and Čerkez* Trial Judgement, para. 192; *Blaškić* Trial Judgement, para. 219; *Kupreškić et al.* Trial Judgement, para. 567; *Tadić* Trial Judgement, para. 694. According to Judge Shahabuddeen “Article 5 of the Statute deals with crimes against humanity committed through certain supporting crimes. Under paragraph (h) of the provision, the relevant supporting crime is ‘persecution’, the underlying act or acts being only evidence of the persecution.” Separate Opinion of Judge Shahabuddeen, *Krnojelac* Appeal Judgement, para. 6.

³²²⁷ *Vasiljević* Trial Judgement, para. 246 (referring to *Krnojelac* Trial Judgement, para. 433; *Kupreškić et al.* Trial Judgement, para. 626). See *Brdanin* Appeal Judgement, para. 295. See also the discussion in para. 966 about acts or omissions that can amount to persecution.

³²²⁸ *Kupreškić et al.* Appeal Judgement, para. 98.

³²²⁹ *Blaškić* Appeal Judgement, para. 139; *Kupreškić et al.* Appeal Judgement, paras. 98, 113–114.

966. The acts or omissions that can amount to persecution include crimes enumerated in Article 5 or elsewhere in the Statute³²³⁰ as well as intentional³²³¹ acts and omissions which are not listed in the Statute.³²³² It is not required that acts or omissions underlying persecution be considered crimes under international law.³²³³ Not every denial of a human right is serious enough to constitute a crime against humanity.³²³⁴ While crimes enumerated in Article 5 of the Statute are by definition considered to be serious enough to amount to persecution, crimes listed under other Articles of the Statute or acts or omissions not listed in the Statute need to meet an additional test. These acts or omissions need to be of equal gravity to the crimes listed in Article 5 whether considered in isolation or in conjunction with other acts.³²³⁵ The test of equal gravity can only be met by a gross or blatant denial of a fundamental right,³²³⁶ and must be determined based on “a fact specific inquiry.”³²³⁷

967. Persecutory acts might often form part of a discriminatory policy or at least of a patterned discriminatory practice.³²³⁸ However, the existence of a discriminatory policy is not a necessary requirement for proving persecution.³²³⁹ An act or omission is considered discriminatory when a victim is targeted because of his or her membership in a group defined by the perpetrator on a political, racial or religious basis.³²⁴⁰

³²³⁰ *Krnojelac* Appeal Judgement, para. 219.

³²³¹ *Stakić* Appeal Judgement, para. 328.

³²³² *Brđanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, para. 321; *Blaškić* Appeal Judgement, paras. 135, 138; *Krnojelac* Appeal Judgement, para. 199.

³²³³ *Brđanin* Appeal Judgement, para. 296; *Kvočka et al.* Appeal Judgement, paras. 323, 325; *Nahimana et al.* Appeal Judgement, para. 985.

³²³⁴ *Milutinović et al.* Trial Judgement, Vol. 1, para. 178; *Blagojević and Jokić* Trial Judgement, para. 580 (referring to *Kupreškić et al.* Trial Judgement, para. 618); *Brđanin* Trial Judgement, para. 995. See also *Nahimana et al.* Appeal Judgement, para. 985 (stating that “not every act of discrimination will constitute the crime of persecution”).

³²³⁵ *Brđanin* Appeal Judgement, para. 296; *Simić* Appeal Judgement, para. 177; *Naletilić and Martinović* Appeal Judgement, para. 574; *Kvočka et al.* Appeal Judgement, paras. 321, 323, 325; *Blaškić* Appeal Judgement, paras. 135, 139, 154–155, 160; *Kordić and Čerkez* Appeal Judgement, paras. 102–103, 672; *Krnojelac* Appeal Judgement, paras. 199, 221; *Nahimana et al.* Appeal Judgement, paras. 985–988.

³²³⁶ *Brđanin* Trial Judgement, para. 995; *Simić et al.* Trial Judgement, para. 48; *Naletilić and Martinović* Trial Judgement, para. 635; *Krnojelac* Trial Judgement, para. 434; *Kvočka et al.* Trial Judgement, paras. 184–185; *Kupreškić et al.* Trial Judgement, paras. 620–621, 627. See *Kordić and Čerkez* Appeal Judgement, para. 103; *Blaškić* Appeal Judgement, para. 139.

³²³⁷ *Brđanin* Appeal Judgement, para. 295.

³²³⁸ *Kupreškić et al.* Trial Judgement, para. 615.

³²³⁹ *Blagojević and Jokić* Trial Judgement, para. 582; *Brđanin* Trial Judgement, para. 996; *Stakić* Trial Judgement, para. 739; *Krnojelac* Trial Judgement, para. 435 (citing *Kupreškić et al.* Trial Judgement, para. 625).

³²⁴⁰ *Blagojević and Jokić* Trial Judgement, para. 583; *Naletilić and Martinović* Trial Judgement, para. 636. Although Article 5(h) reads “persecutions on political, racial and religious grounds” the three listed grounds are alternatives and the establishment of one of the grounds is sufficient basis for a finding of persecution. *Blaškić* Appeal Judgement, para. 135 (quoting *Vasiljević* Appeal Judgement, para. 113).

(ii) Specific Intent

968. Persecution requires a specific intent to discriminate on political, racial or religious grounds.³²⁴¹ This discriminatory intent requirement distinguishes the crime of persecution from the other crimes listed under Article 5,³²⁴² by requiring that the accused acted with the intent to harm a human being because he or she belongs to a particular community or group.³²⁴³

969. The discriminatory intent must relate to each specific act or omission underlying the charge of persecution.³²⁴⁴ Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a targeted group and the general attitude of the accused as demonstrated by his behaviour.³²⁴⁵ Furthermore, a discriminatory intent has been inferred from an accused's knowing participation in a system or enterprise that discriminated on political, racial or religious grounds.³²⁴⁶

(b) Specific Acts Charged as Persecution

970. The Indictment charges the Accused with persecution committed through various underlying acts.³²⁴⁷ Some of these underlying acts have also been charged as separate crimes (murder, forcible transfer and deportation), whose elements have been dealt with separately. It is, however, still required to determine whether they meet the requisite criteria for the crime of persecution. The elements of those underlying acts not already examined as separate charges (acts of cruel and inhuman treatment; terrorising civilians; and destruction of personal property) will be addressed in greater detail below, before examining whether they also fulfil the requisite criteria for the crime of persecution.

(i) Murder

971. Paragraph 48(a) of the Indictment charges the Accused with persecution through "the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons, as described in paragraphs 30 to 31 of this Indictment, with the exception of **Radivoje**

³²⁴¹ *Stakić* Appeal Judgement, paras. 327–328.

³²⁴² *Tadić* Appeal Judgement, para. 305. *See also* *Krnojelac* Appeal Judgement, para. 184.

³²⁴³ *Blaškić* Appeal Judgement, para. 165. The group can be defined based on positive or negative criteria. *See also* *Kvočka et al.* Appeal Judgement, paras. 347, 366; *Krnojelac* Appeal Judgement, para. 186.

³²⁴⁴ *Blagojević and Jokić* Trial Judgement, para. 584; *Simić et al.* Trial Judgement, para. 51; *Vasiljević* Trial Judgement, para. 249. *See Blaškić* Appeal Judgement, para. 164; *Krnojelac* Appeal Judgement, para. 184.

³²⁴⁵ *Kvočka et al.* Appeal Judgement, paras. 366, 460. *See also* *Krnojelac et al.* Appeal Judgement para. 186.

³²⁴⁶ *Simić et al.* Trial Judgement, para. 51; *Kvočka et al.* Trial Judgement, paras. 201, 413(e). The finding of the *Kvočka et al.* Trial Chamber was upheld by the Appeals Chamber, but was limited to the "context of the case". *Kvočka et al.* Appeal Judgement, paras. 347, 367.

³²⁴⁷ Indictment, para. 48.

Miletić and **Milan Gvero**, for whom the relevant paragraph is 31 exclusively (‘Opportunistic Killings’).”

972. Murder is set out as a crime against humanity pursuant to Article 5(a), and as such, can amount to persecution.³²⁴⁸ The definition of murder has been discussed separately.

(ii) Cruel and Inhumane Treatment

973. Paragraph 48(b) of the Indictment charges the Accused with persecution through “cruel and inhumane treatment of Bosnian Muslim civilians, including murder and severe beatings at Potočari and in detention facilities in Bratunac and Zvornik.”

974. Cruel and inhumane treatment is defined as an act or omission, which causes serious mental or physical suffering or injury, or which constitutes a serious attack on human dignity.³²⁴⁹ The act or omission must be committed with the intent to cause serious mental or physical suffering or injury or serious attack on human dignity, or, with the knowledge that serious mental or physical suffering or injury or serious attack on human dignity was a probable consequence of the act or omission.³²⁵⁰

975. The Appeals Chamber has held that the right to life and to be free from cruel, inhumane or degrading treatment or punishment is recognised under customary international law and enshrined in international human rights instruments.³²⁵¹ Furthermore, it has been established in the jurisprudence of the Tribunal that acts of serious bodily and mental harm are of sufficient gravity as compared to the other crimes enumerated in Article 5 of the Statute, and therefore can amount to persecution.³²⁵²

³²⁴⁸ See *supra*, paras. 787–789, 966. See also *Blagojević and Jokić* Trial Judgement, para. 585.

³²⁴⁹ *Kordić and Čerkez* Appeal Judgement, paras. 39, 524, 546; *Blaškić* Appeal Judgement, para. 595 (referring to *Čelebići* Appeal Judgement, paras. 424, 426). The seriousness of the harm or injury must be assessed on a case-by-case basis, taking into account such factors as the severity of the alleged conduct, the nature of the act or omission, the context in which the conduct occurred, its duration and/or repetition, its physical and mental effects on the victim and, in some instances, the personal circumstances of the victim, including age, gender and health. In cases before the Tribunal, Chambers found certain incidents of beatings and inhumane living conditions in a detention centre, among other acts, to constitute cruel or inhumane treatment. *Kvočka et al* Appeal Judgement, paras. 581, 584–585; *Kordić and Čerkez* Appeal Judgement, paras. 572–573; *Krnjelac* Appeal Judgement, paras. 108–112; *Mrkšić et al.* Trial Judgement, paras. 525, 537–539; *Krnjelac* Trial Judgement, paras. 146–165; *Čelebići* Trial Judgement, paras. 554–558.

³²⁵⁰ *Mrkšić et al.* Trial Judgement, para. 516 (referring to *Limaj et al* Trial Judgement, para. 231; *Strugar* Trial Judgement, para. 261).

³²⁵¹ *Kordić and Čerkez* Appeal Judgement, para. 106 (referring to *Blaškić* Appeal Judgement, para. 143 as well as Articles 6 and 7 of the ICCPR, and Articles 2 and 3 of the ECHR). See also Articles 3 and 5 of the UDHR; Articles 4 and 5 of the African Charter on Human and Peoples’ rights; Articles 4 and 5 of the American Convention on Human Rights; Articles 5 and 8 of the Arab Charter on Human Rights.

³²⁵² *Kordić and Čerkez* Appeal Judgement, paras. 106–107; *Blaškić* Appeal Judgement, para. 143.

(iii) Terrorising Civilians

976. Paragraph 48(c) of the Indictment charges the Accused with persecution through “the terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari.”

977. The protection of civilians from terror is enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II.³²⁵³

978. The protection of civilians from terror was further addressed by the *Galić* Appeals Chamber, which held that “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”, as enshrined in Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II, constitute a crime punishable under Article 3 of the Statute.³²⁵⁴

979. The definition of ‘terrorising civilians’ means acts or threats of violence directed against the civilian population or individual civilians not taking direct part in hostilities with the intent to spread terror among the civilian population.³²⁵⁵ Such acts or threats of violence can comprise attacks or threats of attacks against the civilian population.³²⁵⁶ While their nature was described by the Appeals Chamber as “a case of ‘extensive trauma and psychological damage’ being caused by ‘attacks [which] were designed to keep the inhabitants in a constant state of terror’”,³²⁵⁷ “the actual terrorisation of the civilian population is not an element of the crime.”³²⁵⁸

980. The purpose of spreading terror among the civilian population need not be the only purpose of these acts or threats, but must be the principal aim,³²⁵⁹ and can be inferred from the

³²⁵³ These Articles provide that: “The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.” The commentary to the Additional Protocols clarifies that although “there is no doubt that acts of violence related to state of war almost always give rise to some degree of terror among the population [...] this provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage.” Commentary to Additional Protocols, paras. 1940, 4774.

³²⁵⁴ *Galić* Appeal Judgement, paras. 69, 85, 98.

³²⁵⁵ See *Galić* Appeal Judgement, paras. 102–104; *Galić* Trial Judgement, para. 133. See also Commentary to the Additional Protocols, paras. 1938, 4761.

³²⁵⁶ *Milošević* Appeal Judgement, paras. 32–33; *Galić* Appeal Judgement, para. 102. The *Galić* Appeals Chamber clarified that such acts or threats are not “limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.” *Galić* Appeal Judgement, para. 102 (referring to Article 49(1) of Additional Protocol I and the *Travaux Préparatoires* of the Additional Protocols).

³²⁵⁷ *Galić* Appeal Judgement, para. 102. The Appeals Chamber held that “[t]error could be defined [...] as ‘extreme fear’.” *Galić* Appeal Judgement, para. 103, fn. 320 (referring to *Galić* Trial Judgement, para. 137).

³²⁵⁸ *Milošević* Appeal Judgement, para. 35; *Galić* Appeal Judgement, paras. 103–104 (referring to the *Travaux préparatoires* of the Additional Protocols).

³²⁵⁹ *Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104; *Blagojević and Jokić* Trial Judgement, para. 591.

circumstances of the acts or threats, including their nature, manner, timing and duration.³²⁶⁰ However, this is not an exhaustive list of mandatory considerations but an indication of some factors that *may* be taken into account according to the circumstances of the case.³²⁶¹

981. The case-law of the Tribunal has found the protection of civilians to be a principle of customary international law.³²⁶² Attacks in which civilians are targeted, as well as indiscriminate attacks on cities, towns and villages are recognised to be of sufficient gravity as compared to the crimes enumerated in Article 5 of the Statute, and therefore can amount to persecution.³²⁶³ The Trial Chamber notes that in addition to the prohibition against acts or threats of violence enshrined in the Additional Protocols, the exposure to terror is a violation of the fundamental right to security of person laid down in various international and regional legal instruments.³²⁶⁴ Accordingly, the terrorisation of civilians is of sufficient gravity to amount to persecution.³²⁶⁵

(iv) Destruction of Personal Property

982. Paragraph 48(d) of the Indictment charges the Accused with persecution through “the destruction of personal property and effects belonging to the Bosnian Muslims.”³²⁶⁶

983. The right to property is protected in various international and regional legal instruments.³²⁶⁷ It is not an absolute right, and its enjoyment may be subject to certain limitations.³²⁶⁸

³²⁶⁰ *Milošević* Appeal Judgement, para. 37; *Galić* Appeal Judgement, para. 104.

³²⁶¹ *Milošević* Appeal Judgement, para. 37 (emphasis in original).

³²⁶² Among the customary rules that have developed the Appeals Chamber mentioned the prohibition of an attack on civilians (Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II), the protection of civilians against indiscriminate attacks (Article 51(3), (4) and (5) of Additional Protocol I), and the prohibition to attack or bombard undefended towns, villages, dwellings or buildings (Article 25 of the Fourth Hague Convention of 1907). *Blaškić* Appeal Judgement, paras. 157–158.

³²⁶³ *Blaškić* Appeal Judgement, para. 159.

³²⁶⁴ Article 3 of the UDHR; Article 9 of the ICCPR; Article 6 of the African Charter on Human and Peoples’ rights; Article 7 of the American Convention on Human Rights; Article 5 of the ECHR; Article 14 of the Arab Charter on Human Rights.

³²⁶⁵ The *Blagojević and Jokić* Trial Chamber found that, *inter alia*, terrorising of the civilian population constitutes blatant denials of fundamental rights that had a severe impact on the victims and therefore amount to persecution. *Blagojević and Jokić* Trial Judgement, para. 620; The *Krstić* Trial Chamber found that persecution was committed *inter alia* through the underlying act of terrorising the civilians. *Krstić* Trial Judgement, paras. 537–538. *See also* *Blaškić* Appeal Judgement, para. 159.

³²⁶⁶ More specifically the Prosecution charges the Accused with the destruction of “personal property and effects belonging to the Bosnian Muslim male prisoners, including their identification documents and valuables.” The destruction of dwellings is not charged in the Indictment. *See* Indictment, para. 64. *See also* Prosecution Pre-Trial Brief, para. 200; Prosecution Final Brief, para. 2907.

³²⁶⁷ *Blaškić* Appeal Judgement, para. 145 (referring to Article 17(2) of the UDHR; Article 14 of the African Charter on Human and Peoples’ Rights; Article 21 of the American Convention on Human Rights; Article 1 of the Protocol to the ECHR on the Enforcement of certain Rights and Freedoms not included in Section I of the Convention). *See also* Article 31 of the Arab Charter on Human Rights.

³²⁶⁸ Article 29 of the UDHR; Article 14 of the African Charter on Human and Peoples’ Rights; Article 21 of the American Convention on Human Rights; Article 1 of Protocol to the ECHR; Article 31 of the Arab Charter on Human Rights.

984. Different forms of destruction of property are prohibited under customary international law and treaty law. The prohibition on the destruction of property is not absolute. Article 23(g) of the 1907 Hague Regulations prohibits destruction of enemy's property, unless such destruction is "imperatively demanded by the necessities of war". The scope of the prohibition is limited to destruction that is not justified by military necessity.³²⁶⁹

985. Different forms of destruction of property are also criminalised under the Statute. The scope of these crimes is also limited to destruction that is not justified by military necessity.³²⁷⁰

986. The Trial Chamber thus finds that the underlying acts of "destruction of personal property and effects" as persecution encompass only destruction which is not justified by military necessity.

987. The Appeals Chamber has recognised that depending on the nature and extent of the destruction, the destruction of property may amount to persecution.³²⁷¹ To constitute an underlying act of persecution, the destruction must be intentional and it must have a severe impact on the victim.³²⁷² Factors such as the nature and extent of the destruction, including the type of the property involved,³²⁷³ must be taken into consideration.

(v) Forcible Transfer and Deportation

988. The Indictment charges the Accused with forcible transfer and deportation as underlying acts of persecution.

³²⁶⁹ Article 53 of Geneva Convention IV provides that: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations." See also Article 50 of Geneva Convention I, Article 51 of Geneva Convention II and Article 147 of Geneva Convention IV (which consider as grave breaches the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly"); Articles 52, 54(5), 67(4) of Additional Protocol I; Article 4(2) and Article 11(2) of the Hague Cultural Property Convention; Article 6 of the Hague Cultural Property Protocol II. See also *Martić* Appeal Judgement, para. 98.

³²⁷⁰ Article 2(d) of the Statute prohibits the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Article 3(b) of the Statute prohibits the "wanton destruction of cities, towns or villages, or devastation not justified by military necessity." Trial Chambers understood the prohibition on destruction of institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science enshrined in Article 3(d) of Statute to be limited to property that was not used for military purposes. *Martić* Trial Judgement, para. 96; *Strugar* Trial Judgement, paras. 300–301, 310 (referring to *Blaškić* Trial Judgement, para. 185; *Naletilić and Martinović* Trial Judgement, para. 605); *Brđanin* Trial Judgement, paras. 596, 598. See also *Strugar* Appeal Judgement, para. 326; *Kordić and Čerkez* Appeal Judgement, paras. 74, 76; *Orić* Trial Judgement, para. 581; *Strugar* Trial Judgement, paras. 292, 295; *Brđanin* Trial Judgement, paras. 588, 592; *Naletilić and Martinović* Trial Judgement, paras. 578–579; *Kordić and Čerkez* Trial Judgement, paras. 346, 362; *Blaškić* Trial Judgement, para. 185.

³²⁷¹ *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, para. 149

³²⁷² See *Blaškić* Appeal Judgement, para. 146.

³²⁷³ *Kordić and Čerkez* Appeal Judgement, para. 108; *Blaškić* Appeal Judgement, para. 146 (referring to *Kupreškić et al.* Trial Judgement, para. 631).

989. Forcible transfer as an inhumane act and deportation are crimes against humanity pursuant to Articles 5(i) and (d), and as such, can amount to persecution.³²⁷⁴

2. Findings

(a) Underlying Acts

(i) Murder³²⁷⁵

990. The Chamber recalls that it found that from 12 July until late July 1995, thousands of able-bodied Bosnian Muslim males were killed in the Potočari, Bratunac, Zvornik and Trnovo areas.³²⁷⁶ The Trial Chamber finds that among those killed there were also some women, children and elderly.³²⁷⁷ Murder is enumerated in Article 5 of the Statute and by definition considered to be serious enough to amount to persecution.

991. As to specific intent, the Trial Chamber has considered the massive scale of the murder operation aimed at only one ethnic group, the Bosnian Muslims, the systematic manner in which it was carried out, and the behaviour and general attitude of the perpetrators participating in the murder.³²⁷⁸ In all these circumstances, the Trial Chamber finds that these killings, including the

³²⁷⁴ See *supra*, paras. 888–889, 966. See also *Stakić* Appeal Judgement, para. 317; *Blaškić* Appeal Judgement, para. 153; *Krnojelac* Appeal Judgement, paras. 221–222.

³²⁷⁵ Paragraph 48(a) of the Indictment charges the Accused with persecution through “the murder of thousands of Bosnian Muslim civilians, including men, women, children and elderly persons, as described in paragraphs 30 to 31 of this Indictment, with the exception of **Radivoje Miletić** and **Milan Gvero**, for whom the relevant paragraph is 31 exclusively (‘Opportunistic Killings’).”

³²⁷⁶ See *supra*, paras. 793–796.

³²⁷⁷ Helge Brunborg, T. 6800 (1 Feb 2007); Ex. P02424, “Chart - Age Distribution of Srebrenica-Related Missing and Dead (Absolute Numbers)” (68 persons on the 2007 List of Missing and Deceased are female, and among them 2 are under 16 and 29 are over 60. Among the men, 78 were under 16 and 668 were over 60); Ex. P03159, “Report titled Srebrenica Missing: The 2007 Progress Report on the DNA- Based Identification by ICMP, by E. Tabeau and A. Hetland, 11 January 2008, with Annexes I and II”, p. 8 (Of those persons on the 2007 List of Missing and Deceased who had been identified by the ICMP through DNA analysis, 30 persons (only male) were below 16 years of age and 360 persons (including one woman) were older than 60 years of age.). There is other evidence that the victims of the killings included women, children and the elderly. Among the corpses that Jevto Bogdanović saw inside of the Pilica Cultural Centre two were female. Jevto Bogdanović, T. 11330–11331 (10 May 2007). Ahmo Hasić testified that the men with whom he was detained in Pilica ranged from 15 to 80 years of age. Ahmo Hasić, T. 1194 (6 Sept 2006). At an execution site in Kozluk, a boy aged around 13 was shot dead despite “begging to be spared his life.” Veljko Ivanović, T. 18190 (private session) (26 Nov 2007).

³²⁷⁸ The Bosnian Muslims were often called by names disparaging their Bosnian Muslim identity and were forced to chant pro-Serb slogans or sing Serbian songs before they were killed. See e.g. PW-116, Ex. P02205, “92 bis transcript”, KT. 2965 (14 Apr 2000) (stating that the Bosnian Muslim men were ordered to chant pro-Serb slogans as they entered Petkovci School); PW-111, T. 7006 (7 Feb 2007) (stating that the wounded who were called out of the Kravica Warehouse were made to sing nationalistic Serb songs and were then killed); PW-156, T. 7096–7097 (private session) (8 Feb 2007) (stating that Bosnian Muslims suffered curses against their “Turkish mother” and “Islam tribe” before they were killed at Kravica Warehouse); PW-113, Ex. P02280, “92 ter transcript”, BT. 1386 (stating that Bosnian Muslims suffered curses against their “balija mother” when they were captured in the woods), BT. 1388 (stating that Bosnian Muslims were ordered to raise three fingers up, which was a Serb sign of greeting), BT. 1396–1397 (stating that Bosnian Muslims were forced to lie on their stomach with their hands above their necks and say “long live the king, long live Serbia”), BT. 1405 (stating that Bosnian Muslims were forced to repeat that Srebrenica belonged to the Serbs) (21 July 2003), BT. 1419 (22 July 2003) (stating that a Bosnian Muslim was ordered to say “Allah Akbar”); PW-113, T. 3368 (31 Oct 2006) (stating that Bosnian Muslims were forced to shout

“opportunistic” killings, were committed against the Bosnian Muslims with a discriminatory intent on political, racial or religious grounds.

(ii) Cruel and Inhumane Treatment³²⁷⁹

992. The 20,000 to 30,000 people gathered in Potočari for safety faced a situation and atmosphere marked by panic, fear and despair as described above.³²⁸⁰

993. The evidence also establishes that the Bosnian Muslim men who were detained in the White House in Potočari, vehicles in Bratunac and other detention facilities in Bratunac and Zvornik were subject to intolerable conditions. The prisoners held in packed vehicles and detention centres had little, if any, food, water or medical treatment.³²⁸¹ Some prisoners were so thirsty that they drank their own urine.³²⁸² Toilet facilities were very limited and in some instances prisoners were compelled to relieve themselves where they stood.³²⁸³ The prisoners were also exposed to physical and verbal abuse, including severe beatings,³²⁸⁴ and often screams, moans and bursts of gunfire were heard.³²⁸⁵ Of the men who were taken away from the places of detention, some were brought back in a terrible condition to be shown to other captives, while others never returned at all.³²⁸⁶

994. The Trial Chamber finds that, as described above, the Bosnian Muslims in Potočari and detained elsewhere were subjected to horrific and inhumane conditions, as well as physical assaults. These combined circumstances constituted a serious attack on their human dignity and inflicted serious mental and physical suffering and injury. Furthermore, the civilian population gathered in Potočari had to endure a forced and painful separation process and the terrifying uncertainty which followed as to the fate of the men left behind. The Trial Chamber is satisfied these circumstances inflicted serious mental harm on the men, women and children of Srebrenica. For those few men who ultimately survived the executions, the horrendous circumstances they lived through—witnessing the mass execution of all around them and escaping the same fate by chance—there can be no doubt as to severe mental harm inflicted upon them. The Chamber finds that this cruel and

Serb slogans); PW-118, Ex. P02210, “92 *ter* transcript”, KT. 1297 (24 Mar 2000) (stating that Bosnian Serb soldiers cursed PW-118 before they began to shoot him). After the execution, one of the Bosnian Serb soldiers said “We committed genocide, [like the] genocide in Jasenovac in 1941.” Ahmo Hasić, T. 1204 (6 Sept 2006).

³²⁷⁹ Paragraph 48(b) of the Indictment charges the Accused with persecution through “cruel and inhumane treatment of Bosnian Muslim civilians, including murder and severe beatings at Potočari and in detention facilities in Bratunac and Zvornik.” The Trial Chamber will not consider murder as an underlying mode of cruel and inhumane treatment further, as murder as an underlying act of persecution has already been discussed above. *See supra*, paras. 990–991.

³²⁸⁰ *See supra*, paras. 917–918.

³²⁸¹ *See supra*, paras. 329–330, 385, 393, 398, 400–403, 427, 436, 478, 495–496, 518, 529, 538.

³²⁸² *See supra*, para. 398. *See also supra*, fn. 1799.

³²⁸³ *See supra*, paras. 330, 404, 478, 496, 529.

³²⁸⁴ *See supra*, paras. 326, 351, 353, 388, 390, 402, 404–405, 408, 446–449, 452–454, 460, 495–497, 529.

³²⁸⁵ *See supra*, paras. 404–405, 446, 453, 460–461, 480, 497, 529.

³²⁸⁶ *See supra*, paras. 404, 446, 452, 460–461, 480, 497, 529.

inhumane treatment is of equal gravity to the crimes listed in Article 5 and constitutes a blatant denial of fundamental rights that had a severe impact on the victims. The Trial Chamber therefore concludes that it amounts to an underlying act of persecution.

995. As to specific intent, the Trial Chamber recalls that Bosnian Muslims in Potočari were threatened and cursed, and often these remarks were tied to their ethnicity.³²⁸⁷ The victims were subjected to cruel and inhumane treatment solely on the basis that they were Bosnian Muslims. The Trial Chamber concludes that the circumstances surrounding the infliction of the cruel and inhumane treatment leave no doubt that it was carried out with the intention to discriminate against the Bosnian Muslims on political, racial or religious grounds.

(iii) Terrorising Civilians³²⁸⁸

996. The Trial Chamber has found that in the months preceding the fall of Srebrenica there were instances of shelling and sniping directed at the civilian population of Srebrenica.³²⁸⁹ The Chamber recalls its finding that on 10 July 1995 the situation in Srebrenica town was tense with heavy shelling.³²⁹⁰ Shells landed, among other locations, on the direct surroundings of a hospital in which 2,000 civilians sought refuge, killing six of them.³²⁹¹ On 11 July 1995, although the members of the ABiH 28th Division had already left the town, the DutchBat Bravo Company compound in Srebrenica town in which thousands of desperate people sought protection was shelled.³²⁹² Several people were wounded.³²⁹³ The population was shelled and shot at as it left and proceeded along the road from Srebrenica towards Potočari.³²⁹⁴ Some people were wounded, there were dead bodies along the road, and the civilians were terrified.

997. Furthermore, the Trial Chamber recalls the fearful and oppressive atmosphere in Potočari created by the Bosnian Serb Forces as described above.³²⁹⁵ In addition, the sombre and menacing mood during the meetings at Hotel Fontana—two of which held in the presence of civilian representatives—contributed to the pervading terror of the situation.³²⁹⁶ Mladić's own words

³²⁸⁷ See e.g., Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2117–2118 (5 Apr 2000); Johannes Rutten, T. 4877 (30 Nov 2006) (stating that there were incidents of mockery and threats against those in Potočari); PW-126, T. 3601 (6 Nov 2006) (stating that Bosnian Serb Forces cursed Bosnian Muslims by saying that "[they] will never go back to Srebrenica" or "[y]ou are Turks and you would be best to go to Turkey.").

³²⁸⁸ Paragraph 48(c) of the Indictment charges the Accused with persecution through "the terrorising of Bosnian Muslim civilians in Srebrenica and at Potočari."

³²⁸⁹ See *supra*, paras. 207, 210, 249–251.

³²⁹⁰ See *supra*, para. 255.

³²⁹¹ *Ibid.*

³²⁹² See *supra*, para. 257.

³²⁹³ *Ibid.*

³²⁹⁴ See *supra*, para. 265. But see Judge Kwon's Separate Opinion, *supra*, fn. 849.

³²⁹⁵ See *supra*, paras. 917–918.

³²⁹⁶ See *supra*, paras. 277–279, 289–290.

perhaps best evidence the deliberate intent to terrify when he commented to the Bosnian Muslims that they could “either survive or disappear.”³²⁹⁷

998. The Trial Chamber conclusively finds that these actions taken against civilians in Srebrenica and Potočari were committed in an indiscriminate manner and caused extensive trauma and psychological damage. Having considered their nature, manner, timing and duration, the Trial Chamber is satisfied that their primary purpose was to spread terror among the civilian population. The Trial Chamber also finds that the terrorising of civilians as described above is of equal gravity to the crimes listed in Article 5 and constitutes a gross denial of fundamental rights, *inter alia*, the right to security. It therefore finds that it amounts to an underlying act of persecution.

999. As to specific intent, the Trial Chamber recalls the indiscriminate nature of the attack on Bosnian Muslim civilians in Srebrenica and the circumstances surrounding the terrorisation of the civilians in Potočari as described above in the findings on cruel and inhumane treatment.³²⁹⁸ The Trial Chamber concludes that all these circumstances clearly show that the acts of terrorisation were carried out with the intention to discriminate against the Bosnian Muslims on political, racial or religious grounds.

(iv) Destruction of Personal Property³²⁹⁹

1000. It has been established that the Bosnian Muslim men who were taken to the White House had to leave their personal belongings including their identity cards and passports outside the building and that all those belongings were subsequently burned.³³⁰⁰ The Trial Chamber further recalls evidence as to a pile of burning personal belongings on the football field near Nova Kasaba where hundreds of Bosnian Muslim men had been detained.³³⁰¹ The Trial Chamber finds that the destruction of those personal belongings was not justified by military necessity.

1001. However, the Trial Chamber considers the nature and extent of the destruction together with the circumstances in which it took place does not support a finding that the burning of those personal belongings had a severe enough impact on the victims to reach the threshold of equal gravity as the acts listed in Article 5 of the Statute.

³²⁹⁷ See *supra*, para. 290.

³²⁹⁸ See *supra*, paras. 992–994, 996.

³²⁹⁹ Paragraph 48(d) of the Indictment charges the Accused with persecution through “the destruction of personal property and effects belonging to the Bosnian Muslims.”

³³⁰⁰ See *supra*, para. 331.

³³⁰¹ See *supra*, para. 395. The Trial Chamber notes that there is further evidence before it that Bosnian Muslims who were detained were forced to leave their personal belongings behind. See *supra*, paras. 385, 390, 402, 478. However, there is no evidence as to the destruction of these personal belongings.

(v) Forcible Transfer and Deportation³³⁰²

1002. The Trial Chamber recalls that it has found that while there was no deportation, the transportation of the women, children and the elderly from Srebrenica, the forced departure of the civilian males from Srebrenica in the column,³³⁰³ the transportation of the women, children and the elderly from Žepa and the flight of the men from Žepa across the Drina River³³⁰⁴ amounted to forcible transfer, which is a crime against humanity punishable under Article 5(i) of the Statute.³³⁰⁵

1003. As to specific intent, the Trial Chamber recalls the issuance of Directive 7 which reveals clearly the discriminatory intent of the Bosnian Serb Forces to forcibly remove Bosnian Muslims from Srebrenica and Žepa. Furthermore, considering all circumstances surrounding the displacement of Bosnian Muslims, the Trial Chamber is satisfied that the forcible transfer was carried out with the intent to discriminate against Bosnian Muslims on political, racial or religious grounds.

(b) Conclusion

1004. As noted above, the acts of murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer were committed against the Bosnian Muslims with a discriminatory intent. Moreover, surrounding the commission of those underlying acts of persecution, there were numerous occasions on which those participating gave expression to their discriminatory intent. The Trial Chamber recalls hearing evidence as to speeches or remarks revealing discriminatory intent such as the announcement of Mladić in Srebrenica that “we give this town to the Serb people as a gift. [...] the time has come for us to take revenge upon the Turks in this region.”³³⁰⁶ Thus, the Trial Chamber finds that all these circumstances provide a consolidated picture of an overall discriminatory design. The Trial Chamber therefore concludes that the underlying acts of murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer constitute persecution as defined in Article 5 of the Statute. These underlying acts of persecution were committed in the context of a widespread and systematic attack and thus constitute crimes against humanity.

³³⁰² Paragraph 48(e) of the Indictment charges the Accused with persecution through the forcible transfer of Bosnian Muslims from Srebrenica and Žepa, and the deportation of the Bosnian Muslim men from Žepa. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–20.

³³⁰³ *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–14.

³³⁰⁴ *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–6, 15–20.

³³⁰⁵ *See supra*, Chapter IV, Section G.2.

³³⁰⁶ Ex. P02048, “Srebrenica Trial Video Transcript”, p. 11. *See also* Leendert Van Duijn, T. 2292–2293 (27 Sept 2006) (stating that Mladić said “in ten years the Serb army would be in the Netherlands protecting [Dutch] from Muslims and other races”); PW-118, Ex. P02210, “92 *ter* transcript”, KT. 1285 (24 Mar 2000) (stating that a prisoner at Luke School overheard the soldiers discussing Kravica and how they had “finished with the balijas”); Momir Nikolić, Ex. C00001, “Statement of Facts and Acceptance of Responsibility, 6 May 2003”, p. 2; Momir Nikolić, T. 32918 (21 Apr 2009) (reporting that Popović said “All the balija have to be killed”); Ex. P00059, “Dispatch signed by Dragomir Vasić, 12 July 1995”; Ex. P01395c, “Intercept, 2 August 1995 at 13:00”.

**UNITED
NATIONS**



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
Former Yugoslavia since 1991

Case No. IT-05-88-T
Date: 10 June 2010
Original: English

IN TRIAL CHAMBER II

Before: Judge Carmel Agius, Presiding
Judge O-Gon Kwon
Judge Kimberly Prost
Judge Ole Bjørn Støle – Reserve Judge

Registrar: Mr. John Hocking

Judgement of: 10 June 2010

PROSECUTOR

v.

**VUJADIN POPOVIĆ
LJUBIŠA BEARA
DRAGO NIKOLIĆ
LJUBOMIR BOROVČANIN
RADIVOJE MILETIĆ
MILAN GVERO
VINKO PANDUREVIĆ**

PUBLIC REDACTED

**JUDGEMENT
Volume II**

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A handwritten signature in black ink, appearing to be 'V. Støle'.

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V. INDIVIDUAL CRIMINAL RESPONSIBILITY

A. Applicable Law

1. Article 7(1) of the Statute

(a) Planning

1005. Planning requires that one or more persons design criminal conduct constituting one or more statutory crimes that are later perpetrated,³³⁰⁷ with the awareness of the substantial likelihood that a crime would be committed in the realisation of that act or omission.³³⁰⁸ This applies whether the *mens rea* of a crime is general or specific.³³⁰⁹

1006. While there are often several people involved in a plan, planning can be done by one person acting alone.³³¹⁰ It is not necessary to establish that the crime at issue would not have been committed absent the accused's plan; however, the Appeals Chamber has held that the plan must have been a factor "substantially contributing to" "criminal conduct constituting one or more statutory crimes that are later perpetrated."³³¹¹ As is evident from the words "that are later perpetrated,"³³¹² there cannot be liability for planning if the crime, which the accused is charged with planning, was not actually committed.³³¹³

(b) Instigating

1007. Instigation requires that the Prosecution prove that an accused prompted another person to commit a crime,³³¹⁴ with the intent that a crime be committed,³³¹⁵ or prompted an act or omission with the awareness of the substantial likelihood that a crime would be committed in the realisation of that act or omission.³³¹⁶ This applies whether the *mens rea* of a crime is general or specific.³³¹⁷

³³⁰⁷ *Kordić and Čerkez* Appeal Judgement, para. 26.

³³⁰⁸ *Ibid.*, para. 31.

³³⁰⁹ *See ibid.*, para. 112, referring to *Blaškić* Appeal Judgement, para. 166. The *Kordić and Čerkez* Appeals Chamber first considered the requisite *mens rea* for establishing liability under Article 7(1) of the Statute pursuant to planning and subsequently applied it to the crime of persecution.

³³¹⁰ *See ibid.*, para. 26.

³³¹¹ *Ibid.*, para. 26.

³³¹² *Ibid.*

³³¹³ *Aleksovski* Appeal Judgement, para. 165. *See also Orić* Trial Judgement, para. 269 fn. 732; *Brdanin* Trial Judgement, para. 271; *Simić et al.* Trial Judgement, para. 161.

³³¹⁴ *Brdanin* Appeal Judgement, para. 312; *Kordić and Čerkez* Appeal Judgement, para. 27.

³³¹⁵ *Ibid.*

³³¹⁶ *Kordić and Čerkez* Appeal Judgement, para. 30.

³³¹⁷ *Ibid.*, paras. 32, 112. *See also Blaškić* Appeal Judgement, para. 166.

1008. The prompting that constitutes instigation need not be direct or public.³³¹⁸ Moreover, liability for instigation may be incurred even though an accused lacks any sort of authority over the person committing the crime.³³¹⁹

1009. While the Prosecution need not prove that the crime at issue would not have been committed absent the accused's prompting,³³²⁰ the Appeals Chamber has held that the prompting must have been a factor "substantially contributing to the conduct of another person in committing the crime."³³²¹ The logical implication of this pronouncement is that there cannot be liability for instigating, if the crime, which the accused is charged with instigating, was not actually committed.³³²²

(c) Ordering

1010. Ordering requires that an accused instructed another person to engage in an act or omission³³²³ with the intent that a crime be committed in the realisation of that act or omission,³³²⁴ or with the awareness of the substantial likelihood that a crime would be committed in the realisation of that act or omission.³³²⁵

1011. The *Blaškić* Appeals Chamber held that "an individual who orders an act with the awareness of a substantial likelihood that persecutions as a crime against humanity will be committed in the order's execution, may be liable under Article 7(1) for the crime of persecutions."³³²⁶

1012. The Prosecution need not demonstrate that a formal superior-subordinate relationship existed between the accused and the individual committing the crime.³³²⁷ Instead, it must merely put forth "proof of some position of authority on the part of the accused that would compel another

³³¹⁸ *Akayesu* Appeal Judgement, para. 483. (This is distinct from acts of incitement to commit genocide under Article 4(3)(c) of the Statute which must be direct and public).

³³¹⁹ *Orić* Trial Judgement, para. 272; *Brđanin* Trial Judgement, para. 359; *Semanza* Appeals Judgement, para. 257.

³³²⁰ See *Gacumbitsi* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 27.

³³²¹ *Kordić and Čerkez* Appeal Judgement, para. 27. See also *Gacumbitsi* Appeal Judgement, para. 129.

³³²² This conclusion has been explicitly stated by several Trial Chambers, see, e.g., *Orić* Trial Judgement, para. 269 fn. 732; *Brđanin* Trial Judgement, para. 267; *Galić* Trial Judgement, para. 168. See also *Mpambara* Trial Judgement, para. 18.

³³²³ *Galić* Appeal Judgement, para. 176; *Kordić and Čerkez* Appeal Judgement, para. 28. See also *Semanza* Appeal Judgement, para. 361.

³³²⁴ *Kordić and Čerkez* Appeal Judgement, para. 29. See also *Ntagerura et al.* Appeal Judgement, para. 365.

³³²⁵ *Galić* Appeal Judgement, para. 152; *Kordić and Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, paras. 41–42.

³³²⁶ *Blaškić* Appeal Judgement, para. 166. See also *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, para. 30.

³³²⁷ *Galić* Appeal Judgement, para. 176. See also *Semanza* Appeal Judgement, para. 361; *Kamuhanda* Appeal Judgement, para. 75. (In contrast to superior responsibility under Article 7(3), an accused may incur liability for ordering even though he did not enjoy effective control over the person ordered, *Kamuhanda* Appeal Judgement, para. 75.)

to commit a crime in following the accused's order."³³²⁸ The accused need not give the order directly to the person committing the crime,³³²⁹ and the order need not be in writing or in any particular form.³³³⁰

1013. While the Prosecution need not prove that the crime at issue would not have been committed absent the accused's order, the Trial Chamber agrees with the ICTR Appeals Chamber that the order must have had "a direct and substantial effect on the commission of the illegal act."³³³¹ The logical implication of this pronouncement is that there cannot be liability for ordering, if the crime, which the accused is charged with ordering, was not actually committed.³³³²

(d) Aiding and Abetting

1014. Aiding and abetting is a form of accomplice liability.³³³³ In *Blagojević and Jokić*, the Appeals Chamber reiterated that:

an aider and abettor carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on the perpetration of the crime. [...] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.³³³⁴

The Appeals Chamber however observed that "specific direction" was not always included as an element of the *actus reus* of aiding and abetting.³³³⁵ It referred to the contextual nature of the statement and confirmed that "specific direction" is not an essential ingredient of the *actus reus* of aiding and abetting.³³³⁶

1015. An aider and abettor contributes "to the perpetration" of a crime, whether he assists a crime committed by a physical perpetrator or a participant in a joint criminal enterprise who might not be

³³²⁸ *Semanza* Appeal Judgement, para. 361. See also *Galić* Appeal Judgement, para. 176; *Kamuhanda* Appeal Judgement, para. 75; *Kordić and Čerkez* Appeal Judgement, para. 30.

³³²⁹ *Strugar* Trial Judgement, para. 331; *Brđanin* Trial Judgement, para. 270; *Naletilić and Martinović* Trial Judgement, para. 61; *Kordić and Čerkez* Trial Judgement, para. 388.

³³³⁰ *Kamuhanda* Appeal Judgement, para. 76.

³³³¹ *Ibid.*, para. 75. See also *Strugar* Trial Judgement, para. 332; *Galić* Trial Judgement, para. 169.

³³³² *Martić* Trial Judgement, para. 441; *Brđanin* Trial Judgement, para. 267; *Kajelijeli* Trial Judgement, para. 758; *Semanza* Trial Judgement, para. 378.

³³³³ *Tadić* Appeal Judgement, para. 229.

³³³⁴ *Blagojević and Jokić* Appeal Judgement, para. 127. See also; *Simić* Appeal Judgement, paras. 85–86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 45; *Tadić* Appeal Judgement, para. 229. See also *Ntagerura et al.* Appeal Judgement, para. 370.

³³³⁵ *Blagojević and Jokić* Appeal Judgement, para. 189, referring to *Krnojelac* Appeal Judgement, para. 37, citing *Tadić* Appeal Judgment, para. 229; *Čelebići* Appeal Judgement, para. 345, citing *Tadić* Trial Judgement, para. 688.

³³³⁶ *Blagojević and Jokić* Appeal Judgement, paras. 185–186, 188–189. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 159.

a physical perpetrator.³³³⁷ There cannot be liability for aiding and abetting, if the crime, which the accused is charged with aiding and abetting, was not actually committed.³³³⁸

1016. An accused needs to know that his or her acts assist the commission of the crime that he or she is charged with aiding and abetting, though the accused does not need to have the intent to commit the crime.³³³⁹ The aider and abettor does not need to know who is committing the crime.³³⁴⁰ The person or persons committing the crime need not have been tried or identified, even in respect of a crime that requires specific intent.³³⁴¹ Neither does the person or persons committing the crime need to be aware of the involvement of the aider and abettor.³³⁴² Accordingly, the Prosecution generally need not provide evidence that a plan or an agreement existed between the aider and abettor and the person or persons committing the crimes.³³⁴³

1017. While an accused may know of a number of crimes that might be committed with his contribution, he must be aware, at a minimum, of the essential elements of the crime for which he is charged with aiding and abetting.³³⁴⁴ The accused needs to know that the person or persons in the joint criminal enterprise intended the crime he or she is charged with aiding and abetting.³³⁴⁵ With respect to specific-intent crimes such as genocide and persecution, the accused needs to know that the person or persons in the joint criminal enterprise possessed the genocidal or discriminatory intent.³³⁴⁶

1018. The assistance, encouragement, or moral support provided by an aider and abettor must have had a substantial effect on the commission of the crime.³³⁴⁷ The Prosecution need not, however,

³³³⁷ *Blagojević and Jokić* Appeal Judgement, para. 127; *Brdanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102.

³³³⁸ *Aleksovski* Appeal Judgement, para. 165.

³³³⁹ *Brdanin* Appeal Judgement, para. 484; *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, paras. 102, 142–143; *Aleksovski* Appeal Judgement, para. 162; *Tadić* Appeal Judgement, para. 229.

³³⁴⁰ *Krstić* Appeal Judgement, para. 143. *See also* *Brdanin* Appeal Judgement, para. 355. The Appeals Chamber held *Krstić* responsible for aiding and abetting genocide, irrespective of the fact that the individuals committing the genocide were not identified.

³³⁴¹ *Krstić* Appeal Judgement, para. 143. *See also* *Brdanin* Appeal Judgement, para. 355.

³³⁴² *Tadić* Appeal Judgement, para. 229.

³³⁴³ *Krnjelac* Appeal Judgement, para. 33; *Tadić* Appeal Judgement, para. 229.

³³⁴⁴ *Brdanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Aleksovski* Appeal Judgement, para. 162.

³³⁴⁵ *Brdanin* Appeal Judgement, paras. 487–488.

³³⁴⁶ *Krstić* Appeal Judgement, para. 143; *Vasiljević* Appeal Judgement, paras. 142–143. *See* *Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgement, para. 140 (genocide); *Krnjelac* Appeal Judgement, para. 52 (persecution). *See also* *Semanza* Appeal Judgement, para. 316 (genocide); *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 501 (genocide).

³³⁴⁷ *Brdanin* Appeal Judgement, para. 348; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 46; *Vasiljević* Appeal Judgement, para. 102; *Čelebići* Appeal Judgement, para. 352; *Aleksovski* Appeal Judgement, para. 162; *Tadić* Appeal Judgement, para. 229. *See also* *Gacumbitsi* Appeal Judgement, para. 140; *Furundžija* Trial Judgement, para. 234.

prove that the crime would not have been committed absent contribution of the aider and abettor.³³⁴⁸

1019. The Appeals Chamber has held that omission proper may lead to individual criminal responsibility under Article 7(1) of the Statute where there is a legal duty to act.³³⁴⁹ Moreover, the Appeals Chamber has consistently found that, in the circumstances of a given case, the *actus reus* of aiding and abetting may be perpetrated through an omission.³³⁵⁰ The *Orić* Appeals Chamber held that

at a minimum, the offender's conduct would have to meet the basic elements of aiding and abetting. Thus, his omission must be directed to assist, encourage or lend moral support to the perpetration of a crime and have a substantial effect upon the perpetration of the crime (*actus reus*). The aider and abettor must know that his omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal (*mens rea*).³³⁵¹

Thus, the *actus reus* and *mens rea* requirements for aiding and abetting by omission are the same as for aiding and abetting by a positive act.³³⁵² The critical issue to be determined is whether, on the particular facts of a given case, it is established that the failure to discharge a legal duty assisted, encouraged, or lent moral support to the perpetration of the crime, and had a substantial effect on it. In particular, the question as to whether an omission constitutes "substantial assistance" to the perpetration of a crime requires a fact based enquiry.³³⁵³ The fact that the accused provided a more limited assistance to the commission of a crime than others does not preclude the accused's assistance from having had a substantial effect on the perpetration of the crime.³³⁵⁴ With regard to the standard of proof, the Prosecution must show (i) that the omission had a substantial effect on the

³³⁴⁸ *Mrkšić and Šljivančanin* Appeal Judgement, para. 81 (holding "[t]here is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as the precedent to the commission of the crime"); *Brdanin* Appeal Judgement, para. 348; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48. The Appeals Chamber in *Brdanin* held that "[i]n cases where tacit approval or encouragement has been found to be the basis for criminal responsibility, it has been the authority of the accused combined with his presence on (or very near to) the crime scene, especially if considered together with his prior conduct, which all together allow the conclusion that the accused's conduct amounts to official sanction of the crime and thus substantially contributes to it." *Brdanin* Appeal Judgement, para. 277, referring to *Kayishema and Ruzindana* Appeal Judgement, para. 201; *Akayesu* Trial Judgement, paras. 706-707; *Furundžija* Trial Judgement, paras 207-209; *Aleksovski* Trial Judgement, para. 88; *Bagilishema* Trial Judgement, para. 36; *Ndindabahizi* Trial Judgement, para. 457.

³³⁴⁹ *Mrkšić and Šljivančanin* Appeal Judgement, para. 49, citing *Orić* Appeal Judgement, para. 43, *Brdanin* Appeal Judgement, para. 274; *Galić* Appeal Judgement, para. 175; *Blaškić* Appeal Judgement, para. 663; *Ntagerura et al.* Appeal Judgement, paras. 334, 370. See also *Tadić* Appeal Judgement, para. 188.

³³⁵⁰ *Mrkšić and Šljivančanin* Appeal Judgement, para. 134, referring to *Blaškić* Appeal Judgement, para. 47. See also *Nahimana et al.* Appeal Judgement, para. 482; *Ntagerura et al.* Appeal Judgement, para. 370.

³³⁵¹ *Orić* Appeal Judgement, para. 43. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 49.

³³⁵² *Mrkšić and Šljivančanin* Appeal Judgement, para. 146, referring to *Orić* Appeal Judgement, para. 43; *Blaškić* Appeal Judgement, para. 47 ("The Appeals Chamber leaves open the possibility that in the circumstances of a given case, an omission may constitute the *actus reus* of aiding and abetting").

³³⁵³ *Mrkšić and Šljivančanin* Appeal Judgement, paras. 146, 200, referring to *Blagojević and Jokić* Appeal Judgement, para. 134 ("The Appeals Chamber observes that the question of whether a given act constitutes substantial assistance to a crime requires a fact-based inquiry"); *Muvunyi* Appeal Judgement, para. 80.

³³⁵⁴ *Mrkšić and Šljivančanin* Appeal Judgement, para. 200, citing *Blagojević and Jokić* Appeal Judgement, para. 134.

crime in the sense that the crime would have been substantially less likely had the accused acted; and (ii) that the accused knew that the commission of the crime was probable and that his inaction assisted it.³³⁵⁵

1020. The *Mrkšić and Šljivančanin* Appeals Chamber considered that aiding and abetting by omission necessarily requires that the accused has “the ability to act, or in other words, that there were means available to the accused to fulfil this duty”.³³⁵⁶

(e) Committing, including Participation in a Joint Criminal Enterprise

(i) Joint Criminal Enterprise (JCE)

1021. Three categories of JCE existed in customary international law before the events alleged in the Indictment.³³⁵⁷ The first category is a “basic” form of JCE, which is characterised by cases where all participants, acting pursuant to a common purpose, possess the same criminal intention.³³⁵⁸ The second category is a “systemic” form of JCE, characterised by the existence of an organised system of ill-treatment.³³⁵⁹ The third category is an “extended” form of JCE, which involves responsibility of a participant in a JCE for a crime beyond the common purpose but which is nevertheless a natural and foreseeable consequence of carrying out the crimes forming part of the common purpose (“extended crime”).³³⁶⁰ The first and third categories of JCE are charged in the Indictment.³³⁶¹

1022. For an accused to incur liability for a crime forming part of the common purpose under the first category JCE, the accused must possess the intent required for the crime, including the specific intent, when relevant.³³⁶²

³³⁵⁵ *Mrkšić and Šljivančanin* Appeal Judgement, paras. 97, 101; *Orić* Appeal Judgement, para. 43.

³³⁵⁶ *Mrkšić and Šljivančanin* Appeal Judgement, para. 154, referring to *Ntagerura et al.* Appeal Judgement, para. 335.

³³⁵⁷ *Brđanin* Appeal Judgement, paras. 363–364; *Vasiljević* Appeal Judgement, para. 95; *Milutinović et al.* May 2003 Appeal Decision, para. 29; *Tadić* Appeal Judgement, paras. 195–226.

³³⁵⁸ *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, paras. 96–99; *Krnojelac* Appeal Judgement, paras 83–84; *Tadić* Appeal Judgement, paras 195–225. See also *Gacumbitsi* Appeal Judgement, para. 158; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 463; *Krnojelac* Appeal Judgement, para. 84.

³³⁵⁹ *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, paras. 96–99; *Krnojelac* Appeal Judgement, para. 89; *Tadić* Appeal Judgement, paras. 202–203. (The *Vasiljević* Appeals Chamber found that “[i]t is a variant of the basic form, characterised by the existence of an organised system of ill-treatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.” *Vasiljević* Appeal Judgement, para. 98.)

³³⁶⁰ *Stakić* Appeal Judgement, para. 65; *Kvočka et al.* Appeal Judgement, para. 83; *Blaškić* Appeal Judgement, para. 33; *Vasiljević* Appeal Judgement, paras. 96–99; *Krnojelac* Appeal Judgement, para. 89; *Tadić* Appeal Judgement, paras. 202–204.

³³⁶¹ See Indictment, paras. 27–29, 36.

³³⁶² *Tadić* Appeal Judgement, para. 188. Including those crimes requiring specific intent such as genocide and persecution. *Brđanin* Appeal Judgement, para. 365; *Stakić* Appeal, para. 65; *Kvočka et al.* Appeal Judgement, paras. 110, 240; *Brđanin* March 2004 Appeal Decision, para. 6 (genocide); *Krnojelac* Appeal Judgement, paras. 111–112 (persecution); *Tadić* Appeal Judgement, para. 204.

1023. The Appeals Chamber has identified three elements required for a finding of criminal liability under the JCE doctrine. The first element is the participation of a plurality of persons in a common purpose.³³⁶³ It is not required that each member in the JCE is identified by name: “it can be sufficient to refer to categories or groups of persons.”³³⁶⁴ However, the participants need not be organised into any sort of military, political, or administrative structure.³³⁶⁵

1024. The second element is the existence of a common purpose that amounts to or involves the commission of a crime provided for in the Statute.³³⁶⁶ The common purpose need not be previously arranged or formulated but “may materialise extemporaneously and be inferred from the fact that a plurality of persons act in unison to put into effect a joint criminal enterprise”.³³⁶⁷ The Trial Chamber must “specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims)”.³³⁶⁸ The Appeals Chamber has held that where the common purpose is alleged to include crimes committed over a wide geographical area, an accused may be found criminally responsible for his participation in the enterprise, even if his contributions to the enterprise occurred only in a much smaller geographical area.³³⁶⁹

1025. The *Brđanin* Appeals Chamber held that “what matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose”.³³⁷⁰ The determination of whether a particular crime is part of the common purpose has to be assessed “on a case-by-case basis”.³³⁷¹

³³⁶³ *Brđanin* Appeal Judgement, para. 364; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 466.

³³⁶⁴ *Krajišnik* Appeal Judgement, para. 156, referring to *Limaj et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 430. See also *Stakić* Appeal Judgement, para. 69.

³³⁶⁵ *Stakić* Appeal Judgement, para. 64; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227.

³³⁶⁶ *Brđanin* Appeal Judgement, para. 364; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 466; *Kayishema and Ruzindana* Appeal Judgement, para. 193.

³³⁶⁷ *Furundžija* Appeal Judgement, para. 119, quoting *Tadić* Appeal Judgement, para. 227. See also *Brđanin* Appeal Judgement, para. 418.

³³⁶⁸ *Brđanin* Appeal Judgement, para. 430.

³³⁶⁹ *Tadić* Appeal Judgement, para. 199, fn. 243, citing two cases of the Supreme Court for the British Zone (of occupied Germany) dealing with the participation of accused in the *Kristallnacht* riots: *Case no. 66*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. II, p. 284-290 and *Case no. 17*, vol. I, pp. 94-98.

³³⁷⁰ *Brđanin* Appeal Judgement, para. 410.

³³⁷¹ *Ibid.*, para. 413. This may be inferred from various factors, “including the fact that the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose,” especially “when a member of the JCE uses a person outside the JCE to carry out the *actus reus* of a crime, the fact that the person in question knows of the existence of the JCE – without it being established that he or she shares the *mens rea* necessary to become a member of the JCE – may be a factor to be taken into account

1026. The third element is the participation of the accused in the common purpose.³³⁷² An accused may contribute to and further the common purpose of the JCE by various acts, which need not involve carrying out any part of the *actus reus* of a crime forming part of the common purpose, or indeed any crime at all.³³⁷³ While a crime must have been committed for liability through JCE to ensue,³³⁷⁴ the Prosecutor need not demonstrate that the accused's participation is a *sine qua non*, without which the crime could or would not have been committed.³³⁷⁵ There is no requirement that the accused is present at the time and place of perpetration of the crime.³³⁷⁶

1027. The Appeals Chamber has held that, for liability for participation in a JCE, it suffices that an accused perform acts "that in some way are directed to the furthering of the common plan or purpose."³³⁷⁷ The participation or contribution of an accused to the common purpose need not be substantive,³³⁷⁸ but "it should at least be a significant contribution to the crimes for which the accused is found responsible."³³⁷⁹

1028. The common criminal objective of the JCE may also evolve over time, as the Appeals Chamber has held "a JCE can come to embrace expanded criminal means, as long as the evidence shows that the JCE members agreed on this expansion of means."³³⁸⁰ It means that the crimes that make up the common purpose may evolve and change over time and as such the JCE may have different participants at different times. Determinative factors are the accused's intention and whether the expanded crimes became part of the common objective.³³⁸¹

when determining whether the crime forms part of the common criminal purpose. However, this is not a *sine qua non* for imputing liability for the crime to that member of the JCE." *Ibid.*, para. 410.

³³⁷² *Ibid.*, paras. 364, 427; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnjelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. *See also* *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 466; *Kayishema and Ruzindana* Appeal Judgement, para. 193.

³³⁷³ *Krajišnik* Appeal Judgement, para. 215; *Brdanin* Appeal Judgement, para. 427; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, para. 227.

³³⁷⁴ *Brdanin* Appeal Judgement, para. 430.

³³⁷⁵ *Kvočka et al.* Appeal Judgement, paras. 98, 193; *Tadić* Appeal Judgement, paras. 191, 199.

³³⁷⁶ *Krnjelac* Appeal Judgement, para. 81.

³³⁷⁷ *Kvočka et al.* Appeal Judgement, para. 187; *Vasiljević* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 229.

³³⁷⁸ *Krajišnik* Appeal Judgement, para. 215; *Babić* Appeal Judgement, para. 38; *Kvočka et al.* Appeal Judgement, para. 99; *Ntakirutimana* Appeal Judgement, para. 466; *Vasiljević* Appeal Judgement, para. 100; *Krnjelac* Appeal Judgement, paras. 31, 81; *Tadić* Appeal Judgement, para. 227(iii).

³³⁷⁹ *Krajišnik* Appeal Judgement, para. 215; *Brdanin* Appeal Judgement, para. 430. *See also* the *Kvočka et al.* Appeals Chamber, which held that "there may be specific cases which require, as an exception to the general rule, a substantial contribution of the accused to determine whether [the accused] participated in the joint criminal enterprise" and that "[i]n practice, the significance of the accused's contribution will be relevant to demonstrating that the accused shared the intent to pursue the common purpose." *Kvočka et al.* Appeal Judgement, para. 97.

³³⁸⁰ *Krajišnik* Appeal Judgement, para. 163; *Brdanin* Appeal Judgement, para. 410.

³³⁸¹ *Krajišnik* Appeal Judgement, paras. 164–173.

1029. The Appeals Chamber has held that persons carrying out the *actus reus* of the crime forming part of the common purpose need not have been participants in or members of the JCE.³³⁸² Consequently, persons carrying out the *actus reus* of the crime need not share the intent of the crime with the participants in the common purpose.³³⁸³ Nor is the mental state of persons carrying out the *actus reus* of a crime a determinative factor in finding the requisite intent for the participants in a JCE.³³⁸⁴ It is necessary however, that the JCE member used the non-member to commit the *actus reus* of a crime that can be imputed to the member of the JCE.³³⁸⁵ This is assessed on a case-by-case basis.³³⁸⁶

1030. For an accused to incur third category JCE liability, the Prosecution must first prove, as for the first category JCE, that the accused possesses the intent for the crimes forming part of the common purpose.³³⁸⁷ Further, an accused “can only be held responsible for a crime outside the common purpose, if under the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group[³³⁸⁸] and (ii) the accused willingly took that risk”.³³⁸⁹ The Appeals Chamber specified that “willingly took that risk” means that the accused, “with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.”³³⁹⁰

1031. For third category JCE liability, the accused does not need to possess the requisite intent for the extended crime—the crime falling outside the common purpose.³³⁹¹ This also applies to specific intent crimes.³³⁹² The mental state of the person or persons carrying out the *actus reus* of the

³³⁸² *Brđanin* Appeal Judgement, paras. 413, 419, 430. See also *Krajišnik* Appeal Judgement, para. 225; *Martić* Appeal Judgment, para. 168.

³³⁸³ See *Brđanin* Appeal Judgement, para. 362.

³³⁸⁴ *Krajišnik* Appeal Judgement, para. 226.

³³⁸⁵ *Ibid.*, paras. 225–226. “Factors indicative of such a link include evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime. However, it is not determinative whether the non-JCE member shared the *mens rea* of the JCE member or that he knew of the existence of the JCE; what matters in [first category JCE] is whether the JCE member used the non-JCE member to commit the *actus reus* of the crime forming part of the common purpose.” *Ibid.*, para. 226.

³³⁸⁶ *Krajišnik* Appeal Judgement, para. 226; *Martić* Appeal Judgement, para. 168; *Brđanin* Appeal Judgement, para. 413.

³³⁸⁷ See *Stakić* Appeal Judgement, para. 65; *Kvočka et al.* Appeal Judgement, para. 83; *Vasiljević* Appeal Judgement, para. 101; *Krnjelac* Appeal Judgement, para. 32; *Tadić* Appeal Judgement, para. 220.

³³⁸⁸ The crimes may also be “perpetrated by one or more of the persons used by [the accused] (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose.” *Brđanin* Appeal Judgement, para. 411.

³³⁸⁹ *Brđanin* Appeal Judgement, paras. 365, 411. See also *Stakić* Appeal Judgement, para. 87; *Kvočka et al.* Appeal Judgement, para. 83; *Blaškić* Appeal Judgement, para. 33; *Vasiljević* Appeal Judgement, para. 101. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 467.

³³⁹⁰ *Brđanin* Appeal Judgement, para. 411.

³³⁹¹ *Brđanin* March 2004 Interlocutory Appeal Decision, paras. 5–7.

³³⁹² *Ibid.*, paras. 6, 9. The *Brđanin* Appeals Chamber found that an accused can be found criminally responsible for the crime of genocide under the third category of JCE if the Prosecution can “establish that it was reasonably foreseeable to the accused that an act specified in Article 4(2) [of the Statute] would be committed and that it would be committed with genocidal intent”. Genocidal intent on the part of the accused is not required. *Ibid.*

extended crime is therefore not relevant for the finding of the mental state of the accused, but is determinative to the finding of which extended crime was committed, if any.

1032. The reburial is alleged as “a natural and foreseeable consequence of the execution and original burial plan conceived by the [JCE to Murder].”³³⁹³ However, legally, only a crime can constitute an extended crime pursuant to third category JCE. A reburial is not a crime in itself under the Statute and therefore cannot legally constitute a foreseeable consequence of the alleged JCE to Murder.

2. Article 7(3) of the Statute

1033. Under Article 7(3) of the Statute, a superior may incur individual criminal responsibility for failing to take the necessary and reasonable measures either to prevent a subordinate from committing a crime within the jurisdiction of the Tribunal, or to punish a subordinate for having committed a crime, if the following elements exist: (1) a superior-subordinate relationship; (2) the superior knew or had reason to know that a criminal act was about to be, was being or had been committed, and (3) failure to take necessary and reasonable measures to prevent or punish the conduct in question.³³⁹⁴

1034. This form of responsibility was well established in customary international law at the time of the events charged in the Indictment.³³⁹⁵ A superior bears responsibility under Article 7(3) for failing to discharge a duty required by international law, rather than for participating in the crime.³³⁹⁶

1035. The Appeals Chamber has held that “superior responsibility under Article 7(3) of the Statute encompasses all forms of criminal conduct by subordinates,” including “all other modes of participation under Article 7(1).”³³⁹⁷ Hence, a superior may bear superior responsibility for his failure to prevent or punish the physical commission, including through participation in a JCE, planning, instigation, ordering, or aiding and abetting of crimes by a subordinate.³³⁹⁸

³³⁹³ Indictment, para. 32. The absence of cross-references leads the Trial Chamber to conclude that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** are charged for these reburials pursuant to the third category of JCE, only under Counts 1 and 2.

³³⁹⁴ *Orić* Appeal Judgement, para. 18; *Kordić and Čerkez* Appeal Judgement, paras. 827, 839; *Blaškić* Appeal Judgement, para. 69; *Čelebići* Appeal Judgement, paras. 191–192, 197, 256; *Aleksovski* Appeal Judgement, para. 72. *See also* *Gacumbitsi* Appeal Judgement, para. 143.

³³⁹⁵ *Blaškić* Appeal Judgement, para. 85; *Hadžihasanović et al.* July 2003 Appeal Decision, para. 11.

³³⁹⁶ *Krnjelac* Appeal Judgement, para. 171. *See also* *Orić* Trial Judgement, para. 293; *Hadžihasanović and Kubura* Trial Judgement, para. 75; *Halilović* Trial Judgement, para. 54.

³³⁹⁷ *Blagojević and Jokić* Appeal Judgement, para. 280.

³³⁹⁸ *Orić* Appeal Judgement, para. 21; *Blagojević and Jokić* Appeal Judgement, paras. 280–282.

1036. The failure to prevent and the failure to punish are distinct legal obligations as the failure to prevent concerns future crimes of subordinates and the failure to punish concerns past crimes of subordinates.³³⁹⁹ A superior may therefore be convicted for either or both failure to prevent and failure to punish.

(i) A Superior-Subordinate Relationship

1037. A superior-subordinate relationship exists where a superior has “effective control” over the subordinate in question—that is, a material ability to prevent or punish the subordinate’s criminal conduct.³⁴⁰⁰ This standard applies to any superior, whether military or civilian.³⁴⁰¹

1038. Superior responsibility can arise by virtue of the superior’s *de jure* or *de facto* power over the relevant subordinate.³⁴⁰² The possession of *de jure* power may not suffice for the finding of superior responsibility if it does not manifest itself in effective control.³⁴⁰³ The *Orić* Appeals Judgement held that “[t]he possession of *de jure* authority, without more, provides only some evidence of such effective control.”³⁴⁰⁴ Proof is required that the superior was not only able to issue orders but that his orders were actually followed.³⁴⁰⁵ Whether a superior has the requisite level of power for a finding of “effective control” is a matter which has to be determined on the basis of the evidence presented in each case.³⁴⁰⁶

1039. According to the Appeals Chamber’s jurisprudence, a superior cannot incur responsibility under Article 7(3) for crimes committed by a subordinate before he assumed the position as superior over the subordinate in question.³⁴⁰⁷ A superior may however incur superior responsibility no matter how far down the chain of authority the subordinate may be,³⁴⁰⁸ and even if the subordinate has participated in the crimes through intermediaries.³⁴⁰⁹ The relationship between the

³³⁹⁹ *Hadžihasanović and Kubura* Appeal Judgement, para. 259; *Blaškić* Appeal Judgement, para. 83.

³⁴⁰⁰ *Orić* Appeal Judgement, para. 20; *Halilović* Appeal Judgement, para. 59; *Kordić and Čerkez* Appeal Judgement, para. 840; *Blaškić* Appeal Judgement, paras. 67, 375; *Čelebići* Appeal Judgement, para. 256. *See also* *Gacumbitsi* Appeal Judgement, para. 143; *Kajelijeli* Appeal Judgement, para. 86; *Bagilishema* Appeal Judgement, paras. 51–52, 56, 61.

³⁴⁰¹ *Čelebići* Appeal Judgement, paras. 195–197, 240; *Aleksovski* Appeal Judgement, para. 76. *See also* *Kajelijeli* Appeal Judgement, para. 85; *Bagilishema* Appeal Judgement, paras. 50–52, 56.

³⁴⁰² *Čelebići* Appeal Judgement, paras. 191–192, 197. *See also* *Gacumbitsi* Appeal Judgement, para. 143; *Kajelijeli* Appeal Judgement, para. 85; *Bagilishema* Appeal Judgement, para. 50.

³⁴⁰³ *Halilović* Appeal Judgement, para. 204; *Čelebići* Appeal Judgement, para. 197. *See also* *Blagojević and Jokić* Appeal Judgement, para. 302.

³⁴⁰⁴ *Orić* Appeal Judgement, para. 92. *See also* *Hadžihasanović and Kubura* Appeal Judgement, para. 21; *Čelebići* Appeal Judgement, para. 197.

³⁴⁰⁵ *See* *Strugar* Appeal Judgement, para. 256; *Halilović* Appeal Judgement, para. 207; *Blaškić* Appeal Judgement, para. 69.

³⁴⁰⁶ *Čelebići* Appeal Judgement, para. 206; *Aleksovski* Appeal Judgement, paras. 73–74.

³⁴⁰⁷ *Hadžihasanović et al.* July 2003 Appeal Decision, paras. 45–51. *See also* *Halilović* Appeal Judgement, para. 67.

³⁴⁰⁸ *See* *Blaškić* Appeal Judgement, para. 67; *Čelebići* Appeal Judgement, paras. 252, 303.

³⁴⁰⁹ *Orić* Appeal Judgement, para. 20; *Halilović* Appeal Judgement, para. 59.

superior and subordinate need not be permanent in nature.³⁴¹⁰ The superior does not need to know the identity of the subordinate.³⁴¹¹

(b) The Superior Knew or Had Reason to Know

1040. The second element of superior responsibility is that a superior knew or had reason to know that a subordinate's criminal act was about to be, was being, or had been realised.³⁴¹² Actual knowledge may not be presumed by virtue of a position of command alone.³⁴¹³ However, such knowledge may be inferred from circumstantial evidence.³⁴¹⁴

1041. A superior had reason to know "only if information was available to him which would have put him on notice of offences committed by subordinates."³⁴¹⁵ The determination of whether a superior had "reason to know" must take account of the circumstances of each case.³⁴¹⁶ The "reason to know" standard is met if the superior possessed "information sufficiently alarming to justify further inquiry."³⁴¹⁷

1042. The information required to put a superior on notice need not be specific.³⁴¹⁸ Rather it must "put him on notice of possible unlawful acts by his subordinates."³⁴¹⁹

(c) Failure to Take Necessary and Reasonable Measures

1043. For responsibility under Article 7(3), the Prosecution must further prove that the commander failed to take measures that were "necessary and reasonable" to either prevent or punish the

³⁴¹⁰ *Strugar* Trial Judgement, para. 363, fn. 1072.

³⁴¹¹ *Blagojević and Jokić* Appeal Judgement, para. 287.

³⁴¹² *See Kordić and Čerkez* Appeal Judgement, para. 839; *Blaškić* Appeal Judgement, para. 57; *Krnojelac* Appeal Judgement, para. 154; *Čelebići* Appeal Judgement, para. 241. *See also Gacumbitsi* Appeal Judgement, para. 143; *Bagilishema* Appeal Judgement, para. 37.

³⁴¹³ *Blaškić* Appeal Judgement, para. 57.

³⁴¹⁴ *See Galić* Appeal Judgement, paras. 171, 180–184; *Blaškić* Appeal Judgement, para. 57 (stating that the following factors may assist: "the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time." *Ibid.*, fn. 101 (referring to *Blaškić* Trial Judgement, para. 307).

³⁴¹⁵ *Čelebići* Appeal Judgement, para. 241, referring to *Čelebići* Trial Judgement, para. 393. *See also Galić* Appeal Judgement, para. 184; *Blaškić* Appeal Judgement, para. 62; *Bagilishema* Appeal Judgement, para. 42.

³⁴¹⁶ *Krnojelac* Appeal Judgement, para. 156.

³⁴¹⁷ *Strugar* Appeal Judgement, para. 298. *See also Hadžihasanović and Kubura* Appeal Judgement, paras. 27–28 (referring to the *Čelebići* Appeal Judgement and stating: "It follows that, in order to demonstrate that a superior had the *mens rea* required under Article 7(3) of the statute, it must be established whether, in the circumstances of the case, he had information sufficiently alarming to justify further inquiry."); *Čelebići* Appeal Judgement, paras. 226, 232, 241 (stating: "a superior will be criminally responsible through the principles of superior responsibility only if information was available to him which would have put him on notice of offences committed by his subordinates. This is consistent with the customary law standard of *mens rea* as existing at the time of the offences charged in the indictment.").

³⁴¹⁸ *Čelebići* Appeal Judgement, para. 238.

³⁴¹⁹ *Ibid.* *See also Krnojelac* Appeal Judgement, para 155; *Bagilishema* Appeal Judgement, para. 42.

commission of a crime charged in the Indictment.³⁴²⁰ “Necessary” measures are appropriate measures which show that the superior genuinely tried to prevent or punish, and “reasonable” measures are those reasonably falling within the material powers of the superior.³⁴²¹ A superior is not expected to perform the impossible,³⁴²² but must use every means within his or her material ability, based on the circumstances prevailing at the time the superior acquires the requisite knowledge or has reason to know.³⁴²³

1044. The determination of what constitutes “necessary and reasonable measures” is not a matter of substantive law but of fact, to be determined on a case-by-case basis.³⁴²⁴ This assessment depends upon the superior’s level of effective control over the subordinate.³⁴²⁵ As Article 7(3) contains no requirement of causality, the superior’s failure to take necessary and reasonable measures to prevent does not need to have caused the subordinate’s misconduct.³⁴²⁶

1045. “Necessary and reasonable” measures may include carrying out an investigation,³⁴²⁷ transmitting information in a superior’s possession to the proper administrative or prosecutorial authorities,³⁴²⁸ issuing special orders aimed at bringing unlawful practices of subordinates in compliance with the rules of war³⁴²⁹ and securing the implementation of these orders,³⁴³⁰ protesting against or criticising criminal action,³⁴³¹ taking disciplinary measures against the commission of atrocities,³⁴³² reporting the matter to the competent authorities,³⁴³³ and/or insisting before a superior authority that immediate action be taken.³⁴³⁴

³⁴²⁰ *Kordić and Čerkez* Appeal Judgement, para. 839; *Blaškić* Appeal Judgement, para. 72; *Krnjelac* Appeal Judgement, para. 172. See also *Gacumbitsi* Appeal Judgement, para. 143.

³⁴²¹ *Orić* Appeal Judgement, para. 177; *Halilović* Appeal Judgement, para. 63.

³⁴²² *Blaškić* Appeal Judgement, para. 417.

³⁴²³ *Ibid.*, paras. 72, 417, 499. See also *Bagilishema* Appeal Judgement, para. 35.

³⁴²⁴ *Boškoski and Tarčulovski* Appeal Judgement, para. 259; *Orić* Appeal Judgement, para. 177; *Halilović* Appeal Judgement, para. 63; *Blaškić* Appeal Judgement, para. 72; *Čelebići* Appeal Judgement, para. 206; *Aleksovski* Appeal Judgement, paras. 73-74.

³⁴²⁵ *Blaškić* Appeal Judgement, para. 72. See also *Boškoski and Tarčulovski* Appeal Judgement, paras. 230, 231; *Bagilishema* Appeal Judgement, para. 35; *Kayishema and Ruzindana* Appeal Judgement, para. 302.

³⁴²⁶ *Kordić and Čerkez* Appeal Judgement, para. 832; *Blaškić* Appeal Judgement, para. 77. See also *Halilović* Trial Judgement, para. 78.

³⁴²⁷ *Limaj et al.* Trial Judgement, para. 529; *Halilović* Trial Judgement, paras. 97, 99–100; *Strugar* Trial Judgement, para. 376, 416.

³⁴²⁸ See *Galić* Appeal Judgement, para. 184. See also *Milutinović et al.* Trial Judgement, Vol.1, para 123; *Hadžihasanović and Kubura* Trial Judgement, paras. 173–174, 176; *Limaj et al.* Trial Judgement, para. 529; *Halilović* Trial Judgement, paras. 97, 99, 100; *Strugar* Trial Judgement, para. 376; *Kvočka et al.* Trial Judgement, para. 316.

³⁴²⁹ *Halilović* Trial Judgement, para. 74; *Strugar* Trial Judgement, para. 374. See also *Bagilishema* Trial Judgement, para. 265.

³⁴³⁰ *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Halilović* Trial Judgement, para. 74; *Strugar* Trial Judgement, para. 378.

³⁴³¹ *Halilović* Trial Judgement, para. 89; *Strugar* Trial Judgement, para. 374.

³⁴³² *Ibid.*

³⁴³³ *Boškoski and Tarčulovski* Appeal Judgement, para. 230; *Hadžihasanović and Kubura* Trial Judgement, para. 154; *Blaškić* Trial Judgement, paras. 329, 335. See also *Boškoski and Tarčulovski* Appeal Judgement, para. 234.

³⁴³⁴ *Halilović* Trial Judgement, para. 89; *Strugar* Trial Judgement, para. 374.

1046. The quality and completeness of any investigation ordered or undertaken by the superior is determinative when assessing whether it was a “necessary and reasonable” measure.³⁴³⁵ In order to satisfy the obligation under Article 7(3), a superior’s report to the investigating authorities must, under normal circumstances, be likely to trigger a proper investigation into the alleged criminal conduct.³⁴³⁶ Even if, in fact, the investigation undertaken was not satisfactory, if the failure of the investigating authorities was not attributable to the superior, and he or she did not know of their failure, or could not anticipate it at the time, the superior cannot be held responsible under Article 7(3).³⁴³⁷ No further reporting or action is required in such a case.³⁴³⁸ Furthermore, when the most which could be done by a superior would be to report the illegal conduct of subordinates to the very persons who had ordered it, the superior cannot be found responsible under Article 7(3).³⁴³⁹

B. Findings

1. Joint Criminal Enterprise to Murder

(a) Prosecution Submissions

1047. The Prosecution alleges that **Popović, Beara, Nikolić, Borovčanin and Pandurević** participated in a joint criminal enterprise to murder the able-bodied Bosnian Muslim men from Srebrenica in July 1995 (the “JCE to Murder”).³⁴⁴⁰ According to the Indictment, between the evening hours of 11 July and the morning of 12 July, **Popović, Beara, Nikolić, Borovčanin and Pandurević** developed a plan to:

murder the hundreds of able-bodied men identified from the crowd of Muslims in Potočari [...] ³⁴⁴¹
The execution of the plan to murder the able-bodied men from Srebrenica began in the afternoon of 12 July with the forcible separation of the able-bodied men in Potočari from their families

³⁴³⁵ *Hadžihasanović and Kubura* Trial Judgement, para. 175; *Strugar* Trial Judgement, para. 376.

³⁴³⁶ *Boškoski and Tarčulovski* Trial Judgement, para. 536. *See also* *Boškoski and Tarčulovski* Appeal Judgement, paras. 231, 234.

³⁴³⁷ *Boškoski and Tarčulovski* Trial Judgement, para. 536. *See also* *Boškoski and Tarčulovski* Appeal Judgement, paras. 268, 269, 270.

³⁴³⁸ *Boškoski and Tarčulovski* Trial Judgement, para. 536.

³⁴³⁹ *Krnojelac* Trial Judgement, para. 127. This finding was not disturbed on appeal. *See* *Krnojelac* Appeal Judgement. *See also* *Krstić* Appeal Judgement, para. 143, fn. 250.

³⁴⁴⁰ Indictment, paras. 27–30, 36–44. The Prosecution alleges that the officers within both the JCE to Forcibly Remove and the JCE to Murder include, but are not limited to, all seven accused plus the following people: Radovan Karadžić, President of the RS; General Ratko Mladić, the Commander of the VRS; General Milenko Živanović, Commander of the Drina Corps; General Radislav Krstić, Chief of Staff/Deputy Commander and Commander of the Drina Corps; General Zdravko Tolimir, Assistant Commander for Intelligence and Security, Main Staff; Colonel Petar Salapura, Chief of Intelligence of the Main Staff; Colonel Radoslav Janković, Intelligence Officer of the Main Staff; Major Dragomir Pećanac, Security Officer of the Main Staff; Lieutenant Colonel Rajko Krsmanović, Drina Corps Chief of Transportation Services; Colonel Lazar Aćamović, Drina Corps Assistant Commander for Rear Services; Colonel Vidoje Blagojević, Commander of the Bratunac Brigade; Captain Momir Nikolić, Chief of Security and Intelligence, Bratunac Brigade; Lieutenant Colonel Dragan Obrenović, Deputy Commander and Chief of Staff of the Zvornik Brigade; and Captain Milorad Trbić, Security Officer, Zvornik Brigade. Indictment, paras. 96–97.

³⁴⁴¹ Indictment, para. 27.

[...].³⁴⁴² On the morning of 13 July and continuing all day, over 6,000 able-bodied Muslim men surrendered to or were captured by Bosnian Serb forces stationed on the road between Bratunac, Konjević Polje and Milići. The majority of those prisoners were transported to Bratunac and Kravica where they were temporarily detained [...] along with the Muslim men who had been separated in Potočari. The plan to murder the able-bodied Muslim men from Srebrenica encompassed the murder of this group of over 6,000 men.³⁴⁴³

1048. According to the Prosecution, the plan to murder the able-bodied Bosnian Muslim men from Srebrenica was carried out between 11 July 1995 and 1 November 1995.³⁴⁴⁴ The Prosecution alleges that the plan and logistical arrangements for the killing operation took shape between the evening of 11 July and the morning of 12 July, and the plan was in place as of 10 a.m. on 12 July.³⁴⁴⁵

1049. The Prosecution alleges that the first phase of the plan involved the separation and detention of the able-bodied Bosnian Muslim men and boys in Potočari. The men and boys were later transferred from Potočari to various places of detention in Bratunac.³⁴⁴⁶ The Prosecution alleges that a series of systematic and organised mass executions followed, beginning on 13 July at Konjević Polje and ending “in late July or August” with the murder of six men from Srebrenica by the Serbian MUP unit known as the Scorpions.³⁴⁴⁷

(b) The Common Purpose

1050. Over a period of a few days in July 1995, the Bosnian Serb Forces executed several thousand Bosnian Muslim males from in and around Srebrenica in a large scale, systematic operation. The operation began on 12 July with the separation of the Bosnian Muslim men from the women and children gathered at Potočari. These men were subsequently detained in the White House and then various places in Bratunac. Organised mass killings began on 13 July in the Bratunac area at the Kravica Warehouse (where at least 1,000 men were killed), and continued between 14 and 16 July in the Zvornik area at Orahovac (between 800 and 2,500 men killed), Petkovci (over 800 men killed), Kozluk (over 1,000 men killed) and Pilica (between 1,000 and 2,000 men killed).

(c) Formation and Initial Stages of the Plan

1051. The Trial Chamber cannot determine with precision when the plan to murder was formed. However, immediately prior to the third meeting held at the Hotel Fontana, around 10.00 a.m. on

³⁴⁴² *Ibid.*, para. 28.

³⁴⁴³ Indictment, para. 29.

³⁴⁴⁴ Prosecution Final Brief, para. 460.

³⁴⁴⁵ *Ibid.*, paras. 461–462.

³⁴⁴⁶ *Ibid.*, paras. 466–467.

³⁴⁴⁷ *Ibid.*, paras. 471–487.

12 July, security personnel were already discussing the planned execution of the Bosnian Muslim men from Potočari.³⁴⁴⁸ Specifically, Momir Nikolić, Chief of Security and Intelligence of the Bratunac Brigade, and his superior **Popović**, Chief of Security of the Drina Corps, met outside the Hotel where **Popović** informed Nikolić that the able-bodied men within the crowd of Bosnian Muslim civilians would be separated, temporarily detained in Bratunac, and killed shortly thereafter.³⁴⁴⁹ **Popović** advised Momir Nikolić that he was to assist in this operation. **Popović** and Nikolić were joined by Kosorić, Assistant Chief of Staff for Intelligence in the Drina Corps,³⁴⁵⁰ and they went on to discuss some of the logistics of the operation, in particular what locations could be used for the detention and killings.³⁴⁵¹

1052. Immediately after this conversation between **Popović**, Kosorić and Momir Nikolić, there was a third meeting at the Hotel Fontana. At this meeting, for the first time, Mladić announced that all the Bosnian Muslim men in Potočari would be separated to be screened for war crimes. He gave no details as to the logistics of this exercise.³⁴⁵² The Trial Chamber finds that the forecasted separation process in Potočari, which began later that day, marked the commencement of the implementation of the plan to murder the Bosnian Muslim males from Srebrenica.³⁴⁵³

1053. The Trial Chamber also notes that the conditions of detention of the Bosnian Muslim men in Potočari stands as further evidence that a plan to kill was in progress. The men were detained in unbearably cramped conditions and deprived of basic necessities with a total disregard for their safety and well being. Surrendered identification documents were burned³⁴⁵⁴ and there was a ban on

³⁴⁴⁸ Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2. For an analysis of Momir Nikolić's credibility, *see supra*, paras. 48–53, 280–288.

³⁴⁴⁹ Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2. On 11 July, Momir Nikolić wrote a report about the number of men in Potočari and forwarded it to his Command and to the intelligence and security officers of the Drina Corps who were present at the Hotel Fontana. The following day, Momir Nikolić learned that the estimated number of men was between 400 and 700 men. Nikolić explained that once his subordinate units entered Potočari on 12 July, they were able to see how many able-bodied men there were. Momir Nikolić, T. 33009–33010 (22 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 1.

³⁴⁵⁰ Svetozar Kosorić, T. 33760 (30 June 2009).

³⁴⁵¹ *See supra*, para. 286.

³⁴⁵² Pieter Boering, T. 1969, 1974 (21 Sept 2006).

³⁴⁵³ There is evidence before the Trial Chamber that some efforts were made to screen the Bosnian Muslim prisoners: DutchBat members testified that Momir Nikolić, together with Colonel Vuković, did make some effort to check the identities of the detained men at Potočari, and that they did this with a list of alleged war criminals in their possession (*supra*, paras. 320, 323); Johannes Rutten testified that on 12 July at the White House, the VRS checked the men's fingers to see if they smelled of gunpowder and looked for military clothing or identification papers on them (Johannes Rutten, T. 4853–4855 (30 Nov 2006)). However, the efforts were so sporadic and void of superior direction or supervision that one cannot derive a sincere intention on the part of the Bosnian Serb Forces to carry out a legitimate screening operation. The Trial Chamber thus considers that the vague statements and patchy efforts made regarding screening of the Bosnian Muslim males at Potočari against a list of war criminals are not capable of raising a reasonable doubt as to the existence of a plan to kill Bosnian Muslim males from Srebrenica.

³⁴⁵⁴ The Bosnian Muslim men surrendered their belongings, including identity cards and passports, on the lawn of the White House, and the pile of documents was set on fire after the men were transported away. *See supra*, para. 331.

registration.³⁴⁵⁵ The words of Mane Đurić to Leendert van Duijn that “the men didn't need the passports anymore”³⁴⁵⁶ further demonstrate that a murder operation was in motion.

1054. As was the case throughout, these initial steps of separation and detention were carried out by members of various components of the Bosnian Serb Forces including Jahorina Recruits of the MUP, under Jević and Đurić, and members of the Bratunac Brigade Military Police, supervised by Momir Nikolić from the Bratunac Brigade Security Organ.³⁴⁵⁷

(d) Implementation of the Plan

1055. While the initial focus of the operation was the men in Potočari, with the discovery that a large number of men, including most of the 28th Division, had already fled the enclave in a column, the scope of the plan quickly expanded. In the days that followed, the Bosnian Serb Forces vigorously pursued the column, seeking to capture—through force or surrender—as many prisoners as possible.³⁴⁵⁸

1056. By 13 July, the Bosnian Muslim men separated in Potočari had all been taken to places of detention in Bratunac. They were joined by a large number of men from the column who had surrendered to or been captured by the Bosnian Serb Forces.³⁴⁵⁹ There was awareness, from the Brigade level right up to the RS President, that on 13 July, a large number of Bosnian Muslim men were in the custody of the Bosnian Serb Forces around Srebrenica.³⁴⁶⁰ By 5:30 p.m. on 13 July, an intercepted conversation indicates that approximately 6,000 Bosnian Muslim prisoners were

³⁴⁵⁵ When a DutchBat patrol arrived at the White House in the afternoon of 12 July, the Bosnian Serb Forces on guard prevented DutchBat from entering the house or registering the prisoners. *See supra*, para. 327.

³⁴⁵⁶ Leendert Van Duijn, T. 2304 (27 Sept 2006). *See supra*, para. 331. *See also* PW-126, T. 3608, 3611(private session) (6 Nov 2006) (saying Nenad Đokić told her that her brother would not be needing his coat).

³⁴⁵⁷ *See supra*, paras. 316, 319.

³⁴⁵⁸ *See supra*, paras. 380–382. Reports of 12 July show that at Brigade, Corps and Main Staff levels, the VRS had knowledge of the column of Bosnian Muslims fleeing Srebrenica. Ex. P00240, “Document from the Command of the 1st Bratunac Light Infantry Brigade to the Drina Corps Command, Major Golić signed by Captain Pećanac, 12 July 1995”; Ex. P00323, “Intelligence report from the 1st Zvornik Infantry Brigade Command Intelligence organ to the Drina Corps Command signed by Captain 1st Class Duško Vukotić, 12 July 1995”; Ex. P00147, “Document from the Command of the Drina Corps Intelligence Department to the VRS Main Staff signed by Major Pavle Golić, 12 July 1995”; Ex. P00148, “Document from the Command of the Drina Corps Intelligence Dept. to the Main Staff Intelligence and Security Sector signed by Tolimir, 12 July 1995” (stating that according to a prisoner of war, a group of about 500 Bosnian Muslims set off from Sućeska together with ABiH Command, aiming to reach Tuzla). A report from the Bratunac Brigade to the Drina Corps states that “our forces are mopping up the enclave and preventing the enemy from breaking through [in the direction of Milačevići-Jaglići-Bokčini Potok].” Ex. P00239, “Bratunac Brigade daily combat report signed by Colonel Vidoje Blagojević, 12 July 1995”.

³⁴⁵⁹ *See supra*, paras. 380–383.

³⁴⁶⁰ Although no information is reported on the size and location of the Bosnian Muslims from the column or the progress of the operation to capture them, it is clear from the reports that from the Corps level right through to the RS President, it was reported that large numbers of Bosnian Muslim men (described as “the enemy” or “troops”) were surrendering to Bosnian Serb forces. Ex. P00136, “Regular Combat report from the Drina Corps Command signed by Major General Radislav Krstić, 13 July 1995”; Ex. P00047, “Document from the VRS Main Staff signed by Radivoje Miletić, 13 July 1995”.

detained in the Bratunac area.³⁴⁶¹ As in Potočari, the conditions in which the men were detained provides further evidence that these men were all targeted for execution.³⁴⁶²

1057. Even more direct evidence of the murder plan comes from Mladić himself in the evening of 13 July when he issued the following order to the Drina Corps (a proposal along these lines³⁴⁶³ was circulated at 2 p.m.):

1. By means of a planned and organised control prevent the entry of all uninvited individuals to the area of combat operations in the wider areas of Srebrenica and Žepa;
2. Until further notice close Konjević Polje — Kravica — Bratunac and Rogatica — Borike — Višegrad roads to traffic, except for military vehicles of the VRS and MUP units engaged in combat operations;
3. Set up road blocks and check-points for the regulation and control of traffic at the cross-roads in Konjević Polje, just outside Bratunca [sic] on the road to Kravica, and on the Rogatica-Borike and Višegrad-Borike roads;
4. In the area of combat operations in the wider areas of Srebrenica and Žepa, prevent the entry of all local and foreign journalists, except for the journalists of the VRS Main Staff Press Centre;
5. Ban and prevent the giving of information, the making of announcements and statements to the media regarding the course, situation and results of combat operations in this area and the overall activities in this area, particularly on prisoners of war, evacuated civilians, escapees and similar.³⁴⁶⁴

1058. The Trial Chamber is satisfied that these instructions from the VRS Commander had a singular and nefarious purpose—to set conditions of secrecy necessary to carry out a plan to commit mass murder. The repeated references to “combat” conditions in this context were nothing more than a frail attempt to disguise the true nature of the imminent operation. Here before the Trial Chamber is clear evidence of a premeditated, calculated effort to put measures in place to ensure the planned killings could be carried out covertly without any unwanted interference.

1059. In the afternoon of 13 July, the killings began in earnest. By nightfall, over 1,000 Bosnian Muslim males had been executed.³⁴⁶⁵ Events at Sandići Meadow illustrated that the destiny of the Bosnian Muslim men was predetermined already: when the buses to transport the men for execution

³⁴⁶¹ See *supra*, para. 383.

³⁴⁶² At the Sandići Meadow, prisoners were told to drop their belongings in a pile and hand over their money; at Konjević Polje, the men were searched and their belongings were taken from them; at the Nova Kasaba Football Field, prisoners had to throw their belongings in a large pile, and were not given any food or water, the men's... belongings were set alight after they were transported away, when the prisoners began boarding buses between 5 and 6 p.m., they were told they would no longer need their belongings; at the Vuk Karadžić School, prisoners were told to leave their bags, including food, outside, they were not asked their names, nor were they interviewed. See *supra*, paras. 384–396.

³⁴⁶³ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995”. See paras. 1671, 1756.

³⁴⁶⁴ Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

³⁴⁶⁵ At least 1,000 at the Kravica Warehouse, see *supra*, para. 443; approximately 150 at Cerska Valley, see *supra*, para. 414; and 15 at Jadar River, see *supra*, para. 409.

ran out, an order came for the remaining men to be shot on site.³⁴⁶⁶ On the evening of 13 July, Bosnian Muslim men were detained overnight in Bratunac, and a small number were transferred to Zvornik.³⁴⁶⁷

1060. Meanwhile in Bratunac, **Beara**, Chief of Security for the Main Staff, and Miroslav Deronjić, President of the SDS in Bratunac, had a series of heated exchanges as they debated where the remaining mass executions should be carried out.³⁴⁶⁸ As an illustration of the cold and calculated nature of the plan, at the heart of their disagreement was not what the fate of these men should be but solely where this reprehensible operation should be carried out. The discussions concerning location were followed by a series of meetings in which logistics were considered, most notably how to secure the necessary equipment for burial of thousands.³⁴⁶⁹

1061. By the morning of 14 July, Zvornik had been selected as the location for the killings and early on that day, key figures of the Security Branch, **Beara**, **Popović** and **Nikolić**, met at the Standard Barracks to discuss the operation.³⁴⁷⁰ Following this meeting, the Bosnian Muslim men were transported to various places of detention in Zvornik.³⁴⁷¹

1062. In the wake of the order from Mladić blocking access to the area and **Popović**'s instructions about avoiding written records,³⁴⁷² there are just two reports concerning the prisoners after 13 July: **Pandurević**'s interim combat reports to the Drina Corps of 15 July stating that a "large number of prisoners [were] distributed throughout schools in the brigade area"³⁴⁷³ and 18 July stating that "During the last ten days or so the municipality of Zvornik has been swamped with Srebrenica Turks. It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality, in addition to the 7,000 or so who have fled into the forests".³⁴⁷⁴

1063. The transportation and detention of the Bosnian Muslim men followed a pattern. The men were taken from Bratunac and divided across various detention sites in the Zvornik area. The transportation was conducted under guard by the Bratunac Brigade and civilian police.³⁴⁷⁵ The men

³⁴⁶⁶ See *supra*, para. 421.

³⁴⁶⁷ See *supra*, paras. 383–396, 467.

³⁴⁶⁸ See *infra*, paras. 1264–1271.

³⁴⁶⁹ *Ibid.*

³⁴⁷⁰ See *supra*, para. 472.

³⁴⁷¹ See *supra*, paras. 478, 495.

³⁴⁷² On 15 July, Jokić told Obrenović that prisoners were being transferred from Bratunac and Srebrenica to be shot and that "Popović had ordered him not to write down anything concerning that, not to note down anything, and not to use radio equipment to convey this information." For an analysis of this evidence, See *supra*, para. 1122.

³⁴⁷³ Ex. P00329, "Zvornik Brigade Interim Combat Report, signed by Vinko Pandurevic, 15 July 1995".

³⁴⁷⁴ Ex. P00334, "Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 18 July 1995".

³⁴⁷⁵ See *supra*, paras. 476, 505.

were detained in Schools.³⁴⁷⁶ Once at the detention sites, the prisoners were guarded *inter alia* by members of the Zvornik Brigade, including Military Police.³⁴⁷⁷ The manner in which the Zvornik Brigade Battalions were enlisted followed a pattern: the relevant Battalion Commanders were generally informed of the detentions but not necessarily the plan to murder.³⁴⁷⁸

1064. In the days that followed, primarily between 14 and 17 July, several thousand Bosnian Muslim men were executed.³⁴⁷⁹ The mass executions also followed a coordinated pattern. The VRS organised trucks to carry the detainees from the detention site to an execution site. The execution site was generally a secluded area close to the place of detention, for example a field near Orahovac, a Dam near Petkovci, a gravel pit near Kozluk, and a farm in Pilica. Assorted VRS units were mobilised to guard, transport and execute the Bosnian Muslim men, including members of the Bratunac Brigade,³⁴⁸⁰ the Zvornik Brigade Battalions,³⁴⁸¹ the Zvornik Brigade Military Police³⁴⁸² and the 10th Sabotage Detachment, a unit of the VRS Main Staff.³⁴⁸³ The involvement of so many different units shows the level of planning and coordination in place, and the involvement of the 10th Sabotage Detachment in particular shows that the VRS Main Staff was directly involved in the operation.³⁴⁸⁴

1065. There is abundant evidence before the Trial Chamber to establish that this was a coordinated effort reaching from the VRS Commander and some members of the Main Staff through the Drina Corps, the MUP and down to the Zvornik and Bratunac Brigades and the Battalions thereof. While the evidence does not permit an exact determination as to who were participants and who were perpetrators, it is clear that individual units from across the VRS worked together in the

³⁴⁷⁶ The men were detained in the Grbavci School, the Petkovci School, the Ročević School and the Kula School. *See supra* paras. 476–478, 495–496, 505, 528–529.

³⁴⁷⁷ *See supra*, paras. 476–477, 505, 528. At the Grbavci School and the Kula School, the location had been prepared in advance of the prisoners arrival by the Zvornik Brigade. *See supra*, paras. 471, 527.

³⁴⁷⁸ At Petkovci, on the morning of 14 July the Duty Officer informed the Deputy Commander of the 6th Battalion that prisoners would be brought to the Petkovci School that day. *See supra*, paras. 494. At Ročević, on the early morning of 15 July, the Commander of the 2nd Battalion, received instructions that he should deploy men to participate in the execution of prisoners detained at Ročević School. *See supra*, paras. 506–509. On the morning of 14 July, the Deputy Commander of the 1st Battalion had been informed that prisoners were on their way to the Kula School. *See supra*, paras. 527.

³⁴⁷⁹ The Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica, and this number could well be as high as 7,826. *See supra*, para. 664.

³⁴⁸⁰ Members of the Bratunac Brigade, including Military Police, guarded the prisoners at the Ročević School. *See supra* para. 505.

³⁴⁸¹ Members of the Zvornik Brigade 1st Battalion were involved in the detentions at the Kula School, members of the Zvornik Brigade 2nd Battalion were involved in the detentions at Ročević, members of the Zvornik Brigade 4th Battalion were involved in the detentions at Orahovac, members of the Zvornik Brigade 6th Battalion were involved in the detentions at Petkovci and at least one member of the Zvornik Brigade was involved in the killings at Kozluk. *Supra*, paras. 476–478, 479–480, 495–496, 505, 519, 528–529.

³⁴⁸² Members of the Zvornik Brigade Military Police guarded the prisoners at the Grbavci School and the Ročević School, and also transported prisoners to the execution site at Orahovac. *See supra*, paras. 477, 481, 515.

³⁴⁸³ The 10th Sabotage detachment participated in the executions at Pilica (Branjevo Military Farm and Pilica Cultural Centre). *See supra*, paras. 535–536, 540–541.

³⁴⁸⁴ *See supra*, para. 127.

implementation of the common purpose.

1066. Members of the Zvornik Brigade Engineering Company were also mobilised to dig pits and to bury the bodies before, during and after the executions. The Zvornik Brigade Engineering Company was present at Orahovac,³⁴⁸⁵ Petkovci Dam³⁴⁸⁶ and Kozluk.³⁴⁸⁷ The graves were occasionally dug in advance of the execution, as was the case in Orahovac.³⁴⁸⁸ Members of the Engineering Company worked simultaneously as the killings were taking place.³⁴⁸⁹ Throughout the murder campaign, members of the Zvornik Brigade were involved in the delivery of petrol and ammunition to the detention sites.³⁴⁹⁰

1067. The Trial Chamber notes that the reburial operation, which took place during September and October 1995,³⁴⁹¹ is corroborative of the Trial Chamber's finding that the mass executions following the fall of Srebrenica were planned and organised as part of a wide scale, premeditated killing operation. In the same way that the plan to murder was formed within the ranks of the VRS Main Staff and disseminated via the Security Organ, the plan to obscure evidence of the plan's existence also came from the VRS Main Staff through the Security Organ.³⁴⁹² The evidence of the reburial operation is compatible with, and even analogous to, the formulation and coordination of the plan to murder the able-bodied Bosnian Muslim males from Srebrenica.³⁴⁹³ The Trial Chamber considers that this evidence strengthens the conclusion that the plan to murder included a plan to conceal the fact that it was taking place.

1068. While the murder operation implicated personnel and units from the Main Staff to the Corps and the Brigades, the heavy hand of the Security Branch was evident throughout. **Beara** was at the centre of the operations with **Popović**, and together they were responsible for overall planning and implementation—logistics, locations, personnel. They also organised security officers to assist.³⁴⁹⁴ Notably, Momir Nikolić and **Drago Nikolić** were engaged to help in their areas of responsibility.³⁴⁹⁵ While Momir Nikolić was heavily involved in the separations and the capture of men in the immediate vicinity of Srebrenica, he became pivotal to the organisation of detentions

³⁴⁸⁵ See *supra*, paras. 489–490.

³⁴⁸⁶ See *supra*, para. 501.

³⁴⁸⁷ See *supra*, paras. 521–522.

³⁴⁸⁸ See *supra*, paras. 479, 489.

³⁴⁸⁹ See *supra*, para. 489, fn. 1773.

³⁴⁹⁰ See *supra*, paras. 517, 533; *infra*, para. 1129.

³⁴⁹¹ See *supra*, para. 600.

³⁴⁹² See *supra*, para. 601.

³⁴⁹³ See *supra*, paras. 601–606.

³⁴⁹⁴ See *infra*, paras. 1097–1098, 1104.

³⁴⁹⁵ See *infra*, paras. 1097–1098, 1104. Momir Nikolić was the Chief of Security and Intelligence of the Bratunac Brigade, and Drago Nikolić was Chief of Security of the Zvornik Brigade. See *supra*, para. 139; *infra*, para. 1137.

and executions once the Zvornik area was selected for the bulk of the executions.³⁴⁹⁶ Together in Zvornik, **Beara**, **Popović** and **Nikolić** translated the murder plan into actions, engaging various members and units of the VRS as and where necessary.³⁴⁹⁷ The words of Dragan Jokić, as recounted, were apt in this context: “**Beara** and **Popović** were taking people wherever they wanted”.³⁴⁹⁸

1069. Moreover, the Security Branch worked in a highly coordinated manner. The meetings, acts, movements and whereabouts of **Popović**, **Beara** and **Nikolić** from the morning of 14 July onward evince the close cooperation and communication between the officers of the Security Branch as the plan unfolded. For example, **Nikolić** placed calls to Aćimović in the early morning hours of 15 July arranging for him to attend at the Ročević School later that morning, and when Aćimović arrived it was **Popović** who was there to meet him.³⁴⁹⁹ Aćimović observed **Popović** complaining that he had insufficient personnel to complete the operation.³⁵⁰⁰ An hour later, **Beara** asked Krstić to provide him with troops for the killing operation, complaining that the men should have been sent before.³⁵⁰¹

1070. The Trial Chamber is thus satisfied that while various Battalion, Brigade and Corps Commanders, forces and individual members were drawn into the plan as participants and perpetrators, each contributing in different ways, this was an operation steadily organised and directed by the Security Branch of the VRS.

1071. Further, what is clear from the evidence before the Trial Chamber is that such an operation, on a massive scale, involving the participation of a multitude of VRS members from the Main Staff down, could not have been undertaken absent the authorisation and order of VRS Commander Mladić. Given his role in the military structure and his acts and words at the time, including his direct involvement in critical components of the operation, any alternative conclusion is inconceivable.³⁵⁰² His imprint—through rhetoric,³⁵⁰³ threats,³⁵⁰⁴ speeches,³⁵⁰⁵ orders³⁵⁰⁶ and

³⁴⁹⁶ See *supra*, paras. 1266–1269, 1354.

³⁴⁹⁷ See *infra*, paras. 1105–1135, 1272–1288, 1345–1371.

³⁴⁹⁸ PW-168, T. 15871 (closed session) (26 Sept 2007). For an analysis of this evidence, see *infra*, para. 1122.

³⁴⁹⁹ See *supra*, paras. 510–511.

³⁵⁰⁰ See *supra*, para. 511.

³⁵⁰¹ See *infra*, para. 1285.

³⁵⁰² See, for example, PW-168, T. 15948–15950 (closed session) (27 Sep 2007) (stating that on 23, 24 or 25 July, Pandurević told PW-168 about a discussion he had with Mladić concerning the situation in Zvornik after the fall of Srebrenica. Pandurević said “[i]t’s known Mladić ordered this ... with Mladić up there, we are all doomed”).

³⁵⁰³ As Mladić walked victorious through the streets of Srebrenica on 11 July, he is captured on video saying *inter alia* “finally, after the rebellion against the Dahis, the time has come to take revenge on the Turks in this region”; “we give this town to the Serb people as a gift”; “move on immediately towards Bratunac [...] we are going straight to Bratunac, man! Straight to Potočari from here!”; and upon meeting a Serb woman from Srebrenica, he states “may this be a happy town for you!”. Ex. P02047, “Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 11.

physical presence³⁵⁰⁷—appears on an ongoing basis at critical junctures of this murder enterprise. The Trial Chamber is satisfied that Mladić was a central, driving force behind the plan to murder and its implementation.

1072. The Trial Chamber notes the scale of the operation, the number of units involved, the fact that these units fell across the entire spectrum of the VRS hierarchy, the compact time-frame in which the operation was carried out, the sheer number of different locations and the relative geographic disparity of these locations. The only reasonable conclusion available on the evidence is that the killing operation was undertaken pursuant to a pre-conceived, coordinated plan to murder. This plan emanated from the highest echelons of the VRS Main Staff, including Mladić, the Commander of the VRS. The VRS Security Branch planned, organised and implemented the murder operation. The Drina Corps, MUP, Bratunac Brigade and Zvornik Brigade, along with other units detailed above, were also implicated in the murder operation.³⁵⁰⁸ The Trial Chamber is therefore convinced beyond reasonable doubt that there was a plan involving a plurality of persons to murder the able-bodied Bosnian Muslim males from Srebrenica, and that these persons participated in the common purpose and shared the intent to murder.

(e) Scope of the Joint Criminal Enterprise

1073. The Trial Chamber finds that the common purpose involved the commission of murder, a

³⁵⁰⁴ At the Third Hotel Fontana meeting, which took place at around 10 a.m. on 12 July, Mladić stated: “There is no need for your people to get killed, your husband, your brothers or your neighbours. All you have to do is say what you want. As I told this gentleman last night, you can either survive or disappear. For your survival, I demand that all your armed men, even those who committed crimes – and many did – against our people, surrender their weapons to the VRS.” Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 51.

³⁵⁰⁵ Mladić made the following speech at the second Hotel Fontana meeting, which took place at around 11 p.m. on 11 July: “Please write down the following: Number one, you need to lay down your weapons and I guarantee that all those who lay down their weapons will live...I need to have a clear position of the representatives of your people on whether you want to survive...stay or vanish. I am prepared to receive here tomorrow at 10am hrs a delegation of officials from the Muslim side with whom I can discuss the salvation of your people from the enclave, the former enclave of Srebrenica. I shall order a cessation of operations until 10 a.m. tomorrow. If your fighters, your fighters who lay down their arms we shall treat in accordance with international conventions and we guarantee that everybody will live, even those who committed crimes against our people. Have I made myself clear? Nesib, the future of your people is in your hands [...] bring the people who can secure the surrender of weapons and save your people from destruction.” Ex. P02047, “Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 47–48.

³⁵⁰⁶ For example, the order to block outside access to the Zvornik area..See *supra*, para. 1057.

³⁵⁰⁷ Mladić was constantly moving through Potočari as the separation, transport and detention was taking place, and was seen at the White House. See *supra*, paras. 330, 343. On 13 July, Mladić addressed the prisoners at Sandići Meadow, the football field outside Nova Kasaba and the hangar outside the Vuk Karadžić School. See *supra*, paras. 387, 394, 402. The Trial Chamber notes that at Sandići Meadow, Mladić told the prisoners that they would be exchanged. However, in light of the events outlined in this section, in particular Mladić’s actions before and after making this statement, the Trial Chamber is of the opinion that Mladić was lying to the prisoners at Sandići Meadow, and had no intention to exchange them.

³⁵⁰⁸ In relation to the involvement of the Security Organ, Jokić told Obrenović on 15 July that **Beara** and **Popović** had brought prisoners from Bratunac and Srebrenica in order to shoot them. Specifically, he said that “Beara and Popović were taking people wherever they wanted”. See *infra*, paras. 1122, 1283.

crime under the Statute,³⁵⁰⁹ and the scale upon which the murders were carried out is sufficient to establish extermination, also a crime under the Statute.³⁵¹⁰ The Trial Chamber is also satisfied that cruel and inhumane treatment fell within the common purpose.³⁵¹¹ The first and second elements of a JCE have thus been established. The third element required to prove participation in a JCE—participation of the accused in the common purpose—will be discussed below in the responsibility section pertaining to each Accused.

1074. The Trial Chamber does not have evidence in respect of each killing site to determine whether the physical perpetrators of each mass execution were themselves members of the JCE. The Trial Chamber will therefore consider whether each killing formed part of the common purpose, even when the crimes were committed by persons outside the JCE or by unknown members of the JCE. The Trial Chamber recalls that the killings at Jadar River,³⁵¹² Cerska Valley,³⁵¹³ Kravica Warehouse,³⁵¹⁴ and Sandići Meadow³⁵¹⁵ occurred in the area of Bratunac. The common elements, including the units involved (Bratunac Brigade), the method and means by which the killings were carried out and the time frame within which they occurred bring these events within the scope of the common purpose. It is also significant that the victims of the killings at Bratunac and Zvornik were linked in that they had all come from Srebrenica and been either taken into custody at Potočari or captured from the column.³⁵¹⁶ The killings at the Luke School near Tišća are linked to the common purpose in that the killed Bosnian Muslim males came from Potočari, and one of the intended victims was on a bus bound for Muslim-held territory when he was separated from the women and children and taken to a nearby school. He was detained in that school with other Bosnian Muslim men who were later killed.³⁵¹⁷

1075. The killings in Orahovac, Petkovci Dam, Ročević School, Kula School, Kozluk, Branjevo Military Farm and Pilica Cultural Centre were well organised and followed the same pattern: men

³⁵⁰⁹ The Trial Chamber is satisfied that members of the JCE knew that the murders were conducted as part of a widespread and systematic attack against the civilian population. The Trial Chamber is therefore satisfied that the mental element required for the crime of murder as a war crime (Article 3), and murder as a crime against humanity (Article 5(a)), is established. *See supra*, para. 796.

³⁵¹⁰ The Trial Chamber is satisfied that members of the JCE knew that extermination was conducted as part of a widespread and systematic attack against the civilian population. The Trial Chamber is therefore satisfied that the mental element required for the crime of extermination as a crime against humanity (Article 5(b)), is established. *See supra*, para. 806.

³⁵¹¹ The Trial Chamber is satisfied that this underlying act was committed against the Bosnian Muslim males as they were detained in Bratunac and Zvornik prior to execution. *See supra*, para. 995. In order to prove persecution, a crime against humanity, the Prosecution must establish discriminatory intent on the part of the perpetrator. This issue is analysed in relation to each Accused in the responsibility sections below. *See infra*, paras. 1194, 1331, 1426.

³⁵¹² *See supra*, paras. 408–409.

³⁵¹³ *See supra*, paras. 410–414.

³⁵¹⁴ *See supra*, paras. 424–445.

³⁵¹⁵ *See supra*, paras. 421–423.

³⁵¹⁶ *See supra*, paras. 325–331, 383.

³⁵¹⁷ *See supra*, paras. 351–353.

were detained, transported to an appropriate site and summarily executed. The Zvornik Brigade Military Police guarded the prisoners prior to their execution, various Zvornik Brigade Battalions were involved, and the Zvornik Brigade Engineering Company buried the bodies.³⁵¹⁸ All of these large scale executions took place between 14 and 16 July in a geographically concentrated area. The Trial Chamber is satisfied that all of these incidents fall within the common purpose of the JCE.

1076. Additional killings took place in the Zvornik area between 16 and 27 July. Incidents occurred at Baljkovica (near Nezuk)³⁵¹⁹ and Snagovo,³⁵²⁰ and two other incidents can be linked to the Standard Barracks: the killing of ten patients from the Milići Hospital³⁵²¹ and four men who had survived the execution at Branjevo Military Farm.³⁵²² The Trial Chamber is satisfied that the killings at Snagovo, the killing of the men from the Milići Hospital and the killing of the four Branjevo Military Farm survivors all have significant geographic and temporal links to the common purpose of the JCE to Murder. The killings took place within the same time frame and location as the larger-scale mass executions in the Zvornik area³⁵²³ and the victims were all Bosnian Muslim males from Srebrenica.³⁵²⁴ Based on these factors, the Trial Chamber is satisfied that the killings at Snagovo, the killing of the men from the Milići Hospital and the killing of the four Branjevo Military Farm survivors fall within the common purpose of the JCE to Murder.

1077. The killings at Baljkovica, near Nezuk, occurred on 19 July, only a few days after the mass execution at Branjevo Military Farm, the victims were from Srebrenica and a unit resubordinated to the Zvornik Brigade was involved in their capture.³⁵²⁵ The Trial Chamber is satisfied that there are sufficient geographic and temporal links to the JCE for this incident to fall within its scope. Once the execution had commenced, an order came through the radio that the men should not be executed, as they could be used for a prisoner exchange.³⁵²⁶ This shows that there was a presumption that the captured men would be killed, and further strengthens the Trial Chamber's conclusion that these particular men were executed as part of the JCE to Murder.

1078. The Prosecution also alleges that the execution by the Scorpions Unit of six Bosnian Muslim men and boys near the town of Trnovo was part of the common purpose to kill all the able-

³⁵¹⁸ See *infra*, paras. 1064, 1066.

³⁵¹⁹ See *supra*, paras. 565–569.

³⁵²⁰ See *supra*, paras. 578–583.

³⁵²¹ See *supra*, paras. 570–577.

³⁵²² See *supra*, paras. 584–588.

³⁵²³ The Snagovo killings occurred on or around 22 July. See *supra* para. 583. The men from the Milići Hospital and the Branjevo Military Farm survivors were killed some time after 23 July, and last seen at the Standard Barracks. In addition, the latter victims had escaped the larger-scale execution at Branjevo Military Farm. See *supra*, paras. 573, 589.

³⁵²⁴ See *supra*, paras. 565–588.

³⁵²⁵ An infantry company of the 16th Krajina Motorised Brigade was resubordinated to the Zvornik Brigade. See *supra* paras. 565–569.

bodied Bosnian Muslim males from Srebrenica.³⁵²⁷ The Prosecution submits that these killings fall within the JCE to Murder because the men were from Srebrenica, they were arrested in the Drina Corps zone of responsibility, and the logistics of their transport would have required involvement from the VRS Main Staff.³⁵²⁸ The Prosecution asks the Trial Chamber to infer that the men were transported on board buses or trucks that were used in the forcible transfer or the murder operation in order to scatter the victims and cover up the killings.³⁵²⁹ The Prosecution also submits that the Scorpions would not have been able to take any actions without orders from the Bosnian Serb Forces and the MUP in Trnovo.³⁵³⁰

1079. However, the Trial Chamber was not presented with evidence indicating that the six men were detained in the area of responsibility of the Drina Corps, nor was it presented with evidence concerning the men's journey from Srebrenica to the Trnovo area. Similarly, no evidence was presented indicating that there was any VRS Main Staff involvement in the six men coming into the custody of the Scorpions Unit. Any inference that there was coordination with the VRS Main Staff is speculation.

1080. Nevertheless, the killings occurred in July 1995, after the fall of Srebrenica, and the victims were Bosnian Muslim men from Srebrenica. Thus, the Trial Chamber considers, by majority, Judge Kwon dissenting, that these factors are sufficient to link the killings at Trnovo to the common purpose of the JCE to Murder, *i.e.* to murder the able-bodied Bosnian Muslim males from Srebrenica. Even without evidence as to how the men arrived at this location or into the custody of the Scorpions, the Trial Chamber, by majority, considers it an unreasonable inference that within the same relative time period, in an adjoining area, there was a separate, distinct murder operation targeting precisely the same victims. In all the circumstances therefore the Trial Chamber finds, by majority, Judge Kwon dissenting,³⁵³¹ that the killings at Trnovo fall within the scope of the JCE to Murder.

(f) Third Category Joint Criminal Enterprise

1081. In addition to the first category JCE, the Prosecution alleges that five of the Accused (**Popović, Beara, Nikolić, Borovčanin and Pandurević**) are criminally responsible under third category JCE for the so-called "opportunistic" killings. It is alleged that on 12 and 13 July, several Bosnian Muslim men who had either surrendered or been captured from the column or had been

³⁵²⁶ See *supra*, para. 568.

³⁵²⁷ Indictment, para. 30.16.

³⁵²⁸ Prosecution Closing Arguments, T. 34277–34278 (4 Sept 2009).

³⁵²⁹ *Ibid.*, T. 34277 (4 Sept 2009).

³⁵³⁰ *Ibid.*, T. 34278 (4 Sept 2009).

³⁵³¹ See Judge Kwon's Dissenting Opinion, *infra*, paras. 36–39.

separated at Potočari were killed near the UN compound in Potočari,³⁵³² in Bratunac town,³⁵³³ at Petkovci School,³⁵³⁴ and at a supermarket in Kravica.³⁵³⁵ The Prosecution argues that these “opportunistic” killings, which were less organised in their nature, were not part of the common purpose to kill the able-bodied Bosnian Muslim males from Srebrenica, but they were a foreseeable consequence of it.³⁵³⁶

1082. The Trial Chamber has found that murder was committed near the UN compound in Potočari,³⁵³⁷ in Bratunac town,³⁵³⁸ at the Petkovci School.³⁵³⁹ The Trial Chamber has found, by majority, Judge Kwon dissenting, that murder also occurred at the Kravica Supermarket.³⁵⁴⁰ The Trial Chamber considers that within the context of the plan to kill a large number of able-bodied Bosnian Muslim males from Srebrenica, it was foreseeable to members of the JCE that Bosnian Muslims would not just be killed at locations earmarked by the VRS as execution sites in accordance with the plan, but that killings would also occur as the men were detained and captured. The Trial Chamber is satisfied that the killings by VRS soldiers in Potočari, Bratunac, at the Petkovci School and at the Kravica Supermarket were foreseeable consequences of the plan to kill all the able-bodied Bosnian Muslim males from Srebrenica.

1083. The Prosecution also alleges that the reburial operation was a natural and foreseeable consequence of the JCE to murder the able-bodied Bosnian Muslim males from Srebrenica.³⁵⁴¹ The Trial Chamber notes that as reburial is not a crime under the Statute, none of the Accused may be held criminally responsible for it under the third category of JCE.

2. Joint Criminal Enterprise to Forcibly Remove the Populations from Srebrenica and Žepa

1084. The Prosecution alleges that all seven Accused, together with other VRS and MUP officers and units and RS officials, were members of and knowingly participated in a joint criminal enterprise, the common purpose of which was to force the Muslim populations out of the Srebrenica and Žepa enclaves to areas outside the control of the RS from about 8 March 1995 through the end of August 1995.³⁵⁴²

³⁵³² Indictment, para. 31.1.

³⁵³³ *Ibid.*, para. 31.2.

³⁵³⁴ Indictment, para. 31.4.

³⁵³⁵ *Ibid.*, para. 31.3.

³⁵³⁶ *Ibid.*, para. 31; Prosecution Closing Argument, T. 34178 (3 Sept 2009).

³⁵³⁷ *See supra*, paras. 354–361.

³⁵³⁸ *See supra*, paras. 452–463.

³⁵³⁹ *See supra*, para. 497.

³⁵⁴⁰ *See supra*, para. 749. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

³⁵⁴¹ Indictment, para. 32.

³⁵⁴² *Ibid.*, para. 49.

1085. As has been found and detailed by the Trial Chamber in the section addressing the general requirements of Article 5 of the Statute, there was an attack against the civilian populations of the Srebrenica and Žepa enclaves.³⁵⁴³ The Trial Chamber finds that the same acts constituting the attack against the civilian populations, i.e. the issuance of Directive 7, which marked the commencement of the attack, the restrictions on humanitarian aid to the enclaves and re-supply of UNPROFOR, and the military actions, including the indiscriminate shelling of civilians,³⁵⁴⁴ leading up to the fall of the two enclaves, illustrate the intention by the Bosnian Serb political and military leadership to forcibly remove the Bosnian Muslim populations from the Srebrenica and Žepa enclaves.

1086. The Trial Chamber recalls that the plan as laid out in Directive 7 and the 20 March Drina Corps Order was to create “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.³⁵⁴⁵ This plan was first pursued by limiting the aid to the enclaves and the subsequent military attacks. Eventually, the implementation of the plan culminated in the terrorising of the people in Srebrenica town,³⁵⁴⁶ as well as the terrorising and cruel and inhumane treatment of the people gathered at Potočari.³⁵⁴⁷ The Trial Chamber is satisfied that all these acts were intrinsic steps to the ultimate aim to force the Bosnian Muslim populations out of the enclaves.³⁵⁴⁸ This common purpose was finally achieved through the actual busing of the people out of the enclaves and amounted to forcible transfer of the Bosnian Muslim civilian population from Srebrenica and the Bosnian Muslim population from Žepa.³⁵⁴⁹

1087. The Trial Chamber is therefore satisfied of a joint criminal enterprise of the Bosnian Serb political and military leadership to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa. At the latest, this JCE came into existence with the issuance of Directive 7. As found above, the terrorising and cruel and inhumane treatment of the Bosnian Muslim population in Srebrenica were inherent components of the implementation of the plan to forcibly remove the Bosnian Muslim population and thus part of the common purpose of the JCE.

1088. The Trial Chamber notes that the Prosecution has not only charged the “opportunistic” killings as a natural and foreseeable consequence of the JCE to Murder, but also as a natural and foreseeable consequence of the JCE to Forcibly Remove.³⁵⁵⁰ The Trial Chamber, by majority, Judge

³⁵⁴³ See *supra*, paras. 760–761. See also *supra*, Chapter IV, Section B.2.(b).

³⁵⁴⁴ See *supra*, Chapter IV, Section B.2.(b).

³⁵⁴⁵ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10. Cf. Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6. See also *supra*, paras. 199, 201.

³⁵⁴⁶ See *supra*, paras. 920, 924, 996, 998.

³⁵⁴⁷ See *supra*, paras. 917–918, 992–994, 997, 998.

³⁵⁴⁸ See *supra*, para. 760. See also *supra*, Chapter IV, Section B.2.(b).

³⁵⁴⁹ See *supra*, paras. 936, 962. See also *supra*, Chapter IV, Section G.2.

³⁵⁵⁰ Indictment, paras. 31, 83.

Kwon dissenting, is satisfied that in the circumstances of this forced movement of an entire population, numbering in the thousands, it was foreseeable that “opportunistic” killings would occur. This is particularly the case where the movement was accompanied by acts of cruel and inhumane treatment and terrorisation. Therefore, the Trial Chamber is satisfied that “opportunistic” killings were a natural and foreseeable consequence of the JCE to Forcibly Remove. However, given the two JCEs alleged in this case and the Trial Chamber’s findings as to the detention of the men being part of the JCE to Murder, the Trial Chamber is of the view that only the killings which occurred in Potočari were foreseeable consequences of the forcible removal of the population. The Trial Chamber will also address the foreseeability of the “opportunistic” killings in the context of the forcible transfer with regard to the responsibility of the specific Accused who have been found to be participants in the JCE to Forcibly Remove.³⁵⁵¹

³⁵⁵¹ See *infra*, paras. 1724–1727, 1732–1735, 1828–1831, 1834. See also Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–28.

3. Vujadin Popović

(a) The Case against Popović

1089. The Prosecution alleges that **Popović** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.³⁵⁵² Specifically, the Prosecution alleges that **Popović** was a member of a joint criminal enterprise to summarily execute the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).³⁵⁵³

(b) Position and Function

1090. **Vujadin Popović** was a Desk Officer in the Department for Security and Intelligence of the 2nd Krajina Corps of the VRS until November 1992, when he was assigned to the Drina Corps upon its establishment.³⁵⁵⁴ In 1995, **Popović** was the Chief of Security of the Drina Corps³⁵⁵⁵ and he held the rank of Lieutenant-Colonel.³⁵⁵⁶ He was directly subordinated to the Corps Commander, who was Major-General Milenko Živanović until 13 July 1995 and thereafter Major-General Radislav Krstić.³⁵⁵⁷ In the professional chain of command, **Popović** was subordinate to **Beara**, the Chief of Security of the Main Staff.³⁵⁵⁸ **Beara** and Col. Petar Salapura, the Chief of Intelligence at the Main Staff, were both directly subordinated to Zdravko Tolimir, the Assistant Commander for Intelligence and Security.³⁵⁵⁹

³⁵⁵² Indictment, paras. 26–37, 41, 45–71, 79, 83–84, 88. **Popović** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

³⁵⁵³ Indictment, paras. 41, 79.

³⁵⁵⁴ Mikajlo Mitrović, T. 25066 (2 Sept 2008); Prosecution Adjudicated Facts Decision, Fact 75.

³⁵⁵⁵ See *supra*, para. 139.

³⁵⁵⁶ Ex. P00149, “Document from the Command of the Drina Corps Intelligence Dept. to Intelligence and Security organs signed by Tolimir, 12 July 1995”, p. 1; Ex. 1D01180, “Receipt Hotel Fontana”, p. 1; Ex. P00377, “Zvornik Brigade Duty Officer Logbook”, pp. 143, 149, 150, 177; Ex. P03033, “Order to Chiefs of Security and Intelligence signed by Popović, 20 April 1995”, p. 2. PW-109 and Gordan Bjelanović refer to **Popović** as a “Colonel”. PW-109, T. 14589–14590 (private session) (31 Aug 2007); Gordan Bjelanović, T. 22065 (10 June 2008). However, the Trial Chamber finds that he was a Lieutenant-Colonel in view of the large amount of evidence, in particular documentary evidence, indicating that this was his rank.

³⁵⁵⁷ See *supra*, paras. 136–137.

³⁵⁵⁸ See *supra*, para. 139; Milorad Birčaković, T. 11012 (7 May 2007). The nature of the professional chain of command is explained above. See *supra*, paras. 136–138.

³⁵⁵⁹ See *supra*, para. 119.

1091. In the professional chain of command, **Popović** was superior to the security organs of the Drina Corps brigades, including **Drago Nikolić**, the Chief of Security in the Zvornik Brigade, and Momir Nikolić, the Chief of Security and Intelligence in the Bratunac Brigade.³⁵⁶⁰ The Military Police Battalion of the Drina Corps, commanded by Lieutenant Ratko Vujović, was directly subordinated to the Corps Commander, while **Popović**, as Chief of Security, was superior to the Military Police Battalion in the professional sense.³⁵⁶¹

1092. As Chief of Security, **Popović's** function was the detection and prevention of enemy activities directed against the VRS, which included discovering, documenting, and preventing enemy intelligence.³⁵⁶² Counter-intelligence work accounted for around 80% of the Security Organ's tasks, and included the prevention of information about the VRS from reaching the enemy.³⁵⁶³ **Popović's** exercise of his counter-intelligence function is exemplified by an instruction he issued in April 1995 to the Intelligence and Security Organ heads of all the brigades and the 5th Engineers Battalion regarding the arrest and detention of POWs and others.³⁵⁶⁴

1093. At the relevant time, **Popović** was the sole officer within the security organ of the Drina Corps.³⁵⁶⁵ The Department of Intelligence in the Drina Corps was headed by Svetozar Kosorić.³⁵⁶⁶ The Drina Corps Security and Intelligence Departments worked separately from each other, but exchanged information that was of interest to one another.³⁵⁶⁷

³⁵⁶⁰ See *supra*, para. 139. See also Zlatan Čelanović, T. 6654 (31 Jan 2007) (testifying that **Popović** visited Momir Nikolić frequently); Momir Nikolić, T. 33030–33031 (22 Apr 2009) (testifying that he and **Popović** had “a professional and correct relationship” and that he respected **Popović** as a fellow officer and his superior officer but they were not friends in the sense that he would do him favours such as preparing a meal for him).

³⁵⁶¹ See *supra*, para. 140. The plan of work for the Drina Corps Command for December 1994 gave the intelligence and security organs tasks in relation to forming and equipping the Military Police Battalion of the Corps and controlling its work “and other companies and platoons according to brigades”. Ex. 5D00989, “Plan of work of the Drina Corps Command for December 1994 signed by Radislav Krstić”, p. 7.

³⁵⁶² See *supra*, para. 120.

³⁵⁶³ Ex. P02741, “Instruction on Command and Control over the Security and Intelligence Organs signed by Mladić, 24 October 1994”; Petar Vuga, T. 23090–23091 (1 July 2008); see *supra*, para. 120.

³⁵⁶⁴ Ex. P00196, “Drina Corps Security Department instruction, signed by Popović, 15 April 1995”, p. 2, items 1 and 2 (providing that “All prisoners, members of the enemy army are to be handcuffed or their hands tied with anything available immediately after their capture. They are to be searched and all items are to be seized apart from their clothing and footwear. An official record is to be compiled. After the search, they are to be blindfolded at the place of detention prior to being led away in order to prevent them from observing anything. (...) The location where POWs are collected must be such that the prisoners are fully secured, as well as the people from the security organ, from the intelligence organ and from the military police organ that engages in the interrogation and guards POWs.”). Cf. Ex. P03014, “Order to Chiefs of Security and Intelligence on dealing with news reporters signed by Popović, 18 July 1995”, Ex. P03033, “Order to Chiefs of Security and Intelligence signed by Popović, 20 April 1995”.

³⁵⁶⁵ See *supra*, para. 139. The Security Sector of the Drina Corps consisted of the Chief of the Security Section and one civilian who served as a technical clerk processing documents; the other positions in the Section were vacant. Petar Vuga, T. 23193 (2 July 2008); Ex. 1D01296, “Organisation and Establishment Manual for the Drina Corps Command, 1993”, p. 24.

³⁵⁶⁶ Svetozar Kosorić, T. 33760 (30 June 2009).

³⁵⁶⁷ *Ibid.*, T. 33786 (30 June 2009).

1094. **Popović's** professional concern with all of the military police units within the Drina Corps, whether at Corps or Brigade level, is demonstrated by various orders he issued. For example, in one order, **Popović** required the provision of wide-ranging information about the Military Police in the Drina Corps.³⁵⁶⁸ In another, he transmitted within the Drina Corps instructions issued by the VRS Main Staff for the work of Military Police at checkpoints.³⁵⁶⁹ In yet another, he ordered the military police organs to intensify checks on persons and vehicles at all military police checkpoints.³⁵⁷⁰

1095. The 10th Sabotage Detachment was a special unit of the Main Staff directly subordinated to the Department for Intelligence.³⁵⁷¹ **Popović** used to visit the unit of the 10th Sabotage Detachment in Vlasenica to speak to the Commander, Momir Pelemiš, who was from the same area as he was.³⁵⁷² On one occasion in June 1995, Krstić instructed **Popović** to have Momir Pelemiš "come over here with his unit as soon as possible."³⁵⁷³

(c) Acts and Whereabouts

(i) 11 July 1995

1096. **Popović** was with **Beara** on the evening of 10 or 11 July 1995 in front of the Bratunac Brigade Headquarters building, along with some other officers.³⁵⁷⁴ **Popović**, **Beara** and Miroslav Deronjić were at the Pribićevac IKM on 11 July 1995, when NATO planes dropped bombs

³⁵⁶⁸ Ex. P03032 "Order to Security and Intelligence Organs signed by Popović, 7 February 1995".

³⁵⁶⁹ Ex. 3D00436, "Instruction from the Drina Corps Command signed by Popović, 6 July 1995".

³⁵⁷⁰ Ex. 7D00978, "Order on procedure for members of UNPROFOR and other international organizations signed by Popović, 30 August 1995".

³⁵⁷¹ The 10th Sabotage Detachment had platoons at Vlasenica and Bijeljina, each consisting of about 30 men, and was headed by Col. Petar Salapura, the Chief of Intelligence in the Main Staff. Dražen Erdemović, T. 10931–10932, 10934 (4 May 2007); Manojlo Milovanović, T. 12165–12166 (29 May 2007).

³⁵⁷² Dragan Todorović, T. 13993–13994, 14013 (21 Aug 2007). Todorović said that **Popović** never issued orders to any member of the 10th Sabotage Detachment and did not have any influence on it as far as he was aware, but that **Popović** may have conveyed messages to Pelemiš in their conversations. Dragan Todorović, T. 14013–14014 (21 Aug 2007). Although one of the two platoons of the 10th Sabotage Detachment was based in Vlasenica where the Drina Corps Command was also based, there is no evidence that they were both actually at the same location in Vlasenica.

³⁵⁷³ Ex. P01090a. "Intercept of conversation between Popović and Krstić, 25 June 1995, 14:46 hours". Krstić's instruction to Popović regarding Pelemiš's unit was made in relation to "big problems". Krstić also asks **Popović** to "tell [Pelemiš's] lad that I had asked him". **Popović** later says that "his lad is here with me right now"; and Krstić asks him to speak to him and very soon afterwards Krstić says: "Put Cvetković on now". Ex. P01090a, "Intercept of conversation between Popović and Krstić, 25 June 1995, 14:46 hours". There was a member of the 10th Sabotage Detachment called Aleksandar Cvetković. Dražen Erdemović, T. 10967 (4 May 2007). The Trial Chamber finds that he was the person **Popović** referred to as "Pelemiš's lad".

³⁵⁷⁴ Zlatan Čelanović, T. 6654–6655 (31 Jan 2007). Zlatan Čelanović, a desk officer at the Bratunac Brigade, was unsure of the date. *Ibid.* Čelanović indicated that he recognized **Popović**, whom he identified as "the Security Officer of the Corps", because he came to see Nikolić frequently. Zlatan Čelanović, T. 6654 (31 Jan 2007). The Trial Chamber concludes that this is a reference to Momir Nikolić, given his position within the Bratunac Brigade.

there.³⁵⁷⁵ Also on 11 July 1995, **Popović** was with General Mladić and other senior VRS officers when they walked through the empty streets of Srebrenica town.³⁵⁷⁶

(ii) 12 July 1995

1097. Prior to the third meeting at the Hotel Fontana on the morning of 12 July, Momir Nikolić³⁵⁷⁷ met with **Popović** and Svetozar Kosorić, Assistant Chief of Staff for Intelligence of the Drina Corps, outside the hotel.³⁵⁷⁸ Momir Nikolić had the impression that **Popović** was agitated, nervous and angry.³⁵⁷⁹ **Popović** told Momir Nikolić that the thousands of Bosnian Muslim women and children in Potočari would be transported to ABiH-held territory, but that the able-bodied Bosnian Muslim men in Potočari would be separated from the crowd and screened to identify those suspected of committing war crimes.³⁵⁸⁰ When Nikolić asked why these men would be set aside, **Popović** answered “All the *balija* have to be killed.”³⁵⁸¹ **Popović** also told Nikolić that it was his responsibility to “help coordinate and [...] organize this operation”,³⁵⁸² and that prior to their execution the men were supposed to be temporarily detained in Bratunac.³⁵⁸³ **Popović**, Kosorić and Nikolić discussed possible detention sites and execution sites outside Bratunac town.³⁵⁸⁴ Nikolić

³⁵⁷⁵ Božo Momčilović, T. 14085, 14088, 14116 (22 Aug 2007); Prosecution Adjudicated Facts Decision, Fact 113. Momčilović was not entirely clear on the date of the visit of **Popović** and **Beara**, but he does link it to the NATO bombing of Bosnian Serb positions. Božo Momčilović, T. 14088, 14116 (22 Aug 2007). This took place on 11 July 1995. Prosecution Adjudicated Facts Decision, Fact 113 (stating that NATO bombed VRS tanks advancing towards Srebrenica town at around 14:30 on 11 July). There were two bombings on the day concerned, one of which occurred at around 2 or 3 pm and Momčilović thought that **Popović**, **Beara** and Deronjić arrived between the bombings. Božo Momčilović, T. 14114, 14116, 14128–14129 (22 Aug 2007). Momčilović did not know the purpose of their visit, but he believed that “they came by to see the view [of Srebrenica] from Pribićevac”. Božo Momčilović, T. 14085 (22 Aug 2007).

³⁵⁷⁶ Ex. P02047, “Srebrenica Trial Video”, 00:30:31–00:30:35, 00:31:13–00:31:14; Jean René Ruez, T. 1330 (8 Sept 2006); Vinko Pandurević, T. 30876–30879, 30882 (30 Jan 2009); PW-109, T. 14583–14585 (closed session) (31 Aug 2007). According to PW-109, this event occurred “around 11 or noon”; however Pandurević indicates that it took place around 3 or 4 pm. PW-109, T. 14584 (closed session) (31 Aug 2007); Vinko Pandurević, T. 30876 (30 Jan 2009). Cf. Dražen Erdemović, T. 10947–10948 (4 May 2007).

³⁵⁷⁷ For an analysis of Momir Nikolić’s credibility generally and also on this point, *see supra*, paras. 48–53, 280–288.

³⁵⁷⁸ Momir Nikolić, T. 33040–33042 (22 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. Cf. Ex. P01936, “Video stills taken from the Srebrenica Trial Video”, p. 29 (showing **Popović** standing outside the Hotel Fontana with other VRS personnel before the third meeting). Kosorić said that he did not remember seeing **Popović** around the Hotel Fontana on the morning of 12 July, nor did he remember **Popović** being present at the third meeting. Svetozar Kosorić, T. 33768, 33785–33786 (30 June 2009). However, he identified **Popović** in video footage outside the Hotel Fontana shortly before the third meeting and during the meeting itself. Svetozar Kosorić, T. 33787–33790 (30 June 2009); Ex. P02047, “Srebrenica Trial Video”, 01.42.50, 01.44.38.

³⁵⁷⁹ Momir Nikolić, T. 32921 (21 Apr 2009).

³⁵⁸⁰ *Ibid.*, T. 32917–32918, 32921 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2.

³⁵⁸¹ Momir Nikolić, T. 32918 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. Nikolić testified that it was during this conversation with **Popović** that he realised for the first time that the Bosnian Muslim men would be killed. Momir Nikolić, T. 32920–32921 (21 Apr 2009).

³⁵⁸² Momir Nikolić, T. 33040–33042 (22 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2.

³⁵⁸³ *Ibid.*

³⁵⁸⁴ *Ibid.*

suggested specific locations in Bratunac for detaining the prisoners, amongst them the Vuk Karadžić Elementary School, the old school in Bratunac and a hangar in Bratunac.³⁵⁸⁵

1098. At some point in the morning, PW-109 also saw **Popović** in front of the Hotel Fontana, and overheard Krstić speaking to Kosorić, Colonel Krsmanović, Chief of Transportation of the Drina Corps,³⁵⁸⁶ and **Popović** about buses.³⁵⁸⁷ Also on the morning of 12 July, **Popović** attended the third and final meeting at Hotel Fontana.³⁵⁸⁸ **Popović** was in fact staying at the Hotel Fontana on the nights of 11 and 12 July.³⁵⁸⁹

1099. On 12 July **Popović** was present with Bosnian Serb Forces in Potočari.³⁵⁹⁰ **Popović** had also seen reports that a large number of Bosnian Muslims had gathered in Potočari.³⁵⁹¹ On this basis, the Trial Chamber finds that **Popović** was aware that on 11 and 12 July there were a large number of Bosnian Muslim men amongst those gathered in Potočari. On the evening of 12 July, Tolimir sent two communications about the movement of the column to various officers, including **Popović**, who was in Bratunac at the time.³⁵⁹²

³⁵⁸⁵ Momir Nikolić, T. 32918 (21 Apr 2009); Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2. Momir Nikolić described the meeting with **Popović** as not "official". According to Nikolić, **Popović** had merely told him what was going to happen next. Momir Nikolić, T. 33032–33034 (22 Apr 2009).

³⁵⁸⁶ See *supra*, para. 137, fn. 330.

³⁵⁸⁷ PW-109, T. 14589–14591, 14607 (closed session) (31 Aug 2007).

³⁵⁸⁸ See *supra*, para. 289. At this meeting Mladić said that for the survival of the Bosnian Muslims he demanded that all their armed men surrender their weapons to the VRS, that he would provide vehicles to transport the Bosnian Muslims and that all the Bosnian Muslim men would be separated and screened to identify war criminals. *Supra*, paras. 289–290.

³⁵⁸⁹ Ex. 1D01180, "Receipt Hotel Fontana" (showing that **Popović** was given approval to use a room at the Hotel Fontana between 11 and 13 July); Gordan Bjelanović, T. 22111–22112 (11 June 2008). In addition, a bill was made out on 15 July for a stay of two nights by **Popović** at the Hotel Fontana, but it is not clear which two nights are referred to. P00457 "Receipts from Hotel Fontana", p. 7; Gordan Bjelanović, T. 22097–22098 (10 June 2008).

³⁵⁹⁰ At one point, **Popović** was captured on video telling members of the Bosnian Serb Forces to stop distributing bread to the Bosnian Muslims. Ex. P04536, "Video Potočari, 12 July 1995", 28:33–28:36, 30:13–30:14 (showing that **Popović** was present when the bread was distributed). Ex. P04536 also contains an English transcript of the dialogue on the video, and at page 11, records that **Popović** stated "it's enough, it's enough. Stop it! Only that and stop it". See also Ex. P02047, "Srebrenica Trial Video", 2:04:05–2:04:08 (showing **Popović** walking behind Krstić as Krstić is giving an interview); Dragoslav Trišić, T. 27160–27164 (21 Oct 2008) (testifying that it was "more likely" that he saw **Popović** in Potočari on 12 July, although he may have seen **Popović** in video footage after the fact).

³⁵⁹¹ On the evening of 11 July Momir Nikolić sent a report to the Security and Intelligence Departments of the Drina Corps in which he estimated that there were between 1,000 and 2,000 able-bodied men in Potočari. Momir Nikolić, T. 32914–32915 (21 Apr 2009). As this report was sent to the Security Department of the Drina Corps, the Trial Chamber is satisfied that **Popović** saw it. Momir Nikolić also passed this assessment orally to staff officers of the Drina Corps Command who were present at the Bratunac Brigade headquarters. *Ibid.* This estimate was revised to between 400 and 700 the following day. Momir Nikolić, T. 33009–33010 (22 Apr 2009).

³⁵⁹² Ex. P00149, "Document from the Command of the Drina Corps Intelligence Dept. to Intelligence and Security organs signed by Tolimir, 12 July 1995" (showing a communication apparently sent by General Tolimir on the evening of 12 July 1995 to, amongst others, "Bratunac IKM, Attn. Lieutenant Colonel Popović", in which it is reported that a radio network of "elements of the 28th Muslim Division" had been intercepted and the individuals concerned were thought to be in the sector of the Cerska and Zvornik–Šekovići road); Ex. P00148 "Document from the Command of the Drina Corps Intelligence Dept. to the Main Staff Intelligence and Security Sector signed by Tolimir, 12 July 1995" (showing a communication apparently sent by General Tolimir on the evening of 12 July

(iii) 13 July 1995

1100. **Popović** attended a meeting on the morning of 13 July 1995 at the Bratunac Brigade Headquarters with **Mradić**, **Vasić** and **Krstić**.³⁵⁹³ **Vasić**, in his report to the RS MUP, summarised the topics discussed as follows: evacuation of the remaining civilians from Srebrenica to Kladanj, the need for 10 tons of petrol in connection with the evacuation and the “killing of about 8,000 Muslim soldiers [...] blocked in the woods near Konjević Polje.”³⁵⁹⁴ The Trial Chamber finds that the latter issue was discussed in a military context.³⁵⁹⁵ Around the time of the meeting, **Mradić** angrily confronted **Popović** outside the Bratunac Brigade Headquarters over his perception that **Popović** was not getting on with his work.³⁵⁹⁶

1101. On the same day, outside the Bratunac Brigade Headquarters, **Popović** met Momir Nikolić and they went towards several white DutchBat APCs bearing the UN insignia which were parked nearby.³⁵⁹⁷ Soon thereafter, Momir Nikolić went with Mirko Janković, the Commander of the Bratunac Military Police Platoon, and Mile Petrović, a member of the military police, along the Bratunac–Konjević Polje road in a DutchBat APC.³⁵⁹⁸ During this journey, Nikolić, Janković and Petrović took Bosnian Muslim prisoners into their custody.³⁵⁹⁹

1995 to, amongst others, “DK IKM Bratunac (Lieutenant Colonel Popović personally)”, in which further information taken from a captured Muslim is passed on and the Commands of the Bratunac, Zvornik and Milići brigades in cooperation with SJBs are ordered to regulate traffic during the night on the Bratunac–Milići–Vlasenica and Zvornik–Konjević Polje–Vlasenica roads).

³⁵⁹³ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 3.

³⁵⁹⁴ Ex. P00886, “Document from the Zvornik CJB to the RS MUP, type-signed Vasić, 13 July 1995”. The Document states in relevant part:

At the meeting with General MLADIĆ this morning we were informed that the VRS/Army of the Republika Srpska/ was continuing operations towards Žepa and leaving all other work to the MUP, as follows:

1. Evacuation of the remaining civilian population from Srebrenica to Kladanj (about 15,000) by bus. We urgently need 10 tons of petrol;
2. Killing of about 8,000 Muslim soldiers whom we blocked in the woods near Konjević Polje. Fighting is going on. This job is being done solely by MUP units;
3. Securing all key buildings in the town of Srebrenica and controlling entry and exit of people and goods at three checkpoints set up;
4. Send the Srbinje or Doboje special detachment to Konjević Polje.

Ex. P00886, “Document from the Zvornik CJB to the RS MUP, type-signed Vasić, 13 July 1995”, p. 1.

³⁵⁹⁵ Richard Butler, a former US army intelligence analyst, testified as a Prosecution expert witness, and stated that he believed Vasić was referring to events in a “strictly military context” and the phrase “killing of about 8,000 Muslim soldiers” did not have a “dark meaning”. Richard Butler, T. 19870 (17 Jan 2008).

³⁵⁹⁶ **Mradić** shouted at **Popović**, “Why are you just lingering here and chasing women?”, or told **Popović** that he was “lingering about, as if he was a woman, as if he had had a skirt on”, and then attempted to kick **Popović**. PW-138, T. 3813–3814 (private session) (8 Nov 2006). PW-138 indicated that he did not know whether the events described here took place on 13 July 1995. PW-138, T. 3813 (private session) (8 Nov 2006). However, the testimony of Momir Nikolić evidences that they did. Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, pp. 4–5.

³⁵⁹⁷ PW-138, T. 3813–3814, 3817 (private session) (8 Nov 2006). Cf. Momir Nikolić, T. 33029 (22 Apr 2009).

³⁵⁹⁸ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5. Cf. PW-138, T. 3815 (private session) (8 Nov 2006).

³⁵⁹⁹ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5 (testifying that he went with two Military Policemen along the Bratunac–Konjević Polje Road in a DutchBat APC, calling for Bosnian Muslims to surrender, and six Bosnian Muslims surrendered to them and were taken to Konjević Polje in

1102. An intercepted conversation shows that **Popović** himself went along the Bratunac-Konjević Polje road on 13 July. It includes the following exchange: "They didn't call us yet. Go ahead, you take the message. Question: What message? Answer: They are looking for Janković and Popović. Say that Janković escorted these people to Kladanj and Popović went with APCs towards Konjević Polje".³⁶⁰⁰ The Trial Chamber finds that **Popović** had knowledge of the operation along the Konjević Polje Road to capture and detain Bosnian Muslims, and that he went along that road at some time on 13 July.³⁶⁰¹

1103. Johannes Rutten's evidence, based upon a photo identification, places **Popović** at the White House on 13 July.³⁶⁰² Rutten said that he saw a man shown to him in a photograph on the paved road in front of the White House from a distance of 30–50 metres³⁶⁰³ and he described him as not looking like a "plain soldier", because he spoke not only to the VRS soldiers but also to the other Bosnian Serbs who came in front of the White House.³⁶⁰⁴ He addressed several individuals in the area, including soldiers in camouflage uniforms, soldiers in black uniforms, and soldiers in private cars.³⁶⁰⁵ Rutten did not know the man's name.³⁶⁰⁶ Rutten accepted that he did not refer to the actions of this individual in his statement of October 1995, but he attributed this to his not having been asked the relevant question.³⁶⁰⁷ In a proofing session before his testimony in this case, Rutten could not recall the uniform that the man was wearing and, when shown the photograph, his words were "I cannot be certain if I recognise him now", but when this was put to him during his

the APC); PW-138, T. 3823–3824 (8 Nov 2006) (testifying that that during the journey, two DutchBat officers and two civilians who were "probably" Bosnian Muslims climbed into the APC).

³⁶⁰⁰ Ex. P01133g, "Intercept of conversation regarding Popović and Janković, 13 July 1995, 10:30 hours". An intercept operator, PW-140, said that he recalled transcribing this intercept and he commented that at the time information in the intercept was very important for himself and his colleagues because it related to "the problems in Srebrenica". PW-140, T. 5296 (11 Dec 2006).

³⁶⁰¹ In making this finding, the Trial Chamber also notes **Popović's** discussion with Momir Nikolić on 12 July concerning the plan to transfer the women and kill the men, and the following evidence concerning 13 July: the report of the meeting compiled by Vasić; the operation on the Bratunac–Konjević Polje road involving Nikolić, Janković and Petrović; and **Popović's** presence around Konjević Polje.

³⁶⁰² Johannes Rutten, T. 4822–4825 (30 Nov 2006) (testifying that said that a man in a brown T-shirt on the left side of a photograph, who is identifiable as **Popović**, was present at the White House, when he went there on 13 July); Ex. P01936, "Video stills taken from the Srebrenica Trial Video", chapter 5, page 9 (which is the same as Ex. 1D00102, "Photograph from tab 6 of book of photographs identified by OTP witness Rutten, J" and Ex. P02324, "Video still of Popović in Srebrenica"). **Popović** submits that both he and Živanović—the other person allegedly in the photograph—were fully engaged in the preparation for the ceremony in Vlasenica on the handover of duties from Živanović to Krstić and therefore could not have been at the White House on 13 July. Popović Final Brief, para. 527. In view of the close geographical proximity between Potočari and Vlasenica, **Popović** could easily have been at both locations on 13 July.

³⁶⁰³ Johannes Rutten, T. 5218 (7 Dec 2006).

³⁶⁰⁴ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2152–2153 (5 Apr 2000); Johannes Rutten, T. 4822–4825 (30 Nov 2006); Ex. P01936, "Video stills taken from the Srebrenica Trial Video", Ch. 5, p 9. During his testimony in this case, Rutten said that the individual concerned gave direct instructions to other Serb soldiers, but he agreed that he had not said this either in the *Krstić* trial or during the proofing session before he testified in this case. Johannes Rutten, T. 4823 (30 Nov 2006), T. 5221 (7 Dec 2006). Cf. Popović Closing Arguments, T. 34360 (7 Sept 2009).

³⁶⁰⁵ Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2152–2153 (5 Apr 2000).

³⁶⁰⁶ Johannes Rutten, T. 4825–4826 (30 Nov 2006).

³⁶⁰⁷ *Ibid.*, T. 4992–4995 (4 Dec 2006).

testimony, Rutten still adhered to his identification.³⁶⁰⁸ The man in the photograph is identifiable as **Popović**. However, given Rutten's uncertainty about his identification and the lack of corroborating evidence on **Popović's** presence at the White House on this day, the Trial Chamber cannot be satisfied that the man Rutten saw was **Popović**.

1104. In the afternoon of 13 July, **Popović** attended a ceremony in front of the Drina Corps building in Vlasenica, at which Mladić announced the retirement of General Živanović and the appointment of General Krstić as the new Commander of the Drina Corps.³⁶⁰⁹ At around 7 or 8 p.m., **Popović** called **Drago Nikolić** and informed him that a large number of prisoners were to be brought from Bratunac to Zvornik to be killed and he asked **Nikolić** to assist.³⁶¹⁰ **Nikolić** then called Obrenović and told him about the conversation that he had had with **Popović**.³⁶¹¹ **Nikolić** said that the prisoners would be brought by **Beara** and **Popović**, who had been tasked with organising and carrying out the operation and that **Popović** had asked **Nikolić** to assist.³⁶¹²

(iv) 14 July 1995

1105. On 14 July, between 800 and 2,500 Bosnian Muslim men were transported from Bratunac, detained in the Grbavci School in Orahovac and were then executed in a nearby field.³⁶¹³

1106. At around 8 a.m. or shortly after, **Nikolić**, **Popović** and **Beara** met at the Standard Barracks for 15 to 20 minutes to discuss the murder operation.³⁶¹⁴

³⁶⁰⁸ Johannes Rutten, T. 5212–5213 (7 Dec 2006). Rutten agreed that when he was shown the same photograph during a proofing session in the *Krstić* case, he had first said, “those are the men that I probably saw at the ‘White House’”; but that later after flipping through other photographs and looking again he had identified the man in the photograph. Johannes Rutten, T. 5210–5212 (7 Dec 2006). **Popović** submits that Rutten's apparent identification of **Popović** was an instance of the general tendency described by Erwin Wagenaar of the worsening of memory over time coupled with an increasing confidence in the memory. *Popović Closing Arguments*, T. 34359–34360 (7 Sept 2009); Erwin Wagenaar, T. 25371 (8 Sept 2008).

³⁶⁰⁹ PW-109, T. 14598, 14600 (private session) (31 Aug 2007); Gordan Bjelanović, T. 22067–22068, 22083 (10 Jun 2008). PW-109 indicated that the ceremony took place at around 5 or 6 in the evening; whereas Gordan Bjelanović said that it took place at about noon. PW-109, T. 14598–14599 (private session) (31 Aug 2007); Gordan Bjelanović, T. 22067–22068 (10 June 2008). When presented with evidence that (a) General Mladić was at Sandići Meadow at 2p.m. (Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 March 2002”) and (b) the hand-over ceremony took place at 1800 hours (Counsel for the Prosecution (Nicholls) cited testimony of PW-109), Bjelanović stated “I cannot remember precisely, after so much time. In any case, I know it was that day. I know it was in Vlasenica. As for the morning or the afternoon, I don't know. I thought it was around noon. I can't tell you anything else precisely [...] I can't remember, after so much time, whether it was in the afternoon or in the morning. A lot of years have gone by. I cannot remember -- I can remember it was during the day.” Gordan Bjelanović, T. 22108–22109 (11 June 2008).

³⁶¹⁰ PW-168, T. 15830–15833 (closed session) (26 Sept 2007). PW-168 testified that **Drago Nikolić** called Obrenović to say that “he had just received a call from Lieutenant Colonel **Popović**.” PW-168, T. 15830 (closed session) (26 Sept 2007). *See infra*, paras. 1345–1356 for an analysis of the evidence presented concerning this conversation.

³⁶¹¹ PW-168, T. 15830–15833 (closed session) (26 Sept 2007). *See infra*, paras. 1345–1356.

³⁶¹² *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007). *See infra*, paras. 1345–1356.

³⁶¹³ *See supra*, paras. 476–492.

1107. Some time after this meeting, **Popović**, who was in Bratunac, ordered a military policeman, PW-138, to take a UN APC and go to an intersection near the bus station in Bratunac and park facing Konjević Polje.³⁶¹⁵ **Popović** met PW-138 there, and told him to move the APC ahead and to take some fuel from a nearby tanker truck.³⁶¹⁶ **Popović** then told PW-138 to drive forward, and a column of vehicles formed behind the APC.³⁶¹⁷ The vehicles in the column had Bosnian Muslim men on board and there was one soldier on each vehicle.³⁶¹⁸

1108. **Popović** then accompanied the convoy to the Grbavci School in his dark blue golf.³⁶¹⁹ He ordered PW-138 to follow his vehicle in the UN APC.³⁶²⁰ The convoy travelled behind them, through Konjević Polje to Zvornik.³⁶²¹ It stopped *en route* at the Vidikovac Hotel in Divič, where **Drago Nikolić** and Birčaković were waiting.³⁶²² From Divič, the convoy continued on to Karakaj, then to the Grbavci School, where the prisoners disembarked.³⁶²³

1109. After the convoy arrived, **Popović** left his vehicle and spoke to two men by the side of the road in front of the school.³⁶²⁴ The prisoners were in the process of being moved into the school as

³⁶¹⁴ Milorad Birčaković, T. 11014–11017 (7 May 2007); 11090–11091 (8 May 2007). For an analysis of this evidence, *See supra*, para. 472.

³⁶¹⁵ PW-138, T. 3811, 3837–3843 (private session) (8 Nov 2006). PW-138 does not expressly say that he set off from Bratunac with the convoy. He states that he stopped by the intersection where the road turned off towards the headquarters. In light of his position in Bratunac Brigade Military Police Platoon and the context of his testimony on this point, the Trial Chamber finds that PW-138 led the convoy of vehicles in the UN APC.

³⁶¹⁶ PW-138, T. 3839 (private session) (8 Nov 2006).

³⁶¹⁷ *Ibid.*, T. 3840 (private session) (8 Nov 2006).

³⁶¹⁸ *Ibid.*, T. 3842 (private session) (8 Nov 2006).

³⁶¹⁹ *Ibid.*, T. 3842–3844 (8 Nov 2006) (private session), T. 3849–3851 (9 Nov 2006). Orić testified that the convoy headed towards Konjević Polje was headed by an UNPROFOR APC. Mevludin Orić, T. 934–938 (29 Aug 2006). Birčaković testified that the convoy comprised 15 to 20 buses, or even fewer, carrying prisoners, was headed by an UN APC, and accompanied by a high ranking VRS officer. Stanoje Birčaković, T. 10741, 10745–10746, 10766 (1 May 2007).

³⁶²⁰ PW-138, T. 3796 (private session), 3837–3838, 3840–3843 (private session) (8 Nov 2006). Birčaković, who joined the convoy part way through the journey, did not testify that **Popović** led the way. Milorad Birčaković, T. 11151–11153 (8 May 2007). In addition, Momir Nikolić testified that someone else led the convoy, and did not mention **Popović** in this context. Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 7. *See also* Popović Final Brief, para. 489. The Trial Chamber notes this evidence, but does not consider the failure of these witnesses to mention **Popović** in this context as capable of raising a reasonable doubt. The Trial Chamber finds that **Popović** travelled with the convoy from Bratunac to Orahovac, and took a leading role in the operation to transfer the men.

³⁶²¹ PW-138, T. 3843 (private session) (8 Nov 2006). Milorad Birčaković was driving an Opel Rekord on 14 July. Milorad Birčaković, T. 11014 (7 May 2007). A Zvornik Brigade vehicle worklog for an Opel Rekord shows that on 14 July 1995, the vehicle travelled the route “Standard - Orahovac - Divič - Orahovac - Ročević - Orahovac - Zvornik - Standard - Local”. Ex. P00296, “Vehicle logbook for Opel Rekord P-4528”, p. 4. Milorad Birčaković confirmed that on 14 July he had been to Orahovac, Divič and Standard Barracks. Milorad Birčaković, T. 11052–11053 (7 May 2007).

³⁶²² Milorad Birčaković, T. 11017–11019 (7 May 2007). Birčaković was not consistent about the time of arrival of the convoy. At first he said that it came at about 8.30 or 9. Milorad Birčaković, T. 11018 (7 May 2007). However, when an earlier statement was put to him, he said that he did not know the exact time and that it could have been between 10 and 11 or an hour later or earlier. Milorad Birčaković, T. 11083–11085 (8 May 2007).

³⁶²³ PW-138, T. 3838, 3842–3844 (private session) (8 Nov 2006).

³⁶²⁴ Milorad Birčaković, T. 11024 (7 May 2007); Tanacko Tanić, T. 10337–10338 (23 Apr 2007).

PW-138 left in the UN APC.³⁶²⁵ **Popović** stopped PW-138 and asked him to stay at the School; however PW-138 told **Popović** that he could not because he had been ordered by Momir Nikolić to return.³⁶²⁶

1110. At around 2 p.m. on 14 July, it was overheard on the radio that the Duty Officer was requesting two machine operators from the Zvornik Brigade Engineering Company to “go build a road”. The machine operators were required in Orahovac “in relation to the task being performed by **Beara** and **Popović**”.³⁶²⁷

1111. In the afternoon of 14 July, an officer whom PW-101 described as “a lieutenant colonel or a colonel at the most” was present at the field near Orahovac while executions of those detained in the Grbavci School were taking place.³⁶²⁸ PW-101 testified that **Drago Nikolić** and this other officer directed the men who were escorting the prisoners from the truck at the execution site, not yelling at them but simply directing them as to what to do.³⁶²⁹ As the executions took place, a young boy emerged from the pile of corpses calling for his father.³⁶³⁰ The “lieutenant colonel or colonel” asked the soldiers what they were waiting for and said “Just finish him off”; however the soldiers disobeyed.³⁶³¹ According to PW-101, the “lieutenant colonel or colonel” was tall, had a moustache, was good-looking and well-built. He was wearing an officer’s uniform displaying rank insignia and had a pistol.³⁶³² As will be shown below, the Trial Chamber finds that this “lieutenant colonel or colonel” was **Popović**.

1112. **Popović** spent the morning of 14 July in the company of **Nikolić** transporting prisoners from Bratunac to the Grbavci School. The Trial Chamber has evidence before it that **Popović**, in cooperation with **Beara** and **Nikolić**, played a coordinating role in the operation at Orahovac that day. The three men met in the morning at the Standard Barracks, following which **Nikolić** and **Popović** accompanied the transportation of prisoners from Bratunac to Orahovac.³⁶³³ In the early afternoon, machinery was requested from the Zvornik Brigade Engineering Company in relation to work being done by **Beara** and **Popović** at Orahovac.³⁶³⁴ **Popović** was embroiled in several

³⁶²⁵ PW-138, T. 3850 (9 Nov 2006).

³⁶²⁶ *Ibid.*, T. 3850–3851 (9 Nov 2006). PW-138 said that the reason he gave **Popović** for leaving Grbavci School was false and that he did not wish to remain and felt that there was no reason for his continued presence. *Ibid.*

³⁶²⁷ PW-168, T. 15844–15846, 15853–15857 (closed session) (26 Sept 2007).

³⁶²⁸ PW-101, T. 7581–7582 (22 Feb 2007). PW-101 said of the officer: “This officer, I think he was lieutenant-colonel. I’m sure he was lieutenant-colonel or colonel at the most.” *Ibid.*, T. 7581.

³⁶²⁹ *Ibid.*, T. 7590 (22 Feb 2007). PW-101 said that **Nikolić** and the other officer were the only ones able to issue orders at the execution site, and that they were the most senior in rank present. *Ibid.*, T. 7581–7582, 7586, 7589–7590.

³⁶³⁰ PW-101, T. 7581–7582 (22 Feb 2007). *See supra*, paras. 487–488.

³⁶³¹ *Ibid.*, T. 7581–7582, 7586, 7590 (22 Feb 2007). *See supra*, paras. 487–488.

³⁶³² PW-101, T. 7586 (22 Feb 2007).

³⁶³³ *See supra*, paras. 472–474, 478.

³⁶³⁴ *See supra*, para. 482.

important aspects of the operation at Orahovac that day, and the Security Branch was clearly the coordinating authority for the executions.³⁶³⁵ **Popović** matches the description of the “lieutenant colonel or colonel”. He had a moustache in July 1995³⁶³⁶ and held the rank of Lieutenant Colonel.³⁶³⁷ There is no evidence before the Trial Chamber, from PW-101 or otherwise, to suggest that any other high ranking officer was present at the execution site at this time. The Trial Chamber is satisfied that there is no reasonable conclusion available on the evidence other than that the officer directing the executions at Orahovac with **Nikolić** was in fact **Popović**.

1113. In the evening of 14 July, after visiting Ročević School himself, Srećko Aćimović, Commander of the 2nd Battalion of the Zvornik Brigade, called the Zvornik Brigade Command at the Standard Barracks, and was told by the Duty Officer that **Pandurević** and Obrenović were absent, but that **Popović** had just arrived.³⁶³⁸ Aćimović reported to **Popović** that prisoners were being detained in the Ročević School and there were reports that some had been killed. **Popović** told Aćimović not to be so dramatic as the prisoners would be exchanged the next morning.³⁶³⁹

1114. On the basis of the evidence of Gordan Bjelanović, **Popović** presented an alibi.³⁶⁴⁰ Gordan Bjelanović testified that he saw **Popović** at the Krivače IKM on the day after the hand-over ceremony between Generals Živanović and Krstić, which took place on 13 July;³⁶⁴¹ but he does not indicate how long **Popović** spent at the IKM on that day.³⁶⁴² Bjelanović later stated that he could not remember precisely whether his visit to the Krivače IKM occurred on the first or the second day after the hand-over ceremony.³⁶⁴³

1115. The Trial Chamber notes the jurisprudence of the Tribunal, which holds that an alibi does not constitute a “defence” in the ordinary sense of the word.³⁶⁴⁴ The burden remains with the

³⁶³⁵ See *infra*, para. 1068.

³⁶³⁶ Jean René Ruez, T. 1330 (8 Sep 2006); Ex. P02047, “Srebrenica Trial Video”, 00:31:13.

³⁶³⁷ See *supra*, para. 1090.

³⁶³⁸ Srećko Aćimović, T. 12937, 12939–12940 (20 June 2007); Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007). Aćimović made the telephone call from Kozluk at his “former logistics unit”. Srećko Aćimović, T. 12937 (20 June 2007).

³⁶³⁹ Srećko Aćimović, T. 12940–12941 (20 June 2007); T. 13008–13009 (21 June 2007). Although he did not identify **Popović** as the person to whom Aćimović spoke, Mitar Lazarević said that Aćimović spoke to a “security man” from the corps. Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007).

³⁶⁴⁰ Popović Final Brief, paras. 513–518.

³⁶⁴¹ PW-109, T. 14598, 14600 (private session) (31 Aug 2007) (testifying that the handover ceremony occurred on 13 July).

³⁶⁴² Gordan Bjelanović, T. 22072–22073, 22067, 22084 (10 June 2008). Bjelanović testified “I went to the IKM, in the direction of Žepa [...] I don’t know exactly the name of the place, whether Kusače or Krivače, I’m not sure. It’s been a while. I don’t remember.” *Ibid.*, T. 22072–22073. The Trial Chamber finds that Bjelanović must have been referring to the Krivače IKM.

³⁶⁴³ Gordan Bjelanović, T. 22108–22110 (11 June 2008). Bjelanović’s account of his visit to the IKM also contains an inconsistency in regard to Krstić: at one point Bjelanović says that he went to the IKM around noon and stayed till evening, when Krstić was “brought there”; and at another he says that he drove Krstić to the IKM. Gordan Bjelanović, T. 22073, 22084 (10 June 2008).

³⁶⁴⁴ *Čelebići* Appeal Judgement, para. 581; *Zigiranyirazo* Appeal Judgement, para. 17.

Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.³⁶⁴⁵ The Trial Chamber also notes that the Krivače IKM is located between Han Pijesak and Žepa,³⁶⁴⁶ roughly 40 kilometres from Zvornik. In light of the closeness of the Krivače IKM to Zvornik and Bjelanović's uncertainty about times and dates, the Trial Chamber finds that Bjelanović's testimony does not raise a reasonable doubt that **Popović** was in the Zvornik area on 14 July.

(v) 15 July 1995

a. Petkovci

1116. In the early morning hours of 15 July, over 800 Bosnian Muslim men who had been detained in the Petkovci School were transported to a field near Petkovci Dam and executed.³⁶⁴⁷ A member of the 6th Battalion noticed a dark blue Golf vehicle parked beside the buses and trucks in front of the Petkovci School on the day before the executions.³⁶⁴⁸ **Popović** was generally known to drive a dark blue Golf in July 1995,³⁶⁴⁹ and he did so on 13 July when he accompanied the convoy of prisoners to Orahovac.³⁶⁵⁰ However, on the basis of this evidence alone, the Trial Chamber cannot be satisfied that **Popović** was at the Petkovci School on 15 July.

b. Ročević

1117. On 14 and 15 July, approximately 1,000 Bosnian Muslim men were detained at the Ročević School. On 15 July, the men were taken to Kozluk and executed.³⁶⁵¹

1118. At around 9 or 10 a.m. on 15 July, Aćimović, the Commander of the 2nd Battalion of the Zvornik Brigade,³⁶⁵² drove to the Ročević School where he saw at least a dozen corpses lying on the ground.³⁶⁵³ Aćimović met **Popović** in front of the School.³⁶⁵⁴ **Popović** shouted at Aćimović,

³⁶⁴⁵ *Zigiranyirazo* Appeal Judgement, paras. 17–18.

³⁶⁴⁶ Milenko Jevđević, T. 29610 (12 Dec 2008).

³⁶⁴⁷ *See supra*, para. 503.

³⁶⁴⁸ Marko Milošević, T. 13305 (26 June 2007).

³⁶⁴⁹ PW-138, T. 3838, 3843 (private session) (8 Nov 2006). The Golf vehicle that **Popović** used was assigned to the Security Organ and was also used by others. Gordan Bjelanović, T. 22071–22072 (10 June 2008); PW-172, T. 32589 (10 Mar 2009). *See supra*, paras. 474, 1108, fn. 329.

³⁶⁵⁰ PW-138, T. 3838, 3843 (private session) (8 November 2006).

³⁶⁵¹ *See supra*, para. 524.

³⁶⁵² Srećko Aćimović, T. 12930–12931 (20 June 2007). *See also ibid.*, T. 13035–13036 (21 June 2007). Aćimović's evidence is analysed in detail at *supra*, para. 506, where the Trial Chamber concluded that it must examine Aćimović's evidence carefully on each salient issue in order to determine what weight, if any, to attribute to it and has accordingly done so in the analysis which follows.

³⁶⁵³ Srećko Aćimović, T. 12957–12958 (20 June 2007); Mitar Lazarević, T. 13379 (27 June 2007) (testifying that Aćimović went to the Ročević School alone in order to inform those at the school that Aćimović would not dispatch any men to participate in the executions); Dragan Jović, T. 18049, 18050 (21 Nov 2007) (testifying that he

asking him why he had not brought men as ordered.³⁶⁵⁵ **Popović** threatened Aćimović that he would be held responsible for not following the order.³⁶⁵⁶ **Popović** asked Aćimović about suitable execution sites, and also pressured Aćimović to ask the soldiers in the schoolyard to find volunteers willing to participate in the executions.³⁶⁵⁷

1119. While he was with Aćimović on the morning of 15 July, **Popović** called the Zvornik Brigade Command at the Standard Barracks, requesting that trucks be sent to Ročević.³⁶⁵⁸ He also asked that one of two men who were located at Petkovci or Orahovac be sent urgently.³⁶⁵⁹ Aćimović was later told by Milorad Trbić, Security Officer in the Zvornik Brigade, that **Popović** had probably meant that either Trbić or Miomir Jasikovac, the Commander of the Zvornik Brigade Military Police, should come to the school.³⁶⁶⁰ Jasikovac arrived at the school around 11 a.m. or noon.³⁶⁶¹

1120. **Popović** was angry when only a single truck arrived and said that the prisoners would all have to be killed near the school.³⁶⁶² **Popović** attempted to source additional trucks by engaging civilian drivers.³⁶⁶³ At some point, a soldier said someone had volunteered to participate in the executions.³⁶⁶⁴ This volunteer was not a member of the Zvornik Brigade, and **Popović** told the volunteer to go out and find other volunteers.³⁶⁶⁵

1121. Members of the Zvornik Brigade Military Police, acting upon orders from Jasikovac, guarded the prisoners.³⁶⁶⁶ Members of the Zvornik Brigade 2nd Battalion and members of the

heard that there were dead bodies at the Ročević School on 14 July); Mitar Lazarević, T. 13367 (26 June 2007) (testifying that Aćimović told him that prisoners had been killed at the school).

³⁶⁵⁴ Srećko Aćimović, T. 12957–12958 (20 June 2007); Dragan Jović, T. 18055–18056 (21 Nov 2007). *See supra*, para. 511.

³⁶⁵⁵ Srećko Aćimović, T. 12958–12959, 12964–12965 (private session) (20 June 2007).

³⁶⁵⁶ *Ibid.*

³⁶⁵⁷ *Ibid.*, T. 12959–12961, 12964–12965 (20 June 2007). Aćimović testified: “[Popović] was putting pressure on me all this time. He continued doing so. He insisted on me trying to go down there, [...] to talk to somebody in the school-yard, as there were a lot of different soldiers there. [...] I saw them as I was coming in. I told him I wouldn’t do that, that I would not ask anybody to do any such thing. He kept on insisting.” *Ibid.*, T. 12960 (20 June 2007).

³⁶⁵⁸ *Ibid.*, T. 12965–12966 (20 June 2007).

³⁶⁵⁹ *Ibid.*, T. 12986 (21 June 2007).

³⁶⁶⁰ Srećko Aćimović, T. 12986–12988 (21 June 2007).

³⁶⁶¹ PW-142, T. 6463 (private session) (29 Jan 2007); Dragoje Ivanović, T. 14553–14555 (30 Aug 2007). For details of Jasikovac’s arrival, *see supra*, para. 512.

³⁶⁶² Srećko Aćimović, T. 12968–12969 (private session) (20 June 2007).

³⁶⁶³ *Ibid.*, T. 12967–12970 (private session) (20 June 2007). For details of this engagement, *see supra*, para. 513.

³⁶⁶⁴ *Ibid.*, T. 12971 (private session) (20 June 2007).

³⁶⁶⁵ *Ibid.*, T. 12971–12972 (private session) (20 June 2007). Aćimović said he had never seen this individual before, and described the volunteer as 17 or 18 years old, wearing civilian clothes. *Ibid.*, T. 12971 (private session) (20 June 2007); T. 13118 (private session) (22 June 2007).

³⁶⁶⁶ *See supra*, para. 515.

Military Police participated in the transportation of the prisoners to a gravel pit near Kozluk, where they were subsequently killed.³⁶⁶⁷

1122. At about 11 a.m. on 15 July at the Standard Barracks, Obrenović, on his way to meet with Vasić and **Borovčanin** in his office, was stopped by Dragan Jokić, the Duty Officer at the Standard Barracks.³⁶⁶⁸ Jokić told Obrenović that **Beara** and **Popović** had brought prisoners from Bratunac and Srebrenica in order to shoot them and that there were “huge problems” with guarding and burying them.³⁶⁶⁹ Jokić also told Obrenović that “**Beara** and **Popović** were taking people wherever they wanted, that **Popović** had ordered him not to write down anything concerning that, not to note down anything, and not to use radio equipment to convey this information.”³⁶⁷⁰ The **Popović** Defence argued that this evidence should be rejected on the grounds that **Popović** was not authorised to issue orders to Jokić and there was no evidence of a policy throughout the Brigade to refrain from recording information about the prisoners.³⁶⁷¹ The Trial Chamber is, however, of the view that **Popović** gave Jokić instructions not to record details concerning the Bosnian Muslim prisoners or to speak of them over the radio. Furthermore, whether or not **Popović** had authority to issue instructions of this nature does not affect the Trial Chamber’s finding, and it remains satisfied that **Popović** made these comments to Jokić as described.

1123. Sometime after 6:30 p.m., **Popović** and **Beara** met at the Standard Barracks.³⁶⁷²

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1124. On 14 and 15 July, Bosnian Muslim men were detained at Kula School in Pilica. On 16 July, the men were taken to the nearby Branjevo Military Farm and executed.³⁶⁷³ Other Bosnian

³⁶⁶⁷ See *supra*, paras. 517–520.

³⁶⁶⁸ PW-168, T. 15869–15870 (closed session) (26 Sept 2007), T. 16515–16517 (closed session) (17 Oct 2007).

³⁶⁶⁹ *Ibid.*, T. 15871 (closed session) (26 Sept 2007); see also *ibid.* T. 16517–16518 (closed session) (17 Oct 2007).

³⁶⁷⁰ *Ibid.*, T. 15871 (closed session) (26 Sept 2007).

³⁶⁷¹ Popović Final Brief, para. 274.

³⁶⁷² PW-165, T. 9961–9962 (4 Apr 2007). PW-165 was told by persons wearing camouflage uniform at the Standard Barracks that the two men he observed were **Popović** and **Beara** and they were there to meet with a Commander. PW-165 testified that he would not have recognised **Popović** at the time, but after seeing the warrant for his arrest in 1998 or 1999, PW-165 recognised **Popović** as the man that he saw that night. PW-165 thought that the commander who they met with was Obrenović, although he was not sure of this. PW-165, T. 9962, 9965, 9966, 10001, 10003, 10004 (4 Apr 2007). However, there is evidence before the Trial Chamber that Obrenović arrived at the 4th Battalion Command near Baljkovica on the afternoon of 15 July. PW-168, T. 15888–15889 (27 Sept 2007); Lazar Ristić, T. 10090–10091 (16 Apr 2007). The Prosecution argues that the commander would have been **Pandurević**, because he returned to Zvornik from Žepa at around midday on 15 July. Prosecution Final Brief, para. 867. The Prosecution did not put this to **Pandurević** on cross examination. There is evidence before the Trial Chamber that **Pandurević** was at the Kitovnice IKM on the afternoon of 15 July. See *infra*, para. 1864. The Trial Chamber finds that there is insufficient evidence to make a finding as to the identity of the Commander with whom **Popović** and **Beara** met.

³⁶⁷³ See *supra*, para. 550.

Muslims were also executed at the Pilica Cultural Centre on this day. In total, between 1,000 and 2,000 Bosnian Muslims were executed in the Pilica area on 16 July.

1125. Around noon on 16 July, **Popović** arrived at the Kula School in Pilica with **Beara**.³⁶⁷⁴ A van containing about ten or twelve soldiers arrived subsequently and the van was followed by an empty bus.³⁶⁷⁵ As soon as **Popović** arrived, the prisoners were driven away.³⁶⁷⁶ The prisoners were taken to the Branjevo Military Farm and executed.³⁶⁷⁷

1126. At 1:58 p.m. on 16 July, the duty officer of the Zvornik Brigade told his counterpart at the Drina Corps that **Popović** urgently required 500 litres of fuel to be delivered to Pilica “or else the

³⁶⁷⁴ Slavko Perić, T. 11414 (11 May 2007). Perić reluctantly acknowledged that he had previously identified two men at the Kula School on 16 July as **Beara** and **Popović**, however he could not now be sure who they were. Slavko Perić, T. 11414 (11 May 2007); T. 11429 (14 May 2007). Perić said that he was 50 metres from the prisoners when they were removed from the school, although it is not clear that he was also 50 metres from the two officers. Slavko Perić, T. 11415 (11 May 2007). Willem Wagenaar was of the view that identification from 50 metres would be “extremely risky” without further testing. Willem Wagenaar, T. 25363–25364 (8 Sept 2008). Perić said that the Prosecution never showed him any photographs either during interviews or at any other time. Slavko Perić, T. 11437 (14 May 2007). However, the Trial Chamber considers that Perić’s demeanour was such during his testimony that he made a reliable identification of **Beara** and **Popović**. Of particular relevance to the identification of **Popović** is his testimony that one of the two officers he saw at the Kula School was addressed by a soldier as “Pope”. Slavko Perić, T. 11409, 14411, 14115 (11 May 2007). There is evidence before the Trial Chamber that **Popović** was referred to by the nickname “Pop”. Svetozar Kosorić, T. 33801 (30 June 2009); P01204a, “Intercept of conversation between Trbić and X, 16 July 1995, 22:33 hours”; Ex. P02437d, “Intercept of conversation between Popović and Nikolić, 19 January 1995, 10:57 hours”; Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44 hours”; Ex. P02352a, “Intercept of conversation between Popović and Nikolić, 20 April 1995, 19:10 hours”. Cf. Ex. P01218a, “Intercept of conversation between Golić and Zlatar 1, 17 July 1995, 12:42 hours”; Ex. P01219a, (confidential); Mile Janjić, T. 17960, 17982, (20 Nov 2007). Perić testified that “Pope” was a shortened version of **Popović**’s name, but that priests could also be referred to in this way. Slavko Perić, T. 11415, 11424 (11 May 2007). Perić conceded that if he heard a soldier use a nickname such as “Pope”, this would indicate that the person he was addressing was not an Assistant Corps Commander. Slavko Perić, T. 11426 (11 May 2007). Gordan Bjelanović testified that all RS soldiers addressed **Popović** as “Colonel, sir” and none of the common soldiers would use a nickname when addressing him, although his fellow officers might. Gordan Bjelanović, T. 22070–22071 (10 June 2008). However, **Drago Nikolić**, who was a more junior Officer, addressed **Popović** as “Pop”. Ex. P02437d, “Intercept of conversation between Popović and Nikolić, 19 January 1995, 10:57 hours”; Ex. P02352a “Intercept of conversation between Popović and Nikolić, 20 April 1995, 19:10 hours”; Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44 hours”. Having weighed all the evidence, the Trial Chamber is satisfied that Perić saw **Beara** and **Popović** at the Kula School.

³⁶⁷⁵ Slavko Perić, T. 11409–11410 (11 May 2007).

³⁶⁷⁶ *Ibid.*, T. 11415 (11 May 2007). When asked whether the officer who was addressed as “Pope” was present at the time that the prisoners were removed from the school, Perić said: “I cannot be precise about the sequence of events now. I said as soon as they arrived, they started loading and driving the prisoners away. Where each of them was at any given moment, I really can’t say.” Slavko Perić, T. 11415 (11 May 2007).

³⁶⁷⁷ See *supra*, para. 532–539.

work he's doing will stop."³⁶⁷⁸ At 2 p.m. a note was made in the Zvornik Brigade Duty Officer Logbook that "**Popović** requested a bus with a full tank and 500 litres of D2."³⁶⁷⁹

1127. At 4:40 p.m., a note in the Zvornik Brigade Duty Officer Logbook indicates that **Popović** was in the area of Pilica village and Branjevo Military Farm at that time. The entry reads "Message from Zlatar that Lieutenant Colonel Popović must go to Vinko Pandurević in the field at 1640 hrs. Message through the **1st pb** [battalion] that Popović must report to the duty officer so he can be sent on a task by Zlatar" (emphasis added).³⁶⁸⁰ The 1st Battalion zone contained Pilica village and Branjevo Military Farm.³⁶⁸¹

1128. At 7:12 p.m., the following conversation was intercepted between a certain Bašević and an unknown interlocutor:

- B Well the petrol's run out completely. Miki, I said to Miletić today when I was on the phone with him, like, to do with this request that, that Zvornik sent, and Šekovići.
- Y Zvornik is solved.
- B I said I have no petrol, oil, and.
- Y Listen, Zvornik is solved
- B Well, I know, I saw ... You know, but the problem is what's going on ... going across Šekovići this way ... it's not possible this /illegible/, its on hold there and I have to immediately now, I sent 600 litres of petrol there today.³⁶⁸²

The Trial Chamber is satisfied that the reference to Zvornik is a reference to the delivery of fuel.

1129. Branko Bogićević transported 500 litres of fuel from the Standard Barracks to Pilica on 16 July 1995.³⁶⁸³ VRS soldiers took the fuel from Bogićević using a hose and jerrycans.³⁶⁸⁴ Bogićević's memory of the circumstances of his journey is vague.³⁶⁸⁵ His vehicle log showed that on 16 July he used his vehicle from 7 a.m. until 9:30 p.m. and that he made three journeys on the

³⁶⁷⁸ Ex. P01189a, "Intercept, 16 July 1995, 13:58 hours". See also Ex. P00291, "Material Dispatch Order by Zvornik Brigade for D2 diesel fuel, 16 July 1995" (recording that 500 litres of fuel were delivered to Popović in Zvornik, and 140 litres were returned). Cf. Ex. P00286, "Internal Distribution Logbook" (reflecting the assignment of 500 litres of D-2 fuel to the Command of the Drina Corps on 16 July 1995); P00685, "Srebrenica Military narrative - Operation Krivaja 95, 15 May 2000", p. 75. Pandurević did not know anything about such a request for fuel, and did not approve any such transfer. Vinko Pandurević, T. 31014 (2 Feb 2009). **Pandurević** noted that it was common for such fuel transfers to occur between units. Vinko Pandurević, T. 31318-31323 (12 Feb 2009).

³⁶⁷⁹ Ex. P00377, "Zvornik Brigade Duty Officer Logbook", p. 148.

³⁶⁸⁰ *Ibid.*, p. 149. "Zlatar" was the code-name for the Drina Corps command. Vinko Pandurević, T. 31046 (3 Feb 2009).

³⁶⁸¹ Ex. 7DP02109, "Map of the Drina Corps Area of Responsibility"; Richard Butler, T. 20019-20020 (18 Jan 2008).

³⁶⁸² Ex. P01199a, "Intercept of conversation between Bašević and Y, 16 July 1995, 19:12 hours".

³⁶⁸³ Branko Bogićević, T. 22360-22361 (18 June 2008); Ex. P00291, "Material Dispatch Order by Zvornik Brigade for D2 diesel fuel, 16 July 1995".

³⁶⁸⁴ Branko Bogićević, T. 22364-22365 (18 June 2008).

³⁶⁸⁵ *Ibid.*, T. 22361-22364, 22371-22372, 22394-22395 (18 June 2008). Bogićević did not recall whether he took charge of the fuel in the barracks or at the petrol station, who gave him the order to transport the fuel, whether he was given any special document to accompany this trip, or whether he was given the name of any specific individual to deliver the fuel to.

route Standard-Klisa-Pilica-Zvornik-Standard.³⁶⁸⁶ Bogičević confirmed that the vehicle log accurately reflected the time of his return to the Standard Barracks.³⁶⁸⁷ Bogičević initially stated that he left for Pilica at 7 p.m., but this was not evident from the logbook and his testimony on this point was not clear.³⁶⁸⁸ The Trial Chamber nevertheless finds that Bogičević's testimony provides corroboration of the evidence that the fuel was delivered on 16 July to Pilica.³⁶⁸⁹

1130. The request for fuel was made on the same day as the executions at Branjevo Military Farm.³⁶⁹⁰ The following day the bodies were buried there.³⁶⁹¹ The Trial Chamber is satisfied that **Popović's** request for fuel and its delivery was related to the operation of executing and burying the prisoners.

1131. Brano Gojković was in charge of a unit of members of the 10th Sabotage Detachment of the Main Staff.³⁶⁹² On the morning of 16 July, Gojković ordered eight men from his unit to execute busloads of Bosnian Muslims due to arrive at the Branjevo Military Farm. These eight men travelled to the headquarters of the Zvornik Brigade at the Standard Barracks where a certain "lieutenant-colonel" and two military police officers joined them.³⁶⁹³ They continued on to Branjevo Military Farm together; however the "lieutenant-colonel" and the military policemen left as the Bosnian Muslims began to arrive.³⁶⁹⁴

³⁶⁸⁶ Ex. P00295, "Zvornik Brigade July 1995 Vehicle work log book".

³⁶⁸⁷ Branko Bogičević, T. 22367 (18 June 2008).

³⁶⁸⁸ *Ibid.*, T. 22389–22391 (18 June 2008.)

³⁶⁸⁹ No finding can be made on the evidence as to the time of the delivery.

³⁶⁹⁰ Dražen Erdemović, T. 10972 (4 May 2007); Branko Bogičević, T. 22360–22361 (18 June 2008); Ex. P00291, "Material Dispatch Order by Zvornik Brigade for D2 diesel fuel, 16 July 1995"; *see supra*, paras. 532–539.

³⁶⁹¹ *See supra*, para. 546–547. Some of the fuel used for the vehicles that carried out the burial can be traced. The TAM truck that Milenko Tomić used to transport bodies from Pilica to Branjevo Military Farm was issued 40 litres of fuel on 17 July. Milenko Tomić, T. 21001–21003 (5 Feb 2008); Ex. P00295, "Zvornik Brigade July 1995 Vehicle Work log book", pp. 583–584. Tomić said that the procedure before receiving assignments was to receive a travel order and fuel. Milenko Tomić, T. 20999 (5 Feb 2008). The Engineering Company Daily Orders Log recorded that the BGH-700 and the ULT 220 were in Branjevo on 17 July 1995. Damjan Lazarević, T. 14472 (29 Aug 2007); Ex. P00297, "Zvornik Brigade Engineer Company Daily Orders log book", p. 128. On 17 July 1995 the ULT-220 was working for the VRS "digging trenches in Branjevo" for eight and a half hours and was assigned 170 litres of fuel. Ex. P00302, "Zvornik Brigade vehicle logbook for ULT 220 from Birac-Holding". However, Damjan Lazarević testified that this machine was not in Branjevo on 17 July 1995, and there was another ULT-220 machine in Branjevo that was the property of the quarry at Jošanica. Damjan Lazarević, T. 14481 (29 Aug 2007).

³⁶⁹² *See* Dražen Erdemović, T. 10963 (4 May 2007).

³⁶⁹³ Dražen Erdemović, T. 10962–10966 (4 May 2007). The "lieutenant-colonel" travelled in an olive-green-grey Opel Cadet, which Erdemović and the other men followed to Branjevo Military Farm. Dražen Erdemović, T. 10967–10969 (4 May 2007). Erdemović identified the site on two exhibits: Ex. P01915 "Photograph of the Standard Barracks"; Ex. P01916 "Photograph of the Standard Barracks". Dražen Erdemović, T. 10964–10965 (4 May 2007). There is no corroborating evidence that these two photographs are in fact of the Standard Barracks, however another photograph of what is evidently the same complex was identified by Stevo Kosorić as the Zvornik Brigade Headquarters. Ex. 3D00497, "Photograph from Standard"; Stevo Kosorić, T. 25996 (22 Sept 2008).

³⁶⁹⁴ Dražen Erdemović, T. 10969–10971 (4 May 2007). Erdemović testified that they travelled to a farm halfway between Zvornik and Bijeljina. *Ibid.*, T. 10969 (4 May 2007).

1132. At around 3 or 4 p.m., the “lieutenant-colonel”³⁶⁹⁵ returned to the Branjevo Military Farm and ordered the VRS soldiers deployed there to go to the Pilica Cultural Centre in order to execute the 500 Bosnian Muslims who were detained there.³⁶⁹⁶ Members of the 10th Sabotage Detachment refused to go;³⁶⁹⁷ however soldiers from Bratunac who had also been at Branjevo Military Farm that day volunteered and left with the “lieutenant-colonel” and two military policemen.³⁶⁹⁸ The roads from the direction of Pilica were secured, and that same afternoon, firing and explosions could be heard in Pilica town, coming from the direction of the Pilica Cultural Centre.³⁶⁹⁹

1133. Pursuant to an instruction from the “lieutenant-colonel”, Dražen Erdemović, a member of the 10th Sabotage detachment, went to a café directly across the road from the Pilica Cultural Centre at 3 or 4 p.m. from which point he could observe a number of bodies outside the Pilica Cultural Centre.³⁷⁰⁰ A check-point had been set up outside the centre guarded by armed civilian police.³⁷⁰¹ After a short while, VRS soldier Radenko Tomić, who was nicknamed Gargija and had participated in the executions at Branjevo Military Farm, entered the café and told the “lieutenant-colonel” that “everything was finished”.³⁷⁰² Later, just before they all left the café the “lieutenant-colonel” stood up and announced: “Who remained alive has remained alive.”³⁷⁰³ As will be shown below, the Trial Chamber finds that this “lieutenant-colonel” was **Popović**.

1134. As previously stated, **Popović** held the rank of Lieutenant Colonel in July 1995.³⁷⁰⁴ He was at the Kula School just as transportation to the execution site at Branjevo Military Farm began. As established above, in the days leading up to 16 July, **Popović** played a coordinating role in the operations at Orahovac and Ročević. The executions in Pilica were part of the same operation.³⁷⁰⁵ Furthermore, the evidence establishes that **Popović** was involved in the executions at Pilica. **Popović** was at Pilica throughout the day of 16 July: he was seen at the Kula School around noon, an intercept places him in the Pilica area at 4.40 p.m.—around the time the execution at Branjevo Military Farm occurred³⁷⁰⁶—and communications within the Zvornik Brigade on the afternoon of

³⁶⁹⁵ Dražen Erdemović, T. 10966–10967, 10970–10971, 10982 (4 May 2007). *See infra*, paras. 1134–1135 regarding the identity of the Lieutenant Colonel.

³⁶⁹⁶ *Ibid.*, T. 10982 (4 May 2007). This estimate corresponds with the testimony of Jevto Bogdanović, who saw approximately 550 bodies in and around the Pilica Cultural Centre in July 1995. Jevto Bogdanović, T. 11333 (10 May 2007).

³⁶⁹⁷ Dražen Erdemović, T. 10982 (4 May 2007).

³⁶⁹⁸ *Ibid.*, T. 10982, 10966–10967 (4 May 2007).

³⁶⁹⁹ *Ibid.*, T. 10983–10985 (4 May 2007). The firing and explosions were heard around 3 or 4 p.m. *Ibid.*

³⁷⁰⁰ *Ibid.*, T. 10983–10986 (4 May 2007); Ex. P01820, “Video of Pilica Cultural Center”, 0:34–0:55.

³⁷⁰¹ Dražen Erdemović T. 10984 (4 May 2007). There were two or three armed civilian policemen wearing blue camouflage uniforms of the RS MUP. *Ibid.*

³⁷⁰² Dražen Erdemović, T. 10984–10985 (4 May 2007).

³⁷⁰³ *Ibid.*, T. 10986 (4 May 2007).

³⁷⁰⁴ *See supra*, para. 1090.

³⁷⁰⁵ *See supra*, para. 1075.

³⁷⁰⁶ The execution occurred between 10 a.m. and 3 or 4 p.m. *See supra*, para. 536.

16 July indicate that **Popović** needed fuel delivered to Pilica in relation to the executions and burials there otherwise “his work will stop”. There is no evidence before the Trial Chamber of any other Lieutenant Colonel in Pilica at this time. In light of this, the Trial Chamber is satisfied that there is no other reasonable conclusion available on the evidence but that the Lieutenant Colonel whom Erdemović saw at Branjevo Military Farm and in Pilica town on 16 July was **Popović**.

1135. The Trial Chamber has carefully considered the fact that Erdemović was unable to identify **Popović** in a photo line up.³⁷⁰⁷ However, the Trial Chamber considers that given the traumatic circumstances in which Erdemović met **Popović** and the significant passage of time since then, Erdemović’s failure to identify **Popović** in a photo line up does not raise a reasonable doubt as to the Trial Chamber’s conclusion that the man whom Erdemović saw at Pilica on 16 July was, in fact, **Popović**.

1136. As stated above, at 4:40 p.m., a note in the Zvornik Brigade Duty Officer Logbook reads “Message from Zlatar that Lieutenant Colonel Popović must go to Vinko Pandurević in the field at 1640 hrs. Message through the 1st pb that Popović must report to the duty officer so he can be sent on a task by Zlatar”.³⁷⁰⁸ In an intercepted conversation at 4:43 p.m., it is stated that **Popović** or **Nikolić** is to visit “Vinko” to see “what’s going on there”.³⁷⁰⁹ In another conversation at 9:16 p.m., the following exchange took place:

Popović:	I was just up there
Rašić:	Yes.
Popović:	I was with the boss personally.
Rašić:	Yes.
Popović:	Here where I am ... you know where I am?
Rašić:	I know.
Popović:	Well, you got his interim report.
Rašić:	All of it.
Popović:	It’s just like he wrote it ... I was there on the spot and saw for myself he had received some numbers ... well, that’s not even important ... I’ll come there tomorrow so tell the General ... I’ve finished the job.
Rašić:	You finished?
Popović:	I finished everything.
Rašić:	Good.
Popović:	I’ll come there tomorrow when I’m sure that that’s all been taken care of, you know.

³⁷⁰⁷ See Ex. 2D00571, “Stipulation between OTP and Popović” (stating that when Erdemović was shown a photo-board containing the photographs of eight individuals including **Popović**, he did not identify any of the eight individuals in the picture as the Lieutenant-Colonel whom he testified that he had seen on 16 July 1995 at the Branjevo Military Farm and “Pilici”).

³⁷⁰⁸ Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995”, p. 149.

³⁷⁰⁹ Ex. P01225f, “Intercept of conversation between X and Y, 16 July 1995, 16:43 hours”.

Rašić: Good.

Popović: After I bring a transport from there.

Rašić: Right.

Popović: Well, in general, there weren't any major problems. But up there, there were horrible problems and that thing the commander sent, it was just the right thing.

Rašić: Good.³⁷¹⁰

1137. The Trial Chamber is satisfied that “the boss” is a reference to Pandurević.³⁷¹¹ **Pandurević**, however, denies that he saw **Popović** at any point on 16 July.³⁷¹² In light of this intercept, and noting the amount of time that has passed since the events as well as **Pandurević’s** concession that “the boss” was probably a reference to himself, the Trial Chamber is satisfied that **Popović** met **Pandurević** on 16 July in the Zvornik area.

1138. In the first half of the intercept, **Popović** relays information from the Zvornik Brigade Interim Combat Report of 16 July, signed by **Pandurević** and containing information on combat operations in the area as well as **Pandurević’s** decision to open a corridor so that the civilian population may be evacuated.³⁷¹³ The conversation shifts from this topic when **Popović** states “well, that’s not even important ... I’ll come there tomorrow so tell the General ... I’ve finished the job”. **Popović** made this call from the Standard Barracks at 9.16 p.m., and by 10:33 p.m., he had left.³⁷¹⁴ Taking into account all of the evidence, and **Popović’s** activities in the days leading up to this conversation, the Trial Chamber is of the opinion that the only reasonable interpretation of this evidence is that the reference to “the job” is a reference to the killing operation.

1139. The **Popović** Defence proffers a contrary explanation for **Popović’s** presence in Zvornik after 12 July. The **Popović** Defence argues that from 12 July onwards the column “threaten[ed] to invade Zvornik in coordination with ABiH 2nd Corps”.³⁷¹⁵ Petar Vuga, defence expert and retired JNA Colonel,³⁷¹⁶ testified that counter intelligence work was the main task of the Security Organ. According to Vuga, all the duties of the Drina Corps Security Organ were carried out personally by **Popović**.³⁷¹⁷ Given the need for counter intelligence work to be carried out in these circumstances,

³⁷¹⁰ Ex. P01201a, “Intercept of conversation between Popović and Rašić, 16 July 1995, 21:16 hours”.

³⁷¹¹ **Pandurević** acknowledged that the reference to “the boss” was probably a reference to himself. Vinko Pandurević, T. 32244–32245 (27 Feb 2009).

³⁷¹² Vinko Pandurević, T. 32247 (27 Feb 2009).

³⁷¹³ Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Pandurević, 16 July 1995”.

³⁷¹⁴ Ex. P01201a, “Intercept of conversation between Popović and Rašić, 16 July 1995, 21.16 hours”; Prosecution Adjudicated Facts Decision, Fact 87 (stating that the reference to “Palma” is a reference to the Zvornik Brigade); P01204a, “Intercept of conversation between Trbić and X, 16 July 1995, 22.33 hours” (indicating that **Popović** had left the Zvornik Brigade Headquarters by then (“Yes, he was here and gone.”)).

³⁷¹⁵ Popović Final Brief, para. 581.

³⁷¹⁶ Petar Vuga, T. 23034 (30 June 2008).

³⁷¹⁷ Ex. 1D01175, “Expert Report by retired Colonel Mr. Petar Vuga, 31 March 2008”, paras. 4.17–4.20. Vuga estimated that “security organs must be engaged in counterintelligence work up to 80% of their total working capacity”. *Ibid.*, para. 4.17. See *Supra*, para. 1092.

and also that **Popović** was the only person responsible for counter intelligence work,³⁷¹⁸ whereas “any officer” could carry out tasks in relation to prisoners, the **Popović** Defence argues that **Popović’s** presence in Zvornik after 12 July was strictly for the purpose of carrying out counter intelligence tasks.³⁷¹⁹

1140. Further, the **Popović** Defence points to the fact that on 15 July 1995, the Drina Corps issued an urgent mobilisation request and order for conscripts to report to the Zvornik Brigade.³⁷²⁰ Prosecution expert Richard Butler testified that he could foresee a situation where the Security Organ would be required to gather information from potential conscripts to determine whether any of them might pose potential security or counter-intelligence threats.³⁷²¹

1141. The Trial Chamber notes that the arguments of the **Popović** Defence on this point are rooted in speculation. Even if, for the sake of argument, one concludes that **Popović** was engaged in legitimate operations in Zvornik after 12 July—either counter intelligence activities or screening recruits—this has no effect whatsoever on his proven involvement with prisoners from Srebrenica. Having considered all the evidence, the Trial Chamber is satisfied beyond reasonable doubt that **Popović** was present in Orahovac, Ročević and Pilica during the period 14–16 July. The arguments of the **Popović** Defence raise no reasonable doubt as to **Popović’s** presence at these locations, or involvement with prisoners in the days that followed 12 July, including their killing.

(vii) 17 July 1995

1142. In the space of a few minutes around midday on 17 July, three telephone conversations were intercepted, all of which concern a message to be passed on to **Popović**. In the first conversation, at 12:42 p.m., Major Golić tells General Krstić that **Popović** is in Zvornik, but is expected to be back at the IKM that afternoon. Krstić states “Listen, Golić, find this **Popović** chap and have him report to the IKM [...] find him and have him report immediately”.³⁷²² Two minutes later, Trbić, a security officer at the Zvornik Brigade, says that **Popović** “went there, to, towards that task” and that the task was north of Trbić.³⁷²³ Five minutes later, an unknown interlocutor says to Trbić “It’s changed again [...] if you get in touch with him, let him finish that work [...] And have him come /here/

³⁷¹⁸ See *supra*, para. 1093.

³⁷¹⁹ Popović Final Brief, paras. 581–582.

³⁷²⁰ Ex. 1D00698, “Request from the Drina Corps Command for mobilisation of non-assigned conscripts, signed by Krstić 15 July 1995”; Ex. 1D00697, “Order from the Ministry of Defence of the Republika Srpska signed by Secretary Stevan Ivanović 15 July 1995”.

³⁷²¹ Richard Butler, T. 20139–20142 (22 Jan 2008).

³⁷²² Ex. P01218a, “Intercept of conversation between Golić and Zlatar 1, 17 July 1995, 12:42 hours”. Zlatar 1 is a reference to the Commander of the Drina Corps, at the time General Krstić. Vinko Pandurević, T. 31047 (3 February 2009).

³⁷²³ Ex. P01219a (confidential).

immediately [...] So, let him finish that work that he's doing, and have him report immediately here".³⁷²⁴ Later, at 4:22 p.m., **Popović** tells an unknown interlocutor whom he refers to as "boss", that "everything's OK, that job is done ... everything's been brought to an end, no problems [...] I'm at the base ... at the base [...]. Can I just take a little break, take a little break, take a shower and then I'll think again later ... basically, that all gets an A ... an A ... the grade is an A, everything's OK".³⁷²⁵ In light of all the evidence before it concerning **Popović's** acts and whereabouts in the days preceding this conversation, the Trial Chamber finds that the "job" that **Popović** is referring to in this intercept is the operation to kill and bury Bosnian Muslim males in Zvornik during the period 13–17 July 1995.

(viii) 23 July 1995

a. Bišina

1143. On 7 April 2008, two months after the close of the Prosecution case,³⁷²⁶ the Prosecution filed a motion to reopen its case in order to present evidence relating to an alleged mass execution in an area known as Bišina, in which **Popović** was allegedly involved.³⁷²⁷ The Trial Chamber granted the Prosecution motion, stating:

[...] because the executions at Bišina are not specified in the Indictment, it is not possible for Popović—or any of the other six Accused—to be found criminally responsible for those executions. Rather, the evidence is relevant and probative as to Popović's knowledge, intent and "pattern of conduct" during the period relevant to the executions which are alleged in the Indictment and for which the Prosecution's evidence has been led.³⁷²⁸

1144. In the morning of 23 July 1995, a member of the Drina Corps Military Police Battalion in Han Pijesak was assigned with two others to collect some prisoners at the Sušica military prison in Vlasenica³⁷²⁹ in a military truck.³⁷³⁰ Once the truck was loaded with prisoners, it set off in a north-

³⁷²⁴ Ex. P01220a, (confidential).

³⁷²⁵ Ex. P01224a, "Intercept of conversation between Popović and Y, 17 July 1995, 16:22 hours".

³⁷²⁶ The Prosecution brought its case to a close on 7 February 2008. T. 21222 (7 Feb 2008).

³⁷²⁷ Motion to Reopen the Prosecution Case, with Two Appendices (confidential), 7 Apr 2008.

³⁷²⁸ Decision on Motion to Reopen the Prosecution Case, 9 May 2008, para. 39. Rule 93(A) provides: "Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice".

³⁷²⁹ Nikodin Jovičić, who in July 1995 was the Deputy Commander of the Uniform Police in Han Pijesak, testified that there was a military prison in Vlasenica, known as Sušica, but he did not recall the time period. Nikodin Jovičić, Ex. P04438, "92 *ter* statement" (17 Mar 2007), paras. 6, 12.

³⁷³⁰ PW-172, T. 32566–32568 (private session), 32570; 32575–32578 (private session), 32578–32580 (10 Mar 2009); Ex. P04425, (confidential). PW-172 identified on the vehicle log for the TAM truck used that day and the entry indicates that the TAM truck was used on 23 July between 8:30 a.m. and 3 p.m.

westerly direction towards Šekovići and it was joined, at some point, by another truck, and a minibus.³⁷³¹

1145. Somewhere along the main road between Tišća and Šekovići, the vehicles pulled over near a restaurant, where five or six soldiers, some bearing the insignia of the 10th Sabotage Detachment, boarded the minibus.³⁷³² They were armed with automatic rifles and were masked, with caps over their heads; some with fingerless gloves; some wearing camouflage uniforms, others wearing civilian T-shirts.³⁷³³ A few more prisoners were loaded onto the trucks at the same location, before continuing in the direction of Bišina.³⁷³⁴

1146. At some point **Popović**, driving a car, joined the other vehicles.³⁷³⁵ The convoy of vehicles stopped about 200 to 300 meters from the Bišina Battalion Command.³⁷³⁶ Three or four uniformed men wearing yellow or white belts were standing close to the Command.³⁷³⁷

1147. The soldiers from the 10th Sabotage Detachment engaged in a very brief conversation with **Popović**, who was the most senior officer present.³⁷³⁸ The soldiers then opened the back door of one of the trucks, took five prisoners approximately 30 metres from where the trucks were parked, and shot them.³⁷³⁹ This procedure continued at the same rate: the prisoners were being taken from the trucks five at a time, to be shot very quickly, while **Popović** was present.³⁷⁴⁰ PW-172

³⁷³¹ PW-172, T. 32570 (10 Mar 2009); PW-175, T. 32782–32789 (25 Mar 2009); Ex. P04432, “Vehicle log for Minibus”, p. 2.

³⁷³² PW-172, T. 32571, T. 32575 (10 Mar 2009), PW-175, T. 32783–32784 (25 Mar 2009). PW-172 had heard about the 10th Sabotage Detachment from his conversations with other soldiers, specifically, he heard that they were billeted at near Vlasenica. PW-172, T. 32575–32576 (10 Mar 2009). On 23 July 1995, at 10:30 a.m., a member of the Drina Corps was tasked by Momo Amović, the Commander of the administrative HQ of the Drina Corps, to pick up some people. He drove a minibus from Vlasenica to Dragaševac where he picked up five or six men. When the minibus was approaching Šekovići, the passengers instructed the driver to instead drive to Bišina. PW-175, T. 32782–32786 (25 Mar 2009). The relevant entry in the vehicle log for the minibus showed that the vehicle was used between 10:30 and noon on 23 July 1995 on a route given as “Vlasenica-Šehovići-Bišina-Šehovići”, with a total number of 8 people onboard, and 48 kilometres travelled. Ex. P04432, “Vehicle log for Minibus”; PW-175, T. 32793–32794 (25 Mar 2009).

³⁷³³ PW-175, T. 32784, T. 32788 (25 Mar 2009); PW-172, T. 32588 (10 Mar 2009). *But see* PW-175, initially testifying that he could only see that two passengers were armed as he was too afraid to look at them. PW-175, T. 32784 (25 Mar 2009).

³⁷³⁴ PW-172, T. 32571 (10 Mar 2009).

³⁷³⁵ PW-172, T. 32572 (10 Mar 2009).

³⁷³⁶ *Ibid.*, T. 32572 (10 Mar 2009). PW-172 testified that he was unfamiliar with this place. *Ibid.* PW-175, T. 32786–32788 (25 Mar 2009).

³⁷³⁷ PW-175, T. 32788 (25 Mar 2009). *See also* PW-175, T. 32787 (25 Mar 2009), testifying as to the presence of two or three civilians in the area.

³⁷³⁸ PW-172, T. 32575, 32588–32589 (10 Mar 2009). The conversation did not involve any sort of a command; **Popović** was not issuing any direct orders to them. *Ibid.*, T. 32572–32573, 32588–32589 (10 Mar 2009).

³⁷³⁹ *Ibid.*, T. 32572–32573 (10 Mar 2009).

³⁷⁴⁰ *Ibid.*, T. 32573, 32598 (10 Mar 2009). PW-172 said that **Popović** was present while the executions were taking place but that he believes that he had nothing to do with the transport of the prisoners from Šekovići to Bišina. *Ibid.*, T. 32598 (10 Mar 2009). The driver of the minibus wrote “Lieutenant Colonel Popović” next to “Vlasenica-Šehovići-Bišina-Šehovići” as his record of the journey on 23 July 1995 and he said that he wrote this because he had been told that **Popović** was in charge, but he was not altogether clear about this or the circumstances

approached **Popović**, dispensing with protocol and using his nickname, and asked him what was happening; **Popović** did not answer. PW-172 described the interaction as follows: “I approached him, and I just told him, Pop, what has just happened? He never replied to me. I could see tears in his eyes, and he just turned his head away from me”.³⁷⁴¹ Bodies have been exhumed from a mass grave in the Bišina area and among them the remains of Himzo Mujić have been identified.³⁷⁴² In an intercepted conversation that took place on the day after the killings, **Popović** is said to know the whereabouts of Himzo Mujić and what happened to him.³⁷⁴³

1148. Later, a construction machine, a front loader, arrived and dug a hole.³⁷⁴⁴ The person who operated the machine asked a member of the Military Police Battalion in Han Pijesak to load the dead bodies.³⁷⁴⁵ One of them refused; then **Popović** told the other two military policemen: “Do it if you can and if you will.”³⁷⁴⁶ They accepted, and did it.³⁷⁴⁷

1149. On the basis of the evidence of Slaviša Vlačić,³⁷⁴⁸ Dragiša Čojić³⁷⁴⁹ and Milenko Kojić,³⁷⁵⁰ **Popović** presented an alibi concerning his involvement in the killings in Bišina.³⁷⁵¹ These witnesses testified as follows.

1150. Slaviša Vlačić gave evidence of a meeting he had with **Popović** at the *Vezionica* factory in Zvornik, in the morning sometime in July 1995. At one point **Popović** made a phone call in which he shouted several questions, like: “When?”, “Where?”, and “Why?”. Directly thereafter, **Popović**

surrounding it. Ex. P04432, “Vehicle Work Log No. 28/3-202 for Minibus”; PW-175, T. 32794–32799 (25 Mar 2009).

³⁷⁴¹ PW-172, T. 32573–32574 (10 Mar 2009).

³⁷⁴² Ex. P03517 (confidential); Ex. 1D01366 (confidential); Ex. 1D01389 (confidential); Ex. 1D01330 (confidential); Ex. P04494 (confidential); Ex. 1D01392, “Federation of BiH Cantonal Prosecutor’s office for the Tuzla Canton - Exhumation report, 1 June 2006”; Thomas Parsons, T. 33463–33467, 33468–33470 (private session) (29 Apr 2009).

³⁷⁴³ Ex. P01324a, “Intercept of conversation between X and Y, 24 July 1995, 12:50 hours” (One of the speakers asks the other to tell Kane that “Himzo [MUJIĆ] is no longer in prison here”, that he should call Lieutenant-Colonel **Popović** at the Drina Corps and that **Popović** is “the only one who knows where he went from here and what happened to him”). In an earlier intercepted conversation on the same day a speaker, who is identified as Kane, says that Himzo Mujić, “would like to talk to Jovičić, because [he] used to work for him”. Later in the conversation the other speaker says: “Check that down there, you know? Maybe **Popović**, the security guy will.” Ex. P01323a, “Intercept of conversation between X (Kane) and Y, 24 July 1995, 11:32 hours”. Nikodin Jovičić testified that Himzo Mujić was his “operational contact” before the war, but he did not recall knowing Mujić’s whereabouts in July 1995. Jovičić later heard that Mujić and his brothers had gone to Srebrenica and had been killed. Nikodin Jovičić, Ex. P04438, “92 *ter* statement” (17 Mar 2007), paras. 6–7, 8, 10.

³⁷⁴⁴ PW-172, T. 32573–32574 (10 Mar 2009).

³⁷⁴⁵ *Ibid.*, T. 32574 (10 Mar 2009).

³⁷⁴⁶ *Ibid.*

³⁷⁴⁷ *Ibid.* PW-172 said that “there was nothing resembling military command or order”, but that **Popović** simply said to them, “if you are willing to do that or if you can”. *Ibid.*, T. 32603 (10 Mar 2009). PW-172 further stated that he never received an order from **Popović**, “not then, not before then, and not after then.” PW-172, T. 32588 (10 Mar 2009).

³⁷⁴⁸ Slaviša Vlačić, Ex. 1D01438, “92 *ter* statement” (20 Apr 2008).

³⁷⁴⁹ Dragiša Čojić, Ex. 1D01439, “92 *ter* statement” (28 Dec 2008).

³⁷⁵⁰ Milenko Kojić, Ex. 1D01446, “92 *ter* statement” (25 Dec 2008).

³⁷⁵¹ Popović Final Brief, paras. 650–656; T. 34383–34390 (7 Sept 2009).

said that “he had to go back immediately”. **Popović** had stayed at the factory for about half an hour. Vlačić said that he made the visit several days after the capture of **Popović**’s relative, Đordije Popović, which occurred on 18 July.³⁷⁵² There is also documentary evidence that **Popović** went to Zvornik at 9 a.m. on 23 July.³⁷⁵³ Dragiša Čojić said that some time in July 1995 **Popović** came to the construction site of the Bišina Barracks and asked him whether his brother-in-law, Milenko Kojić, was there and he replied that he was and called him. Čojić said that he had seen two trucks drive past at least two hours before **Popović** came.³⁷⁵⁴ Milenko Kojić gave an account of seeing **Popović** at the construction site of the Bišina Barracks a few days after he heard about the capture of Đordije Popović. He said that he saw **Popović** between 1 and 2 p.m. **Popović** asked him whether he had seen any military trucks going by. He replied that he had about two or three hours previously. **Popović** stayed only for a few minutes before driving off in the same direction as the vehicles had previously gone. He returned to the construction site half an hour later appearing “tired and miserable”.³⁷⁵⁵ **Popović**’s position is that he arrived at the site of the executions after they had taken place.³⁷⁵⁶

1151. The Trial Chamber recalls its observations about alibi.³⁷⁵⁷ The Trial Chamber finds that the alibi evidence presented by **Popović** does not raise a reasonable doubt as to the Prosecution evidence placing **Popović** at the scene as the executions took place. This is so for a number of reasons. First, the Trial Chamber found PW-172 to be a credible witness. Secondly, Vlačić, Čojić and Kojić were not specific as to the date on which they saw **Popović**.³⁷⁵⁸ Thirdly, the military trucks that Čojić and Kojić said that they saw could have been performing any of a number of functions other than that of transporting prisoners to Bišina, particularly given the closeness of Bišina to the confrontation line. Based on the evidence before the Trial Chamber, the only reasonable conclusion is that **Popović** was involved with and present during the executions at Bišina.

1152. However, **Popović** has not been indicted for crimes in relation to this incident. The Trial Chamber accepts the evidence presented by the Prosecution relating to the execution at Bišina, and finds it to be corroborative of the Trial Chamber’s previous findings on **Popović**’s involvement in the killing operation, as alleged in the Indictment.

³⁷⁵² Slaviša Vlačić, Ex. 1D01438, “92 *ter* statement” (20 Apr 2008), pp. 2-3; Ex. P00141, “Regular Combat Report from the Drina Corps Command to the VRS Main Staff signed by Krstić, 18 July 1995”, p. 2.

³⁷⁵³ Ex. P00197, “Vehicle Log from 1 to 31 July 2008 from Military Post 7111”, p. 4.

³⁷⁵⁴ Dragiša Čojić, Ex. 1D01439, “92 *ter* statement” (28 Dec 2008), pp. 2–3.

³⁷⁵⁵ Milenko Kojić, Ex. 1D01446, “92 *ter* statement” (25 Dec 2008), pp. 3–4.

³⁷⁵⁶ Popović Final Brief, para. 654; T. 34388 (7 Sept 2009).

³⁷⁵⁷ See *supra*, para. 1115.

³⁷⁵⁸ Slaviša Vlačić, Ex. 1D01438, “92 *ter* statement” (20 Apr 2008), pp. 2-3; Milenko Kojić, Ex. 1D01446, “92 *ter* statement” (25 Dec 2008), pp. 3–4 ; Dragiša Čojić, Ex. 1D01439, 92 *ter* statement” (28 Dec 2008), pp. 2–3.

b. Wounded Bosnian Muslim Prisoners From Milići Hospital

1153. Some time in July 1995, ten wounded Bosnian Muslim prisoners from Milići Hospital were transferred to the Standard Barracks, where they stayed until around 23 July.³⁷⁵⁹ Two intercepted conversations on 23 July 1995 indicate that **Pandurević** sought guidance on the issue of wounded Bosnian Muslims and was told that **Popović** would arrive to sort the matter out. In the first conversation at 8 a.m., **Pandurević** tells Colonel Cerović, Assistant for Moral, Legal and Religious Affairs in the Drina Corps, that he has some wounded prisoners whom he does not know what to do with, and inquires about the possibility of an exchange.³⁷⁶⁰ The second call occurs five minutes later, and Cerović instructs the Duty Officer to tell **Pandurević** that **Popović** will arrive at 5 p.m. to “say what needs to be done regarding the work we talked about.”³⁷⁶¹

1154. Sometime thereafter, Obrenović learned from the Zvornik Brigade Duty Officer that early in the morning, the wounded men were transported away from the Standard Barracks.³⁷⁶² Later, on the same day that Obrenović learned the prisoners had been taken away, **Pandurević** told Obrenović that **Popović** had arrived with an order from Mladić for the injured Bosnian Muslim men to be liquidated and they were driven away.³⁷⁶³

1155. On 23 July, the vehicle log for a car assigned to **Popović** recorded that this car travelled from Vlasenica to Zvornik.³⁷⁶⁴ Of the 10 wounded Bosnian Muslim prisoners who were transferred to the Standard Barracks, the remains of one have been identified in a grave at Liplje,³⁷⁶⁵ and as of November 2007, the remaining nine were still missing.³⁷⁶⁶

1156. The Trial Chamber is satisfied that the ten wounded Bosnian Muslim men were killed some time around 23 July.³⁷⁶⁷ The Trial Chamber is further satisfied, based on the evidence above, that these men were placed in the custody of **Popović** around 23 July. In light of this evidence, as well as the previously examined evidence concerning **Popović’s** involvement in the mass executions in

³⁷⁵⁹ See *supra*, para. 572–573.

³⁷⁶⁰ Exhibit P01309a “Intercept, 23 July 1995, 08:00 hours”; Vinko Pandurević, T. 31146 (9 Feb 2009) (stating that he believed the other participant in the conversation to be Cerović).

³⁷⁶¹ Ex. P01310a “Intercept, 23 July 1995, 08:05 hours”. PW-168, T. 16025 (closed session) (28 Sept 2007) (stating that, based on his knowledge of the incident and review of the intercept, the “Ljubo” referred to is Major Ljubo Bojanović, who was on duty that day); See also Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 177 (stating “0830 hrs. – Lieutenant Colonel Cerović relayed a message for commander that LTC **Popović** will arrive by 17:00 hours”); Vinko Pandurević, T. 32262–32263 (27 Feb 2009); see *supra*, para. 1904.

³⁷⁶² PW-168, T. 15915 (closed session) (27 Sept 2007).

³⁷⁶³ PW-168, T. 15915–15916 (closed session) (27 Sept 2007). **Pandurević** denies having authorised the execution of the Bosnian Muslim prisoners and contrary to PW-168’s account, testified that Obrenović reported to him that the wounded Bosnian Muslim prisoners were taken to the Batković detention centre, in Bijeljina. Vinko Pandurević, T. 31170 (10 Feb 2009).

³⁷⁶⁴ Ex. P00197, “Vehicle log for VW GOLF P-7065 assigned to Vujadin Popović from 1–31 July 1995”, p. 4.

³⁷⁶⁵ Ex. P04494, (confidential), p. 163; See *supra*, para. 576.

³⁷⁶⁶ Ex. P03159a, (confidential).

the Zvornik area in July, the Trial Chamber finds that **Popović** killed or facilitated the killing of the ten wounded Bosnian Muslim prisoners from Milići Hospital.

(ix) 2 August 1995 (Žepa)

1157. **Popović** spoke with General Krstić twice during the Žepa operation in the second half of July.³⁷⁶⁸ Two intercepted conversations dated 2 August show that Krstić gave instructions to **Popović** to go to Serbia to handle the issue of the Bosnian Muslim men from Žepa.³⁷⁶⁹ The second conversation at 1 p.m. indicates that the Serbian MUP was refusing to allow VRS representatives to talk to the Bosnian Muslims who had crossed the Drina River to Serbia or to take them back into custody.³⁷⁷⁰ In this same conversation, **Popović** told Krstić that **Beara** had just called **Popović** recounting that **Beara** had reported to **Miletić** that there were 500 to 600 Bosnian Muslims in Serbia but that the Serb authorities would not allow anyone to speak to them.³⁷⁷¹

(x) September 1995

1158. In September 1995, **Popović** instructed Momir Nikolić, Chief of Security and Intelligence of Bratunac Brigade, to conduct a reburial of the bodies of Bosnian Muslims at Glogova.³⁷⁷² He also told Momir Nikolić that the order for reburial came from the VRS Main Staff and that “the Drina Corps Command or the Security Organ of the Drina Corps” was tasked to ensure the necessary quantity of fuel to carry out the operation.³⁷⁷³

1159. Around 14 September,³⁷⁷⁴ Obrenović was assuming the position of the Zvornik Brigade Commander when he received information about a telegram for an unusually large quantity of fuel for Captain Trbić.³⁷⁷⁵ Obrenović called the duty officer at the Drina Corps to follow up but the latter

³⁷⁶⁷ See *supra*, para. 577.

³⁷⁶⁸ PW-109, T. 14603 (private session) (31 Aug 2007).

³⁷⁶⁹ Ex. P01392d, “Intercept, 2 August 1995, 1240 hours”; Ex. P01395g, “Intercept, 2 August 1995, 1300 hours”.

³⁷⁷⁰ Ex. P01395g, “Intercept, 2 August 1995, 1300 hours”.

³⁷⁷¹ *Ibid.*

³⁷⁷² Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 7; Momir Nikolić, T. 32960–32962 (21 Apr 2009). See also PW-138, T. 3865, 3867 (private session) (9 Nov 2006) (testifying Momir Nikolić was involved in the reburial operation and that he received orders from his superiors, along the security chain of command).

³⁷⁷³ Momir Nikolić, T. 32960–32962 (21 Apr 2009).

³⁷⁷⁴ Ex. P00041, “Document from the VRS Main Staff to the Drina Corps, signed by Ratko Mladić, 14 September 1995”; Ex. 3D00217, “Excerpt from Ex. P379 - Duty Officer's Notebook - entry for 14 Sep 95” (recording “Strictly Confidential Cable 03/4-2341 dated 14 September 1995”). This is the Main Staff Order on fuel for Trbić (Ex. P00041). PW-168, T. 15921–15922 (27 Sept 2007), T. 17006–17012 (closed session) (26 Oct 2007).

³⁷⁷⁵ PW-168, T. 15921–15922 (closed session) (27 Sept 2007); T. 17006 (closed session) (26 Oct 2007). At this time Obrenović was assuming the position of the Zvornik Brigade Commander in the absence of **Pandurević**, as documented in a formal order issued by Krstić on 8 August. PW-168, T. 15923–15924 (closed session) (27 Sept 2007); T. 16621–16622 (closed session) (19 Oct 2007); Vinko Pandurević, T. 31191–31193 (10 Feb 2009); Ex. 5D00452 (confidential). The telegram requested five thousand tonnes of fuel, and this was unusual because the Brigade would normally only have two tonnes of fuel reserve. PW-168, T. 15921–15922 (closed session) (27 Sept 2007).

“had no idea about this”.³⁷⁷⁶ A few minutes later, Obrenović received a call from **Popović** asking how he knew about the fuel, to which he replied he had heard this from the Zvornik Brigade duty officer.³⁷⁷⁷ **Popović** responded that “the duty officers messed things up and that they had no clue”, after which the conversation ended.³⁷⁷⁸ Later that day, the Zvornik Brigade *did* receive a Main Staff order approving 5,000 litres of D-2 Diesel for engineering works for Captain Trbić.³⁷⁷⁹

1160. On 22 September, **Popović** followed up on the delivery of fuel during an intercepted conversation with “Mihalić” and asked whether Trbić was around.³⁷⁸⁰ Mihalić replied that Trbić had left, to which **Popović** responded “he is working on that, right”.³⁷⁸¹ On 26 September, **Popović** came to the Zvornik Brigade with a large map to see **Pandurević** and **Drago Nikolić**.³⁷⁸²

1161. The Trial Chamber finds the evidence outlined above of **Popović’s** involvement in the reburial operation to be corroborative of the findings made above concerning his involvement in the mass executions in the Zvornik area in July 1995.

(d) Findings

1162. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Participation in Two Joint Criminal Enterprises

1163. The centrepiece of the Prosecution’s case against **Popović** is his commission of crimes through participation in two joint criminal enterprises, as outlined in the Indictment. The Trial Chamber will therefore begin with an examination of **Popović’s** alleged participation in these joint criminal enterprises.

³⁷⁷⁶ PW-168, T. 15921 (closed session) (27 Sept 2007); T. 17006 (closed session) (26 Oct 2007).

³⁷⁷⁷ *Ibid.*

³⁷⁷⁸ *Ibid.*, T. 15921 (closed session) (27 Sept 2007).

³⁷⁷⁹ *Ibid.*; Ex. P00041, “Main Staff Order on assignment of fuel, type-signed Ratko Mladić, 14 Sept. 95” (stating that Trbić was responsible for the accurate maintenance of the records on the number of engine work hours of engineering machines and to account accordingly for consumption of fuel). Although the document states the fuel be delivered to the Standard Barracks in Zvornik, to “Captain Milorad Trpić”, PW-168 confirmed this was most likely a typographical error by the teleprinter operator and that it should read Captain Milorad Trbić. PW-168, T. 15922 (closed session) (27 Sept 2007). The Prosecution also noted a translation error on the English version of Ex. P00041: the first two lines of the order read “General Staff of the Army of Republika Srpska”, where it should read “Main Staff of the Army of Republika Srpska”. PW-168, T. 15922 (closed session) (27 Sept 2007).

³⁷⁸⁰ Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44”.

³⁷⁸¹ Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44”.

³⁷⁸² PW-168, T. 15926 (closed session) (27 Sept 2007).

a. The Joint Criminal Enterprise to Murder

i. First Category Joint Criminal Enterprise

1164. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.³⁷⁸³ The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Chamber will now turn to the third element: participation of the accused in the common purpose.

1165. The Trial Chamber recalls that in order for **Popović** to incur liability pursuant to the first category of joint criminal enterprise, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Popović** must have significantly contributed to the common purpose and have shared with other members of the JCE to Murder the intent to carry out the common purpose.

1166. By morning on 12 July, **Popović** was aware of a plan to murder Bosnian Muslim men,³⁷⁸⁴ and in the days that followed, as the plan expanded in scope and scale, he helped establish a framework according to which the plan could be executed. **Popović** figured prominently in the various aspects of the implementation of the plan and at a number of key locations. He enlisted members of the VRS to assist in the murder operation, including Momir Nikolić on 12 July, **Drago Nikolić** on 13 July³⁷⁸⁵ and Srećko Aćimović on 15 July.³⁷⁸⁶ **Popović** was in Potočari where civilians had gathered, including the men whom he knew were to be separated for execution.³⁷⁸⁷ He was at all but one of the locations in the Zvornik area where large-scale detentions and executions were carried out,³⁷⁸⁸ and in one instance, he was present as executions took place.³⁷⁸⁹ He organised the transportation of Bosnian Muslim prisoners to a place of detention immediately prior to their

³⁷⁸³ See *supra*, para. 1073.

³⁷⁸⁴ **Popović** told Momir Nikolić of the operation immediately before he attended the third Hotel Fontana meeting. See *supra*, paras. 1097–1099.

³⁷⁸⁵ See *supra*, para. 1104.

³⁷⁸⁶ See *supra*, para. 1118.

³⁷⁸⁷ See *supra*, para. 1099.

³⁷⁸⁸ There were four locations where large-scale executions took place in the Zvornik area between 14 and 16 July 1995 (Orahovac, Petkovci, Ročević/Kozluk and Pilica). **Popović** accompanied the convoy of vehicles to the Grbavci School in Orahovac where Bosnian Muslim men were detained and was present later that day at a nearby field as the men were executed. See *supra*, paras. 1107–1115. **Popović** was present at the Ročević School on 15 July as Bosnian Muslim men were detained there, organizing logistics for their transport to the execution site at Kozluk. See *supra*, paras. 1117–1122. **Popović** was also present on 16 July in Pilica at the Kula School where Bosnian Muslim men were detained, the Branjevo Military Farm and Pilica village, recruiting men to participate in the executions. See *supra*, paras. 1131–1135.

³⁷⁸⁹ **Popović** was present at a field in Orahovac on 14 July as Bosnian Muslim men were executed. See *supra*, paras. 1111–1115.

execution³⁷⁹⁰ and he coordinated logistics “on-site” for two of the mass executions.³⁷⁹¹ Throughout the operation, **Popović** interacted and met with other participants in the murder operation, including **Drago Nikolić** and **Ljubiša Beara**.³⁷⁹² **Popović’s** participation in the JCE to Murder is also corroborated by his presence at an execution site in Bišina³⁷⁹³ and his participation in the reburial operation.³⁷⁹⁴

1167. On 17 July, **Popović** is intercepted reporting on the killing operation to an unknown interlocutor whom he refers to as “boss”, that “everything’s OK, that job is done ... everything’s been brought to an end, no problems [...] basically, that all gets an A [...] the grade is an A, everything’s OK”.³⁷⁹⁵ Through this intercepted conversation, **Popović’s** own words illustrate his commitment to the common purpose. Even after declaring that “everything’s been brought to an end”, his efforts continued when around 23 July he played a central role in arranging for the murder of ten wounded Bosnian Muslim prisoners from the Standard Barracks.³⁷⁹⁶

1168. Based on the abundant evidence before it, the Trial Chamber is satisfied beyond reasonable doubt that **Popović** made a significant contribution to the JCE to Murder and that he shared the intent to carry out the common purpose. This is evident in the pivotal role that he played in the organization, coordination and implementation of the killing operation. The Trial Chamber therefore finds that **Popović** was a participant in the JCE to Murder.

³⁷⁹⁰ **Popović** ordered a military policeman to take a UN APC to an intersection near the bus station in Bratunac and park facing Konjević Polje. Once at the bus station, **Popović** gave further instructions regarding refueling and told the military policeman to position the APC so that a column of vehicles could form behind it. The APC and the column then followed **Popović** to Orahovac, where the prisoners were killed. *See supra*, paras. 1107–1112.

³⁷⁹¹ At the Ročević School, **Popović** called the Zvornik Brigade Command to request trucks and men to be sent to Ročević urgently. **Popović** also attempted to engage civilian drivers to assist with transportation of prisoners to the execution site. *See supra*, para. 1120. At Pilica, **Popović** requested delivery of fuel in relation to the execution and burial of Bosnian Muslim prisoners. *See supra*, paras. 1126–1130.

³⁷⁹² **Popović** met with **Beara** and **Nikolić** at the Standard Barracks in the morning of 14 July. *See supra*, para. 1106. **Popović** also met with **Beara** at the Standard Barracks in the evening of 15 July. *See supra*, para. 1123. **Popović’s** participation in the common purpose was corroborated in a conversation about the killing operation between Jokić and Obrenović on 15 July. *See supra*, para. 1122.

³⁷⁹³ This event is not specified in the Indictment. Therefore, no finding in regard to it can serve as a basis for conviction on any of the counts in the Indictment. However, the evidence of the killings at Bišina was admitted on the grounds that it was relevant and probative as to **Popović’s** knowledge, intent and “pattern of conduct” during the period relevant to the executions which are alleged in the Indictment. The circumstances of **Popović’s** participation in the events at Bišina have important similarities with those of his participation in the events at the Grbavci School, the Ročević School, the Kula School, the Branjevo Military Farm and the Pilica Cultural Centre. **Popović’s** involvement in the killings in Bišina occurred in the same region and during the same time period as these other events and in each instance **Popović** participated in a process that resulted in the killing of prisoners by the Bosnian Serb Forces. Therefore the Trial Chamber is of the opinion that **Popović’s** actions in Bišina provide corroboration for the already strong evidence of his participation in the JCE to Murder. *See Decision on Motion to Reopen the Prosecution Case*, 9 May 2008.

³⁷⁹⁴ It is established that the Security Organs at the Corps and Brigade levels were responsible for the organization of the reburial operation in the Bratunac and Zvornik areas and that **Popović** participated in this operation in September 1995. *See supra*, para. 1161.

³⁷⁹⁵ *See supra*, para. 1142.

³⁷⁹⁶ *See supra*, para. 1156.

ii. Third Category Joint Criminal Enterprise

1169. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Popović** that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Murder.³⁷⁹⁷ The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.³⁷⁹⁸ The Trial Chamber, by majority, Judge Kwon dissenting, has found that “opportunistic” killings also occurred near the Kravica Supermarket.³⁷⁹⁹ The Trial Chamber recalls its finding above that **Popović** was an active participant in the JCE to Murder. The operation occurred in a time of chaos and involved soldiers with personal revenge motivations. A huge number of men were transported and detained with intent to murder. The Trial Chamber finds that it was foreseeable to **Popović** that the “opportunistic” killings would occur in addition to the large-scale executions and these “opportunistic” killings were a probable consequence of the JCE to Murder. When he participated in the JCE to Murder, **Popović** willingly took this risk.

b. The Joint Criminal Enterprise to Forcibly Remove

1170. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.³⁸⁰⁰

1171. A Drina Corps order dated 20 March 1995 echoed the language of Directive 7 by stating that it was the task of the Drina Corps to “create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.³⁸⁰¹ This order was from the Drina Corps Command and included a section entitled “Security Support”, which outlines the actions required from the Security Organ in support of the combat operation.³⁸⁰² This order dealt with **Popović’s** area of expertise, and considering his position as Chief of Security of the Drina Corps, the Trial Chamber finds that **Popović** was aware of this order.

1172. At the time of his conversation with Momir Nikolić before the third meeting at Hotel Fontana on the morning of 12 July, **Popović** was aware that the thousands of Bosnian Muslim

³⁷⁹⁷ Indictment, para. 31. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

³⁷⁹⁸ See *supra*, paras. 359, 361, 455, 457, 459, 463, 497.

³⁷⁹⁹ See *supra*, para 449. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–39.

³⁸⁰⁰ See *supra*, para. 1087. The Trial Chamber recalls its previous finding that the transport of the men to detention and execution sites does not constitute forcible transfer. *Ibid.* Therefore, the Trial Chamber will not address **Popović’s** alleged participation in forcible transfer through his involvement in transportation of the men.

³⁸⁰¹ Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6.

³⁸⁰² *Ibid.*, pp. 17–18. See also *supra*, paras. 1092–1093.

women and children in Potočari were to be transported to ABiH-held territory.³⁸⁰³ **Popović** was also physically present in Potočari during the day of 12 July.³⁸⁰⁴ It is clear from the video footage of this event that **Popović** could see the desperate situation of those gathered there and would have experienced the coercive atmosphere that encompassed Potočari on this day, which left the people gathered there without a genuine choice regarding their transfer. This conclusion is corroborated by **Popović's** presence at the third Hotel Fontana meeting where the situation of the people gathered in Potočari was discussed.³⁸⁰⁵ The Trial Chamber therefore finds that throughout the day on 12 July, **Popović** knew that it was intended that all the Bosnian Muslim women and children then in Potočari were to be forcibly transferred from the Srebrenica enclave.

1173. The question whether **Popović** contributed to forcible transfer in Srebrenica is less straightforward. The Trial Chamber notes that there is some evidence in support of this conclusion. On 12 July, **Popović** discussed the plan to transfer the women and children gathered in Potočari to ABiH controlled territory with Momir Nikolić;³⁸⁰⁶ and **Popović** was present in Potočari that same day and he issued instructions to a member of the VRS present there.³⁸⁰⁷ The 20 March Drina Corps order contains security measures and instructions, which **Popović** was aware of;³⁸⁰⁸ and **Popović** attended a meeting on 13 July where the transfer was discussed.³⁸⁰⁹ However, taken in its totality, while there is evidence of **Popović's** awareness of the operation to forcibly remove, there is a paucity of evidence concerning any action taken by him in support of this goal. Informing Momir Nikolić of the plan to remove the population, and instructing a member of the VRS to stop distributing bread do not amount to a significant contribution to the JCE to Forcibly Remove as required by the jurisprudence. The Trial Chamber is therefore of the view that the evidence is insufficient to establish that **Popović** made a *significant* contribution to the JCE, and thus his actions in relation to the population in Srebrenica do not indicate that he was a participant in the JCE to Forcibly Remove.³⁸¹⁰

1174. Further, the Trial Chamber finds that **Popović** did not contribute to the forcible transfer of the population of Žepa. The only evidence of his involvement in the Žepa area consists of two intercepts of 2 August 1995, in which he is making efforts to bring back to the RS the Bosnian

³⁸⁰³ See *supra*, paras. 1097–1099.

³⁸⁰⁴ See *supra*, para. 1099.

³⁸⁰⁵ See *supra*, para. 1098.

³⁸⁰⁶ See *supra*, paras. 1097–1098.

³⁸⁰⁷ **Popović** was captured on video giving instructions concerning the distribution of bread to the people gathered in Potočari. See *supra*, para. 1099, fn. 3590.

³⁸⁰⁸ See *supra*, paras. 1092–1093.

³⁸⁰⁹ The meeting took place at the Bratunac Brigade Headquarters with Mladić, Vasić and Krstić, and *inter alia*, the “evacuation” of the remaining civilians from Srebrenica to Kladanj and the need for 10 tons of petrol in connection with this was discussed. See *supra*, para. 1100.

³⁸¹⁰ See *supra*, para. 1026–1027.

Muslim men from Žepa who had crossed the Drina River to Serbia.³⁸¹¹ The Trial Chamber considers this evidence, in and of itself, insufficient to establish that **Popović** made a significant contribution to the JCE to Forcibly Remove with respect to Žepa. Although, as stated above, **Popović** knew the full extent of the plan to forcibly remove, *i.e.* that the plan involved the Bosnian Muslim population of Žepa as well as Srebrenica,³⁸¹² there is insufficient evidence to establish that he significantly contributed to either aspect of the operation. Therefore, it has not been established that **Popović** was a participant in the JCE to Forcibly Remove.

(ii) Count 1: Genocide

1175. The Trial Chamber has found that **Popović** was a participant in the JCE to Murder.³⁸¹³ **Popović** therefore committed the underlying act of killing members of the group, and through this killing, inflicted serious bodily and mental harm on the families of the victims and the survivors of the executions, as articulated in Article 4(2)(a) and (b) of the Statute. The Trial Chamber will now focus upon whether **Popović** carried out these underlying acts with genocidal intent.

1176. As is often the case, there is no direct explicit evidence that **Popović** had the requisite specific intent for genocide.³⁸¹⁴ Therefore, the Trial Chamber must look at all of the surrounding circumstances, including **Popović's** words and acts, as well as the inferences to be drawn, to determine whether genocidal intent has been established.

1177. The Prosecution submits that **Popović's** genocidal intent is evidenced by his ethnic animus towards Bosnian Muslims.³⁸¹⁵ As will be seen below, the Trial Chamber finds that **Popović** acted with the specific intent to discriminate on political, racial or religious grounds.³⁸¹⁶ However, a finding that **Popović** participated in the killing operation with the specific intent to discriminate is not on its own sufficient to establish the specific intent for genocide, namely the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.³⁸¹⁷ The Trial Chamber recalls that the words “as such” here underscore that something more than discriminatory intent is required for genocide, that the intent “must be to destroy the group as a separate and distinct entity” and that the ultimate victim of the crime of genocide is the group.³⁸¹⁸ The Trial Chamber finds that

³⁸¹¹ See *supra*, para. 1157.

³⁸¹² **Popović** was aware of this by virtue of his knowledge of the 20 March Drina Corps order. Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”.

³⁸¹³ See *supra*, para. 1168.

³⁸¹⁴ See *supra*, para. 823.

³⁸¹⁵ Prosecution Final Brief, paras. 2585–2589.

³⁸¹⁶ See *infra*, para. 1194.

³⁸¹⁷ Art. 4(2) of the Statute.

³⁸¹⁸ See *supra*, paras. 821–822.

while **Popović** was obviously not sympathetic towards Bosnian Muslims, his use of derogatory language such as the term “*balija*” is in no way determinative of his alleged specific intent to commit genocide, though it is relevant to it.

1178. However, an examination of the circumstances of the killings and **Popović**’s knowledge and participation provides a clear picture as to his state of mind. **Popović** knew of the plan to murder from the time of its inception, and was privy to each development: from the discussions at Bratunac before the operation began,³⁸¹⁹ to the capture of Bosnian Muslim men from the column,³⁸²⁰ to the large scale killings at Zvornik.³⁸²¹ **Popović** had an overview of the full scale of the murder operation. In particular, he knew of the scope of the plan; that it encompassed killing men separated in Potočari and later pursuing those fleeing in the column with the aim of capturing and executing them. He visited almost all the major killing sites while prisoners were being detained and thus had visual confirmation of the thousands of individuals destined for execution. From these facts alone **Popović** knew that the intent was not just to kill those who had fallen into the hands of the Bosnian Serb Forces, but to kill as many as possible with the aim of destroying the group. **Popović**’s ensuing robust participation in all aspects of the plan demonstrates that he not only knew of this intent to destroy, he also shared it.

1179. **Popović** was not a marginal participant in the JCE to Murder. The evidence shows that he was entrenched in several aspects of the operation, and that he participated with resolve. He was ubiquitous in the Zvornik area, present at all but one of the major killing sites. His own words at the outset of the operation, telling Momir Nikolić that “*all* the *balija* have to be killed” (emphasis added),³⁸²² are also evidence of his genocidal intent. Even after thousands had been executed and the large-scale killing was complete, **Popović** remained determined—he arrived at the Standard Barracks to arrange for the murder of the injured Bosnian Muslim men held at the hospital facilities there. The evidence supports the finding that **Popović** aimed to spare no one amongst the Bosnian Muslims within his reach, not even a young boy.³⁸²³

1180. The factors which the Trial Chamber considers to be decisive in finding that **Popović** had the requisite specific intent for genocide are the scale of the atrocities committed to his knowledge, his vigorous participation in several aspects of the massive killing operation, in particular his direct participation in the organisation of large-scale murders at Grbavci School (where between 800 and

³⁸¹⁹ **Popović** discussed the plan to kill the Bosnian Muslims with Momir Nikolić on the morning of 12 July, and attended the third meeting at the Hotel Fontana immediately afterwards. *See supra*, paras. 1097–1098.

³⁸²⁰ *See supra*, paras. 1100–1103.

³⁸²¹ *See supra*, paras. 1107–1115, 1118–1122, 1125–1138.

³⁸²² *See supra*, para. 1097.

³⁸²³ *See supra*, paras. 1111–1122.

2,500 Bosnian Muslims were killed), Ročević School (where approximately 1,000 Bosnian Muslims were killed), and Pilica (where between 1,000 and 2,000 Bosnian Muslims were killed).³⁸²⁴ The systematic, exclusive targeting of Bosnian Muslims; and the repetition by **Popović** of destructive and discriminatory acts evidence his genocidal intent.³⁸²⁵ Further, his participation in these killings with knowledge that they would contribute to the destruction of the group also demonstrates his genocidal intent. Even his own words, grading the success of the operation with a top mark,³⁸²⁶ demonstrate his commitment to the destruction of the group. The Trial Chamber is satisfied beyond reasonable doubt that **Popović** participated in the JCE to Murder with genocidal intent. He is therefore guilty of genocide.

1181. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.³⁸²⁷ The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but he also planned and ordered the murder of the Bosnian Muslim males from Srebrenica, with genocidal intent. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of genocide through his participation in the JCE to Murder with genocidal intent.

(iii) Count 2: Conspiracy to Commit Genocide

1182. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide;³⁸²⁸ and to be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.³⁸²⁹

1183. As outlined above, **Popović** consciously cooperated with other members of the JCE to Murder, shared in its common purpose and worked towards realisation of the common goal. The Trial Chamber has also found that **Popović** had the specific intent for genocide.

³⁸²⁴ See *supra*, paras. 1105–1115, 1117–1141.

³⁸²⁵ See *Jelisić* Appeal Judgement, para. 47.

³⁸²⁶ See *supra*, para. 1142; Ex. P01224a, “Intercept of conversation between Popović and Y, 17 July 1995, 16:22 hours” (recording that **Popović** stated “basically, that all gets an A ... an A ... the grade is an A, everything’s OK”)

³⁸²⁷ Indictment, para. 88.

³⁸²⁸ *Musema* Trial Judgement, para. 191. See also *Nahimana et al.* Trial Judgement, para. 1041; *Kajelijeli* Trial Judgement, para. 787; *Ntagerura et al.* Trial Judgement, para. 70; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798.

³⁸²⁹ *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 799(i)–(ii). See also *supra*, paras. 821–830.

1184. The *actus reus* of the criminal act of conspiracy to commit genocide is the act of entering into an agreement to commit genocide.³⁸³⁰ Conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework.³⁸³¹ Evidence has already been examined of the coordinated actions and unified framework of those who participated in the operation to murder the able-bodied Bosnian Muslim males from Srebrenica in July 1995, including **Popović**.³⁸³² Based upon this evidence, the Trial Chamber concludes that at least by 13 July 1995, it is evident that **Popović** had entered into an agreement to commit genocide, and he himself possessed specific intent to commit genocide. He is therefore criminally responsible for conspiracy to commit genocide.³⁸³³

(iv) The Knowledge Requirement for a Crime Under Article 5 of the Statute

1185. **Popović** is responsible for a crime against humanity under Article 5 of the Statute, if his acts were part of the widespread and systematic attack against the civilian population and if at the time he knew of that attack and that his crimes comprised a part thereof.³⁸³⁴

1186. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. As established above, **Popović** had knowledge of the 20 March Drina Corps Order,³⁸³⁵ through which the plan for the transfer of the Bosnian Muslim population from the Srebrenica and Žepa enclaves was to be implemented.³⁸³⁶ He also knew of the military attack on Srebrenica.³⁸³⁷ **Popović**'s acts of murder are clearly tied to the attack on Srebrenica,³⁸³⁸ and **Popović**—with his overview of the killing operation from its inception—knew that this was the case. On this basis, the Trial Chamber finds that **Popović** meets the knowledge requirement for commission of a crime under Article 5 of the Statute.

(v) Counts 4 and 5: Murder

1187. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims initially residing or taking refuge in Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or

³⁸³⁰ *Nahimana et al.* Appeal Judgement, para. 894.

³⁸³¹ *Nahimana et al.* Trial Judgement, para. 1047.

³⁸³² *See supra*, paras. 1164–1168.

³⁸³³ *But see infra*, paras. 2120–2127.

³⁸³⁴ *See supra*, para. 751.

³⁸³⁵ Ex. P00203, "Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995".

³⁸³⁶ *See supra*, para. 1171.

³⁸³⁷ *Ibid.*

³⁸³⁸ *See supra*, para. 779.

customs of war.³⁸³⁹ The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it.³⁸⁴⁰ **Popović** participated in the JCE to Murder and he met the knowledge requirement for murder as a crime against humanity. He also knew that the victims were taking no active part in the hostilities when the murders were committed. He is therefore criminally responsible for murder as a crime against humanity as well as being liable for murder as a violation of the laws or customs of war, both for the murders found to be part of the scope of the JCE to murder and the “opportunistic” killings.³⁸⁴¹

1188. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.³⁸⁴² The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of murder through his participation in the JCE to Murder.

(vi) Count 3: Extermination

1189. The Trial Chamber has found that the large-scale murders of men and boys from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5. These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it. **Popović** participated in the JCE to Murder and met the knowledge requirement for a crime against humanity. He is therefore criminally liable for extermination as a crime against humanity.

1190. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.³⁸⁴³ The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but also planned and ordered the extermination of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of extermination through his participation in the JCE to Murder.

³⁸³⁹ See *supra*, para. 796.

³⁸⁴⁰ See *supra*, paras. 796, 1081–1083.

³⁸⁴¹ See *supra*, paras. 1074–1083. But see Judge Kwon’s Dissenting Opinions, *infra*, paras. 36–46.

³⁸⁴² Indictment, para. 88.

³⁸⁴³ *Ibid.*

(vii) Count 6: Persecution

1191. The Trial Chamber has found that persecution, a crime against humanity, was committed *inter alia*, through the murder of thousands of Bosnian Muslims (including the “opportunistic” killings) and cruel and inhumane treatment of men detained in Bratunac and Zvornik.³⁸⁴⁴ The Trial Chamber has found that these acts fall within the scope of the JCE to Murder, or were a natural and foreseeable consequence of it.³⁸⁴⁵

1192. The Trial Chamber has also found that **Popović** was a participant in the JCE to Murder, and through his participation he was responsible for murder on a large scale, including the “opportunistic” killings, the latter being a natural and foreseeable consequence of the JCE to Murder.³⁸⁴⁶

1193. The Trial Chamber has heard evidence from witnesses who testified that **Popović** did not display any signs of intolerance towards members of other ethnic groups.³⁸⁴⁷ However, **Popović** used the term “balija” when referring to Bosnian Muslims on several occasions.³⁸⁴⁸ This term was derogatory and its use was not appropriate,³⁸⁴⁹ although use of such language was not unusual in the VRS.³⁸⁵⁰

1194. The Trial Chamber is of the opinion that **Popović’s** knowledge of the plan to murder a single ethnic group and his willing participation in that plan clearly show his discriminatory intent. His use of pejorative language about Bosnian Muslims is also to some extent evidence of such intent. For all these reasons, the Trial Chamber finds that **Popović** participated in the JCE to Murder with specific intent to discriminate on political, racial or religious grounds and thereby committed persecution through murder and cruel and inhumane treatment.³⁸⁵¹

1195. For an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the Prosecution needs to establish is that it was reasonably foreseeable to the

³⁸⁴⁴ See *supra*, para. 990–995.

³⁸⁴⁵ See *supra*, paras. 1074–1083. See also Indictment, para. 83.

³⁸⁴⁶ See *supra*, paras. 1164–1169, 1188.

³⁸⁴⁷ Milan Vojinović, T. 23681, 23712, 23719 (21 Jul 2008) (testifying that he interacted regularly with **Popović** while he was the security officer in the Second Romanija Brigade and **Popović** never demonstrated animosity towards other ethnic groups except for the enemy armies); Mikajlo Mitrović, T. 25067–25069 (2 Sept 2008) (testifying that he worked with **Popović** in the Department of Security and Intelligence of the 2nd Krajina Corps, and that **Popović** did not display any signs of intolerance towards members of other ethnic groups in the 2nd Krajina Corps).

³⁸⁴⁸ Momir Nikolić, T. 33032 (22 Apr 2009); Ex. P03497, “Document from the Security Department of the Drina Corps Command signed by Popović, 29 April 1995”; Ex. 1D01076 “Document from the Security and Intelligence Department of the Drina Corps Command signed by Popović, 11 February 1995.”

³⁸⁴⁹ Petar Vuga, T. 23412, 23416 (7 July 2008); Lazar Ristić, T. 10183 (17 Apr 2007).

³⁸⁵⁰ Momir Nikolić, T. 33032 (22 Apr 2009) (testifying that 95% of officers in the VRS at the time called Bosnian Muslims “balija”).

³⁸⁵¹ See *supra*, paras. 990–995. But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–39.

accused that the extended crime would be committed and that it would be committed with the required specific intent.³⁸⁵² The Trial Chamber is satisfied that it was foreseeable to **Popović** that the “opportunistic” killings would be carried out with persecutory intent. By participating in the JCE to murder, **Popović** willingly took this risk. He is therefore responsible, through his participation in the JCE to Murder, for persecution as a crime against humanity through “opportunistic” killings under the third category JCE.³⁸⁵³

1196. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.³⁸⁵⁴ The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but also planned and ordered persecution of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as commission of the crime of persecution through murder and cruel and inhumane treatment, committed as part of the JCE to Murder with discriminatory intent.

(viii) Count 7: Inhumane Acts (Forcible Transfer)

1197. The Trial Chamber has found that **Popović** did not participate in the JCE to Forcibly Remove.³⁸⁵⁵ Similarly, the evidence is insufficient to establish that he aided and abetted forcible transfer in either Srebrenica or Žepa, nor does it demonstrate that he is responsible for forcible transfer through another mode of liability. The Trial Chamber therefore, finds that **Popović** is not criminally responsible for forcible transfer (inhumane acts) as a crime against humanity.

(ix) Count 8: Deportation

1198. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Popović** is not criminally responsible for deportation as a crime against humanity.

³⁸⁵² See *supra* paras. 1030–1031.

³⁸⁵³ See *supra*, paras. 1073–1083. But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

³⁸⁵⁴ Indictment, para. 88.

³⁸⁵⁵ See *supra*, para. 1171–1174.

4. Ljubiša Beara

(a) The Case against Beara

1199. The Prosecution alleges that **Beara** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.³⁸⁵⁶ Specifically, the Prosecution alleges that **Beara** was a member of a joint criminal enterprise to summarily execute the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).³⁸⁵⁷

(b) Positions and Functions

1200. **Beara** was born on 14 July 1939 in Sarajevo, Bosnia and Herzegovina.³⁸⁵⁸ In 1962, **Beara** graduated from the Yugoslav Military and Naval Academy.³⁸⁵⁹ He worked in Brioni as Commander of the Guards in 1964 and subsequently joined the JNA Security Services.³⁸⁶⁰ **Beara** was transferred to Split in 1971 and then to Kumbor in Montenegro during 1979.³⁸⁶¹

1201. In 1985, **Beara** was Assistant Chief of the Security Department and Deputy Chief of the 8th Naval Military District with the rank of Naval Captain.³⁸⁶² **Beara** continued to serve in the security organ of the Naval Military District. Its command was moved from Split to Kumbor in 1992.³⁸⁶³ At that time, **Beara** was Tolimir’s superior.³⁸⁶⁴

1202. In late 1992, **Beara** joined the VRS Main Staff in Crna Rijeka as the Chief of the Administration for Security³⁸⁶⁵ with the rank of Colonel.³⁸⁶⁶ He remained in this position during the

³⁸⁵⁶ Indictment, paras. 26–37, 40, 45–71, 78, 83–84, 88–91. **Beara** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

³⁸⁵⁷ Indictment, paras. 40, 78.

³⁸⁵⁸ Case No. IT-02-58-I, Initial Appearance, T. 6 (9 Nov 2004); Mikajlo Mitrović, T. 25047 (2 Sept 2008).

³⁸⁵⁹ Nadežda Beara, Ex. 2D00664, “92 *bis* statement” (17 Mar 2008), p. 1.

³⁸⁶⁰ *Ibid.*

³⁸⁶¹ *Ibid.*; Spiridon Alacov, T. 23551 (10 July 2008).

³⁸⁶² Mikajlo Mitrović, T. 25040–25041 (2 Sept 2008), T. 25154–25155 (3 Sept 2008).

³⁸⁶³ 2DPW-19, T. 25623 (11 Sept 2008).

³⁸⁶⁴ Mikajlo Mitrović, T. 25046 (2 Sept 2008).

³⁸⁶⁵ Manojlo Milovanović, T. 12153 (29 May 2007) (testifying that **Beara** joined the Main Staff in September 1992); Spiro Pereula, T. 24151 (28 July 2008) (testifying that **Beara** joined the Main Staff in November 1992); Ljubomir Mitrović, T. 24279 (29 July 2008) (testifying that **Beara** was appointed the Chief of the Security “sometime in

period relevant for the Indictment.³⁸⁶⁷ **Beara's** immediate superior was Tolimir, the Assistant Commander for Intelligence and Security in the VRS Main Staff.³⁸⁶⁸

1203. During the war, **Beara** had a good working relationship with Mladić, who trusted him.³⁸⁶⁹ **Beara** attended morning briefings of the Main Staff with Mladić, the Assistant Commanders of the Main Staff, and **Miletić**.³⁸⁷⁰

1204. **Beara's** function as Chief of the Security Administration included overseeing the security organs of the VRS and of the Main Staff military police, as well as counter-intelligence activities.³⁸⁷¹ He would make proposals to the Main Staff Commander concerning the use of the Military Police Battalion of the 65th Protection Regiment.³⁸⁷²

1205. In the professional chain of command, **Beara** was superior to **Popović**, who was superior to the security organs of the Drina Corps brigades, including **Drago Nikolić** and Momir Nikolić.³⁸⁷³

1206. As officer in charge of the security organs in the VRS, **Beara** had to be apprised of the subordinate security organs' work in order to provide guidance and evaluate and monitor their

November or December 1992"); Mikajlo Mitrović, T. 25047 (2 Sept 2008) (testifying that **Beara** was appointed to the position "either at the end of 1992 or beginning or middle of 1993").

³⁸⁶⁶ Manojlo Milovanović, T. 12153 (29 May 2007); Ex. P00480, "Article by Sredoje Simić", p. 2.

³⁸⁶⁷ See Manojlo Milovanović, T. 12212 (30 May 2007); Momir Nikolić, T. 32903 (21 Apr 2009). Certain members of the VRS expressed displeasure at **Beara's** appointment as Chief of Security because they viewed **Beara** as someone who was more pro-Yugoslavia than pro-Serb. Srđa Trifković, T. 25218–25219 (4 Sept 2008). See also *ibid.*, T. 25223 (4 Sept 2008). **Beara** was often believed to be a Croat by ethnicity because of his Dalmatian accent. Mikajlo Mitrović, T. 25047 (2 Sept 2008). See also Branimir Grulović, T. 23783–23784 (22 July 2008); Ljuban Mrković, T. 24309 (29 July 2008).

³⁸⁶⁸ Manojlo Milovanović, T. 12153 (29 May 2007); Ljubomir Obradović, T. 28249 (14 Nov 2008). One of the officers serving in the intelligence branch was Colonel Radoslav Janković. Ex. P00692, "Main Staff Structure". See *supra*, para. 119.

³⁸⁶⁹ Mikajlo Mitrović, T. 25108 (2 Sept 2008), T. 25127–25128 (3 Sept 2008).

³⁸⁷⁰ Manojlo Milovanović, T. 12188–12189 (29 May 2007). See *supra*, para. 113.

³⁸⁷¹ Petar Vuga, T. 23327–23329 (4 July 2008).

³⁸⁷² Milomir Savčić, T. 15240 (12 Sept 2007). See *supra*, para. 113.

³⁸⁷³ Svetozar Kosorić, T. 33760 (30 June 2009); Richard Butler, T. 19646–19647 (14 Jan 2008). See also Mile Janjić, T. 17967 (20 Nov 2007). See *supra*, para. 122.

work.³⁸⁷⁴ **Beara** would send instructions to the subordinate security organs, including instructions regarding the arrest and the detention of prisoners of war.³⁸⁷⁵

(c) Acts and Whereabouts

(i) Preliminary Issues—Beara's Submissions

1207. **Beara** contends that he was not present in Eastern Bosnia between 10 and 16 July at the places and times alleged by the Prosecution and had no involvement in the mass executions which took place during this time.³⁸⁷⁶ According to **Beara**, the fourteen witnesses who testified to his presence in Eastern Bosnia during that period were either deliberately giving false testimony in order to incriminate him or were mistaken in their identification of him.³⁸⁷⁷ It is further submitted that any intercept or documentary evidence tending to show that **Beara** was in the area was either mistakenly attributed to him or deliberately falsified to incriminate him.³⁸⁷⁸ Finally, he submits that witnesses and documents adduced by him concerning the events that occurred on 13 and 14 July are reliable and thus should be given full weight.³⁸⁷⁹ In light of the extensive arguments advanced by **Beara**, the Trial Chamber will consider them as a preliminary matter.

³⁸⁷⁴ Peter Vuga, T. 23109 (1 July 2008). *See also* Ex. P02741, "Instruction on command and control over the Security and Intelligence organs of the VRS signed by Mladić, 24 October 1994" p. 1 ("2. The security and intelligence organs are directly commanded by the commander of the unit or institution of which they form part, but with regard to professional activities they are controlled centrally by the security and intelligence organs of the superior command."), p. 2 ("4. Security and intelligence organs at all levels must submit to the superior organ in the professional sense, in a timely fashion and the prescribed form, security and intelligence reports in accordance with the Rules of Service and the Instructions on Applying Work Methods and Means of the VRS OB [Security Organ]."), p. 3 ("6. All security and intelligence organs and unit and institution command organs are obliged to provide every assistance in their operative work and tasks to the detached and deployed organs of the 410th Intelligence Centre and Counter-Intelligence Group of the VRS."). *See supra*, para. 122.

³⁸⁷⁵ Instructions detailing the procedure for the arrest and detention of prisoners of war violating rules and regulations were sent via telegram dated 1 April 1994 from the VRS Security Administration to the Drina Corps Security Department. *See* Ex P00196, "Drina Corps Security Department instruction, signed by Popović, 15 April 1995" (Disseminating the instructions in full which had been received from the VRS Security Administration to the Drina Corps Security Department and requesting that they inform Military Police units of the instructions and act upon the provisions listed. The provisions listed from page 2 of the document comprise detailed instructions, the first provision reads: "All prisoners, members of the enemy army are to be handcuffed or their hands tied with anything available immediately after their capture. They are to be searched and all items are to be seized apart from their clothing and footwear. An official record is to be compiled. After the search, they are to be blindfolded at the place of detention prior to being led away in order to prevent them from observing anything").

³⁸⁷⁶ *See* Beara Final Brief, paras. 377–378, 404.

³⁸⁷⁷ Beara Closing Arguments, T. 34462–34464 (8 Sept 2009); Beara Final Brief, paras. 105–249.

³⁸⁷⁸ Beara Final Brief, paras. 252–354.

³⁸⁷⁹ *Ibid.*, paras. 78–104.

a. Identification Evidence

i. Allegations of Deliberate Falsification

1208. **Beara** first challenges the evidence of Miroslav Deronjić, PW-161, PW-162, Ljubisav Simić and Zlatan Čelanović, who testified to **Beara**'s presence in the Bratunac area and his involvement in a series of meetings there between 13 and 14 July 1995. **Beara** contends that these witnesses untruthfully testified about his whereabouts during the period with the intention of concealing their own involvement in the crimes charged and shifting the responsibility to him.³⁸⁸⁰ **Beara** argues that:

[Th]e whereabouts of **Ljubiša Beara** on 13 and 14 July were untruthfully portrayed by the group of small but close-knit local civilian officials and friends who stayed in close contact after the events. [...] Deronjić's testimony was premeditated construction full of previous lies by his own admission and that he and his associates, because of their own involvement, had a strong motive to shift the responsibility to somebody else, in this case **Ljubiša Beara**.³⁸⁸¹

1209. **Beara** argues that Deronjić and "his close associates" agreed to shift the responsibility for the crimes, from Deronjić and local civilian officials of Bratunac, to **Beara**.³⁸⁸² **Beara** submits that Ljubisav Simić, PW-161, PW-162 and Čelanović falsely corroborated Deronjić's fabricated story.³⁸⁸³ In this regard, **Beara** alleges that Ljubisav Simić was a school friend of Deronjić and knew other local civilian officials of Bratunac and that, the same as Čelanović, these officials still maintain "a close bond and have collaborated with each other before, during and after the war".³⁸⁸⁴ According to **Beara**, Deronjić spoke to Simić in order to synchronise their future statements so that they could vouch for Deronjić's own chronology of events.³⁸⁸⁵ **Beara** further argues that Simić is not a credible witness because his testimony on the meeting between Deronjić and **Beara** was confusing, due to Simić giving contradictory evidence as to whether he was present or not.³⁸⁸⁶ With regard to PW-161 and PW-162's evidence, in addition to challenging their identifications of **Beara**, which will be discussed later,³⁸⁸⁷ **Beara** argues that they were deeply involved in the crimes against

³⁸⁸⁰ Beara Final Brief, paras. 105–123, 132–166. In this context, **Beara** also notes that 2DPW-19 testified that it was the local authorities who organised the crimes against non-Serbs in Bratunac in 1992 and that it was the local nationalists who organised the paramilitary groups and that, in his view, it was the same perpetrators, the same program, and the same system that were responsible for the events in July 1995. *Ibid.*, para. 166, referring to 2DPW-19, T. 25630–25631 (11 Sept 2008).

³⁸⁸¹ *Ibid.*, para. 105. See also *ibid.*, paras. 137, 139.

³⁸⁸² Beara Final Brief, para. 139. **Beara** also argues that the involvement of the local civilian officials of Bratunac in the crimes was clear by virtue of the fact that Deronjić, Ljubisav Simić and Davidović were present at the meeting at the Hotel Fontana at 10 a.m. on 12 July when "the [fate] of the Muslim population was discussed". *Ibid.*, para. 152.

³⁸⁸³ Beara Final Brief, paras. 110–119.

³⁸⁸⁴ *Ibid.*, paras. 133–135 (quotation at para. 135).

³⁸⁸⁵ *Ibid.*, paras. 139–140.

³⁸⁸⁶ *Ibid.*, para. 142. **Beara** further argues that Simić did not participate in the meeting because he was asleep in front of Deronjić's office. *Ibid.* **Beara** also challenges Simić's identification of Beara. In this regard, see *infra* para. 1264.

³⁸⁸⁷ See *infra*, paras. 1222–1224.

the Bosnian Muslims in Srebrenica and joined in the implication of **Beara** to avoid their own criminal responsibility.³⁸⁸⁸

1210. The Trial Chamber has considered **Beara**'s allegation that these five witnesses constructed their evidence regarding **Beara** in order to shift the responsibility for these criminal acts from themselves and the civilian authorities on to **Beara** and the VRS. **Beara** has not pointed to any direct evidence of collusion amongst these five witnesses as a group. In particular, his allegations of close collaboration before, during and after the war and the suggestion that Deronjić spoke to Simić to synchronise future stories is without evidentiary support. Thus, the Trial Chamber was left to consider these broad allegations on the basis of a consideration of the evidence of these witnesses taken individually and cumulatively. Having done so, the Trial Chamber finds that there is simply no evidence of such construction amongst these witnesses so as to raise a reasonable doubt as to the reliability of the testimony of these witnesses. The witnesses testify to different, albeit related, events. While in some instances, the witnesses corroborate each other, there is a significant portion of the testimony of each of them which is not interrelated. Further, there is nothing in the content or nature of the evidence provided which would suggest such construction.³⁸⁸⁹ Thus the Trial Chamber finds no evidence which would suggest that these witnesses collaborated to construct their evidence to cast blame on **Beara** and thus no reasonable doubt as to the reliability of their evidence arises on that basis.

1211. On a related but separate point, **Beara** argues that PW-161 and PW-162, who were friends before, during and after the war,³⁸⁹⁰ had a chance to harmonise their stories given that they travelled together to testify before the Tribunal, and also stayed in the same hotel during their testimony.³⁸⁹¹ The Trial Chamber notes that while the two witnesses were friends and did have some contact prior to their testimony, both denied that they in any way constructed their evidence together.³⁸⁹² In addition, both witnesses testified to distinct meetings and different events such that there is little intersection in their evidence so as to allow for construction or even "refreshment" of memory.³⁸⁹³ Again, the Trial Chamber finds this allegation to be unfounded.

1212. As to their overall credibility, PW-161, PW-162 and Zlatan Čelanović were called by the Prosecution and Ljubisav Simić by **Borovčanin** and they all testified before the Trial Chamber

³⁸⁸⁸ Beara Final Brief, paras. 148–155.

³⁸⁸⁹ In this regard, the specific allegations regarding Deronjić, whose evidence was admitted under Rule 92 *quater*, will be considered separately below. *See infra*, paras. 1213–1215.

³⁸⁹⁰ Beara Final Brief, para. 133.

³⁸⁹¹ *Ibid.*, para. 147.

³⁸⁹² PW-162, T. 9268–9269 (private session) (22 Mar 2007); PW-161, T. 9405–9406 (private session) (26 Mar 2007), T. 9513–9514, 9517 (private session) (27 Mar 2007).

³⁸⁹³ *See infra*, paras. 1267, 1274.

about their meetings with **Beara** in the SDS offices between 13 and 14 July, except for Čelanović who testified about his two encounters with **Beara** in Bratunac.³⁸⁹⁴ The Trial Chamber had an opportunity to assess the quality of their evidence, the accuracy of their memory and their demeanour during their testimony. It also considered internal inconsistencies and differences between their testimony,³⁸⁹⁵ in order to assess the reliability and credibility of their evidence. Simić, PW-161 and PW-162 were present at meetings with **Beara**,³⁸⁹⁶ and Čelanović saw **Beara** at the Bratunac Brigade Headquarters where six Bosnian Muslim prisoners were brought in.³⁸⁹⁷ Later they went to the Bratunac town where the Bosnian Muslim prisoners were detained.³⁸⁹⁸ The Trial Chamber, as previously found, does not consider that they harmonised their evidence so as “to evade their own personal involvement in the crimes”.³⁸⁹⁹ The same holds true for Čelanović and the Trial Chamber finds no evidence to suggest that he fabricated his evidence to corroborate Deronjić’s evidence. The Trial Chamber will discuss the individual credibility of these witnesses below as their evidence is considered. Lastly, in terms of **Beara**’s challenge to Simić’s credibility, the Trial Chamber is of the opinion that his evidence was not confusing and that Simić clearly stated that he went to the SDS offices where he met a “senior officer” whom he was later told was **Beara** although he did not know his name at this time.³⁹⁰⁰ As will be discussed later, the Trial Chamber is convinced that Simić saw **Beara**.³⁹⁰¹

1213. In addition to levelling a general allegation of construction, **Beara** submits that Deronjić’s testimony in the *Blagojević and Jokić* case, which was admitted into evidence under Rule 92 *quater* in this case, should not be given any weight and that to rely on evidence that was not cross-examined by **Beara** would result in a miscarriage of justice. **Beara** also contends that Deronjić’s testimony is unreliable in that (i) his description and recollection of events in 1995 was unlikely because he admitted in the *Blagojević and Jokić* case that he consulted or “used some friendly connections”, including Ljubisav Simić, Davidović and Vasić among others, to recreate the chronology of the events; and (ii) Deronjić did not mention the purported sightings or meetings with **Beara** in his first statement made to the Prosecution in 1997.³⁹⁰²

³⁸⁹⁴ See *infra*, paras. 1256, 1262, 1264, 1267, 1274..

³⁸⁹⁵ For their respective evidence, see *infra, ibid.*

³⁸⁹⁶ See *infra*, paras. 1264, 1267, 1274.

³⁸⁹⁷ See *infra*, para. 1256.

³⁸⁹⁸ See *infra*, para. 1262.

³⁸⁹⁹ See *Beara* Final Brief, para. 137.

³⁹⁰⁰ Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7626–7627 (15 Apr 2004). See also *infra*, para. 1264.

³⁹⁰¹ See *infra*, para. 1264.

³⁹⁰² *Beara* Final Brief, paras. 137–138, 143 (quotation at para. 138). **Beara** also argues that like Deronjić, PW-161, PW-162 and Simić did not mention **Beara** during their first statements to the Prosecution. *Beara* Final Brief, paras. 143–144.

1214. The Trial Chamber first notes that in its decision pursuant to Rule 92 *quater*, issued on 21 April 2008,³⁹⁰³ it acknowledged that Deronjić's evidence contains a number of inconsistencies, admissions of prior false statements and uncorroborated claims.³⁹⁰⁴ It also noted that corroboration of Deronjić's evidence is a factor to be taken into consideration for assessing its reliability.³⁹⁰⁵ In the *Krstić* case, the Appeals Chamber also held that "the discrepancies in the evidence given by Mr. Deronjić and the ambiguities surrounding some of the statements he made, [...] caution the Appeals Chamber against relying on his evidence alone".³⁹⁰⁶

1215. In addition, to the concerns outlined above, the Accused in this case did not have the opportunity to cross-examine Deronjić because of Rule 92 *quater* procedures.³⁹⁰⁷ In these combined circumstances, the Trial Chamber has exercised caution in assessing and attributing weight because of the 92 *quater* procedure and looked for corroboration with reference to those parts that relate to critical issues.

1216. In sum, the Trial Chamber finds that the testimony of these witnesses does not suggest that they fabricated or falsified their evidence with regard to **Beara**. Therefore, the Trial Chamber is satisfied that, when evaluated together with the totality of evidence, the evidence of these witnesses is mutually corroborative in terms of **Beara**'s presence in the Bratunac area and at the meetings in the SDS office.

1217. **Beara** also contests the reliability of identifications of **Beara** made by Marko Milošević and Ostoja Stanišić, the Deputy Commander and Commander respectively of the 6th Battalion of the Zvornik Brigade.³⁹⁰⁸ **Beara** argues that Milošević and Stanišić "untruthfully" made up an incident whereby Milošević delivered a message to **Beara** on Stanišić's order, motivated by the knowledge that the Prosecution were aware Stanišić was involved in crimes committed at Petkovci.³⁹⁰⁹ **Beara** notes that there is no entry or confirmation in the Zvornik Brigade Duty Officer Notebook to corroborate the meeting or that the purported message was ever conveyed to **Beara**.³⁹¹⁰ **Beara** further argues that the testimony of Milošević and Stanišić is suspect and unreliable.³⁹¹¹ He further

³⁹⁰³ Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 Apr 2008.

³⁹⁰⁴ *Ibid.*, para. 61.

³⁹⁰⁵ *Ibid.*, para. 62.

³⁹⁰⁶ *Krstić* Appeals Judgement, para. 94.

³⁹⁰⁷ Although Deronjić was extensively cross examined during the *Blagojević* and *Jokić* case.

³⁹⁰⁸ **Beara** Final Brief, paras. 177–186.

³⁹⁰⁹ *Ibid.*, para. 185.

³⁹¹⁰ *Ibid.*, para. 182.

³⁹¹¹ *Ibid.*, para. 183. **Beara** argues that Stanišić and Milošević drove together to Banja Luka to each provide statements to the Prosecution in 2002, although Milošević stated that they did not discuss the events of 14 July 1995 during that journey; it is argued that such a proposition is "illogical and reveals Milošević's lack of credibility"; that Milošević and Stanišić's story is inconsistent because while affirming that the two travelled together in 2002, Stanišić stated they did "jog each other's memory" before the interview. *Ibid.*, paras. 183–184.

points to Stanišić's discussions with Obrenović after the events, and the fact that Stanišić and Milošević had the chance to coordinate their stories as further contributing to the lack of reliability of their evidence.³⁹¹²

1218. The Trial Chamber finds that there is nothing in the testimony of Stanišić and Milošević, or elsewhere for that matter, to suggest fabrication of evidence in order to avoid self-incrimination and untruthfully place blame on **Beara**. In the Trial Chamber's view, both witnesses were forthcoming in testifying about their involvement in the operations in Petkovci. The Trial Chamber had an opportunity to hear and view each of them and to assess their responses, particularly as they were extensively tested on cross-examination. The Trial Chamber found both witnesses to be honest and straightforward in their answers and forceful in their rejection of allegations that they constructed evidence. Further, the Trial Chamber accepts the circumstances of the conversation between Obrenović and Stanišić occurred as described, that Stanišić was not threatened or intimidated but merely advised not to say anything about the events at the Petkovci school,³⁹¹³ and finds that this does not affect the credibility of Stanišić's evidence. In addition, while it is the case that Stanišić and Milošević had the opportunity to discuss matters when they travelled to their interviews together, the Trial Chamber, having assessed their evidence in its totality, does not consider that this affects the reliability or credibility of either witness.

ii. Reliability of Positive Identifications

1219. **Beara** contests the reliability of many witnesses' identifications of **Beara**. In this respect, **Beara** relies heavily on the evidence of identification expert Willem Wagenaar. In assessing the evidence of **Beara**'s presence in Eastern Bosnia between 10 and 16 July 1995 the Trial Chamber will now consider Wagenaar's evidence. Wagenaar testified that an adequate identification procedure usually requires a photo line-up, and that such a line-up was not held for many of the witnesses who said they identified **Beara**.³⁹¹⁴ While the Trial Chamber agrees that a photo line-up may add to the strength of an identification,³⁹¹⁵ such evidence must be considered on a case-by-case basis and the absence of a line-up does not necessarily reduce the probative value of the

³⁹¹² Beara Final Brief, paras. 184–186. While Wagenaar testified that Milošević might have only been looking for the highest rank or the only colonel (Willem Wagenaar, T. 25449 (9 Sept 2008); Ex. P03704 (confidential); Ex. P03669c (confidential), the Trial Chamber considers this to be purely speculative. Further, while the suggested use of a photo line-up may have provided additional evidence to the Trial Chamber, the absence of it does not affect the credibility or reliability of the evidence provided.

³⁹¹³ Ostoja Stanišić, T. 11619, 11636–11639 (16 May 2007).

³⁹¹⁴ Willem Wagenaar, T. 25325, 25331–25332, 25337–25338 (8 Sept 2008); Ex. 2D00574, "Report by Willem A. Wagenaar", p. 10; See also Beara Final Brief, paras. 229–249.

³⁹¹⁵ In relation to a number of witnesses, Wagenaar admitted that the possibility of their subsequent exposure to images of **Beara** through the media would have rendered a photo line-up inappropriate. Willem Wagenaar, T. 25407 (9 Sept 2008).

identification. As such, the Trial Chamber has analysed all the circumstances under which the relevant identifications were made and has assessed the reliability of those identifications with caution.

1220. **Beara** first challenges DutchBat officer Egbers's identification of **Beara** outside the school, near the Nova Kasaba Football Field, on the morning of 14 July.³⁹¹⁶ **Beara** claims that there is significant uncertainty with Egbers' recognition of him and thus the recollection is unreliable.³⁹¹⁷ According to Egbers, **Beara** did not speak English very well but he mentioned his name.³⁹¹⁸ Egbers' interpreter told him that the man he had met with was **Beara**.³⁹¹⁹ Egbers described him as a tall man with grey hair "with an atmosphere of a colonel", in a camouflage suit with a colonel rank.³⁹²⁰ On cross-examination, Egbers testified that **Beara** "looked an older man between 45 and 50" with grey or greying hair and 1.90 metres tall.³⁹²¹ When interviewed by the Prosecution on 30 April 2000, Egbers was shown a video of an inspection of troops by Mladić seven or eight times before he could identify **Beara**.³⁹²² During his testimony, a video showing an inspection of troops by Mladić was played to Egbers and he identified the individual behind Mladić as Colonel **Beara**.³⁹²³ Wagenaar testified that uncertainties as to whom Egbers saw could have been solved by using a photo line-up test.³⁹²⁴ Having considered all the evidence, particularly in light of the fact that Egbers' interpreter told him that the man he met was **Beara**, the Trial Chamber considers that the limited uncertainties described above do not cast doubt on Egbers' identification of **Beara**. Moreover, his encounter with **Beara** on that day is recorded in the report he wrote upon his return to Potočari on 15 July 1995:

³⁹¹⁶ Beara Final Brief, paras. 167–173. *See also ibid.*, paras. 239–242 (concerning Wagenaar's evidence), 246 (arguing that Egbers neglected to mention in the affirmative that he saw **Beara** with glasses or that he was not continually wearing glasses).

³⁹¹⁷ Beara Final Brief, para. 169.

³⁹¹⁸ Vincent Egbers, T. 2821 (19 Oct 2006) (further stating that, "there was no conversation in English between Colonel Beara and me at that time. There was always an interpreter who could speak English and Serbo-Croatian as well").

³⁹¹⁹ Vincent Egbers, T. 2820–2821 (19 Oct 2006).

³⁹²⁰ *Ibid.*, T. 2776 (19 Oct 2006).

³⁹²¹ Vincent Egbers, T. 2822, 2824, 2831 (19 Oct 2006) (quotation at T. 2822). *See also* Martijn Anne Mulder, Ex. P02199, "92 *bis* statement" (24 and 25 Oct 1995, 12 May 2000), pp. 15–16, 18 (12 May 2000) (stating that in the morning of 14 July, he saw a blue-coloured private car driven by an unarmed military driver arriving at the parking lot of the school. A VRS officer, who appeared to be of high rank, but whose rank Mulder could not see, exited from the back seat. Mulder described him as being tall (approximately 190 cm), heavily built with a belly and about 50 years of age. He was dressed in a dark camouflage uniform and was wearing a strange cap. Mulder was shown a video (Ex. P02025) and, after a couple of viewings, retained the impression that the third man behind Mladić was the man he saw at the school on the morning of 14 July, except that, in the video, the man is wearing sunglasses, and at the time Mulder saw him on 14 July 1995 in Nova Kasaba he was without sunglasses. Mulder drew these conclusions based on the person's distinctive height, posture and belly. In an addendum to his statement dated 25 September 2007, Mulder specified that the man he saw at the school on 14 July was around 1.80 metres).

³⁹²² Vincent Egbers, T. 2849–2850 (20 Oct 2006).

³⁹²³ *Ibid.*, T. 2777 (19 Oct 2006); Ex. P2D00021, "Egbers Statement, 30 April 2000"; Ex. P02025, "Video showing Mladić and Beara in Potočari".

³⁹²⁴ Willem Wagenaar, T. 25323 (8 Sept 2008).

1. On 13 July transports were organized from Potočari in the direction of Kladanj.
2. A number of incidents took place between Potočari and Nova Kasaba. Vehicles, helmets and flak jackets were taken away [...]
3. On the way back, in the direction of Bratunac, our vehicle was forced to stop in the rough area of map reference JNA 88229622.

[...]

5. I sought contact with the local commander in an old school building that was being used as temporary barracks, Major Malinić Zoran (born in 1961) and told him that the convoys were being escorted on the orders of General Mladić.

[...]

8. As a large group of BiH fighters was assembling, several [VRS] units advanced. Our safety could not be guaranteed, because Major Zoran had no contact with them. His commanding officer, Colonel Beara, would look into the matter.

9. I made the acquaintance of the colonel. He wore the insignia of his rank and drove an expensive car.

10. I gave an account of what happened to us, which was written down. Colonel Beara has the original, and there is a copy in the possession of section 2/3.³⁹²⁵

In light of the above, the Trial Chamber is satisfied with Egbers' identification of **Beara**.

1221. **Beara** next challenges the identification of Birčaković, who testified to **Beara**'s presence and his meeting with **Nikolić** and **Popović** at the Standard Barracks on the morning of 14 July 1995.³⁹²⁶ Wagenaar testified that Birčaković's recognition of **Beara** was not certain given that he expressed doubts as to having met **Beara** in a statement prior to his testimony.³⁹²⁷ In his testimony, Birčaković stated that when **Beara** arrived at the Standard Barracks with **Popović**, "everybody saw it" and that he saw **Beara** and **Popović** go in to the barracks.³⁹²⁸ Birčaković confirmed that he did not mention seeing **Beara** on that day in his prior statement because no such question was put to him during the interview.³⁹²⁹ On the basis of this testimony, taking into account that Birčaković already knew **Beara** in July 1995,³⁹³⁰ the Trial Chamber has no doubt about Birčaković's identification of **Beara**.

1222. **Beara** challenges both the credibility and reliability of the evidence of PW-161 and PW-162.³⁹³¹ He challenges PW-161's credibility noting that he gave various versions as to the date of his meeting with **Beara**.³⁹³² As to reliability, he points to PW-161's limited contact with **Beara**

³⁹²⁵ Ex. 2D00024, "Dutch Ministry of Defence Debriefing Statement", p. 6.

³⁹²⁶ Beara Final Brief, para. 243. *See also ibid.*, para. 175.

³⁹²⁷ Willem Wagenaar, T. 25339 (8 Sept 2008) (further testifying that the conditions for Birčaković's familiarity with **Beara**, and thus his ability to recognise him were uncertain), T. 25480 (9 Sept 2008).

³⁹²⁸ Milorad Birčaković, T. 11097, 11102 (8 May 2007).

³⁹²⁹ *Ibid.*, T. 11103, 11105–11107 (8 May 2007). Further, Birčaković denied the proposition that he did not tell the truth about **Beara**. *Ibid.*, T. 11113 (8 May 2007).

³⁹³⁰ *Ibid.*, T. 11012 (7 May 2007).

³⁹³¹ Beara Final Brief, paras. 116, 245.

³⁹³² *Ibid.*, para. 111.

prior to the relevant meetings described and the expert evidence surrounding weaknesses in his identification.³⁹³³ Similarly, **Beara** argues that PW-162's identification was unreliable in that he acknowledged he would not know **Beara** today if he "saw him in the street"³⁹³⁴ and that he was able to identify him in the courtroom because he had seen him on television broadcasts from the Hague.³⁹³⁵

1223. While PW-161 did give contradictory versions of the chronology surrounding his meeting with **Beara**,³⁹³⁶ the Trial Chamber considers that he was simply unable to clearly recollect the order of the events he was describing. However, his evidence as to the meeting itself—location, circumstances, participants and the conversation—was clear. Further, his evidence is generally consistent with that of other witnesses to meetings with **Beara** on the night of 13 July at the SDS premises.³⁹³⁷ As to the identification of **Beara**, the Trial Chamber notes that PW-161 was summoned to the SDS offices specifically to meet with "Colonel Beara".³⁹³⁸ When he arrived he indicated he was there to see Colonel Beara and he was then admitted to an office where he saw Colonel Beara.³⁹³⁹ He knew that **Beara** was a senior officer of the VRS and he had seen him previously.³⁹⁴⁰ On the basis of this evidence, the Trial Chamber is satisfied beyond reasonable doubt that PW-161 met with **Beara** on the night of 13 July at the SDS offices and that they had a conversation as described by PW-161 in his testimony.

1224. The Trial Chamber is also satisfied with the evidence of PW-162 as to his meeting with **Beara** on the morning of 14 July which also took place at the SDS offices. While **Beara** and PW-162 had not met before, when he arrived at the offices **Beara** introduced himself by name.³⁹⁴¹ Given these circumstances and the totality of the evidence surrounding **Beara**'s presence at the SDS offices, the Trial Chamber has no doubt that PW-162 met with **Beara** and had a discussion as described.

1225. Next **Beara** challenges PW-104's identification of **Beara** on the afternoon of 14 July.³⁹⁴² He highlights that PW-104 conceded that when he saw **Beara** on television in connection with the

³⁹³³ Beara Final Brief, para. 245 (noting that Wagenaar relied on the fact that PW-161 did not refer to **Beara**'s glasses).

³⁹³⁴ *Ibid.*, para. 116 (referring to PW-162, T. 9267 (22 Mar 2007)).

³⁹³⁵ *Ibid.*, para. 116 (referring to PW-162, T. 9268 (22 Mar 2007)).

³⁹³⁶ In particular, PW-161 was inconsistent as to whether the meeting occurred the same day as events he witnessed at the Kravica Warehouse or a day before. PW-161, T. 9362–9362, 9365–9366 (23 Mar 2007), T. 9415–9417, 9445–9447 (26 Mar 2007). Whatever the precise chronology of events, the Trial Chamber is satisfied from other evidence and the actual content of the conversation that the meeting with **Beara** took place on the night of 13 July.

³⁹³⁷ *See infra*, paras. 1264–1266, 1268.

³⁹³⁸ PW-161, T. 9362 (23 Mar 2007). *See also infra*, para. 1267.

³⁹³⁹ PW-161, T. 9365–9366 (23 Mar 2007).

³⁹⁴⁰ *Ibid.*, T. 9362 (23 Mar 2007).

³⁹⁴¹ PW-162, T. 9230 (22 Mar 2007).

³⁹⁴² Beara Final Brief, paras. 223–225, 246.

Tribunal's proceedings, he was (and remains) of the view that this **Beara** did not (and does not) resemble the man he met in July 1995.³⁹⁴³ Wagenaar testified that he saw no reason why the Prosecution investigators had failed to conduct a photo board identification test for PW-104, although in cross-examination Wagenaar conceded that such a test would have been ineffective from the moment PW-104 saw pictures of **Beara** in the media.³⁹⁴⁴ The Trial Chamber notes that in these circumstances Wagenaar's evidence is not of assistance in assessing the reliability of PW-104's identification of **Beara**. While PW-104 had not met or spoken with **Beara** prior to this encounter, importantly, when PW-104 arrived at the SDS offices there was an officer present who introduced himself as "Colonel Beara".³⁹⁴⁵ PW-104 described this individual as tall and well built, with grey hair, aged around 50 or 55, and wearing a camouflage uniform.³⁹⁴⁶ The Trial Chamber is satisfied that this description matches roughly with the physical features of **Beara** in 1995 and is similar to other descriptions of him at the relevant time. PW-104 admitted that **Beara** looked different in the media pictures just before his arrival in The Hague to testify before the Tribunal.³⁹⁴⁷ However, given the passage of time and taken in the context of all the evidence, in particular that **Beara** introduced himself at the meeting, the Trial Chamber does not consider that this raises any doubt as to the identification of **Beara** as a participant in this meeting. Finally, the Trial Chamber notes that the circumstances of the meeting and the subject discussed parallels other meetings with **Beara** taking place at that time, as described by different witnesses. Thus the identification is corroborated by other testimony. Therefore, in view of the totality of the evidence on this point, the Trial Chamber is satisfied that PW-104 did meet with **Beara** in July 1995 and that the content of the conversation they had was as recounted by PW-104.

1226. **Beara** contests Perić's identification of **Beara** at around noon on 16 July 1995 at the Kula School, together with **Popović**.³⁹⁴⁸ The Trial Chamber has already discussed their identification issues in the section concerning **Popović**'s acts and whereabouts.³⁹⁴⁹ As previously found, the Trial Chamber is satisfied that Perić identified **Beara** there.

1227. Finally, **Beara** contests the identification of PW-165, who testified to **Beara**'s presence, together with **Popović**, at the Standard Barracks at 6:30 p.m. on 15 July 1995.³⁹⁵⁰ The Prosecution has presented PW-165's evidence as further corroborating other credible evidence that **Beara** was heavily involved in organising the execution of the remaining Muslim men still being held in the

³⁹⁴³ PW-104, T. 8015 (1 Mar 2007).

³⁹⁴⁴ Willem Wagenaar, T. 25459 (9 Sept 2008).

³⁹⁴⁵ PW-104, T. 7941 (28 Feb 2007).

³⁹⁴⁶ *Ibid.*, T. 8014 (1 Mar 2007).

³⁹⁴⁷ PW-104, T. 8015 (1 Mar 2007).

³⁹⁴⁸ **Beara** Final Brief, paras. 422–425.

³⁹⁴⁹ *See supra*, para. 1125.

Zvornik area.³⁹⁵¹ PW-165 testified that “up the stairs there were a few people walking around, and they were wearing camouflage uniforms and I saw their backs and I asked who they were and one of them said, ‘Well, the commander has a meeting with **Popović** and **Beara**’.”³⁹⁵² PW-165 stated that he did not see **Beara** at the time and he did not know him,³⁹⁵³ and that he never saw him before or after this event at the Standard Barracks.³⁹⁵⁴ **Beara** argues that PW-165’s evidence is not capable of amounting to identification evidence when the witness had only seen this person from the back, and had never seen **Beara** before.³⁹⁵⁵ Wagenaar questioned PW-165’s recognition of **Beara**, testifying that a line-up test could have been carried out by the Prosecution; however he admitted that this could only have been conducted under the condition that PW-165 had not seen **Beara** on a warrant poster after the possible encounter.³⁹⁵⁶

1228. The Trial Chamber has found previously that PW-165’s subsequent identification of **Popović** as one of the men that he saw, combined with the evidence of what he was told, was sufficient to satisfy the Trial Chamber that **Popović** was present.³⁹⁵⁷ This is not the same in the case of **Beara**, as PW-165 did not see him at the time other than from the back and he was not able to subsequently identify him, thus PW-165 does not directly identify **Beara** as having been present. However, the fact remains that PW-165 was told that this was **Beara** and **Popović**, and that information was confirmed in part by the subsequent identification of **Popović**.³⁹⁵⁸ When considered in combination with other evidence, especially as to **Beara**’s presence in the area at the time, the Trial Chamber is satisfied that **Beara** was present with **Popović** at the Standard Barracks in the early evening of 15 July 1995.

1229. Lastly, the Trial Chamber notes that **Beara** challenged the identification made by Rajko Babić, who testified to the presence of a “high ranking officer” he did not know at the Kula School in Pilica on the afternoon of 15 July 1995.³⁹⁵⁹ This officer was addressed as either Colonel or Lieutenant Colonel, was tall with receding blonde hair combed over to one side, neatly shaven, no moustache, and did not wear spectacles.³⁹⁶⁰ No attempt was made to have Babić identify **Beara** at

³⁹⁵⁰ See *supra*, para. 1123. See also *infra*, para. 1284.

³⁹⁵¹ Prosecution Final Brief, para. 2274.

³⁹⁵² PW-165, T. 9962 (4 Apr 2007).

³⁹⁵³ *Ibid.*, T. 9965 (4 Apr 2007).

³⁹⁵⁴ *Ibid.*, T. 9979 (4 Apr 2007).

³⁹⁵⁵ Beara Final Brief, para. 247. See also *ibid.*, para. 246 (stating that PW-165 neglected to mention in the affirmative that he saw **Beara** in glasses or that he was not continually wearing glasses).

³⁹⁵⁶ Willem Wagenaar, T. 25334, 25337–25338, 25353–25355 (8 Sept 2008), T. 25408–25422 (9 Sept 2008); Ex. 2D00574, “Report by Willem A. Wagenaar”. See also Beara Final Brief, para. 248.

³⁹⁵⁷ See *supra*, para. 1123.

³⁹⁵⁸ *Ibid.*

³⁹⁵⁹ Beara Final Brief, paras. 222, 235–236. See also *ibid.*, para. 425.

³⁹⁶⁰ Rajko Babić, T. 10237–10241, 10247 (18 Apr 2007). Babić went on to state that the officer was strong, heavy-built and had a military appearance and that he wore a camouflage uniform. *Ibid.*, T. 10240 (18 Apr 2007).

trial. **Beara** submits that it is plain that Rajko Babić did not recognise **Beara** and thus **Beara** is not the person he was referring to.³⁹⁶¹ Wagenaar was asked extensively about Rajko Babić being shown photographs of **Beara**,³⁹⁶² the relevance of which seems marginal at best given that no identification was made or attempted at trial. Indeed, while the Prosecution refers to his evidence, it does not claim that the officer Rajko Babić saw was **Beara**, let alone any other Accused.³⁹⁶³ For these reasons, the Trial Chamber finds that the evidence is insufficient to find that **Beara** was the officer Rajko Babić saw. Therefore, the Trial Chamber will not rely on Rajko Babić's identification with regard to **Beara**.

b. Intercept Evidence

1230. **Beara** contests the reliability of intercept evidence relating to him on the following grounds: the intercepts cannot be used to deduce the location from which he is calling;³⁹⁶⁴ the intercepts are subject to transcription errors because of inexperienced operators and poor quality audio;³⁹⁶⁵ the dates and times recorded on the intercepts may be unreliable;³⁹⁶⁶ the intercepted conversations were only selectively transcribed;³⁹⁶⁷ it would not have been possible for the intercept operators accurately to recognise his voice;³⁹⁶⁸ and the intercept records could have been subject to manipulation and tampering.³⁹⁶⁹

1231. Challenging the analysis made by the Prosecution's expert witnesses, **Beara** relies on evidence from linguistic expert Remetić in arguing that the Trial Chamber should give no weight to the intercepted conversations.³⁹⁷⁰ Remetić met with **Beara** twice in April 2008 and, on the basis of his observations of **Beara**'s speech patterns on these occasions, analysed 18 transcripts of intercepted communications alleged to have involved **Beara**.³⁹⁷¹ Remetić testified that of the 18 intercepts, only one, Ex. P01387a,³⁹⁷² was consistent with **Beara**'s current speech patterns.³⁹⁷³ In assessing the evidence of **Beara**'s presence in Eastern Bosnia between 10 and 16 July 1995, the Trial Chamber has considered Remetić's evidence, which is discussed in more detail where it is

³⁹⁶¹ Beara Final Brief, para. 222.

³⁹⁶² Willem Wagenaar, T. 25195–25196 (3 Sept 2008), T. 25332–25334, 25366–25367 (8 Sept 2008), T. 25425–25429 (9 Sept 2008), T. 25523–25525 (10 Sept 2008); Ex. 2D00574, "Report by Willem A. Wagenaar", p. 10.

³⁹⁶³ Prosecution Final Brief, para. 918.

³⁹⁶⁴ Beara Final Brief, para. 257.

³⁹⁶⁵ See, *inter alia*, Beara Final Brief, paras. 252–273.

³⁹⁶⁶ See, *inter alia*, Beara Final Brief, paras. 269–273.

³⁹⁶⁷ See, *inter alia*, *ibid.*, paras. 272–273, 282.

³⁹⁶⁸ See, *inter alia*, *ibid.*, paras. 274–293.

³⁹⁶⁹ See *ibid.*, paras. 252–332.

³⁹⁷⁰ See, *inter alia*, *ibid.*, paras. 294–332.

³⁹⁷¹ Slobodan Remetić, T. 24568, 24577, 24595 (25 Aug 2008).

³⁹⁷² Ex. P01387a, "Intercept, 2 August 1995, 09:50 hours".

relevant below. However, the Trial Chamber notes that Remetić's opinions were formed on the basis of limited contact with **Beara** after the events in question, during the trial. Further, his analysis of the intercepts was carried out without the benefit of hearing audio recordings of the relevant intercepts where linguistic patterns of speech would be most apparent. Therefore, in its general context Remetić's evidence is not of such a nature as to raise doubt as to the reliability of the intercept evidence overall. Nevertheless, in assessing the intercept evidence, particularly as to **Beara's** presence in Eastern Bosnia between 10 and 16 July 1995, the Trial Chamber has considered Remetić's evidence on specific intercepts where it is relevant below.

1232. The Trial Chamber has discussed its general approach to the intercept evidence above.³⁹⁷⁴ In considering each specific challenged intercept, the Trial Chamber has placed reliance on the general procedures employed by the intercept operators.³⁹⁷⁵ Conversations were initially transcribed simultaneously and then verified, with the operators often listening to an intercept several times to capture it as accurately as possible. In many instances the assistance of other intercept operators was sought to ensure the accuracy of the transcription.³⁹⁷⁶ Further, the Trial Chamber notes that the operators were well aware of the importance of the intelligence collected through the intercepts and the possible serious implications of mistaken transcription. The Trial Chamber heard extensive evidence from numerous operators who described the efforts taken to ensure that the transcriptions were as precise as possible as to participants and content.³⁹⁷⁷ The Trial Chamber, thus, has taken the credibility of the intercept process into account in assessing the weight to be attributed to individual conversations. Further, the Trial Chamber has carefully analysed the content of each intercept and the individual intercept operators' evidence when assessing the weight to be given to each intercepted communication.

1233. Chronologically, the first intercept specifically challenged by **Beara** is Ex. P01130a.³⁹⁷⁸ Remetić testified that this intercept could not be attributed to **Beara** because the intercept contains insufficient elements to reach such a conclusion.³⁹⁷⁹ The intercept operator PW-124 based his

³⁹⁷³ Ex. 2D00551, "Linguistic Analysis of Intercepts to be connected to the Name of Ljubiša Beara", p. 22. *See also* Slobodan Remetić, T. 24596 (25 Aug 2008).

³⁹⁷⁴ *See supra*, paras. 64–66.

³⁹⁷⁵ *See supra*, para. 65.

³⁹⁷⁶ *See* PW-132, T. 4283 (21 Nov 2006) (stating that sometimes intercept operators re-listened to the conversations together with other operators); PW-157, T. 7191 (9 Feb 2007) (when PW-157 was not sure about something, he would ask his colleagues for assistance, so they could decipher together what was said); PW-136, T. 6230 (23 Jan 2007) (if PW-136 could not understand a certain word he invited others, including the commander, to listen to the tape and give their opinion); PW-145, Ex. P02430 (confidential), p. 2 (sometimes PW-145 would consult with other intercept operators to have "another set of ears").

³⁹⁷⁷ *See supra*, paras. 64–65.

³⁹⁷⁸ Ex. P01130a, "Intercept dated 13 July 1995, 10:09 hours". **Beara** argued during PW-124's testimony that much of this conversation is mistakenly attributed to **Beara** rather than to Lučić. *See* PW-124, T. 5825–5832 (12 Jan 2007).

³⁹⁷⁹ Slobodan Remetić, T. 24631–24632 (26 Aug 2008).

identification of the conversant as **Beara** “because he introduced himself as that”.³⁹⁸⁰ Further, in describing his attributions to **Beara** he stated “one collocutor, **Beara** in this case, could be heard very well. So I had no doubts that it was him”.³⁹⁸¹ **Beara** also challenged the reliability of this intercept because the operator had crossed out a large section of it and rewrote it with some substantive differences.³⁹⁸² In fact, the Trial Chamber finds that this correction by the operator only adds to the reliability of the captured words. When questioned as to why this alteration had been made he said “because I wasn’t satisfied with what I heard, so I listened to the conversation again, and re-transcribed it.”³⁹⁸³ In these circumstances, the Trial Chamber is satisfied both as to **Beara**’s participation in the conversation and the words attributed to him. It does not consider that Remetić’s evidence as to linguistic elements raises any doubt as to this finding.

1234. The second intercept specifically challenged by **Beara** is Ex. P01164a.³⁹⁸⁴ **Beara** submits that this intercept was transcribed inaccurately and that he did not participate in this conversation, arguing that there is no logical explanation why **Beara** would not have known to whom the number 155 was assigned.³⁹⁸⁵ In Remetić’s opinion, this intercept contains very little linguistic data upon which the intercept could be attributed to **Beara**.³⁹⁸⁶ Intercept operator PW-132 testified that he ascertained from the request made by a conversant “Let me talk to Beara”³⁹⁸⁷ during the intercept, as well as “the course of the conversation” and “his rank, he mentions it” that the conversant “Mr Jović is talking to the person he asked to talk to”.³⁹⁸⁸ As to the content of the conversation, PW-132 gave evidence that it was difficult to transcribe, stating that he listened to the conversation “for the second time and then for the third time and I don’t know how many times, that is when I realised how many participants there were in the conversation”, explaining that this was the reason why several corrections were inserted in the notebook.³⁹⁸⁹ The Trial Chamber finds that these corrections improve the reliability of the identification of the participants and the content of the intercept. PW-132 explained that the letters “B”, “J” and “BE” stands for the participants Jokić,³⁹⁹⁰ **Beara**,³⁹⁹¹ and

³⁹⁸⁰ PW-124, T. 5771–5772 (11 Jan 2007) (quotation at T. 5772).

³⁹⁸¹ *Ibid.*, T. 5831–5832 (12 Jan 2007) (quotation at T. 5831).

³⁹⁸² *Ibid.*, T. 5834 (12 Jan 2007).

³⁹⁸³ *Ibid.*, T. 5767 (11 Jan 2007).

³⁹⁸⁴ Ex. P01164a, “Intercept, 14 July 1995, 21:02 hours”.

³⁹⁸⁵ **Beara** Final Brief, paras. 299, 304.

³⁹⁸⁶ Slobodan Remetić, T. 24641 (26 Aug 2008). Remetić also pointed out a mistake on the part of the operator where he used the letter B to denote **Beara** instead of Badem station. Remetić stated that this observation was made in his expert linguistic capacity. *Ibid.*, T. 24722–24723 (27 Aug 2008).

³⁹⁸⁷ PW-132, T. 4322 (21 Nov 2006).

³⁹⁸⁸ *Ibid.*, T. 4345–4346 (22 Nov 2006).

³⁹⁸⁹ *Ibid.*, T. 4361 (22 Nov 2006).

³⁹⁹⁰ *Ibid.*, T. 4341 (22 Nov 2006). PW-132 omitted the name of the person who was talking in the first and third lines, although from the conversation itself it becomes clear that this was Jokić. *Ibid.*, T. 4498–4499 (private session) (24 Nov 2006).

³⁹⁹¹ *Ibid.*, T. 4345 (22 Nov 2006). PW-132 testified that the letters “BE” appear in the text of the intercept but not in the actual line which designates the participants. PW-132 clarified that the name **Beara** did not appear in the section prepared by his unit: “[F]irst it was B, and then e was added. It had been listened a number of times and when this

someone from Badem.³⁹⁹² PW-132 also stated that the name **Beara** should have been added to the line designating the participants, but was omitted by mistake in “haste” due to the urgency with which the intercept needed to be sent out.³⁹⁹³ The Trial Chamber is satisfied based on the identifying information mentioned during the conversation, the explanations of PW-132 and the conversation itself, that **Beara** was a participant in it.

1235. The third intercept specifically challenged by **Beara** is Ex. P01178a.³⁹⁹⁴ **Beara** disputes that **Beara** participated in this conversation, relying on Remetić’s conclusion that there are insufficient linguistic indicators to attribute this and other conversations to **Beara**.³⁹⁹⁵ PW-157, who transcribed this conversation, testified that he recognised **Beara**’s voice and heard that **Beara** called Živanović, another participant of this conversation.³⁹⁹⁶ PW-157 was examined and cross-examined extensively as to the basis for his identification of **Beara** as a participant in the conversation. He described that while initially when he began this work he was unable to identify voices without the speakers introducing themselves,³⁹⁹⁷ by 1993 “I could recognise most of their voices, starting with Beara, Kristić, Živanović, Borovčanin.”³⁹⁹⁸ In terms of the procedures he used in transcribing intercepted conversations, PW-157 stated that when he was not sure about something, he would ask “one colleague, two or three” for assistance; however, he stated in this context, I “wouldn’t tell them what I thought I heard” and after they had listened to the portion of the conversation they would “jointly conclude” what was said.³⁹⁹⁹ In light of PW-157’s evidence, the Trial Chamber is satisfied that this conversation can be attributed to **Beara** and that the intercept is reliable as to its content.

1236. Another intercept specifically challenged by **Beara** is Ex. P01179, which was recorded by three different operators in three different locations between 9:55 a.m. and 10 a.m. on 15 July 1995.⁴⁰⁰⁰ Remetić testified that the three intercept operators recorded one single conversation and that there were insufficient linguistic indicators to attribute this and other conversations to

all ended, it turned out to be the way you see it now.” [...] All the while I had a switchboard operator under Badem, every time, and after that, another person would join the conversation whom I could not hear, and then when the switch operator called that person, judging by the course of the conversation led by Jokic, in my book, from then on, this was Beara.” *Ibid.*, T. 4455–4456 (23 Nov 2006).

³⁹⁹² *Ibid.*, T. 4323 (private session) (21 Nov 2006).

³⁹⁹³ *Ibid.*, T. 4457 (23 Nov 2006).

³⁹⁹⁴ Ex. P01178a, “Intercept, 15 July 1995, 9:54 hours”.

³⁹⁹⁵ Slobodan Remetić, T. 24651–24652 (26 Aug 2008), T. 24718 (27 Aug 2008).

³⁹⁹⁶ PW-157, T. 7170–7171 (9 Feb 2007).

³⁹⁹⁷ PW-157, T. 7224 (9 Feb 2007).

³⁹⁹⁸ *Ibid.*, T. 7223–7224 (9 Feb 2007).

³⁹⁹⁹ *Ibid.*, T. 7191 (9 Feb 2007).

⁴⁰⁰⁰ Beara Final Brief, para. 307. Ex. P01179(a)(b), “Intercept, 15 July 1995, 10:00 hours” and “Intercept, 15 July 1995, 09:55 hours”; Ex. P01179(c), “Intercept, 15 July 1995, 10:00 hours;” Ex. P01179(k)(l), “Intercept, 15 July 1995, 09:57 hours”.

Beara.⁴⁰⁰¹ All three intercept operators who independently transcribed the conversation at the time identified **Beara** as a participant. PW-136 testified that he transcribed the communication at 9:55 p.m.⁴⁰⁰² PW-136 stated that he recognised the voice of the man he identified as “Colonel Ljubo”.⁴⁰⁰³ While he failed to record the last name at the time, he knew that it was “Ljubomir Beara” who was one of the participants in the conversation.⁴⁰⁰⁴ He testified that his identification was based on information provided to him as to call signs, as well as voice identification.⁴⁰⁰⁵ PW-157, who transcribed the conversation at 9:57 p.m., testified that he could only hear **Beara**’s side because there was one channel for one side and another channel for the other.⁴⁰⁰⁶ PW-157 determined that **Beara** was a participant by voice recognition and the fact that **Beara** introduced himself.⁴⁰⁰⁷ PW-133, who transcribed the conversation at 10 a.m., testified that he recognised **Beara**’s voice because he heard it frequently.⁴⁰⁰⁸ All three witnesses also recognised Krstić.⁴⁰⁰⁹ In light of the combined evidence of the three intercept operators and the content of the intercepts themselves, the Trial Chamber finds that these three intercepts record the same conversation, which is attributable to **Beara**.

1237. Finally, **Beara** asserts that the intercepted conversation transcribed on 1 August at 10:45 p.m. related to **Beara** and Žepa is unreliable.⁴⁰¹⁰ Remetić testified that the language used in the conversation transcribed on 1 August at 10:45 p.m. is incompatible with the language used in the conversation earlier that morning at 10:02 a.m.,⁴⁰¹¹ and that the conversation therefore cannot be linked with **Beara**.⁴⁰¹² **Beara** argues that it cannot be concluded that a reference to “Ljubo” in this conversation is a reference to **Beara**.⁴⁰¹³ PW-145, who transcribed this conversation, testified that

⁴⁰⁰¹ Slobodan Remetić, T. 24651–24652 (26 Aug 2008), T. 24723–24726 (27 Aug 2008). *See also* Beara Final Brief, para. 308.

⁴⁰⁰² PW-136, T. 6220–6221 (23 Jan 2007).

⁴⁰⁰³ Ex. P02383 (confidential), p. 6.

⁴⁰⁰⁴ PW-136, Ex. P02383 (confidential), p. 6; PW-136, T. 6220 (23 Jan 2007).

⁴⁰⁰⁵ PW-136, T. 6220–6223 (23 Jan 2007).

⁴⁰⁰⁶ PW-157, Ex. P02440 (confidential), p. 5.

⁴⁰⁰⁷ PW-157, T. 7171 (9 Feb 2007).

⁴⁰⁰⁸ PW-133, T. 5476 (13 Dec 2006). *See also ibid.*, T. 5569–5570 (14 Dec 2006).

⁴⁰⁰⁹ PW-136, Ex. P02383 (confidential), p. 6; PW-133, Ex. P02333 “confidential – 92 *ter* statement”, BT. 4141 (11 Nov 2003); PW-157, Ex. P02439 “confidential – 92 *ter* statement”, KT. 4514 (closed session) (22 June 2000).

⁴⁰¹⁰ Beara Final Brief, paras. 390–394 (regarding Ex P01380a, “Intercept, 1 August 1995, 22:45 hours”). With regard to Ex. P01378a, “Intercept, 1 August 1995, 10:02 hours”, **Beara** concedes that based on Remetić’s opinion the language used in this intercept is consistent with **Beara**’s speech today and submits that this conversation does not display Beara’s criminal intent. *Ibid.*, paras. 321, 392. The Trial Chamber considers that **Beara** is not challenging **Beara**’s participation in that conversation.

⁴⁰¹¹ Slobodan Remetić, T. 24602–24603 (25 Aug 2008) (referring to Ex. P01378a, “Intercept, 1 August 1995, 10:02 hours”).

⁴⁰¹² *Ibid.*, T. 24605 (25 Aug 2008) (testifying that “one person cannot utter within one day or within 13 or so hours, the speeches that differ to such an extent”).

⁴⁰¹³ Beara Final Brief, para. 393. In this regard, **Beara** argues that the Prosecution attempts to attribute certain conversations to **Beara** because of a reference to the common first name “Ljubo”. More specifically, **Beara** submits that although two intercepted conversations (Ex. P01310a, “Intercept, 23 July 1995, 08:05 hours” and Ex. P01328a, “Intercept, 25 July 1995, 07:09 hours”) have the reference to the name of “Ljubo”, they cannot be

he identified **Beara** on the basis that Števo, a participant in the conversation, addressed **Beara** by his first name, Ljubo.⁴⁰¹⁴ PW-145 explained the various parameters and indicators he used to identify participants including identifying information given upon connection and comparisons with other intercepted conversations. He repeatedly explained the steps taken to be certain as to identifications⁴⁰¹⁵ and how he recognised the participants.⁴⁰¹⁶ On the basis of his evidence, the Trial Chamber is therefore satisfied that **Beara** was the person taking part in these conversations.

c. Alibi for 13 to 14 July 1995

1238. **Beara** raises an alibi for 13 and 14 July 1995, arguing that he was present in Belgrade at that time in order to celebrate his birthday. **Beara** relies on three witnesses: Miroslava Čekić, Svetlana Gavrilović and Milan Kerkez, each of whom testified to his presence in Belgrade on those dates.

1239. Čekić testified that on the evening of 13 July, **Beara** was in Belgrade, having dinner in a restaurant with his wife, Čekić and her late husband, Toma Božinović.⁴⁰¹⁷ Čekić stated that around noon on the same day, **Beara**, who was at home, called her late husband and they agreed to meet for dinner that evening.⁴⁰¹⁸ During this dinner, which lasted until 11 or 11.30 p.m., Nada Beara, **Beara**'s wife, told the Čekićs that the following day would be **Beara**'s birthday. For this reason, Čekić invited **Beara** and his wife to her house in Belgrade for a birthday gathering, together with Svetlana and Đorđe Gavrilović on the evening of 14 July.⁴⁰¹⁹ Čekić stated that she remembered the date of **Beara**'s birthday because "if somebody tells me something, then I remember things".⁴⁰²⁰ Čekić testified that they did not discuss the developments in Bosnia at the birthday gathering, as **Beara** did not want to talk about these matters.⁴⁰²¹ As an explanation as to how she remembers the year, she relies on the conversation during the evening. She says that, they spoke, among other things, about the 25th anniversary of Svetlana and Đorđe Gavrilović's marriage and their plan to

attributed to **Beara**. Since the Prosecution does not claim that the Ljubo in these conversations was **Beara**, the Trial Chamber will not consider the reliability of these conversations in this section.

⁴⁰¹⁴ PW-145, T. 7287 (19 Feb 2007).

⁴⁰¹⁵ PW-145, Ex. P02430, "confidential – 92 *ter* statement", para. 6 (stating that the intercept operators would always try to confirm the identification of a participant such as by the participant being identified in the conversation by himself/herself or others, or by voice identification and that they would not write down a participant's name if they were not sure).

⁴⁰¹⁶ PW-145, T. 7287 (19 Feb 2007) (testifying that "And I explained why we were sure that it's precisely these particular speakers. Normally, at the beginning of a conversation when the link was made, when they were connected, their subordinates would give certain identifications and then they would connect the senior officers, and then the intercept that follows would begin").

⁴⁰¹⁷ Miroslava Čekić, T. 24835, 24841 (28 Aug 2008).

⁴⁰¹⁸ Miroslava Čekić, T. 24835, 24841 (28 Aug 2008).

⁴⁰¹⁹ *Ibid.*, T. 24831–24833, 24847–24848, 24850 (28 Aug 2008).

⁴⁰²⁰ *Ibid.*, T. 24886 (29 Aug 2008).

⁴⁰²¹ *Ibid.*, T. 24851 (28 Aug 2008).

travel on the Orient Express.⁴⁰²² Čekić stated that she could recollect these topics because it was extravagant and unusual to travel on the Orient Express.⁴⁰²³ She stated that **Beara** joked about taking those who were at the dinner to the train station to look at the train,⁴⁰²⁴ and that someone—probably one of the Gavrilovićs—joked about going to a newly opened restaurant, which was located in an old fashioned train wagon, instead of travelling on the Orient Express.⁴⁰²⁵

1240. Gavrilović gave a similar account to Čekić, claiming that she remembered the date of **Beara**'s birthday because it fell in the same month as her own and that they used to joke about sharing the same star sign.⁴⁰²⁶ She also stated that she specifically remembered the year because it was during the year of her 25th wedding anniversary, which had fallen on 4 January 1995.⁴⁰²⁷ She recalled that Čekić's husband had made jokes about their failed attempt to plan a trip on the Orient Express for this anniversary and about a newly opened restaurant in Belgrade named the "Orient Express".⁴⁰²⁸ According to Gavrilović, Čekić remembered this joke.⁴⁰²⁹

1241. Kerkez, a friend of **Beara**'s son, testified that at around 2 p.m. on 14 July, he visited **Beara**'s son at his family apartment in Belgrade to discuss the holiday for which they were about to depart.⁴⁰³⁰ When Kerkez arrived, he saw and greeted **Beara**, who was with his wife and some other people.⁴⁰³¹ Kerkez stated that he and his friends had gone on holiday on the evening of 15 July and returned two weeks later, setting off on a Saturday and arriving back on 31 July in order to start his handball training on Monday, 1 August.⁴⁰³² Kerkez said that he discussed the details of the trip with his friends while they were all reminiscing over drinks one night in April 2008.⁴⁰³³ Kerkez claimed to have a better recollection of the details than the rest of his friends—partly because he had organised the trip that year.⁴⁰³⁴

⁴⁰²² Miroslava Čekić, T. 24852–24853 (28 Aug 2008).

⁴⁰²³ *Ibid.*, T. 24853 (28 Aug 2008).

⁴⁰²⁴ *Ibid.*, T. 24851 (28 Aug 2008). *See also ibid.*, 24875–24876 (29 Aug 2008).

⁴⁰²⁵ *Ibid.*, T. 24853–24855 (28 Aug 2008). *See also ibid.*, 24874–24876 (29 Aug 2008).

⁴⁰²⁶ Svetlana Gavrilović T. 24760–24761 (27 Aug 2008).

⁴⁰²⁷ *Ibid.*, T. 24760–24761 (27 Aug 2008).

⁴⁰²⁸ Svetlana Gavrilović, T. 24761–24762, 24770–24771 (27 Aug 2008), T. 24851 (28 Aug 2008). Gavrilović insisted that she was able to recall the party on that day because jokes were made about her silver wedding anniversary and the Orient Express and because she had highlighted **Beara**'s handsomeness. *Ibid.*, T. 24774–24776 (27 Aug 2008), T. 24786–24791 (28 Aug 2008).

⁴⁰²⁹ *Ibid.*, T. 24761–24762, 24770–24771, 24851 (27 Aug 2008).

⁴⁰³⁰ Milan Kerkez, T. 24911–24914 (29 Aug 2008).

⁴⁰³¹ *Ibid.*, T. 24911–24912 (29 Aug 2008).

⁴⁰³² *Ibid.*, T. 24909, 24949, 24956 (29 Aug 2008).

⁴⁰³³ *Ibid.*, T. 24912–24914, 24922, 24925–24930, 24944–24952 (29 Aug 2008).

⁴⁰³⁴ *Ibid.*, T. 24945–24948 (29 Aug 2008) (Kerkez presumed that he was contacted by the **Beara** Defence because Branko Beara gave them his name and asked them to contact him about the details of the vacation).

1242. **Beara** claims that the evidence of these witnesses is further corroborated by documentary evidence, namely, a war diary prepared by Bob Đurđević.⁴⁰³⁵ According to Đurđević's diary, when he was stopped on the Bosnian side of the Drina River on 13 July 1995, Đurđević heard a group of military police guards inform Miloš Tomović, **Beara**'s driver, that the road via Kasaba and Konjević Polje was closed.⁴⁰³⁶ Based on this diary entry, **Beara** submits that Tomović drove **Beara** to Belgrade on the morning of 13 July when he was stopped together with Đurđević by military police.⁴⁰³⁷ **Beara** further submits that the accuracy of the Đurđević's diary is corroborated by the testimony of Srđa Trifković, a freelance journalist who mentions a meeting with Đurđević in July 1995,⁴⁰³⁸ and by Radovan Karadžić's appointment book for July 1995, in which Trifković's name appears on 13 and 14 July.⁴⁰³⁹

1243. The Trial Chamber recalls that where alibi evidence has been raised by an accused, the burden remains on the Prosecution to eliminate any reasonable possibility that the alibi is true.⁴⁰⁴⁰ In this case, when assessing whether the alibi pleaded by **Beara** was "reasonably possibly true" or whether the Prosecution eliminated any reasonable possibility of its truth, the Trial Chamber has considered the cumulative effect of all relevant evidence adduced by both parties. The Trial Chamber recalls that it is the "totality" of the relevant evidence, including considerations of the honesty and reliability of witnesses and the quality of any identification, which must be weighed when determining whether the Prosecution has eliminated any reasonable possibility that the alibi is true.⁴⁰⁴¹

1244. In the view of the Trial Chamber, while Čekić and Gavrilović had unusually vivid memories and identical accounts about the date, the specific topics of conversation, the jokes and other details of **Beara**'s birthday party on 14 July 1995, this was in contrast to their blurred recollections on other relevant matters. Čekić could not recall how many birthdays she had celebrated with the Bearas, nor did she remember the date of the birthday of Nada Beara, whom she has known since 1985.⁴⁰⁴² Gavrilović testified that she attended one previous birthday party of **Beara**'s around 1993, but she could not recall the exact date or specific topics of the conversation at that time.⁴⁰⁴³

⁴⁰³⁵ Beara Final Brief, paras. 90–91.

⁴⁰³⁶ *Ibid.*, para. 91.

⁴⁰³⁷ *Ibid.*, paras. 91–92, which refers to Ex. 2D00531, "War Diary by Bob Đurđević", pp. 18–19, 31.

⁴⁰³⁸ Srđa Trifković, T. 25230, 25240, 25243, 25270, 25284 (4 Sept 2008).

⁴⁰³⁹ *Ibid.*, T. 25235 (4 Sept 2008); Ex. P02905, "Excerpt from appointment calendar for Radovan Karadžić for 13–14 July 1995".

⁴⁰⁴⁰ *See supra*, para. 57.

⁴⁰⁴¹ *See supra*, para. 58.

⁴⁰⁴² Miroslava Čekić, T. 24827, 24841–24842 (28 Aug 2008).

⁴⁰⁴³ Svetlana Gavrilović, T. 24776–24778 (27 Aug 2008) (Gavrilović however remembered details concerning **Beara**'s clothes at the party).

1245. The circumstances surrounding Čekić and Gavrilović's meetings with the **Beara** Defence team prior to their testimony in this case raise further questions of reliability. Čekić stated that her conversations with the **Beara** Defence team jogged her memory about the date of **Beara**'s birthday.⁴⁰⁴⁴ Čekić was asked by the Prosecution about the lack of information on the Orient Express conversation and on the specific dates of the Čekić's dinners with **Beara** and his wife in her 65 *ter* witness summary. Čekić responded that the specific dates of the two dinners and the Orient Express conversation were not mentioned in the summary, probably because either the **Beara** Defence team might have omitted to note down the dates or she might have recalled them later.⁴⁰⁴⁵ Čekić further testified that a few days after meeting with the **Beara** Defence team, she met Gavrilović and they reminded each other about the evening of 14 July 1995.⁴⁰⁴⁶ According to Čekić, Gavrilović told Čekić the rough date of the birthday gathering in July 1995, but Čekić never gave her the exact date of the birthday dinner and they did not share any of their conversations with **Beara**'s wife or the **Beara** Defence team.⁴⁰⁴⁷ Čekić also stated that she and Gavrilović had spoken to each other about the joke on the Orient Express only after Čekić met with the **Beara** Defence team in August 2009.⁴⁰⁴⁸ In Gavrilović's account, the day after her interview with the **Beara** Defence team in March or April 2008, she called Čekić to inform her that the **Beara** Defence team had asked her about the birthday party on 14 July 1995.⁴⁰⁴⁹ About two weeks later, Gavrilović talked about the meeting with **Beara** Defence team with Čekić, and a few days before their trip to The Hague to testify before the Tribunal, Gavrilović and Čekić talked about the necessary preparations on the phone.⁴⁰⁵⁰ Gavrilović stated that she had not spoken to **Beara**'s wife about **Beara**'s birthday party.⁴⁰⁵¹

1246. The Trial Chamber does not consider that Gavrilović and Čekić deliberately falsified their testimony. However, their detailed and almost identical accounts of 14 July 1995 are so unusual—particularly in comparison to their memory of other events—that they lack credibility individually and cumulatively. In addition, the circumstance by which the information was conveyed to the defence, in particular as to the date and the reasons for the clear recollection of it, further damages the reliability of the evidence. Furthermore, the frequent discussions between the two witnesses and the way in which they developed their memories of the event further weaken the trustworthiness of

⁴⁰⁴⁴ Miroslava Čekić, T. 24886 (29 Aug 2008). Čekić also alluded to being able to remember things that are told to her and to having possibly made a note of the date afterwards. *Ibid.*

⁴⁰⁴⁵ *Ibid.*, T. 24887, 24892–24893 (29 Aug 2008).

⁴⁰⁴⁶ *Ibid.*, T. 24900 (29 Aug 2008).

⁴⁰⁴⁷ Miroslava Čekić, T. 24887, 24899–24903 (29 Aug 2008).

⁴⁰⁴⁸ *Ibid.*, T. 24896–24898 (29 Aug 2008).

⁴⁰⁴⁹ Svetlana Gavrilović, T. 24786 (28 Aug 2008).

⁴⁰⁵⁰ *Ibid.*, T. 24788–24789 (28 Aug 2008).

⁴⁰⁵¹ *Ibid.*, T. 24791 (28 Aug 2008).

their evidence. Consequently, in the Trial Chamber's view, Gavrilović's and Čekić's recollections are simply unreliable and the Trial Chamber can attribute no weight to them.

1247. Despite Milan Kerkez's expressed clear memory of the exact dates of his holiday in 1995, he could not recall when he took his holiday in 1996 nor was he able to remember the date or even the day of the week that the **Beara** Defence called him in April 2008 prior to his testimony in August 2008.⁴⁰⁵² Kerkez's memory was also not strong when he was tested as to other details about July of 1995, such as what the **Beara** house looked like at the time, what clothes **Beara** was wearing on 14 July 1995, and who else was at the **Beara** house. Kerkez was only able to answer some of these questions.⁴⁰⁵³ Moreover, as noted by the Prosecution, 1 August 1995 was a Tuesday, contrary to Kerkez's testimony that he started his training on a Monday.⁴⁰⁵⁴ In the Trial Chamber's view, Kerkez did not deliberately falsify his testimony, and the event he described might have happened at some point during 1995. However, in light of the deficiencies in his memory, particularly as to the day his training started (which does not correspond to 1 August 1995),⁴⁰⁵⁵ Kerkez's evidence is not credible as to the date when he saw **Beara** in Belgrade in 1995.

1248. Finally, with respect to the war diary, the Trial Chamber notes that the entry itself—a hearsay statement from Đurđević—is vague as to the time and circumstances of this encounter. Most significantly it also does not attest to the presence of **Beara** at the checkpoint on 13 July. The Trial Chamber can accord little probative value to this evidence with respect to the whereabouts of **Beara** at the time and finds that the evidence is not corroborative of his presence in Belgrade on 13 and 14 July.

1249. As discussed in subsequent paragraphs,⁴⁰⁵⁶ the Trial Chamber has been presented with convincing evidence that places **Beara** in the Bratunac and Zvornik areas on 13 and 14 July. For all these reasons, in light of the totality of evidence, the Trial Chamber finds that the alibi raised by **Beara** is not reasonably possibly true and does not raise a reasonable doubt about his presence in Bratunac and Zvornik on 13 and 14 July.

1250. In light of this conclusion the Trial Chamber will now consider **Beara**'s acts and whereabouts during the period relevant to the Indictment.

⁴⁰⁵² Milan Kerkez, T. 24923, 24940 (29 Aug 2008).

⁴⁰⁵³ *Ibid.*, T. 24918–24924, 24940–24941, 24954–24957 (29 Aug 2008).

⁴⁰⁵⁴ Prosecution Final Brief, para. 2316.

⁴⁰⁵⁵ Milan Kerkez, T. 24940, 24956 (29 Aug 2008) (stating that 1 August 1995 was a weekend and he started training on the Monday). However, the Trial Chamber notes that 1 August 1995 was a Tuesday.

⁴⁰⁵⁶ *See infra*, paras. 1255–1280.

(ii) The Srebrenica Enclavea. Up to the Fall of Srebrenica

1251. During the period of March to June 1995 **Beara** visited Srebrenica on at least two occasions with the purpose of making enquiries of DutchBat about the ABiH's positions in the enclave.⁴⁰⁵⁷

1252. On 5 July 1995, **Beara** attended one of the monthly meetings with security organs in the Sarajevo-Romania Corps in Ilijas, west of Sarajevo, in which the military and political situation in the RS and the Sarajevo theatre was discussed.⁴⁰⁵⁸ An intercept conversation indicates that **Beara** remained there for some days.⁴⁰⁵⁹ **Beara** then left for Krajina in Western Bosnia.⁴⁰⁶⁰

1253. On 11 July 1995,⁴⁰⁶¹ **Beara** came to the Drina Corps IKM in Pribićevac, together with **Popović** and Deronjić.⁴⁰⁶² Upon arrival, they reported to Krstić, who was already present.⁴⁰⁶³

1254. On the evening of 10 or 11 July 1995, Zlatan Čelanović, a desk officer for legal, religious, and moral affairs at the Bratunac Brigade, saw **Beara** with **Popović** in front of the Bratunac Brigade Headquarters.⁴⁰⁶⁴

b. 12–13 July 1995

⁴⁰⁵⁷ Pieter Boering, T. 1875–1877, 1902 (19 Sept 2006).

⁴⁰⁵⁸ Ljuban Mirković, T. 24280–24281, 24283–24284 (29 July 2008).

⁴⁰⁵⁹ *Ibid.*, T. 24296, 24498–24299 (29 July 2008). *See also ibid.*, T. 24290–24298 (29 July 2008).

⁴⁰⁶⁰ *Ibid.*, T. 24288, 24290–24299 (29 July 2008); Ex 2D00557 “Audio recordings of intercepted conversations between Ljuban Mrković and unknown male”.

⁴⁰⁶¹ Momčilović testified that around 11 July, NATO planes dropped bombs in the area around Pribićevac. Božo Momčilović, T. 14088 (22 Aug 2007). *See supra*, para. 1096.

⁴⁰⁶² Božo Momčilović, T. 14114–14117 (22 Aug 2007) (testifying that there were two bombings a couple of hours apart and that **Popović**, **Beara** and Deronjić arrived in between); *ibid.*, T. 14085 (22 Aug 2007) (testifying that Momčilović did not know the purpose of their visit). Momčilović testified he did not know who **Popović** and **Beara** were and that some soldiers present at the location told him they were security officers. Later he saw **Popović** and **Beara** on TV and he recognised them. *Ibid.*, T. 14085–14088, 14110–14111 (22 Aug 2007). *See supra*, para. 1096.

⁴⁰⁶³ Božo Momčilović, T. 14122 (22 Aug 2007). *See also* PW-138, T. 3799–3801 (private session) (8 Nov 2006). Grulović, the bureau chief for the Balkans section of Reuters in Belgrade, testified that on or about 11 July, when Srebrenica fell, **Beara** was seen at an IKM “in the area of responsibility of the 2nd Krajina Corps” and that **Beara** was present at a meeting held at the IKM where **Gvero** and Milovanović and some others also attended. Branimir Grulović, T. 23776–23778, 23812–23816 (22 July 2008). This evidence does not change the Trial Chamber’s view that **Beara** was at the IKM in Pribićevac on 11 July. PW-161 testified that **Beara** was in or around Hotel Fontana a few days before 13 July. PW-161, T. 9362 (23 Mar 2007). When confronted on cross-examination with what he said in his prior interview to the Prosecution in 2000, that is, he had seen **Beara** for the first time “that year” or 1995 (*see* Ex. 2D1D00167 (confidential), p. 9), PW-161 stated that he must have meant that the first time was in July 1995, not sometime earlier in 1995. *Ibid.*, T. 9500–9501 (27 Mar 2007).

⁴⁰⁶⁴ Zlatan Čelanović, T. 6654–6655 (31 Jan 2007).

1255. On 12 July 1995, **Borovčanin** saw **Beara** in the area towards Potočari.⁴⁰⁶⁵ On the afternoon of the same day, **Borovčanin** saw **Beara** with Deronjić in the centre of Bratunac.⁴⁰⁶⁶ **Beara** stated that there was a large column moving towards Zvornik and that help would be needed.⁴⁰⁶⁷

1256. Either on the evening of 12 July or the morning of 13 July, Čelanović met with **Beara** in front of the Bratunac Brigade Headquarters.⁴⁰⁶⁸ **Beara** asked him to check whether any Bosnian Muslim men taken into custody by the military police had “sinned” against the Serb people by torching Serb villages or killing Serb civilians in previous years.⁴⁰⁶⁹ In such cases, **Beara** told Čelanović to inform one of the security organs so that the matter could be brought to the attention of the competent prosecutor.⁴⁰⁷⁰ **Beara** then departed on foot to the Bratunac Brigade Headquarters building, about 30 to 50 metres away.⁴⁰⁷¹ At about 10 or 11 a.m. on 13 July and subsequent to Čelanović’s first meeting with **Beara**, five Muslim prisoners arrived in a vehicle and were brought to Čelanović’s office by “members of special forces” or “special military police forces” and later one Bosnian Muslim man was brought in by Momir Nikolić.⁴⁰⁷² Following their interrogation, the six men were taken by the special police or a special platoon of the VRS to the Vuk Karadžić School in Bratunac town.⁴⁰⁷³

1257. In a conversation intercepted on 13 July at 10:09 a.m., **Beara** told Lučić, the Deputy Commander of the Military Police Battalion of the 65th Protection Regiment,⁴⁰⁷⁴ that “400 *Balijas* have shown up in Konjević Polje”.⁴⁰⁷⁵ **Beara** instructed Lučić to “[s]hove them all on the playground, who gives a fuck about them”.⁴⁰⁷⁶ **Beara** then asked, “Do you have enough room over there?”, and noted that “it’s not really detention there at your place, it’s just – like that. [...] Well line them up in 4–5 rows”.⁴⁰⁷⁷ Later in the conversation, **Beara** spoke to “Zoka”, Zoran Malinić,⁴⁰⁷⁸

⁴⁰⁶⁵ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 14–15. Trišić, Assistant Commander for Logistics in the Bratunac Brigade, testified that although his previous statement to the Prosecution indicates that **Beara** was in Potočari on 12 July, he could not confirm that he saw **Beara** in Potočari on 12 July. Dragoslav Trišić, T. 27159–27164, 27180–27183, 27185–27186 (21 Oct 2008). The Trial Chamber finds that Trišić’s evidence lacks reliability.

⁴⁰⁶⁶ Ex. P02852, “Transcript of OTP Interview of Ljubomir Borovčanin, 20 Feb 2002”, p. 76.

⁴⁰⁶⁷ *Ibid.*, p. 77.

⁴⁰⁶⁸ Zlatan Čelanović, T. 6628–6631 (31 Jan 2007).

⁴⁰⁶⁹ *Ibid.*, T. 6628–6631 (31 Jan 2007). Upon **Beara** requesting information about perpetrators of crimes committed against Serbs, Čelanović told **Beara** that these crimes were well documented in the book *The Chronicle of our Cemetery* by Miliwoje Ivanišević. *Ibid.*, T. 6631–6632 (31 Jan 2007).

⁴⁰⁷⁰ Zlatan Čelanović, T. 6628–6632, 6649 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović” (with the venue of the meeting with **Beara** marked by Čelanović as B1).

⁴⁰⁷¹ Zlatan Čelanović, T. 6627–6628, 6649, 6699 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”.

⁴⁰⁷² *See supra*, para. 391.

⁴⁰⁷³ *Ibid.*

⁴⁰⁷⁴ Milomir Savčić, T. 15236 (12 Sept 2007).

⁴⁰⁷⁵ Ex. P01130a, “Intercept, 13 July 1995, 10:09 a.m.”

⁴⁰⁷⁶ *Ibid.*

⁴⁰⁷⁷ *Ibid.*

who said “they’re killing themselves [...] there are also plenty of wounded...”. **Beara** responded, “You mean they’re doing it amongst themselves? [...] Well, excellent. Just let them continue, fuck it.”⁴⁰⁷⁹

1258. At 11:25 a.m. on 13 July 1995, another conversation was intercepted,⁴⁰⁸⁰ in which **Beara** was heard saying that he was “sending four buses, two trucks, and one trailer truck to Kasaba to transport Muslim prisoners”, and that “[t]hey will be dispatched to the camp in Batkovići village, where they will be ‘sorted’ into war criminals and normal soldiers”.⁴⁰⁸¹ **Beara** argues that in this intercept he is instructing that 1,300 prisoners should be transported to Batković camp and preparations should be made for them.⁴⁰⁸² **Beara** submits that this evidences that at the time he intended and was making efforts to arrange for the prisoners to be transported to a detention facility and thus **Beara** was unaware of any plan to murder at that point.⁴⁰⁸³

1259. The Trial Chamber notes first that the intercept in question is in summary form and does not provide the actual content of the conversation nor is the other participant in the conversation identified. Similarly, it is not clear in what context the information about the prisoners being taken to a camp was conveyed. While there is some evidence of preparations being made for the arrival of 1,300 prisoners at the Batković camp on that date, the Trial Chamber notes those preparations were futile in that only a handful of prisoners ever arrived.⁴⁰⁸⁴ In this context, the Trial Chamber further notes the secret nature of the killing operation and **Beara**’s knowledge of the vulnerability of phone conversations to interception.⁴⁰⁸⁵ It is also striking that his reference to a detention camp mirrors the speeches Mladić was giving at the time to the detained prisoners at Sandići Meadow.⁴⁰⁸⁶ The Trial Chamber has found those statements by Mladić to have been deliberate lies.⁴⁰⁸⁷ As noted above, there is no evidence that any Bosnian Muslim prisoners were transported to Batković until 18 July.⁴⁰⁸⁸ To the contrary, there is evidence that the Bosnian Muslim males held at the Nova

⁴⁰⁷⁸ See *supra*, para. 133. Milomir Savčić, testified that Zoran Malinić’s nickname was “Zoka”, which was a typically short form of the name “Zoran”. Milomir Savčić, T. 15274–15278 (12 Sept 2007). The Trial Chamber finds that “Zoka” mentioned in this intercept is Zoran Malinić.

⁴⁰⁷⁹ Ex. P01130a, “Intercept, 13 July 1995, 10:09 a.m.”

⁴⁰⁸⁰ The intercept conversation was obtained by Croatian authorities. See Prosecution Final Brief, para. 2216; Beara Final Brief, para. 435, fn. 970.

⁴⁰⁸¹ Ex. 7D2D00642, “Intercept, 13 July 1995, 11:25 a.m.”

⁴⁰⁸² Beara Final Brief, para. 440.

⁴⁰⁸³ Beara Final Brief, paras. 441–442.

⁴⁰⁸⁴ See *supra*, para. 590.

⁴⁰⁸⁵ Exs. P01033, 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”. See *supra*, paras. 1057–1058. Concerning of the vulnerability of phone conversations to interception, see Ex. P01179(a)(b), “Intercept, 15 July 1995, 10:00 hours” and “Intercept, 15 July 1995, 09:55 hours”; Ex. P01179(c), “Intercept, 15 July 1995, 10:00 hours;” Ex. P01179(k)(l), “Intercept, 15 July 1995, 09:57 hours”; Ex. P01178(e), (confidential).

⁴⁰⁸⁶ See *supra*, para. 387.

⁴⁰⁸⁷ See *supra*, para. 1071.

⁴⁰⁸⁸ See *supra*, para. 591.

Kasaba Football Field or captured along the road to Nova Kasaba on 13 July were detained in various locations and ultimately executed.⁴⁰⁸⁹ Considering this summary intercept in the context of all the evidence, including the earlier intercept described above, the Trial Chamber finds that the intercept does not reflect a genuine intent or real efforts on the part of **Beara** to transfer the prisoners to a detention camp. The Trial Chamber is satisfied that this conversation was deliberately misleading as to the fate which awaited these Bosnian Muslim males and an attempt to mask their true intentions.

1260. On the same day, five DutchBat officers were captured by VRS Soldiers while trying to escort convoys of Bosnian Muslim women, children and elderly from Potočari to ABiH-held territory.⁴⁰⁹⁰ They were taken to a school building close to the Nova Kasaba Football Field where the Military Police of the 65th Protection Regiment were stationed.⁴⁰⁹¹ There, Vincent Egbers, one of the DutchBat officers, met with Zoran Malinić,⁴⁰⁹² who was in charge of the school, and complained about the manner in which VRS soldiers had treated DutchBat officers.⁴⁰⁹³ Malinić told Egbers that the DutchBat officer could not leave before **Beara**'s arrival as their safety on the journey back to Srebrenica could otherwise not be guaranteed.⁴⁰⁹⁴ The next morning, Egbers met with **Beara** outside the school near the Nova Kasaba Football Field for 10 to 15 minutes.⁴⁰⁹⁵ According to Egbers, **Beara** took a written complaint from Egbers and went to see Malinić inside the school.⁴⁰⁹⁶ **Beara** stayed for half an hour and, a few hours after his visit, Malinić arranged the return of the DutchBat soldiers to the DutchBat compound in Potočari in a VRS APC.⁴⁰⁹⁷ As will be seen below, on the same morning of 14 July, **Beara** went to the brick factory in Bratunac.⁴⁰⁹⁸

⁴⁰⁸⁹ See *supra*, Chapter III, Sections F.4(d), 5–6, G3. H3.

⁴⁰⁹⁰ Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), p. 5 (24 and 25 Oct 1995), p. 5 (12 May 2000); Vincent Egbers, T. 2756–2757 (19 Oct 2006). See *supra*, para. 396.

⁴⁰⁹¹ Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), pp. 4–5 (24 and 25 Oct 1995); Bojan Subotić, T. 24976, 24984 (1 Sept 2008); Vincent Egbers, T. 2758 (19 Oct 2006); Ex. P01688, "Photograph of School at Nova Kasaba". See *supra*, para. 396.

⁴⁰⁹² Vincent Egbers, T. 2758, 2784, 2787–2788, 2799–2800 (19 Oct 2006); Ex 2D00024, "Document, Dutch MOD Debriefing Statement", p. 6. Egbers was questioned extensively on the appearance of Major Malinić. Despite minor inconsistencies in the description of Malinić's hair, the Trial Chamber agrees that Egbers met Malinić.

⁴⁰⁹³ Bojan Subotić, T. 24995, 25014 (1 Sept 2008); Vincent Egbers, T. 2757–2758 (19 Oct 2006). Mulder, another DutchBat soldier, was with Egbers at the time and complained that he had been forced by a Bosnian Serb to go in a Dutch APC, through the woods, presenting himself as a UN peacekeeper and calling to the Bosnian Muslims saying that it was safe for them to come out of the woods. In addition to speaking to Malinić through an interpreter, Egbers also made a written complaint to Malinić about this incident, the stealing of the vehicles and other improper treatment of DutchBat troops. Vincent Egbers, T. 2757–2760 (19 Oct 2006). Egbers initially described **Beara** as Malinić's commanding officer. *Ibid.*, T. 2759 (19 Oct 2006). He later stated that it was his impression at the time that there was a "relationship between the two". *Ibid.*, T. 2854–2856 (20 Oct 2006).

⁴⁰⁹⁴ Vincent Egbers, T. 2760 (19 Oct 2006), T. 2856 (20 Oct 2006). See also Milomir Savčić, T. 15249 (12 Sept 2007).

⁴⁰⁹⁵ Vincent Egbers, T. 2775–2776, 2817, 2826–2827 (19 Oct 2006). **Beara** arrived in what Egbers described as a "luxurious car [...]". *Ibid.*, T. 2776 (19 Oct 2006).

⁴⁰⁹⁶ Vincent Egbers, T. 2779 (19 Oct 2006).

⁴⁰⁹⁷ *Ibid.*, T. 2778–2779 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, "92 bis statement" (24 and 25 Oct 1995, 12 May 2000), pp. 5–6 (24 and 25 Oct 1995), p. 13 (12 May 2000) (stating that after negotiations between Egbers and the VRS Major, they were told that they could leave to Kladanj at their own risk).

⁴⁰⁹⁸ See *infra*, para. 1275.

Considering that the locations are very close, the Trial Chamber is satisfied that **Beara** could have been in both places during that time.

1261. The Zvornik Brigade Duty Officer Notebook contains a notation made at some time on 13 July, most likely after 4 p.m.,⁴⁰⁹⁹ which reads: “President of the Municipality Mitorović⁴¹⁰⁰ called and asked that the flat-bed trailer (~~Colonel Beara~~) be sent to Bratunac to bring a bulldozer 1000. Colonel Beara passed on the message”.⁴¹⁰¹

1262. On the evening of 13 July around dusk, Čelanović again met **Beara** in front of a building where Čelanović’s office was in Bratunac.⁴¹⁰² Čelanović reported that only a few people had been brought to the military police building, and he had not turned up any new information after looking at their IDs and questioning them.⁴¹⁰³ At this time, large numbers of buses and trucks carrying Bosnian Muslim men were parked on the street leading to the Vuk Karadžić School, and at the Bratunac stadium.⁴¹⁰⁴ Čelanović raised concerns about the security of the town, considering the large number of Bosnian Muslim prisoners being held there, to which **Beara** responded that, “I hope that they will make it through the night and we will too, because I guess they’re going to Kladanj tomorrow.”⁴¹⁰⁵ Then they walked towards the Vuk Karadžić School; on the way **Beara** looked at the vehicles and the guards, but did not address the prisoners.⁴¹⁰⁶ When Čelanović asked why the prisoners on the vehicles were not being transported out of Bratunac immediately, **Beara** responded that it was not safe to transport them, as there were too few vehicles to transport them, and that they would have to wait until the other vehicles that had transported the women and children had returned before taking these men to Kladanj the next morning.⁴¹⁰⁷ They then walked to the stadium,⁴¹⁰⁸ where there were vehicles with detained Bosnian Muslim men.⁴¹⁰⁹ **Beara** and

⁴⁰⁹⁹ The Prosecution submits that this entry “must have been made after 14:45 hours and probably after 16:00 hours on 13 July”, based on pp. 122–123 of Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”. Prosecution Final Brief, para. 2220, fn. 4911.

⁴¹⁰⁰ Mitorović was the President of the Zvornik municipality. See Vinko Pandurević, T. 31810 (19 Feb 2009).

⁴¹⁰¹ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 124.

⁴¹⁰² Zlatan Čelanović, T. 6638, 6641 (31 Jan 2007). Čelanović stated that during his two encounters with **Beara** he did not make derogatory remarks about Bosnian Muslims, and he behaved like an officer. *Ibid.*, T. 6683 (31 Jan 2007).

⁴¹⁰³ *Ibid.*, T. 6639 (31 Jan 2007).

⁴¹⁰⁴ See *supra*, para. 407.

⁴¹⁰⁵ Zlatan Čelanović, T. 6640–6641 (31 Jan 2007).

⁴¹⁰⁶ Zlatan Čelanović, T. 6640–6641 (31 Jan 2007). Čelanović marked the route they took. *Ibid.*, T. 6650 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”.

⁴¹⁰⁷ Zlatan Čelanović, T. 6641 (31 Jan 2007). When Čelanović and **Beara** arrived at the street going down towards the school, **Beara** continued toward the school, and on his return told Čelanović that it was not quite safe, but that he thought there would not be any problems. *Ibid.*, T. 6640–6641 (31 Jan 2007).

⁴¹⁰⁸ Zlatan Čelanović, T. 6641–6642 (31 Jan 2007) (testifying that **Beara** looked inside the stadium from the gate, while he stayed behind). See *supra*, para. 407.

⁴¹⁰⁹ Zlatan Čelanović, T. 6652 (31 Jan 2007). Čelanović placed a “0” on the spot where he could see part of them. *Ibid.*, T. 6653 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”. See *supra*, para. 407.

Čelanović walked back toward the school, and then to the police building.⁴¹¹⁰ When they arrived in front of the police building, **Beara** went into the yard of the Bratunac Brigade Headquarters.⁴¹¹¹

1263. Several witnesses testified that **Beara** was present in Bratunac and took part in informal meetings held at the SDS offices between 13 and 14 July 1995. The Trial Chamber will therefore first consider evidence presented by each witness.

i. Deronjić

1264. At around 8 p.m. on 13 July, Deronjić received a call in his SDS office from Karadžić who instructed him to place the “goods inside warehouses before twelve tomorrow”.⁴¹¹² Deronjić stated that he understood this to mean that the Bosnian Muslim prisoners should be transported outside Bratunac and placed in a military prison.⁴¹¹³ Karadžić said that he would also inform Mladić of his instructions.⁴¹¹⁴ Shortly after Deronjić’s conversation with Karadžić, **Beara** came to his office.⁴¹¹⁵ He said that he was in the Bratunac area to “kill all the Bosnian Muslims that were being warehoused in schools and buses in Bratunac”,⁴¹¹⁶ adding that his orders were “from the top”.⁴¹¹⁷ **Beara** was “very drunk”.⁴¹¹⁸ Deronjić responded that he would not allow for the killings to be carried out in Bratunac in light of the orders he had received from Karadžić.⁴¹¹⁹ He told **Beara** that

⁴¹¹⁰ Zlatan Čelanović, T. 6643 (31 Jan 2007).

⁴¹¹¹ *Ibid.*

⁴¹¹² Ex. P01149a, “Intercept, 13 July 1995, 20:10 hours”; Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6438, 6441–6443 (22 Jan 2004).

⁴¹¹³ Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6441–6443 (22 Jan 2004).

⁴¹¹⁴ *Ibid.*, BT. 6439, 6441–6465 (22 Jan 2004). This conversation between Karadžić and Deronjić was intercepted and is thus corroborated. See Ex. P01149a, “Intercept, 13 July 1995, 20:10 hours”. The Trial Chamber therefore accepts Deronjić’s evidence as to this conversation.

⁴¹¹⁵ Miroslav Deronjić, Ex. P03139a, “confidential - 92 *quater* transcript”, BT. 6440–6441 (22 Jan 2004).

⁴¹¹⁶ *Ibid.*, BT. 6226 (20 Jan 2004).

⁴¹¹⁷ *Ibid.*, BT. 6447, 6449 (22 Jan 2004). Deronjić testified he did not know who **Beara** was exactly referring to and that the fact that **Beara** did not specify any names suggested that he intended to remain discrete on the identity of the individual(s) who entrusted him with this order. Miroslav Deronjić, Ex. P03139a, “confidential - 92 *quater* transcript”, BT. 6447 (22 Jan 2004).

⁴¹¹⁸ Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6449 (22 Jan 2004). See also *ibid.*, BT. 6452 (22 Jan 2004). Deronjić testified that his secretary, Sofir, and Simić, the president of the Bratunac Municipality, remembered **Beara**’s visit and that the conversation was disrupted and he thus told people to leave the room in order to have a one-on-one discussion with **Beara**. *Ibid.*, BT. 6441, 6448 (22 Jan 2004). Ljubisav Simić, the President of the Bratunac Municipality in 1995, testified that sometime on 13 July 1995, Davidović, the President of the Executive Board in Bratunac, informed him of the fact that during the evening of 12 July, some buses carrying people arrived in Bratunac and that they were leaving towards Konjević Polje. Davidović suggested that Simić go to the Hotel Fontana or to the SDS office, where he could inquire with someone on duty about this event. He first went to the SDS office, where he met a senior officer, who he was told later was **Beara**, but at that time he did not know his name. Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7625–7627 (15 Apr 2004). Simić reiterated that he was told later on by someone that the officer he had spoken to “was probably **Beara**,” but, to this day, he did not know if it actually was **Beara**. Ljubisav Simić, T. 27238–27239, 27245 (22 Oct 2008). In light of the totality of evidence, the Trial Chamber is satisfied that Simić saw **Beara**.

⁴¹¹⁹ Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6274, 6278 (20 Jan 2004). Deronjić testified that he told **Beara** “you cannot do this” and characterised his reaction as a human gesture rather than an order. Deronjić thought that, by the end of the meeting, he had managed to secure an agreement with **Beara** to

he intended to see Karadžić the next morning to report their conversation.⁴¹²⁰ **Beara** then left the meeting angrily.⁴¹²¹

ii. Borovčanin

1265. At around 8 p.m. on 13 July, **Borovčanin** went to the Bratunac Brigade Headquarters and spoke with Krstić on the phone.⁴¹²² There, he overheard Deronjić and **Beara** arguing about whether Bosnian Muslim captives were to be brought to Bratunac.⁴¹²³ **Beara** supported the idea but not Deronjić.⁴¹²⁴ Deronjić said that the mayors of Milići and Zvornik were trying to get rid of the prisoners from their respective areas.⁴¹²⁵ **Borovčanin** then returned to the police station in Bratunac.⁴¹²⁶

iii. Momir Nikolić

1266. At around 8:30 p.m. on 13 July in the centre of Bratunac, Momir Nikolić saw **Beara**,⁴¹²⁷ who ordered him to go to the Zvornik Brigade and inform **Drago Nikolić** that thousands of Bosnian Muslims were held in Bratunac and would be sent to Zvornik that evening.⁴¹²⁸ **Beara** also said that they should be detained in the Zvornik area and executed.⁴¹²⁹ Momir Nikolić then drove to Zvornik via Konjević Polje.⁴¹³⁰ After conveying the orders from **Beara** to **Drago Nikolić** at the Kitovnice IKM, Momir Nikolić drove back to Bratunac at around midnight and reported to **Beara** at the Hotel Fontana.⁴¹³¹ Thereafter, Momir Nikolić was told to go to the SDS offices.⁴¹³² At the time, Bratunac was crowded with Bosnian Muslim prisoners and there was insufficient transportation to move

make sure that no killings would be perpetrated in Bratunac that night: “[e]ven though we had reached some kind of agreement about that, I got the impression that he would not do anything else with the prisoners anymore in Bratunac but would act upon orders of President Karadžić, in the way I conveyed them to him”. *Ibid.*, BT. 6226, 6278 (20 Jan 2004), BT. 6450 (22 Jan 2004).

⁴¹²⁰ Miroslav Deronjić, Ex. P03139a, “confidential – 92 quater transcript”, BT. 6448 (22 Jan 2004).

⁴¹²¹ *Ibid.*, BT. 6277 (20 Jan 2004).

⁴¹²² Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 35–36, 75–76, 79–80; Ex. P00993a, “Intercept, 13 July 1995, 20:40 hours.”

⁴¹²³ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 83.

⁴¹²⁴ *Ibid.*, pp. 83, 92.

⁴¹²⁵ *Ibid.*, p. 92.

⁴¹²⁶ *Ibid.*, p. 83 (stating that Deronjić also stopped by and complained that the VRS was putting a large number of prisoners in Bratunac).

⁴¹²⁷ Momir Nikolić stated that he received a call at the Bratunac Brigade Headquarters to report to **Beara**. Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

⁴¹²⁸ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

⁴¹²⁹ *Ibid.* Momir Nikolić said that this was the first time that he heard about the transfer of prisoners to Zvornik. Momir Nikolić, T. 32937 (21 Apr 2009).

⁴¹³⁰ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

⁴¹³¹ *Ibid.*; Momir Nikolić, T. 32937–32939 (21 Apr 2009). Momir Nikolić testified that on his way back to Bratunac he saw buses between Drinjaca and Konjević Polje, on the road leading to Zvornik. He indicated this on a map. *Ibid.*, T. 33256–33257 (27 Apr 2009); Ex. 3DIC00247, “Map marked by Momir Nikolić”.

⁴¹³² Momir Nikolić, T. 32939 (21 Apr 2009).

them to Zvornik.⁴¹³³ Momir Nikolić saw **Beara**, Deronjić⁴¹³⁴ and Dragomir Vasić at the SDS offices.⁴¹³⁵ Deronjić and **Beara** were arguing⁴¹³⁶ and they were drunk during the meeting.⁴¹³⁷ Deronjić was concerned that the prisoners were posing a security threat and did not want them to be killed in or around Bratunac.⁴¹³⁸ Deronjić invoked instructions from Karadžić on how to handle the prisoners in Bratunac and those who would soon be arriving from Konjević Polje, insisting that they should be transferred to Zvornik.⁴¹³⁹ **Beara** invoked different instructions he had received from “his boss”.⁴¹⁴⁰ Momir Nikolić testified that the “killing operation was openly discussed”.⁴¹⁴¹ Decisions were made and changed constantly, due to the chaotic situation in Bratunac at that time.⁴¹⁴² It was ultimately decided that all the prisoners should be quickly transferred to Zvornik⁴¹⁴³ and that until then, the Bosnian Muslim men in and around Bratunac should continue to be guarded by elements of the Bratunac Brigade Military Police, various MUP forces and armed volunteers from Bratunac town.⁴¹⁴⁴

⁴¹³³ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6. *See also* Momir Nikolić, T. 33180 (24 Apr 2009).

⁴¹³⁴ Nikolić testified that Deronjić was married to his cousin. Momir Nikolić, T. 33083–33084 (23 Apr 2009).

⁴¹³⁵ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6 (stating that all the participants indicated that they had been reporting to their various chains of command).

⁴¹³⁶ Momir Nikolić, T. 32940 (21 Apr 2009).

⁴¹³⁷ Momir Nikolić, T. 33193–33194 (24 Apr 2009).

⁴¹³⁸ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

⁴¹³⁹ Momir Nikolić, T. 32942–32943 (21 Apr 2009), T. 33176 (24 Apr 2009).

⁴¹⁴⁰ *Ibid.*, T. 32943 (21 Apr 2009). Asked to clarify the positions of Deronjić and **Beara** concerning prisoners in Bratunac, Nikolić stated that **Beara** “claimed that he had totally different instructions [on] how to deal with prisoners who were in Bratunac at the moment and who were arriving from Konjević Polje by the minute.” *Ibid.*, T. 32941–32942 (21 Apr 2009).

⁴¹⁴¹ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6; Momir Nikolić, T. 32944–32945 (21 Apr 2009).

⁴¹⁴² Momir Nikolić, T. 33182 (21 Apr 2009) (asked to clarify the positions of Deronjić and **Beara** concerning prisoners in Bratunac, Nikolić stated that **Beara** “claimed that he had totally different instructions [on] how to deal with prisoners who were in Bratunac at the moment and who were arriving from Konjević Polje by the minute.” Momir Nikolić further testified that, “The situation that prevailed on the 11th, 12th, and the 13th, could you really believe that you could have consistent decisions about something that is totally in order and that all the orders were clear and consistent? It was obvious that the decisions, what to do and how to do things were changed and made every ten minutes, as far as I know. Instructions were pouring in. Orders were pouring in. Of course, I’m not talking about written instructions, but there were telephone calls. There were communications through radio communication lines, and there was a huge influx of information that affected the positions and the decisions on what to do next. I was trying to describe to you the situation in Bratunac. There were thousands of people on the streets of Bratunac. They had been brought in there from that axis, and the people who were supposed to secure them had left, simply left. [...] The same situation prevailed when it came to taking a decision what to do with these people, regardless of the fact that there were many people from the army, from the — both civilian and army police, from the reserve forces or people who were under work obligation, including civilians armed with rifles. The situation was horrible. And as for the status of these prisoners, they made different decisions every half an hour, let’s say.”).

⁴¹⁴³ Momir Nikolić, T. 33180 (24 Apr 2009).

⁴¹⁴⁴ Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6. The following day, Momir Nikolić returned to Bratunac and informed Blagojević about the SDS meeting and about the fact that, as instructed by **Beara**, all the Bosnian Muslim prisoners would be moved to Zvornik, detained and killed. Blagojević did not contest. *Ibid.*, pp. 6–7.

iv. PW-161

1267. At around 9 p.m. on 13 July,⁴¹⁴⁵ PW-161 was called to attend a meeting with **Beara** at the SDS offices.⁴¹⁴⁶ He arrived at the SDS offices at around 9:30 p.m.⁴¹⁴⁷ He had seen **Beara** in Bratunac a day or two prior to this, in or around Hotel Fontana, but he only knew that **Beara** was a senior officer in the VRS.⁴¹⁴⁸ **Beara** and two VRS officers were present in Deronjić's office but Deronjić was absent.⁴¹⁴⁹ **Beara** asked PW-161 about the availability of machinery and manpower and told PW-161 to go to Milići, where there were many dead bodies that needed to be buried.⁴¹⁵⁰ He also stated that PW-161 would receive further orders later on.⁴¹⁵¹ In the early hours of 14 July, at about 1 or 2 a.m., PW-161 was called again to the SDS offices to receive further instructions.⁴¹⁵² **Beara** was present there,⁴¹⁵³ and ordered him to go with a military policeman to find a burial location.⁴¹⁵⁴

v. PW-170

1268. Around the same time PW-161 went to meet **Beara** at the SDS offices on the evening of 13 July, PW-170 was also called to report to the SDS offices,⁴¹⁵⁵ where he met Deronjić with two uniformed officers.⁴¹⁵⁶ While he does not indicate that **Beara** was present at the meeting, the Trial Chamber finds that his evidence further demonstrates that there was a series of meetings that evening, during which there were discussions amongst various participants all on the same subject of either execution or burial of prisoners. In this instance, the subject matter at the respective meetings attended by PW-161 and PW-170 was the same—the organisational details of the burial operation of the bodies in Kravica.⁴¹⁵⁷ Sometime after midnight, PW-170 was called again to the

⁴¹⁴⁵ PW-161, T. 9358–9365 (23 Mar 2007), T. 9433–9434, 9446, 9449 (26 Mar 2007).

⁴¹⁴⁶ *Ibid.*, T. 9362 (23 Mar 2007).

⁴¹⁴⁷ *Ibid.*, T. 9459 (26 Mar 2007).

⁴¹⁴⁸ PW-161, T. 9362 (23 Mar 2007).

⁴¹⁴⁹ *Ibid.*, T. 9366 (23 Mar 2007) (testifying that he did not recognise these other two officers and that there was no one else inside the office), T. 9433 (26 Mar 2007).

⁴¹⁵⁰ *Ibid.*, T. 9367–9369 (23 Mar 2007). *See also ibid.*, T. 9432 (26 Mar 2007).

⁴¹⁵¹ PW-161, T. 9369 (23 Mar 2007). The meeting lasted for 30 to 40 minutes. *Ibid.*, T. 9460 (26 Mar 2007).

⁴¹⁵² *Ibid.*, T. 9369–9370 (23 Mar 2007).

⁴¹⁵³ *Ibid.*, T. 9370 (23 Mar 2007) (testifying that there was a bottle of whiskey and a glass in front of **Beara** and that the other two officers from before were in an adjacent office).

⁴¹⁵⁴ *Ibid.*, T. 9369 (23 Mar 2007). PW-161 did not know the name of the military policeman and stated that he was not from Bratunac. *Ibid.*, T. 9486–9488 (27 Mar 2007).

⁴¹⁵⁵ PW-170, Ex. P02960, “confidential – 92 ter transcript”, BT. 7873 (closed session) (20 Apr 2004).

⁴¹⁵⁶ *Ibid.*, BT. 7873, 7901 (closed session) (20 Apr 2004) (testifying that he did not recognise these officers).

⁴¹⁵⁷ At the meeting Deronjić said that many Bosnian Muslim prisoners had been killed in Kravica and then the two officers said that the bodies of those killed should be removed to a bauxite mine located in Rupovo Brdo in Milići and that civilian protection workers from the “*asanacija*” and the “works obligation unit” were to load the bodies onto vehicles. At the end of the meeting, it was decided that the officers would find the vehicles necessary to transport the bodies and that the civilian protection workers were to report to Kravica the next morning. PW-170, Ex. P02960, “confidential – 92 ter transcript”, BT. 7873–7874 (closed session) (20 Apr 2004); PW-170, T. 17909 (closed session) (19 Nov 2007).

SDS offices, where he again met Deronjić and the same two officers to further discuss the identical issue of burials.⁴¹⁵⁸ Momir Nikolić was present either at the first or second meeting.⁴¹⁵⁹

1269. The Trial Chamber has carefully considered the evidence of Momir Nikolić describing his actions and this series of meetings on 13 and 14 July. The Trial Chamber notes that again the core of this evidence⁴¹⁶⁰ was recounted by him in his original Statement of Facts and Acceptance of Responsibility of May 2003 and it remained consistent during his testimony.⁴¹⁶¹ His evidence on these points, in particular that which highlights the role he played in conveying information about the killing operation to **Drago Nikolić**, is highly self-incriminatory, adding to its reliability.⁴¹⁶² His account is also corroborated in different parts by other witnesses.⁴¹⁶³ On this basis, the Trial Chamber finds the evidence of Momir Nikolić reliable and accepts his description of the various events and meetings on 13 and 14 July as described above.⁴¹⁶⁴

1270. The Trial Chamber has also carefully analysed the evidence of Deronjić as to his meeting with **Beara** on 13 July. Given the corroboration provided through the intercept,⁴¹⁶⁵ by all the witnesses as to the various meetings that evening and **Borovčanin** and Momir Nikolić⁴¹⁶⁶ as to the subject matter discussed, the Trial Chamber accepts the evidence of Deronjić with respect to the discussion and argument he had with **Beara** as to where the prisoners should be killed.

1271. Having considered the evidence above, the Trial Chamber is satisfied that there is an abundance of mutually corroborative evidence which places **Beara** in the Bratunac area, and in particular at a series of meetings which took place in the SDS offices during the evening of 13 July,

⁴¹⁵⁸ PW-170, Ex. P02960, "confidential – 92 *ter* transcript", BT. 7876, 7902 (closed session) (20 Apr 2004).

⁴¹⁵⁹ *Ibid.*; PW-170, T. 17862 (closed session) (19 Nov 2007). PW-170 was informed that Rajko Dukić, the director of the bauxite mine in Milići, had refused to take the bodies and that civilian protection workers needed to be sent to Glogova in the morning where they had to report to Momir Nikolić and assist in digging a large grave. PW-170, Ex. P02960, "confidential – 92 *ter* transcript", BT. 7876–7877 (closed session) (20 Apr 2004).

⁴¹⁶⁰ Specifically, that **Beara** summoned him at about 8:30 p.m. and ordered him to travel to the Zvornik Brigade to inform **Drago Nikolić** that thousands of Bosnian Muslim prisoners would be transferred from Bratunac to Zvornik where they would be executed; that Momir Nikolić then traveled to the Standard Barracks and on to the Zvornik Brigade IKM where he relayed this information to **Drago Nikolić**; that there was a meeting at which he, Deronjić, **Beara** and Vasić were present during which the executions of the prisoners was discussed. *See supra*, para. 1266.

⁴¹⁶¹ The Trial Chamber notes that while Momir Nikolić sought to emphasise the limited role he played in the meetings that night, he did not depart from his description as to the substance of the discussions.

⁴¹⁶² *See also infra*, para. 1354.

⁴¹⁶³ PW-170 corroborates Momir Nikolić's presence at the SDS offices that evening; **Borovčanin** confirms that Deronjić and **Beara** were arguing about the detention of prisoners in Bratunac; Deronjić confirms that he and **Beara** were arguing as to whether the prisoners should be killed in Bratunac; and PW-161 and PW-170 confirm the meetings that took place that evening at the SDS on the related subject of burials.

⁴¹⁶⁴ *See supra*, para. 1266.

⁴¹⁶⁵ Ex. P01149a, "Intercept, 13 July 1995, 20:10 hours". *See also supra*, para. 1264.

⁴¹⁶⁶ The Trial Chamber has considered the evidence of Deronjić, describing his discussion with Momir Nikolić at the UNDU about the meeting between Deronjić and **Beara** in which allegedly Nikolić stated that he was not at the meeting and that he learned the details of the meeting and the gist of conversation directly from **Beara**. Miroslav Deronjić, Ex. P03139a, "confidential – 92 *quater* transcript", BT. 6139–6140 (closed session) (19 Jan 2004),

continuing until the early morning hours of 14 July.⁴¹⁶⁷ The Trial Chamber is further satisfied that the subject-matter of the meetings was the logistics of the planned murder operation, including the location for the killings and burial as well as transportation and equipment. The Trial Chamber finds that throughout the evening, **Beara** actively participated in the organisation and coordination of the transport of the prisoners from Bratunac and Zvornik and was fully aware of the ultimate purpose—to execute them. The Trial Chamber determines that **Beara** played a key role in coordinating and facilitating the transportation, execution and burial of the prisoners with local civilian authorities, the Bratunac Brigade and the Zvornik Brigade.

c. 14 July 1995

1272. At around 7 a.m. on 14 July, **Popović** and **Beara** arrived at the Standard Barracks, looking for **Nikolić**.⁴¹⁶⁸ At around 8 a.m., **Nikolić** arrived at Standard Barracks and met with **Popović** and **Beara** for 15 to 20 minutes.⁴¹⁶⁹ Then **Beara** returned to Bratunac.⁴¹⁷⁰ As previously found, **Beara**, **Popović** and **Nikolić** discussed the organisation and coordination of the killing operation at this meeting.⁴¹⁷¹

1273. On that morning, at around 9 a.m., PW-161 and the military policeman went to Glogova.⁴¹⁷² The military policeman indicated a spot near Glogova for digging graves.⁴¹⁷³ When an excavator and an operator for the excavator arrived, the “common grave was dug”.⁴¹⁷⁴ The excavator was a ULT loader excavator, not a backhoe and it was thus unable to dig the graves properly.⁴¹⁷⁵ PW-161 reported this to **Beara**, who promised to send a backhoe.⁴¹⁷⁶ A yellow backhoe then arrived on a trailer pulled by a FAP-18 truck from the direction of Kravica or Konjević Polje.⁴¹⁷⁷

BT. 6476–6478 (private session) (22 Jan 2004). However, having considered all the circumstances and evidence, the Trial Chamber accepts Momir Nikolić’s version that he was present at the meeting.

⁴¹⁶⁷ While the evidence discussed above is not consistent in every aspect and there are some discrepancies as to what was discussed and who participated in the meetings, the subject-matter remains essentially the same, as does the fact that **Beara** was present and actively involved in these discussions.

⁴¹⁶⁸ Milorad Birčaković, T. 11011, 11013–11014 (7 May 2007), T. 11088, 11102, 11118 (8 May 2007). Birčaković stated that when he arrived at the Standard Barracks, **Popović** and **Beara** arrived there as well and he “saw them go in [the Standard Barracks]”. Milorad Birčaković, 11102 (8 May 2007).

⁴¹⁶⁹ Milorad Birčaković, T. 11014–11017, 11052–11054 (7 May 2007), T. 11090–11091 (8 May 2007). Ex. P00296, “Vehicle logbook for Opel Rekord P-4528”, p. 4. *See supra*, para. 472.

⁴¹⁷⁰ *See infra*, para. 1274.

⁴¹⁷¹ *See supra*, para. 472.

⁴¹⁷² PW-161, T. 9370–9371 (23 Mar 2007), T. 9485–9487 (27 Mar 2007).

⁴¹⁷³ *Ibid.*

⁴¹⁷⁴ *Ibid.*, T. 9371 (23 Mar 2007).

⁴¹⁷⁵ *Ibid.*

⁴¹⁷⁶ *Ibid.* During cross-examination by the **Beara** Defence, Momir Nikolić testified that, during a proofing session he had with the Prosecution in 2007, he stated that to his knowledge, **Beara** had nothing to do with the burial of bodies in Glogova in 1995, and that PW-161 had lied about this in his statement. Momir Nikolić, T. 33127–33129 (private session) (23 Apr 2009). Nikolić further testified that he found out what PW-161 had said about **Beara**’s

1274. At around 9:30 a.m. on the same day, PW-162 received a call from the SDS offices in Bratunac to go there “because there was a man waiting” to see him.⁴¹⁷⁸ There he saw **Beara** for the first time who was sitting in the first office when he arrived.⁴¹⁷⁹ **Beara** asked PW-162 to go into the second office, telling him there were some people there who would like to talk to him.⁴¹⁸⁰ These officers asked PW-162 which companies in the Bratunac municipality had construction machinery.⁴¹⁸¹ PW-162 told them that the brickworks had a ULT and that the utilities company had a SKIP, which was a very small machine used for digging.⁴¹⁸² PW-162 called the brick company and promised the officers that the machinery would be available.⁴¹⁸³ **Beara** remained in the first office for the duration of the meeting and did not discuss the subject matter of the meeting with PW-162.⁴¹⁸⁴

1275. That morning, **Beara** himself went to the brick factory in Bratunac.⁴¹⁸⁵ Deronjić was informed that **Beara** was looking for the brick factory in Bratunac municipality in order to place some prisoners there with the intention of detaining and killing them.⁴¹⁸⁶ He then drove to the brick factory and told **Beara** that there could be no detention and no killings.⁴¹⁸⁷ **Beara** got angry and left the premises.⁴¹⁸⁸

1276. The Zvornik Brigade Duty Officer Notebook contains an entry made by the Duty Officer Jokić on 14 July.⁴¹⁸⁹ The entry reads: “Colonel Salapura called—Drago and **Beara** are to report to

involvement in Glogova by reading his statement and that PW-161 had never personally admitted to him that **Beara** did not participate in that event. Nikolić drew this conclusion from his personal knowledge of the situation in the area in 1995. Momir Nikolić, T. 33129–33130 (private session) (23 Apr 2009). Asked to explain why he was sure that **Beara** had nothing to do with this event, Momir Nikolić stated that **Beara** had nothing to do with the machinery that came from Zvornik that was used to bury the bodies, and he had no ability to secure them. *Ibid.*, T. 33355 (28 Apr 2009). Given PW-161’s first hand knowledge, in contrast to Momir Nikolić’s evidence which was speculative on this point, the Trial Chamber finds that PW-161’s account is reliable.

⁴¹⁷⁷ PW-161, T. 9371–9372 (23 Mar 2007), T. 9553 (private session) (27 Mar 2007). The operator was Rade Đurković and he and the backhoe were from the state-owned company called Brickworks Bratunac (“Ciglane”). *Ibid.*, T. 9371–9372 (23 Mar 2007).

⁴¹⁷⁸ PW-162, T. 9230 (22 Mar 2007).

⁴¹⁷⁹ *Ibid.* See also *ibid.*, T. 9267–9268 (private session) (22 Mar 2007). With regard to PW-162’s identification of **Beara**, see *supra*, paras. 1222, 1224.

⁴¹⁸⁰ PW-162, T. 9231 (22 Mar 2007).

⁴¹⁸¹ *Ibid.*, T. 9231–9232 (22 Mar 2007).

⁴¹⁸² *Ibid.*, T. 9232 (22 Mar 2007).

⁴¹⁸³ *Ibid.*, T. 9235 (22 Mar 2007).

⁴¹⁸⁴ PW-162, T. 9233–9234 (22 Mar 2007). Considering the evidence of PW-162 with respect to the brick factory, and the Trial Chamber’s finding as to **Beara**’s involvement with organising the killing and burial, the Trial Chamber is satisfied that Deronjić’s evidence on this point is reliable.

⁴¹⁸⁵ Miroslav Deronjić, Ex. P03139a, “confidential – 92 quater transcript”, BT. 6275, 6278 (20 Jan 2004).

⁴¹⁸⁶ *Ibid.*, BT. 6275 (20 Jan 2004).

⁴¹⁸⁷ *Ibid.*, BT. 6278 (20 Jan 2004).

⁴¹⁸⁸ *Ibid.*, BT. 6279 (20 Jan 2004) (testifying that he subsequently saw that the convoys were heading out to Zvornik). Deronjić later met with Karadžić in Pale and reported about the meeting with **Beara**. *Ibid.*, BT. 6448–6449 (22 Jan 2004).

⁴¹⁸⁹ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 126. See also Kathryn Barr, T. 13181 (25 June 2007). See also Ex. P02846, “Kathryn Barr Handwriting Analysis Report, 16 July 2003”; Ex. P02847, “Kathryn Barr Handwriting Analysis Report, 22 August 2003”.

Golić”.⁴¹⁹⁰ “Salapura” is Petar Salapura, the Chief of the Administration of Intelligence of the Main Staff and “Golić” is Major Pavle Golić, an officer of the Department of Intelligence in the Drina Corps.⁴¹⁹¹ The Trial Chamber is satisfied that “Drago” is **Drago Nikolić**. The Notebook also reads that at 3 p.m., “Colonel Beara is coming [in the following] order to Orovoc [namely, Orahovac] Petkovci Ročević Pilica”.⁴¹⁹²

1277. At around 2 p.m. on 14 July 1995, Obrenović heard on the radio that the Duty Officer was requesting two machine operators from the Zvornik Brigade Engineering Company to “go build a road” and when he inquired about this request, he was told that the two machine operators had to go to Orahovac “in relation to the task being performed by **Beara** and **Popović**”.⁴¹⁹³ Nada Stojanović, a 92 *quater* witness, gave evidence that she saw **Beara** at the Grbavci School in Orahovac on 14 July.⁴¹⁹⁴ **Beara** submits that Stojanović is only speculating.⁴¹⁹⁵ In her statement, Stojanović stated that when she arrived at Orahovac before 10 a.m. on 14 July, she saw a “grey-haired officer from Vlasenica”, who she thought was a Lieutenant Colonel but definitely a higher ranking officer. Stojanović knew this officer was from Vlasenica because she had seen him before in the Standard Barracks. She, however, did not know his name.⁴¹⁹⁶ Stojanović was later asked whether she knew anything about a meeting at headquarters on the morning of 14 July 1995 of **Nikolić**, **Popović**, and **Beara**.⁴¹⁹⁷ She stated that while she did not know about this alleged meeting, the mention of **Beara**’s name had caused her to recall that the grey-haired man she had previously mentioned was actually **Beara**.⁴¹⁹⁸ The Trial Chamber recognises that Stojanović’s 92 *quater* statement was untested. However, the Trial Chamber is of the view that PW-168’s evidence and the Zvornik Brigade Duty Officer Notebook are corroborative of Stojanović’s evidence. The Trial Chamber is therefore satisfied that **Beara** was present at the Grbavci School in Orahovac at this time.

⁴¹⁹⁰ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 126.

⁴¹⁹¹ See *supra*, paras. 127, 138.

⁴¹⁹² Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 128. The Prosecution claims that “Orovoc” was a misspelling of Orahovac. Prosecution Final Brief, para. 2244. The Trial Chamber is satisfied that the entry also concerns Orahovac.

⁴¹⁹³ PW-168, T. 15844–15846, 15853–15857 (closed session) (26 Sept 2007).

⁴¹⁹⁴ Although she did not give a time, Nada Stojanović told the OTP that she saw **Beara** in Orahovac on 14 July, standing near the entrance to the school yard. Nada Stojanović, Ex. 3D00511, “92 *quater* statement” (1 July 2002), pp. 39, 43–45.

⁴¹⁹⁵ Beara Final Brief, para. 415.

⁴¹⁹⁶ Nada Stojanović, Ex. 3D00511, “92 *quater* statement” (1 July 2002), pp. 27–28.

⁴¹⁹⁷ *Ibid.*, pp. 38–39.

⁴¹⁹⁸ *Ibid.*

1278. Sometime after 3 p.m. on that day,⁴¹⁹⁹ PW-104 was called to a briefing with **Beara** at the Standard Barracks.⁴²⁰⁰ During the meeting **Beara** said: “We have a lot of prisoners and it is very hard for us to control them. They are at various locations in the Zvornik municipality. We have to get rid of them. I expect assistance from the municipality.”⁴²⁰¹ PW-104 interpreted this to mean that **Beara** needed the municipality’s help in burying the bodies.⁴²⁰² **Beara** also told him that this order came “from two presidents”, and that he was in command of the barracks and that PW-104 should obey his orders.⁴²⁰³

1279. Some time in the afternoon of 14 July,⁴²⁰⁴ Stanišić, Commander of the 6th Battalion, received a call from Dragan Jokić, instructing him to notify **Beara**—whom Jokić said could be found around the Petkovci School—that **Beara** needed to report to the Standard Barracks.⁴²⁰⁵ Following this call, between 6 and 7 p.m., Stanišić sent Marko Milošević, the Deputy Commander of the 6th Battalion, to deliver this message and Milošević met **Nikolić** at the crossroads 70 or 80 metres from the Petkovci School.⁴²⁰⁶ Milošević delivered the message to **Beara** after **Nikolić** pointed him out.⁴²⁰⁷ Milošević approached **Beara**, greeted him, and conveyed the message that he, **Beara**, should contact “the Brigade”.⁴²⁰⁸ **Beara**, however, did not respond at all.⁴²⁰⁹ The encounter with **Beara** lasted for about a minute or two.⁴²¹⁰ Stanišić subsequently notified the Zvornik Brigade

⁴¹⁹⁹ PW-104 could not remember the precise date or time of the meeting. However, he recalled receiving a telephone call advising him to come to the Standard Barracks. PW-104, T. 7941 (private session) (28 Feb 2007), T. 8011 (private session) (1 Mar 2007). The Zvornik Brigade Duty Officer Log indicates that someone was advised to call PW-104’s phone number sometime after 3.03 pm on 14 July 1995. PW-104, T. 7938–7939 (private session) (28 Feb 2007); Vinko Pandurević, T. 32406–32407 (private session) (3 Mar 2009). *See also* Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, p. 131. The same entry does not appear in the Duty Officer Logbook (Ex. 7DP00378, “Zvornik Brigade Duty Officer logbook, 12 February 1995 to 3 January 1996”).

⁴²⁰⁰ PW-104, T. 7941 (28 Feb 2007), T. 8011 (private session), 8014–8015 (1 Mar 2007).

⁴²⁰¹ PW-104, T. 7942 (28 Feb 2007).

⁴²⁰² *Ibid.*, T. 7944 (28 Feb 2007), T. 8013 (1 Mar 2007).

⁴²⁰³ *Ibid.*, T. 7942, 7944 (28 Feb 2007).

⁴²⁰⁴ Milošević said that Stanišić told him about this second call from Jokić at around 4 or 5 p.m. Marko Milošević, T. 13302 (26 June 2007). Later in his testimony, Milošević said that the time was 3 p.m. *Ibid.*, T. 13336 (26 June 2007).

⁴²⁰⁵ *Ibid.*, T. 13302–13303 (26 June 2007) (testifying that he was told to convey a message to **Beara** to report to the “brigade command”); Ostoja Stanišić, T. 11601 (16 May 2007) (stating that when he asked Jokić which “command” **Beara** was supposed to report to, Jokić said “Well, he knows well which command he’s supposed to report to”), *Ibid.*, T. 11604 (16 May 2007), T. 11703–11705, 11725–11726 (17 May 2007).

⁴²⁰⁶ Ostoja Stanišić, T. 11604–11606 (16 May 2007); Marko Milošević, T. 13302–13304 (26 June 2007). Although Milošević did not specify the time when he met **Nikolić** and **Beara** at the school, Stanišić said that he sent Milošević between 6 and 7 p.m. Ostoja Stanišić, T. 11604–11606 (16 May 2007).

⁴²⁰⁷ Marko Milošević, T. 13303 (26 June 2007). *See also* Ostoja Stanišić, T. 11604–11606 (16 May 2007) (testifying that Marko Milošević told him that he met **Beara** at the intersection of the small road leading to the old Petkovci school and the main Zvornik-Sapna road. At this time **Beara** was in the company of **Drago Nikolić**, some unknown troops as well as military policemen).

⁴²⁰⁸ Marko Milošević, T. 13303 (26 June 2007).

⁴²⁰⁹ *Ibid.*, T. 13305 (26 June 2007).

⁴²¹⁰ *Ibid.*, T. 13319 (26 June 2007).

Duty Operations Officer that the message had been relayed to **Beara**.⁴²¹¹ Two days later, Stanišić told Obrenović that “**Beara** had brought prisoners to the school in Petkovci, and the last group that was brought there had been executed there by that school and the bodies remained lying around there”.⁴²¹² Based on this evidence the Trial Chamber finds that **Beara** was present at Petkovci on 14 July, overseeing and coordinating the detention, transport, execution and burial of the prisoners detained there.

1280. The Zvornik Brigade Duty Officer Notebook contains an entry made by the Duty Officer Jokić some time after 8 p.m.⁴²¹³ The entry reads: “Beara to call 155”,⁴²¹⁴ a number associated with the operations office of the Main Staff,⁴²¹⁵ and “from Beara–Drago to report Mane – Đukići 0900 Beara is coming”.⁴²¹⁶ The Trial Chamber is satisfied that **Beara** was coming to the Standard Barracks the next morning. On 14 July at 9:02 p.m., Jokić called at the Bratunac Brigade Headquarters to speak to **Beara**.⁴²¹⁷ Jokić said that it was urgent for **Beara** to call 155,⁴²¹⁸ that “[t]here are big problems. Well, with the people, I mean, with the parcel.”⁴²¹⁹ Jokić further said, “Drago is nowhere around”.⁴²²⁰ When **Beara** asked Jokić, “Why number 155. Where is that?”, Jokić responded, “Well I can’t tell you on this line, you know. You have it over there at the signalmen [...]”.⁴²²¹

⁴²¹¹ Ostoja Stanišić, T. 11605 (16 May 2007). Although Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, does not contain a “message conveyed” entry under the heading of 14 July 1995, the Trial Chamber is satisfied that Milošević delivered the message to **Beara**.

⁴²¹² PW-168, T. 1597–15898 (closed session) (27 Sept 2007). Although Stanišić does not directly confirm that this was said during his evidence, he acknowledges that he was made aware that the prisoners had been brought to the school in Petkovci by **Beara** and that prisoners’ bodies had been left in the area. See Ostoja Stanišić T. 11601, 11604–11605, 11610–11611 (16 May 2007).

⁴²¹³ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 133. See also Kathryn Barr, T. 13181 (25 June 2007). See also Ex. P02846, “Kathryn Barr Handwriting Analysis Report, 16 July 2003”; Ex. P02847, “Kathryn Barr Handwriting Analysis Report, 22 August 2003”. See also *supra*, para. 82.

⁴²¹⁴ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 133. The Prosecution submits that based on the entries on the preceding pages, this entry must have been made after 8 p.m. on 14 July. Prosecution Final Brief, para. 2249, fn. 4971. The Trial Chamber is satisfied that the entry was made at around that time.

⁴²¹⁵ Manojlo Milovanović, T. 12209, 12215, 12272–12274 (30 May 2007) (testifying that the extension number of Milovanović’s office was “155”; and that this extension number was also connected with the Operations Centre of the Administration for Operations and Training and, according to Milovanović, became a “public phone” in the Main Staff very soon after it was connected). See also *infra*, para. 1624.

⁴²¹⁶ Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 134. The Trial Chamber concludes that “Mane Đukići” was Mendeljev Đurić, Deputy Chief of the Zvornik CJB. See Mendeljev Đurić, T. 10892 (3 May 2007); Slaviša Simić, T. 27493 (28 Oct 2008).

⁴²¹⁷ Ex. P01164a, “Intercept, 14 July 1995, 2102 hours.” The conversation initially took place between Jokić and the Bratunac Brigade switchboard operator, who then put **Beara** on the line.

⁴²¹⁸ *Ibid* (Jokić said to **Beara**, “We were together Colonel, Sir. Number 155 called you and asked you to call him urgently”; “Number 155. That’s I mean, the higher house, you go ahead and call them, you have, so I don’t speak this”; “What? Call up there number 155 in the higher house and that’s it. OK boss”).

⁴²¹⁹ *Ibid*.

⁴²²⁰ *Ibid*.

⁴²²¹ *Ibid*.

d. 15 July 1995

1281. On the morning of 15 July, at 9:52 a.m., **Beara** “was looking for General Živanović, but he was not there. He said he was to call him at ext. 139”.⁴²²² 139 was **Nikolić’s** extension at the Standard Barracks.⁴²²³ A few minutes later, **Beara** spoke with Živanović.⁴²²⁴ **Beara** stated that he “informed the commander about it, Furtula didn’t send Lukić’s intervention platoon”.⁴²²⁵ **Beara** went on to say that Furtula ignored a “commander’s order”.⁴²²⁶ **Beara** requested half of the soldiers of Lukić’s platoon but Živanović responded that he could not give such an order any longer because he was no longer the Drina Corps Commander.⁴²²⁷ Živanović referred **Beara** to extension 385 at Zlatar,⁴²²⁸ which was the extension of Krstić.⁴²²⁹

1282. At 10 a.m. on 15 July, **Beara** called and spoke to Krstić,⁴²³⁰ who was at that time at the Drina Corps IKM.⁴²³¹ This intercept reads (B = Beara/ K = Krstić):

B: General, Furtula didn’t carry out the boss’s order.

K: Listen, he ordered him to lead out a tank, not a train.

B: But I need 30 men just like it was ordered.

K: Take them from Nastić or Blagojević, I can’t pull anybody out of here for you.

B: But I don’t have any here. I need them today and I’ll give them back tonight. Krle, you have to understand. I can’t explain it to you like this.

K: I’ll disturb everything on his axis if I pull them out, and a lot depends on him.

B: I can’t do anything without 15 to 30 men with Boban Indić.

K: Ljubo, this/line/is not secure.

B: I know, I know.

K: I’ll see what I can do, but I’ll disturb a lot. Check down with Nastić and Blagojević.

B: But I don’t have any. If I did, I wouldn’t still be asking for the third day.

K: Check with Blagojević, take his Red Berets.

⁴²²² Ex. P01177a, “Intercept, 15 July 1995, 09:52 hours”. See also Dragan Todorović, T. 14029 (21 Aug 2007)

⁴²²³ Vinko Pandurević, T. 32183–32184 (26 Feb 2009) (testifying that **Drago Nikolić’s** extension was 139). PW-157 testified in *Krstić* that the participant in this intercepted conversation was **Beara**, mainly because **Beara** introduced himself to the exchange and PW-157 could also have recognised **Beara’s** voice. PW-157 believed that this conversation was on 15 July 1995 by counting the number of days from this conversation to the next date. PW-157, Ex. P02439, “confidential - 92 ter transcript”, KT. 4544 (closed session) (22 June 2000); PW-157, T. 7220–7221, 7163, 7170, 7195, 7197 (9 Feb 2007).

⁴²²⁴ Ex. P01178a, “Intercept, 15 July 1995, 09:54 hours”. See also PW-157, T. 7171 (9 Feb 2007) (testifying that he determined that **Beara** was a participant by voice recognition).

⁴²²⁵ Ex. P01178a, “Intercept, 15 July 1995, 09:54 hours”.

⁴²²⁶ *Ibid.* Furtula was Lieutenant Colonel Radomir Furtula who commanded the 5th Podrinje Brigade.

⁴²²⁷ *Ibid.*

⁴²²⁸ *Ibid.*

⁴²²⁹ Vinko Pandurević, T. 32188 (26 Feb 2009); Milenko Jevđević, T. 29828 (16 Dec 2008).

⁴²³⁰ Ex. P01179(a)(b), “Intercept, 15 July 1995, 10:00 hours” and “Intercept, 15 July 1995, 09:55 hours”; Ex. P01179(c), “Intercept, 15 July 1995, 10:00 hours”; Ex. P01179(k)(l), “Intercept, 15 July 1995, 09:57 hours” (the intercept operator heard **Beara** introduce himself and ask if Krstić was there).

⁴²³¹ Vinko Pandurević, T. 30940–30941 (30 Jan 2009), T. 30947–30948 (2 Feb 2009); Milenko Jevđević, T. 29620 (12 Dec 2008).

B: They're not there, only four of them are still there. They took off, fuck 'em, they're not there anymore.

K: I'll see what I can do.

B: Check it out and have them go to Drago's.

K: I can't guarantee anything.

B: Krle, I don't know what to do anymore.

K: Ljubo, then take those MUP guys from up there.

B: No, they won't do anything. I talked to them and there's no other solution but for those 15 to 30 men with Indić that were supposed to arrive on the 13th but didn't.

K: Ljubo, you have to understand me, you guys fucked me up so much.

B: I understand, but you have to understand me too, had this been done then, we wouldn't be arguing over it now.

K: Fuck it, now I'll be the one to blame.

B: I don't know what to do. I mean it Krle. There are still 3,500 "parcels" that I have to distribute and I have no solution.

K: Fuck it, I'll see what I can do.

At this time, there were approximately 1,000 prisoners being held at the Ročević School, and 1,000–2,000 at the Kula School and the Pilica Culture Centre in Pilica, who were still to be executed.⁴²³² The only inference that the Trial Chamber can draw from this conversation is that **Beara** was organising troops to assist in relation to the killing operation in these areas.

1283. At around 11 a.m. on 15 July, at the Standard Barracks, Dragan Jokić stopped Obrenović and informed him that **Beara** and **Popović** had brought in prisoners "from up there Bratunac and Srebrenica, in order to shoot them there".⁴²³³ Jokić also told Obrenović that "there were huge problems with guarding and burying the prisoners", and that **Beara** and **Popović** "were taking people wherever they wanted".⁴²³⁴

1284. Sometime after 6:30 p.m., **Beara** and **Popović** met at the Standard Barracks.⁴²³⁵

e. 16–17 July 1995

1285. The Zvornik Brigade Duty Officer Notebook has an entry on 16 July 1995, which reads: "Beara to call Panorama 155 at 09:30 hours".⁴²³⁶ At 11:11 a.m. on 16 July, a conversation was intercepted, which involved a participant X, who was Milorad Trbić, **Beara** and **Cerović**,⁴²³⁷

⁴²³² See *supra*, paras. 504–550.

⁴²³³ PW-168, T. 16517–16518 (closed session) (17 Oct 2007). See also *ibid.*, T. 15871 (closed session) (26 Sept 2007).

⁴²³⁴ *Ibid.*, T. 15871 (closed session) (26 Sept 2007). See also *ibid.*, T. 16517–16518 (closed session) (17 Oct 2007).

⁴²³⁵ PW-165, T. 9961–9965 (4 Apr 2007).

⁴²³⁶ Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995", p. 145.

⁴²³⁷ Ex. P01187a, "Intercept, 16 July, 11:11 hours".

Assistant Commander for Morale, Legal and Religious Affairs of the Drina Corps, who was serving as duty officer at Drina Corps headquarters in Vlasenica at the time.⁴²³⁸ The intercept reads (C=Cerović, X=Trbić, B=Beara):

C: Hey, listen to me. Triage has to be done today...? ...taken prisoners.
 X: Yes.
 C: ...
 X. To do triage.
 C: Triage has to be done on the prisoners.
 X. Colonel Beara is right here by me.
 C: Give me Beara.
 X: Go ahead.
 B: Yes?
 C: Ljubo.
 B: I hear you.
 C: Hello! Cerović speaking.
 B: I hear you.
 C: Trkulja was here with me just now and he was looking for you. I don't know.
 B: Yes.
 C: So, he told me...? ...he got instructions from above.
 B: Yes.
 C: To do triage on those (he's interrupted).
 B: I don't want to talk about it on the phone.
 C: OK.
 B: OK, take care.
 C: Cheers.⁴²³⁹

Beara contends that “triage” used in this conversation refers to “the type of selection customarily utilised when discussing the sick and wounded” and that the association of this term with execution “is not the most reasonable conclusion from the evidence”.⁴²⁴⁰ At around this time, however, there were 1,000–2,000 Bosnian Muslim prisoners being held at the Kula School in Pilica and the Pilica Cultural Centre.⁴²⁴¹ There is no evidence to support that there was any kind of legitimate medical triage being carried out on these Bosnian Muslim prisoners in Zvornik.⁴²⁴² The Trial Chamber is thus satisfied that this conversation was a coded and cryptic reference to the killing operation.

⁴²³⁸ Ex. P01187a, “Intercept, 16 July, 11:11 hours”.

⁴²³⁹ Ex. P01187a, “Intercept, 16 July 1995, 11:11 hours”.

⁴²⁴⁰ Beara Final Brief, paras. 310–313 (quotation at para. 310).

⁴²⁴¹ See *supra*, paras. 525–550.

⁴²⁴² In this regard, referring to Ex. P01200a, “Intercept, 16 July 1995, 19:48 hours” (in which a certain Đurđić and a certain Jelena talked about organising the transportation of the Bosnian Muslim wounded from Bratunac and Potočari. Đurđić stated that “[...] we agreed there today for UNPROFOR/to transport/them from Potočari to

1286. The conversation between **Beara** and Cerović was nearly simultaneously recorded in the Zvornik Brigade duty officer notebook on 16 July at 11:15 a.m., which reads: “It was reported from Zlatar that a triage of wounded and prisoners must be carried out. It was reported to (**Beara**)”.⁴²⁴³ On that day, Trbić was the Zvornik Brigade Duty Officer.⁴²⁴⁴

1287. At around noon on 16 July, **Beara** and **Popović** arrived at the Kula School.⁴²⁴⁵ A van containing about ten or twelve soldiers arrived subsequently and the van was followed by an empty bus.⁴²⁴⁶

1288. Early in the morning of 17 July 1995, Pandurević spoke with Obrenović.⁴²⁴⁷ Obrenović said that Trbić, who was the duty officer, told him that **Beara** had been in the area of Pilica and Ročević and “was in charge of that business”—the accommodation and execution of the prisoners in the schools in Pilica and Ročević.⁴²⁴⁸

(iii) The Žepa Enclave

1289. A few days before the fall of Grahovo and Glamoč on 27 and 28 July 1995 **Beara** visited and stayed in the 2nd Krajina Corps zone of responsibility, for one day.⁴²⁴⁹

1290. During the Žepa operation, which began on 14 July and lasted for 15 to 16 days,⁴²⁵⁰ only one witness, PW-109, testified that he saw **Beara** in person. PW-109 stated that he saw **Beara** only once during the Žepa operation⁴²⁵¹ “at a UN checkpoint” in Žepa towards the end of the operation.⁴²⁵²

1291. Three intercept conversations involving **Beara** were transcribed on 1 August 1995. On 1 August at 10:02 a.m., first “Stevo”, who identifies himself as **Beara**’s subordinate, and then

Bratunac to a designated place and then from there to take the shortest road to Ljubovija along the right bank. And where will the selection and triage be done to see who goes to Belgrade and who to Tuzla [...]”, **Beara** argues that the word triage on Ex. P01187a “relates to the type of selection customarily utilized when discussing the sick and wounded” and thus the Prosecution’s submission that this word relates to execution is “not the most reasonable conclusion.”, *Beara* Final Brief, para. 310. In the Trial Chamber’s view, these two intercepted communications relate to different matters and locations and it cannot be concluded that by analogy the content in Ex. P01187a should be interpreted in the same way as Ex. P01200a. *See also infra*, para. 1793.

⁴²⁴³ Ex. P00377, “Zvornik Brigade Duty Officer Log Book, 29 May 1995 to 27 July 1995”, p. 146. Zlatar is the Drina Corps Command.

⁴²⁴⁴ *See* Ex. P01204a, “Intercept, 16 July 1995, 22:33 hours”.

⁴²⁴⁵ Slavko Perić, T. 11414 (11 May 2007).

⁴²⁴⁶ *Ibid.*, T. 11409–11410 (11 May 2007).

⁴²⁴⁷ Vinko Pandurević, T. 31083–31084 (9 Feb 2009).

⁴²⁴⁸ *Ibid.*

⁴²⁴⁹ Mikajlo Mitrović, T. 25057–25058, 25065 (2 Sept 2008).

⁴²⁵⁰ PW-109, T. 14601 (closed session) (31 Aug 2007).

⁴²⁵¹ *Ibid.*, T. 14603–14604 (closed session) (31 Aug 2007).

Beara, spoke to Jevtić, a Serbian army (“VJ”) officer.⁴²⁵³ Jevtić told Stevo and **Beara** that the VJ and the Serbian MUP had caught Bosnian Muslim men, and handed them over to the RS.⁴²⁵⁴ **Beara** told Jevtić that he would go to see him, adding that “we’ll try to do something” but he did not “want to talk about it on the phone”.⁴²⁵⁵ At 10:45 p.m. on that evening, **Beara** spoke to Stevo.⁴²⁵⁶ **Beara** stated that he was in Serbia with regard to “parcels”.⁴²⁵⁷ **Beara** said that representatives of ICRC and UNHCR filmed a “pile of parcels” to be shown on TV. **Beara** and “Stevo” discussed the difficulties of preventing Muslims from fleeing across the river. **Beara** remarked that there were “no plans to kill them, [...] but to exchange them”.⁴²⁵⁸ About 20 minutes later, “Stevo” again spoke with **Beara**, stating that he “just called the boss”.⁴²⁵⁹ Stevo told **Beara** about drafting a request to the Serbian authorities. **Beara** responded that the Serbian authorities said he came to Serbia for nothing because “the order” regarding the Bosnian Muslims had come “from the highest”.⁴²⁶⁰

1292. On 2 August 1995, at 1 p.m., **Popović** informed Krstić that, since their earlier conversation, he had received a call from **Beara** and said that **Beara** had reported to **Miletić** that “there are about 500–600 of them over there”.⁴²⁶¹

1293. On 16 August 1995, **Beara** sent a report to the RS military court and prosecutors, informing them that a VRS investigation team would interrogate POWs from the “Baliće enclave of Žepa” held in Serbia in order to document crimes against humanity and war crimes.⁴²⁶² This documentation would, **Beara** explains, enable the team to request a handover of the POWs to the VRS.⁴²⁶³

(iv) Reburial Operation

1294. **Beara**’s involvement in the reburial operation was addressed in both the Prosecution’s Pre-Trial Brief and Final Brief.⁴²⁶⁴ The Prosecution conceded, in response to the Trial Chamber’s

⁴²⁵² PW-109, T. 14604 (closed session) (31 Aug 2007). PW-109 knew **Beara** at the time. *Ibid.*, T. 14603 (closed session) (31 Aug 2007). **Beara** challenged PW-109’s testimony because it was not corroborated. *Beara* Closing Arguments, T. 34454–34455 (8 Sept 2009). The Trial Chamber accepts PW-109’s account as honest and credible.

⁴²⁵³ Ex. P01378a (confidential). *See supra*, para. 735.

⁴²⁵⁴ Ex. P01378a (confidential).

⁴²⁵⁵ *Ibid.*

⁴²⁵⁶ Ex. P01380a (confidential). *See supra*, para. 735.

⁴²⁵⁷ Ex. P01380a (confidential).

⁴²⁵⁸ *Ibid.*

⁴²⁵⁹ Ex. P01381a (confidential). *See supra*, para. 735.

⁴²⁶⁰ Ex. P01381a (confidential) (**Beara** decides that he will send a request the following day to have the Serbian authorities provide him with a list of those caught and turn those individuals over to the VRS, with a UNPROFOR escort if necessary, in order to exchange for captured Serbs).

⁴²⁶¹ Ex. P01395g, “Intercept, 2 August 1995, 13:00 hours”. *See supra*, paras. 735, 1157.

⁴²⁶² Ex. P00539, “VRS Main Staff Security Administration Report, signed by Ljubiša Beara, 16 August 1995”.

⁴²⁶³ *Ibid.*

⁴²⁶⁴ Prosecution Pre-Trial Brief, para. 302; Prosecution Final Brief, paras. 2282–2283.

request for clarification during the closing arguments with respect to **Beara**'s involvement in the reburial operation, that there was nothing in the Indictment suggesting that **Beara** had participated in the reburials and submitted that he therefore "cannot be held responsible under the Indictment for that".⁴²⁶⁵ The Trial Chamber will therefore not consider any evidence adduced during the trial with respect to **Beara**'s involvement in the reburial operation.⁴²⁶⁶

(d) Findings

1295. While specific references are provided below in relation to the findings, the Trial Chamber notes that these findings are based upon all the relevant evidence.

(i) Participation in Two Joint Criminal Enterprises

1296. The centrepiece of the Prosecution's case against **Beara** is his commission of crimes through participation in two joint criminal enterprises, as outlined in the Indictment. The Trial Chamber will therefore begin with an examination of **Beara**'s alleged participation in these joint criminal enterprises.

a. The Joint Criminal Enterprise to Murder

i. First Category Joint Criminal Enterprise

1297. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.⁴²⁶⁷ The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Chamber will now turn to the third element: participation of the accused in the common purpose.

1298. The Trial Chamber recalls that in order for **Beara** to incur liability pursuant to the first category of joint criminal enterprise, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Beara** must have significantly contributed to the common purpose and have shared with other members of the JCE to Murder the intent to carry out the common purpose.

⁴²⁶⁵ Prosecution Closing Arguments, T. 34287 (4 Sept 2009), T. 34321 (7 Sept 2009).

⁴²⁶⁶ *See ibid.*, T. 34321 (7 Sept 2009).

⁴²⁶⁷ *See supra*, para. 1072.

1299. By the morning of 12 July, the plan to murder had been formulated and the Security Branch of the VRS had been tasked with a central coordinating role in the implementation of that plan.⁴²⁶⁸ The Trial Chamber notes there is no direct evidence before it of **Beara**'s participation in the murder operation prior to 13 July.⁴²⁶⁹ However, there is clear evidence before the Trial Chamber that as of the morning of 12 July, **Popović**, **Beara**'s subordinate in the Security Branch, was aware of the plan to murder as were Momir Nikolić and Kosorić.⁴²⁷⁰ In addition, the Trial Chamber has found that the orders with respect to this operation were given by Mladić.⁴²⁷¹ In these circumstances, and given his responsibilities as Chief of Security for the VRS Main Staff, the subordinate relationship of **Popović** to him and the role played by members of the Security Branch from the beginning, the Trial Chamber is satisfied that by the morning of 12 July, **Beara** was aware of and implicated in the plan to murder.⁴²⁷² The evidence is clear that from that point onward, **Beara** played a key role in orchestrating the murder operation by planning, coordinating and overseeing the detention, transportation, execution and burial of the able-bodied Bosnian Muslim males.⁴²⁷³

1300. The first evidenced act on the part of **Beara** illustrates well the pivotal and high level role he played in the murder operation. He arrives on 13 July at the offices of the President of the Bratunac SDS with orders "from the top" to kill all the Bosnian Muslim males housed in and around Bratunac.⁴²⁷⁴ His appearance there came shortly after Deronjić had been discussing the prisoners with Karadžić and a call was to be made on that very subject between Karadžić and Mladić.⁴²⁷⁵ From there, **Beara** makes multiple contributions to the common plan, guiding and directing implementation at all phases. His reach extends across various components of the VRS and to relevant civilian authorities.⁴²⁷⁶ He is implicated in identifying locations, in securing personnel and equipment and in overseeing the effective execution of the plan at the individual killing sites.⁴²⁷⁷ As tellingly noted in the Zvornik Brigade Duty Officers notebook: "Beara is coming [in the following] order to Orovc [namely, Orahovac] Petkovci Ročević Pilica".⁴²⁷⁸ He interacts and meets with other

⁴²⁶⁸ See *supra*, paras. 1051–1072.

⁴²⁶⁹ See *supra*, paras. 1251–1256.

⁴²⁷⁰ See *supra*, paras. 1051–1052.

⁴²⁷¹ See *supra*, paras. 1051–1072.

⁴²⁷² See *supra*, paras. 1204–1206.

⁴²⁷³ See *supra*, paras. 1253–1258, 1262–1268, 1271.

⁴²⁷⁴ See *supra*, para. 1264.

⁴²⁷⁵ *Ibid.*

⁴²⁷⁶ See *supra*, para. 1271.

⁴²⁷⁷ *Ibid.*

⁴²⁷⁸ Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995", p. 128. See *supra*, para. 1272.

participants in the killing operation including **Popović** and Drago **Nikolić**,⁴²⁷⁹ and he is omnipresent in the Zvornik area—the scene of mass killings.⁴²⁸⁰

1301. Throughout the critical period of 13–16 July, the evidence demonstrates **Beara**’s overarching responsibility for and participation in the killing operation carried out in pursuance of the common purpose to murder the able-bodied Bosnian Muslim males.⁴²⁸¹ His contribution to the common purpose cannot be classified as anything other than significant and by his actions and words there can be no doubt that he shared the intent to murder on a massive scale.

1302. Based on the abundant evidence before it, the Trial Chamber is satisfied beyond reasonable doubt that **Beara** made a significant contribution to the JCE to Murder and he shared the intent to carry out the common purpose. The Trial Chamber therefore finds that **Beara** was a participant in the JCE to Murder.

ii. Third Category Joint Criminal Enterprise

1303. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Beara** that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Murder.⁴²⁸² The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.⁴²⁸³ The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.⁴²⁸⁴

1304. The Trial Chamber recalls its finding above that **Beara** was an active participant in the JCE to Murder. The operation occurred in a time of chaos and involved soldiers with personal revenge motivations.⁴²⁸⁵ A huge number of men were transported and detained with intent to murder. The Trial Chamber finds that it was foreseeable to **Beara** that the “opportunistic” killings would occur in addition to the large-scale executions and those “opportunistic” killings were a probable consequence of the JCE to Murder. When he participated in the JCE to Murder, **Beara** willingly took this risk.

⁴²⁷⁹ See *supra*, para. 1272.

⁴²⁸⁰ See *supra*, paras. 1272–1288. There were four locations where large-scale executions took place in the Zvornik area between 14 and 16 July 1995 (Orahovac, Petkovci, Ročević/Kozluk and Pilica). See *supra*, paras. 1227, 1249, 1266.

⁴²⁸¹ See *supra*, paras. 1286–1287.

⁴²⁸² Indictment, para. 31. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

⁴²⁸³ See *supra*, Chapter III, Sections E.7(b), F.6(b)(v), G.3(b).

⁴²⁸⁴ See *supra*, Chapter III, Section E.6(b); see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

⁴²⁸⁵ See *supra*, Chapter V, Section B.1.

b. The Joint Criminal Enterprise to Forcibly Remove

1305. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.⁴²⁸⁶

1306. Directive 7 and its objective, namely, to “create an unbearable situation of total insecurity, with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”,⁴²⁸⁷ was implemented through two orders known as *Krivaja-95*⁴²⁸⁸ issued on 2 July 1995 by Živanović. These orders refer expressly to Directives 7 and 7/1 (which was issued on 31 March 1995 in the name of Mladić). The *Krivaja-95* combat order specifically instructs the Drina Corps Brigades “by a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”.⁴²⁸⁹ A copy of the combat order was sent to the Main Staff on 2 July 1995. Considering his position as Chief of Security of the VRS Main Staff, the Trial Chamber finds that **Beara** was aware of Directives 7 and 7/1 and “*Krivaja-95*”.

1307. The only evidence which places **Beara** physically in Potočari is the interview of **Borovčanin** who stated that he saw **Beara** “in the area towards Potočari” on 12 July.⁴²⁹⁰ This evidence, on its own, is insufficient to infer that **Beara** knew about the forcible transfer of the Bosnian Muslim women, children and elderly from Srebrenica. However, throughout the day on 12 July, **Popović**, **Beara**’s subordinate in the Security Branch, knew that it was intended that all the Bosnian Muslim women and children then in Potočari were to be forcibly transferred from Srebrenica.⁴²⁹¹ Further, on 13 July, the VRS soldiers captured five DutchBat officers who were trying to escort convoys of the Bosnian Muslim women, children and elderly from Potočari to ABiH-held territory, and detained the officers in a school building close to the Nova Kasaba Football Field.⁴²⁹² When Egbers complained about the detention to Malinić, he was informed that the DutchBat officers could not leave before **Beara**’s return, as their safety could not be guaranteed.⁴²⁹³ Moreover, during the conversation with Čelanović about the transportation of the prisoners on the vehicles out of Bratunac that evening, **Beara** stated that they would have to wait

⁴²⁸⁶ See *supra*, Chapter V, Section B.2.

⁴²⁸⁷ See *supra*, para. 199.

⁴²⁸⁸ Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”.

⁴²⁸⁹ Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

⁴²⁹⁰ See *supra*, para. 1255.

⁴²⁹¹ See *supra*, paras. 1099, 1166.

⁴²⁹² See *supra*, para. 1260.

⁴²⁹³ *Ibid.*

until the other vehicles that had transported the women and children had returned.⁴²⁹⁴ In these combined circumstances, the Trial Chamber therefore finds that **Beara** knew that it was intended that all the Bosnian Muslim woman, children and elderly in Potočari were to be forcibly transferred from the Srebrenica enclave.

1308. However, in order to establish beyond reasonable doubt that **Beara** was a member of the JCE to Forcibly Remove the Bosnian Muslim women, children and elderly it must be demonstrated that he made a significant contribution to the execution of the plan to forcibly remove. While there is evidence of **Beara**'s awareness of the operation, there is a paucity of evidence concerning any action taken by him in support of this goal. The Trial Chamber is therefore of the view that the evidence is insufficient to establish that **Beara** made a *significant* contribution to the JCE, and thus his actions in relation to the population in Srebrenica do not indicate that he was a participant in the JCE to Forcibly Remove.⁴²⁹⁵

1309. Further, the Trial Chamber finds that **Beara** did not contribute to the forcible transfer of the Bosnian Muslim population of Žepa. The only evidence of his involvement in the Žepa area consists of some intercepts transcribed between 1 and 2 August 1995 and a report dated 16 August 1995, in which he is making efforts to bring back to the RS the Bosnian Muslim men from Žepa who had crossed the Drina River to Serbia.⁴²⁹⁶ The Trial Chamber considers this evidence, in and of itself, insufficient to establish that **Beara** made a significant contribution to the JCE to Forcibly Remove with respect to Žepa. Although, as stated above, **Beara** knew the full extent of the plan to forcibly remove, *i.e.* that the plan involved the Bosnian Muslim population of Žepa as well as Srebrenica, there is insufficient evidence to establish that he significantly contributed to either aspect of the operation. Therefore, it has not been established that **Beara** was a participant in the JCE to Forcibly Remove.

(ii) Count 1: Genocide

1310. The Trial Chamber has found that **Beara** was a participant in the JCE to Murder.⁴²⁹⁷ He therefore committed the underlying act of killing members of the group, and through this killing, inflicted serious bodily and mental harm on the families of the victims and the survivors of the executions, as articulated in Article 4(2)(a) and (b) of the Statute. The Trial Chamber will now focus upon whether **Beara** carried out these underlying acts with genocidal intent.

⁴²⁹⁴ See *supra*, para. 1260.

⁴²⁹⁵ See *supra*, para. 1027.

⁴²⁹⁶ See *supra*, paras. 1291–1293.

⁴²⁹⁷ See *supra*, para. 1302.

1311. There is no direct explicit evidence that **Beara** had the requisite specific intent for genocide. Therefore, the Trial Chamber must look at all of the surrounding circumstances, including **Beara**'s words and acts, as well as the inferences to be drawn, to determine whether genocidal intent has been established.

1312. The Prosecution submitted that **Beara**'s genocidal intent is evidenced by the existence of a genocidal plan and his central involvement in it.⁴²⁹⁸ The Trial Chamber has found below that **Beara** acted with the specific intent to discriminate on political, racial or religious grounds.⁴²⁹⁹ However, a finding that **Beara** participated in the killing operation with the specific intent to discriminate is not on its own sufficient to establish the specific intent for genocide, namely the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".⁴³⁰⁰ The Trial Chamber recalls that the words "as such" here underscore that something more than discriminatory intent is required for genocide, that the intent must be "to destroy the group as a separate and distinct entity" and that the ultimate victim of the crime of genocide is the group.⁴³⁰¹ Similar to **Popović**, his use of derogatory language such as the term "balija" is in no way determinative of his alleged specific intent to commit genocide, although it is relevant to it.⁴³⁰²

1313. Far more telling are the inferences which can be drawn from his detailed knowledge of the killing operation itself and **Beara**'s high level and far reaching participation in it. As the most senior officer of the Security Branch—the entity charged with a central directing role—he had perhaps the clearest overall picture of the massive scale and scope of the killing operation. Further, from his walk through Bratunac on the night of 13 July, his personal visits to the various execution sights and the extensive logistical challenges he faced throughout,⁴³⁰³ he had a very personal view of the staggering number of victims destined for execution.

1314. Steeped in knowledge, **Beara** became a driving force behind the murder enterprise. His vigorous efforts to organise locations and sites, recruit personnel, secure equipment and oversee executions⁴³⁰⁴ all evidence his grim determination to kill as many as possible as quickly as possible. His encounters with Deronjić on the night of 13 July provide a chilling illustration of a mind set on destruction.⁴³⁰⁵ He announces an intent to "kill all" the detained men, and without pause to

⁴²⁹⁸ Prosecution Final Brief, paras. 2303–2303.

⁴²⁹⁹ See *infra*, para. 1331.

⁴³⁰⁰ Art. 4(2) of the Statute.

⁴³⁰¹ See *supra*, para. 821.

⁴³⁰² **Beara** is intercepted talking with Lučić, the Deputy Commander of the Military Police Battalion of the 65th Protection Regiment that "400 Balijas have shown up in Konjević Polje". Ex. P01130a, "Intercept, 13 July 1995, 10:09 a.m." See *supra*, para. 1257.

⁴³⁰³ See *supra*, paras. 407, 1256–1257, 1260–1262, 1264, 1272–1275, 1278, 1281–1283.

⁴³⁰⁴ See *supra*, para. 1271.

⁴³⁰⁵ See *supra*, para. 1264.

consider or comment upon the horrific nature of his “orders” he launches into a series of heated exchanges about the best location for this reprehensible undertaking.⁴³⁰⁶

1315. **Beara**’s own words provide further evidence of his intent. He stated on 13 July:

Shove them all on the playground, who gives a fuck about them.

You mean they are doing it amongst themselves [killing themselves]? Well, excellent. Just let them continue. Fuck it.⁴³⁰⁷

Beara further stated on 14 July:

We have a lot of prisoners and it is very hard for us to control them. They are at various locations in the Zvornik municipality. We have to get rid of them. I expect some assistance from the municipality.⁴³⁰⁸

1316. And there are his striking words to Krstić as he implores him for more men to carry out this nefarious crime: “I don’t know what to do. I mean it Krle. There are still 3500 ‘parcels’ that I have to distribute and I have no solution.”⁴³⁰⁹ These words capture clearly and succinctly the state of mind of a man bent on destroying a group by killing all the members of it within his reach.

1317. From his knowledge, his actions and his words, the Trial Chamber is satisfied beyond reasonable doubt of **Beara**’s genocidal intent.

1318. The factors which the Trial Chamber finds to be decisive in finding that **Beara** had the requisite specific intent for genocide are the scale and scope of the killing operation carried out with his knowledge, pursuant to his instructions and under his supervision, his extensive and forceful participation in all components of the killing operation, his demonstrated determination to kill as many as possible and his vital contribution in overcoming hurdles and challenges to effective implementation. Further, the systematic, exclusive targeting of Bosnian Muslims, the repetition by **Beara** of destructive and discriminatory acts and his words all evidence his genocidal intent.⁴³¹⁰ Further, his participation in these killings with knowledge that they would contribute to the destruction of the group also demonstrates his genocidal intent. Accordingly, the Trial Chamber is satisfied beyond reasonable doubt that **Beara** participated in the JCE to Murder with genocidal intent. He is therefore guilty of genocide.

⁴³⁰⁶ See *supra*, para. 1264.

⁴³⁰⁷ Ex. P01130a, “Intercept, 13 July 1995, 10:09 a.m.”

⁴³⁰⁸ PW-104, T. 7942 (28 Feb 2007); see also *supra*, para. 1278.

⁴³⁰⁹ See *supra*, para. 1282.

⁴³¹⁰ *Jelisić* Appeal Judgement, para. 47.

1319. The Prosecution alleges that **Beara** “ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴³¹¹ The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of the Bosnian Muslim males from Srebrenica, with genocidal intent. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of genocide through his participation in the JCE to Murder with genocidal intent.

(iii) Count 2: Conspiracy to Commit Genocide

1320. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide;⁴³¹² and to be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.⁴³¹³

1321. As outlined above, **Beara** consciously cooperated with other members of the JCE to Murder, shared in the common purpose and worked towards the realisation of the common goal. The Trial Chamber has also found that **Beara** had the specific intent for genocide.

1322. The *actus reus* of the criminal act of conspiracy to commit genocide is the act of entering into an agreement to commit genocide.⁴³¹⁴ Conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework.⁴³¹⁵ Evidence has already been examined of the coordinated actions and unified framework of those who participated in the operation to murder the able-bodied Bosnian Muslim males from Srebrenica in July 1995, including **Beara**.⁴³¹⁶ Based upon this evidence, the Trial Chamber concludes that **Beara** entered into an agreement to commit genocide, and he himself possessed specific intent to commit genocide. He is therefore criminally responsible for conspiracy to commit genocide.⁴³¹⁷

⁴³¹¹ Indictment, para. 88. *See also* Prosecution Final Brief, para. 2301.

⁴³¹² *See supra*, para. 868.

⁴³¹³ *Ibid.*

⁴³¹⁴ *Nahimana et al.* Appeal Judgement, para. 894; *Kajelijeli* Trial Judgement, para. 788.

⁴³¹⁵ *Nahimana et al.* Trial Judgement, para. 1047.

⁴³¹⁶ *See supra*, paras. 1060–1072, 1299–1302.

⁴³¹⁷ *But see infra*, paras. 2111–2127.

(iv) The Knowledge Requirement for a Crime Under Article 5 of the Statute

1323. **Beara** is only responsible for a crime against humanity under Article 5, if at the time he knew that there was a widespread or systematic attack directed against a civilian population and knew that his crimes comprise part of that attack against this population.⁴³¹⁸

1324. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. As Chief of Security in the VRS Main Staff from 1992, **Beara** had knowledge of the strategic goals of the RS and VRS's leadership to remove the Bosnian Muslim population from Srebrenica and Žepa.⁴³¹⁹ His position required that he had intimate knowledge of Directive 7, Directive 7/1, the *Krivaja-95* Operation, and all orders pursuant to the implementation of Directive 7 that passed to subordinate security organs.⁴³²⁰ From this, the Trial Chamber is satisfied beyond reasonable doubt that **Beara** was well aware of the aim of the illegal purpose of Directive 7, Directive 7/1, as well as *Krivaja-95*, and of the military action against a civilian population. On this basis, the Trial Chamber finds that **Beara** meets the knowledge requirement for the commission of a crime under Article 5 of the Statute.

(v) Count 3: Extermination

1325. The Trial Chamber has found that the large-scale murders of Bosnian Muslim males from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5.⁴³²¹ These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it. **Beara** participated in the JCE to Murder and met the knowledge requirement for a crime against humanity. He is therefore criminally liable for extermination as a crime against humanity.

1326. The Prosecution alleges in the Indictment that **Beara** “committed, ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴³²² The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the extermination of the

⁴³¹⁸ See *supra*, paras. 751, 758.

⁴³¹⁹ Božo Milovanović, T. 12188-12189 (stating that **Beara** regularly attended daily VRS Main Staff meetings). Further **Beara** had first hand knowledge of the military and security situation in the Drina Corps. See Ex. P02741, “Instruction on command and control over the Security and Intelligence organs of the VRS signed by Mladić, 24 October 1994”, paras. 4, 6; Pieter Boering T. 1876–1877, 1902–1904 (19 Sept 2006), 2109–2111, 2121 (25 Sept 2006).

⁴³²⁰ See *supra*, paras. 1200–1206.

⁴³²¹ See *supra*, paras. 802–806.

⁴³²² Indictment, para. 88.

Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of extermination through his participation in the JCE to Murder.

(vi) Counts 4 and 5: Murder

1327. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims initially residing or taking refuge in Srebrenica. The aforementioned killings have been found to constitute murder, both as a crime against humanity and a violation of the laws or customs of war.⁴³²³ The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to murder the able-bodied Bosnian Muslim males from Srebrenica or as a natural and foreseeable consequence of it.⁴³²⁴ **Beara** participated in the JCE to Murder and met the knowledge requirement for murder as a crime against humanity. He also knew that the victims were taking no active part in the hostilities when the murders were committed. He is therefore criminally responsible for murder as a crime against humanity as well as being liable for murder as a violation of the laws or customs of war, both for the murders found to be part of the scope of the JCE to murder and the “opportunistic” killings.⁴³²⁵

1328. The Prosecution alleges that **Beara** “committed, ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴³²⁶ The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of murder through his participation in the JCE to Murder.

(vii) Count 6: Persecution

1329. The Trial Chamber has found that persecution, as a crime against humanity, was committed, *inter alia*, through the murder of thousands of Bosnian Muslim males (including “opportunistic” killings) and cruel and inhumane treatment of males detained in Bratunac and Zvornik.⁴³²⁷ The Trial Chamber has found that these acts fall within the scope of the JCE to Murder, or were a natural and foreseeable consequence of it.⁴³²⁸

⁴³²³ See *supra*, paras. 793–796.

⁴³²⁴ See *supra*, paras. 1050–1082.

⁴³²⁵ See *supra*, paras. 1050–1082. But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–46.

⁴³²⁶ Indictment, para. 88; Prosecution Final Brief, para. 2300.

⁴³²⁷ See *supra*, paras. 990–995.

⁴³²⁸ See *supra*, paras. 1050–1082. See also Indictment, para. 83.

1330. The Trial Chamber has also found that **Beara** was a participant in the JCE to Murder, and through his participation he was responsible for murder on a large scale, including the so-called “opportunistic” killings, the latter being a natural and foreseeable consequence of the JCE to Murder.⁴³²⁹

1331. **Beara** was intercepted using the term “balija” when referring to Bosnian Muslims on 13 July.⁴³³⁰ This term was “mildly derogatory” and its use was inappropriate, although not unusual.⁴³³¹ The Trial Chamber has also heard evidence from witnesses who testified that **Beara** did not display any signs of intolerance towards members of other ethnic groups.⁴³³² The Trial Chamber is of the opinion that **Beara**’s knowledge of the plan to murder a single ethnic group and his willing participation in that plan, and to some limited extent his use of pejorative language about Bosnian Muslims, establishes that he acted with discriminatory intent. On this basis, the Trial Chamber finds that **Beara** participated in the JCE to Murder with the specific intent to discriminate on political, racial or religious grounds. He thereby committed persecution as a crime against humanity through murder and cruel and inhumane treatment committed by his participation in the JCE to Murder.

1332. For an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the Prosecution needs to establish that it was reasonably foreseeable to the accused that the extended crime would be committed and that it would be committed with the required specific intent.⁴³³³ The Trial Chamber is satisfied that it was foreseeable to **Beara** that the “opportunistic” killings would be carried out with persecutory intent. By participating in the JCE to Murder, **Beara** willingly took this risk. He is therefore responsible, through his participation in the JCE to Murder, for persecution as a crime against humanity through “opportunistic” killings under the third category JCE.⁴³³⁴

1333. The Prosecution alleges that **Beara** “committed, ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴³³⁵ The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the persecution of the Bosnian Muslim males from

⁴³²⁹ See *supra*, paras. 1301–1302.

⁴³³⁰ Ex. P01130a, “Intercept, 13 July 1995, 10:09 hours”.

⁴³³¹ See *supra*, para. 1193.

⁴³³² See 2DPW-19, T. 25633–23635, 25640 (11 Sept 2008); Mikajlo Mitrović, T. 25042, 25044, 25054 (2 Sept 2008); Milan Alaica, T. 24809, 24811–24812 (28 Aug 2008); Alajica Bosko, Ex. 2D00665, “92 *bis* statement” (15 June 2008), p. 2; Slobodan Makivić, Ex. 2D00658, “92 *bis* statement” (27 Mar 2008), p. 4; Dragan Beara, Ex. 2D00661, “92 *bis* statement” (15 Mar 2008), p. 1; Marina Beara, Ex. 2D00662, “92 *bis* statement” (15 Mar 2008), p. 1; Mirsad Tokić, Ex. 2D00655, “92 *bis* statement” (11 Apr 2007), p. 1; Rajko Jelusić, Ex. 2D00652, “92 *bis* statement” (14 Dec 2006), p. 2.

⁴³³³ See *supra*, paras. 1030–1031.

⁴³³⁴ See *supra*, para. 1302. *But see* Judge Kwon’s Dissenting Option, *infra*, paras. 40–46.

Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of the crime of persecution as a crime against humanity through murder and cruel and inhumane treatment committed as part of participation in the JCE to Murder with discriminatory intent.

(viii) Count 7: Inhumane Acts (Forcible Transfer)

1334. The Trial Chamber has found that while **Beara** knew of the common plan to forcibly remove the Bosnian Muslim population, he did not make a significant contribution to it.⁴³³⁶ Similarly, the evidence is insufficient to establish that he aided and abetted forcible transfer in either Srebrenica or Žepa, nor does it demonstrate that he is responsible for forcible transfer through another mode of liability. The Trial Chamber therefore finds that **Beara** is not criminally responsible for forcible transfer as a crime against humanity.

(ix) Count 8: Deportation

1335. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute the crime of deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Beara** is not criminally responsible for deportation as a crime against humanity.

⁴³³⁵ Indictment, para. 88; Prosecution Final Brief, para. 2300.

⁴³³⁶ *See supra*, paras. 1307, 1309.

5. Drago Nikolić

(a) The Case against Nikolić

1336. The Prosecution alleges that **Nikolić** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.⁴³³⁷ Specifically, the Prosecution alleges that **Nikolić** was a member of a joint criminal enterprise to summarily execute the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).⁴³³⁸

(b) Position and Function

(i) Authority as Chief of Security of the Zvornik Brigade

1337. In July 1995, **Nikolić** was the Chief of Security in the Zvornik Brigade,⁴³³⁹ and he held the rank of Second Lieutenant in the VRS.⁴³⁴⁰ The work of the Zvornik Brigade Security Organ is described in more detail in another section of this Judgment.⁴³⁴¹

1338. **Nikolić** was subordinate to the Zvornik Brigade Commander **Pandurević** (subordination line), but for security matters, he was subordinate to the Assistant Commander for Security of the Drina Corps, **Vujadin Popović** (specialty line).⁴³⁴² **Nikolić** was not obliged to inform the Brigade

⁴³³⁷ Indictment, paras. 26–37, 42, 45–74, 80, 83–84, 88. **Nikolić** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

⁴³³⁸ Indictment, paras. 42, 80.

⁴³³⁹ PW-142, T. 6440–6441 (private session) (29 Jan 2007); PW-143, T. 6526 (private session) (30 Jan 2007); Lazar Ristić, T. 10036 (16 Apr 2007), T. 10123, 10183 (17 Apr 2007); Nebojša Jeremić, T. 10418, 10447 (24 Apr 2007); Milorad Birčaković, T. 11011 (7 May 2007); Miodrag Dragutinović, T. 12562 (13 June 2007); Srećko Aćimović, T. 12931–12932 (20 June 2007), T. 13041 (21 June 2007), T. 13066–13067 (22 June 2007); Dragoje Ivanović, T. 14538 (30 Aug 2007); Sreten Milošević, T. 33960 (15 July 2009); Stevo Kostić, T. 25988 (22 Sept 2008); PW-168, T. 15753, 15760 (closed session) (25 Sept 2007).

⁴³⁴⁰ Ex. P00373, “Details of professional serviceman, Drago Nikolić”.

⁴³⁴¹ See *supra*, Chapter III, Section B.1(c).

⁴³⁴² PW-168, T. 15758, 15767–15768 (closed session) (25 Sept 2007), T. 16213–16215 (closed session) (11 Oct 2007). “The security and intelligence organs are directly commanded by the commander of the unit or institution of which they form part, but with regard to professional activities they are controlled centrally by the security and intelligence organs of the superior command. This indicates their full independence in the implementation of intelligence and counter-intelligence tasks and operative combinations [...]”. Ex. P02741 “Instruction on command and control over the Security and Intelligence organs of the VRS from the Main Staff of the VRS, signed by Ratko Mladić, 24 October 1994”, para. 2.

Commander **Pandurević** on matters of security.⁴³⁴³ However, **Nikolić** was duty-bound to provide **Pandurević** with information regarding anything that could endanger the Zvornik Brigade and advise him on measures that could be taken to remove that danger.⁴³⁴⁴

1339. When sending official correspondence to his superior organ in the Drina Corps, he did not have to seek clearance from the Brigade Commander, unlike all others in the Brigade.⁴³⁴⁵ All correspondence that arrived at the Brigade that was addressed to the Chief of Security, or to **Nikolić** personally, was treated as confidential; the Brigade Commander was not entitled to look into that correspondence.⁴³⁴⁶ **Nikolić** had a vehicle and a driver at his disposal.⁴³⁴⁷ That vehicle was not attached to the Brigade Headquarters, but was given to him by the “superior” Security Organ.⁴³⁴⁸

1340. The Chief of Security enjoyed further privileges within the Brigade. **Nikolić** was entitled to use the teleprinter station, which was the only method of communicating with the “superior” Security Organ.⁴³⁴⁹ No one else in the Brigade could do that without the express approval of the Brigade Commander.⁴³⁵⁰ Lastly, the Chief of Security was not obliged to serve as Duty Officer.⁴³⁵¹

1341. In the winter of 1994, **Pandurević** tried to level the privileges of **Nikolić** with those of the other Assistant Commanders in the Brigade. Specifically, **Pandurević** had ordered that every outside communication with other security organs would have to be disclosed and approved by **Pandurević**, that **Nikolić**’s vehicle should be attached to the Zvornik Brigade’s headquarters, and that he was not allowed to use encryption any longer and that he also had to serve as a duty officer.⁴³⁵² **Pandurević** also ordered **Nikolić** to include a section on the Security Organ in the daily combat reports that the Zvornik Brigade sent to the higher command, which **Nikolić** refused.⁴³⁵³

1342. Soon after this order from **Pandurević**, the Drina Corps Command, copying Mladić’s instructions on command and control of security organs, issued an order setting out the privileges of the Chief of Security.⁴³⁵⁴ Pursuant to this order, **Pandurević** had to revoke his order removing

⁴³⁴³ PW-168, T. 16237–16238 (closed session) (11 Oct 2007).

⁴³⁴⁴ *Ibid.*, T. 15768 (closed session) (25 Sept 2007).

⁴³⁴⁵ *Ibid.*

⁴³⁴⁶ *Ibid.*, T. 15762 (closed session) (25 Sept 2007).

⁴³⁴⁷ *Ibid.*, T. 15761 (closed session) (25 Sept 2007), T. 16234 (closed session) (11 Oct 2007); Ex. P00904, “Vehicle work log for Opel Rekord P-4528”. In July 1995, **Nikolić** had an olive-drab green Opel Station Wagon that he used at his own discretion. Vinko Pandurević, T. 32395 (3 Mar 2009).

⁴³⁴⁸ PW-168, T. 15761 (closed session) (25 Sept 2007) (testifying that it was the “superior organ” through which **Nikolić** acquired his own vehicle, which in this context appears to be the Drina Corps.)

⁴³⁴⁹ PW-168, T. 15762 (closed session) (25 Sept 2007).

⁴³⁵⁰ *Ibid.*

⁴³⁵¹ *Ibid.*, T. 15762 (closed session) (25 Sept 2007), T. 17053 (closed session) (29 Oct 2007).

⁴³⁵² PW-168, T. 15762–15765 (closed session) (25 Sept 2007), T. 17053 (closed session) (29 Oct 2007). *See also* Vinko Pandurević, T. 30779–30780 (28 Jan 2009), T. 31346 (12 Feb 2009).

⁴³⁵³ Miodrag Dragutinović, T. 12563 (13 June 2007).

⁴³⁵⁴ *See supra*, para. 124, fn. 301.

Nikolić's privileges. However, **Nikolić's** exemption from service as a duty officer was not reinstated.⁴³⁵⁵

(ii) The Security Organ and the Military Police of the Zvornik Brigade

1343. As discussed in more detail above,⁴³⁵⁶ the Zvornik Brigade Military Police was under the command and control of the Zvornik Brigade Commander.⁴³⁵⁷ The Commander of the Zvornik Brigade Military Police was Miomir Jasikovac.⁴³⁵⁸ He would advise Brigade Commander **Pandurević** on the use of the Military Police “for certain purposes, for certain operations in terms of their number”.⁴³⁵⁹ However, as the Brigade’s Chief of Security, **Nikolić** was the main advisory organ to the Brigade Commander regarding the use of the Military Police.⁴³⁶⁰ In the “subordination line” the Military Police reported to Brigade Commander **Pandurević**;⁴³⁶¹ however, in the “specialty line” or “professional line”, **Nikolić** could give orders directly to the Commander of the Military Police.⁴³⁶²

(c) Acts and Whereabouts

(i) 12 July 1995

1344. **Nikolić** was seen in and around the Standard Barracks during the days following the fall of Srebrenica on 11 July.⁴³⁶³ In the morning of 12 July, the Zvornik Brigade Command received an order from the Drina Corps Command to send a traffic squad of about four to five Military Policemen to Konjević Polje to regulate the traffic giving priority to buses from Srebrenica and to take over the Konjević Polje junction at 4:30 p.m.⁴³⁶⁴ PW-168 testified that either the Duty Officer or **Nikolić** carried out the order by sending a small passenger vehicle with four or five Military

⁴³⁵⁵ PW-168, T. 15765–15766 (closed session) (25 Sept 2007), T. 16218 (closed session) (11 Oct 2007). Cf. Miodrag Dragutinović, T. 12563–12564 (13 June 2007).

⁴³⁵⁶ See *supra*, Chapter III, Section B.1(c)(iii).

⁴³⁵⁷ Ex. P00707, “Service Regulations of the SFRY Armed Forces Military Police, 1985”, para. 12.

⁴³⁵⁸ Nebojša Jeremić, T. 10418 (24 Apr 2007); Stevo Kostić, T. 25982 (22 Sept 2008).

⁴³⁵⁹ Miodrag Dragutinović, T. 12777 (18 June 2007).

⁴³⁶⁰ *Ibid.*

⁴³⁶¹ *Ibid.*, T. 12567–12571 (13 June 2007), T. 12777 (18 June 2007).

⁴³⁶² PW-168, T. 16239, 16240 (closed session) (11 Oct 2007); Ex. 7D00539, “Organisation of infantry brigade-scheme”. See also Vinko Pandurević, T. 30764 (28 Jan 2009). **Pandurević** added that the military police could not be used in combat without the permission of either the Brigade Commander or the Chief of Staff, except in the case of an emergency. *Ibid.*, T. 31685 (18 Feb 2009).

⁴³⁶³ Nebojša Jeremić, T. 10426 (24 Apr 2007).

⁴³⁶⁴ PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16150–16151 (closed session) (10 Oct 2007), T. 16500 (closed session) (17 Oct 2007); Ex. 7DP00157, “Order from the Command of the Drina Corps signed by Milenko Živanović, 12 July 1995”.

Policemen.⁴³⁶⁵ The Trial Chamber has not drawn any inference from this evidence, as it remains unknown by whom the order was carried out.

(ii) 13 July 1995

1345. On 13 July between 7 and 8 p.m., Dragan Obrenović received a phone call from **Nikolić** who was at the IKM in Kitovnice.⁴³⁶⁶ **Nikolić** told Obrenović that **Popović** had called him that evening. **Popović** had told **Nikolić** to make preparations for a large number of Bosnian Muslim prisoners coming from Bratunac to the “Zvornik sector”,⁴³⁶⁷ and told him that on Mladić’s order they were to be shot.⁴³⁶⁸ **Popović** had also told **Nikolić** that the prisoners would be brought by **Beara** and **Popović** who would “organise this and [...] carry this out”, and requested **Nikolić** to be involved “in this” as well.⁴³⁶⁹ **Nikolić** told Obrenović that “the superior command” was informed about it as was **Pandurević**.⁴³⁷⁰ **Nikolić** also indicated to Obrenović that **Popović** was to “send somebody to convey verbally information concerning this”.⁴³⁷¹ **Nikolić** then asked Obrenović to be relieved of duty at the IKM and insisted that, in order to carry out the task requested of him, he should be “given” the Commander of the Zvornik Brigade’s Military Police Miomir Jasikovac and at least a military police platoon.⁴³⁷² Obrenović authorised **Nikolić** to use a military police squad and released him from his duties at the Zvornik Brigade IKM. Obrenović then ordered Military Police Commander Jasikovac to return from Siroki Put⁴³⁷³ to Zvornik with his Military Police platoon.⁴³⁷⁴ Jasikovac was informed that prisoners would be brought from Bratunac, and that he and a squad of about four or five military policemen should stay in the Standard Barracks and wait for **Nikolić**’s orders.⁴³⁷⁵

1346. **Nikolić** has vigorously challenged the evidence of PW-168 with regard to his account of an alleged conversation between Obrenović and **Nikolić** on the evening of 13 July. He argues that PW-168, motivated by revenge, fabricated this evidence in order to falsely implicate **Nikolić**.⁴³⁷⁶

⁴³⁶⁵ PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16500 (closed session) (17 Oct 2007); Ex. P00322, “Zvornik Brigade regular combat report, 12 July 1995”, p.1 (point 2) (showing that one Military Police squad was sent to Konjević Polje pursuant to the order).

⁴³⁶⁶ PW-168, T. 15830 (closed session) (26 Sept 2007).

⁴³⁶⁷ *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007).

⁴³⁶⁸ *Ibid.*

⁴³⁶⁹ *Ibid.*, T. 15831 (closed session) (26 Sept 2007).

⁴³⁷⁰ *Ibid.*

⁴³⁷¹ *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007).

⁴³⁷² *Ibid.*, T. 15830–15832 (closed session) (26 Sept 2007).

⁴³⁷³ Siroki Put is a hill in the Siroki Polje area. PW-168, T. 15828, 15835 (closed session) (26 Sept 2007).

⁴³⁷⁴ PW-168, T. 15831–15833, 15835–15837 (closed session) (26 Sept 2007).

⁴³⁷⁵ PW-168, T. 15836–15837 (closed session) (26 Sept 2007).

⁴³⁷⁶ [REDACTED]

1347. As previously indicated, the Trial Chamber generally considers PW-168 to be a credible witness.⁴³⁷⁷ However given the length and extent of his testimony, the Trial Chamber has also carefully assessed individual parts of his evidence, taking into account the defence arguments. This is the case with reference to the alleged conversation of 13 July given its significance and the defence challenges to it. The Trial Chamber considers that there are several points regarding this evidence which support its credibility.

1348. [REDACTED]^{4378 4379}

1349. Importantly, key points of PW-168's description of the conversation are corroborated by other evidence. PW-168 says **Nikolić** requested that Obrenović release him from IKM duty and Mihajlo Galić's testimony, as well as the contemporaneous IKM logbook entry that Galić made in the Zvornik Brigade Logbook, evidence that this is what occurred.⁴³⁸⁰

1350. Moreover, PW-168 testified that Obrenović authorised **Nikolić** to use a Military Police unit for this criminal task and he ordered the Zvornik Brigade Military Police Commander Jasikovac and members of the Zvornik Brigade Military Police to await **Nikolić's** orders regarding an assignment to guard prisoners. He testified that later that evening and the next day, **Nikolić**, Jasikovac and some members of his military police squad participated in the preparation of detention sites. This evidence is also corroborated. The tactical intercept notebook records a conversation of 13 July at 20:50 indicating that Dragan Obrenović ordered two Military Police Platoons to come to the Zvornik Brigade Standard Barracks, and that they should wait outside

⁴³⁷⁷ See *supra*, paras. 28–47.

⁴³⁷⁸ [REDACTED]

⁴³⁷⁹ [REDACTED]

⁴³⁸⁰ Subsequent to the request of **Nikolić** to be relieved of duty at the IKM in Kitovnice, Mihajlo Galić was ordered to replace **Nikolić** on 13 July at approximately 10 or 11 p.m. When Galić arrived at the IKM, **Nikolić** had already left. Galić officially took over **Nikolić's** duty at 11 p.m. that evening. A 13 July entry in the IKM logbook in Mihajlo Galić's handwriting provides "I took over duty, unscheduled, from Lieutenant **Drago Nikolić** at 2300 hours." Mihajlo Galić, T. 10498, 10501 (25 Apr 2007); Ex. P00347, "Zvornik Brigade IKM Duty Officer Logbook, 7 July – 5 October 1995", p. 6. Both Mihajlo Galić and PW-168 recognised Galić's handwriting. Mihajlo Galić, T. 10500–10501 (25 Apr 2007); PW-168, T. 15835 (closed session) (26 Sept 2007). The Trial Chamber notes that Dragan Stojkić gave contrary testimony to the effect that Mihajlo Galić did not come to replace **Nikolić** on the evening of 13 July, and that **Nikolić** and he stayed at the IKM until 8.00 a.m. on 14 July 1995. When shown the IKM Logbook with Galić's note that he replaced **Nikolić** on 13 July 1995 at 2300 hours, Dragan Stojkić became very evasive and stated that Galić's entry was "not true". Stojkić also testified that Galić, several years after the events, came to him and tried to convince him that Galić replaced **Nikolić** on the evening of 13 July, to which Stojkić responded that he was lying. The Prosecution presented credible evidence that Stojkić was a member of Tactical Group 1, and that Tactical Group 1 was at Rijeka in the late evening of 13 July and early morning of 14 July 1995. Particularly in light of the IKM Logbook and Mihajlo Galić's evidence confirming his entries therein, and considering that Stojkić was in Rijeka on the evening of 13 July 1995, the Trial Chamber finds that Dragan Stojkić was either mistaken or he was untruthful when he testified that Mihajlo Galić was not at the IKM on the evening of 13 July 1995. Dragan Stojkić, T. 21993–21994, 21999–22000 (9 June 2008); Ex. P00347 "Zvornik Brigade IKM Duty Officer Logbook, 7 July – 5 October 1995"; Prosecution Closing Arguments, T. 31460–34161 (3 Sept 2009) (referring to the evidence of Miodrag Dragutinović, T. 12591–12592 (14 June 2007)). See also

Standard Barracks for further instructions.⁴³⁸¹ Several witnesses corroborate Jasikovac's orders to members of the Zvornik Brigade Military Police Company to go to the Grbavci School in Orahovac and to prepare the school for the arrival of prisoners.⁴³⁸² PW-143 testified that it was **Nikolić** who assigned him and other Military Policemen to spend the night behind the Grbavci School and guard the prisoners.⁴³⁸³ Two witnesses confirmed Miomir Jasikovac's and **Nikolić**'s presence at the Grbavci School on the night of 13 and the morning of 14 July 1995. PW-143 testified that he saw **Nikolić** and Jasikovac at the Grbavci School on the night of 13 July 1995.⁴³⁸⁴ Ivanović testified that he saw **Nikolić** and Jasikovac at the Grbavci School on the early morning of 14 July 1995.⁴³⁸⁵ In addition, there is documentary evidence that corroborates **Nikolić**'s presence at the Grbavci School. The Zvornik Brigade Vehicle Log also corroborates **Nikolić**'s presence⁴³⁸⁶ at the school on 13 July

Ex. P03396, "Tactical Group Command Commander Lt. Colonel Vinko Pandurević" (confirming Stojkić's membership of Tactical Group 1).

⁴³⁸¹ Ex. P02232, "Exhibit P-121/a in Case No. IT-02-60-T - Draft English translations covering 11 to 20 July 1995 - Tactical intercepts notebook", p.3 ("At 20.50 Lovac 1 reported to Lovac that the column was moving below Zlatni kamen. They immediately called and said to round up two more military platoons and to wait in front of Standard. Not to get off the truck and that the Chief will wait for them there"). Dragan Obrenović was referred to by the name of Lovac 1, and the Zvornik Brigade Radio Centre was referred to as Lovac, *see e.g.*, Vinko Pandurević, T. 31039 (3 Feb 2009), T. 31833 (19 Feb 2009), T. 31920 (20 Feb 2009).

⁴³⁸² Dragoje Ivanović, T. 14539–14541 (30 Aug 2007); Stanoje Birčaković, T. 10741–10744, 10764 (1 May 2007); PW-143, T. 6527 (30 Jan 2007). PW-143 initially testified that either **Nikolić** or Miomir Jasikovac issued this order because he would receive orders only from the two of them during this period. PW-143, T. 6527–6528 (private session) (30 Jan 2007). On cross-examination, PW-143 said that he mentioned these two names because he was not sure which one of them issued the order. PW-143, T. 6599 (private session) (30 Jan 2007). PW-143 further stated that the fact that PW-142, another MP member, had stated that Miomir Jasikovac ordered him to go to Orahovac did not help him refresh his memory. *Ibid.*, T. 6600–6601 (private session) (30 Jan 2007). On re-examination, PW-143 stated that he remembered that **Nikolić** gave him the order, which he had also said in a previous statement. PW-143, T. 6611–6612 (private session) (30 Jan 2007). However, two other witnesses indicated that the order was given by Jasikovac. Stevo Kostić stated that on 13 July, Commander Jasikovac sent all available Military Policemen at the Standard Barracks to Orahovac. Stevo Kostić, T. 26003 (22 Sept 2008). Stanoje Birčaković also testified that during the late afternoon or early evening of 13 July 1995, he was lined up, together with others, and was ordered by Company Commander Miomir Jasikovac to go to Orahovac to guard "prisoners of war". Birčaković did not use **Nikolić**'s car to get to Orahovac; he entered a minibus of the Military Police Company. In the minibus there were between 10 and 15 people from the Military Police Company. Stanoje Birčaković, T. 10741–10742, 10743, 10744, 10764, 10765 (1 May 2007). The Trial Chamber accepts that Birčaković went to Orahovac on Jasikovac's order.

⁴³⁸³ PW-143, T. 6533 (30 Jan 2007).

⁴³⁸⁴ *Ibid.*, T. 6532, 6611–6612 (private session) (30 Jan 2007). Having observed the whole of PW-143's testimony, the Trial Chamber rejects **Nikolić**'s argument that PW-143's testimony is "completely unreliable" because he could not remember certain facts regarding the night of 13 July 1995, such as exactly how long he slept during his guard duty or the kind of vehicle that drove him to Orahovac. *See* **Nikolić** Final Brief, para. 1166.

⁴³⁸⁵ Dragoje Ivanović, T. 14544 (30 Aug 2007). Ivanović further testified that **Nikolić**'s arrival was shortly followed by the arrival of 20 to 30 soldiers. Dragoje Ivanović, T. 14544 (30 Aug 2007). The evidence of Ivanović that **Nikolić** "came" at around 8 a.m., does not affect the Trial Chamber's finding that **Nikolić** was present at Grbavci School during the night of 13 July 1995, nor does it affect the credibility of PW-143's evidence that he saw **Nikolić** on the night of 13 July 1995.

⁴³⁸⁶ The vehicle log for **Nikolić**'s Opel Rekord provides for 13 July: "Standard, IKM, Zvornik local; Orahovac–Zvor–Orahovac, Standard–Bratunac–Orahovac." Ex. P00904, "Vehicle log for Opel Rekord, P-4528". When shown the logbook, **Nikolić**'s driver Milorad Birčaković said he did not remember going to Orahovac on 13 July 1995, Milorad Birčaković, T. 11054 (7 May 2007). He also testified that, generally, the logbook was not always accurate. *Ibid.*, T. 11052–11053 (7 May 2007). Birčaković's evidence does not affect the Trial Chamber's finding regarding **Nikolić**'s presence at Orahovac on 13 July 1995.

1995, and the Transport Service Log corroborates the presence of the Military Police at Orahovac during the late evening of 13 July and the morning of 14 July.⁴³⁸⁷

1351. The role ultimately played by **Nikolić**, Jasikovac and some members of his squad in guarding the prisoners on the night of 13 July and the morning of 14 July further corroborates the conversation between Obrenović and **Nikolić**, and will be discussed below.

1352. [REDACTED]^{4388 4389}

1353. [REDACTED]

1354. Momir Nikolić also testified about events on the night of 13 July 1995 relevant to the evidence of PW-168. On that same evening, Momir Nikolić was told by **Beara** that the Bosnian Muslim prisoners would be detained in the Zvornik area and executed.⁴³⁹⁰ He was instructed by **Beara** to travel to the Zvornik Brigade to convey this information to **Drago Nikolić**. Momir Nikolić went to the Standard Barracks in Zvornik and from there was taken to the IKM where **Drago Nikolić** was serving as Duty Officer on the evening of 13 July 1995.⁴³⁹¹ He passed on the information to **Drago Nikolić** who responded that he would convey **Beara**'s order to his command.⁴³⁹² The Trial Chamber has carefully considered Momir Nikolić's evidence on this point and finds it to be reliable.⁴³⁹³ While the evidence of Momir Nikolić does not correspond to that of PW-168 in all its particulars, the Trial Chamber is satisfied that the core of the evidence of both

⁴³⁸⁷ The Transport Service Log, a log used by the logistics sector to record shipments, also corroborates that there was a Zvornik Brigade Military Police presence at Orahovac during the late evening of 13 July or as early as 1 a.m. on 14 July. Sreten Milošević, T. 34013–31015 (15 July 2009); Ex. P00289, "Log book Kp-6 of transport service detailing vehicle movements, 2 Dec 1994 to 31 Dec 1995", p. 8. Although the Transport Service Log only mentions the word "police", read in conjunction with the Zvornik Brigade Military Police attendance roster and considered with the evidence of PW-143, Dragoje Ivanović and Stevo Kostić, the Trial Chamber concludes that the Transport Log referred to members of the Military Police. Stevo Kostić admitted to having altered the Zvornik Brigade Military Police attendance roster to indicate that members of the Military Police had not been at Orahovac, when in fact they had been there. For certain Military Police members, Kostić had erased the "O", which referred to Orahovac, and replaced it with a "T", which referred to a soldier generally being in the field. Stevo Kostić, T. 26025, 26043, 26054–26057 (22 Sept 2008); Ex. P00354, "Zvornik Brigade Military Police unit attendance roster for July 1995".

⁴³⁸⁸ [REDACTED]

⁴³⁸⁹ [REDACTED]

⁴³⁹⁰ Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 6.

⁴³⁹¹ *Ibid.*; Momir Nikolić, T. 32937, 32938 (21 Apr 2009).

⁴³⁹² Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 6.

⁴³⁹³ *See supra*, para. 1266. In addition the Trial Chamber has taken into account that Momir Nikolić's account of his meeting with **Drago Nikolić** is corroborated by the abundant evidence which demonstrates that **Drago Nikolić** was on duty at the IKM that evening until he was replaced by Mihajlo Galić. In reaching this conclusion the Trial Chamber has considered the evidence of Sreten Milošević that he did not see Momir Nikolić at the Standard Barracks that evening. Sreten Milošević, T. 33971 (15 July 2009). However, the Trial Chamber considers that in answering the Prosecution's questions regarding his presence Milošević was very evasive in his testimony such that his evidence lacks credibility. Further, there is evidence to suggest that he was not constantly at his post. Sreten Milošević, T. 34009–340011 (15 July 2009). Therefore, the Trial Chamber finds that his evidence does not raise a doubt as to Momir Nikolić's description of his meeting with **Drago Nikolić** at the IKM on 13 July.

witnesses is substantially similar. While the accounts of Momir Nikolić and PW-168 vary particularly as to timing, the Trial Chamber is satisfied that the two descriptions can otherwise stand together. In essence, **Drago Nikolić** would have heard from **Popović** by phone and from Momir Nikolić in person about the planned killings. In content, the evidence of both witnesses is identical in that **Drago Nikolić** (i) received the information about the killing operation on the evening of 13 July 1995, (ii) he was at the IKM when he was told about the operation, and (iii) he received his instructions from superiors in the specialty line (**Beara-Popović-Nikolić**). Further, **Drago Nikolić** also indicated to Obrenović that **Popović** was to “send somebody to convey verbally information concerning this”.⁴³⁹⁴ This may well have been a reference to Momir Nikolić’s subsequent visit. While Momir Nikolić testified that **Drago Nikolić** was “surprised” when he heard of **Beara**’s instructions,⁴³⁹⁵ that was only his impression and does not detract from the overall consistency of the evidence of both witnesses. Thus the Trial Chamber finds that the evidence of PW-168 and Momir Nikolić as to the knowledge and actions of **Drago Nikolić** on the night of 13 July 1995 to be mutually corroborative and reliable.

1355. Rémi Landry, a military expert called by **Nikolić**, provided evidence which was critical of what Obrenović did and failed to do on the evening of 13 July. He stated in essence that from a military perspective he could not explain Obrenović’s failure to obtain additional information after his phone call with **Nikolić** on an unsecured line on the evening of 13 July.⁴³⁹⁶ He did so in support of the defence allegation that PW-168 could not be telling the truth. Richard Butler provided his assessment⁴³⁹⁷ as to **Nikolić**’s acts and whereabouts on the evening of 13 July 1995. In the view of the Trial Chamber, both Landry and Butler strayed well beyond the purview of an expert witness in providing these particular pieces of evidence. Landry’s testimony was premised on a hypothesis as to how a military person should react in the extraordinary circumstances where he is given insufficient information about an operation to murder prisoners. As such Landry’s comments can only be viewed as purely speculative and not founded on any military expertise. In the case of Butler, the acts and whereabouts of **Nikolić** are factual matters for the Trial Chamber’s determination and not issues falling within his expertise or upon which the Trial Chamber has need of expert opinion. Thus, the Trial Chamber gives no weight to the evidence of Landry or Butler on these points.

⁴³⁹⁴ PW-168, T. 15830–15833 (closed session) (26 Sept 2007).

⁴³⁹⁵ Momir Nikolić, T. 33211–33212 (24 Apr 2009).

⁴³⁹⁶ Rémi Landry, T. 26260–26261, 26265–26267, 26268 (25 Sept 2008). Cf. Ex. 3D00409, “Military Expert Report by Rémi Landry,” paras. 133, 140, 160.

⁴³⁹⁷ Richard Butler, T. 20446–20449 (25 Jan 2008).

1356. Considering all the evidence before it, the Trial Chamber is satisfied beyond reasonable doubt that the conversation between Obrenović and **Nikolić**, as described by PW-168, took place on the evening of 13 July.

(iii) 14 July 1995

a. Transport of Prisoners from Bratunac to Zvornik

1357. On 14 July at around 8 a.m., **Nikolić**, **Popović** and **Beara** met at the Standard Barracks for 15 to 20 minutes to discuss the murder operation.⁴³⁹⁸ After the meeting, **Nikolić** was sombre and “not in a good mood”,⁴³⁹⁹ and did not say much.⁴⁴⁰⁰

1358. Shortly after the meeting, **Nikolić** and **Birčaković** went to the Vidikovac Hotel at Divić about two kilometres from Zvornik and waited for buses.⁴⁴⁰¹ Sometime that morning,⁴⁴⁰² between five and ten vehicles arrived at Divić,⁴⁴⁰³ carrying Bosnian Muslim prisoners accompanied by “security guards.”⁴⁴⁰⁴ **Nikolić** ordered **Birčaković** to get on one of the vehicles and to go to Orahovac.⁴⁴⁰⁵

b. Kula School

1359. On the morning of 14 July, Slavko Perić, Assistant Commander for Intelligence and Security of the 1st Battalion of the Zvornik Brigade, was informed by Deputy Battalion

⁴³⁹⁸ Milorad Birčaković, T. 11014–11017 (7 May 2007), T. 11090–11091 (8 May 2007). For an analysis of this evidence, *see supra*, para. 472.

⁴³⁹⁹ Milorad Birčaković, T. 11015 (7 May 2007).

⁴⁴⁰⁰ *Ibid.*, T. 11017 (7 May 2007). During cross-examination Birčaković confirmed that he had stated in his previous statement that when **Nikolić** came out of the meeting, he was very angry “because he was not consulted beforehand but was only ordered to find some accommodation” for people coming in for exchange. *Ibid.*, T. 11120 (8 May 2007).

⁴⁴⁰¹ *Ibid.*, T. 11017 (7 May 2007), T. 11121 (8 May 2007).

⁴⁴⁰² *Ibid.*, T. 11018 (7 May 2007).

⁴⁴⁰³ *Ibid.*, T. 11017–11019 (7 May 2007). PW-110, a Bosnian Muslim prisoner, stated that 20–30 vehicles with prisoners left Bratunac, and passed through Konjević Polje, Drinjača, Joševac, Divić, where “someone saw that there was an APC near the Vidikovac Hotel, which was about 800 metres away from where we were”. He further testified that they passed through Divić and Zvornik, and continued towards Karakaj, where they turned towards Tuzla, and arrived at Grbavci schoolyard in Orahovac on 14 July. PW-110, T. 675–679 (24 Aug 2006). PW-110 did not know whether all the 20–30 vehicles that he had seen in the convoy went to Grbavci School or whether they also went to other places. *Ibid.*, T. 761 (25 Aug 2006). PW-169, who was transported from Bratunac to Orahovac on 13 July, testified that he was in a convoy of six vehicles. PW-169, T. 17324, 17326–17327 (1 Nov 2007). Mevludin Orić, who was transported to Orahovac on 14 July, testified that he was in a convoy of six buses and four trucks. Mevludin Orić, T. 933–934 (29 Aug 2006).

⁴⁴⁰⁴ Milorad Birčaković, T. 11019 (7 May 2007). During cross-examination, Birčaković confirmed that the security guards on the bus were civilian policemen in blue uniforms. Following questioning from **Borovčanin**, Birčaković testified that he was not sure whether the security guards were civilian policemen or Military Police. *Ibid.*, T. 11085, 11122, 11149–11150 (8 May 2007), T. 11158–11159 (9 May 2007).

⁴⁴⁰⁵ *Ibid.*, T. 11018, 11054–11055 (7 May 2007). Birčaković testified that a convoy of at least four buses arrived at the Grbavci School in Orahovac. Milorad Birčaković, T. 11019–11020 (7 May 2007).

Commander Momir Pelemiš that a group of around 200 Bosnian Muslim prisoners would be arriving and they would be accommodated in the school-house near Kula.⁴⁴⁰⁶ Shortly thereafter, the 1st Battalion received a telegram containing an order to prepare the Kula School for the arrival of those prisoners. Approximately one hour later, Perić spoke with **Nikolić** on the telephone.⁴⁴⁰⁷ **Nikolić** repeated the content of the telegram to Perić,⁴⁴⁰⁸ and ordered him to go to the school to “avoid any problems with the surrounding citizenry.”⁴⁴⁰⁹ The Trial Chamber rejects **Nikolić**’s argument⁴⁴¹⁰ that his order to Perić to secure the prisoners at the Kula School was merely a “suggestion”. Initially, Perić testified that what **Nikolić** told him did not constitute an order. However, shortly thereafter he classified the instruction from **Nikolić** as an order,⁴⁴¹¹ and the Trial Chamber has interpreted it as such. An hour or two after his phone conversation with **Nikolić**, Perić went to the Kula School and secured it.⁴⁴¹²

1360. The Trial Chamber is satisfied that **Nikolić** ordered Perić of the Zvornik Brigade 1st Battalion to secure the prisoners at the Kula School in the awareness that these prisoners were to be executed. In this regard, it is immaterial that **Nikolić** went to a funeral on 16 July 1995 on the day that they were killed at Branjevo Military Farm.⁴⁴¹³

c. Orahovac

1361. For much of the day on 14 July, **Nikolić** was at the Grbavci School in Orahovac.⁴⁴¹⁴ During the day, **Nikolić** was directing members of the Military Police and interacting with Jasikovac and

⁴⁴⁰⁶ Slavko Perić, T. 11375–11376 (11 May 2007).

⁴⁴⁰⁷ See *supra*, para. 527.

⁴⁴⁰⁸ Slavko Perić, T. 11376 (11 May 2007).

⁴⁴⁰⁹ *Ibid.*, T. 11376 (11 May 2007).

⁴⁴¹⁰ See **Nikolić** Final Brief, paras. 1176–1177.

⁴⁴¹¹ Slavko Perić, T. 11376, 11378, 11380 (11 May 2007). In the professional line, **Nikolić** could also give an order to Slavko Perić. See *supra*, paras. 121–124.

⁴⁴¹² Slavko Perić, T. 11380–11381 (11 May 2007). Perić testified that he went to the Kula School together with Rajko Babić and Dragan Pantić, and “I’m not sure whether or not a dozen or so soldiers went out together with us or whether they came later”. Slavko Perić, T. 11380 (11 May 2007). Rajko Babić also testified that 12 soldiers went along to the Kula School to secure all the entrances and assess the building. Rajko Babić, T. 10220 (18 Apr 2007).

⁴⁴¹³ In the early afternoon of 16 July 1995, **Nikolić** received a call at the Zvornik Brigade Command regarding the burial of his late cousin, Dušan Nikolić. From the afternoon of 16 July until the evening of 17 July, **Nikolić** participated in the funeral ceremonies, see *infra*, para. 1373.

⁴⁴¹⁴ Dragoje Ivanović, a private in the traffic unit of the Zvornik Brigade Military Police, testified that at approximately 8 a.m., **Nikolić** arrived at the Grbavci School, followed shortly by 20 to 30 soldiers. Dragoje Ivanović, T. 14544 (30 Aug 2007). Milorad Birčaković, **Nikolić**’s driver, stated that **Nikolić** arrived at the Grbavci School at approximately 11 a.m., and that he came from the direction of Zvornik. Milorad Birčaković, T. 11022 (7 May 2007), T. 11124–11125 (8 May 2007). See also Ex. P00904, “Vehicle log for Opel Rekord, P-4528”. Some time after noon. Tanacko Tanić, a treasurer in the Zvornik Brigade, saw **Nikolić** in front of the Grbavci School gym in the schoolyard. Tanacko Tanić, T. 10334, 10337–10338 (23 Apr 2007). Stanoje Birčaković, a Military Police officer, testified that he saw **Nikolić** between noon and 2 p.m. in the yard outside the Grbavci School gym or “perhaps a bit further up closer to the road”. Stanoje Birčaković, T. 10748–10750 (1 May 2007). Stanoje Birčaković marked on a photograph and a sketch where he saw **Nikolić**. Stanoje Birčaković, T. 10749, 10776–10777 (1 May 2007); Ex. PIC00095, “Photograph P01691 marked by the witness”; Ex. 3DIC00097, “Sketch 3D84

other VRS officers outside the Grbavci School.⁴⁴¹⁵ In an effort to have the 4th Battalion soldiers present to assist with the executions, **Nikolić** tried to prevent Lazar Ristić from removing them by offering them new uniforms if they stayed.⁴⁴¹⁶ He offered these uniforms through Sreten Milošević and ultimately these 4th Battalion soldiers stayed at Orahovac and participated.⁴⁴¹⁷

1362. In the afternoon of 14 July, the prisoners held at the Grbavci School were led onto TAM trucks by members of the Zvornik Brigade including members of the 4th Battalion, the Zvornik Brigade Logistics Company and members of the Zvornik Brigade Military Police.⁴⁴¹⁸ **Nikolić** moved around in different directions while the trucks full of prisoners were leaving and returning empty.⁴⁴¹⁹ **Nikolić** also got into a metallic grey military station wagon, and drove in the direction to which the trucks transporting prisoners to the execution field headed.⁴⁴²⁰ When PW-101 arrived at a

marked by the witness". PW-142, a member of the Zvornik Brigade Military Police, stated that he saw **Nikolić** outside the Grbavci School between noon and 2 or 3 p.m. and on two more occasions at the school the same day. PW-142, T. 6451–6452 (29 Jan 2007). PW-143, a member of the Zvornik Brigade Military Police, testified that he saw **Nikolić** at Grbavci School that day. PW-143, T. 6536 (private session), 6538 (30 Jan 2007). Sreten Milošević, Assistant Commander for Logistics in the Zvornik Brigade, did not see **Nikolić** in Orahovac on 14 July, but he was told by those who were present in Orahovac that **Nikolić** had been there during the day. Sreten Milošević, T. 3973, 33985 (15 July 2009).

⁴⁴¹⁵ According to Dragoje Ivanović, **Nikolić** "told Jasikovac that we were free to go, but that we should stay close by with the minibus." Dragoje Ivanović, T. 14544 (30 Aug 2007). PW-143 testified that **Nikolić** ordered him to guard the prisoners at the Grbavci School. PW-143, T. 6531–6533, 6612 (30 Jan 2007). Tanacko Tanić saw **Nikolić** in front of the Grbavci School gym in the schoolyard. He also saw Sreten Milošević and a man whom a Military Policeman identified as **Vujadin Popović**. Tanacko Tanić, T. 10334, 10337–10338 (23 Apr 2007). PW-143 saw **Nikolić** talking with Miomir Jasikovac and "a tall officer" at the Grbavci School. PW-143, T. 6535–6538 (private session) (30 Jan 2007).

⁴⁴¹⁶ PW-168, T. 15887–15888 (closed session) (27 Sept 2007) (testifying that he was told by Ristić that **Nikolić** prevented Ristić from removing the 4th Battalion soldiers from Orahovac because he wanted them to participate in the killings). PW-168 also stated that **Nikolić** had offered the 4th Battalion soldiers uniforms through Sreten Milošević if they stayed. *Ibid.*, T. 15888 (closed session) (27 Sept 2007). Ristić denied that such a conversation between himself and PW-168 took place, and that he was in fact able to remove his men from Orahovac. Lazar Ristić, T. 10072, 10076, 10101–10102, 10104 (16 Apr 2007). According to Sreten Milošević, the Zvornik Brigade did not have new uniforms, and they used the existing ones—the old JNA and M77 uniforms. Sreten Milošević, T. 33988, 34032 (15 July 2009). Milošević was evasive and non responsive on this issue, particularly when he was shown the Prosecution evidence regarding the new uniforms for his battalion. Sreten Milošević, T. 33997–33999, 34001–34003, 34032–34033 (15 July 2009); Ex. P04602, "Request to the Drina Corps Command for the Listed Equipment for the Military Post 7469, signed by Sreten Milošević, 2 July 1995"; Ex. P04600, "Zvornik Brigade Material List for Camouflage Uniforms, signed by Sreten Milošević, 17 July 1995". The Trial Chamber notes the corroboration of PW-168's evidence through Ex. P04600, "Zvornik Brigade Material List for Camouflage Uniforms, signed by Sreten Milošević, 17 July 1995" (which indicates that 19 new uniforms were provided to the Zvornik Brigade on 17 July), and by the evidence of the subsequent participation of the 4th Battalion members. *See infra*, para. 1362. Further, having observed the demeanor of PW-168, Ristić and Sreten Milošević when testifying in court, the Trial Chamber finds PW-168's evidence reliable on the issue. Therefore, the Trial Chamber is satisfied that **Nikolić** offered new uniforms to members of the 4th Battalion as an incentive for them to participate in the executions at Orahovac and they did so. *See also supra*, paras. 479–484.

⁴⁴¹⁷ PW-168, T. 15888 (closed session) (27 Sept 2007). Sreten Milošević was the Assistant Commander for Logistics in the Zvornik Brigade. Sreten Milošević, T. 33959 (15 July 2009).

⁴⁴¹⁸ *See supra*, para. 481.

⁴⁴¹⁹ PW-143, T. 6540 (30 Jan 2007).

⁴⁴²⁰ *Ibid.*, T. 6540, 6607, 6614 (private session) (30 Jan 2007). During cross-examination, PW-143 allowed for the possibility that **Nikolić**'s vehicle sometimes travelled without him in it, and **Nikolić** may not have been in the car when he saw it following the trucks. PW-143, T. 6606–6607 (private session) (30 Jan 2007). On re-examination, PW-143 agreed with the Prosecution that at a certain point of that day, he saw **Nikolić** going into the car and heading in the directions the trucks had headed. PW-143, T. 6614 (private session) (30 Jan 2007).

field in Orahovac around 8.30 p.m. where prisoners were being executed, he saw **Nikolić** there.⁴⁴²¹ **Nikolić** and **Popović** gave directions to the soldiers at the execution site, “not yelling at them”, but “simply directing them what to do”.⁴⁴²²

1363. Milorad Birčaković described that when he drove **Nikolić** from Grbavci School to the IKM in the evening, he saw in the reflection of the headlights approximately 50 bodies on the left side of the road, possibly five meters away from the road.⁴⁴²³

1364. The Trial Chamber is satisfied that **Nikolić** was actively involved in organising the detention of the prisoners held at Grbavci School in Orahovac, and that he was personally present at the execution site.

1365. The Trial Chamber notes that **Nikolić**, in his closing statement, confirmed his presence at Grbavci School on 14 July 1995:

I understand that I bear some part of the responsibility because at certain moments I was at Orahovac school on the 14th of July, but I kindly ask you to take into account my limited possibilities in relation to the events that took place. I could not have influenced them in any way.⁴⁴²⁴

d. Petkovci School

1366. In the late afternoon of 14 July, **Nikolić** and **Beara** were at a crossroad 70 or 80 metres from the Petkovci School,⁴⁴²⁵ where prisoners were being held.⁴⁴²⁶

⁴⁴²¹ PW-101, T. 7624, 7581–7582, 7586, 7589–7590 (22 Feb 2007). **Nikolić** confronted PW-101 with the fact that he did not mention **Nikolić**’s presence at the execution site to the Prosecution when he met with them in 2005 and 2006. *Ibid.*, T. 7686 (private session), T. 7686–7690 (23 Feb 2007). The Trial Chamber, who had the opportunity of assessing the demeanor of PW-101 during his testimony, finds that PW-101 was consistent in his testimony that **Nikolić** was present at the execution site, and finds that his testimony was not shaken in cross-examination. Its finding was not disturbed by the fact that PW-101 did not mention **Nikolić**’s presence at the execution site when he met with the Prosecution in 2005 and 2006.

⁴⁴²² *Ibid.*, T. 7590 (22 Feb 2007). PW-101 testified that he saw **Nikolić** and another officer directing executions at a field in Orahovac. PW-101 stated that this officer was lieutenant-colonel or colonel at the most. PW-101 also said that the “lieutenant-colonel” and **Nikolić** were the only ones able to issue orders at the execution site, and the most senior in rank present. *Ibid.*, T. 7581–7582, 7586, 7589–7590 (22 Feb 2007). The Trial Chamber is satisfied that there is no reasonable conclusion available on the evidence other than that the officer directing the soldiers at the execution site at Orahovac with **Nikolić** was in fact **Popović**. *See supra*, para. 1111.

⁴⁴²³ Milorad Birčaković, T. 11038, 11042 (7 May 2007). Birčaković testified that it was probably 50 metres away from the fountain at Grbavci School. *Ibid.*, T. 11042 (7 May 2007).

⁴⁴²⁴ **Nikolić** Closing Arguments, T. 34899 (15 Sept 2009).

(iv) 15 July 1995

a. Ročević School

1367. On 15 July, **Nikolić** was the Duty Officer at Standard Barracks.⁴⁴²⁷ Between 1 and 2 a.m. on 15 July, Commander of the 2nd Battalion of the Zvornik Brigade Aćimović received a telegram from the Zvornik Brigade Command that a platoon of soldiers should be dispatched to execute the prisoners at the Ročević School.⁴⁴²⁸

1368. Around 2:30 a.m. that morning, Aćimović received a call from **Nikolić**, who told him that the order “had come from above” and had to be carried out.⁴⁴²⁹ **Nikolić** called him again at approximately 7 or 8 a.m. to find out whether Aćimović had executed the order.⁴⁴³⁰ Aćimović told **Nikolić** that he would not assign anyone to execute the prisoners.⁴⁴³¹ **Nikolić** was angry and ordered Aćimović to meet him at the Ročević School that same morning.⁴⁴³² **Nikolić** was informed on the evening of 14 July that **Beara** was coming to the Standard Barracks at 9 a.m on 15 July 1995.⁴⁴³³

⁴⁴²⁵ Marko Milošević, Deputy Commander of the 6th Battalion of the Zvornik Brigade and former assistant to **Nikolić**, met **Nikolić** at that crossroad, where he saw him with **Beara**. Ostoja Stanišić, T. 11604–11606 (16 May 2007); Marko Milošević, T. 13302–13304 (26 June 2007).

⁴⁴²⁶ See *supra*, para. 494–495.

⁴⁴²⁷ PW-168, T. 17210 (closed session) (31 Oct 2007), referring to Ex. 7DP00378 “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”. The logbook states for 15 July at 06.30 a.m. “**Drago Nikolić**” and PW-168 recognised **Nikolić**’s signature. PW-168, T. 17210 (closed session) (31 Oct 2007). Todor Gavrić, a member in the artillery of the Bratunac Brigade saw **Nikolić**, between 8 and 9 a.m., together with Dule Nikolić and Mico Gavrić outside the hangar at the Standard Barracks. **Nikolić** was wearing a military uniform. Todor Gavrić, T. 26449, 26452–26454 (29 Sept 2008). Dušica Sikimić, wife of Dušan Nikolić, **Nikolić**’s cousin, called **Nikolić** at the Standard Barracks on 15 July at around 10 am. Dušica Sikimić, T. 25962–25964, 25969 (18 Sept 2008). Kathryn Barr, a handwriting analysis expert, gave evidence that five entries and associated signatures of 15 July in the Duty Officer’s Logbook could be concluded to be **Nikolić**’s handwriting and signature, and that five pages of record on 15 July in the Duty Officer’s Notebook also could be concluded to be **Nikolić**’s handwriting. Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 Jan 1996”; Kathryn Barr, T. 13183–13184, 13185, 13259 (25 June 2007); Ex. P02845, “Handwriting report Milorad Trbić, Drago Nikolić and Ljubislav Strbac, 29 June 2006”, pp. 8–10; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”. **Nikolić**’s handwritings found in the Duty Officer Logbook show that he wrote into the logbook on five occasions at 4:40, 6:30 a.m., 1:45, 1:50, 4:45 p.m. **Nikolić**’s handwritings found in the Duty Officer Notebook show that he wrote into the notebook concerning the events that happened from 11:45 a.m. to 3:50 p.m. Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 Feb 1995 to 3 Jan 1996”; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”. See also Vinko Pandurević, T. 31360 (12 Feb 2009).

⁴⁴²⁸ See *supra*, para. 508.

⁴⁴²⁹ See *supra*, paras. 509–510.

⁴⁴³⁰ See *supra*, para. 510.

⁴⁴³¹ *Ibid.*

⁴⁴³² *Ibid.*

⁴⁴³³ The Zvornik Brigade Duty Officer Notebook contains an entry made by the Duty Officer Jokić some time after 8 p.m. The entry reads: “from Beara–Drago to report Mane – Đukić 0900 Beara is coming”. Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, pp. 133–134. An intercept on the evening of 14 July at 10:18 p.m. indicates that a “Chief of Security Centre” named “Đukić” in Vlasenica tried to call **Drago Nikolić** at the Standard Barracks but could not, and asked for **Nikolić** to call him back. “Đukić” also required that **Nikolić** be informed stating “tell him we’ll meet there, where you are, Tomorrow morning at 0900. There, where you are”. Ex. P01165a, “Intercept 14 July 1995, 22:18 hours”. The Trial Chamber concludes that “Mane” and “Đukić” referred to Mane Đurić, Deputy Chief of the Zvornik CJB. See, *inter alia*, Mendeljev Đurić, who also testified that

1369. At around 9 or 10 a.m. on 15 July, Aćimović drove to the Ročević School where he saw at least a dozen corpses lying on the ground.⁴⁴³⁴ Instead of **Nikolić**, Aćimović found **Popović** in front of the School,⁴⁴³⁵ who asked Aćimović why he had not brought any men as ordered and threatened that he would be held responsible for not obeying the order.⁴⁴³⁶

1370. The Trial Chamber has already found that the Military Police Company of the Zvornik Brigade was present at and around the Ročević School and that several of its members performed duties.⁴⁴³⁷ On 15 July 1995,⁴⁴³⁸ PW-165, a Zvornik Brigade Military Policeman, was sent by Miodir Jasikovac with his colleague to the checkpoint in Ročević, which was “the main village road leading off the main road about 400 metres towards the school”,⁴⁴³⁹ where he stayed from approximately 11:30 a.m. to 5 p.m.⁴⁴⁴⁰ During his shift in Ročević, PW-165 witnessed two vehicles passing by. PW-165’s colleague said to him that the “security officers” had arrived, meaning Trbić and **Nikolić**, although PW-165 did not personally see that it was **Nikolić** who arrived.⁴⁴⁴¹ Given his contradictory and uncertain testimony on the point, the Trial Chamber is not satisfied that the evidence of PW-165 is sufficient to prove that **Nikolić** was physically present at the Ročević School on 15 July 1995.

it was not him. Mendeljev Đurić, T. 10892 (3 May 2007), *See also* T. 7348 (20 Feb 2007) (where the parties agreed that Mane Đurić, as mentioned in the intercept Ex. P01165a, was not the same person as witness Mendeljev Đurić); Slaviša Simić, T. 27493 (28 Oct 2008).

⁴⁴³⁴ Srećko Aćimović, T. 12957–12958 (20 June 2007). Mitar Lazarević testified that Aćimović went to the Ročević School alone in order to inform those at the school that Aćimović would not dispatch any men to participate in the executions. Mitar Lazarević, T. 13379 (26 June 2007). Jović heard that there were dead bodies at the Ročević School on 14 July. Dragan Jović, T. 18049, 18050 (21 Nov 2007). Aćimović told Lazarević that prisoners had been killed at the school. Mitar Lazarević, T. 13367 (26 June 2007).

⁴⁴³⁵ Srećko Aćimović, T. 12957–12958 (20 June 2007). In front of the goal on the soccer pitch nearby, Dragan Jović saw Aćimović talking to a “rather big” man with a shaven, round face who wore a uniform without a rank, and wore no gun or uniform hat. Jović did not recognise him as someone from the Zvornik Brigade. Dragan Jović, T. 18055–18056 (21 Nov 2007).

⁴⁴³⁶ Srećko Aćimović, T. 12958–12959, 12964–12965 (20 June 2007).

⁴⁴³⁷ *See supra*, para. 505.

⁴⁴³⁸ PW-165 testified that he received this order on 11 July. In examination-in-chief, after PW-165 had said that he was in Ročević on 11 July, he was reminded that he had said in a statement to the Prosecution in 2005 that he did not know the date on which he had been in Ročević and that it must have been soon after the fall of Srebrenica. PW-165 nevertheless still maintained that he was in Ročević on 11 July. PW-165, T. 9916 (3 Apr 2007). However, based upon the testimony of PW-142 and PW-143 that they received this assignment the day after they were stationed at the Grbavci School, together with the Zvornik Brigade Military Police attendance roster detailed below, the Trial Chamber concludes that PW-165 was mistaken about the date and was actually present at the Ročević School with the other men on 15 July. *See supra*, para. 516, fn. 1887.

⁴⁴³⁹ PW-165, T. 9910, 9911 (3 Apr 2007). *See also* PW-165, T. 9919–9920 (3 Apr 2007).

⁴⁴⁴⁰ PW-165, T. 9905, 9909–9913, 9923 (3 Apr 2007).

⁴⁴⁴¹ PW-165, T. 9923 (3 Apr 2007), T. 9961 (4 Apr 2007). PW-165 said that in July 1995 the security officers in the Zvornik Brigade were Milorad Trbić and **Nikolić**, though he qualified this by saying that he was not sure whether Milorad was Trbić’s first name. PW-165, T. 9906 (3 Apr 2007). PW-165 initially testified that he did not himself see Trbić and **Nikolić**. PW-165, T. 9923 (3 Apr 2007). Later however, when responding to a question from Judge Prost, he gave evidence that he saw Trbić, that he had heard **Nikolić** had arrived, but that he had not personally seen that it was **Nikolić** who had arrived. *Ibid.*, T. 9961 (4 Apr 2007).

1371. The Trial Chamber recalls that, on 15 July 1995, the prisoners detained at the Ročević School were subsequently blindfolded and brought to a gravel pit in Kozluk, where they were executed.⁴⁴⁴²

(v) 16 July 1995

1372. The Prosecution submits that **Nikolić** was Duty Officer at the Standard Barracks on the morning of 16 July 1995,⁴⁴⁴³ and that between 4 a.m. and 6 a.m. he made a notation in the Zvornik Brigade Notebook that the 1st Battalion requested 50 litres of oil and 20 litres of gasoline for “transport of troops to Kula” and 10 crates of ammunition.⁴⁴⁴⁴ A follow-up notation in the same Notebook at 6 a.m. states that the situation regarding the 1st Battalion is “under control”.⁴⁴⁴⁵ The Prosecution argues (1) that the references to the transport of troops “can only have been related to the detention of prisoners at Kula School”, (2) that there was “no combat activity in the area of the 1st Battalion at that time”, and (3) that the ammunition “must have been used for the mass executions planned that day at the Branjevo Military Farm”.⁴⁴⁴⁶ **Nikolić**, referencing the same Duty Officer Notebook, claims that he was at the Zvornik Brigade between the morning of 15 and the morning of 16 July 1995, and thus he acknowledges he made the entry.⁴⁴⁴⁷ However, no evidence was led by the Prosecution to support its statement that there was “no combat activity in the area of the 1st Battalion at that time.”⁴⁴⁴⁸ Considering the burden of proof, in the absence of such evidence, the Trial Chamber is not convinced that the only reasonable inference to be drawn from the Zvornik Brigade Notebook entries is that they concerned materials required for the killing operation.

1373. In the early afternoon of 16 July 1995, **Nikolić** received a call at the Zvornik Brigade Command regarding the death of his cousin, Dušan Nikolić.⁴⁴⁴⁹ From the afternoon of 16 July 1995

⁴⁴⁴² See *supra*, paras. 517–520.

⁴⁴⁴³ Prosecution Final Brief, para. 2780.

⁴⁴⁴⁴ Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, p. 143. Ten crates of ammunition would equal approximately 11,000 bullets. Vinko Pandurević, T. 31304–31305 (11 Feb 2009).

⁴⁴⁴⁵ Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, p. 144.

⁴⁴⁴⁶ Prosecution Final Brief, para. 2781.

⁴⁴⁴⁷ Nikolić Final Brief, paras. 1258, 1269, 1275.

⁴⁴⁴⁸ Prosecution Final Brief, para. 2781.

⁴⁴⁴⁹ On 16 July 1995 at 2 p.m. Mara Milošević testified she made a call to **Nikolić** who was in the Zvornik Brigade Command. Mara Milošević, Ex. 3D00476, “92 *ter* statement”, p. 2 (28 Apr 2008). The call to **Nikolić** was made from the home of Dušica Sikimić. Mara Milošević, T. 25957 (18 Sept 2008); Dušica Sikimić, T. 25965 (18 Sept 2008). Dragan Milošević, a cousin-in-law of **Nikolić**, testified he met **Nikolić** between 3 and 4 p.m. on 16 July at the Standard Barracks. Dragan Milošević, Ex. 3D00475, “92 *ter* statement”, p. 2 (23 Apr 2008). On cross-examination, Dragan Milošević stated that it was difficult to know what time it was exactly. He estimated that it was between 3 and 4 in the afternoon, “give or take half an hour”. *Ibid.*, T. 25945 (18 Sept 2008).

to the evening of 17 July 1995, **Nikolić** was with the family of his cousin participating in the funeral ceremonies.⁴⁴⁵⁰

(vi) Evidence Given by PW-102 and PW-108 regarding Physical Participation of Nikolić in Executions

1374. The Prosecution presented the evidence of PW-102 and PW-108 regarding a meeting that PW-102 had with **Nikolić** on an unspecified day in July 1995. During that meeting, **Nikolić** said to PW-102 that **Nikolić** had been personally involved in killings that occurred on that day. The core of PW-108's evidence is what he heard from PW-102 regarding that meeting. The evidence of PW-102 was received pursuant to Rule 92 *quater*.

1375. PW-102 testified that in "mid-July 1995" (he did not specify the date) the school playground in Ročević "was full of buses and soldiers of some kind".⁴⁴⁵¹ There, PW-102 received information about killings at Ročević School.⁴⁴⁵² PW-102 then left and came to see PW-108 at his work post.⁴⁴⁵³ PW-108 and PW-102 both set off on a trip to the Zvornik Brigade Command.⁴⁴⁵⁴ PW-108 could not recall the exact date of the trip.⁴⁴⁵⁵ When they came to the Standard Barracks, they could not find the Brigade Commander.⁴⁴⁵⁶ According to PW-102 and PW-108, they met **Nikolić** on the first floor

⁴⁴⁵⁰ Mara Milošević, Ex. 3D00476, "92 *ter* statement", pp. 2–3 (28 Apr 2008); Dušica Sikimić, T. 25962–25966 (18 Sept 2008); Ex. 3D00462, "Obituary of Dušan Nikolić"; Dragan Milošević, T. 25948 (18 Sept 2008); Milorad Birčaković, T. 11141–11142, 11144 (8 May 2007). The funeral procession for Dušan Nikolić set out from Zvornik at around noon on 17 July 1995, Dragan Milošević, T. 25947 (18 Sept 2008). After the funeral, a religious ceremony or funeral mass was held in the church in Bratunac. Dušica Sikimić, T. 25966 (18 Sept 2008); Dragan Milošević, T. 25948 (18 Sept 2008). Milorad Birčaković testified that on 17 July 1995, late in the afternoon, he drove in a van to Kravica, where the funeral was held, together with **Nikolić** and the entire Military Police. Milorad Birčaković, T. 11141–11142, 11144 (8 May 2007). *See also* Vinko Pandurević, T. 31084 (9 Feb 2009). In cross-examination, **Nikolić** asked, "You said in your testimony that Trbić would have said to PW-168 that **Drago** was not there because his brother-in-law or his cousin died. Do you recall saying this?" to which **Pandurević** answered "Yes, that's what I said." *Ibid.* T. 31360–31361 (12 Feb 2009).

⁴⁴⁵¹ PW-102, Ex. P03128, "confidential – 92 *quater* transcript", MT. 21040, 21043 (private session), T. 21091 (22 May 2003). He also stated that he went to Ročević with a relative on private business. PW-102, Ex. P03128, "confidential – 92 *quater* transcript", MT 21043, 21095–21096 (private session) (22 May 2003).

⁴⁴⁵² PW-102, Ex. P03128, "confidential – 92 *quater* transcript", MT. 21040–21041 (private session) (22 May 2003). The locals at the school who were protesting and disapproved told PW-102 that "they were killing people from Srebrenica there." PW-102 could hear frequent bursts of gunfire. *Ibid.*, MT. 21040–21042 (private session) (22 May 2003). PW-102 recalled: "A woman was protesting, and then this soldier headed towards her with a rifle in his hand. They said that they had brought several busloads there and that they were killing them behind the school." *Ibid.*, MT. 21042 (private session) (22 May 2003).

⁴⁴⁵³ PW-108, T. 14982 (private session) (7 Sept 2007). PW-108 testified that he "think(s) it was a working day". *Ibid.* T. 14982 (private session) (7 Sept 2007).

⁴⁴⁵⁴ *Ibid.*, T. 14757 (private session) (4 Sept 2007).

⁴⁴⁵⁵ *Ibid.*, T. 14982 (private session) (7 Sept 2007).

⁴⁴⁵⁶ PW-102 testified that they were looking for "the commander of the brigade [...], Mr. Obrenović". Later during his testimony, PW-102 specifies him as the "chief of the brigade". PW-102, Ex P03128, "confidential – 92 *quater* transcript", MT. 21094–21096 (private session) (22 May 2003). According to PW-108, they were looking for **Pandurević**. PW-108, T. 14747 (private session) (4 Sept 2007). The Zvornik Brigade seemed empty, PW-108, T. 14757 (private session) (4 Sept 2007).

of the Standard Barracks.⁴⁴⁵⁷ PW-102 and **Nikolić** went to an office to talk, leaving PW-108 in the corridor.⁴⁴⁵⁸

1376. According to PW-102, **Nikolić** said during his meeting with him “that **Beara** had ordered that 6,900 people had to disappear within five days [...]”,⁴⁴⁵⁹ PW-102 stated that **Nikolić** had soot on his arms and had said “that he himself had to pick up a weapon and shoot.”⁴⁴⁶⁰ According to PW-102, **Nikolić** appeared “disturbed, excited, in haste”⁴⁴⁶¹ and **Nikolić** indicated that he had come from an execution site where they were killing people.⁴⁴⁶²

1377. The Trial Chamber emphasises that neither PW-102 nor PW-108 was able to attach a precise date to the events they described. The evidence regarding the date on which they encountered **Nikolić** is conflicting and contains several inconsistencies.⁴⁴⁶³

1378. The evidence of PW-102 regarding **Nikolić**’s physical involvement in killings was received pursuant to Rule 92 *quater*, which means **Nikolić** did not have an opportunity to cross-examine the witness. PW-108 testified that he only heard from PW-102 that **Nikolić** was personally involved in

⁴⁴⁵⁷ PW-102, Ex. P03128, “confidential – 92 *quater* transcript” MT. 21041 (private session) (22 May 2003); PW-108, T. 14757–14758 (private session) (4 Sept 2007), T. 14993–14994 (private session) (7 Sept 2007). The Trial Chamber notes that in their first statements they provided to the Prosecution in 1995, neither PW-102 nor PW-108 mentioned their visit to the Zvornik Brigade. Ex. P03134 (confidential); Ex. 3D00197, “PW-108 – OTP Info Report, 27 Nov 1992”.

⁴⁴⁵⁸ PW-108, T. 14747, 14758, 14762 (private session) (4 Sept 2007). PW-108 could only hear PW-102 asking “What are you doing? What is it that you’re doing?” before the office door closed, *ibid*, T. 14762 (private session) (4 Sept 2007). In his statement, PW-102 did not specify that PW-108 waited outside the office, Ex. P03133, “OTP Witness Statement of PW-102, 11 February 2003”, pp 10–11.

⁴⁴⁵⁹ PW-102, Ex. P03128, “confidential – 92 *quater* transcript”, MT. 21041 (private session) (22 May 2003).

⁴⁴⁶⁰ PW-102, Ex. P03128, “confidential – 92 *quater* transcript”, MT. 21041 (private session) (22 May 2003).

⁴⁴⁶¹ *Ibid*.

⁴⁴⁶² *Ibid*.

⁴⁴⁶³ For example, some of their evidence suggests that the encounter with **Nikolić** occurred on 14 July 1995 (there was a general absence of personnel at the Zvornik Brigade Command and “it was a working day” [14 July 1995 being a Friday]. PW-108, T. 14757 (private session) (4 Sept 2007), T. 14982 (private session) (7 Sept 2007)). However, according to PW-108, Srebrenica was “under siege” (PW-108, T. 14751 (4 Sept 2007), whereas it was no longer under siege on 14 July, a fact that should have been known to both PW-102 and PW-108. Moreover, the Trial Chamber also heard testimony of Stevo Kostić and Nebojša Jeremić who testified that they did not remember seeing **Nikolić** or any civilians passing by on 14 July, while they were guarding the reception gate at the Standard Barracks. Stevo Kostić, a Military Police member, stated that it was not possible that a civilian could enter the Standard Barracks without the Military Policemen knowing as they guarded the only entrance to the compound. According to them, Jeremić and Kostić were the only Military Policemen present at the Standard Barracks on 14 July 1995. Kostić did not recall seeing **Nikolić**’s driver Milorad Birčaković, **Nikolić** himself, or any visitors that day. Jeremić testified that no one dressed as civilians visited the Standard Barracks that day, Nebojša Jeremić, T. 26092 (23 Sept 2008). Both PW-102 and PW-108 were wearing civilian clothes, PW-108, T. 14997 (7 Sept 2007). There is also evidence to suggest that their visit to the Zvornik Brigade took place on 16 July 1995 as, particularly, (i) PW-102 testified that he had visited the Ročević School and was informed of the killings there, which had not yet taken place before the afternoon of 14 July, (ii) **Nikolić** was at the Standard Barracks on the afternoon of 16 July, (iii) and that PW-108 had seen a convoy of vehicles several days prior to their visit to the Zvornik Brigade. PW-108, T. 14755 (4 Sept 2007), T. 14983–14984 (private session) (7 Sept 2007). On the basis of the evidence of PW-102 and PW-108, the Trial Chamber cannot conclude beyond reasonable doubt on which day the encounter took place, and whether it involved crimes committed in Orahovac or in Ročević. Stevo Kostić, T. 25987, 26000–26001, 26004, 26006–26007 (22 Sept 2008); Nebojša Jeremić, T. 26092 (23 Sept 2008); PW-108, T. 14755 (4 Sept 2007), T. 14983–14984 (private session), 14997 (private session) (7 Sept 2007).

killings. For these reasons, as well as several important inconsistencies in the evidence of PW-102 and PW-108 and conflicting testimony regarding (1) the date of their visit and (2) the criminal activity in which **Nikolić** would have been involved, the Trial Chamber finds that the evidence of PW-102 and PW-108 is insufficient to make a finding that **Nikolić** executed prisoners.

(vii) After 17 July 1995

a. Four Branjevo Military Farm Survivors

1379. The Trial Chamber has found previously that four Bosnian Muslim men who were survivors of the Branjevo Military Farm executions were killed sometime after 23 July 1995.⁴⁴⁶⁴ On 23 July these men were in the custody of the Zvornik Brigade Crimes Prevention Service at the Standard Barracks.⁴⁴⁶⁵ Sometime between 19 and 23 July, **Nikolić** had interrogated and punished Neško and Slobodan Đokić, father and son, who had admitted to giving the four Bosnian Muslim survivors food and fresh clothes.⁴⁴⁶⁶ There is no evidence that **Nikolić** had any direct involvement with the four survivors; however the Trial Chamber has found that he was aware of their presence and the fact that they had survived the mass killing. Specifically, the Trial Chamber has found that **Nikolić** mentioned the prisoners to **Pandurević**, telling **Pandurević** that they had escaped from an execution site in Pilica.⁴⁴⁶⁷ In response, **Pandurević** told **Nikolić** to stay after the morning briefing so they could discuss the matter.⁴⁴⁶⁸ There is no further evidence before the Trial Chamber as to the discussion which took place between **Pandurević** and **Nikolić** nor as to the precise circumstances under which these four men were killed. Thus, while it was **Nikolić** who informed **Pandurević** of the capture of these four men, in the view of the Trial Chamber, there is more than one reasonable inference that can be made as to the course of action taken by **Nikolić** subsequently with respect to these four prisoners. In the absence of such evidence, the Trial Chamber cannot be satisfied beyond reasonable doubt that **Nikolić** was involved in the murder of the four Branjevo Military Farm survivors. The Trial Chamber does, however, attribute the responsibility for these killings to the members of the Joint Criminal Enterprise to Murder.⁴⁴⁶⁹

⁴⁴⁶⁴ See *supra*, paras. 584–588.

⁴⁴⁶⁵ See *supra*, para. 586.

⁴⁴⁶⁶ Nebojša Jeremić, T. 10417–10418, 10427, 10428 (24 Apr 2007).

⁴⁴⁶⁷ See *infra*, para. 1911.

⁴⁴⁶⁸ *Ibid.*

⁴⁴⁶⁹ See *supra*, para. 1076. See *infra*, paras. 1387–1392, where the Trial Chamber finds **Nikolić** was a member of the JCE to Murder.

b. Wounded Bosnian Muslim Prisoners from Milići Hospital

1380. Of the eleven Bosnian Muslim men who came from the Milići Hospital to the Zvornik Hospital on 14 July, ten men were subsequently brought to the Standard Barracks and guarded by the Military Police of the Zvornik Brigade.⁴⁴⁷⁰ These wounded Bosnian Muslim prisoners stayed at the Standard Barracks for five to seven days.⁴⁴⁷¹ During this time, **Pandurević** sought assistance from the superior command to solve the problem as to what to do with these wounded prisoners.⁴⁴⁷² The Trial Chamber has found that these ten wounded prisoners were ultimately taken by **Popović** and that he arranged for their murder. However there is scant evidence as to the precise circumstances under which this occurred. There is even less evidence as to what, if any, role **Nikolić** had in the matter. The only evidence on this point comes from PW-168 who says that after the wounded prisoners had been taken away from the Brigade, **Pandurević** told Obrenović that **Popović** had arrived with an order from Mladić for the injured Bosnian Muslim men to be liquidated “and that the wounded were taken from **Nikolić** and driven away, taken away.”⁴⁴⁷³ PW-168 could provide no further details and he did not clarify this vague reference to **Nikolić**. In these circumstances, the Trial Chamber cannot be satisfied as to what involvement **Nikolić** had with the ten wounded prisoners and more specifically his role in terms of their custody. The Trial Chamber is therefore not satisfied beyond reasonable doubt that **Nikolić** was involved in the murder of the ten wounded Bosnian Muslim prisoners from the Milići Hospital. The Trial Chamber does, however, attribute the responsibility for these killings to the members of the Joint Criminal Enterprise to Murder.⁴⁴⁷⁴

⁴⁴⁷⁰ See *supra*, para. 570. One man, Aziz Bećirović had passed away in the Milići Hospital. Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 2; Radivoje Novaković, T. 9039–9041, 9075, 9084 (20 Mar 2007). See also Ex. P01884 (confidential), p. 34. The Zvornik Brigade Duty Officer’s notebook entry for 16 July 1995 states “Aziz Bećirović died at the hospital. Novaković notified that the utility company should take care of it”. Ex. 7D00169, “Page from Zvornik Brigade Duty Officer’s Notebook, 16 July 1995”. Novaković testified that he did not remember having reported this or the Zvornik Brigade being informed of Aziz Bećirović’s death. Radivoje Novaković, T. 9081–9082 (20 Mar 2007). Novaković’s failure to recall whether Bećirović’s death was reported does not affect the Trial Chamber’s finding that he did, in fact, pass away at the Zvornik Hospital.

⁴⁴⁷¹ Zoran Begović, Ex. P02481 “92 *ter* statement” (2 Apr 2003), p. 3.

⁴⁴⁷² PW-168, T. 15914 (closed session) (27 Sept 2007); Ex. P01309a, “Intercept 23 July 1995, 08:00 hours”.

⁴⁴⁷³ PW-168, T. 15914 (closed session) (27 Sept 2007). On 20 November 2009, the Trial Chamber requested the Tribunal’s translation section (“CLSS”) to verify the translation of T. 15914, lines 20-23, which read “A. (...) He told [Obrenović] that Lieutenant-Colonel arrived with Mladić’s order for them to be liquidated and that the wounded were taken from Drago Nikolić and driven away, taken away. That’s all I know about that.” CLSS responded on 1 December 2009, confirming its translation, but noting that “the original in BCS is ambiguous. While the interpretation provided into English is correct, the original could also be construed to mean “... that the wounded were taken by Drago Nikolić [...]” It further clarified that name of “the Lieutenant-Colonel is missing” and that the original should read: A. (...) He told [Obrenović] that Lieutenant-Colonel Popović arrived with Mladić’s order for them to be liquidated and that the wounded were taken from Drago Nikolić and driven away, taken away. That’s all I know about that.” Internal Memorandum re. Verification of accuracy of interpretation in case no. IT-05-88-T, hearing of 27 September 2007, confidential, 4 December 2009.

⁴⁴⁷⁴ See *supra*, para. 1076. See *infra*, paras. 1387–1392, where the Trial Chamber finds **Nikolić** was a member of the JCE to Murder.

c. Reburial Operation

1381. On 14 September 1995, the VRS Main Staff approved the delivery of five tons of diesel fuel to Milorad Trbić, **Nikolić**'s subordinate in the Security Organ of the Zvornik Brigade.⁴⁴⁷⁵ On 22 September 1995, **Popović** called **Nikolić** and asked him whether the fuel had arrived, to which **Nikolić** responded that it had not. They referred to Milorad Trbic, who was working on the "fuel supply matter".⁴⁴⁷⁶ The Trial Chamber is satisfied that the "fuel supply matter" referred to the mass reburial operation that was being carried out in the Zvornik area.⁴⁴⁷⁷

1382. At the end of November 1995, **Nikolić** told Dragan Obrenović that "the majority of the bodies from the graves where they had been buried were taken to different locations and that practically nothing was left in these other graves".⁴⁴⁷⁸ **Nikolić** did not go into too much detail,⁴⁴⁷⁹ but there were stories circulating in the Standard Barracks about the reburials.⁴⁴⁸⁰

1383. **Nikolić** argued that, as the reburial operation according to Damjan Lazarević lasted a maximum of six days,⁴⁴⁸¹ and since the first order regarding the reburial operation was of 14 September 1995, the reburial operation was executed between 14 and 20 September 1995.⁴⁴⁸² As **Nikolić** was away during this time period, he could not have been involved in the reburial operation. The Trial Chamber does not agree that the VRS Main Staff Order of 14 September 1995

⁴⁴⁷⁵ Ex. P00041, "Document from the Main Staff of the VRS to the Command of the Drina Corps, signed by Ratko Mladić, 14 Sept 1995". Although the document says that the fuel shall be delivered to the Standard Barracks in Zvornik, to "Captain Milorad Trpić", PW-168 confirmed that this most likely was a typo made by the teleprinter operator, and that it should read "Captain Milorad Trbić", with a "b" instead of a "p". PW-168, T. 15922 (closed session) (27 Sept 2007).

⁴⁴⁷⁶ An intercept of a conversation on 22 September records **Popović** asking a person called "Mihalić", nicknamed "Nido", whether fuel arrived and received the answer that it had not. **Popović** and "Nido" referred to Trbić who was working on the fuel supply matter. Another intercept adduced by the Prosecution shows that "Nido" was a nickname **Popović** used for **Nikolić**. Based on this second intercept, the Trial Chamber is satisfied that Nido was in fact **Nikolić**. Ex. P02391e, "Intercept, 22 Sept 1995, 18:44 hours"; Ex. P02437a, "Intercept of conversation, 19 January 1995, 10:57 hours", p. 1 ("[N: Nikolić here. P: This is Popović. N: How are you Pop? P: Hi Nidjo, old buddy [...]]"). The Trial Chamber also heard evidence that **Popović** came to the Zvornik Brigade with a large map and asked if **Pandurević** and "Drago" were there on 26 September 1995. No further evidence was led as to whether in fact a meeting between **Popović** and **Nikolić** occurred on that day, and what that meeting would have been about. PW-168, T. 15925-15926 (closed session) (27 Sept 2007).

⁴⁴⁷⁷ See *supra*, Chapter III, Section I.

⁴⁴⁷⁸ PW-168, T. 15927 (closed session) (27 Sept 2007).

⁴⁴⁷⁹ *Ibid.*

⁴⁴⁸⁰ *Ibid.*, T. 15927-15928 (closed session) (27 Sept 2007).

⁴⁴⁸¹ Damjan Lazarević, T. 14510 (30 Aug 2007).

⁴⁴⁸² **Nikolić** led evidence that between 14 and 19 September 1995 he was not present in the Zvornik Brigade area, but that in fact he was in the Krajina as part of a new brigade composed by Radislav Krstić. Miodrag Dragutinović confirmed seeing **Nikolić** "on the ground" in the Krajina on an unspecified time. **Nikolić** Final Brief, para. 1317; Ex. 7DP02925, "Zvornik Brigade Command Roster for September 1995", p. 1; Miodrag Dragutinović, T. 12780 (18 June 2007). The Trial Chamber is of the view that whether **Nikolić** was in the Krajina or not during this period is of little relevance since the Trial Chamber is satisfied, in the context of all the evidence regarding the reburial operation, that the only reasonable inference on the evidence is that the "fuel supply matter" in question concerned fuel necessary for the reburial operation and that **Nikolić** was involved in this.

evidences that the reburials physically started on that day, or that they would have ended precisely on 20 September 1995.

1384. However, while the Trial Chamber is satisfied that **Nikolić** had some knowledge of the reburial operation in September 1995 and afterwards, there is no evidence as to his participation beyond his discussion of fuel with **Popović**.

(d) Findings

1385. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Participation in Two Joint Criminal Enterprises

1386. The Prosecution's case against **Nikolić** is that he committed crimes through participation in two joint criminal enterprises. The Trial Chamber will begin with an examination of **Nikolić's** alleged participation therein.

a. The Joint Criminal Enterprise to Murder

i. First Category Joint Criminal Enterprise

1387. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.⁴⁴⁸³ The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Chamber will now turn to the third element: participation of the accused in the common purpose.

1388. The Trial Chamber recalls that in order for **Nikolić** to incur liability pursuant to the first category of JCE, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Nikolić** must have significantly contributed to the common purpose and have shared the intent with other members of the JCE to Murder to carry out the common purpose.

1389. On the evening of 13 July 1995, **Nikolić** knew that the Bosnian Muslim able-bodied males from Srebrenica were to be brought from Bratunac to Zvornik to be killed. **Nikolić** was requested to assist in the murder operation, and he sought his release from the IKM for this purpose. When

Nikolić requested to be relieved from his duty as Duty Officer at the IKM in order to organise the detention and killings of prisoners, **Nikolić** became an active member of the JCE to kill the Bosnian Muslim able-bodied males from Srebrenica.

1390. During the evening of 13 July 1995, **Nikolić** made preparations for detaining the prisoners at Orahovac, and was at Orahovac giving directions to the Zvornik Brigade Military Police he had previously ordered to go there. On the morning of 14 July, **Beara**, **Popović** and **Nikolić** met at the Standard Barracks to organise and coordinate the killing operation.⁴⁴⁸⁴ After the meeting, **Nikolić** travelled to the Vidikovac Hotel at Divić, where he awaited the Bosnian Muslim prisoners arriving on buses from Bratunac.⁴⁴⁸⁵ For much of the day on 14 July 1995, **Nikolić** was present at the Grbavci School in Orahovac and coordinated and directed the subsequent killings at the Orahovac execution site.⁴⁴⁸⁶ On 14 July, **Nikolić** ordered Slavko Perić of the 1st Battalion to secure the prisoners at the Kula School in the awareness that they would be executed.⁴⁴⁸⁷ On 15 July 1995 **Nikolić**, working closely with **Beara** and **Popović**, was involved in organising the detention and execution of prisoners at Ročević School.⁴⁴⁸⁸

1391. Thus, **Nikolić** was involved in the operation at many of the sites in the Zvornik area where Bosnian Muslims were detained and executed. He participated in various aspects of the operation – planning, physical preparations, and securing personnel. At Orahovac, he was giving directions at the execution site.⁴⁴⁸⁹ Throughout the operation, **Nikolić** interacted and met with other participants in the murder operation, including **Popović** and **Beara**. **Nikolić's** participation in the JCE to Murder is also corroborated by his participation, albeit limited, in the reburial operation.⁴⁴⁹⁰

1392. As outlined above, there is substantial evidence before the Trial Chamber that **Nikolić** was involved in various aspects of the JCE to Murder. He played an important role in the organisation of the operation by which the common purpose was achieved, and he made a number of contributions to that common purpose through his work, behind the scenes of and at, various detention and execution sites in Zvornik. Notably he arranged for personnel to guard and carry out executions and was personally present at Orahovac, in an organizational capacity, at the detention and execution sites, at times while the executions were being carried out. Through these acts he made a significant

⁴⁴⁸³ See *supra*, para. 1072.

⁴⁴⁸⁴ See *supra*, paras. 472, 1357.

⁴⁴⁸⁵ See *supra*, para. 1358.

⁴⁴⁸⁶ See *supra*, paras. 1361–1364.

⁴⁴⁸⁷ See *supra*, paras. 1359–1360.

⁴⁴⁸⁸ See *supra*, paras. 1367–1369.

⁴⁴⁸⁹ See *supra*, para. 1362.

⁴⁴⁹⁰ It is established that the Security Organs at the Corps and Brigade levels were responsible for the organisation of the reburial operation in the Bratunac and Zvornik areas and that **Nikolić** participated in this operation in September 1995. See *supra*, paras. 1381–1384, 1390 and Chapter III, Section I.

contribution and from his steadfast and resolute approach to the task given to him in the murder operation, it is clear that he shared the intent of the common purpose. The Trial Chamber therefore finds that **Nikolić** significantly contributed to the common purpose of the JCE to Murder and that he shared the intent to carry out the common purpose. Thus, the Trial Chamber finds that **Nikolić** was a participant in the JCE to Murder.

ii. Third Category Joint Criminal Enterprise

1393. The Prosecution alleges that pursuant to the third category of liability through participation in a joint criminal enterprise, it was foreseeable to the participants of the JCE that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Murder.⁴⁴⁹¹ The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.⁴⁴⁹² The Trial Chamber, by majority, Judge Kwon dissenting, has found that “opportunistic” killings also occurred at the Kravica Supermarket.⁴⁴⁹³ The Trial Chamber recalls its finding above that, as of the evening of 13 July 1995, **Nikolić** became an active participant in the JCE to Murder. At that point, **Nikolić** was aware that a large number of prisoners would be brought to Zvornik for detention and execution. The next day **Nikolić** witnessed first hand the transport of a significant number of prisoners and he was subsequently present at Grbavci School to witness the conditions of detention. The operation occurred in a time of chaos and involved soldiers with personal revenge motivations. The Trial Chamber finds that given these combined circumstances it was clearly foreseeable to **Nikolić** that “opportunistic” killings of the Bosnian Muslim men held in the Zvornik area would occur, in addition to the large-scale executions. However, given the timing of **Nikolić**’s participation in the JCE and the fact that his sphere of knowledge was limited to Zvornik, the evidence does not show that the detentions and killings in Bratunac were foreseeable to **Nikolić**. Rather it was the “opportunistic” killings of prisoners detained at the Petkovci School that occurred on 14 July 1995 that were foreseeable to him.⁴⁴⁹⁴ Thus, the Trial Chamber is satisfied that these murders were foreseeable to **Nikolić** and that he willingly took the risk that they would occur. The Trial Chamber finds that as a member of the JCE to Murder therefore **Nikolić** was also responsible for these killings at Petkovci School.

⁴⁴⁹¹ Indictment, para. 31. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

⁴⁴⁹² *See supra*, para. 497.

⁴⁴⁹³ *See supra*, paras. 446–449; *see* Judge Kwon’s Dissenting Opinion, *infra*, para. 40–46.

⁴⁴⁹⁴ *See supra*, paras. 1345–1356, 1366.

b. Participation in the Joint Criminal Enterprise to Forcibly Remove

1394. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.⁴⁴⁹⁵ The Trial Chamber recalls its previous finding that the transport of the men to detention and execution sites does not constitute forcible transfer.⁴⁴⁹⁶ Therefore, the Trial Chamber will not address **Nikolić**'s alleged participation in forcible transfer through his involvement in the transportation of the men from Bratunac.

1395. According to procedure, **Nikolić** should have known about the content of the 20 March 1995 Order.⁴⁴⁹⁷ However, whether or not **Nikolić** knew about the plan to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa, the Trial Chamber finds that there is no evidence that he participated in the JCE to Forcibly Remove. Therefore, the Trial Chamber finds there is no evidence that **Nikolić** contributed to the JCE to Forcibly Remove.

1396. The Trial Chamber further finds that there is no evidence that it was "clearly foreseeable"⁴⁴⁹⁸ to him, as the Prosecution alleged, that his participation in the murder of the Bosnian Muslim males from Srebrenica would "contribute to the climate of fear in Žepa which resulted in the forcible removal the Muslim population from that area".⁴⁴⁹⁹

(ii) Count 1: Genocide

1397. The Trial Chamber has found that **Nikolić** shared the intent to bring about the common purpose of the JCE to Murder, namely to murder the able-bodied Muslim males from Srebrenica, and that he made a significant contribution to the commission of the crimes within the scope of this JCE. Through his participation in the JCE to Murder, **Nikolić** committed murder. The Trial Chamber has further found that **Nikolić** planned and ordered murder.⁴⁵⁰⁰ With reference to genocide, what must be considered, however, is whether his participation in the JCE to Murder and his acts of planning and commission were carried out with genocidal intent.

1398. As described previously, direct evidence of genocidal intent is rare. Instead, it must be inferred from the acts, conduct and knowledge of the accused, as well as other relevant circumstances. The Prosecution points to various factors in support of their allegation that **Nikolić**

⁴⁴⁹⁵ See *supra*, Chapter III, Section G.2.

⁴⁴⁹⁶ See *supra*, para. 934.

⁴⁴⁹⁷ In accordance with Rule 131 of the Brigade Rules, **Pandurević** should have briefed the members of the Zvornik Brigade Command, including **Nikolić** as the Chief of Security, on the task contained in the 20 March Order. See Ex. 7DP00408, "JNA Brigade Rules, 1984", Rule 131 and 132. **Pandurević** confirmed in his testimony that he had received the 20 March Order. Vinko Pandurević, T. 30822 (29 Jan 2009).

⁴⁴⁹⁸ See Prosecution Final Brief, para. 2790.

⁴⁴⁹⁹ *Ibid.*

⁴⁵⁰⁰ See *infra*, para. 1421,

had genocidal intent. They highlight the derogatory language **Nikolić** used to refer to Bosnian Muslims, with special emphasis on entries he made on 15 July 1995 in the Duty Officer Notebook and in the Duty Officer Diary, where he describes Muslims as “Turks”.⁴⁵⁰¹ The Prosecution submits that the use of such language just a day after the killings at Orahovac and on the same day of the killings at Ročević and Kozluk, clearly shows **Nikolić**’s ethnic hatred toward the Muslim population.⁴⁵⁰² They also allude to other instances where derogatory terms are used with reference to Muslims and other ethnic groups.⁴⁵⁰³

1399. As indicated before, while the use of derogatory language may be of relevance in relation to genocidal intent, it does not in and of itself evidence such intent.⁴⁵⁰⁴ This is particularly the case given the culture within the VRS and the Zvornik Brigade in which such language was commonplace. Further, the Trial Chamber has considered the proximity of **Nikolić**’s use of the language to the criminal acts but is not persuaded that this adds weight to the evidence as an indicator of genocidal intent. His words are captured at that time because he served as duty officer during the relevant period and again there is nothing to suggest this was other than a reflection of an unacceptable but common practice.

1400. More significantly, the Prosecution points to the systematic and coordinated nature of the murder operation and the various forms and extent of **Nikolić**’s involvement in the execution of the plan to murder, including his role in planning, organising and coordinating. Further, the Prosecution points to the willingness to participate in the common plan, which **Nikolić** demonstrated.

1401. The starting point in the analysis is **Nikolić**’s knowledge of the details and features of the murder operation which evidences that it was being carried out with genocidal intent. **Nikolić**, argues that while he came to know of the killings at Orahovac, he never learned of or shared a genocidal intent.

⁴⁵⁰¹ Prosecution Final Brief, para. 2802. See Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, pp. 140, 142; Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”, p. 3.

⁴⁵⁰² Prosecution Final Brief, paras. 2802–2803. The Prosecution also referred to evidence of his ethnic bias towards other ethnic groups. In an intercepted conversation between **Nikolić** and **Popović** on 20 April 1995, **Nikolić** talked about two Polish volunteers calling them “Catholic peasants” and threatening to “slit their throats and dump them in the Drina.” According to the **Nikolić** Defence, this intercept does not establish the genocidal intent of the Accused. It emphasizes **Nikolić**’s good relation with his sister-in-law (who was a Catholic Croat), and argues that such language was uttered during the war, and that during the recorded conversation, **Nikolić** was particularly “agitated” by the problems of security related to the arrival of volunteers under his responsibility. Prosecution Final Brief, para. 2804; Ex. P02352a, “Intercept of conversation between Popović and Nikolić, 20 April 1995, 19:10 hours”; **Nikolić** Final Brief, paras. 1580–1584

⁴⁵⁰³ Prosecution Final Brief, paras. 2804.

⁴⁵⁰⁴ See *supra*, para. 1117.

1402. **Nikolić's** knowledge of the murder operation was of a different nature from that of **Beara** and **Popović**. **Nikolić** is first informed of the murder plan on the evening of 13 July.⁴⁵⁰⁵ On the evidence before the Trial Chamber, the information he was given was sparse; a large number of prisoners were being brought from Bratunac to Zvornik to be executed.⁴⁵⁰⁶ The timing is also significant. By then the murder operation was well underway, the vast majority of the victims had been detained and over 1,000 had been or were about to be executed at the Kravica Warehouse and in Sandići Meadow.⁴⁵⁰⁷

1403. On the evidence before the Trial Chamber, **Nikolić** had no knowledge of those events. Other than his general understanding that these were prisoners taken as a result of the attack on, and fall of the Srebrenica enclave, he had no information as to the circumstances by which these men had ended up in VRS custody. He did not know about the indiscriminate separations in Potočari or the vigorous pursuit of victims on the Konjević Polje road.⁴⁵⁰⁸ Thus he was not aware that this murderous enterprise went well beyond killing those who had fallen into VRS custody and was in fact an operation designed to maximise the number of victims, with the aim of destruction of the group.⁴⁵⁰⁹ In addition having had no direct involvement with the prisoners at that point, while it would have been evident the prisoners were Bosnian Muslims, there is no evidence he knew that the intended victims included a significant component of civilians.⁴⁵¹⁰ Thus, the Trial Chamber finds that on 13 July when he joined in the common plan, **Nikolić** was aware of the plan to murder on a large scale but not of some of the key features of the operation which would evidence genocidal intent. In this respect, the Prosecution is correct in its assertion that **Nikolić** was willing to pursue his release from duty officer responsibilities at the IKM in order to participate in this operation. Nevertheless, given his state of knowledge at the time, this evidences only his willingness to accede to these patently illegal orders and to participate in murder. In that context, it alone does not show genocidal intent.

1404. However, even accepting that this was **Nikolić's** initial state of knowledge, what happened soon after was more than sufficient for him to conclude that the plan was not just to kill but to destroy. On the morning of 14 July, **Nikolić** acquires a clearer picture of the operation. First, he meets with **Beara** and **Popović** to discuss the details of the killing operation.⁴⁵¹¹ The only

⁴⁵⁰⁵ See *supra*, paras. 1345–1356.

⁴⁵⁰⁶ *Ibid.*

⁴⁵⁰⁷ See *supra*, para. 1299, noting that while there is no direct evidence before it of **Beara's** participation in the murder operation prior to 13 July. However, there is clear evidence before the Trial Chamber that as of the morning of 12 July, **Popović**, **Beara's** subordinate in the Security Branch, was aware of the plan to murder).

⁴⁵⁰⁸ See *supra*, Chapter III, Sections E.6 and F.4.

⁴⁵⁰⁹ See *supra*, Chapter III, Section E.6.

⁴⁵¹⁰ See *supra*, paras. 760–761.

⁴⁵¹¹ See *supra*, para. 1357.

reasonable inference to draw from such a planning meeting is that when he leaves Standard Barracks that morning, he knows the details of the plan; the executions were to be carried out in multiple locations in the Zvornik area and the victims would number in the hundreds to thousands.⁴⁵¹² Later that morning, he sees the convoy of buses and subsequently he acquires first hand information from his observations at Orahovac about the composition of the victims: soldiers and civilians, men, boys and elderly.⁴⁵¹³ It was also apparent that these unarmed, weakened, Bosnian Muslim males, already in VRS custody, constituted no military threat.

1405. The fact that a large number of Bosnian Muslim males had already been killed elsewhere does not detract from the reality that the killings that followed and with which he was involved were sufficient to make **Nikolić** aware of the scale and scope of this killing operation. **Nikolić** observed first hand the systematic and organised manner in which the killing operation was planned and carried out and further he took an active role in it. He saw evidence of the sheer determination that every detained Bosnian Muslim male would be killed, including the incident when **Popović** enjoined the soldiers at an execution site to shoot a young boy.⁴⁵¹⁴

1406. His knowledge of the genocidal nature of the plan can also be inferred from his close association and interaction with **Beara** and **Popović**, whom the Trial Chamber has found harbored genocidal intent. The evidence shows that the interaction with these two men did not end with the meeting of 14 July at Standard Barracks. He continued to meet and work with them in the course of the killing operation and the Trial Chamber is satisfied that through this interaction he would have known of their genocidal intent.⁴⁵¹⁵

1407. Thus on the basis of this combined evidence, the Trial Chamber is satisfied that soon after the inception of his involvement in the killing operation, and certainly by the time of executions at Orahovac, **Nikolić** knew that this was a massive killing operation being carried out with a genocidal intent. His key contributions to the JCE to Murder are made concurrent with, and after the acquisition of this knowledge.

1408. The Trial Chamber has found above that **Nikolić** played an important role in the JCE to Murder in terms of planning and organising detentions and executions. His contribution can properly be described as persistent and determined. The central issue, however, is whether those actions, combined with his knowledge of the genocidal intent of others, considered in the totality of the evidence, are sufficient to satisfy the Trial Chamber beyond reasonable doubt that **Nikolić** not

⁴⁵¹² See *supra*, paras. 1345–1356.

⁴⁵¹³ See *supra*, paras. 478–488, 1358.

⁴⁵¹⁴ See *supra*, paras. 486–488.

⁴⁵¹⁵ See *supra*, paras. 486–488, 1366. See *supra*, paras. 1368–1369.

only knew of the intent but that he shared it. In reaching this determination the Trial Chamber recalls that “the gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed.”⁴⁵¹⁶ In this context, “the demanding proof of specific intent” is one of the safeguards to ensure that convictions for this crime will not be imposed lightly.⁴⁵¹⁷

1409. The evidence shows that **Nikolić** demonstrated a resolve to carry out his assigned tasks in this murderous operation. For the executions at Orahovac, he was instrumental in arranging for the guarding of the prisoners and he was present, giving directions at the actual killing site.⁴⁵¹⁸ He even took the extra step of offering new uniforms to soldiers from the Zvornik Brigade in order to encourage them to remain present for the executions.⁴⁵¹⁹ For Ročević, he pressured Aćimović to provide personnel for the executions after Aćimović had refused the initial request to assist.⁴⁵²⁰ As to the scope of his participation, **Nikolić** was actively involved in many facets of the executions at Orahovac. He pursued personnel for executions at Ročević and for guarding at the Kula school though the evidence does not demonstrate that he was physically present at those locations. He was also present with **Popović** near Petkovci while prisoners were held there. His acts and participation therefore provide some evidence from which a genocidal intent on his part could be inferred.⁴⁵²¹

1410. At the same time, while **Beara** and **Popović** can properly be described as architects of this genocidal operation, **Nikolić** was brought in to carry out specific tasks assigned to him, in implementation of a monstrous plan, designed by others. His criminal acts, though horrific in nature, were confined to his sphere of responsibility – some specific detention and execution sites in Zvornik. His participation and role in the operation viewed in this context is not overarching. He did not participate in capturing nor was he involved in selecting the prisoners. While he had some escort responsibilities, he was not implicated in the arrangements for the movement of the prisoners from Bratunac to Zvornik. He was not involved in recruiting personnel beyond the reaches of the Zvornik Brigade. He had no involvement in securing equipment and there is no evidence of his taking part in the arrangements for the burials. Further, his connection to the reburial operation is minimal. His participation in the killing operation is limited in time, beginning on the night of 13

⁴⁵¹⁶ *Krstić* Appeal Judgement, para. 37.

⁴⁵¹⁷ *Krstić* Appeal Judgement, para. 37.

⁴⁵¹⁸ *See supra*, para. 1362.

⁴⁵¹⁹ *See supra*, para. 1361.

⁴⁵²⁰ *See supra*, paras. 1367–1368.

⁴⁵²¹ The Trial Chamber has also considered the Prosecution argument that the role **Nikolić** played in arranging the murder of the four survivors further evidences **Nikolić**'s genocidal intent. However, as the Trial Chamber has found the evidence insufficient to link **Nikolić** directly to their murder, the Prosecution's argument in this respect falls.

and ending suddenly midday on 16 July. As a result he is not directly implicated in the killings at Branjevo Military Farm or Pilica Cultural Centre.

1411. The Trial Chamber also recalls that the wounded prisoners from Milići Hospital were in the custody of the Zvornik Brigade for several days. The Trial Chamber has some evidence that **Nikolić** had a role in that custody and thus he had an opportunity to further the genocidal plan by arranging himself for their execution. Yet, they remained safe within the custody of **Nikolić** and the Zvornik Brigade and were killed only after **Popović** took control of them.

1412. His acts must also be considered in the context of the evidence in totality and to that end, **Nikolić**'s personal circumstances and position within the VRS at the time are very relevant. **Nikolić** was a 2nd Lieutenant, the lowest rank of officer, had never attended a military academy, and was occupying the position of Chief of Security, a post usually reserved for the rank of Major or higher.⁴⁵²² It is evident he was not a senior officer and in the context of an operation directed by **Beara** and **Popović**, **Nikolić** would have little authority of his own. **Nikolić** was brought into the operation by his superiors in the Security Branch who ordered him to make logistical arrangements for the detention and killing of a large number of prisoners in the Zvornik area. Further, he was aware that this was an operation being conducted pursuant to the orders of the VRS Commander **Mladić**. Of course, these were patently illegal orders and there can be no doubt that **Nikolić** was obligated to refuse to carry them out. However, in terms of assessing his personal intent to destroy a group, it is relevant to place his participation in the context in which it clearly occurred.

1413. The words of **Vinko Pandurević** in describing **Nikolić**'s performance and character as an officer are also very telling. He recounted that **Nikolić** was a disciplined officer, however, "the cloak of the security service that he put on [...] was much too big a size for him [...] with time he would be swallowed by this service. He was actually very devoted to this service and therefore believed the service much more than he believed me."⁴⁵²³

1414. Having considered and weighed all of the above factors individually and cumulatively, the Trial Chamber is not satisfied that the only reasonable inference to be drawn from **Nikolić**'s acts is that he shared the genocidal intent. Another reasonable inference is that **Nikolić**'s blind dedication to the Security Service led him to doggedly pursue the efficient execution of his assigned tasks in this operation, despite its murderous nature and the genocidal aim of his superiors. In these circumstances the stringent test for specific intent is not met and the Trial Chamber therefore finds that **Nikolić** did not participate in the JCE to Murder with genocidal intent.

1415. However having found that **Nikolić** knew of that intent on the part of others, his multi-faceted participation in the murder operation not only constituted a significant contribution to the JCE to Murder, it also was a substantial contribution to the commission of genocide. The Trial Chamber therefore finds that **Nikolić** aided and abetted genocide.

(iii) Count 2: Conspiracy to Commit Genocide

1416. The Trial Chamber has found that **Nikolić** did not have the specific intent for genocide. Thus, **Nikolić** did not have the *mens rea* for conspiracy to commit genocide. The Trial Chamber therefore finds that **Nikolić** is not criminally responsible for conspiracy to commit genocide.

(iv) The Knowledge Requirement for a Crime under Article 5 of the Statute

1417. **Nikolić** is responsible for a crime against humanity under Article 5 of the Statute, if his acts formed part of a widespread or systematic attack directed against a civilian population and if at the time he knew of that attack and that his acts comprise part of it.⁴⁵²⁴

1418. The Trial Chamber recalls its finding that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. **Nikolić**, as Chief of Security of the Zvornik Brigade, whose Commander took part in the attack on Srebrenica, knew of the military attack against the protected Srebrenica enclave.⁴⁵²⁵ He further knew that the Bosnian Muslim prisoners were transported from Bratunac to Zvornik. Therefore, he knew that these were prisoners who had come into the custody of the VRS as a result of the attack on the civilian enclave of Srebrenica.⁴⁵²⁶ **Nikolić** saw that the Bosnian Muslim prisoners detained at the Grbavci School and executed at Orahovac were not only soldiers, but also civilians and that no distinction or selection was made in terms of those to be executed. **Nikolić's** acts of murder are clearly tied to the attack on Srebrenica,⁴⁵²⁷ and **Nikolić** knew that this was the case.

1419. On this basis, the Trial Chamber finds that **Nikolić** meets the knowledge requirement for commission of a crime against humanity under Article 5 of the Statute.

⁴⁵²² Vinko Pandurević, T. 31340–31342 (12 Feb 2009).

⁴⁵²³ Vinko Pandurević, T. 31342–31343 (12 Feb 2009).

⁴⁵²⁴ See *supra*, paras. 751, 757–758.

⁴⁵²⁵ See *supra*, paras. 1841–1850.

⁴⁵²⁶ See *supra*, paras. 120–124, 153–157, 1345.

⁴⁵²⁷ See *supra*, para. 779.

(v) Counts 4 and 5: Murder

1420. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims from Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.⁴⁵²⁸ The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to murder the able-bodied Bosnian Muslim males from Srebrenica or were a natural and foreseeable consequence of it.⁴⁵²⁹ **Nikolić** participated in the JCE to Murder and met the knowledge requirement for murder as a crime against humanity. He also knew that the victims were taking no active part in the hostilities when the murders were committed. He is therefore criminally responsible for murder as a crime against humanity as well as being liable for murder as a violation of the laws or customs of war, both for the murders found to be part of the JCE to murder and the “opportunistic” killings.⁴⁵³⁰

1421. The Prosecution alleges that **Nikolić** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴⁵³¹ The Trial Chamber finds that **Nikolić** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of Bosnian Muslim able-bodied males, as is evidenced by his participation in the killings at Orahovac, his meetings with **Beara** and **Popović** in planning and coordinating the murder operation, his conversation with **Aćimović** regarding the killings of the prisoners held at Ročević School, and his conversation with **Obrenović** on the night of 13 July 1995. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of murder through his participation in the JCE.

(vi) Count 3: Extermination

1422. The Trial Chamber has found that the large-scale murders of men and boys from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5.⁴⁵³² These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it. **Nikolić** participated in the JCE to Murder and he also ordered and planned murder as a crime against humanity. These murders, to **Nikolić**’s knowledge, were carried out on a massive scale with thousands of victims. Thus **Nikolić** committed, ordered and planned murder on a large scale. On the basis of these combined circumstances the Trial Chamber finds

⁴⁵²⁸ See *supra*, paras. 793–798.

⁴⁵²⁹ See *supra*, paras. 1081–1082. The Trial Chamber recalls that, in relation to the “opportunistic” killings, **Nikolić** has been found responsible only for the murders that occurred at the Petkovci School. See *supra*, 1393.

⁴⁵³⁰ See *ibid.* See also Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–46.

⁴⁵³¹ Indictment, para. 88.

Nikolić guilty of extermination. With the knowledge requirement for Article 5 having been met, **Nikolić** is therefore criminally liable for extermination as a crime against humanity.

1423. The Prosecution alleges that **Nikolić** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴⁵³³ The Trial Chamber finds that **Nikolić** not only committed, through his participation in the JCE to Murder, but also ordered and planned the extermination of Bosnian Muslim able-bodied males from Srebrenica.⁴⁵³⁴ However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of extermination through his participation in the JCE to murder.

(vii) Count 6: Persecution

1424. The Trial Chamber has found that persecution, a crime against humanity, was committed, *inter alia*, through the murder of thousands of Bosnian Muslims (including the so-called “opportunistic” killings) and cruel and inhumane treatment of men detained in Bratunac and Zvornik.⁴⁵³⁵ The Trial Chamber has found that these acts fall within the scope of the JCE to Murder, or were a natural and foreseeable consequence of it.⁴⁵³⁶

1425. The Trial Chamber has also found that **Nikolić** was a participant in the JCE to Murder, and that through his participation he was responsible for cruel and inhumane treatment and murder on a large scale, including the so called “opportunistic” killings at Petkovci School, the latter being a natural and foreseeable consequence of the JCE to Murder.⁴⁵³⁷

1426. **Nikolić** participated in the killing operation with the specific intent to discriminate on political, racial or religious grounds. The Trial Chamber is of the opinion that **Nikolić’s** involvement in the organisation and coordination of the massive scale murder of a single ethnic group –the Bosnian Muslims– shows his discriminatory intent. Moreover, his active participation in the detention, killing and reburial, the circumstances and manner of which plainly display discriminatory intent as previously found by the Trial Chamber,⁴⁵³⁸ is further proof of **Nikolić’s** intent. The Trial Chamber therefore finds that **Nikolić** participated in the JCE to Murder with

⁴⁵³² See *supra*, paras. 802–805.

⁴⁵³³ Indictment, para. 88.

⁴⁵³⁴ See *supra*, para. 1421.

⁴⁵³⁵ See *supra*, paras. 990–995.

⁴⁵³⁶ See *supra*, paras. 1081–1083. See also Indictment, para. 83.

⁴⁵³⁷ See *supra*, paras. 1387–1393, 1420–1421.

⁴⁵³⁸ See *supra*, paras. 990–995.

specific intent to discriminate on political, racial or religious grounds and thereby committed persecution through murder and cruel and inhumane treatment.

1427. For an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the Prosecution needs to establish is that it was reasonably foreseeable to the accused that the extended crime would be committed and that it would be committed with the required specific intent.⁴⁵³⁹ The Trial Chamber is satisfied that it was foreseeable to **Nikolić** that the “opportunistic” killings at Petkovci School would be carried out with persecutory intent. By participating in the JCE to Murder, **Nikolić** willingly took this risk. He is therefore responsible, through his participation in the JCE to Murder, for persecution as a crime against humanity through “opportunistic” killings under the third category JCE⁴⁵⁴⁰.

1428. The Prosecution alleges that **Nikolić** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.⁴⁵⁴¹ The Trial Chamber finds that **Nikolić** planned, ordered and committed persecution. However, the Trial Chamber is of the view that his conduct is most accurately described as the commission of the crime of persecution as a crime against humanity through murder and cruel and inhumane treatment committed as part of the JCE to Murder with discriminatory intent.

(viii) Count 7: Inhumane Acts (Forcible Transfer)

1429. The Trial Chamber has found that **Nikolić** did not participate in the JCE to Forcibly Remove.⁴⁵⁴² Similarly, the evidence is insufficient to establish that he aided and abetted forcible transfer in either Srebrenica or Žepa, nor does it establish that he is responsible for forcible transfer through another mode of liability.⁴⁵⁴³ The Trial Chamber therefore finds that **Nikolić** is not criminally responsible for forcible transfer as a crime against humanity.

(ix) Count 8: Deportation

1430. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only

⁴⁵³⁹ See *supra*, para. 1021.

⁴⁵⁴⁰ See *supra*, para. 1420, fn. 1428.

⁴⁵⁴¹ Indictment, para. 88.

⁴⁵⁴² See *supra*, paras. 1394–1396.

⁴⁵⁴³ *Ibid.* The Trial Chamber has drawn no inference from the evidence of PW-168 that “either the Duty Officer or **Nikolić**” carried out an order to regulate the traffic giving priority to buses from Srebrenica and to take over the Konjević Polje junction at 4:30 p.m. PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16150-16151 (closed session) (10 Oct 2007), T. 16500 (closed session) (17 Oct 2007); Ex. 7DP00157, “Order from the Command of the Drina Corps signed by Milenko Živanović, 12 July 1995”.

alleged basis for the charge of deportation in the Indictment, **Nikolić** is not criminally responsible for deportation as a crime against humanity.

6. Ljubomir Borovčanin

(a) The Case against Borovčanin

1431. The Prosecution alleges that **Borovčanin** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.⁴⁵⁴⁴ Specifically, the Prosecution alleges that **Borovčanin** was a member of the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica and the JCE to Forcibly Remove.⁴⁵⁴⁵

1432. **Borovčanin** is also charged as a commander for the acts of his subordinates,⁴⁵⁴⁶ with the same crimes referred to above, pursuant to Article 7(3) of the Statute.⁴⁵⁴⁷

(b) Position and Function

1433. **Ljubomir** (a.k.a. Ljubiša) **Borovčanin** was born on 27 February 1960 in Han Pijesak, BiH.⁴⁵⁴⁸ He graduated in political science from Sarajevo University in 1982.⁴⁵⁴⁹ From November 1990 until May 1992, **Borovčanin** was Commander of the Kladanj Police Station.⁴⁵⁵⁰ In August 1992 he moved, also in the role of Commander, to the Bratunac Police Station and stayed in that position until February 1994 when he was appointed Deputy Commander of the SBP of the RS MUP, based at the SBP headquarters in Janja, a village close to Bijeljina.⁴⁵⁵¹ In December 1995, **Borovčanin** was appointed Head of the Police Administration for the MUP in RS until February 1998, when he became Public Security Adviser to the Minister of the Interior of RS.⁴⁵⁵²

⁴⁵⁴⁴ Indictment, paras. 88–89. **Borovčanin** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

⁴⁵⁴⁵ Indictment, paras. 43, 49–71, 81, 84, 90–92. **Borovčanin** is charged under Count 7 of the Indictment with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

⁴⁵⁴⁶ Indictment, paras. 93, 95.

⁴⁵⁴⁷ *Ibid.*, paras. 26–29, 30.4, 30.4.1, 31, 33–37, 43, 45–49, 60–64, 72–73, 81, 83–84.

⁴⁵⁴⁸ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002” p. 4; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 1.

⁴⁵⁴⁹ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 5.

⁴⁵⁵⁰ *Ibid.*, pp. 6, 10; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 154.

⁴⁵⁵¹ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 6; PW-160, T. 8571 (9 Mar 2007). See also Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 116.

⁴⁵⁵² Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 8–9.

1434. During the time relevant to the Indictment, **Borovčanin** was Deputy Commander of the SBP of the RS MUP.⁴⁵⁵³ On 10 July 1995, **Borovčanin** was appointed Commander of a joint force of MUP units which was sent to Bratunac.⁴⁵⁵⁴ The order appointing him read in relevant part as follows:

2. The unit shall consist of the 2nd Special Police Detachment from Šekovići, the 1st Company of the PJP /Special Police Unit/ of the Zvornik SJB, a mixed company of joint RSK /Republic of Serbian Krajina/, Serbian and RS MUP forces and a company from the training camp on Jahorina.

[...]

4. [...] Assemble units by 1200 hours on 11 July 1995, in front of the SJB in Bratunac except for the 2nd Special Police Detachment, which shall proceed towards its destination on 11 July 1995 in the afternoon.

5. On arrival at his destination the unit commander is obliged to make contact with the Corps Chief of Staff, General Krstić.⁴⁵⁵⁵

Borovčanin received this order issued by Tomislav Kovač, Deputy Minister of the Interior,⁴⁵⁵⁶ in the afternoon on 10 July, while he was in battle in Trnovo on the Sarajevo front.⁴⁵⁵⁷

1435. The order was issued pursuant to the RS “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War” which authorised the resubordination of MUP forces to the VRS.⁴⁵⁵⁸ This order resubordinated **Borovčanin** and his units to the command of the Drina Corps.⁴⁵⁵⁹ He was ordered to contact Krstić, then the Drina Corps’ Chief of Staff.⁴⁵⁶⁰ The MUP forces under **Borovčanin** which gathered in Bratunac on 11 July and early in the morning of 12 July 1995 were the 1st PJP Company from Zvornik,⁴⁵⁶¹ under the command of

⁴⁵⁵³ Ex. P02857, “Document brought by Borovčanin to the interview on 20 Feb 2002 and marked Document 3: Memo assigning Borovčanin temporary Deputy Cdr RS Special Police Brigade, 24 Feb 1994”; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 6.

⁴⁵⁵⁴ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 20–21; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 3; Exs P00057, P00094, 4D00337 “RS Ministerial Order 64/95 to MUP units, type-signed Tomislav Kovač, 10 July 1995.”

⁴⁵⁵⁵ Ex. P00057, “RS Ministerial Order 64/95 to MUP units type-signed Tomislav Kovač, 10 July 1995.”

⁴⁵⁵⁶ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 15; PW-160, T. 8574 (9 Mar 2007); Mendeljev Đurić, T. 10797 (1 May 2007).

⁴⁵⁵⁷ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 20–21; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 3.

⁴⁵⁵⁸ Exs. 4D00413, 4DP00725, P00422 “RS Law on the Implementation of the Law on Internal Affairs during an Imminent Threat of War or a State of War, 29 Nov 1994”. An imminent threat of war was declared in RS in April 1992 and in June 1995. Ex. 4D00527, “RS Presidency Decision Declaring an Imminent Threat of War, 15 April 1992”; Exs 4DP00001, 4DP00726, 5D01341, 5D01342, “Presidential Order of Mobilization.”

⁴⁵⁵⁹ Exs P00057, P00094, 4D00337 “RS Ministerial Order 64/95 to MUP units, type-signed Tomislav Kovač, 10 July 1995.”

⁴⁵⁶⁰ *Ibid.* See *supra*, paras. 184–185.

⁴⁵⁶¹ The 1st PJP Company from Zvornik arrived in Bratunac in the early evening of 11 July. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 47–48; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 5; Nenad Filipović, T. 26992, 26995 (10 Oct 2008); Zarko Zarić, T. 26912–26914 (9 Oct 2008).

Radomir Pantić,⁴⁵⁶² the SBP 2nd Šekovići Detachment,⁴⁵⁶³ under the command of its commander Rado Čuturić, (a.k.a. “Oficir”),⁴⁵⁶⁴ and the Jahorina Recruits,⁴⁵⁶⁵ under the command of Đuško Jević (a.k.a. “Staljin”),⁴⁵⁶⁶ and his deputy and commander of the Jahorina Recruits’ 1st Company, Mendeljev Đurić, (a.k.a. “Mane”).⁴⁵⁶⁷ According to RS law, the MUP forces retained their internal chain of command, while resubordinated to the commander of the VRS in whose area of responsibility they were performing combat tasks.⁴⁵⁶⁸

(c) Acts and Whereabouts

(i) Arrival in Bratunac

1436. On receipt of the order, **Borovčanin** left for Bratunac on the evening of 10 July 1995.⁴⁵⁶⁹ On his way he stopped at Jahorina and discussed his assignment in Srebrenica with his SBP commander, Goran Sarić.⁴⁵⁷⁰

1437. **Borovčanin** arrived at the Bratunac Police Station around noon on 11 July and headed to the Pribićevac IKM to speak to Krstić.⁴⁵⁷¹ When he got there at around 3 p.m., he was put on the telephone to Mladić who ordered him to go that same day with his MUP forces from the direction of Žuti Most to Potočari and Milačevići.⁴⁵⁷²

⁴⁵⁶² See *supra*, para. 182.

⁴⁵⁶³ The SBP 2nd Šekovići Detachment arrived at around 3 a.m. on the morning of 12 July. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 63–64.

⁴⁵⁶⁴ Milenko Pepić, T. 13539 (9 July 2007). See *supra*, para. 178; fn. 1236.

⁴⁵⁶⁵ The 1st Company of the Jahorina Recruits arrived in Bratunac in the afternoon of 11 July. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002,” pp. 40, 44; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 5; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995,” p. 2; Mendeljev Đurić, T. 10799 (1 May 2007).

⁴⁵⁶⁶ See *supra*, para. 180.

⁴⁵⁶⁷ While the order mentions the “mixed company of joint RSK /Republic of Serbian Krajina/, Serbian and RS MUP forces”, the Trial Chamber finds that there is no evidence as to their whereabouts, except for Borovčanin saying that they did not arrive in Bratunac. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 26–27, 33. See Ex. P00057, “RS Ministerial Order 64/95 to MUP units type-signed Tomislav Kovač, 10 July 1995.”

⁴⁵⁶⁸ Ex. 4D00413, “RS Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War, 29 Nov 1994”, Art. 14, para. 2; Ex. P00008, “Order of the VRS Main Staff, 22 Apr 1995”; Milomir Savčić, T. 15287–15288 (12 Sept 2007); Dobrisav Stanojević, T. 12873 (19 June 2007).

⁴⁵⁶⁹ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 20–21, 26; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995,” p. 1.

⁴⁵⁷⁰ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 26; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995,” p. 1.

⁴⁵⁷¹ Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 26–28, 30; Dragan Nesković, T. 27425 (27 Oct 2008); Slaviša Simić, T. 27500–27501 (28 Oct 2008).

⁴⁵⁷² Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 30–32, 38–41, 44–45; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995”, p. 2.

1438. On returning to the Bratunac Police Station around 5 p.m., **Borovčanin** met with his subordinate commanders Jević, Mane and Pantić.⁴⁵⁷³ Dragomir Vasić, Head of the Zvornik CJB, and Danilo Zoljić, Commander of the Zvornik PJPs, also stopped by.⁴⁵⁷⁴

1439. Around this time, in the late afternoon or early evening of 11 July, **Borovčanin** ordered a reconnoitre of the Potočari area, including the DutchBat compound and the access leading towards Srebrenica.⁴⁵⁷⁵ **Borovčanin** was informed that Bosnian Muslim civilians were gathering in the area of the DutchBat compound.⁴⁵⁷⁶

1440. At around 7 p.m. on 11 July, Mladić summoned **Borovčanin** to the Hotel Fontana where Mladić, Krstić, and other officers were dining.⁴⁵⁷⁷ When **Borovčanin** informed Mladić that his units had not yet arrived and that he had not yet started to move to Potočari and Milačevići, Mladić dismissed him angrily, whereupon **Borovčanin** returned to the Bratunac Police Station.⁴⁵⁷⁸

1441. At around 10 p.m., **Borovčanin** went to Žuti Most, outside of Potočari, to reconnoitre the area where his units were to be deployed to scour the area around the Bratunac-Srebrenica Road.⁴⁵⁷⁹ Colonel Slobodan Cerović, Assistant Commander for Moral, Legal, and Religious Affairs of the Drina Corps,⁴⁵⁸⁰ and Momir Nikolić, the Chief of Security and Intelligence of the Bratunac Brigade, were there, as were a large number of VRS officers and soldiers.⁴⁵⁸¹

1442. At the time, in response to information received on the movement of the ABiH 28th Division, Bosnian Serb Forces were ordered to block the withdrawal of the ABiH from the Srebrenica enclave by ensuring control over the territory along the defence lines of the VRS in the Bratunac area.⁴⁵⁸² At one point, **Borovčanin** saw DutchBat members and some Bosnian Muslim civilians leaving the area, whereupon Cerović informed him that they were going to a meeting.⁴⁵⁸³ **Borovčanin** later learned of the results of the Hotel Fontana meetings, that the Bosnian Muslims

⁴⁵⁷³ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 45; PW-160, T. 8574–8575 (9 Mar 2007).

⁴⁵⁷⁴ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 44–45; PW-160, T. 8574 (9 Mar 2007).

⁴⁵⁷⁵ PW-160, T. 8579 (9 Mar 2007), T. 8655, 8657 (12 Mar 2007). See Momir Nikolić, T. 33220 (24 Apr 2009).

⁴⁵⁷⁶ PW-160, T. 8579 (9 Mar 2007).

⁴⁵⁷⁷ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 45–46.

⁴⁵⁷⁸ *Ibid.*

⁴⁵⁷⁹ *Ibid.*, p. 51; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 5; Zarko Zarić, T. 26917–26918 (9 Oct 2008); Milenko Pepić, T. 13544–13545 (9 July 2007).

⁴⁵⁸⁰ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 52; Prosecution Adjudicated Facts Decision, Annex, Fact 80.

⁴⁵⁸¹ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 52–53.

⁴⁵⁸² See *supra*, para. 364.

⁴⁵⁸³ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 51–52. The Trial Chamber notes that this was the Second Hotel Fontana Meeting.

were to be transported out of Potočari, and that the Bosnian Muslim representatives had signed documents to this effect.⁴⁵⁸⁴

1443. Late that evening, while he was at the Bratunac Police Station, Momir Nikolić, who had just come out of a meeting at the Hotel Fontana,⁴⁵⁸⁵ passed on an order from Mladić to **Borovčanin** to strengthen the Žuti Most line towards Potočari in the early hours of the morning as Bosnian Muslims, both civilians and members of the ABiH, were amassing there.⁴⁵⁸⁶ That evening, **Borovčanin** instructed the Jahorina Recruits to advance to Potočari the next morning to assist in the transportation of the Bosnian Muslim civilians, and to wait for further orders.⁴⁵⁸⁷

(ii) Advance on Potočari

1444. At around 5 a.m. on 12 July, **Borovčanin** went to Žuti Most.⁴⁵⁸⁸ From there, the Jahorina Recruits and the 1st PJP Company from Zvornik, later joined by the SBP 2nd Šekovići Detachment,⁴⁵⁸⁹ advanced towards Potočari and managed to take control of OP Papa, the UN checkpoint at Žuti Most, without any reaction from DutchBat.⁴⁵⁹⁰ Eventually an order arrived from the VRS that all military activities were to be halted to await the result of the meeting at the Hotel Fontana.⁴⁵⁹¹ The Jahorina Recruits and the 1st PJP Company from Zvornik proceeded to enter Potočari and together with other members of Bosnian Serb Forces took up positions in the area surrounding the DutchBat compound.⁴⁵⁹²

1445. **Borovčanin** also went to the DutchBat compound in Potočari that morning and remained in the taped-off area where the Bosnian Muslims were gathered.⁴⁵⁹³ While Mladić was there, **Borovčanin** together with some other Bosnian Serb officers and soldiers handed out bread and

⁴⁵⁸⁴ PW-160, T. 8579 (9 Mar 2007).

⁴⁵⁸⁵ The Trial Chamber notes that this was the Second Hotel Fontana Meeting.

⁴⁵⁸⁶ Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", p. 2; Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 55, 59–61.

⁴⁵⁸⁷ Mendeljev Đurić, T. 10804, 10855–10856 (2 May 2007); PW-160, T. 8579–8580, 8607 (9 Mar 2007), T. 8719–8720 (13 Mar 2007). *But see* Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 50–52, 65–66.

⁴⁵⁸⁸ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 63.

⁴⁵⁸⁹ Milenko Pepic, T. 13545 (9 July 2007); Predrag Čelić, T. 13465 (28 June 2007); Dobrisav Stanojević, T. 12875, 12905 (19 June 2007).

⁴⁵⁹⁰ Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", p. 2; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", p. 1; PW-160, T. 8657–8659, 8589 (9 Mar 2007), T. 8657–8658 (12 Mar 2007), T. 8725 (13 Mar 2007); Mendeljev Đurić, T. 10805–10807, 10856–10858 (2 May 2007); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 61, 63–64; Nenad Filipović, T. 26994, 26996–26997 (10 Oct 2008); Robert Franken, T. 2588 (17 Oct 2006); Johannes Rutten, T. 4962 (4 Dec 2006).

⁴⁵⁹¹ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 64–65. Borovčanin did not remember who gave this order but said that someone gave it orally. Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 65. The Trial Chamber notes that this was the Third Hotel Fontana Meeting.

⁴⁵⁹² *See supra*, paras. 302, 304.

⁴⁵⁹³ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 13, 18–19, 143.

sweets to the Bosnian Muslims.⁴⁵⁹⁴ At around noon, **Borovčanin** noticed a Bratunac Brigade military police unit with Momir Nikolić arriving; they had lists with them to screen Bosnian Muslim men of fighting age.⁴⁵⁹⁵ He understood that this was what had been agreed upon the day before in the Hotel Fontana meetings.⁴⁵⁹⁶ At some point, **Borovčanin**, Jević, and a DutchBat officer went into the DutchBat compound to check whether there were ABiH soldiers inside.⁴⁵⁹⁷

(iii) Controlling the Movement of the Bosnian Muslim Women, Children and the Elderly out of Potočari

1446. Some time thereafter, **Borovčanin** noticed buses and trucks arriving in Potočari.⁴⁵⁹⁸ In order to implement Mladić's order of earlier that day—**Borovčanin** had met Mladić on the road between Potočari and Žuti Most, and Mladić had ordered **Borovčanin** to leave some of his men in Potočari and move with others to the Bratunac-Konjević Polje Road to secure the area⁴⁵⁹⁹—**Borovčanin** left around 40 to 45 men⁴⁶⁰⁰ from the 1st Company of the Jahorina Recruits, under their commanders, Jević and Mane⁴⁶⁰¹ in Potočari.⁴⁶⁰² The Trial Chamber has already found above that the Jahorina Recruits assisted in coordinating the boarding of the buses by the Bosnian Muslim women, children, and the elderly and the separation of the men.⁴⁶⁰³

1447. On the evening of 12 July, Jević reported to **Borovčanin** at the Bratunac Police Station, after the transportation of the Bosnian Muslims out of Potočari stopped at around 10 or 11 p.m.⁴⁶⁰⁴ **Borovčanin** told Jević to continue the next day.⁴⁶⁰⁵

⁴⁵⁹⁴ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 13–14, 143; Ex. P02047, "Srebrenica Trial Video", 1:57:27–1:57:42.

⁴⁵⁹⁵ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 10–12, 21.

⁴⁵⁹⁶ *Ibid.*, p. 10; Momir Nikolić, Ex. C00001, "Statement of Facts and Acceptance of Responsibility, 6 May 2003", para. 6; Momir Nikolić, Ex. C00002, "Supplementary Statement provided by Momir Nikolić on request of the Trial Chamber, 16 April 2009", p. 3; T. 33033 (22 Apr 2009), T. 33269 (private session) (27 Apr 2009).

⁴⁵⁹⁷ PW-160, T. 8583, 8585 (9 Mar 2007), T. 8672 (12 Mar 2007).

⁴⁵⁹⁸ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 23.

⁴⁵⁹⁹ The Trial Chamber notes that the issue raised by the Prosecution as to inconsistencies between **Borovčanin's** reports and statements regarding being ordered by Mladić to go "to", or "towards" Zvornik, aimed to challenge **Borovčanin's** credibility, is of no significance in terms of the events which transpired that day or **Borovčanin's** credibility. See Prosecution Final Brief, paras. 2070–2102; See also Prosecution Closing Arguments, T. 34218–34219 (4 Sep 2009).

⁴⁶⁰⁰ Mendeljev Đurić, T. 10800 (1 May 2007), T. 10857 (2 May 2007); PW 160, T. 8580, 8587, 8604 (9 Mar 2007), T. 8637–8638 (private session), 8639, 8654–8655, 8657–8658, 8683 (12 Mar 2007), T. 8725 (13 Mar 2007).

⁴⁶⁰¹ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 70; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 24, 125; PW-160, T. 8580, 8586–8587, 8604 (9 Mar 2007), T. 8637–8638 (private session), T. 8639, 8654–8655, 8657–8658, 8683 (12 Mar 2007), T. 8725 (13 Mar 2007).

⁴⁶⁰² Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", pp. 1–2.

⁴⁶⁰³ See *supra*, paras. 316, 319, 323.

⁴⁶⁰⁴ PW-160, T. 8607–8608 (9 Mar 2007).

⁴⁶⁰⁵ *Ibid.*, T. 8607 (9 Mar 2007). **Borovčanin** spent the night of 12 July in his apartment in Bratunac. Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 84.

1448. In the afternoon of 13 July, approximately between 2:30 p.m. and 3:30 p.m., **Borovčanin** was again in Potočari.⁴⁶⁰⁶ While he was there, the Red Cross tractor that was being used to bring water to Potočari was taken away, and when DutchBat officer Van Duijn requested that it be returned, **Borovčanin** intervened and the tractor was in fact returned.⁴⁶⁰⁷ Kingori, the UNMO observer, also complained to **Borovčanin** of the crowded conditions in the White House, while they were standing next to it.⁴⁶⁰⁸ **Borovčanin** remained in Potočari for about half an hour.⁴⁶⁰⁹

(iv) Securing the Bratunac-Konjević Polje Road

1449. Following Mladić's order on 12 July, **Borovčanin** left Potočari at around 1:30 p.m. and went to the Bratunac Police Station to organise the deployment of the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment.⁴⁶¹⁰ As described above, around dusk, the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment were deployed along the Bratunac-Konjević Polje Road from Kravica-Sandići-Pervani up to Hrnčići.⁴⁶¹¹ Their task was to assist in securing the Bratunac-Konjević Polje Road against the column which was trying to break through the VRS defence lines.⁴⁶¹² Later that night some men from the 1st Company of the Jahorina Recruits were also deployed along the Bratunac-Konjević Polje Road.⁴⁶¹³

1450. **Borovčanin** remained in Bratunac for the rest of 12 July, though he maintained radio communication with his units who were on the Bratunac-Konjević Polje Road throughout most of

⁴⁶⁰⁶ See *supra*, para. 329; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 84–85; Ex. P02047, "Srebrenica Trial Video", 2:27:41–2:28:01; 2:28:22–2:28:25; 2:28:30–2:28:32; 2:29:51–2:30:01; Zoran Petrović, T. 18852 (6 Dec 2007).

⁴⁶⁰⁷ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 85, 126; Zoran Petrović, T. 18850–18851 (6 Dec 2007); Leendert van Duijn, T. 2301 (27 Sep 2006); Ex. P02047, "Srebrenica Trial Video", 2:27:41–2:28:01; 2:28:22–2:28:25; 2:28:30–2:28:32; 2:29:51–2:30:01.

⁴⁶⁰⁸ Ex. P02047, "Srebrenica Trial Video", 02:29:45–02:30:00 (showing **Borovčanin** standing with Joseph Kingori and Miki, the interpreter, outside the White House).

⁴⁶⁰⁹ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 87–88; Zoran Petrović, T. 18855 (6 Dec 2007).

⁴⁶¹⁰ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 24, 27; Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", pp. 1–2.

⁴⁶¹¹ Hrnčići was in the direction of Konjević Polje. See Ex. 4D00510 "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3.

⁴⁶¹² Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 70–71, 73; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 27–28; Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", pp. 1–2. See also *supra*, paras. 377–378.

⁴⁶¹³ Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P00060, "CJB Zvornik Report, 13 July 1995"; Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007); Nenad Filipović, T. 26998–26999, 27015 (10 Oct 2008) (when asked on cross-examination if he was ordered to go to Zvornik or to deploy on that road in the area of Sandići, he replied "Just to deploy along the road at Sandići"); Zarko Zarić, T. 26931–26933 (9 Oct 2008). But see Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 35. The Trial Chamber concludes that the 1st Company of the Jahorina Recruits was deployed on the Bratunac-Konjević Polje Road in the evening of 12 July. See *supra*, para. 377.

the night.⁴⁶¹⁴ During the night, the column attacked the Bosnian Serb Forces stationed there and heavy fighting ensued.⁴⁶¹⁵

1451. On 13 July, the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment remained deployed along the Bratunac-Konjević Polje Road.⁴⁶¹⁶ More men from the 1st Company of the Jahorina Recruits were also sent to the Bratunac-Konjević Polje Road on 13 July.⁴⁶¹⁷ At around 7 a.m., **Borovčanin** went to Sandići after receiving reports that a member of the 1st PJP Company from Zvornik had been killed and others wounded.⁴⁶¹⁸ **Borovčanin** spoke to his subordinate commander Pantić and to Miloš Stupar, the former Commander of the SBP 2nd Šekovići Detachment⁴⁶¹⁹ and travelled along the Bratunac-Konjević Polje Road with them for about an hour or an hour and a half.⁴⁶²⁰

1452. After visiting Potočari in the afternoon of 13 July, **Borovčanin** returned to the Bratunac-Konjević Polje Road.⁴⁶²¹ He stopped at Sandići Meadow where he saw a large number of Bosnian Muslim men who had surrendered to and were still surrendering to Bosnian Serb Forces, including to the 1st Company of the Jahorina Recruits,⁴⁶²² the 1st PJP Company from Zvornik,⁴⁶²³ and the

⁴⁶¹⁴ Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 79, 87; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 33–34.

⁴⁶¹⁵ Milenko Pepić, T. 13594–13595 (9 July 2007); Nenad Filipović, T. 27001, 27003 (10 Oct 2008); Ex. 4DP03113, "Bulletin of daily events of the Zvornik Public Security Centre for 13/14 July 1995 signed by Vlado Kovacević, 14 July 1995"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 33–34, 41.

⁴⁶¹⁶ Ex. P00062, Document from Zvornik CJB signed by Dragomir Vasić, 13 July 1995; Ex. P00886, "Document from the Zvornik CJB to the RS MUP type-signed Vasić, 13 July 1995"; Ex. P03112, "CJB Zvornik Dispatch regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995"; Mendeljev Đurić, T. 10822, 10870–10871 (2 May 2007); Ex. P01937, (confidential), pp. 62, 64, 67–69; Ex. P02985, "Transcript of Petrović video", pp. 10–14.

⁴⁶¹⁷ Mendeljev Đurić, T. 10822, 10870–10871 (2 May 2007); PW-100, T. 14822, 14824–14826, 14908–14909 (5 Sept 2007).

⁴⁶¹⁸ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 40–41; Milenko Pepić, T. 13594–13595 (9 July 2007).

⁴⁶¹⁹ Predrag Čelić, T. 13458–13459 (28 June 2007).

⁴⁶²⁰ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 41.

⁴⁶²¹ *Ibid.*, p. 5; Zoran Petrović, T. 18746 (4 Dec 2007), T. 18764, 18782–18784, 18786, 18795–18796 (5 Dec 2007), T. 18855, 18857–18858 (6 Dec 2007); Joseph Kingori, T. 19292–19293 (14 Dec 2007) (Kingori recognising **Borovčanin** as one of the senior officers to whom he spoke about the issue of overcrowding at the White House); Ex. P02047, "Srebrenica Trial Video", 02:47:45 – 02:48:12.

⁴⁶²² PW-100, T. 14824–14826, 14839 (5 Sept 2007) (stating *inter alia* that Bosnian Muslims were surrendering to members of the 1st Company of the Jahorina Recruits and that his platoon-leaders instructed them that if anyone surrendered, they were to notify their superiors and pass on the prisoners); PW-160, T. 8586 (9 Mar 2007); Ex. P02000, "Video footage shot by Zoran Petrović during July 1995, provided by the BBC", 0:18:45–0:21:32 (showing a member of the Jahorina Recruits identified by PW-160, T. 8642 (12 Mar 2007) and PW-100, T. 14843–14844 (5 Sept 2007); Ex. P02985, Transcript of Petrović video, pp. 12–14; *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 53–54 (stating that it was possible that they were also surrendering to MUP officers).

⁴⁶²³ Ex. P02000, "Video footage shot by Zoran Petrović during July 1995, provided by the BBC", 0:22:25–0:24:05 (showing Predrag Krstić, a member of the 1st Company PJP from Zvornik); Dobrisav Stanojević, T. 12897 (19 June 2007) (identifying Predrag Krstić). *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 53–54 (stating that it was possible that they were also surrendering to police officers).

SBP 2nd Šekovići Detachment.⁴⁶²⁴ The commander of the 3rd Platoon (a.k.a. “Skelani Platoon”)⁴⁶²⁵ of the SBP 2nd Šekovići Detachment, Milenko Trifunović (a.k.a. “Čop”),⁴⁶²⁶ was calling to the Bosnian Muslim men in the forest to surrender.⁴⁶²⁷ **Borovčanin**’s units were also guarding the Bosnian Muslim men at Sandići Meadow.⁴⁶²⁸

1453. While at Sandići Meadow, **Borovčanin** spoke with his subordinate commanders, their subordinate officers and platoon commanders, including Pantić, Čuturić, and Stupar, who complained to him about the increasing number of surrendering Bosnian Muslim men and expressed concern on how to detain the prisoners overnight.⁴⁶²⁹ Some time around 4 p.m., Mladić arrived at Sandići Meadow with a number of officers and gave a speech to the Bosnian Muslims detained there, telling them that the transportation to ABiH-held territory was under way and that they would be exchanged as prisoners of war.⁴⁶³⁰ In his interview with the Prosecution, **Borovčanin** stated that he thought Mladić was sincere when he said that.⁴⁶³¹ He left before Mladić finished his speech and continued towards Konjević Polje.⁴⁶³²

(v) Kravica Warehouse

1454. In the afternoon of 13 July, around 4:50 p.m., **Borovčanin**, who was in a car on the Bratunac-Konjević Polje Road, asked an unidentified interlocutor over the radio on “the column

⁴⁶²⁴ Predrag Čelić, T. 13460, 13489–13490 (28 Jun 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 53–56, 129–130; PW-111, T. 6796 (6 Feb 2007); PW-160, T. 8586 (9 Mar 2007); Zoran Petrović, T. 18795–18796 (5 Dec 2007), T. 18857–18858 (6 Dec 2007); Ex. P02000, Video footage shot by Zoran Petrović during July 1995, provided by the BBC, 0:09:45–0:10:47; 0:18:45–0:21:32; Ex. P02985, Transcript of Petrović video, pp. 8, 11–15; Ex. P02047, “Srebrenica Trial Video”, 02:47:45–02:48:12, 02:50:45–02:52:56; Ex. P03789, “Borovčanin Report to SBP and other police staff, 13 July 1995”, p. 2. *See also* Ex. P03112, “CJB Zvornik Dispatch regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995.”

⁴⁶²⁵ Milenko Pepić, T. 13541 (9 July 2007).

⁴⁶²⁶ Predrag Čelić, T. 13460, 13489–13490 (28 Jun 2007) (also stating that he knew Trifunović well as Čelić often saw Trifunović when Trifunović came to the Šekovići base).

⁴⁶²⁷ Predrag Čelić, T. 13489–13490 (28 Jun 2007) (identifying Trifunović instructing Ramo Osmanović, a Bosnian Muslim man, to call to the Bosnian Muslims in the forest to surrender).

⁴⁶²⁸ Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, 0:09:39–0:10:50, 0:12:15–0:12:18, 0:22:10–0:23:52 (showing, *inter alia*, Predrag Krstić, a member of the 1st PJP Company from Zvornik, identified by Dobisrav Stanojević at T. 12897 (19 Jun 2007) and Milenko Trifunović, a member of the SBP 2nd Šekovići Detachment, identified by Predrag Čelić at T.13489-13490 (28 Jun 2007) guarding prisoners); Ex. P01937, (confidential), pp. 56–57, 60, 72–73; PW-100, T. 14822, 14830–14832 (5 Sep 2007) (stating that members of the Jahorina Recruits guarded prisoners); PW-160, T. 8586 (9 Mar 2007) (stating that members of the Jahorina Recruits guarded prisoners); Milenko Pepić, T. 13541 (9 July 2007) (describing the green and coffee-coloured, one-piece camouflage uniform with a flag on a black-coloured insignia on the left sleeve worn by the 2nd Šekovići Detachment).

⁴⁶²⁹ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 56–57.

⁴⁶³⁰ *Ibid.*, pp. 58–59. *See supra*, para. 387.

⁴⁶³¹ *Ibid.*

⁴⁶³² *Ibid.*, pp. 59, 62; Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC,” 16:55–17:30; Ex. P02047, “Srebrenica Trial Video,” 2:54:58–2:55:27; Ex. P02986, “Road Book – Still Images from the Petrović Video and images of locations found in the Petrović Video,” p. 38.

[...] on the road” and was informed that “the column is moving.”⁴⁶³³ A few seconds later, **Borovčanin** called Čuturić, the Commander of the SBP 2nd Šekovići Detachment, and ordered him to “stop the traffic” behind him.⁴⁶³⁴

1455. Milenko Pepić, a subordinate member of the 2nd Platoon of the Commander of the SBP 2nd Šekovići Detachment, was eventually ordered by Čuturić to stop the convoy of buses carrying Bosnian Muslim women, children, and the elderly travelling from Potočari to Konjević Polje, so that the Bosnian Muslim prisoners who had been detained at Sandići Meadow could pass unhindered to Kravica Warehouse.⁴⁶³⁵

1456. Some time after Pepić had stopped the convoy, from their position on the Bratunac-Konjević Polje Road, he and Čelić, another member of the 2nd Platoon of the SBP 2nd Šekovići Detachment, heard loud and intense one-sided gunfire coming from the direction of the Kravica Warehouse.⁴⁶³⁶ He also heard voice traffic over the radio, including Čuturić calling out the call sign “Bor,” the code name for **Borovčanin**,⁴⁶³⁷ and reporting that the “hairpin had happened”, meaning that someone had been killed or injured.⁴⁶³⁸

1457. Meanwhile, while **Borovčanin** was in the car on the Bratunac-Konjević Polje Road, he heard shooting and detonations over his Motorola, as well as the voice of Miloš Stupar, the former commander of the SBP 2nd Šekovići Detachment.⁴⁶³⁹ **Borovčanin** called Stupar on his radio, who told **Borovčanin** that “something terrible has happened” and to go urgently to Kravica Warehouse.⁴⁶⁴⁰ This was some time between 5 p.m. and 5:15 p.m.⁴⁶⁴¹

⁴⁶³³ Ex P02047, “Srebrenica Trial Video”, 02:45:25–02:45:53; Ex P02048, “Srebrenica Trial Video Transcript”, p. 70; Ex P02054, “Copy of the Zoran Petrović’s roll material in 8 mm”, 00:13:50; Ex. P02985, “Transcript of Petrović video”, pp. 10–11.

⁴⁶³⁴ Ex P02047, “Srebrenica Trial Video”, 02:45:31–02:45:53; Ex P02048, “Srebrenica Trial Video Transcript”, p. 70; Ex P02054, “Copy of the Zoran Petrović’s roll material in 8 mm”, 00:13:50; Ex. P02985, Transcript of Petrović video, pp. 10–11.

⁴⁶³⁵ Milenko Pepić, T. 13538–13539, 13555–13557, 13559, 13561–13562, 13595–13596 (9 July 2007).

⁴⁶³⁶ Milenko Pepić, T. 13560–13561 (9 July 2007). *See also* Predrag Čelić, T. 13479 (28 June 2007).

⁴⁶³⁷ Milenko Pepić, T. 13558 (9 July 2007).

⁴⁶³⁸ *Ibid.*, T. 13561 (9 July 2007).

⁴⁶³⁹ Ex P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 63; Zoran Petrović, T. 18797–18798 (5 Dec 2007).

⁴⁶⁴⁰ *Ibid.*

⁴⁶⁴¹ The Trial Chamber finds that based on the time stamp of 16:49 hours on Ex. P02047, “Srebrenica Trial Video”, 2:34:26, the Bratunac Health Centre log indicating 5:30 p.m. as the time the first casualty of the Kravica Warehouse “burnt-hands” incident is recorded, the real running time of the video and the known distances between the locations videotaped, this would have been the approximate time. **Borovčanin** generally agrees with this timeline. **Borovčanin** Closing Arguments, T. 34563 (9 Sept 2009).

1458. **Borovčanin** arrived at Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m.⁴⁶⁴² He stopped at Kravica Warehouse where, according to him, Milan Lukić's soldiers,⁴⁶⁴³ as well as members of the SBP 2nd Šekovići Detachment who had been deployed along the Bratunac-Konjević Polje Road, including Stupar, were gathered.⁴⁶⁴⁴ **Borovčanin** saw "a large number [...] several dozens" of dead bodies in the yard in front of the West and Centre Rooms of Kravica Warehouse.⁴⁶⁴⁵ The door of the West Room of Kravica Warehouse was closed.⁴⁶⁴⁶ A large number of bullet holes were also visible on the outside walls of Kravica Warehouse.⁴⁶⁴⁷ **Borovčanin's** arrival at Kravica Warehouse and the scene before him were captured on the Petrović video.⁴⁶⁴⁸

1459. **Borovčanin** said that he stayed at the junction of the road and the driveway into Kravica Warehouse only long enough to have a short conversation with Stupar.⁴⁶⁴⁹ Stupar told him that an unknown military unit had brought the Bosnian Muslim prisoners to Kravica Warehouse, that a prisoner shot a policeman, and that the same military unit shot the Bosnian Muslim prisoners.⁴⁶⁵⁰ **Borovčanin** said that Stupar told him no MUP member participated in the killings.⁴⁶⁵¹

1460. After checking on Čuturić, who had been hurt in the "burnt-hands" incident, at the hospital, **Borovčanin** returned to the Bratunac Police Station, visibly angry and agitated, and was heard saying, "What's going on? What's being done? Give me a phone quickly. I have to phone the brigade."⁴⁶⁵² At some point, he was informed that a military unit had arrived in the area where his

⁴⁶⁴² **Borovčanin** generally agrees with this time-line, stating however that it was more likely that he was there between 5:20 p.m. and 5:30 p.m. Borovčanin Closing Arguments, T. 34563 (9 Sept 2009). See also Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 65, 72 (describing the timing as being "afternoon, but still daylight" and "half an hour, forty minutes max" after Mladić's speech).

⁴⁶⁴³ The Trial Chamber notes that there is no other evidence to corroborate **Borovčanin's** statement that Lukić's men were there. See also Ex. P01147a, "Intercept, 13 July 1995, 19:19 hours" (stating that a bus carrying soldiers from Višegrad has broken down).

⁴⁶⁴⁴ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 63–65.

⁴⁶⁴⁵ Prosecution Closing Arguments, T. 34233 (4 Sept 2009); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 64, 66; Ex. P02047, "Srebrenica Trial Video", 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, "Video by Zoran Petrović, Studio B Version", 18:08–18:11.

⁴⁶⁴⁶ In its closing arguments, the Prosecution offered to enter an agreement of facts that the doors of Kravica Warehouse that are seen on the video footage were closed when **Borovčanin** was there. Prosecution Closing Arguments, T. 34232 (4 Sept 2009). See Borovčanin Final Brief, para. 150.

⁴⁶⁴⁷ Ex. P02047, "Srebrenica Trial Video," 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, "Video by Zoran Petrović, Studio B Version," 18:08–18:11.

⁴⁶⁴⁸ See Ex. P02047, "Srebrenica Trial Video," 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, "Video by Zoran Petrović, Studio B Version", 18:08–18:11. Zoran Petrović, a Serb journalist, accompanied **Borovčanin** on 13 and 14 July 1995. Petrović filmed a documentary on the events surrounding the fall of Srebrenica as he travelled with **Borovčanin**. These include shots of the happenings at Potočari and the Bratunac-Konjević Polje Road, including Sandići Meadow and the Kravica Warehouse. Excerpts of the Petrović video are included in the Srebrenica Trial Video. See Zoran Petrović, T. 18745 (4 Dec 2007), T. 18754–18757 (5 Dec 2007); Ex. P02054, "Copy of the Zoran Petrović's roll material in 8 mm", 08:58:4; 10:15; 23:21; 24:10.

⁴⁶⁴⁹ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 64–65.

⁴⁶⁵⁰ *Ibid.*

⁴⁶⁵¹ *Ibid.*

⁴⁶⁵² Dragan Nesković, T. 27436–27437 (2 Oct 2008); Slaviša Simić, T. 27506–27507 (2 Oct 2008); Ex. 4D00620, "CJB Bratunac, Attendance Roster, June–August 1995"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11

units were deployed along the Bratunac-Konjević Polje Road, so he pulled out the 1st PJP Company from Zvornik and the 1st and 2nd Platoons of the SBP 2nd Šekovići Detachment from along the Bratunac-Konjević Polje Road and sent them to rest.⁴⁶⁵³

1461. At 8:40 p.m., an intercepted conversation between **Borovčanin** and Krstić records Krstić asking **Borovčanin**, "How's it going," to which he replied, "It's going well", that there were no problems, and that "We'll continue tomorrow."⁴⁶⁵⁴

(vi) 14–18 July 1995

1462. **Borovčanin** spent almost the whole day of 14 July in Srebrenica, with Vasić and Deputy Minister of the Interior Kovač, who was visiting.⁴⁶⁵⁵ They went to see the newly established police station in Srebrenica and visited a factory in Zeleni Jadar.⁴⁶⁵⁶ **Borovčanin** returned to Bratunac in the late afternoon and remained at home for the rest of that day.⁴⁶⁵⁷

1463. In the morning of 15 July, **Borovčanin** set off by car from Bratunac to Zvornik.⁴⁶⁵⁸ He stopped first at the police station, where he met Vasić and Stupar.⁴⁶⁵⁹ Later on that morning, the three met at the Standard Barracks of the Zvornik Brigade some time before noon.⁴⁶⁶⁰ Obrenović received them, briefed them on the situation in the field, and informed them that he had been ordered to strengthen the line in the area of Baljkovica to prevent Bosnian Muslims from going through towards ABiH-held territory.⁴⁶⁶¹ **Borovčanin** or Vasić suggested that it may be better to open the line and let the column of Bosnian Muslims through, but ultimately that idea was denied.⁴⁶⁶² Some time into the meeting, **Pandurević** arrived.⁴⁶⁶³

and 12 Mar 2002", p. 74; *see also* Borovčanin Final Brief, para. 297 (stating that **Borovčanin** had not taken Čuturić personally to the hospital but he visited him there).

⁴⁶⁵³ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 74–75 (stating that he did not know which military unit replaced them or what time they were replaced, maybe in the evening hours or during the night); Predrag Čelić, T. 13471, 13480, 13505 (28 June 2007); Milenko Pepić, T. 13567, 13572–13573, 13600 (9 July 2007). There is no evidence on where the members of the 3rd Platoon, the Skelani Platoon, were that night.

⁴⁶⁵⁴ Ex. P00993a, "Intercept, 13 July 1995, 20:40 hours"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 75–76.

⁴⁶⁵⁵ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 95; Zoran Petrović, T. 18821–18823 (5 Dec 2007), T. 18861 (6 Dec 2007).

⁴⁶⁵⁶ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 95.

⁴⁶⁵⁷ *Ibid.*

⁴⁶⁵⁸ *Ibid.*, pp. 101–102.

⁴⁶⁵⁹ *Ibid.*, p. 102.

⁴⁶⁶⁰ *Ibid.*; PW-168, T. 15869–15873 (closed session) (26 Sept 2007), T. 16524 (closed session) (17 Oct 2007), T. 16527–16528 (closed session) (18 Oct 2007).

⁴⁶⁶¹ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 102. *See also* Ex. 4D5D01346, "Drina Corps Command, document n.03/157-7, order, Krstić." On 15 July 1995, Krstić ordered that until the return of certain elements of the Zvornik Brigade, MUP units were to take all measures to block and capture "Muslim forces" from Srebrenica to prevent their linking up with those in Tuzla. *Ibid.*

⁴⁶⁶² Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 102–103, 105. *See supra*, para. 552.

1464. At that meeting, **Borovčanin** said that a large number of Bosnian Muslims had been captured and that he did not wish the civilian police, meaning the MUP units he commanded,⁴⁶⁶⁴ “to guard those prisoners once they were placed in the facilities and once they were brought to their destination.”⁴⁶⁶⁵

1465. The meeting lasted about thirty or forty minutes and **Borovčanin** then proceeded to Baljkovica around noon or 1 p.m.⁴⁶⁶⁶ At the time, **Borovčanin** was under the command of the Zvornik Brigade and communicated with the VRS through the local battalion commander.⁴⁶⁶⁷

1466. At Baljkovica, **Borovčanin** saw that his units—the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment—were under intensive fire.⁴⁶⁶⁸ **Borovčanin** remained there with them until 18 July.⁴⁶⁶⁹ On 18 July, **Borovčanin** left the Bratunac and Zvornik areas and returned to the SBP headquarters in Janja.⁴⁶⁷⁰

(d) Findings

1467. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Preliminary Issue on Vagueness of the Indictment: The Sandići Meadow Murders Charge, Counts 3 to 6 and Count 8

1468. **Borovčanin** argues that paragraphs 30.4.1 and 95 of the Indictment only allege superior responsibility with regard to the Sandići Meadow murders, that the Indictment is vague as to whether this is also part of the alleged JCE to Murder, and that it is vaguer still as to which of his acts and omissions satisfy the *actus reus* or *mens rea* of the alleged crime.⁴⁶⁷¹ **Borovčanin** submits that he interprets paragraph 30.4.1 of the Indictment as only charging superior responsibility and objects on the ground of lack of notice if the Prosecution argues that it has charged **Borovčanin** with having committed this act, directly or by way of a JCE.⁴⁶⁷²

⁴⁶⁶³ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 104.

⁴⁶⁶⁴ PW-168, T. 15877 (closed session) (26 Sept 2007).

⁴⁶⁶⁵ *Ibid.*

⁴⁶⁶⁶ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 105–106; PW-168, T. 15876–15877 (closed session).

⁴⁶⁶⁷ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 103–104, 106 (also stating that he was not specifically under Obrenović’s command, though Obrenović could order him to go to Baljkovica).

⁴⁶⁶⁸ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 106.

⁴⁶⁶⁹ *Ibid.*, pp. 110, 116; PW-160, T. 8706, 8735–8736 (13 Mar 2007). The distance between Bratunac and Zvornik is approximately 40 to 50 km. PW-160, T. 8706 (13 Mar 2007).

⁴⁶⁷⁰ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 116.

⁴⁶⁷¹ Borovčanin Final Brief, para. 399.

⁴⁶⁷² Borovčanin Final Brief, para. 399.

1469. Furthermore, **Borovčanin** objects to Counts 3 to 6 (extermination as a crime against humanity, murder as a crime against humanity and as a violation of the laws or customs of war and persecution as a crime against humanity) and 8 (deportation as a crime against humanity) of the Indictment as they do not indicate which modes of liability under Article 7(1) are being alleged and which material facts support them.⁴⁶⁷³ With regard to Kravica Warehouse, **Borovčanin** concedes that the Indictment does give notice of the JCE to Murder, superior responsibility, aiding and abetting, instigation, and “*Blaškić* omission liability,”⁴⁶⁷⁴ so he reads the language of Counts 3 to 6 and 8 narrowly to incorporate only these forms of liability.⁴⁶⁷⁵ Specifically, he reads the Indictment as not charging aiding and abetting in respect of any crimes committed in Potočari, including forcible transfer and other forms of persecution.⁴⁶⁷⁶

1470. The Prosecution submits that the time to challenge the form of the Indictment has passed and that paragraph 88 lays out all forms of liability for all the Accused in all the events charged in the Indictment and that paragraph 92 further elaborates on **Borovčanin**’s mode of liability for the Kravica Warehouse.⁴⁶⁷⁷ It also submitted in closing arguments that the Indictment charges aiding and abetting and all forms of liability and that it covers any aspects of “aiding and abetting,” including the *Mrkšić and Šljivančanin* Appeals Judgement standard⁴⁶⁷⁸ that was subsequently developed after the Indictment was drawn up, and not just “*Blaškić* omission liability.”⁴⁶⁷⁹ Specifically, the Prosecution also argues that **Borovčanin**’s responsibility also covers aiding and abetting forcible transfer.⁴⁶⁸⁰

1471. The Trial Chamber notes that it has already ruled on the same or very similar challenges to the Indictment that **Borovčanin** has brought earlier on in the proceedings.⁴⁶⁸¹ The Trial Chamber recalls that it has already held that the Indictment is clear as to what is charged under Counts 3 to 8 with regard to **Borovčanin**, and in particular, that paragraphs 88 to 95 cover all the various forms of the alleged individual responsibility of the Accused.⁴⁶⁸²

1472. The Trial Chamber finds that the Indictment clearly charges all modes of liability for all alleged crimes, including the Sandići Meadow murders, and that **Borovčanin** has been sufficiently

⁴⁶⁷³ Borovčanin Final Brief, para. 411.

⁴⁶⁷⁴ Borovčanin Final Brief, paras. 411–412 (referring to “*Blaškić* omission liability”).

⁴⁶⁷⁵ Borovčanin Final Brief, para. 412.

⁴⁶⁷⁶ *Ibid.*, para. 413.

⁴⁶⁷⁷ Prosecution Closing Arguments, T. 34305–34306 (4 Sept 2009), T. 34318–34319 (7 Sept 2009).

⁴⁶⁷⁸ See *supra*, paras. 1019–1020.

⁴⁶⁷⁹ Prosecution Closing Arguments, T. 34289–34290 (4 Sept 2009).

⁴⁶⁸⁰ Prosecution Final Brief, para. 2035.

⁴⁶⁸¹ See Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006; Decision on Further Amendments and Challenges to the Indictment, 13 July 2006.

⁴⁶⁸² See Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006, para. 94; Decision on Further Amendments and Challenges to the Indictment, 13 July 2006, paras. 25–27.

put on notice of such charges. Furthermore, it notes that as the Prosecution has charged “aiding and abetting,” the Trial Chamber will apply the law as most recently interpreted by the Appeals Chamber, which encompasses the *Mrkšić and Šljivančanin* Appeals Judgement standard of aiding and abetting by omission.⁴⁶⁸³

(ii) Forcible Transfer

1473. The Trial Chamber notes that the centrepiece of the Prosecution’s case against **Borovčanin**, with regard to forcible transfer is his alleged commission of the crime through participation in the JCE alleged in the Indictment. The Trial Chamber will therefore begin with an examination of **Borovčanin**’s alleged participation in the JCE to Forcibly Remove.

a. JCE to Forcibly Remove

1474. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.⁴⁶⁸⁴

i. Prosecution Allegations

1475. **Borovčanin** is charged with forcibly removing the Bosnian Muslims of Srebrenica and Žepa by: (i) disabling the UN forces militarily, by taking “military control of Potočari and the Dutchbat based there” on the morning of 12 July, and “commanding MUP forces [...] who assisted the VRS in disarming DutchBat troops in and around Potočari” on 12 and 13 July; and (ii) controlling the movement of the Bosnian Muslim population out of the enclaves by commanding “MUP forces [...] who assisted the VRS in organizing the transportation on buses and trucks” of the Bosnian Muslim women, children, and the elderly to areas outside RS on 12 and 13 July.⁴⁶⁸⁵

1476. The Prosecution submits that **Borovčanin** was fully aware of the VRS’s plan to move out the Bosnian Muslim population from in and around Potočari.⁴⁶⁸⁶ **Borovčanin** knew of the wartime history of the enclave and of the Bosnian Serbs’ plan, evident since 1992, to remove the Bosnian Muslim civilians from Eastern Bosnia and as he came from that region, he would have known that

⁴⁶⁸³ Cf. *Aleksovski* Appeal Judgement, para. 113; *Krajišnik* Appeal Judgement, para. 670; Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction-Joint Criminal Enterprise, IT-99-37-AR72, 21 May 2003, paras. 37–39.

⁴⁶⁸⁴ See *supra*, para. 1087. The Trial Chamber recalls its previous finding that the transport of the men to detention and execution sites does not constitute forcible transfer. *Ibid.* Therefore, the Trial Chamber will not address **Borovčanin**’s alleged participation in forcible transfer through his involvement in the transportation of the men.

⁴⁶⁸⁵ Indictment, para. 81; Prosecution Pre-Trial Brief, paras. 197–198.

⁴⁶⁸⁶ Prosecution Final Brief, paras. 1877, 1891.

the Bosnian Muslims of Srebrenica would only leave if left with no other option.⁴⁶⁸⁷ The Prosecution argues that **Borovčanin** knew by the late evening of 11 July that the VRS intended to forcibly remove the Bosnian Muslims in Potočari and that he and his units were expected to play a key role.⁴⁶⁸⁸ According to the Prosecution, **Borovčanin** would have been fully aware that the Bosnian Serb Forces left the Bosnian Muslims no choice.⁴⁶⁸⁹

1477. The Prosecution argues that **Borovčanin**'s actions by commanding the MUP forces who assisted the VRS in controlling the Bosnian Muslim population made the VRS's goal to forcibly remove the Bosnian Muslim population from Srebrenica possible.⁴⁶⁹⁰ **Borovčanin** was in command of the MUP forces who assisted the VRS in organizing the transportation of the Bosnian Muslim women, children, and the elderly to areas outside of the VRS.⁴⁶⁹¹

1478. The Prosecution also submits that the disarming of DutchBat was done to facilitate the separation and forcible transfer.⁴⁶⁹² It submits that MUP forces under the command of **Borovčanin** advanced on Potočari, took over OP Papa, and forcibly entered the DutchBat compound.⁴⁶⁹³ Further, it is submitted that they disarmed DutchBat troops in and around Potočari.⁴⁶⁹⁴ Lastly, it argues that the taking over of Potočari where the Bosnian Muslims were gathered was a significant step to the actual expulsion of the Bosnian Muslim population from Potočari.⁴⁶⁹⁵

1479. Finally, the Prosecution claims that in his role of neutralising DutchBat and taking control of the Bosnian Muslim population, **Borovčanin** would have appreciated the important role he played in forcing the Bosnian Muslim population out and as such he and his forces played a significant role in achieving the goal of the JCE to Forcibly Remove.⁴⁶⁹⁶

ii. Knowledge of the JCE to Forcibly Remove

1480. The evidence does not demonstrate that **Borovčanin** was involved in the formation of the plan to forcibly remove the Bosnian Muslim population from the RS, nor in the steps taken prior to 10 July 1995 to implement that plan. The evidence similarly does not support an inference that **Borovčanin** was made aware either of the plan or its incremental implementation prior to his arrival in Bratunac.

⁴⁶⁸⁷ Prosecution Final Brief, paras. 1877, 1892.

⁴⁶⁸⁸ *Ibid.*, paras. 1877, 1891.

⁴⁶⁸⁹ *Ibid.*, para. 1893.

⁴⁶⁹⁰ *Ibid.*, para. 1891.

⁴⁶⁹¹ *Ibid.*, paras. 1894-1901.

⁴⁶⁹² Prosecution Closing Arguments, T. 34224 (4 Sept 2009).

⁴⁶⁹³ Indictment, para. 81; Prosecution Final Brief, paras. 1880-1900.

⁴⁶⁹⁴ Indictment, para. 81; Prosecution Final Brief, para. 1890.

⁴⁶⁹⁵ Prosecution Final Brief, paras. 1884, 1888.

⁴⁶⁹⁶ Prosecution Final Brief, para. 1893.

1481. In particular, the evidence is insufficient to find that **Borovčanin** knew about Directive 7 or Directive 7/1, or that he understood that these Directives outlined an attack against the civilian population in the enclaves.⁴⁶⁹⁷ With respect to the progressive efforts to force the Bosnian Muslim population to leave the enclaves, there is no evidence that **Borovčanin** knew of the VRS policy to restrict humanitarian aid to the enclaves, or the fact that the humanitarian situation in the enclaves deteriorated after Directive 7 was issued.⁴⁶⁹⁸ There is also no evidence that **Borovčanin** knew that the civilian population had been the target of shelling and sniping prior to the fall of Srebrenica, or that members of DutchBat were similarly targeted.⁴⁶⁹⁹ Nor is there evidence that **Borovčanin** knew of the *Krivaja-95* Orders to take military action against the enclaves, or in particular that these Orders also had an illegal goal, namely, to forcibly remove the Bosnian Muslim civilian population from the enclaves.⁴⁷⁰⁰

1482. The Trial Chamber notes that **Borovčanin** was brought into the Srebrenica operation in part due to his familiarity with the Bratunac area.⁴⁷⁰¹ Evidence of **Borovčanin**'s knowledge of the region's past and his local contacts is insufficient to conclude that **Borovčanin** must have inferred that there was a plan to forcibly transfer the Bosnian Muslim population. Moreover, it is not the only reasonable conclusion to be made that Mladić, Krstić or other VRS personnel informed **Borovčanin**, either before he arrived in Bratunac or after he was resubordinated to the Drina Corps, of the plan to forcibly remove the Bosnian Muslim population.

1483. However, the Trial Chamber notes that **Borovčanin** was present in Bratunac and Potočari between 11 and 13 July, when the plan to forcibly remove culminated in the actual forcible transfer of the Bosnian Muslim women, children, and the elderly.⁴⁷⁰² **Borovčanin** was based in Bratunac, at the police station,⁴⁷⁰³ the centre of activity. The evidence establishes that **Borovčanin** received instructions and information from Mladić and his subordinates, including Krstić, Cerović, and Momir Nikolić during this period.⁴⁷⁰⁴ While it is possible that **Borovčanin** learned of the plan to forcibly remove from these communications, other inferences are possible, including that he was simply not told.

1484. The Trial Chamber turns then to consider whether, from **Borovčanin**'s acts over the period of 11 to 13 July, the Trial Chamber can conclude that he gained knowledge of the plan to forcibly

⁴⁶⁹⁷ See *supra*, paras. 762–765.

⁴⁶⁹⁸ See *supra*, paras. 766–767.

⁴⁶⁹⁹ See *supra*, paras. 770.

⁴⁷⁰⁰ See *supra*, paras. 769, 774–775.

⁴⁷⁰¹ See Miroslav Deronjić, Ex. P03139a, “confidential–92 *quater* transcript,” BT. 6376–6377, 6384 (21 Jan 2004), BT. 6407–6408, 6432–6435 (22 Jan 2004).

⁴⁷⁰² See *supra*, para. 1437–1448.

⁴⁷⁰³ See *supra*, paras. 1437–1438, 1440, 1443, 1447, 1449.

remove the population or whether from those actions, the orders he received, and what he saw, he would have been aware of the plan.

1485. In the evening of 11 July, **Borovčanin** knew that masses of Bosnian Muslims were gathering in Potočari around the DutchBat compound for protection, following the attack on and fall of Srebrenica town earlier that day.⁴⁷⁰⁵

1486. In the early morning of 12 July, **Borovčanin** and his units arrived in Potočari after they took over OP Papa without any fighting.⁴⁷⁰⁶ **Borovčanin** and the MUP units had been brought to the area to assist in the military operation which was ongoing at that time. This military operation had a dual purpose—one of which was the legitimate aim to demilitarise the enclave and to respond militarily to the ABiH.⁴⁷⁰⁷ In these circumstances, advancing towards Potočari to secure the area at a time when the VRS was not clear as to the location of the ABiH 28th Division does not demonstrate that **Borovčanin** must have then known of the illegal common purpose of the JCE. It is also reasonable to conclude that **Borovčanin** was simply participating in a purely legitimate military combat activity at that point and that he believed this to be the case, even though he knew that Potočari was full of Bosnian Muslims seeking safety.⁴⁷⁰⁸ The Trial Chamber concludes that **Borovčanin**'s participation in the advance towards and securing of Potočari and the DutchBat compound in the early morning of 12 July does not evidence knowledge on his part of the plan to forcibly remove, nor from that participation would the plan have become evident to **Borovčanin**.

1487. The following paragraphs are decided by majority, Judge Kwon dissenting.⁴⁷⁰⁹

1488. Later that morning of 12 July, **Borovčanin** was present in Potočari with his men, who took up positions among the Bosnian Muslims, before the separation of the men and the transportation of the Bosnian Muslim women, children, and the elderly out of Potočari began.⁴⁷¹⁰ He was aware at that time that the population assembled there was to be transported out of the area and the Jahorina Recruits were to participate in that process. The video footage evidences clearly what **Borovčanin** would have seen in Potočari at that stage—human suffering and a desperate and terrified population of Bosnian Muslims gathered under chaotic conditions.⁴⁷¹¹ Faced with the reality of the dire humanitarian situation on the ground, even if he had been told that the civilian population was to be evacuated at their request, he must have known then that the Bosnian Muslims were not voluntarily

⁴⁷⁰⁴ See *supra*, paras. 1437, 1440–1441, 1443, 1446–1447.

⁴⁷⁰⁵ See *supra*, paras. 1439, 1443; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 39.

⁴⁷⁰⁶ See *supra*, para. 1444.

⁴⁷⁰⁷ See *supra*, paras. 774–775.

⁴⁷⁰⁸ See *supra*, paras. 1439, 1443.

⁴⁷⁰⁹ See Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35

⁴⁷¹⁰ See *supra*, paras. 304–305, 1445.

leaving the enclave.⁴⁷¹² The coercive atmosphere in Potočari would have been tangible to him, the terror on the faces of the population, young and old, men and women, visible and palpable to such an extent that the only reasonable inference is that he knew that the population of Srebrenica had been forced out of their homes by the attack, into those desperate conditions.

1489. The Trial Chamber has considered that **Borovčanin** had not participated in the initial stages of the military attack on the enclave, nor is there evidence before the Trial Chamber that he was aware of the scale of it or the methods used, particularly with reference to the civilian population. Nevertheless, it must have been evident to him upon seeing the Bosnian Muslim population—women, children, infants, elderly gathered in chaos, carrying meagre possessions—that this was not a voluntary evacuation of the residents of Srebrenica. It was also clear to him at the time that the triggering event for this massive movement of population was the military attack which had been launched against the enclave by the VRS. There were, at that stage, no signs of the ABiH in Potočari and the military action there had ceased. **Borovčanin** therefore could have been under no illusion that the population were being moved for their safety. The Trial Chamber is satisfied that given all these circumstances, the only reasonable inference is that, at the time he was in Potočari on 12 July, **Borovčanin** was aware that he was witnessing a forcible transfer.

1490. **Borovčanin** left the Jahorina Recruits under his subordinate commanders Jević and Mane, with orders for them to participate with, *inter alia*, the Bratunac Brigade Military Police, in the process whereby the Bosnian Muslim population in Potočari was to be removed from the area and transported to ABiH-held territory. During the course of that day, Jević and Mane and the Jahorina Recruits assisted with the boarding of the women, children, and the elderly onto the buses.⁴⁷¹³ They also participated in the separation of the men from their families though there is no evidence before the Trial Chamber that on 12 July **Borovčanin** was aware that there would be such a separation on a massive scale. On the evidence before the Trial Chamber he left the area before the separations and boarding began. Jević, who was on the ground in Potočari reported to **Borovčanin** on the evening of 12 July.⁴⁷¹⁴ While there is no evidence on the details of the report, **Borovčanin** told Jević to continue what he was doing the next day.⁴⁷¹⁵ **Borovčanin** therefore was fully aware of his men's participation in the movement of the population on 12 July and he ordered their continued involvement on the 13th.

⁴⁷¹¹ See *supra*, paras. 317–318, 320, 325.

⁴⁷¹² See *supra*, Chapter III, Section E.5.

⁴⁷¹³ See *supra*, paras. 316, 321, 323.

⁴⁷¹⁴ See *supra*, paras. 321, 1447.

⁴⁷¹⁵ See *supra*, paras. 321, 1447.

1491. There is however no evidence that Jević reported to **Borovčanin** any instances of abuse of the Bosnian Muslims that day or about the separation process particularly.⁴⁷¹⁶ There is further no evidence that **Borovčanin** ordered or knew of the actions of the Jahorina Recruits who detained and disarmed DutchBat officer Rutten and his men on 12 July, and who threatened and robbed DutchBat soldiers during the night of 12 July.⁴⁷¹⁷

1492. **Borovčanin**'s return to Potočari in the afternoon of 13 July is partly captured on the Petrović video.⁴⁷¹⁸ **Borovčanin** saw the boarding and transportation of the remaining Bosnian Muslim women, children, and the elderly which was still ongoing when he was there.⁴⁷¹⁹ **Borovčanin** denies seeing the actual separation process though he saw its result.⁴⁷²⁰ The overcrowded conditions in the White House where the separated men were detained was specifically drawn to his attention by UNMO member Kingori and he is caught on videotape standing in front of the White House during this conversation.⁴⁷²¹ From where he stood, **Borovčanin** could also see a pile of belongings outside the White House.⁴⁷²² Nonetheless, there is no evidence before the Trial Chamber that he saw any abuse, assault or ill-treatment while in Potočari, or that reports on these were made to **Borovčanin** by his subordinate commanders, Jević and/or Mane.

1493. What **Borovčanin** witnessed therefore on 13 July was the completion of the process of the forcible transfer of the Bosnian Muslim women, children, and the elderly, of which he was already aware.⁴⁷²³ In addition, he then knew that a large number of men had been separated from the rest of the population and were being detained in crowded and inhumane conditions. This new information is very relevant in terms of **Borovčanin**'s knowledge of the JCE to Murder and it will be assessed by the Trial Chamber in that context below. However, in so far as the plan to forcibly remove is concerned, the Trial Chamber considers that this additional knowledge of the detention of the men and the conditions of that, would have further confirmed **Borovčanin**'s knowledge that the transfer of the remainder of the population was a forcible one. In this context, the Trial Chamber has also considered that **Borovčanin** could not but know that the women, children, and the elderly would not voluntarily choose to leave without their male family members and that they were thus being

⁴⁷¹⁶ See *supra*, paras. 321, 1447.

⁴⁷¹⁷ See *supra*, paras. 307–308.

⁴⁷¹⁸ See *supra*, paras. 329, 1448.

⁴⁷¹⁹ Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 85–86.

⁴⁷²⁰ *Ibid.*, pp. 127–128.

⁴⁷²¹ Ex. P02047, "Srebrenica Trial Video," 02:28:33–02:30:37; see also Ex. P02047, "Srebrenica Trial Video", 02:30:39–02:30:50; Zoran Petrović, T. 18852 (6 Dec 2007).

⁴⁷²² Ex. P02047, "Srebrenica Trial Video" 02:29:45–02:30:37.

⁴⁷²³ *Ibid.*

forced out of the enclave. The Trial Chamber considers that this is the only reasonably possible inference in the circumstances.

1494. Therefore, the Trial Chamber finds that while he did not have prior knowledge, on 12 July, with his presence in Potočari and what he witnessed there, **Borovčanin** came to know that there was a forcible transfer of the civilian population of Srebrenica taking place. With that knowledge **Borovčanin** ordered two of his subordinate commanders and the Jahorina Recruits under his command to assist with that forcible transfer operation. He further authorised their continued participation on 13 July.

1495. However, the Trial Chamber notes that on the evidence, **Borovčanin** was aware only that a forcible transfer was in progress. He had no knowledge of the advance plan, details of the attack, the terrorisation of the population or even specifics as to the conditions suffered by the population over the night of 11 and into 12 July. In these circumstances, the Trial Chamber is satisfied that while **Borovčanin** knew of a forcible transfer operation in Potočari, the evidence is insufficient to demonstrate that he shared the intent to forcibly transfer himself. In this respect, the Trial Chamber notes that the same circumstances which evidenced to him that this was a forced movement, also would have clearly revealed to **Borovčanin** that the population of Srebrenica was now facing a catastrophic humanitarian situation. Thus while one reasonable inference from his actions in authorising the participation of his men is that he intended to forcibly transfer, an equally reasonable inference is that he intended to assist with the removal of the population because of these horrific conditions. As further support, the Trial Chamber notes that there is no evidence of **Borovčanin**'s knowledge or authorisation of any abusive conduct with respect to the population. In fact, the only evidence before the Trial Chamber demonstrates the assistance he rendered in securing the return of a water truck for the use of the civilians. Thus, the Trial Chamber is not satisfied that **Borovčanin** shared in the common purpose of the JCE or had the intent to forcibly transfer. Therefore, the Trial Chamber finds that he was not a member of the JCE to Forcibly Remove.

b. Other Modes of Liability

1496. The Prosecution also alleges that **Borovčanin** committed (other than through participation in a JCE), planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.⁴⁷²⁴ The Trial Chamber has found that **Borovčanin** had no intent to forcibly transfer. In addition, there is no evidence before the Trial Chamber of any acts or

⁴⁷²⁴ Indictment, paras. 88–89, 92.

omissions on his part which would constitute other Article 7(1) forms of responsibility, except for aiding and abetting which is discussed below, in relation to the crime of forcible transfer.

c. Aiding and Abetting

1497. To aid and abet a crime, the accused must carry out an act, whether a positive act or an omission, to assist, encourage or lend moral support to the perpetration of a crime, and this support has a substantial effect upon the perpetration of such crime.⁴⁷²⁵ The requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal.⁴⁷²⁶

1498. At the outset, the Trial Chamber recalls that **Borovčanin** had no involvement in the attack on the Žepa enclave. Turning to the Srebrenica enclave, on 12 July, **Borovčanin** left the 1st Company of the Jahorina Recruits in Potočari to assist in the forcible transfer. He continued to permit them to practically assist on 13 July. The Trial Chamber has considered the evidence as to **Borovčanin**'s subordinate commanders, Jević and Mane and the Jahorina Recruits' role in assisting with the boarding of the Bosnian Muslim women, children, and the elderly onto buses and trucks, separating the men from their families, counting the people as they stepped onto the buses, and patrolling the area in which the Bosnian Muslims were gathered until the forcible transfer was completed.⁴⁷²⁷ It finds that they were instrumental in executing the actual physical forcible transfer out of Potočari, and it was a key role they played. By so doing, the Trial Chamber finds that they contributed substantially to the commission of the crime.

1499. The Trial Chamber recalls its majority finding above that **Borovčanin** knew, as of 12 July when he was in Potočari, that a forcible transfer of the civilian population was taking place.⁴⁷²⁸ In ordering his commanders and units to participate in the operation to move the population, **Borovčanin** knew that this would assist substantially with the crime of forcible transfer. This knowledge would have only been reinforced on the evening of the 12 July when Jević reported to him on the actions of the unit during that day.⁴⁷²⁹

1500. As found above, the Trial Chamber is not satisfied that **Borovčanin** had any intent to forcibly transfer. Further, the evidence is insufficient to demonstrate that he intended to assist in a forcible transfer. As it is, however, under the jurisprudence of this Tribunal, not only is the accused

⁴⁷²⁵ See *supra*, paras. 1014–1015.

⁴⁷²⁶ See *supra*, paras. 1016–1017.

⁴⁷²⁷ See *supra*, paras. 316, 319–323.

⁴⁷²⁸ See *supra*, para. 1494.

⁴⁷²⁹ See *supra*, paras. 321, 1447.

not required to share the intent of the crime, he or she need not even have the intent to assist with the crime for responsibility through aiding and abetting to attach.⁴⁷³⁰ It is sufficient for the accused to know that an act will assist the commission of the crime by the principal.⁴⁷³¹ The Trial Chamber notes that in the vast majority of cases, the acts of the accused, with the requisite knowledge that it assists a crime, will allow for no other reasonable inference than that the accused intended to assist the commission of an offence. That is, however, not the case in this instance where the participation of **Borovčanin**'s men substantially assisted a crime, but at the same time aided in providing relief to a population facing a humanitarian disaster. The law of the Tribunal however does not allow for a distinction to be drawn on this basis in terms of criminal responsibility.

1501. In light of his knowledge of the forcible transfer, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Borovčanin**'s action in allowing the use of his personnel—his subordinate commanders and the Jahorina Recruits—to assist in the transfer of the Bosnian Muslim women, children, and the elderly out of Potočari, amounts to aiding and abetting the crime of forcible transfer. The circumstances described above which surround **Borovčanin**'s intent will be considered by the Trial Chamber in mitigation of sentence.

(iii) Murder

1502. The Trial Chamber notes that the centrepiece of the Prosecution's case against **Borovčanin**, with regard to murder, extermination, and genocide is his alleged commission of the crime through participation in the JCE to Murder alleged in the Indictment. The Trial Chamber will therefore begin with an examination of **Borovčanin**'s alleged participation in the JCE to Murder.

a. First Category JCE to Murder

1503. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.⁴⁷³² The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Trial Chamber will now turn to the third element: participation of the accused in the common purpose.

1504. The Trial Chamber recalls that in order for **Borovčanin** to incur liability pursuant to the first category of joint criminal enterprise, he must have contributed to the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this

⁴⁷³⁰ See *supra*, paras. 1016–1017.

⁴⁷³¹ See *supra*, paras. 1016–1017.

element, **Borovčanin** must have significantly contributed to the common purpose and have shared with other members of the JCE to Murder the intent to carry out the common purpose.

i. Prosecution Allegations

1505. The Prosecution submits that **Borovčanin** was a member of the conspiracy to commit genocide and of the JCE to Murder.⁴⁷³³ By the end of the day of 12 July, **Borovčanin** and his commanders must have been fully aware of the VRS's intentions to separate and murder the Bosnian Muslim men and boys in Potočari.⁴⁷³⁴ Furthermore, in the afternoon of 13 July 1995, **Borovčanin** received orders from his VRS superior command to execute at least 1,000 of the Bosnian Muslim men detained by his units at the Sandići Meadow.⁴⁷³⁵

1506. The Prosecution alleges that (i) on 12 and 13 July 1995, **Borovčanin** commanded MUP forces as they, together with the VRS, separated, detained and transported the Bosnian Muslim men and boys of Potočari, knowing that they would be executed,⁴⁷³⁶ (ii) on 13 July 1995, **Borovčanin** was present along the Bratunac-Konjević Polje Road, including the Kravica Warehouse, along with his units, who assisted in capturing, detaining, transporting, and executing hundreds of able-bodied Bosnian Muslim men and boys from Srebrenica, with full knowledge that the Bosnian Muslim men would be executed,⁴⁷³⁷ (iii) on 13 July 1995, **Borovčanin** was present at Kravica Warehouse when hundreds of Bosnian Muslim prisoners were being summarily executed by or in the presence of his units, including members of the Skelani Platoon of the SBP 2nd Šekovići Detachment,⁴⁷³⁸ (iv) as commander, **Borovčanin** had a responsibility to ensure the safety and welfare of all the Bosnian Muslim prisoners within his custody and/or control; specifically with regard to Kravica Warehouse, his presence at or near it, together with his failure to intercede in order to protect the prisoners there, constituted a wilful failure to discharge his legal duty to protect the detainees who were then in his custody and/or control, and that the failure to discharge this legal duty results in omission liability under Article 7(1),⁴⁷³⁹ and (v) on 13 July, a deputy platoon commander from the Jahorina Recruits of the SBP, under the command and control of **Borovčanin**, issued an order to summarily execute 10 to 15 Bosnian Muslim prisoners remaining at Sandići Meadow.⁴⁷⁴⁰

⁴⁷³² See *supra*, paras. 1049–1080.

⁴⁷³³ Indictment, paras. 27–37, 43.

⁴⁷³⁴ *Ibid.*, para. 43(a)(ii); Prosecution Final Brief, paras. 1878, 1914.

⁴⁷³⁵ Prosecution Final Brief, paras. 1861, 1988, 2006, 2008.

⁴⁷³⁶ Indictment, para. 43(a)(i); Prosecution Final Brief, para. 1856.

⁴⁷³⁷ Indictment, para. 43(a)(ii).

⁴⁷³⁸ *Ibid.*, paras. 30.4, 43(iii), Prosecution Final Brief, paras. 1861–1862.

⁴⁷³⁹ Indictment, paras. 43(iv), 92; Prosecution Final Brief, paras. 1852, 2036–2043.

⁴⁷⁴⁰ Indictment, paras. 30.4.1, 43(a).

ii. Knowledge of the JCE to Murder

1507. As discussed above, **Borovčanin** was in Potočari, Bratunac, and on the Bratunac-Konjević Polje Road when the plan to murder was developed and put into place and he was also communicating with Mladić, Krstić, and Momir Nikolić, all involved, in varying degrees, in the JCE to Murder alleged in the Indictment.⁴⁷⁴¹ **Borovčanin** believed that the men in Potočari were to be screened to identify any ABiH members.⁴⁷⁴² He understood this to have been agreed upon in the Hotel Fontana meetings, and he saw the Bratunac Brigade Military Police and Momir Nikolić arriving with lists which he thought were for that purpose.⁴⁷⁴³ In addition, at one point, **Borovčanin** himself went into the DutchBat compound to check whether there were ABiH soldiers in the crowd.⁴⁷⁴⁴

1508. The Trial Chamber has found that the separation of the Bosnian Muslim men in Potočari was the first step in the execution of the plan to murder them.⁴⁷⁴⁵ On the days following 12 July, the plan to murder was expanded to include all the Bosnian Muslim men who were in the custody of the VRS.⁴⁷⁴⁶ By the afternoon of 13 July, **Borovčanin** was aware that the Bosnian Muslim men in Potočari had been separated from the rest of the population and were being detained in overcrowded conditions in the White House.⁴⁷⁴⁷ He also saw many buses full of Bosnian Muslim men going into the Bratunac stadium that evening.⁴⁷⁴⁸ However, there is no evidence before the Trial Chamber that he witnessed the actual separation process or that he knew of its extent. Further, there is no evidence before the Trial Chamber that this was reported to **Borovčanin** by his subordinate commanders Jević and Mane. Aside from the conditions of the White House, there is similarly no evidence before the Trial Chamber that instances of abuse, assault or ill-treatment were drawn to his attention by the UNMOs or DutchBat soldiers present.

1509. The Trial Chamber has considered these circumstances individually and cumulatively and is not satisfied that the only reasonable inference which can be drawn from these facts is that **Borovčanin** knew of the plan to murder. He could have also reasonably believed that the Bosnian Muslim men in Potočari and in Bratunac town were being detained for a lawful screening process

⁴⁷⁴¹ See *supra*, paras. 1437–1453.

⁴⁷⁴² Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 10–11, 21.

⁴⁷⁴³ See *supra*, paras. 323, 1442, 1445. See also Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 10–11, 21.

⁴⁷⁴⁴ See *supra*, paras. 305, 1445.

⁴⁷⁴⁵ See *supra*, paras. 1052, 1055.

⁴⁷⁴⁶ See *supra*, paras. 1056–1064.

⁴⁷⁴⁷ Ex. P02047, “Srebrenica Trial Video”, 02:29:45–02:30:37 (showing **Borovčanin** standing with Joseph Kingori and Miki, the interpreter, outside the White House); Zoran Petrović, T. 18852 (6 Dec 2007); Ex. P02986, “Road Book - Still frames from the Petrovic video and images of locations found in the Petrovic video”, p 10.

⁴⁷⁴⁸ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 82–83.

and that the crowded conditions of their detention were intended for a limited time period to carry out this process.

1510. **Borovčanin** saw the pile of prisoners' personal belongings on the ground next to where he stood close to the White House on 13 July. From this alone, in the absence of evidence that he saw identification documents, more than one inference can be drawn.⁴⁷⁴⁹ The Trial Chamber also notes that Mane, **Borovčanin**'s subordinate, told the Dutchbat officer that the Bosnian Muslim men would no longer need their passports.⁴⁷⁵⁰ Mane, unlike **Borovčanin**, had been constantly on the ground in Potočari in those two days.⁴⁷⁵¹ From this evidence alone, however, the Trial Chamber cannot infer that if Mane knew that these prisoners were to be killed, **Borovčanin**, as his superior, must also have known. There is also no evidence that **Borovčanin** overheard Mane's remark to the DutchBat officer. Nor can the Trial Chamber conclude that Jević knew or reported this to **Borovčanin** the evening before.⁴⁷⁵² Looking at all the evidence before it, the Trial Chamber finds that it is insufficient for it to conclude that the only reasonable inference to be drawn from **Borovčanin**'s presence and actions in Potočari, what he saw there, and the reports he received from his subordinate commanders Jević and Mane, is that he knew that the Bosnian Muslim prisoners held in Potočari would be killed.

1511. Moving on to the involvement of **Borovčanin**'s units in securing the Bratunac-Konjević Polje Road, **Borovčanin** was aware that his units, together with other units of the Bosnian Serb Forces, were not only fighting the column militarily, but also capturing and guarding detained Bosnian Muslim prisoners in Sandići Meadow on 13 July.⁴⁷⁵³ Nevertheless, there is insufficient evidence before the Trial Chamber to conclude that **Borovčanin** knew at that time that the detained Bosnian Muslim men would be killed. **Borovčanin** was present at Sandići Meadow in the mid-afternoon of 13 July, when Mladić told the prisoners that they would be exchanged as prisoners of war.⁴⁷⁵⁴ He had no reason to disbelieve Mladić at the time, as he had just seen the busing of the Bosnian Muslim women, children, and the elderly in Potočari. It was reasonably possible for him to believe that after their screening, the men would indeed be exchanged.⁴⁷⁵⁵

⁴⁷⁴⁹ Ex. P02047, "Srebrenica Trial Video", 02:28:33–02:30:00 (showing **Borovčanin** standing with Joseph Kingori and Miki, the interpreter, outside the White House); Zoran Petrović, T. 18770–18771 (5 Dec 2007), T. 18847 (6 Dec 2007); Ex. P02853, "Transcript of OTP Interview of **Borovčanin**, 11 and 12 Mar 2002", pp. 85–86; Ex. P02011, "Video by journalist Zoran Petrović, Studio B version, which includes two scenes not in the original video (V000-0550)."

⁴⁷⁵⁰ See *supra*, para. 331.

⁴⁷⁵¹ See *supra*, paras. 316, 319–321, 323.

⁴⁷⁵² See *supra*, paras. 321, 1447.

⁴⁷⁵³ See *supra*, paras. 386–387, 1451–1453.

⁴⁷⁵⁴ See *supra*, paras. 387, 1453.

⁴⁷⁵⁵ See *supra*, paras. 305, 1445.

1512. There is no evidence before the Trial Chamber to find that **Borovčanin** saw or received any reports of beatings or killings of prisoners while in Sandići Meadow. There is evidence that while he was in Sandići Meadow, some women, young girls, and boys were allowed to leave and get on the buses heading to ABiH-held territory.⁴⁷⁵⁶ Though he would have likely realised that the masses of prisoners detained in Sandići Meadow were not being given sufficient food or water, that alone cannot be sufficient to infer **Borovčanin**'s knowledge of the plan to murder, particularly in so far as he viewed the detention as a temporary measure.

1513. Turning to **Borovčanin**'s knowledge of the murders, the Trial Chamber notes that it has already found that the Sandići Meadow killings were committed by members of the Jahorina Recruits who had been guarding the Bosnian Muslim prisoners upon the order of "Aleksa", the Deputy Commander of a platoon of an SBP company.⁴⁷⁵⁷ On the basis of the evidence before it, the Trial Chamber finds that it was members of a unit under **Borovčanin**'s command who murdered the Bosnian Muslim prisoners, as there were no other SBP units, as distinct from other MUP units, in Sandići Meadow on that day.⁴⁷⁵⁸ Nevertheless, there is no evidence before the Trial Chamber that **Borovčanin** knew of or ordered these murders.

1514. The Trial Chamber will now consider **Borovčanin**'s knowledge of what happened at Kravica Warehouse, the role of the SBP 2nd Šekovići Detachment, one of his subordinate units, and his subsequent gained knowledge and actions. The Prosecution alleges that **Borovčanin**'s order to close the Bratunac-Konjević Polje Road was to facilitate the murder of the Bosnian Muslim prisoners in the Kravica Warehouse.⁴⁷⁵⁹ The Trial Chamber has considered the evidence as to the circumstances of the Bratunac-Konjević Polje Road closure. While one possible inference is that this was done to facilitate the killings, an equally reasonable inference is that the Bratunac-Konjević Polje Road was closed because of the movement of the column along it from Sandići to the Kravica Warehouse.⁴⁷⁶⁰ In fact, according to Pepić, this is what Cuturić indicated was the reason at the time. The Bratunac-Konjević Polje Road was busy and it needed to be secured for the column of prisoners to pass.⁴⁷⁶¹ In the circumstances, the Trial Chamber is not satisfied the only reasonable inference to be drawn from the Bratunac-Konjević Polje Road closure is that **Borovčanin** knew of the plan to murder the Bosnian Muslim prisoners. There being no other evidence, the Trial Chamber is not satisfied that prior to the killings, **Borovčanin** was aware of the plan to murder generally or specifically with reference to the Kravica Warehouse.

⁴⁷⁵⁶ Zoran Petrović, T. 18793 (5 Dec 2007); *see supra*, para. 385.

⁴⁷⁵⁷ *See supra*, paras. 387, 1453.

⁴⁷⁵⁸ *See supra*, para. 386.

⁴⁷⁵⁹ *See* Prosecution Final Brief, para. 1988.

⁴⁷⁶⁰ *See supra*, paras. 424, 454.

⁴⁷⁶¹ Milenko Pepić, T. 13555–13557, 13559 (9 July 2007).

1515. The Prosecution alleges that shortly thereafter, MUP forces under the command of **Borovčanin**, including the Skelani Platoon of the SBP 2nd Šekovići Detachment and at least one member of the Bratunac Brigade Red Berets, participated in the murder of roughly 500 Muslims detained in the West Room of the Kravica Warehouse.⁴⁷⁶² They then moved to the East Room and murdered “the 500 remaining Muslim prisoners”.⁴⁷⁶³ The Prosecution further alleges that from the automatic gunfire that can be heard on the Petrović video, the executions were in progress in the East Room when **Borovčanin** arrived at Kravica Warehouse.⁴⁷⁶⁴ Moreover, the Prosecution alleges that the “burnt-hands” incident happened twenty minutes into an already ongoing execution.⁴⁷⁶⁵

1516. Based on the abundant evidence, the Trial Chamber is satisfied that when **Borovčanin** arrived at the Kravica Warehouse, the “burnt-hands” incident had occurred approximately ten to fifteen minutes before, and what appears to be a busload of Bosnian Muslim prisoners outside the West and Centre Rooms had been shot dead.⁴⁷⁶⁶ However, there is insufficient evidence before the Trial Chamber to find that the Bosnian Muslim prisoners held inside the West Room had also been killed by this time.⁴⁷⁶⁷ The evidence of PW-156 provides some support for the argument that the killings commenced in the West Room and were carried out on a continuous basis with no significant interruption.⁴⁷⁶⁸ However, as is discussed in more detail below, the Trial Chamber finds this evidence, particularly when viewed with the evidence of PW-111, is not sufficient to satisfy the Trial Chamber that the killings were conducted as a single mass execution without significant interruption. Similarly, this evidence is not sufficient to demonstrate that when **Borovčanin** arrived, the prisoners in the West Room had been killed and the executions were ongoing.

1517. The Trial Chamber has studied carefully the Petrović video passage related to this issue. While gunfire can be heard simultaneously with the footage showing the Kravica Warehouse with the bodies out front, the Trial Chamber cannot conclude where the gunfire was coming from and in particular that there was an ongoing execution at the time.⁴⁷⁶⁹ The Trial Chamber notes that the video images do not capture anyone shooting on the grounds of the Warehouse at that time. Thus the video does not establish that executions were ongoing when **Borovčanin** arrived.

⁴⁷⁶² Indictment, para. 43(a)(iii); Prosecution Final Brief, para. 1989.

⁴⁷⁶³ Prosecution Final Brief, para. 1989.

⁴⁷⁶⁴ See Prosecution Final Brief, paras. 625–627, 1989, 1993. In its closing arguments, the Prosecution offered to enter an agreement of facts that the doors of Kravica Warehouse that are seen on the video footage were closed when **Borovčanin** was there and that one cannot infer as easily that the prisoners in the West Room had already been killed. Prosecution Closing Arguments, T. 34232–34233 (4 Sept 2009). See **Borovčanin** Final Brief, para. 150.

⁴⁷⁶⁵ See Prosecution Final Brief, paras. 2151, 2153–2154, 2156–2160.

⁴⁷⁶⁶ Based on the scene of the parked bus and the pile of bodies lying in front of the Kravica Warehouse, caught on the Petrović video, the Trial Chamber estimates that approximately 50 prisoners, approximately a busload of prisoners were shot. See Ex. P02047, “Srebrenica Trial Video,” 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, “Video by Zoran Petrović, Studio B Version”, 18:08–18:11.

⁴⁷⁶⁷ See *supra*, paras. 428–433.

1518. The Trial Chamber has also considered the evidence of Pepić, who testified that when Cuturić stopped at the checkpoint where Pepić was located at approximately 5:30 p.m., en route to the Bratunac Health Centre, the “one-sided” firing was still ongoing and Cuturić commented that “they were shooting at Muslims at the warehouse.”⁴⁷⁷⁰ For the reasons outlined below, while Pepić’s evidence provides some support for the Prosecution argument that the shooting was ongoing at the time that **Borovčanin** arrived, the Trial Chamber does not consider it sufficient to establish this fact beyond reasonable doubt.

1519. Having assessed all of this evidence individually and cumulatively, the Trial Chamber is not satisfied that at the time of **Borovčanin**’s arrival, prisoners other than those seen outside the Kravica Warehouse, had been executed or that the execution was ongoing at that moment.

1520. The Trial Chamber turns to consider who participated in the killing of the busload of prisoners following the “burnt-hands” incident. The Trial Chamber notes that there is no direct evidence before it as to which units or members of the Bosnian Serb Forces shot the busload of prisoners seen outside the Kravica Warehouse. The evidence before the Trial Chamber is circumstantial and thus the Trial Chamber has considered the matter in terms of the possible reasonable inferences to be drawn from these circumstances.

1521. **Borovčanin** argues that the evidence does not establish that members of SBP 2nd Šekovići Detachment were guarding the Kravica Warehouse.⁴⁷⁷¹ While there is direct evidence that two members were present, **Borovčanin** claims they may have been there for personal reasons and not for the guarding of prisoners.⁴⁷⁷² He also submits there is no evidence of their involvement in the commission of crimes and that the evidence suggests that his units were not in control of Kravica Warehouse but were spread out along the Bratunac-Konjević Polje Road.⁴⁷⁷³

1522. The SBP 2nd Šekovići Detachment, together with other MUP units, was brought in immediately after the fall of Srebrenica, to assist in the major operation of securing the Bratunac-Konjević Polje Road, and on 13 July, specifically entrusted with guarding the captured and surrendered Bosnian Muslim prisoners in the area.⁴⁷⁷⁴ The Trial Chamber does not find it credible that during this important operation, at a critical time when approximately a thousand prisoners

⁴⁷⁶⁸ See *supra*, para. 428.

⁴⁷⁶⁹ See *supra*, para. 432.

⁴⁷⁷⁰ See *supra*, para. 433.

⁴⁷⁷¹ Borovčanin Final Brief, paras. 181–221.

⁴⁷⁷² Borovčanin Final Brief, paras. 190–195; Borovčanin Closing Arguments, T. 34595–34596 (10 Sept 2009), T. 34877 (15 Sept 2009). See also Miloš Đukanović, T. 11759, 11786 (18 May 2008); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5.

⁴⁷⁷³ Borovčanin Final Brief, paras. 166–180. See also, *ibid.*, paras. 181–221.

⁴⁷⁷⁴ See *supra*, paras. 377–378, 386, 1449–1453.

were being held there in custody, the SBP 2nd Šekovići Detachment commander, Čuturić, would go off to the Kravica Warehouse with one of his men, to investigate a private matter. The Trial Chamber finds the possibility that these members of the SBP 2nd Šekovići Detachment were at Kravica Warehouse for personal or ulterior reasons and not for guarding purposes unreasonable.

1523. The Trial Chamber does not have direct evidence that more than two members were present at the Kravica Warehouse itself. However, members of the SBP 2nd Šekovići Detachment were part of an integrated force which had been guarding prisoners in the Sandići Meadow and along the Bratunac-Konjević Polje Road all day.⁴⁷⁷⁵ As the bulk of those prisoners were moved to the Kravica Warehouse, the only reasonable inference is that members of the SBP 2nd Šekovići Detachment would have moved with them. Further, Čuturić, the commander of the SBP 2nd Šekovići Detachment was present at the Warehouse and was in fact injured during the “burnt-hands” incident. After receiving first aid, he returned directly to the vicinity of the Kravica Warehouse.⁴⁷⁷⁶ The Trial Chamber is satisfied that the only reasonable inference to be drawn from the commander’s initial presence and his return, is that his men—members of the SBP 2nd Šekovići Detachment—were present and guarding there at both times. Considering this evidence combined, the Trial Chamber is satisfied that in addition to Krsto Dragičević, and Čuturić, other members of the SBP 2nd Šekovići Detachment were present guarding at the Kravica Warehouse at the time that the “burnt-hands” incident occurred.

1524. As to the actual shooting, again the evidence is circumstantial. However, not only were the members of the SBP 2nd Šekovići Detachment amongst those who were guarding the prisoners, it was in fact their members who were directly involved in the “burnt-hands” incident—Dragičević was killed and Čuturić—their commander—was injured.⁴⁷⁷⁷ As a result, members of the SBP 2nd Šekovići Detachment had a strong motivation to take revenge on the prisoners.

1525. The Trial Chamber has also considered the hearsay evidence of PW-100 and PW-168 regarding the killing of the prisoners at the Kravica Warehouse.⁴⁷⁷⁸ It finds it reliable, especially when viewed cumulatively, and because this was contemporaneous hearsay. As to the “burnt-

⁴⁷⁷⁵ See *supra*, paras. 377–378, 386, 1449–1453.

⁴⁷⁷⁶ See *supra*, para. 434.

⁴⁷⁷⁷ The Trial Chamber notes that Miroslav Stanojević, a member of the Red Berets of the Bratunac Brigade was also injured in the “burnt-hands” incident. See *supra*, para. 433.

⁴⁷⁷⁸ PW-100 testified that he heard from a Jahorina Recruit that all the prisoners destined to be exchanged in Tuzla were killed at a “warehouse” by a “regular special police force.” PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007). PW-168 testified how he had heard Stupar describe how one of the prisoners at the Kravica Warehouse had grabbed a rifle and used it to kill a member of his unit. This was followed by an incident “whereby the police men and the soldiers who were there, opened fire on the prisoners and killed them” PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).

hands” incident, it is the evidence of PW-168 which is particularly relevant.⁴⁷⁷⁹ PW-168 received this information from Stupar two days after the Kravica Warehouse killings, and Stupar was at or close enough to Kravica Warehouse when the “burnt-hands” incident happened.⁴⁷⁸⁰ The information coming from Stupar was also self-incriminatory in so far as he places responsibility on the MUP units to which he belonged. According to Stupar’s account, both the police and soldiers present at the time fired on the prisoners.⁴⁷⁸¹

1526. Finally the Trial Chamber has considered **Borovčanin**’s account of what Stupar told him—that a VRS unit shot at the prisoners and that the MUP were not involved—but does not find it credible in the light of the other evidence before it.⁴⁷⁸² Looking at all of this evidence cumulatively, the only reasonable inference is that members of the SBP 2nd Šekovići Detachment participated in the shooting and killing of the busload of Bosnian Muslim prisoners immediately after the “burnt-hands” incident occurred and the Trial Chamber so finds.

1527. Much has been said about what then happened at the Kravica Warehouse after the “burnt-hands” incident. What emerges from the evidence is that the shooting of the busload of prisoners was followed by a full-scale execution of all the Bosnian Muslim prisoners detained at the Kravica Warehouse. The timing of this execution has gained significance in the light of **Borovčanin**’s submissions that this only took place later that evening, after the SBP 2nd Šekovići Detachment had been pulled out of the area.⁴⁷⁸³ As such, establishing what time the mass execution took place may help evidence who were the perpetrators of the Kravica Warehouse massacre, a necessary step towards consideration of **Borovčanin**’s responsibility.

1528. The Trial Chamber has found that members of the SBP 2nd Šekovići Detachment were present and participated in the initial killings. However, in his statement, **Borovčanin** said that before leaving the Kravica Warehouse, he asked his men to remain on the Bratunac-Konjević Polje Road, telling them that he would ask for their removal from that area as soon as possible.⁴⁷⁸⁴ Indeed there is evidence that the members of the 1st and 2nd Platoons of the SBP 2nd Šekovići Detachment were pulled out of the area at around 8:30 p.m. or 9 p.m.⁴⁷⁸⁵ The Trial Chamber is thus faced with a

⁴⁷⁷⁹ The evidence of PW-100 lacks detail and makes no reference to the “burnt-hands incident”. In addition, in contrast to the evidence of PW-168, PW-100 was not able to recall the source of the information making it difficult to determine the original declarant’s ability to know. *See* PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007).

⁴⁷⁸⁰ Stupar was able to inform **Borovčanin** of what was going on immediately after the incident happened. *See supra*, paras. 432, 1457. *See also* Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5; PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).

⁴⁷⁸¹ PW-168, T. 15877 (closed session) (26 Sep 2007).

⁴⁷⁸² *See supra*, para. 1459.

⁴⁷⁸³ **Borovčanin** Final Brief, Section V. (c)–(d).

⁴⁷⁸⁴ Ex. P02853, “Transcript of OTP Interview of **Borovčanin**, 11 and 12 Mar 2002”, p. 73.

⁴⁷⁸⁵ *See supra*, para. 1460.

gap of about three hours from the moment **Borovčanin** arrives on the scene to the time two Platoons of the SBP 2nd Šekovići Detachment are pulled out, which are unaccounted for. With regard to the members of the 3rd Platoon, the “Skelani” Platoon, whose member, Krsto Dragičević, had been killed in the “burnt-hands” incident, there is no evidence as to their location or whether they remained at the Kravica Warehouse or not.

1529. The Trial Chamber has analysed with care the testimony of the two survivors. While the evidence of PW-111 is more detailed, the Trial Chamber finds both witnesses to be credible and reliable. Further, while there are differences in their evidence, it is not necessarily contradictory particularly given that the witnesses were in two separate rooms and arrived at different times. Understandably, their recollections, particularly as to the time of day or night, and the sequence of events, are not always clear. The timing and turn of events offered by the two survivors as to when and how the full-blown execution commenced, varies somewhat. PW-111 testified that the first episode—the “burnt-hands” incident—happened when one could still see, though it was getting dark, and then later, they opened fire on the prisoners inside the East Room—the full-blown execution.⁴⁷⁸⁶ His estimate as to the gap between the initial shooting and the second wave of killings is however not lengthy—approximately half an hour.⁴⁷⁸⁷ Yet, later, PW-111 testified that the first incident—the “burnt-hands” incident—started after it became dark, with some shelling, and this was probably around 8.30 p.m. or 9 p.m, thereby casting some doubt on his reliability for the timing of both events.⁴⁷⁸⁸ Meanwhile, PW-156 did not refer to the “burnt-hands” incident but described the arbitrary way in which the shootings started in the West Room.⁴⁷⁸⁹ PW-156 said that the shooting continued, with pauses, until it was dark.⁴⁷⁹⁰ One inference to be drawn from this evidence is that there was but a single execution incident with no significant gaps. However, having assessed the evidence of PW-156 individually and with that given by PW-111, the Trial Chamber is not satisfied this is the only reasonable inference. It may well be that in the chaotic and horrifying circumstances, PW-156 did not hear the initial shootings or that he cannot recall them. In assessing this evidence, the Trial Chamber has considered the dark and crowded rooms they were in, and the extreme conditions they were under at the time. Given all these factors and the content of the evidence, the Trial Chamber finds it cannot rely solely or to any great extent on the survivors’ evidence on timing and how the full-scale execution unfolded. Thus, having analysed their evidence with great care, the Trial Chamber cannot be satisfied beyond reasonable doubt that there was a

⁴⁷⁸⁶ See *supra*, para. 1460.

⁴⁷⁸⁷ See *supra*, paras. 429–430.

⁴⁷⁸⁸ PW-111, T. 6999–7000, 7060–7061 (7 Feb 2007).

⁴⁷⁸⁹ PW-111, T. 6999–7000, 7060–7062 (7 Feb 2007).

⁴⁷⁹⁰ See *supra*, para. 428.

single killing action or that the full-blown execution began in the early evening before the 1st Platoon and 2nd Platoon of the SBP 2nd Šekovići Detachment had been removed.

1530. The Trial Chamber has also considered the evidence of witnesses who were in the vicinity that evening, and who testified on what they saw and heard at the nearby Sandići Meadow and around the Kravica Warehouse. Miloš Đukanović's evidence provides some support for two killing episodes with the second one occurring at dusk.⁴⁷⁹¹ However his evidence does not provide any further clarity as to the time gap between the two events. The Trial Chamber has also looked at the testimony of Mevludin Orić and PW-117.⁴⁷⁹² Neither Mevludin Orić's nor PW-117's evidence has assisted it in its determination of the timing of the full-scale execution.⁴⁷⁹³

1531. The Trial Chamber notes the evidence of Pepić, who was deployed close to the Kravica Warehouse, on the Bratunac-Konjević Polje Road, and who heard intense one-sided shooting from the Warehouse soon after the column of Bosnian Muslim prisoners had crossed the Bratunac-Konjević Polje Road.⁴⁷⁹⁴ Pepić initially testified that this one-sided shooting was still audible when Čuturić, injured, stopped on his way to the Bratunac Health Centre.⁴⁷⁹⁵ He also testified that the shooting continued after Cuturić had left en route to the Health Centre but stopped "more or less" after Cuturić passed through again on his way back.⁴⁷⁹⁶ When asked to give a time as to when the shooting stopped he says, "[p]erhaps it was dusk but it was in the afternoon", "late afternoon".⁴⁷⁹⁷ Under cross-examination, he contradicted some of these statements, most notably, indicating that when Cuturić arrived the first time en route to Bratunac, the intense one-sided firing had stopped⁴⁷⁹⁸ Given the inconsistencies in his evidence and his admitted inability to precisely recount the time-

⁴⁷⁹¹ Miloš Đukanović heard two short bursts of fire and was told that the "special" he had brought water for was shot and killed and one of the others was wounded. He then heard more gun shots for a period of ten to fifteen minutes, coming directly from the Warehouse. Towards dusk, he heard explosions that sounded more like bombs from the same direction. *See* Miloš Đukanović, T. 11767–11769, 11791 (18 May 2007).

⁴⁷⁹² Orić saw no bodies and does not recall hearing shooting from the direction of Kravica Warehouse when the bus he was on stopped to pick up Bosnian Muslim prisoners at Sandići Meadow, close to the Kravica Warehouse, at around dusk, 9 or 10 p.m. Mevludin Orić, T. 890–891, 897–898 (28 Aug 2006), T. 1061–1062 (30 Aug 2006). PW-117 heard shooting coming from behind the Kravica Warehouse when he was there at dusk and saw a four or five bodies near its entrance. PW-117, Ex. P02207, "92 bis transcript", KT. 3025–3027 (14 Apr 2000).

⁴⁷⁹³ Perica Vasović and Miladin Jovanović, both describe hearing gunshots when they went to Kravica Warehouse at around 8 p.m. and 10 p.m. respectively that evening. Both testified that they were unsure from which direction the shots came from. Vasović only mentions a soldier in black coming out of the darkness and asking him to help guard the Warehouse. Jovanović, on the other hand, heard human cries and cursing coming from the Warehouse. The Trial Chamber finds their testimony very limited in specific information and generally unhelpful as to the timing and who was involved in the full-scale execution at Kravica Warehouse. *See* Perica Vasović, Ex. 2D00555, "92 ter statement Perica Vasović, 23 April 2007", p. 1; Perica Vasović, T. 24229–24233, 24250–24251, 24256, 24258–24259, 24261–24262 (29 July 2008); Miladin Jovanović, Ex. 2D00554, "92 ter statement" (24 Apr 2007), p. 1; Miladin Jovanović, T. 24214, 24223–24224 (28 July 2008); Ex. P03592, "Record of Witness Statement of Miladin Jovanović, War Crimes Investigations Centre, State Investigation and Protection Agency, Ministry of Security, Bosnia and Herzegovina, 21 Sept 2005", p. 5.

⁴⁷⁹⁴ *See supra*, paras. 431, 1456.

⁴⁷⁹⁵ Milenko Pepić, T. 13562–13564 (9 July 2007).

⁴⁷⁹⁶ *Ibid.*, T. 13566–13567 (9 July 2007).

⁴⁷⁹⁷ *Ibid.*, T. 13567 (9 July 2007).

frames, the Trial Chamber cannot be satisfied beyond reasonable doubt as to the timing of the shooting which Pepić heard. As a result, the Trial Chamber cannot infer from this evidence, individually or cumulatively with that of the survivors, that the shooting Pepić heard was the reaction to the “burnt-hands” incident, or the ongoing, full-scale execution.⁴⁷⁹⁹

1532. The Trial Chamber has also considered the hearsay evidence of PW-100 and PW-168. PW - 100’s statement, albeit not detailed, does provide support for the involvement of the SBP in the full-scale execution in that he refers to all the prisoners destined to be exchanged in Tuzla as having been killed at a “warehouse” by a “regular special police force”.⁴⁸⁰⁰ He makes no mention of a separate event triggered by the killing and injury of some police members present at the site and thus the statement supports the participation of the SBP in the full-blown execution. Yet, as noted previously, this statement is vague in content and the source of the hearsay is not identified beyond the person being a member of the Jahorina Recruits. PW-168, on the other hand, recounted a hearsay statement which is more detailed and in which the source is identified. He related that Stupar described that one of the prisoners grabbed a rifle and used it to kill a member of his unit. There was then an incident “whereby the police men and the soldiers who had been there opened fire on the prisoners and killed them”.⁴⁸⁰¹ However, this statement is ambiguous in its content. It could be interpreted to mean the prisoners in the immediate vicinity were killed, *i.e.*, the “burnt-hands” incident or all the prisoners at the Kravica Warehouse were killed, *i.e.*, full-scale execution. While the Trial Chamber, as noted previously, is satisfied as to the reliability of the evidence, given the lack of detail as to the content and source of PW-100’s information and the ambiguity of the statement made to PW-168, combined with the fact that both involve untested hearsay, the Trial Chamber finds the evidence is not sufficient to establish participation on the part of the SBP 2nd Šekovići Detachment in the full massacre at the Kravica Warehouse.

1533. From the totality of the evidence before it, the Trial Chamber finds that a full-scale execution took place at the Kravica Warehouse that evening, after the “burnt-hands” incident occurred.⁴⁸⁰² While there is evidence that there were pauses between the shooting, the length of the pauses is unclear.⁴⁸⁰³ It could have ranged from a mere half hour to three hours. In addition, the Trial Chamber is unable on the evidence to establish the time when the full-scale execution began.

1534. As to who executed the Bosnian Muslim prisoners, the evidence is even more unclear. Taken cumulatively, the Trial Chamber finds that one reasonable inference in the circumstances is

⁴⁷⁹⁸ Milenko Pepić, T. 13598 (9 July 2007).

⁴⁷⁹⁹ See also *supra*, paras. 431, 1456.

⁴⁸⁰⁰ PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007).

⁴⁸⁰¹ PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).

⁴⁸⁰² See *supra*, paras. 428–445.

that members of the SBP 2nd Šekovići Detachment, in particular the 3rd Platoon, the “Skelani” Platoon, remained in Kravica Warehouse after **Borovčanin** left, and together with members of the Bratunac Brigade, continued shooting at the Bosnian Muslim prisoners until virtually all had been killed. In this regard, the Trial Chamber is satisfied that members of the 3rd Platoon, the “Skelani” Platoon were present at the Kravica Warehouse guarding the prisoners, as clearly evidenced by the death of Dragičević, who was from that Platoon. Further, there is no evidence before the Trial Chamber that this 3rd Platoon, the “Skelani” Platoon, was withdrawn with the remainder of the SBP 2nd Šekovići Detachment that evening.

1535. However, on the evidence before it, another reasonable possibility is that upon seeing the busload of dead bodies, **Borovčanin** ordered his men to retreat to the Bratunac-Konjević Polje Road until he pulled them out at dusk, as he claims. As to the members of the 3rd Platoon, the “Skelani” Platoon, may have been sent home as was the custom when one of their men was killed and that is why they were not billeted for the night with the two other Platoons of the SBP 2nd Šekovići Detachment.⁴⁸⁰⁴ Recalling the burden on the Prosecution, given the absence of evidence as to their whereabouts, the benefit of doubt must go to the accused.

1536. In conclusion, the Trial Chamber finds that there is insufficient evidence to determine beyond reasonable doubt which units of the Bosnian Serb Forces were involved in the full-scale execution. While members of the SBP 2nd Šekovići Detachment were present for a few hours in and close to Kravica Warehouse before and after the “burnt-hands” incident occurred, there is insufficient evidence to conclude that they were also there when the full-scale execution took place and that they participated in it.

1537. Turning to **Borovčanin**’s actions again, the Trial Chamber notes that his only major act upon his return to the Bratunac Police Station after being at Kravica Warehouse, was to pull out the 1st PJP Company from Zvornik and the 1st and 2nd Platoons of the SBP 2nd Šekovići Detachment from the area and send them to rest.⁴⁸⁰⁵ In the Trial Chamber’s opinion, this action, coupled with his words—“What’s going on? What’s being done? Give me a phone quickly. I have to phone the brigade.”⁴⁸⁰⁶—together with evidence of his upset state of mind,⁴⁸⁰⁷ demonstrate his lack of

⁴⁸⁰³ See *supra*, paras. 1527–1532.

⁴⁸⁰⁴ See Predrag Čelić, T. 13481 (28 June 2007); Dragan Nesković, T. 27435–27439 (27 Oct 2008); Slavisa Simić, T. 27513–27514 (29 Oct 2008); Miodrag Dragutinović T. 12886 (19 June 2007).

⁴⁸⁰⁵ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 74–75; Predrag Čelić, T. 13480, 13505 (28 June 2007); Milenko Pepić, T. 13567, 13572–13573, 13600 (9 July 2007). There is no evidence before the Trial Chamber on what happened to the Skelani Platoon whose member had been killed in the “burnt-hands” incident.

⁴⁸⁰⁶ Dragan Nesković, T. 27436–27437 (28 Oct 2008).

⁴⁸⁰⁷ *Ibid.*; Slavisa Simić, T. 27506–27507 (2 Oct 2008); Ex. 4D00620, “CJB Bratunac, Attendance Roster, June–August 1995”.

knowledge of the plan to murder the Bosnian Muslim prisoners at Kravica Warehouse. His actions also show that he wanted to distance himself and his men from what had happened and what could later happen there.

1538. The conversation **Borovčanin** and Deronjić had that evening also supports this view. **Borovčanin** informed Deronjić of what had happened at the Kravica Warehouse that evening.⁴⁸⁰⁸ They discussed the fact that many Bosnian Muslim prisoners were being detained in Bratunac and shared their concern that as the VRS was moving on to Žepa, the civilian authorities and the MUP would be left with the responsibility for the fate of the Bosnian Muslim prisoners.⁴⁸⁰⁹ **Borovčanin** indicated he was worried that he and his units would be involved.⁴⁸¹⁰ **Borovčanin**'s intent to distance himself and his men from the guarding of Bosnian Muslim prisoners is also evident from the 15 July meeting at the Standard Barracks when **Borovčanin** expressly said that he did not wish his MUP units to guard the prisoners who were being captured or surrendering from the column.⁴⁸¹¹

1539. The Prosecution points to the intercepted conversation between **Borovčanin** and Krstić which took place at 8:40 p.m. on 13 July, as evidence of **Borovčanin**'s knowledge.⁴⁸¹² The Trial Chamber has considered the intercept which reads in part: "K: How's it going? B: It's going well. K: Don't tell me you have problems. B: I don't. I don't [...] B: We'll continue that tomorrow."⁴⁸¹³ It finds that this conversation is too cryptic to conclude that the only reasonable inference to be made is that **Borovčanin** was discussing the plan to kill with Krstić, and that they both knew of the Kravica Warehouse murders. It is equally reasonable to conclude that they were discussing the patrols along the Bratunac-Konjević Polje Road or the blocking of the column, which were tasks **Borovčanin**'s units were also carrying out that day.⁴⁸¹⁴

⁴⁸⁰⁸ Miroslav Deronjić, Ex. P03139a, "confidential – 92 *ter* transcript", BT. 6226 (20 Jan 2004), BT. 6461 (22 Jan 2004).

⁴⁸⁰⁹ Miroslav Deronjić, Ex. P03139a, "confidential – 92 *ter* transcript", BT. 6418–6420 (22 Jan 2004) (confirming the excerpt of the statement he had given to the Prosecution on 19 June 2003 and read to him by Defence counsel). Deronjić also stated that if that had happened, the fate of the Bosnian Muslim prisoners may have been different. Miroslav Deronjić, Ex. P03139a, "confidential – 92 *ter* transcript", BT. 6419–6420 (22 Jan 2004). *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 82–83.

⁴⁸¹⁰ Miroslav Deronjić, Ex. P03139a, "confidential – 92 *ter* transcript", BT. 6418–6419 (22 Jan 2004). The Trial Chamber finds Deronjić credible as Borovčanin's words are consistent with his subsequent action of withdrawing his units and he echoes them at the Standard Barracks meeting on 15 July.

⁴⁸¹¹ *See supra*, para.1464.

⁴⁸¹² Prosecution Final Brief, paras. 2022–2030. *See also* Borovčanin Final Brief, paras. 389–390.

⁴⁸¹³ Ex. P00993a, "Intercept, 13 July 1995, 20:40 hours". *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 35–36, 75–76, 78.

⁴⁸¹⁴ *See* Ex. P00993a, "Intercept, 13 July 1995, 20:40 hours"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 79–80. *See also* Prosecution Final Brief, paras. 2022–2023; Borovčanin Final Brief, paras. 389–390.

1540. Prior to the Kravica Warehouse incident, there is insufficient evidence that **Borovčanin** knew of the plan to murder the Bosnian Muslim men. His knowledge and his actions thereafter will be considered below in the context of aiding and abetting murder.⁴⁸¹⁵

iii. Conclusion

1541. The Trial Chamber thus finds that **Borovčanin** did not share the intent with other JCE members to contribute to the common purpose and he was not a member of the JCE to Murder. **Borovčanin**'s lack of intent is also further evident in his proposal or agreement to the opening of the corridor on 15 July.⁴⁸¹⁶

b. Other Modes of Liability

1542. The Prosecution also alleges that **Borovčanin** committed (other than through participation in a JCE), planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.⁴⁸¹⁷ The Trial Chamber has concluded above that **Borovčanin** did not have knowledge of the plan to murder or its implementation. Nor did he have the intent to murder. Except for aiding and abetting which will be discussed below, there is no evidence before the Trial Chamber of any acts or omissions on his part which would constitute other Article 7(1) forms of responsibility in relation to the crime of murder.

c. Aiding and Abetting the Kravica Warehouse Execution

1543. In the case of **Borovčanin** there is no evidence before the Trial Chamber of any particular acts on his part which may have constituted aiding and abetting the crimes committed at the Kravica Warehouse. However, the Trial Chamber must also consider if his conduct can properly constitute aiding and abetting by omission. The Trial Chamber recalls the jurisprudence which provides for aiding and abetting by omission.⁴⁸¹⁸ Where a person fails to discharge a legal duty and by this failure he assists, encourages or lends moral support to the perpetration of a crime and has a substantial effect on the commission of that crime, he may be held criminally responsible.⁴⁸¹⁹ The

⁴⁸¹⁵ See *infra*, paras. 1543–1563.

⁴⁸¹⁶ See *supra*, paras. 552, 1463.

⁴⁸¹⁷ Indictment, paras. 88–89, 92.

⁴⁸¹⁸ See *supra*, para. 1019.

⁴⁸¹⁹ *Ibid.*

person must have the ability to act and also must know the essential elements of the crime and that their omission assists the commission of the crime.⁴⁸²⁰

1544. In analysing that issue, the Trial Chamber begins with a consideration of the duty to protect prisoners as imposed by the laws and customs of war. With regard to the legal duty to act, the *Mrkšić and Šljivančanin* Appeals Chamber elaborated on the duty to protect and treat prisoners of war humanely. It found that

Geneva Convention III invests all agents of a Detaining Power into whose custody prisoners of war have come with the obligation to protect them by reason of their position as agents of that Detaining Power. No more specific investment of responsibility in an agent with regard to prisoners of war is necessary. The Appeal Chambers considers that all state agents who find themselves with custody of prisoners of war owe them a duty of protection regardless of whether the investment of responsibility was made through explicit delegation such as through legislative enactment or a superior order, or as a result of the state agent finding himself with *de facto* custody over prisoners of war such as where a prisoner of war surrenders to that agent.⁴⁸²¹

1545. The *Mrkšić and Šljivančanin* Appeals Chamber further considered that breach of the duty to protect prisoners of war as imposed by the laws and customs of war may give rise to individual criminal responsibility.⁴⁸²²

1546. The Trial Chamber notes that the duty to protect under this form of Article 7(1) liability also arises when other units or individuals, not just a commander's subordinates, are involved in crimes.⁴⁸²³

i. Custody and/or Control of the Prisoners

1547. Much attention has focused on the question of the presence of **Borovčanin's** SBP 2nd Šekovići Detachment at the Kravica Warehouse itself on the late afternoon of 13 July.⁴⁸²⁴ As has been discussed above, this is of course a significant issue, particularly important for a determination as to the physical perpetrators of the crimes which took place there and to the discussion of his command responsibility.⁴⁸²⁵ However, it is not the only relevant question for the analysis. What also must be considered is who had custody that day of the Bosnian Muslim prisoners who met their tragic fate at the Kravica Warehouse. The Trial Chamber is of the opinion that in this case, the question of custody must be viewed in the context of the whole operation carried out by Bosnian Serb Forces on 13 July along the Bratunac–Konjević Polje Road.⁴⁸²⁶ The Trial Chamber's assessment of who had custody and/or control cannot be limited in scope solely to the Kravica

⁴⁸²⁰ See *supra*, para. 1020. See also *Ntagerura et al.* Appeal Judgement, para. 335.

⁴⁸²¹ *Mrkšić and Šljivančanin* Appeal Judgement, para. 73.

⁴⁸²² *Ibid.*, para. 151.

⁴⁸²³ See *supra*, para. 1019.

⁴⁸²⁴ See *supra*, paras. 1526–1527.

⁴⁸²⁵ See *supra*, paras. 1526–1527, 1534–1536; see *infra*, paras. 1565–1566, 1568.

Warehouse or compartmentalised into separate and distinct parts. While the final act may have taken place at the Kravica Warehouse, the custodial chain leading up to the killings covers a larger geographic area, including the Sandići Meadow, the Kravica Warehouse and along the Bratunac-Konjević Polje Road in between. The Trial Chamber has considered **Borovčanin**'s submissions on this matter but finds them unconvincing in light of the facts of this case and the totality of the evidence before it.⁴⁸²⁷

1548. It is undisputed that **Borovčanin**'s units were assigned to the Bratunac-Konjević Polje Road as part of the forces responsible to search the terrain, engage militarily with the column as necessary, and capture and detain members thereof.⁴⁸²⁸ In the particular area of relevance, there were three main locations where the Bosnian Serb Forces were at work—along the Bratunac-Konjević Polje Road, and in the chosen detention sites, Sandići Meadow and the Kravica Warehouse.⁴⁸²⁹ What the video footage, along with supporting testimonial evidence, illustrates is that there was a single operation that day which resulted in the surrender or capture of many hundreds of Bosnian Muslims from the column.⁴⁸³⁰ Once captured, the Bosnian Muslim prisoners were escorted to Sandići Meadow.⁴⁸³¹ There they were held for the morning of 13 July and much of the afternoon and early evening.⁴⁸³² The vast majority were subsequently transported under guard, on foot and by bus, to the Kravica Warehouse where they were detained prior to the execution.⁴⁸³³ The evidence satisfies the Trial Chamber that there were not three custodial sites with separate forces responsible for each, but rather a single geographic area—along the Bratunac-Konjević Polje Road, between and including the Sandići Meadow, to and including the Kravica Warehouse—where different units of the Bosnian Serb Forces, blended together, and had joint custody of the prisoners.⁴⁸³⁴ Temporally, this was also a compact operation.

1549. There is ample evidence before the Trial Chamber which establishes that **Borovčanin**'s units, the Jahorina Recruits, the 1st PJP Company from Zvornik,⁴⁸³⁵ and the SBP 2nd Šekovići

⁴⁸²⁶ Prosecution Pre-Trial Brief, para. 214; Prosecution Final Brief, paras. 1926–1929.

⁴⁸²⁷ See Borovčanin Final Brief, paras. 360–382, Borovčanin Closing Arguments, T. 34580–34581, 34599–34601 (10 Sept 2009). **Borovčanin** argues that there is no evidence that anyone from the SBP 2nd Šekovići Detachment escorted the Bosnian Muslims or guarded them once they arrived at Kravica Warehouse. The presence of two members of a unit is not strongly probative that other members of the unit were present. He submits that the prisoners were in the custody of the Bratunac Brigade or other military forces at or around the time they were escorted from Sandići Meadow to Kravica Warehouse, and therefore were no longer in his custody. *Ibid*; Borovčanin Final Brief, paras. 181–203, 221; Borovčanin Closing Arguments, T. 34579 (10 Sept 2009).

⁴⁸²⁸ See *supra*, paras. 377, 386, 1449, 1451–1453.

⁴⁸²⁹ See *supra*, paras. 377, 386, 1449, 1451–1453.

⁴⁸³⁰ See *supra*, paras. 384–386.

⁴⁸³¹ See *supra*, paras. 383–386.

⁴⁸³² See *supra*, paras. 388, 421, 424–425.

⁴⁸³³ See *supra*, paras. 425–426.

⁴⁸³⁴ See *supra*, paras. 383–384, 386, 388, 1449–1454.

⁴⁸³⁵ See *supra*, para. 386.

Detachment,⁴⁸³⁶ were a part of this joint force, guarding and moving the Bosnian Muslim prisoners throughout this geographic area.⁴⁸³⁷ **Borovčanin**'s units were deployed along the Bratunac-Konjević Polje Road, they guarded the prisoners in Sandići Meadow, and they assisted in the transfer of the prisoners from Sandići to the Kravica Warehouse by guarding the Bratunac-Konjević Polje.⁴⁸³⁸ Some members of the SBP 2nd Šekovići Detachment also guarded the Bosnian Muslim prisoners at the Kravica Warehouse.⁴⁸³⁹ That the SBP 2nd Šekovići Detachment's presence at the Kravica Warehouse was for this purpose and not for any ulterior or personal reason is clearly evidenced by the fact that the Commander of the SBP 2nd Šekovići Detachment, Čturić, was present at the Kravica Warehouse.⁴⁸⁴⁰ In addition, he immediately returned to that part of the Bratunac-Konjević Polje Road after he was treated in hospital for the injuries he sustained there.⁴⁸⁴¹ Stupar, the former commander, was also close by.⁴⁸⁴² There can be no doubt that **Borovčanin**'s units were amongst the Bosnian Serb Forces with custody and/or control of the Bosnian Muslim prisoners on 13 July, before and at the time of their murder at Kravica Warehouse.

1550. Thus, the Trial Chamber finds that the SBP 2nd Šekovići Detachment, the Jahorina Recruits, and the 1st PJP Company from Zvornik had joint custody of the Bosnian Muslim prisoners ultimately detained and killed at the Kravica Warehouse and that **Borovčanin**—who had been up and down the Bratunac-Konjević Polje Road much of that day—was fully aware of that custodial role on the part of the units under his command.⁴⁸⁴³

ii. Borovčanin's Duty to Protect the Prisoners

1551. The Trial Chamber recalls that all state agents who find themselves with custody of prisoners owe them a duty of protection.⁴⁸⁴⁴ Importantly on the facts of this case, the Trial Chamber notes that the duty does not end with the transfer of custody to other units. Those charged with the responsibility of prisoners have an ongoing duty in any handover to assure themselves that the prisoners will not be harmed.⁴⁸⁴⁵ **Borovčanin** therefore had a duty to protect these prisoners and to treat them humanely and that duty did not end with the withdrawal of his units from the operation which had created conditions of joint custody.⁴⁸⁴⁶

⁴⁸³⁶ See *supra*, para. 386.

⁴⁸³⁷ See *supra*, paras. 377, 386, 1449, 1451–1453.

⁴⁸³⁸ See *supra*, paras. 377, 424, 386, 1449, 1451–1454.

⁴⁸³⁹ See *supra*, para. 1523.

⁴⁸⁴⁰ See *supra*, paras. 433, 1459–1460.

⁴⁸⁴¹ See *supra*, para. 434.

⁴⁸⁴² See *supra*, para. 1459.

⁴⁸⁴³ See Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002," pp. 43–44.

⁴⁸⁴⁴ See *supra*, para. 1544.

⁴⁸⁴⁵ *Mrkšić and Šljivančanin* Appeal Judgement, para. 74.

⁴⁸⁴⁶ See *supra*, para. 1544.

iii. Borovčanin's Ability to Act

1552. Given his duty to protect the prisoners, the Trial Chamber must next consider whether in the circumstances, **Borovčanin** had an ability to act; in essence whether there were means available to him to fulfil this duty.

1553. The Trial Chamber notes the circumstances which surrounded the “burnt-hands” incident and **Borovčanin**'s ability to protect those prisoners who were killed at that time. The incident which triggered this initial killing spree could not have been anticipated by **Borovčanin**. He was not present when it began and the Trial Chamber has found there is no evidence of a continuation of the shooting at the time he arrived on the scene.⁴⁸⁴⁷ Thus **Borovčanin** cannot be said to have had the material ability to prevent or stop the killing which took place immediately after the “burnt-hands” incident.

1554. However, the circumstances were significantly altered once **Borovčanin** arrived at the Kravica Warehouse and was confronted with the horrifying scene before him; a scene captured for all to see by the Petrović video footage.⁴⁸⁴⁸

1555. The Trial Chamber finds that, at this point in time, **Borovčanin** had the means to fulfil his duty to the prisoners in his custody. **Borovčanin** arrived there as a senior commanding officer. Whether commanding officers of other units may have been present does not detract from the fact that he was able to give orders to his subordinates and bring his authority and influence to bear with respect to other units which may have been present. Indeed, the Trial Chamber notes that he himself said that he did not want to interfere in “other people's matters”,⁴⁸⁴⁹ implying that he could have taken measures but chose not to.

iv. Whether Borovčanin's Failure to Act Substantially Contributed to the Crimes

1556. The Trial Chamber finds that despite his ability to do so, **Borovčanin** took no action to fulfil his duty to the Bosnian Muslim prisoners at that time. He failed to take the basic step of checking on the condition of the prisoners visible in the video footage or the remainder lodged at the Kravica Warehouse.⁴⁸⁵⁰ Offering first aid is the least he could have done to protect the prisoners who had already been harmed. He did not seek out other commanders or senior officers present. In fact, there is no evidence he engaged in any way. His discussion with Stupar—whereby he accepted a simple

⁴⁸⁴⁷ See *supra*, para. 1519.

⁴⁸⁴⁸ See *supra*, para. 1458.

⁴⁸⁴⁹ Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 69.

⁴⁸⁵⁰ See *supra*, para. 1458; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 72.

denial as to participation by his men—cannot be classified even as a cursory examination into what had happened.⁴⁸⁵¹ He gave no orders to his units not to fire further or to protect the prisoners from such actions on the part of VRS soldiers present. He also did not engage with the other VRS units in an effort to shield the prisoners from future harm.

1557. Instead, by ordering Stupar to keep his men out of the Kravica Warehouse and to return to the Bratunac-Konjević Polje Road,⁴⁸⁵² **Borovčanin** left the prisoners in the hands of units who committed crimes, including murder, against them. Perhaps even more significantly, he left the scene within minutes without putting in place a single measure of protection for those Bosnian Muslim prisoners who remained. Shortly thereafter he made arrangements for the withdrawal of his units from the area leaving the prisoners to their tragic fate.⁴⁸⁵³

1558. Despite opportunities during his urgent call to the Bratunac Brigade command, and in his conversation with Krstić, **Borovčanin** also failed to engage his superiors in the MUP or the VRS with a view to protecting the prisoners

1559. The Trial Chamber is satisfied that the failure on the part of **Borovčanin** to protect the Bosnian Muslim prisoners then still detained, substantially contributed to the full-scale execution which took place later at the Kravica Warehouse.

v. Borovčanin's *Mens Rea*

1560. For criminal responsibility by way of aiding and abetting by omission, **Borovčanin** had to know the essential elements of the crime to be committed and that his failure to act would assist the commission of that crime.⁴⁸⁵⁴ The Trial Chamber has found that the evidence before it is insufficient to establish beyond reasonable doubt that **Borovčanin** had any prior knowledge of the plan to murder the Bosnian Muslim prisoners at the Kravica Warehouse.⁴⁸⁵⁵ However the circumstances are quite different once **Borovčanin** arrived at the Warehouse after the “burnt-hands” incident.

1561. The Trial Chamber is satisfied that the pile of bodies of Bosnian Muslim prisoners—what appears to be a busload of them—immediately visible to **Borovčanin**, alone evidenced the danger to the remaining prisoners in his custody. From this significantly disproportionate reaction to the “burnt-hands” incident—the execution of a multiple number of unarmed prisoners—**Borovčanin**

⁴⁸⁵¹ See *supra*, para. 1459.

⁴⁸⁵² Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 65, 72.

⁴⁸⁵³ See *supra*, para. 1460.

⁴⁸⁵⁴ See *supra*, para. 1019.

would have known the probability of more prisoners being murdered. That probability was enhanced by the fact that the original triggering incident—the death of a Bosnian Serb policeman and the injury of another—remained a motive for revenge.

1562. But perhaps the most significant evidence as to **Borovčanin**'s knowledge comes from his own actions which followed. The first and only step that **Borovčanin** took after seeing the evidence of prisoner executions was to remove himself and his men from the Kravica Warehouse as quickly as he could.⁴⁸⁵⁶ The only reasonable inference the Trial Chamber can draw from his words and actions is that at this time, **Borovčanin** knew not only that it was probable these prisoners would be killed but that it was a certainty. Barring that knowledge, there was no reason for **Borovčanin**'s swift actions to distance himself and his units from the ongoing operation at the Kravica Warehouse later that night. Similarly, his overheard words in the evening of 13 July, at the Bratunac Police Station, asking angrily what was going on and for a phone to call the Bratunac Brigade Headquarters, add further weight to the evidence supporting this conclusion.⁴⁸⁵⁷ This is also evident two days later, when he voices his clear opposition to any involvement by his men in the guarding of prisoners.⁴⁸⁵⁸ **Borovčanin** failed in his ongoing duty to protect the prisoners who had been in his custody in the knowledge that murder would be committed and that the removal of his units and the failure to intervene would assist in the commission of that crime. The *mens rea* requirement has thus been met.

vi. Conclusion

1563. On the totality of the evidence before it, the Trial Chamber finds that **Borovčanin**'s failure to discharge his legal duty to protect the Bosnian Muslim prisoners assisted the perpetration of murder and the other crimes committed at Kravica Warehouse against the Bosnian Muslim prisoners detained there, and had a substantial effect on the realisation of the said crimes. He thus aided and abetted murder by omission.

(iv) "Opportunistic" Killings

1564. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Borovčanin** that certain "opportunistic" killings would be carried out by the Bosnian Serb Forces as part of both the JCE to Murder and the JCE to Forcibly

⁴⁸⁵⁵ See *supra*, paras. 1540–1541.

⁴⁸⁵⁶ See *supra*, para. 1460.

⁴⁸⁵⁷ See *supra*, para. 1460. The Trial Chamber has considered the fact that there is no evidence before it that he got through to the Bratunac Brigade at the time, and that his intercepted conversation with Krstić later that evening, as found above, is equivocal, but finds this does not detract from its finding on **Borovčanin**'s *mens rea* at the time.

Remove.⁴⁸⁵⁹ As **Borovčanin** was not a member of the JCE to Murder or the JCE to Forcibly Remove, he cannot be found responsible under third category JCE liability for the “opportunistic” killings.⁴⁸⁶⁰

(v) Superior Responsibility

1565. The only issue left for the Trial Chamber to decide is whether **Borovčanin** can be held criminally responsible for not having punished the members of the Jahorina Recruits who killed 10 to 15 men at Sandići Meadow, and the members of the SBP 2nd Šekovići Detachment who participated in the killing of the busload of Bosnian Muslim prisoners following the “burnt-hands” incident.⁴⁸⁶¹ In doing so, the Trial Chamber will first examine whether there existed a superior-subordinate relationship between **Borovčanin** and the said SBP 2nd Šekovići Detachment at the relevant time, then turn to whether **Borovčanin** knew or had reason to know about the commission of these crimes, and if so, whether he took any necessary and reasonable measures to punish the crimes in question.

a. Existence of a Superior-Subordinate Relationship

1566. By the ministerial order of 10 July 1995, **Borovčanin** was appointed the commander of a MUP force comprised of the SBP 2nd Šekovići Detachment, the 1st PJP Company from Zvornik, and the Jahorina Recruits.⁴⁸⁶²

1567. **Borovčanin** argues that he lacked effective control over the Jahorina Recruits who were in Potočari.⁴⁸⁶³ The Trial Chamber notes however that it was on his orders that Jević, Mane, and the members of the 1st Company of the Jahorina Recruits remained in Potočari and it was to him that Jević reported on the evening of 12 July.⁴⁸⁶⁴ As is captured on video footage, while in Potočari, **Borovčanin** acted as a commander, walking with purpose in the crowd, and performing his duties with authority as both Kingori and Van Duijn recognised when they approached him to discuss the issues of the overcrowded White House and the disappearance of the Red Cross tractor,

⁴⁸⁵⁸ See *supra*, para. 1464.

⁴⁸⁵⁹ Indictment, paras. 31, 37. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

⁴⁸⁶⁰ See *supra*, paras. 1495–1541.

⁴⁸⁶¹ The Trial Chamber finds that as it has found **Borovčanin** responsible for aiding and abetting forcible transfer under Article 7(1) it need not consider his responsibility under Article 7 (3). Furthermore, as discussed above, as there is insufficient evidence that **Borovčanin**’s subordinates participated in the full-scale execution that took place at the Kravica Warehouse, **Borovčanin**’s responsibility under Article 7(3) is not triggered. See *supra* para. 1536.

⁴⁸⁶² See *supra*, para. 1434.

⁴⁸⁶³ Borovčanin Final Brief, paras. 92–102.

⁴⁸⁶⁴ See *supra*, paras. 321, 1443, 1446–1447.

respectively.⁴⁸⁶⁵ Based on this, and the unity of command principle of MUP forces re-subordinated to the VRS,⁴⁸⁶⁶ the Trial Chamber finds that the Jahorina Recruits were under **Borovčanin**'s effective control and command while they were in Potočari on 12 and 13 July.⁴⁸⁶⁷

1568. It is not contested that the SBP 2nd Šekovići Detachment was under **Borovčanin**'s command and control.⁴⁸⁶⁸ The evidence clearly demonstrates that **Borovčanin** was the commander whose orders were followed by his subordinate commanders and units.⁴⁸⁶⁹ Furthermore, the Trial Chamber recalls the principle of unity of command under which MUP forces re-subordinated to the VRS retained their internal chain of command.⁴⁸⁷⁰

1569. For these reasons, the Trial Chamber finds that a superior-subordinate relationship existed between **Borovčanin** and the Jahorina Recruits in Sandići Meadow on 13 July, and the members of the SBP 2nd Šekovići Detachment—including the subordinate commanders Čuturić and Stupar, present along the Bratunac-Konjević Polje Road on 12 and 13 July and in Kravica Warehouse in particular on 13 July. The Trial Chamber finds that **Borovčanin** had effective control over these units.

b. Borovčanin's Knowledge or "Reason to Know"

1570. The Trial Chamber has already found that the killings of 10 to 15 Bosnian Muslim men at Sandići Meadow were committed by members of the Jahorina Recruits upon the order of "Aleksa", a Deputy Commander of a platoon of an SBP company under **Borovčanin**'s command.⁴⁸⁷¹ Nevertheless, there is no evidence before the Trial Chamber to find that **Borovčanin** knew or "had reason" to know of these murders, nor evidence that he came to know during the relevant time period.

1571. With regard to Kravica Warehouse, the Trial Chamber has found that members of the SBP 2nd Šekovići Detachment, jointly with members of the Bosnian Serb Forces, murdered a busload of Bosnian Muslim prisoners at Kravica Warehouse following the "burnt-hands" incident on 13 July.⁴⁸⁷² As discussed extensively above, **Borovčanin** had actual knowledge of the murder of

⁴⁸⁶⁵ See *supra*, paras. 305, 1445, 1448.

⁴⁸⁶⁶ See *supra*, para. 184. See also Momir Nikolić. T. 32926 (21 Apr 2009).

⁴⁸⁶⁷ The Trial Chamber notes **Borovčanin**'s submission that the Jahorina Recruits were not part of the SBP but of the MUP. Borovčanin Final Brief, para. 28. See also *supra*, fn. 447. In the light of this finding, the Trial Chamber does not consider it necessary to address this issue.

⁴⁸⁶⁸ See e.g. Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 27–28.

⁴⁸⁶⁹ See e.g. *supra*, paras. 1439, 1443, 1446, 1448.

⁴⁸⁷⁰ See *supra*, para. 184. See also Momir Nikolić. T. 32926 (21 Apr 2009).

⁴⁸⁷¹ See *supra*, para. 423.

⁴⁸⁷² See *supra*, paras. 1526, 1528.

these prisoners and sufficient information to put him on notice of possible murder by members of the SBP 2nd Šekovići Detachment.⁴⁸⁷³

c. Failure to Punish

1572. The Trial Chamber will now turn to consider whether **Borovčanin** failed to take the necessary and reasonable measures to punish the perpetrators of this crime. The Trial Chamber notes that the duty to punish includes at least an obligation to establish the facts, to investigate possible crimes or have the matter investigated, and if the superior has no power to sanction, to report the perpetrators to the competent authorities.⁴⁸⁷⁴

1573. Under the “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War” which regulates the organisation, duties and powers of members of the MUP when re-subordinated to the VRS, a superior officer, including an MUP officer, is obliged, *inter alia*, to take steps to prevent a person who has committed a criminal offence from fleeing or hiding, and to inform the military prosecutor, directly or indirectly, of the criminal offence or what could be a criminal offence.⁴⁸⁷⁵

1574. The Trial Chamber is satisfied that **Borovčanin** had the means to investigate and punish the members of the SBP 2nd Šekovići Detachment at Kravica Warehouse and that he failed to take measures to do so.⁴⁸⁷⁶ First, the Trial Chamber notes that **Borovčanin** accepted Stupar’s simple denial as to participation by his men without requesting reports from Stupar or anyone else present at the scene.⁴⁸⁷⁷ **Borovčanin** relied on Stupar’s implausible explanation that no one from the SBP 2nd Šekovići Detachment was involved, despite being confronted with the pile of dead bodies before him and the fact that one of his men was dead and the commander himself injured. His acceptance fell well short of his duty to establish the facts and to investigate the possible crimes. It was necessary and reasonable for **Borovčanin** as a commander to further inquire into Stupar’s story, and speak to the other men present.

1575. In addition, there is no evidence that **Borovčanin** reported what he witnessed at Kravica Warehouse to his superiors in the VRS and/or the MUP so that the matter could be fully

⁴⁸⁷³ See *supra*, paras. 1516, 1560–1562.

⁴⁸⁷⁴ See *Halilović* Appeal Judgement, para. 182; *Kordić and Čerkez* Trial Judgement, para. 446.

⁴⁸⁷⁵ Exs. P00422, 4DP725, “RS Law on the Implementation of the Law on Internal Affairs during an Imminent Threat of War or a State of War, 29 Nov 1994”, Articles 13–14; Ex. 4D00503, “Report by Branislav Ristivojević”, paras. 5.3–5.6; Ex. 4D00234, “Law on Military Courts, Article 65.” See also Ex. 4D00136, “Law on Internal Affairs, RS Official Gazette 16/95”; Ex. 4D00212, “Official Gazette of Republika Srpska, Year III - Issue 6; Law on internal affairs - final text, President of the Legislative and Legal Affairs Committee, Mirko Mijatović, 25 Mar 1994.”

⁴⁸⁷⁶ See *e.g.*, *supra*, paras. 1555–1556.

⁴⁸⁷⁷ See *supra*, para. 1459; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 69.

investigated by the competent authorities.⁴⁸⁷⁸ The Trial Chamber notes that the incident at issue is the murder of a busload of Bosnian Muslim prisoners following the “burnt-hands” incident. **Borovčanin** had no prior knowledge of the plan to murder. Thus, at that point in time, he had no knowledge or reason to know that Krstić, his immediate superior in the Srebrenica operation, was involved. Yet, despite having the opportunity, he never raised the matter with Krstić when he spoke to him on the phone on the 13 July in the evening. Even if he determined that Mladić, Krstić, and others in the VRS were involved and thought it useless to report the crimes to them, he had the option and obligation of reporting through his MUP chain of command.⁴⁸⁷⁹ After the Srebrenica operation, **Borovčanin** could also have reported up to Sarić, his MUP commander. He had sent at least one report to the MUP on 13 July, so further contact would have been possible and reasonable.⁴⁸⁸⁰ In his contemporaneous reports to his MUP superiors, the Kravica Warehouse murders are conspicuous by their absence.⁴⁸⁸¹ Rumours of what had happened in Kravica Warehouse spread fast in the days following 13 July, and there was clearly a need for a proper investigation of what had happened there.⁴⁸⁸² This would have been evident to **Borovčanin**, a policeman by profession and one with an outstanding reputation. Furthermore, it was necessary and reasonable for him to ensure that he reported what he knew so that the competent authorities could investigate further.

d. Conclusion

1576. The Trial Chamber therefore finds that **Borovčanin**, as the superior of the SBP 2nd Šekovići Detachment, had knowledge which was sufficient to put him on notice that his subordinates committed the crime of murder. As their superior, **Borovčanin** was obliged to report this crime to the competent authorities responsible for investigating criminal conduct so that the matter could be fully investigated, and any perpetrators, punished. **Borovčanin** did not report anything to anyone. He thus failed to take the necessary and reasonable measures required to punish the relevant

⁴⁸⁷⁸ See Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 69–70.

⁴⁸⁷⁹ Ex. 4D00503, “Report by Branislav Ristivojević,” paras. 5.7–5.8; Branislav Ristivojević, T. 27962–27963 (7 Nov 2008), T. 28073–28074 (12 Nov 2008). The Trial Chamber notes that if an officer for some reason is unable to inform the competent authorities of the commission of a crime, he still carries out his duty by informing another organ, which formally has no jurisdiction, and which then has an obligation and ability to pass that information on to the competent authorities. See *ibid.*

⁴⁸⁸⁰ See Ex. P03789, “Borovčanin Report to SBP and other police staff, 13 July 1995”.

⁴⁸⁸¹ Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995,” p. 3. In his 5 September 1995 report, Borovčanin’s reference to the Kravica Warehouse is that “One member of the Skelani Platoon of the 2nd Special Police Detachment was killed in the fighting with the enemy.” *Ibid.* Borovčanin did not report the Kravica Warehouse execution in the 13 July 1995 report to his MUP superiors though the Trial Chamber notes that this may have been because it was drawn up earlier that day. See Ex. P03789, “Borovčanin Report to SBP and other police staff, 13 July 1995”, p. 2. See also Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 70–71.

⁴⁸⁸² See *supra*, paras. 1525, 1532.

members of the SBP 2nd Šekovići Detachment for the murders of the busload of Bosnian Muslim prisoners at the Kravica Warehouse. **Borovčanin** is therefore criminally responsible, pursuant to Article 7(3), for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.

(vi) Counts

a. The Knowledge Requirement for a Crime under Article 5 of the Statute

1577. **Borovčanin** is responsible for a crime against humanity under Article 5 of the Statute, if his acts were part of the widespread and systematic attack against the civilian population and if at the time he knew of that attack and that his crimes comprised a part thereof.⁴⁸⁸³

1578. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. From the evidence before it, the Trial Chamber notes that at least just prior to his arrival in Bratunac on 11 July, **Borovčanin** knew of the attack on the Srebrenica enclave.⁴⁸⁸⁴ In the afternoon of 11 July, he was at the Pribićevac IKM where he was briefed on the military operation and the participants', including his units' role.⁴⁸⁸⁵ He was also in Bratunac, a few kilometres away from Srebrenica town, when the VRS entered it triumphantly, and he knew of the exodus of the population from Srebrenica to Potočari, where they congregated on the night of 11 July.⁴⁸⁸⁶ Thus, he was aware as of 11 July of the military attack on this civilian enclave, including the taking of the town itself, which was a component of the overall attack and in and of itself a widespread and systematic attack against a civilian population. He also knew that civilians were amassing in Potočari. When on 12 July, he realised a forcible transfer was taking place,⁴⁸⁸⁷ he knew that the crime was a component of the attack against the civilian population, given the temporal and geographic proximity to the actual military attack on the enclave.

1579. Around this time, **Borovčanin** also became aware of the large column which had left Srebrenica as a result of the attack and was attempting to flee to ABiH-held territory. Pursuant to his orders, units under his command then formed part of the Bosnian Serb Forces which combed the area along the Bratunac-Konjević Polje Road, capturing, detaining and guarding prisoners from this column. From his own observations on 13 July, he was also aware of the civilian component of the

⁴⁸⁸³ See *supra*, para. 751.

⁴⁸⁸⁴ See *supra*, para. 1436.

⁴⁸⁸⁵ See Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 31-33; Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", pp. 1-2.

⁴⁸⁸⁶ See *supra*, paras. 1437, 1439-1443.

column.⁴⁸⁸⁸ From these facts, he was clearly aware that his acts or omissions directed towards members of the column who were captured or surrendered, formed part of the attack against a civilian population. Specifically, he would have known that his failure by omission to protect these men who had fled Srebrenica as a result of the attack against a civilian population was a continuation of and formed part of that attack.

1580. For the foregoing reasons, the Trial Chamber finds that **Borovčanin** knew that there had been a widespread and systematic attack directed against a civilian population, and that the forcible transfer in Potočari,⁴⁸⁸⁹ and the crimes of murder, extermination and persecution committed at Kravica Warehouse against members of the column that had fled Srebrenica, comprised part of that attack. The Trial Chamber therefore concludes that **Borovčanin** meets the knowledge requirement for commission of a crime under Article 5 of the Statute.

b. Counts 4 and 5: Murder

1581. The Trial Chamber has found that during the period of 12 to 27 July 1995, Bosnian Serb Forces killed thousands of Bosnian Muslims initially residing or taking refuge in Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.⁴⁸⁹⁰ The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica or as a natural and foreseeable consequence of it.⁴⁸⁹¹

1582. The Trial Chamber has found that while **Borovčanin** was not a member of the JCE to Murder, he aided and abetted murder at Kravica Warehouse by omission.⁴⁸⁹² He also knew at the time of his omission that the victims were taking no active part in hostilities. **Borovčanin** aided and abetted murder as a crime against humanity,⁴⁸⁹³ had the knowledge required for a crime against humanity and for a war crime, and is therefore criminally liable for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.⁴⁸⁹⁴

1583. In addition, the Trial Chamber has also found that as commander, **Borovčanin** failed to take the necessary and reasonable measures required to punish the relevant members of the SBP 2nd

⁴⁸⁸⁷ But see Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35.

⁴⁸⁸⁸ See *supra*, paras. 1451–1453; see also Ex. P02047, "Srebrenica Trial Video", 02:50:02–02:50:31; 02:51:41–02:52:27.

⁴⁸⁸⁹ But see Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35.

⁴⁸⁹⁰ See *supra*, paras. 744–748, 779–785.

⁴⁸⁹¹ See *supra*, paras. 1073–1083.

⁴⁸⁹² See *supra*, paras. 1541, 1563.

⁴⁸⁹³ See *supra*, paras. 1577–1580.

⁴⁸⁹⁴ See *supra*, paras. 1577–1580.

Šekovići Detachment for the murder of the busload of Bosnian Muslim prisoners at the Kravica Warehouse.⁴⁸⁹⁵ The Trial Chamber also finds **Borovčanin** responsible under Article 7(3) for failure to punish.

c. Count 3: Extermination

1584. The Trial Chamber has found that at least 1,000 men and boys from Srebrenica were murdered at Kravica Warehouse.⁴⁸⁹⁶ The Trial Chamber has found that **Borovčanin** was present on and patrolling the Bratunac-Konjević Polje Road on 13 July.⁴⁸⁹⁷ He knew that hundreds of prisoners had surrendered or were caught at Sandići Meadow earlier that day, and therefore that in the evening, Kravica Warehouse was crammed with Bosnian Muslim prisoners.⁴⁸⁹⁸ Further, his omission with respect to the duty to protect related to this extensive number of prisoners detained at the Kravica Warehouse. His act thus contributed substantially not just to murder, but to murder on a large scale. Based on these large numbers, the Trial Chamber finds that **Borovčanin** aided and abetted extermination because he knew that his failure to protect the prisoners at Kravica Warehouse would lead to killing on a large scale.⁴⁸⁹⁹

1585. As **Borovčanin** aided and abetted extermination as a crime against humanity, and had the knowledge required for a crime against humanity, he is therefore criminally liable for extermination as a crime against humanity.⁴⁹⁰⁰

1586. The Trial Chamber recalls its finding that **Borovčanin** was responsible pursuant to Article 7(3) for murder with respect to the killing of a busload of prisoners following the "burnt-hands" incident. Having considered the nature, scope and particular circumstances of these killings, the Trial Chamber is not satisfied that in relation to this particular incident, **Borovčanin** is responsible under Article 7(3) for the crime of extermination.

d. Count 1: Genocide

1587. The Prosecution submits that the best evidence of **Borovčanin**'s genocidal intent may be inferred from his actions in furtherance of the JCE to Murder and his deliberate lies to the Prosecution, strategically designed to cover his intentions at Kravica Warehouse and Sandići

⁴⁸⁹⁵ See *supra*, para. 1576.

⁴⁸⁹⁶ See *supra*, para. 443.

⁴⁸⁹⁷ See *supra*, paras. 1451–1454.

⁴⁸⁹⁸ See *supra*, para. 1453.

⁴⁸⁹⁹ See *supra*, para. 1563.

⁴⁹⁰⁰ See *supra*, paras. 1577–1580.

Meadow.⁴⁹⁰¹ Furthermore, his intent to commit genocide may be inferred, amongst other facts, from evidence of other culpable acts systematically directed against the same group.⁴⁹⁰² **Borovčanin**'s familiarity with the history of the Bratunac area and the RS and VRS plans to remove the Bosnian Muslims from eastern Bosnian in 1992 and 1993, events which created a climate of ethnic hatred and VRS policies devised to inflict unbearable conditions upon the Bosnian Muslims in the area where **Borovčanin** was police commander, cannot be severed from what was going on there in 1995.⁴⁹⁰³

1588. The Trial Chamber found that **Borovčanin** was not a member of the JCE to Murder and did not share the intent to murder with members of the JCE to Murder.⁴⁹⁰⁴ He was not involved in the planning, nor in the systematic and organised manner in which the murder operation was executed. There is also no evidence that **Borovčanin** knew of the scale and nature of the murder operation, including the planned killings in Zvornik and Bratunac. His knowledge was limited to the events at the Kravica Warehouse. Further, while **Borovčanin** was responsible for aiding and abetting murder and extermination by omission for the Kravica Warehouse execution,⁴⁹⁰⁵ there is not a single piece of evidence to show that his omission was accompanied by genocidal intent. In fact, the removal of his men from the area and his view on the opening of the corridor⁴⁹⁰⁶ show he did not have any genocidal intent. His knowledge was limited to what happened at the Kravica Warehouse at the time. While **Borovčanin**'s knowledge of the history of systematic forcible transfer and crimes committed in the area is a relevant factor, it cannot be sufficient, in and of itself, in inferring **Borovčanin**'s specific intent for genocide, given his lack of knowledge of even the murder operation.⁴⁹⁰⁷

1589. The Trial Chamber finds that at the time **Borovčanin** aided and abetted murder and extermination by omission, he had no genocidal intent. Further, there is no evidence at the time of the omission, that he was aware of the genocidal intent of others. The Trial Chamber finds that there is no indication, considering the evidence individually and cumulatively, of genocidal intent on the part of **Borovčanin**. On this basis the Trial Chamber is satisfied that **Borovčanin** is not guilty of genocide.

⁴⁹⁰¹ Prosecution Final Brief, paras. 2046–2066.

⁴⁹⁰² *Ibid.*, para. 2052.

⁴⁹⁰³ *Ibid.*, para. 2053.

⁴⁹⁰⁴ *See supra*, para. 1541.

⁴⁹⁰⁵ *See supra*, paras. 1541, 1563, 1584.

⁴⁹⁰⁶ *See supra*, paras. 1460, 1463.

⁴⁹⁰⁷ *See* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 112.

e. Count 2: Conspiracy to Commit Genocide

1590. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide.⁴⁹⁰⁸ To be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.⁴⁹⁰⁹

1591. As outlined above, **Borovčanin** did not have the specific intent for genocide.⁴⁹¹⁰ There is even less evidence that **Borovčanin** entered into an agreement to commit genocide. **Borovčanin** is therefore not guilty of conspiracy to commit genocide.

f. Count 6: Persecution

1592. The Trial Chamber has found that persecution, a crime against humanity, was committed *inter alia*, through forcible transfer, the murder of thousands of Bosnian Muslims (including the alleged “opportunistic” killings), cruel and inhumane treatment of the Bosnian Muslim men detained in the Potočari and the Bratunac areas, and terrorising civilians.⁴⁹¹¹

The Trial Chamber by majority has also found that **Borovčanin** aided and abetted forcible transfer of the Bosnian Muslim women, children, and the elderly.⁴⁹¹² He has also been found to have aided and abetted by omission murder at the Kravica Warehouse.⁴⁹¹³

1593. **Borovčanin** knew that the attack on the Srebrenica enclave targeted the Muslim population located there and that only Muslims were being forcibly transferred on both 12 and 13 July.⁴⁹¹⁴ However, given the nature of his acts of aiding and abetting, and the context in which they were carried out, there is no evidence that **Borovčanin** himself had the specific intent to discriminate. Nonetheless, the Trial Chamber, by majority, Judge Kwon dissenting, is satisfied that the circumstances of the forcible transfer—the movement of the entire population of the enclave—were such that clearly **Borovčanin** knew it was being carried out by others who harboured discriminatory intent. In addition, the Trial Chamber, by majority, Judge Kwon dissenting, finds that given the

⁴⁹⁰⁸ See *Musema* Trial Judgement, para. 191. See also *Nahimana et al.* Trial Judgement, para. 1041; *Kajelijeli* Trial Judgement, para. 787; *Ntagerura et al.* Trial Judgement, para. 70; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798.

⁴⁹⁰⁹ See *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 799(i)–(ii). See also paras. 821–830.

⁴⁹¹⁰ See *supra*, paras. 1589.

⁴⁹¹¹ See *supra*, paras. 991, 995, 999, 1002–1003.

⁴⁹¹² See *supra*, para. 1501.

⁴⁹¹³ See *supra*, para. 1563.

⁴⁹¹⁴ See *supra*, paras. 1436, 1443, 1494–1495, 1579.

actions of the Jahorina Recruits in Potočari in assisting generally with the physical movement of the population over a two-day period, **Borovčanin**'s contribution in leaving them there constituted a substantial contribution to the commission of the crime of persecution. In addition, **Borovčanin** knew that by doing this, he was aiding and abetting persecution.

1594. While **Borovčanin** knew that the approximately 1,000 men in the Kravica Warehouse were of the same racial background, namely Muslims,⁴⁹¹⁵ the circumstances of his aiding and abetting by omission are such that there is no evidence he had a discriminatory intent when he failed to protect them. However, just as he knew these prisoners would probably be killed by the members of the Bosnian Serb Forces there,⁴⁹¹⁶ he knew this would probably be done with discriminatory intent. Having been involved in the capture, detention, and guarding of these prisoners, and subsequently failing to protect them in the knowledge of others' discriminatory intent, the Trial Chamber is satisfied **Borovčanin** substantially contributed to the crime of persecution. He also knew he was aiding and abetting persecution by this omission.⁴⁹¹⁷

1595. Moving on to the underlying act of cruel and inhumane treatment, there are two locations where cruel and inhumane treatment of Bosnian Muslims occurred—Potočari and Sandići Meadow—which are relevant to **Borovčanin**'s responsibility. He knew of the overcrowding at the White House, but there is no evidence he aided and abetted cruel and inhumane treatment or contributed to it in any way.⁴⁹¹⁸ There is evidence to the contrary—that he retrieved the Red Cross tractor used to distribute water to the crowd, which had been taken away by Bosnian Serb Forces.⁴⁹¹⁹ With regard to Sandići Meadow, there is no evidence that **Borovčanin** knew of the cruel and inhumane treatment of the Bosnian Muslim prisoners there. For these reasons the Trial Chamber finds that **Borovčanin** is not criminally responsible for persecution through cruel and inhumane treatment.

1596. Lastly, with regard to the underlying act of terrorising civilians, there is no evidence that **Borovčanin** was present during the attack on Srebrenica, or that he had details of the factors constituting the terrorisation of civilians. While **Borovčanin** knew of the fearful and oppressive atmosphere in Potočari, he did not know of the circumstances leading up to that, of the terror of the nights of 11 and 12 July, or that the Jahorina Recruits participated in this to some extent. The Trial Chamber finds that there is no evidence that **Borovčanin** knew that persecution through terrorising civilians was taking place.

⁴⁹¹⁵ See *supra*, para. 1584.

⁴⁹¹⁶ See *supra*, paras. 1560–1562.

⁴⁹¹⁷ See *supra*, para. 1016.

⁴⁹¹⁸ See *supra*, paras. 329, 1448, 1508.

⁴⁹¹⁹ See *supra*, para. 1448.

1597. In conclusion, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Borovčanin** aided and abetted persecution as a crime against humanity, through aiding and abetting forcible transfer. Further, the Trial Chamber is satisfied that he aided and abetted persecution as a crime against humanity, through aiding and abetting murder by omission. In light of these findings, the Trial Chamber finds it unnecessary to consider **Borovčanin**'s responsibility under Article 7(3).

g. Count 7: Inhumane Acts (Forcible Transfer)

1598. The Trial Chamber, by majority, Judge Kwon dissenting, has already found that **Borovčanin** aided and abetted forcible transfer as a crime against humanity.⁴⁹²⁰ The Trial Chamber has also found that the act of forcible transfer of the women, children and the elderly is sufficiently serious to amount to "other inhumane acts" under Article 5(i) of the Statute.⁴⁹²¹ Accordingly, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Borovčanin** is criminally responsible for aiding and abetting forcible transfer, an inhumane act, as a crime against humanity.

h. Count 8: Deportation

1599. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Borovčanin** is not criminally responsible for deportation as a crime against humanity.

⁴⁹²⁰ See *supra*, para. 1501.

⁴⁹²¹ See *supra*, para. 937.

7. Radivoje Miletić

(a) The Case against Miletić

1600. The Prosecution alleges that **Radivoje Miletić** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of murder, persecution, inhumane acts (forcible transfer), and deportation.⁴⁹²² Specifically, the Prosecution alleges that **Miletić** was an essential figure in the JCE to Forcibly Remove the Bosnian Muslim populations of Srebrenica and Žepa.⁴⁹²³

1601. **Miletić** allegedly drafted Directive 7 and played a central role in organising and implementing the efforts to create an unbearable situation with no hope for survival for the Bosnian Muslims in the enclaves.⁴⁹²⁴ **Miletić** further monitored the state and surrender of the Muslim forces, and the activities of the VRS before, during, and after the attacks on Srebrenica and Žepa.⁴⁹²⁵ The Prosecution also alleges that **Miletić** monitored the progress of the transfer of the civilians from Srebrenica and Žepa by the VRS and the VRS efforts to search Žepa of any remaining Muslims, and was kept informed of the flight of Bosnian Muslim men from Žepa to Serbia.⁴⁹²⁶ **Miletić** communicated all information to his superiors, including Karadžić and Mladić, and the subordinate units.⁴⁹²⁷

(b) Preliminary Issues

(i) Alleged Participation in the Joint Criminal Enterprise to Murder

1602. **Miletić** asserts that the Prosecution's allegation in paragraph 97 of the Indictment and in the Final Brief, that **Miletić** was a member of the JCE to Murder "disregards every single principle of criminal law, flies in the face of any legal reasoning, and is not permissible".⁴⁹²⁸

⁴⁹²² Indictment, paras. 46–47, 48–71, 75, 83–84, 88.

⁴⁹²³ Prosecution Final Brief, para. 1663.

⁴⁹²⁴ Indictment, para. 75(a); Prosecution Final Brief, paras. 1663, 1669, 1679.

⁴⁹²⁵ Indictment, para. 75(b); Prosecution Final Brief, paras. 1686–1687.

⁴⁹²⁶ Indictment, paras. 75(c); Prosecution Final Brief, paras. 1686–1687, 1726.

⁴⁹²⁷ Indictment, paras. 75(b)–75(c); Prosecution Final Brief, paras. 1686–1687.

⁴⁹²⁸ **Miletić** Closing Arguments, T. 34609–34611 (10 Sept 2009) (arguing that "an accused is not a member of the JCE because it is so alleged in the Indictment", but this must be proven; and further submitting that the paragraphs in the Prosecution Final Brief referring to **Miletić**'s alleged involvement in the murders in Nežuk and Milić hospital must be disregarded and cannot be taken into account to establish **Miletić**'s intent, since they are not part of the charges against him. *See* Prosecution Final Brief, paras. 1003–1019, 1032–1038). In support of his submission, **Miletić** refers to the Trial Chamber's "Decision on Motions Challenging the Indictment pursuant to Rule 72 of the Rules" of 31 May 2006, according to which **Miletić** is only charged with participation in the JCE to forcibly remove the Bosnian Muslim population out of the Srebrenica and Žepa enclaves. *Ibid.*, para. 47; **Miletić** Closing Arguments, T. 34609 (10 Sept 2009).

1603. The Trial Chamber notes that the Prosecution has not alleged that **Miletić** is criminally responsible for any crimes as a member of the JCE to Murder. The Trial Chamber will assess the evidence in light of the Prosecution's specific allegations against **Miletić**; these allegations do not include responsibility for murder other than "opportunistic" killings through third category JCE.

(ii) Temporal Scope of the Indictment

1604. **Miletić** submits at the outset, that "[t]echnically speaking, the drafting of Directive 7 does not fall within the period covered by the Indictment" and that "[a]lthough Directive 7 was written before the material time, General **Miletić** is accused for his role in drafting the said Directive".⁴⁹²⁹

1605. The Trial Chamber notes that it is clearly set out at paragraph 49 of the Indictment that **Miletić** is charged with participating in a JCE with a common purpose to forcibly remove the population out of Srebrenica and Žepa, from about 8 March 1995 through the end of August 1995.⁴⁹³⁰ The Indictment states that the JCE was formed from *about* 8 March, not that it was formed on 8 March. This wording does not, as such, exclude the drafting of Directive 7 from the Indictment period.

1606. In any event, the Trial Chamber notes that a distinction must be drawn between the crimes alleged in the Indictment and the evidence adduced by the Prosecution to prove such crimes. The Trial Chamber considers that evidence falling outside the temporal scope of the Indictment can be used by the Prosecution in support of its allegations.⁴⁹³¹ In this regard, the Trial Chamber considers that **Miletić**'s role in drafting Directive 7 constitutes evidence relevant to his purported involvement in the JCE, clearly alleged in the Indictment. Furthermore, the Trial Chamber notes that paragraph 75 of the Indictment explicitly states that **Miletić** "drafted Directive 7, which was signed by President Karadžić". Therefore, **Miletić** was put on notice of this allegation.

1607. **Miletić** furthermore raises arguments generally relating to the use of evidence from a time period which he claims to be outside the Indictment period. **Miletić** submits that the relevance of facts prior to the creation of the safe areas—as referred to in the Indictment⁴⁹³²—was not demonstrated in relation to events in July 1995.⁴⁹³³ He further argues that the Prosecution cannot infer **Miletić**'s intent from the knowledge he allegedly had of acts and conducts prior to 8 March

⁴⁹²⁹ Miletić Final Brief, para. 97.

⁴⁹³⁰ See also Prosecution Pre-Trial Brief, para. 269.

⁴⁹³¹ See *Stakić* Appeal Judgement, paras. 116–121; *Kupreškić et al.* Appeal Judgement, paras. 88–89.

⁴⁹³² Indictment, paras. 19–21 (referring to events in 1992).

⁴⁹³³ Miletić Final Brief, paras. 350–351. **Miletić** however recognizes that the events following the creation of the safe areas, as referred to in paragraphs 22–23 of the Indictment, are relevant to events in July 1995. *Ibid.*, para. 350.

1995, because this should have been clearly pleaded in the Indictment; instead, it was not stated in the Indictment, in the Pre-Trial Brief, or in the Opening Statement.⁴⁹³⁴

1608. The Trial Chamber notes that paragraphs 19–23 of the Indictment specifically address events in 1992, 1993 and 1994 as evidence relevant for background and context to the charges; and therefore, the Accused were put on notice of this.

1609. Furthermore, the Trial Chamber is of the view that evidence from time periods prior to the alleged crimes in the Indictment, when deemed relevant to the allegations therein, can be used to infer the knowledge and intent of an accused. In light of this, the Trial Chamber rejects **Miletić**'s argument.

(iii) Judicial Notice of Facts Concerning Humanitarian Aid and UNPROFOR Convoys

1610. **Miletić** submits that the Trial Chamber taking judicial notice of facts in relation to humanitarian aid and UNPROFOR convoys put him at disadvantage, as it reversed the burden of proof.⁴⁹³⁵

1611. As discussed above, the acceptance of adjudicated facts does not affect the burden of proof.⁴⁹³⁶ Once adjudicated facts are admitted, a rebuttable presumption is created as to the truth of those facts. Other than in the manner in which the fact is established, this is no different than any other type of fact established on the evidence. Thus, the Trial Chamber will consider the adjudicated facts in this context and having regard to any evidence adduced. Therefore, in terms of the burden of proof, it remains as always on the Prosecution which must prove its case beyond reasonable doubt.

(iv) Interpretation of “monitoring”

1612. **Miletić** makes a submission with regard to the translation and interpretation of the wording “he monitored”, as in paragraphs 75 (b) and (c) of the Indictment. According to **Miletić**, the English “monitoring” can alternatively be translated into BCS as “supervising” or “following-up”. However, in the BCS version of the Indictment it has always been translated as “supervising” (in BCS “nadzirati”); therefore, **Miletić** submits this is the correct interpretation.⁴⁹³⁷

1613. **Miletić** refers to a hearing on 26 November 2008, when the Prosecution asserted that “monitoring” as written in the English Indictment should be understood as “following-up” and that

⁴⁹³⁴ Miletić Closing Arguments, T. 34611 (10 Sept 2009).

⁴⁹³⁵ Miletić Final Brief, paras. 179–182, 213–217.

⁴⁹³⁶ See *supra*, Chapter II, Section B(h)(ii)..

BSC is not an official language of the Tribunal. **Miletić** submits that, through this statement the Prosecution introduced a new term two years after the commencement of the trial without seeking to amend the Indictment; and contends that the fact the Prosecution used an ambiguous term cannot be held to the detriment of the accused.⁴⁹³⁸

1614. The Trial Chamber considers that the English “monitoring” can be read in a wider sense as to encompass both “supervising” and “following-up”. This would, moreover, be confirmed by the language used in the correspondent paragraphs of the French version of the Indictment, where “he monitored” is translated in three different ways: “il a observé”, “il a suivi” and “il a surveillé”. The Trial Chamber considers the Indictment to be sufficiently clear in describing **Miletić**’s actions and thus finds **Miletić** was put on notice of the nature of the allegations against him. The Trial Chamber considers that the Prosecution’s subsequent clarification of its interpretation of “monitoring” has not changed the case and does not cause prejudice to **Miletić**.

(v) Pleading of Material Facts

1615. **Miletić** also makes a number of submissions arguing that the Prosecution has not sufficiently pleaded the material facts relating to **Miletić**’s alleged participation in the crimes. **Miletić** submits that the Indictment contains no allegations concerning **Miletić**’s involvement (1) in the restriction of UNPROFOR supplies;⁴⁹³⁹ (2) in monitoring the Muslim column;⁴⁹⁴⁰ (3) in the requisitioning of buses for transportation of the Bosnian Muslim population;⁴⁹⁴¹ (4) in the supplying of arms to the Drina Corps during *Krivaja-95*;⁴⁹⁴² and (5) in the drafting of the 10 and 13 July orders.⁴⁹⁴³ **Miletić** contends that these allegations constitute material facts and should thus have been expressly set out in the Indictment.⁴⁹⁴⁴

⁴⁹³⁷ Miletić Closing Arguments, T. 34614–34615 (10 Sept 2009).

⁴⁹³⁸ *Ibid.*

⁴⁹³⁹ Miletić Final Brief, paras. 286–288. See Prosecution Final Brief, paras. 1679–1685 (alleging **Miletić**’s involvement in the restriction of re-supply convoys).

⁴⁹⁴⁰ Miletić Closing Arguments, T. 34611–34612 (10 Sept 2009). See Prosecution Final Brief, para. 1700 (alleging **Miletić**’s involvement in “following the progress of the Muslim column”). **Miletić** further contends that during its Closing Arguments, the Prosecution expressed a novel position that the column and the people of which it was composed were part of a forcible transfer. *Ibid.* See Prosecution Closing Arguments, T. 34146, 34184–34185 (3 Sept 2009).

⁴⁹⁴¹ Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009). See Prosecution Final Brief, paras. 1694–1695 (alleging **Miletić**’s involvement in the requisitioning of vehicles for the transportation of Bosnian Muslim civilians).

⁴⁹⁴² Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009). See Prosecution Final Brief, para. 1699 (alleging **Miletić**’s involvement in the supply of ammunition to the Drina Corps).

⁴⁹⁴³ Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009). See Prosecution Final Brief, paras. 1692, 1703 (alleging **Miletić**’s role in drafting two orders: Exs. P01059, P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed by Gvero, 13 July 1995”; and Ex. P00181, “Order from the VRS Main Staff to the Command of the Drina Corps and the 65th Protection Motorized Regiment signed by Ratko Mladić, 10 July 1995”).

⁴⁹⁴⁴ Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009).

1616. The Trial Chamber notes that **Miletić** is charged with participating in a JCE with a common purpose to forcibly transfer and deport the populations of Srebrenica and Žepa, from about 8 March 1995 through the end of August 1995, and he is alleged to have committed a series of acts in furtherance of this JCE.⁴⁹⁴⁵

1617. With regard to the argument concerning **Miletić**'s participation in the restriction of UNPROFOR supplies, the Trial Chamber notes that paragraph 75(a)(i) of the Indictment clearly alleges that **Miletić** ordered the "relevant State and military organs" to "reduce and limit the logistic support of UNPROFOR"; and paragraph 75(a)(ii) refers to **Miletić**'s role in restricting humanitarian aid to the Bosnian Muslim populations of Srebrenica and Žepa.⁴⁹⁴⁶ Similarly, the Trial Chamber considers that the submission concerning **Miletić**'s participation in monitoring the "Muslim column" falls within the purview of paragraph 75(b), which is "[d]efeating the Muslim forces militarily".⁴⁹⁴⁷ More specifically, the Indictment states that **Miletić** "monitored the state of the Muslim forces" and "monitored the surrender of the Muslim forces".⁴⁹⁴⁸

1618. The Trial Chamber further considers that the Prosecution's submission—in its Final Brief—of **Miletić**'s involvement in the requisitioning of buses for the transportation of the Bosnian Muslim population falls within the allegation that **Miletić** was "[c]ontrolling the movement of the Muslim population out of the enclave" and more specifically that he was monitoring the progress of the transfer of civilians from Srebrenica and Žepa, pleaded at paragraph 75(c)(i) of the Indictment.⁴⁹⁴⁹ Furthermore, in relation to the Prosecution's submissions concerning **Miletić**'s involvement in the supplying of arms to the Drina Corps during *Krivaja-95* and in the drafting of the 10 and 13 July orders, the Trial Chamber considers they fall under paragraph 75(b) of the Indictment, alleging **Miletić**'s role in "[d]efeating the Muslim forces militarily".

1619. The Trial Chamber finds the material facts have been properly pleaded and therefore **Miletić** was put on notice of these allegations. For these reasons, the Trial Chamber rejects **Miletić**'s argument.

⁴⁹⁴⁵ Indictment, paras. 49–71, 75.

⁴⁹⁴⁶ See also Prosecution Pre-Trial Brief, para. 270 (alleging that "Miletić played a central role in organizing and implementing the effort to create an unbearable situation for survival. From March 1995 through July 1995 the VRS deliberately restricted humanitarian and aid supplies to the Muslim inhabitants of the two enclaves as the beginning of the effort to remove them.").

⁴⁹⁴⁷ Indictment, para. 75(b). See also Prosecution Pre-Trial Brief, para. 271 (alleging that "Miletić monitored the state of the Muslim forces before, as well as after, their defeat, reporting this information to his superiors, including President Karadžić and to his subordinates").

⁴⁹⁴⁸ Indictment, para. 75 (b)(i) and (ii) respectively.

⁴⁹⁴⁹ Indictment, para. 75(c). See also Prosecution Pre-Trial Brief, para. 272 (alleging that "**Miletić** demonstrated control of the movement of people out of the enclave of Srebrenica by monitoring the progress of the transfer of the civilians of the VRS").

(vi) Liability for Crimes Committed by Subordinates

1620. **Miletić** submits that the fact that officers subordinate to him committed criminal acts may not be held against him for the sake of his participation in the JCE, as the Prosecution must prove that **Miletić** personally contributed to the JCE through his personal and individual acts.⁴⁹⁵⁰

1621. The Trial Chamber notes that **Miletić** is charged under Article 7(1) of the Statute for having “committed, planned, instigated, ordered and otherwise aided or abetted in the planning, preparation and execution” of the alleged crimes; and that the term “committed”, as used in the Indictment, is meant to include a JCE as a form of co-perpetration.⁴⁹⁵¹ The Trial Chamber further notes that **Miletić** is not charged with superior responsibility under Article 7(3); and therefore agrees with **Miletić** to the extent that, for his liability, **Miletić** must have participated in the JCE by sharing and furthering its common purpose. However, in light of the jurisprudence of this Tribunal, a person can also be liable in a JCE through acts physically committed by another person, provided that certain elements are met.⁴⁹⁵²

(c) Position and Function

(i) Authority as Chief of the Administration for Operations and Training

1622. **Miletić** joined the VRS Main Staff in Crna Rijeka in July 1992.⁴⁹⁵³ **Miletić** was appointed as Chief of the rocket and artillery units of the air defence, which was part of the Administration of Air Force and Anti-Aircraft Defence.⁴⁹⁵⁴ In this capacity, he assisted in establishing the artillery rocket battalion of anti-aircraft defence of the 65th Protection Regiment.⁴⁹⁵⁵ **Miletić** immediately displayed an inclination towards operative work and often assisted the Chief of Staff of the Main Staff, Milovanović. He was soon singled out as an “exemplary worker” and a “very good operations man”.⁴⁹⁵⁶ **Miletić** was transferred to the Administration for Operations and Training.⁴⁹⁵⁷ The exact date of his transfer and his title within the Administration after he was transferred are unclear. However, it is established that **Miletić** was in the Administration for Operations and Training from at least 1 May 1993,⁴⁹⁵⁸ and that he was the Chief of this Administration from at least 1 September

⁴⁹⁵⁰ Miletić Closing Arguments, T. 34613–34614 (10 Sept 2009).

⁴⁹⁵¹ Indictment, para. 88.

⁴⁹⁵² See *Brdanin* Appeal Judgement, paras. 362, 410; *Tadić* Appeal Judgement, para. 192.

⁴⁹⁵³ Manojlo Milovanović, T. 12158 (29 May 2007); Milomir Savčić, T. 15260 (12 Sept 2007).

⁴⁹⁵⁴ Manojlo Milovanović, T. 12158 (29 May 2007); Milomir Savčić, T. 15260–15621 (12 Sept 2007).

⁴⁹⁵⁵ Milomir Savčić, T. 15621 (12 Sept 2007).

⁴⁹⁵⁶ Manojlo Milovanović, T. 12158 (29 May 2007); Milomir Savčić, T. 15261 (12 Sept 2007).

⁴⁹⁵⁷ Manojlo Milovanović, T. 12158 (29 May 2007).

⁴⁹⁵⁸ See Ex. P02742, “VRS Main Staff Combat order for the liberation of Žepa and Goražde, signed by Milovanović, 1 May 1993”, p. 15 (the order mentions **Miletić** as its drafter).

1994 and held this position during the period relevant to this Indictment.⁴⁹⁵⁹ In June 1995, he was promoted to the rank of General.⁴⁹⁶⁰

1623. The Administration for Operations and Training planned operations at the strategic level, namely, those operations encompassing the entire army or the forces of two or more corps. As its Chief, **Miletić** was directly subordinated to Manojlo Milovanović, who was in turn directly subordinated to Mladić.⁴⁹⁶¹ The Administration for Operations and Training was divided into three departments: the Department for Operations, the Department for Training, and the Operations Centre.⁴⁹⁶²

1624. The Department for Operations played a role in planning combat activities by coordinating the work of the other organs and drawing up the combat documents.⁴⁹⁶³ The Operations Centre was the largest room in the prefabricated office buildings of the Main Staff in Crna Rijeka, the “above-the-ground command post”.⁴⁹⁶⁴ A duty team headed by **Miletić**, or one of his assistants, and composed of operative representatives of the Assistant Commanders and Chiefs of different administrations, representing all sectors and administrations of the Main Staff, was always present in the Operations Centre.⁴⁹⁶⁵ **Miletić** rarely left the Main Staff as he was practically always on duty in the Operations Centre.⁴⁹⁶⁶

1625. In his position as Chief of Operations and Training, **Miletić** read all reports from the Corps and the 65th Protection Regiment.⁴⁹⁶⁷ The 65th Protection Regiment provided daily combat reports in the morning and evening to **Miletić** by phone in lieu of regular written reports.⁴⁹⁶⁸ **Miletić**,

⁴⁹⁵⁹ Manojlo Milovanović, T. 12158 (29 May 2007) (testifying that **Miletić** took over from Ilić—who according to the Main Staff Personnel was the Chief of the Administration for Operations and Training—in July 1993); Novica Simić, T. 28484 (19 Nov 2008) (testifying that **Miletić** became Chief of the Administration for Operations and Training in 1993); Ex. P03178, “Main Staff personnel employment records”, p. 4 (listing **Miletić** as Chief of Operations and Training, appointed by order of 01-21-195/93. Under remarks it reads “010994”). See also *ibid.*, p. 6 (mentioning **Miletić** as Chief of the Training Department in the rank of Colonel. Under remarks it is written “200692” and “310894”, which may be indicative of dates).

⁴⁹⁶⁰ Manojlo Milovanović, T. 12158–12159 (29 May 2007).

⁴⁹⁶¹ *Ibid.*, T. 12159 (29 May 2007), T. 12303 (31 May 2007); Mirko Trivić, T. 11936 (22 May 2007).

⁴⁹⁶² Petar Skrbić, T. 15502 (17 Sept 2007); Ljubomir Obradović, T. 28210 (14 Nov 2008).

⁴⁹⁶³ Ljubomir Obradović, T. 28287, 28295–28296 (17 Nov 2008).

⁴⁹⁶⁴ Manojlo Milovanović, T. 12210 (30 May 2007). According to Pajić, in May 1995 during the NATO bombing of the Jahorina stream, the Operations Centre was moved underground. Velo Pajić, T. 28792 (25 Nov 2008).

⁴⁹⁶⁵ Manojlo Milovanović, T. 12210–12211, 12272 (30 May 2007). In the absence of Mladić, Milovanović, **Miletić**, or any of Mladić’s assistants, the duty team could deal with current situations on the front line. *Ibid.*, T. 12211 (30 May 2007).

⁴⁹⁶⁶ Novica Simić, T. 28515 (19 Nov 2008), T. 28564 (20 Nov 2008); Manojlo Milovanović, T. 12305 (31 May 2007), T. 12210, 12272 (30 May 2007); Vojislav Babić, T. 29188 (3 Dec 2008). The Operations Centre was connected to extension 155, which was also the extension of Milovanović’s office. Manojlo Milovanović, T. 12209, 12215, 12272–12274 (30 May 2007); Ljubomir Obradović, T. 28306 (17 Nov 2008).

⁴⁹⁶⁷ Novica Simić, T. 28564 (20 Nov 2008); Manojlo Milovanović, T. 12313–12314 (31 May 2007).

⁴⁹⁶⁸ Ex. 5D01205, “65th Protection Regiment Order on regular combat report, signed by Milomir Savčić, 23 Dec 1993”; Ljubomir Obradović, T. 28222, 28251, 28273 (14 Nov 2008), T. 28322–28324 (17 Nov 2008).

together with Milovanović, studied the reports and identified the parts relevant for each department.⁴⁹⁶⁹

1626. **Miletić** was responsible for putting the Commander's decisions into the appropriate format, such as orders and other documents.⁴⁹⁷⁰ The documents drawn up by the Administration for Operations and Training were inspected by the Chief of Staff before the Commander approved and signed them.⁴⁹⁷¹ Following signature, **Miletić** forwarded the Commander's orders to the relevant units and monitored their execution through daily reports.⁴⁹⁷² **Miletić** was further responsible for drafting directives.⁴⁹⁷³

1627. Milovanović, **Miletić**'s superior at the time, described **Miletić**'s role with regard to receiving and drafting documents, such as reports, orders, and directives, as follows:

[t]he most important mission in a war is to keep the trench you are holding. So Miletić's trench was to design documents, to make plans, to coordinate the work of subordinated units [...] Miletić did this as the officer -- an officer of the staff. The value of every operations officer is great, is crucial, but operations officers are considered to be the soul of an army. In this case, he was the soul of the Main Staff of the VRS. He knows everyone, he is able to advise everyone, to give them the appropriate information.⁴⁹⁷⁴

1628. As Chief of Operations and Training, **Miletić** was not in a position to independently issue orders other than to his direct subordinates.⁴⁹⁷⁵ However, **Miletić** played a role in the process of the Commander's decision to carry out a corps operation: if documents were submitted in time, his Administration was responsible for reviewing the orders, entering the decisions and orders into a map, and providing comments to the Chief of Staff, to be forwarded to Mladić for approval.⁴⁹⁷⁶

1629. While **Miletić** had no authority with regard to POWs in July 1995,⁴⁹⁷⁷ he was responsible for registering the number of POWs and the number of VRS troops captured.⁴⁹⁷⁸

(ii) Miletić's Authority in 1995

1630. Milovanović was absent from the Main Staff during the end of 1994 and for most of 1995, in particular during the period between 29 May 1995 and the end of October 1995.⁴⁹⁷⁹ During this

⁴⁹⁶⁹ Manojlo Milovanović, T. 12187–12188 (29 May 2007); Ljubomir Obradović, T. 28322–28324 (17 Nov 2008).

⁴⁹⁷⁰ Manojlo Milovanović, T. 12159–12160 (29 May 2007). Milovanović described **Miletić** as "technical staff" and a "writing man". *Ibid.*

⁴⁹⁷¹ Ljubomir Obradović, T. 28284, 28287, 28295–28296 (17 Nov 2008).

⁴⁹⁷² Manojlo Milovanović, T. 12161, 12181 (29 May 2007), T. 12313–12314 (31 May 2007).

⁴⁹⁷³ Ljubomir Obradović, T. 28472–28474 (19 Nov 2008); Manojlo Milovanović, T. 12274–12275 (30 May 2007).

⁴⁹⁷⁴ Manojlo Milovanović, T. 12309 (31 May 2009).

⁴⁹⁷⁵ Nedeljko Trkulja, T. 15101 (10 Sept 2007); Manojlo Milovanović, 12307 (31 May 2007). See Ljubomir Obradović, 28370 (18 Nov 2007).

⁴⁹⁷⁶ Ljubomir Obradović, T. 28287, 28295–28296 (17 Nov 2008).

⁴⁹⁷⁷ Manojlo Milovanović, T. 12315 (31 May 2007); Slobodan Kosovac, T. 30103 (14 Jan 2009), T. 30187 (15 Jan 2009).

time, **Miletić** took on certain of Milovanović's duties.⁴⁹⁸⁰ As Milovanović was present in the theatre of war in western Bosnia, he remained the Chief of Staff of the Main Staff.⁴⁹⁸¹ When Milovanović was not at the Main Staff, he frequently kept contact with **Miletić**. **Miletić** also acted as his intermediary in communications with the other members of the Main Staff, and often even with the Supreme Command.⁴⁹⁸² Upon Milovanović's return to the VRS Main Staff, **Miletić** was duty-bound to inform him verbally and brief him on the general situation on the front lines.⁴⁹⁸³

1631. A large number of documents were presented to the Trial Chamber signed⁴⁹⁸⁴ by **Miletić** "standing in for the Chief of Staff",⁴⁹⁸⁵ as well as evidence that the practice whereby **Miletić** signed as "standing in for the Chief of Staff" was not in accordance with VRS procedures and was an administrative error or a mistake.⁴⁹⁸⁶

⁴⁹⁷⁸ Manojlo Milovanović, T. 12315 (31 May 2007).

⁴⁹⁷⁹ *Ibid.*, T. 12159, 12181 (29 May 2007). At the end of 1994, at the time of the Bihać operation, Milovanović went to the western front in Bosanska Krajina. Upon completion of this operation, Milovanović was transferred to the Glamoc front, also in the west of Bosnia. *Ibid.*, T. 12156, 12159 (29 May 2008). From 29 May until the end of October 1995, Milovanović was still on the western front, in Drvar and in Banja Luka. During this period, Milovanović was only back in Crna Rijeka for the retirement party for Živanović on 19 and 20 July 1995. *Ibid.*, T. 12181, 12185 (29 May 2007).

⁴⁹⁸⁰ Manojlo Milovanović, T. 12308 (31 May 2007); Nedeljko Trkulja, T. 15075 (10 Sept 2007); Bogdan Sladojević, T. 14359 (27 Aug 2007). *See also* Ex. P04160, "VJ Gen Staff Sector for system matters personnel administration – Minutes re official interview with Miletić in relation to the ending of his professional military service, signed by Milan Biga, 31 January 2000", p. 2.

⁴⁹⁸¹ Manojlo Milovanović, T. 12172, 12182 (29 May 2007); Mirko Trivić, T. 11935–11936 (22 May 2007); Petar Skrbić, T. 15505–15506 (17 Sept 2007); Novica Simić, T. 28561 (20 Nov 2008).

⁴⁹⁸² Manojlo Milovanović, T. 12317–12318 (31 May 2007).

⁴⁹⁸³ *Ibid.*, T. 12303 (31 May 2007); Ex. 5D01278, "Summary of intercepted conversation involving Milovanović and Miletić, 18 April 1995, 9:46 hours". *See also* Dragiša Masal, T. 29068 (1 Dec 2008).

⁴⁹⁸⁴ In this context, the term "signed" includes both type-signed and personally signed.

⁴⁹⁸⁵ Manojlo Milovanović, T. 12183–12185 (29 May 2007). Milovanović testified that when **Miletić**'s name appears on the document, **Miletić** was taking over Milovanović's duty of reporting to the Supreme Command through VRS Main Staff reports; whereas, when Milovanović's name is on a report to the Supreme Commander, it means that Milovanović would be back temporarily at the Main Staff assuming his duties. Milovanović further testified that he reviewed the Main Staff reports to the Supreme Command from 1995 that are in possession of the Prosecution and many of them were type-signed **Miletić** with the addition "standing in for the Chief of Staff". Milovanović also testified that many of the reports from 1995 were in his own name. He did not give an exact number of reports signed by himself or by **Miletić**, but confirmed when the Prosecution referred to "hundreds of reports that went out in **Miletić**'s name". Milovanović testified he only found one document that included **Miletić**'s signature as it was probably not teletyped but sent either by fax or carrier. It also occurred that documents were type-signed **Miletić** on occasions when Milovanović was at the VRS Main Staff. *Ibid.* There were also occasions when documents were type-signed **Miletić** and Milovanović on the same day, e.g. Ex. P02522, "VRS Main Staff document and Drina Corps, signed by Miletić, 6 March 1995"; Ex. 5D00620, "VRS Main Staff Document to Drina Corps Command signed by Manojlo Milovanović, 6 March 1995".

⁴⁹⁸⁶ Nedeljko Trkulja, 15076–15077 (10 Sept 2007); Manojlo Milovanović, T. 12182 (29 May 2007), T. 12301 (31 May 2007); Petar Skrbić, T. 15510 (17 Sept 2007) (testifying that the documents should have gone out under Milovanović's name and **Miletić** should have put "za" ("for") in front of Milovanović's name before putting his own signature); Bogdan Sladojević, T. 14392 (27 Aug 2007) (testifying that for **Miletić** to sign "standing in" ("zastupa") there should have been an order assigning him accordingly); Ljubomir Obradović, T. 28235 (14 Nov 2008) (testifying that shortly after Milovanović expressed his discontent about receiving reports at the IKM from the VRS Main Staff in his own name, a new practice was introduced following which documents were signed "Standing in for the Chief of Staff, Major General Radivoje Miletić." According to Obradović, it would have been more appropriate and congruent with regulations to have signed "upon the approval of the Chief of Staff"). There is evidence that already in 1993, **Miletić** signed documents using "zastupa". *See* Ex. P04219, "VRS Main Staff Information re approval of entry and movement within RS, sent to the Drina Corps, signed by Miletić, 8 October

1632. The Prosecution argues that **Miletić** was Milovanović's Deputy and, in Milovanović's absence, naturally took over some of his duties; and that he was "standing in" for Milovanović.⁴⁹⁸⁷ **Miletić** submits that he was not formally "standing in" for Milovanović and the fact that **Miletić** (type) signed certain documents, preceded by the indication "standing in for the Chief of Staff", cannot lead to a definitive conclusion as to **Miletić**'s duties, powers and authorities.⁴⁹⁸⁸

1633. The Trial Chamber has been presented with conflicting evidence as to whether **Miletić** was the Deputy Chief of Staff of the VRS Main Staff and whether this title existed within the Main Staff.⁴⁹⁸⁹ After an examination of that evidence, the Trial Chamber is not satisfied **Miletić** was Deputy Chief of Staff. As to whether **Miletić** was "standing in" for Milovanović, that term in the VRS was a legally defined category, which was regulated by an order.⁴⁹⁹⁰ Such an appointment

1993." According to the Rules on Official Correspondence and Office Activities in the JNA, documents created in the command of the unit were signed by the commanding officer of the unit. In his absence, his deputy according to establishment could sign. The commanding officer could delegate this responsibility to a person in his command to whom he had delegated specific work from within his field of competence. Ex. 5D01194, "Rules on Official Correspondence and Office Activities in the JNA, 1994", para. 65. These Rules were still applied in 1995. See Ljubomir Obradović, T. 28237 (14 Nov 2008).

⁴⁹⁸⁷ Prosecution Final Brief, paras. 1635, 1641.

⁴⁹⁸⁸ **Miletić** Final Brief, para. 49.

⁴⁹⁸⁹ Milovanović testified that when he was absent from the Main Staff, **Miletić** as the most senior officer in the Staff Sector of the Main Staff would take over from him. While describing **Miletić**'s tasks when "substituting" for him, Milovanović referred to **Miletić** as Deputy Chief of Staff. Manojlo Milovanović, T. 12173 (29 May), T. 12305–12306 (31 May 2007). Obradović testified that by establishment, the Chief of the Administration for Operations and Training was neither a deputy nor a person standing in for somebody, but the Chief of Staff had the right to transfer his duties and obligations, particularly the authority to sign documents, to the most senior officer. Ljubomir Obradović, T. 28238 (14 Nov 2008) (when shown Ex. 5D01194, "Rules on Official Correspondence and Office Activities in the JNA, 1994", Art. 65). Obradović also testified that Ex. 7DP00410, "Regulations on the Responsibilities on the Land Army Corps Command in Peacetime, 1990", which stipulate in Art. 11.13 that the Chief of Operations and Training shall stand in for the Chief of Staff in his absence, did not apply to the VRS Main Staff. *Ibid.*, T. 28227–28228 (14 Nov 2008). Obradović testified that **Miletić** was "deputising" for Milovanović in his absence, which he described as **Miletić** replacing Milovanović in organising work at the command post because the Armoured Units were directly subordinate to Milovanović as was the Administration for Operations and Training; and as the senior officer in the Staff after the Chief of Staff, **Miletić** conveyed tasks and was responsible for discipline and order in that part of the Staff where those units were. *Ibid.*, T. 28374–28375 (18 Nov 2008). According to Skrbić, Milovanović had the right to pick any senior officer from his sector to fill in for him while he was absent from the command post, but he did not use the option of designating someone other than **Miletić**. Petar Skrbić, T. 15596–15597 (18 Sept 2007). According to Kosovac, the most senior officer stood in for the Chief of Staff in his absence. Slobodan Kosovac, T. 30016 (13 Jan 2009). According to Babić, in the absence of Milovanović, **Miletić** was standing in for Milovanović, but **Miletić** was not referred to as Deputy Chief of Staff. Vojislav Babić, T. 29214 (3 Dec 2008). According to Lazić, at the VRS Main Staff, the Chief of Operations and Training did not automatically stand in for the Chief of Staff, unlike at the Corps level. Milenko Lazić, T. 21753 (4 June 2008). Ex. P03178, "VRS Main Staff personnel employment records" does not indicate that the Chief of the Administration for Operations and Training is the Deputy Chief of Staff, whereas it does indicate that the Chief of Staff is the Deputy Commander (p. 3) and the Chief of the Operations Department is the Deputy Chief of Operations and Training (p. 4). Ex. 5D00431, "Summary of duties of units and establishment elements VRS Main Staff", pp. 3–4, does not indicate the Chief of the Administration for Operations and Training is the Deputy Chief of Staff, whereas it does indicate the Chief of Staff is the Deputy Commander, and the Chief of the Department of Operations is the Deputy Chief of Operations and Training. Ex. 5D00758, "VRS Main Staff – Order on the VRS Main Staff wartime establishment pursuant to the Decision of the Presidency of RS, signed by Ratko Mladić, 16 June 1992" does not indicate the Chief of the Administration for Operations and Training is the Deputy Chief of Staff, whereas it does indicate the Chief of Staff is the Deputy Commander, and the Chief of the Department of Operations is the Deputy Chief of the Administration of Operations and Training.

⁴⁹⁹⁰ Manojlo Milovanović, T. 12182 (29 May 2007); Slobodan Kosovac, T. 30321–30322 (19 Jan 2009), T. 30509–30510 (22 Jan 2009); Milenko Lazić, T. 21799 (5 June 2008). See Ex. 5D00753, "The Law on the Army – Official

brought greater responsibility in exchange for certain benefits.⁴⁹⁹¹ No order was issued assigning **Miletić** as “standing in” Chief of Staff in 1995.⁴⁹⁹² The Trial Chamber therefore does not find that **Miletić** was formally assigned as “standing in” as that term is reflected in the law and regulations. However, whether or not the practice whereby **Miletić** signed documents as “standing in for the Chief of Staff” was in accordance with proper VRS procedure, the Trial Chamber considers that this practice is evidence of **Miletić**’s authority in the Main Staff and his knowledge of the information contained in the documents that carry his name.

1634. The Trial Chamber is further convinced that **Miletić**, as the most senior officer in the Staff Sector, took over certain tasks from Milovanović during the latter’s absence from the Main Staff.⁴⁹⁹³ However, the Trial Chamber considers that it has not been established that **Miletić** did so automatically by virtue of his function as the Chief of the Administration for Operations and Training. Therefore, the Trial Chamber will base its determination as to **Miletić**’s role and his responsibilities, including those undertaken for Milovanović, on the factual evidence before it, and not on any assumptions from the signature format used.

1635. In the absence of Milovanović, **Miletić** worked from Milovanović’s office.⁴⁹⁹⁴ **Miletić** took over Milovanović’s tasks in the Staff Sector,⁴⁹⁹⁵ which included receiving daily combat reports from subordinate units; briefing the Commander, drawing his attention to problems and suggesting solutions; receiving proposals and suggestions from subordinate commanders and transmitting these to the Commander; providing daily Main Staff reports to the President of RS; distributing information across various departments; organising the work of the Staff at the command post in Crna Rijeka; and coordinating the work in the Staff Sector between the departments.⁴⁹⁹⁶ **Miletić** also coordinated the work of the Assistant Commanders but only in an “advisory role”.⁴⁹⁹⁷ **Miletić**

Gazette of the Serbian people in BiH, Issue no. 7, 1 June 1992”, Art. 156 (stating in paragraph 1 that “A replacement shall be appointed to a post of a senior officer who is temporarily prevented from exercising his duties. Paragraph 3 reads “A replacement may occupy the post for no longer than six months or up to a year if so decided by a second superior officer.”).

⁴⁹⁹¹ Bogdan Sladojević, T. 14392 (27 Aug 2007); Ratko Miljanović, T. 28887–28888 (26 Nov 2008).

⁴⁹⁹² Petar Skrbić, T. 15510 (17 Sept 2007); Milenko Lazić, T. 21799 (5 June 2008). *See also* Manojlo Milovanović, T. 12308 (31 May 2007).

⁴⁹⁹³ *Cf.* Manojlo Milovanović, T. 12173 (29 May 2007), T. 12305–12306 (31 May 2007); Bogdan Sladojević, T. 14359 (27 Aug 2007); Ljubomir Obradović, T. 28374–28375 (18 Nov 2008). *See also* Ex. 7DP00417, “Provisional Service Regulations of the VRS, August 1992”, Art. 17 (stating that members of the Army shall carry out the orders of the most senior officer present when the superior officer is absent); Richard Butler, T. 20826 (31 Jan 2008) (stating that the Provisional Service Regulations were in force in 1995).

⁴⁹⁹⁴ Manojlo Milovanović, T. 12209, 12272 (30 May 2007).

⁴⁹⁹⁵ *Ibid.*, T. 12308 (31 May 2007); Ljubomir Obradović, T. 28251 (14 Nov 2008).

⁴⁹⁹⁶ Manojlo Milovanović, T. 12159–12161, 12173–12174, 12185, 12187–12188 (29 May 2007), T. 12308, 12311 (31 May 2007); Bogdan Sladojević, T. 14364–14365 (27 Aug 2007); Nedeljko Trkulja, T. 15075–15076, 15080–15081 (10 Sept 2007); Dragiša Masal, T. 29074 (1 Dec 2008); Ljubomir Obradović, T. 28222 (14 Nov 2008).

⁴⁹⁹⁷ Manojlo Milovanović, T. 12305–12308 (31 May 2007).

assumed the responsibility to sign certain documents on behalf of Milovanović, including Main Staff daily reports to the President of RS and convoy notifications.⁴⁹⁹⁸

1636. The decision-making process at the Main Staff Command in terms of planning and carrying out combat operations was based on reports of subordinate units. Units reported to their immediate superior commands and the corps commanders reported to the VRS Main Staff.⁴⁹⁹⁹ In the absence of Milovanović, **Miletić** received these daily as well as interim reports and continued to identify the parts relevant for each department.⁵⁰⁰⁰ In the absence of Milovanović, in addition to the reports from the Corps, the 67th Signals Regiment submitted oral reports directly to **Miletić**.⁵⁰⁰¹ **Miletić** advised Mladić directly regarding all these reports.⁵⁰⁰²

1637. Every morning at 7 a.m., Mladić and the Assistant Commanders met, regularly joined by **Miletić**, **Beara**, and the Chief of Intelligence. Usually Mladić would call the meeting and give the floor to either Milovanović or, in his absence, **Miletić** who would inform all present about the problems in the theatre of war.⁵⁰⁰³ In the absence of Milovanović, **Miletić** participated in the discussions, conveyed proposals to the Commander, and explained the situation in the field because he was familiar with it through the corps reports that he received and the conversations with Milovanović.⁵⁰⁰⁴ The Assistant Commanders and Chiefs of Administrations would study the details brought to their attention and provide proposals to Mladić based on their expertise.⁵⁰⁰⁵ If Mladić and Milovanović were absent, the most senior general present chaired the meeting, while **Miletić** remained the person explaining the situation.⁵⁰⁰⁶ In his capacity as Chief of Operations and Training, **Miletić** also took the minutes of these meetings.⁵⁰⁰⁷

1638. **Miletić** also informed the Supreme Command of any relevant combat developments through daily Main Staff reports.⁵⁰⁰⁸ He based the reports on the daily and interim reports sent from the Drina Corps and other units to the VRS Main Staff.⁵⁰⁰⁹ The procedure was that in the evening, the

⁴⁹⁹⁸ Bogdan Sladojević, T. 14364–14365 (27 Aug 2007); Nedeljko Trkulja, T. 15091, 15096 (10 Sept 2007); Slobodan Kosovac, T. 30584 (22 Jan 2009); Slavko Kralj, T. 29260–29261 (4 Dec 2008).

⁴⁹⁹⁹ See *supra*, para. 113.

⁵⁰⁰⁰ Manojlo Milovanović, T. 12187–12188 (29 May 2007); Ljubomir Obradović, T. 28322–28324 (17 Nov 2008).

⁵⁰⁰¹ Vojislav Babić, T. 29188–29189, 29211–29214 (3 Dec 2008).

⁵⁰⁰² Manojlo Milovanović, T. 12311 (31 May 2007).

⁵⁰⁰³ *Ibid.*, T. 12188–12189 (29 May 2007).

⁵⁰⁰⁴ *Ibid.*, T. 12319 (31 May 2007).

⁵⁰⁰⁵ *Ibid.*, T. 12189 (29 May 2007).

⁵⁰⁰⁶ *Ibid.*, T. 12189 (29 May 2007).

⁵⁰⁰⁷ Ljubomir Obradović, T. 28248 (14 Nov 2008).

⁵⁰⁰⁸ Manojlo Milovanović, T. 12174 (29 May 2007).

⁵⁰⁰⁹ *Ibid.*, T. 12313–12314 (31 May 2008); Ex. 5D01205, “65th Protection Regiment Order on regular combat reports n.7/354, signed by Milomir Savčić, 23 December 1993”; Ljubomir Obradović, T. 28273 (14 Nov 2008); Vojislav Babić, T. 29188–29189, T. 29211–29213 (3 Dec 2008). Evidence has been adduced that the reports from subordinate units did not always accurately reflect the situation on the ground. However, in light of the totality of

information from the received reports was compiled in one single report by the Administration for Operation and Training. This was a task **Miletić** executed in his function as the Chief of Operations and Training.⁵⁰¹⁰ In Milovanović's absence, **Miletić** also reviewed and signed these reports before they were encrypted, and sent to the President of RS, the Corps Commands, the Air Force and Anti-Aircraft Defence, the Military School Centre, the 2nd IKM of the Sarajevo-Romanjia Corps, and the VRS Main Staff IKM.⁵⁰¹¹ The reports kept the President updated on the events on the battlefield.⁵⁰¹² A significant amount of the reports for 1995 are type-signed **Miletić**, "standing in for the Chief of Staff".⁵⁰¹³ **Miletić** submits that the reports were initialled on the front page by other officers of the Staff Sector of the VRS Main Staff; and that this means that **Miletić** did not draft the reports.⁵⁰¹⁴

1639. The Trial Chamber is satisfied on the evidence that **Miletić** received daily and interim reports from subordinate units and he and his staff were responsible to incorporate the substance of the information received into the daily Main Staff reports to the President. Through this responsibility alone, the Trial Chamber is satisfied that **Miletić** always had knowledge of the

evidence, including showing that **Miletić** was updated directly by telephone, the Trial Chamber is satisfied that **Miletić** ensured he was kept fully updated.

⁵⁰¹⁰ Bogdan Sladojević, T. 14364–14365 (27 Aug 2007); Nedeljko Trkulja, T. 15091, 15096 (10 Sept 2007).

⁵⁰¹¹ Bogdan Sladojević, T. 14365 (27 Aug 2007); Nedeljko Trkulja, T. 15091, 15096 (10 Sept 2007). For examples of reports, see, e.g., Ex. P02889, "VRS Main Staff Report, type-signed Miletić, 2 July 1995"; Ex. P02890, "VRS Main Staff Report, type-signed Miletić, 3 July 1995"; Ex. P03166, "VRS Main Staff situation, type-signed Miletić, 5 July 1995"; Exs. P00044, P02748, "VRS Main Staff Daily Combat Report, 12 July 1995".

⁵⁰¹² Manojlo Milovanović, T. 12175–12177 (29 May 2007). When asked if the information in the reports was important for Karadžić to receive, Milovanović answered "yes, yes". He testified he did not know if the Supreme Command in part used the information in the reports to make their decisions, but added that "occasionally the Supreme Commander or the Supreme Command did take a voice, issuing tasks to the VRS and one could conclude that they were in response to some of those reports". *Ibid.* See also Petar Skrbić, T. 15510 (17 Sept 2007).

⁵⁰¹³ Manojlo Milovanović, T. 12184–12185 (29 May 2007). Milovanović testified he had the chance to review all the VRS Main Staff reports for 1995 in the possession of the Prosecution and marked on each document whether it was signed by himself or **Miletić**. He confirmed that from 31 May–4 September, 9 September–18 November, as well as dates in December the reports were type-signed **Miletić**. Milovanović referred in his testimony to a Prosecution document, which listed all these dates; however the exhibit number was not specified. See however Ex. P03163, "OTP Witness Statement of Manojlo Milovanović, 28 May 2007" (according to which Milovanović had been shown VRS Main Staff documents, mainly VRS Main Staff Daily Situation Reports, and he indicated who signed them, i.e. the documents were type-signed Milovanović between 28 January–2 February; 12 February–4 March; 11 March–13 April; 19 April; 22 April–3 May; 9 May–14 May; 19 May–30 May; 19–22 November; 27 November–24 December. Documents were type-signed **Miletić** on 4–5, 7–27 January; 3–5, 7–11 February; 5–10 March; 14–18, 20–21 April; 4–8, 15–18 May; 31 May–4 September (except 8 August); 9 September–18 November; 23–26 November; 25–31 December). It also occurred that documents were type-signed **Miletić** on occasions when Milovanović was at the VRS Main Staff. Manojlo Milovanović, T. 12185 (29 May 2007) (testifying he had noted **Miletić** had signed documents up to December, whereas Milovanović was at the Main Staff from mid-November). There were also occasions where on the same day documents were type-signed **Miletić** and Milovanović, e.g., Ex. P02522, "VRS Main Staff document and Drina Corps, signed by Miletić, 6 March 1995"; Ex. 5D00620, "VRS Main Staff Document to Drina Corps Command signed by Milovanović, 6 March 1995". Milovanović only found one document that included **Miletić**'s signature as it was probably not teletyped but sent either by fax or carrier. Manojlo Milovanović, T. 12183 (29 May 2007). See also Ljubomir Obradović, T. 28235 (14 Nov 2008) (testifying that after December 1994 a new practice was introduced regarding the signing of combat reports in the absence of Milovanović, following which such documents were signed as "Standing in for the Chief of Staff, Major-General Radivoje Miletić" instead of just the block signature of Milovanović).

⁵⁰¹⁴ Miletić Final Brief, para. 447.

activities of, and issues relating to, the subordinate units. In addition, as noted above, on many occasions these reports went out under **Miletić**'s name. The Trial Chamber considers that in these instances, **Miletić** had taken on the additional task of reviewing and approving the reports before they were encrypted and sent to the President and other addressees. The Trial Chamber notes the significance of these reports, not only in terms of the information contained therein, but also in that they were a central instrument for updating the President and Supreme Command on the activities of the VRS. Thus, the Trial Chamber is satisfied that when the reports were transmitted under his name—signed or type-signed—to the President amongst others, **Miletić** was fully aware of, and responsible for, the content of these Main Staff reports. This would have been the case even if the reports were initialled by others and **Miletić** did not physically draft them. Cumulatively, his involvement in the preparation and submission of these reports evidences that **Miletić** was amongst the most knowledgeable members of the Main Staff when it came to the ongoing operations of the VRS.

1640. Milovanović was the Deputy Commander for the VRS and took command in the absence of Mladić. **Miletić** was not formally in a position to command or issue orders to the Assistant Commanders as Milovanović could in Mladić's absence. The Assistant Commanders did not report to **Miletić** in the absence of Mladić and Milovanović but to the most senior general present.⁵⁰¹⁵ However, Milovanović testified that "the Main Staff was a harmonious whole. We had a good mutual understanding. And I can't imagine a situation in which General Gvero would refuse the advice of General Miletić, and I can't imagine any of the assistant commanders having any quarrel with what Miletić proposed. We just never experienced such incidents."⁵⁰¹⁶

1641. Mladić, as the Commander, took the decisions on reinforcements and movement of staff between the Corps, and **Miletić**'s role was normally to forward these decisions.⁵⁰¹⁷ The Prosecution submits that on a few occasions **Miletić** took a more active role with the reassignment of units.⁵⁰¹⁸ Particularly, on 15 July, when Mladić was in Belgrade for part of the day,⁵⁰¹⁹ **Miletić** issued a report on the reassignment of a unit from the 1st Krajina Corps to assist the Zvornik Brigade.⁵⁰²⁰

⁵⁰¹⁵ Petar Skrbić, T. 15515 (17 Sept 2007); Manojlo Milovanović, T. 12182 (29 May 2007), T. 12305–12308 (31 May 2007).

⁵⁰¹⁶ Manojlo Milovanović, T. 12307–12308 (31 May 2007).

⁵⁰¹⁷ Ljubomir Obradović, T. 28377–28882 (18 Nov 2008) (commenting on Ex. P01198b, "Intercept, 16 July 1995, 18:47 hours"); Slobodan Kosovac, T. 30180–30182 (15 Jan 2009).

⁵⁰¹⁸ Prosecution Final Brief, paras. 1718–1720.

⁵⁰¹⁹ See Ex. P02942, "Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milosević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan".

⁵⁰²⁰ Ex. P02754, "VRS Main Staff document on the dispatch of an infantry company, type-signed Miletić, 15 July 1995". See also Ex. P01198b, "Intercept, 16 July 1995, 18:47 hours" (stating "At General Mladić request received through Miletić, Col. Čerović asked Blagojević [...] to send some men or a unit. At 2006 hrs Blagojević reports that 5 minutes or a half an hour ago, 50 men left and that he has 60 more down in Kovačevići."). According to

The unit assisted the Zvornik Brigade from 16 to 20 July.⁵⁰²¹ On 21 July, **Miletić** issued an order on the dispatch of the same unit to Trnovo,⁵⁰²² which he signed personally.⁵⁰²³ Even though the document of 15 July is called a report, based on its contents, the Trial Chamber is satisfied that it concerns an order, type-signed **Miletić**. The Trial Chamber further notes that the dispatch of the unit to the Zvornik Brigade took place. The Trial Chamber is satisfied that on these two occasions, *i.e.* on 15 and 21 July, under Mladic's authority,⁵⁰²⁴ **Miletić** ordered the dispatch of units.⁵⁰²⁵ The Trial Chamber considers this as evidence of **Miletić**'s position and authority at the Main Staff.

1642. Cooperation with UNPROFOR did not fall within the purview of **Miletić**'s normal tasks as Chief of Operations and Training.⁵⁰²⁶ In the absence of Milovanović, UNPROFOR Chief of Staff General Nicolai interacted with other members of the Main Staff rather than **Miletić**.⁵⁰²⁷ **Miletić** was however, involved in the convoy approval procedure and signed certain UNPROFOR convoy

Milovanović and Obradović, **Miletić** did not issue the order but forwarded an order from Mladić. Manojlo Milovanović, T. 12373–12374 (1 June 2007); Ljubomir Obradović, T. 28377–28378 (18 Nov 2008).

⁵⁰²¹ Ex. P03923, "VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995", p. 1; Vinko Pandurević, T. 32240 (27 Feb 2009) (testifying he got a unit from the Krajina Corps under his command from the 16th of July). *See also* Ex. P00405, "Order from 1st Krajina Corps, dispatching an infantry company to the Zvornik area, signed by Momir Talić, 16 July 1995".

⁵⁰²² Ex. P03923, "VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995. *See also* Ljubomir Obradović, T. 28391–28392 (18 Nov 2008); Ex. P01294g, "Intercept, 21 July 1995, 13:05 hours"; Ex. P01295c, "Intercept, 21 July 1995, 13:23 hours"; PW-168, T. 16020–16021 (closed session) (28 Sept 2007).

⁵⁰²³ Ex. P03923, "VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995". The document reads "SR" after the block signature of Miletić, "Standing in for the Chief of Staff". The term "SR" next to a signature means the person signed personally. Manojlo Milovanović T. 12267–12268 (30 May 2007); PW-168, T. 17178 (closed session) (30 Oct 2007).

⁵⁰²⁴ Manojlo Milovanović, T. 12304–12305 (31 May 2007) (testifying that "None of us, save for the commander of the Main Staff, was able to issue executive orders to subordinate units, unless the commander has authorised one of use to deal with one segment of the front, like he, for instance, authorised me to handle operation Lukavac 93, the counterattack in Bihać and the defence against Croatian Operation Storm. Only in such situations did one of his assistants receive a command role but not for the VRS as a whole but as relating to a certain area, one section of the front").

⁵⁰²⁵ **Judge Kwon's Separate Opinion:** The majority's statements that the two documents above, type-signed **Miletić**, concerned an order and that **Miletić** ordered the dispatch of units are misleading. As the Trial Chamber has found, **Miletić** was not in a position to independently issue orders to the subordinate units to the Main Staff, *i.e.*, corps. *Cf. supra*, para. 1628 and fn. 4975. The 15 July document is not only titled as "report" but it also clearly states that the dispatch of the unit was "[b]ased on an agreement with the 1st Krajina Corps Commander". Although the 21 July document was termed as an "order", such an order was only possible since it was based on an agreement with the 1st Krajina Corps Commander. The dispatch of these units would not have been possible without prior agreement of the respective corps commander. In my view, while these documents evidence **Miletić**'s coordinating role, they do not constitute orders by **Miletić** as considered by the majority.

⁵⁰²⁶ Slobodan Kosovac, T. 30102 (14 Jan 2009).

⁵⁰²⁷ Cornelis Nicolai, T. 18448–18449 (29 Nov 2007). Nicolai testified that his designated contact at the VRS was Milovanović. In the latter's absence he would speak to Mladić or occasionally to Tolimir or Gvero. He did not recall speaking to any other VRS Main Staff officer. *Ibid.* *See also* Ex. 5D01306, "VRS Main Staff Document to UNPROFOR Command Sarajevo to C.H. Nicolai signed by Miletić, 6 March 1995" (proposing to postpone a certain meeting due to Milovanović's absence).

related documents.⁵⁰²⁸ He also forwarded the approvals and denials of the convoys to UNPROFOR and at times had direct contact with UNPROFOR.⁵⁰²⁹

1643. **Miletić** attended a meeting with General Smith on 19 September 1995 concerning the implementation of the Framework Agreement. UNPROFOR considered the meeting “productive and satisfactory” and **Miletić** “an intelligent interlocutor” and “man to do business with”.⁵⁰³⁰

(d) Acts

(i) Drafting Documents and Directives, including Directive 7

1644. All written documents issued by the Main Staff, relating to combat activities, were drafted by the Administration for Operations and Training.⁵⁰³¹ This fell within the responsibility of **Miletić**, as the Chief of this Administration.

1645. **Miletić** drafted Supreme Command directives. Since the Supreme Command was not technically equipped to deal with military issues, the task of drafting directives was handed down to the VRS Main Staff. Accordingly, the authors of most directives were members of the VRS Main Staff.⁵⁰³² Within the VRS Main Staff, the body charged with drafting was the Administration for Operations and Training.⁵⁰³³ For such directives, the Supreme Commander would provide, either in writing or orally, instructions to the Commander or the leader of the team in charge of drafting the directive. The team leader then drafted the directive in accordance with the instructions provided, using his knowledge and capabilities.⁵⁰³⁴

1646. The actual process of drafting a Supreme Command directive depended on the methodology applied, which was a decision within the discretion of the Supreme Commander.⁵⁰³⁵ Most directives were drafted using the so-called “full” or “complete” method, involving the work of all of the

⁵⁰²⁸ See *infra*, paras. 1655–1660.

⁵⁰²⁹ Ex. P01399a, “Intercept, 3 August 1995, 15:20 hours” (**Miletić** received a call from UNPROFOR’s Office of the Chief of Staff, enquiring about a specific convoy. **Miletić** informed the caller about the expected time of arrival of the convoy and confirmed the number of vehicles in the convoy). The Trial Chamber furthermore has evidence that **Miletić** was directly involved in medical evacuations by UNPROFOR on one occasion. Ex. 5D01281, “Intercepted conversation between **Miletić** and Nicolai, 12 August 1995, 11:47 hours”; Ljubomir Obradović, T. 28293–28294 (17 Nov 2008).

⁵⁰³⁰ Ex. P02908, “UNPROFOR fax reporting on several meetings, including the summary of a meeting between Smith, Bachelet, **Miletić**, and Milosević, 20 September 1995”. See also Ex. P02952, “Notes from meeting between Smith, Bachelet, **Miletić** and Milosević, 19 September 1995” (according to which “**Miletić** is Mladić DCOS and today was the first time we had seen him in the flesh”).

⁵⁰³¹ Manojlo Milovanović, T. 12275 (30 May 2007).

⁵⁰³² *Ibid.*, T. 12193 (29 May 2007). See also *supra*, para. 115.

⁵⁰³³ Novica Simić, T. 28512 (19 Nov 2008); Manojlo Milovanović, T. 12275 (30 May 2007).

⁵⁰³⁴ Manojlo Milovanović, T. 12193 (29 May 2007).

⁵⁰³⁵ Slobodan Kosovac, T. 30247–30248 (16 Jan 2009).

command organs in the Main Staff.⁵⁰³⁶ Each command organ would provide the elements pertaining to its own respective sector.⁵⁰³⁷ The Administration for Operations and Training merged all these elements, as approved by the VRS Main Staff Commander, and incorporated them in a single directive.⁵⁰³⁸ The drafter wrote the directive in accordance with the Supreme Commander's decisions; he could not change its contents, though in preparing the draft, he had influence on its form and wording.⁵⁰³⁹ Upon finalisation, the Chief of Staff normally approved the directive before he, or in his absence **Miletić**, sent it to the Commander for his approval to forward it to the Supreme Commander,⁵⁰⁴⁰ who then reviewed the directive, together with the Supreme Command, and signed it. If the Supreme Commander did not agree with the text, he could remove or add parts, make comments and return it with instructions for redrafting.⁵⁰⁴¹ Upon implementation of the changes, the final version was returned to the Supreme Commander for signature and the Supreme Command would subsequently send the directive to the Main Staff for further action.⁵⁰⁴²

1647. In 1993, **Miletić** drafted Supreme Command Directive 6, which formulated the task for the VRS to create objective conditions for achievement of the strategic war goals, including "a) the liberation of Sarajevo; b) defining the borders of Republika Srpska on the Neretva river and gaining access to the sea in the Neum - Zaton and the Cavtat - Prevlaka sectors; c) defining the borders of Republika Srpska in the Una river basin; and d) expanding the border of Republika Srpska in its

⁵⁰³⁶ Ljubomir Obradović, T. 28304 (17 Nov 2008), T. 28472–28473 (19 Nov 2008). *See also supra*, para. 116. Ex. 5DP00699, "JNA Manual for the Work of Command and Staffs, 1983", pp. 52–62, described the three methods of decision-making, *i.e.* the full-method, the abridged method, and decisions by the Commander without previous consultations within the Command. This document was still applied in the VRS. Ljubomir Obradović, T. 28465 (19 Nov 2008). On the different methods *see also ibid.*, T. 28465–28466 (19 Nov 2008); Dragiša Masal, T. 29072 (1 Dec 2008).

⁵⁰³⁷ Ljubomir Obradović, T. 28472 (19 Nov 2008).

⁵⁰³⁸ *Ibid.*, T. 28305 (17 Nov 2008), T. 28475 (19 Nov 2008); Novica Simić, T. 28512 (19 Nov 2008). Richard Butler, T. 20584–20585 (29 Jan 2008).

⁵⁰³⁹ Manojlo Milovanović, T. 12274–12275 (30 May 2007); Slobodan Kosovac, T. 30053–30054 (13 Jan 2009); Novica Simić, T. 28512 (19 Nov 2008); Mirko Trivić, T. 11926–11927 (22 May 2007); Ljubomir Obradović, T. 28305 (17 Nov 2008). Masal, who drafted Directive 9, testified he had no influence on its contents. Directive 9 was drafted in accordance with the shortened procedure. Masal testified that this process in principle did not differ much from the complete or full method. "The only difference lies in the fact that when it comes to the complete method, all the organs of the Main Staff draft their own contributions for the directive, and they submit their contributions to the person who compiles or drafts the final version of the directive. So the only difference between the full or complete method and shortened method lies in the fact that the drafter has to write everything, and when it comes to the complete method he actually receives already written parts of the directive that he then merges. To put it simply, the drafter of a directive has a much easier time if the method is complete or full rather than shortened." Dragiša Masal, T. 29071–29072 (1 Dec 2008).

⁵⁰⁴⁰ Ljubomir Obradović, T. 28318, 28320 (17 Nov 2008). Obradović was not present at the Main Staff at the time of drafting of Directive 7. He based his answers on his experience in the VRS army and his knowledge of how things proceeded during those times. Ljubomir Obradović, T. 28312, 28319–28320 (17 Nov 2008).

⁵⁰⁴¹ Ljubomir Obradović, T. 28305, 28321 (17 Nov 2008); Slobodan Kosovac, T. 30089 (14 Jan 2009); Richard Butler, T. 20586 (29 Jan 2008); Petar Skrbić, T. 15523–15524 (17 Sept 2007). *See also* Manojlo Milovanović, T. 12193 (29 May 2007) (testifying that the Supreme Command could remove or add parts of the draft).

⁵⁰⁴² Manojlo Milovanović, T. 12193 (29 May 2007).

northeastern part and establishing firmer ties with Serbia”,⁵⁰⁴³ thereby referring to the “Six Strategic Objectives”.⁵⁰⁴⁴

1648. **Miletić** drew up the agenda for and participated in a two-day combat readiness analysis briefing held on 29 and 30 January 1995.⁵⁰⁴⁵ During this briefing, Karadžić briefed the participants on “defining future political and military goals and strategies of conducting the war and peace strategies”.⁵⁰⁴⁶ Present at the briefing, other than **Miletić**, were Karadžić, the Prime Minister, the Minister of Defence, Mladić with “his associates”, the corps commanders, and the commanders of the units that had direct links to the Main Staff.⁵⁰⁴⁷ **Miletić**’s task during the briefing included extracting the most important points and drawing conclusions, based on the discussions from the participants, which if accepted by Karadžić would form the basis for a directive.⁵⁰⁴⁸ Also, in relation to the combat readiness analysis, all corps were ordered by Mladić to submit their prepared combat readiness analysis reports directly to **Miletić**.⁵⁰⁴⁹ The combat readiness briefing of January resulted in Directive 7.⁵⁰⁵⁰ The Trial Chamber finds that by participating in the combat readiness analysis, **Miletić** gained a wide and substantive knowledge of the strategies and goals of RS.

⁵⁰⁴³ Ex. P03919, “RS Supreme Command Directive 6, 11 November 1993”, para. 3. According to Obradović, para. 3 of the Directive “was drawn up in the staff. The proposal for the use of their own forces is done by the operations and training organ, but also the organs of the various branches.” Ljubomir Obradović, T. 28331 (17 Nov 2008). Directive 7 refers directly to Directive 6, stating “In the implementation of other forms of support for combat operations, all measures are to be taken according to Directive Op no. 6.” Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, para. 6.1.

⁵⁰⁴⁴ Ex. P02755, “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina, 12 May 1992, published in the Official Gazette of Republika Srpska, Vol. II, no. 22, Art. 386, 26 November 1993”. See *supra*, para. 89.

⁵⁰⁴⁵ Ex. 5D00967, “Schedule briefing on Combat Readiness in 1994, 29 and 30 January 1995, signed by Mladić”. The agenda is signed by **Miletić** “Standing in for the Chief of Staff” (p. 5) and approved by Mladić (p. 1).

⁵⁰⁴⁶ *Ibid.*, p. 3.

⁵⁰⁴⁷ Novica Simić, T. 28498–28499 (19 Nov 2008).

⁵⁰⁴⁸ *Ibid.*, T. 28503–28504 (19 Nov 2008). Simić described **Miletić**’s tasks as “secretarial”. *Ibid.*

⁵⁰⁴⁹ Ex. 5D01206, “VRS Main Staff Order on preparation, organization and realization of reporting on combat readiness in 1994, type-signed Mladić, 23 January 1995”, p. 6. The Drina Corps command combat readiness analysis for 1995 suggested as one of its main assignments for 1995 to “find a way to completely close off the Srebrenica and Žepa enclaves.” It further suggested to “[r]esolve [...] at the Main Staff and Supreme Command level: Find a way to eliminate the [Srebrenica and Žepa] enclaves. We see two ways to resolve this matter: either by a military defeat of the enemy force in the enclave or by political and diplomatic means.” Ex. 5D01394, “Drina Corps Analysis of combat readiness for 1994, signed by Milenko Živanović”, pp. 22–23.

⁵⁰⁵⁰ Novica Simić, T. 28659–28660 (21 Nov 2008); Ljubomir Obradović, T. 28319–28320 (17 Nov 2008); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, p. 51, para. 109; Slobodan Kosovac, T. 30058 (13 Jan 2009), T. 30096–30097 (14 Jan 2009). Also, Directive 7 refers to the VRS Main Staff Order to take measures to raise the combat readiness of commands and units during the four-month truce of 5 February 1995, which was issued following the January combat analysis readiness briefing. Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 7; Ex. 5D00969, “VRS Main Staff Order to take measures to raise the combat readiness of commands and units during the four-month truce, signed by Mladić, 5 February 1995”. Kosovac, referring to Ex. 5D01394, “Drina Corps document, Analysis of combat readiness for 1994, signed by Živanović”, testified that the suggestion contained in the report to “Resolve [...] at the Main Staff and Supreme Command level: Find a way to eliminate the [Srebrenica and Žepa] enclaves. We see two ways to resolve this matter: either by a military defeat of the enemy force in the enclave or by political and diplomatic means” was unusual and out of military context as the Drina Corps had received an order for a complete close-off of the Žepa and Srebrenica enclaves as early as 1993. Kosovac excluded the possibility that this suggestion was linked to Directive 7. Slobodan Kosovac, T. 30071–30073 (13 Jan 2009); Ex. 5D01394, “Drina Corps Analysis of combat

1649. The Trial Chamber has heard conflicting evidence on the method of drafting of Directive 7.⁵⁰⁵¹ If it would have been drafted in accordance with the “full” or “complete” method, all sectors and administrations of the VRS Main Staff would have been duty-bound to provide **Miletić** with their input.⁵⁰⁵² Following an analysis of all evidence before it, the Trial Chamber is satisfied **Miletić** drafted Supreme Command Directive 7 following the full method. Whether or not the command organs of the Main Staff provided the actual words of Directive 7, the Trial Chamber is satisfied they provided substantive input.

1650. Directive 7 was signed by Karadžić and dated 8 March 1995.⁵⁰⁵³ The Directive was forwarded to the corps by Milovanović by letter dated 17 March 1995.⁵⁰⁵⁴ The Trial Chamber takes note of the time gap between the date of Directive 7 and the date it was forwarded to the corps. It however also notes there is no conclusive evidence as to what happened during this period.⁵⁰⁵⁵ On

readiness for 1994, signed by Milenko Živanović”. See also Ex. 5D00988, “Drina Corps work plan for Nov 1994, signed by Živanović, 29 October 1994”.

⁵⁰⁵¹ Milovanović and Lazić testified Directive 7 was drafted by **Miletić** in accordance with the full-method or complete method. Manojlo Milovanović, T. 12275 (30 May 2007); Milenko Lazić, T. 21763 (4 June 2008). Assistant Commander Skrbić testified he never saw Directive 7 until shown by the Prosecution in 2005, let alone participated in its drafting. Petar Skrbić, T. 15517–15518 (17 Sept 2007). Kosovac testified there is nothing in Directive 7 as such that suggested the method according to which it was drafted. Slobodan Kosovac, T. 30256–30258 (16 Jan 2009). Miljanović, Chief of the Operations and Logistics Department—and during absence of Đukić appointed to stand for him from the end of March—testified he did not recall receiving any request to draft any directive or instructions from Đukić to prepare any proposals for a Directive around the end of March. Ratko Miljanović, T. 28957 (27 Nov 2008).

⁵⁰⁵² Manojlo Milovanović, T. 12275 (30 May 2007); Petar Skrbić, T. 15519–15521 (17 Sept 2007). When asked if **Miletić** approached various sectors in order to ask for their input, Skrbić replied he would have been duty-bound to do so if “the commander of the Main Staff had issued an order to him to consult particular sectors and to ask for their input”. Petar Skrbić, T. 15517–15518 (17 Sept 2007). Skrbić however testified he never saw Directive 7 until shown by the Prosecution in 2005, let alone participated in its drafting. *Ibid.*

⁵⁰⁵³ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 2. See also Manojlo Milovanović, T. 12290 (31 May 2007) (testifying that as far as he remembered, Directive 7 was issued on 8 March 1995).

⁵⁰⁵⁴ See, e.g., Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 1; Ex. 5D01326, “Letter forwarding Directive 7 to the Herzegovina Corps, signed by Milovanović, 17 March 1995”; Ex. 5D01327, “Letter forwarding Directive 7 to the Sarajevo-Romanija Corps, signed by Milovanović, 17 March 1995”.

⁵⁰⁵⁵ According to Kosovac, based on the date on Directive 7 and according to military practice, it could only have been forwarded to Karadžić on 7 March at the latest “in order to reserve the number”. Karadžić had a meeting with General Đukić and minister Ninković on 7 March at 2 p.m. Considering Directive 7 was qualified as state-secret and should be forwarded in accordance with applicable regulations, Đukić could have taken the Directive to Karadžić, though Kosovac testified it could also have been delivered in a different way. Also the notes in Karadžić’s diary on 7 March refer to a call with Mladić. Kosovac testified that under normal circumstances, when the Main Staff had prepared a document that required approval by Karadžić, the draft would be reported to the Supreme Commander by the Commander of the VRS. According to Kosovac, it was “highly likely that this directive was sent and that it was said on the phone that it had been sent and that if anything further is needed, then the commander of the VRS was prepared to provide additional explanations”. Slobodan Kosovac, T. 30082–30084 (14 Jan 2009); Ex. 5D01322, “Diary of the Radovan Karadžić’s secretary for the year 1995”, pp. 26–27. According to Masal, the time between 8 March and 17 March was too long considering the document was strictly confidential and very important for further combat activities of the VRS. Dragiša Masal, T. 29055 (1 Dec 2008). Simić testified the delay was “surprising”. He testified that possibly there was dissatisfaction with the document so it was rephrased or there was nobody to forward it. Novica Simić, T. 28513 (19 Nov 2008). Kosovac testified that it was very likely that between 8 and 17 March, Directive 7 was being kept by the President or Supreme Commander of the VRS and it was received by the VRS Main Staff either immediately before it was dispatched further to the Corps, or on the same or following day. He testified there was no set time frame for forwarding an urgent directive to the Corps. Slobodan Kosovac, T. 30084 (14 Jan 2009).

16 March a meeting took place at Karadžić's office, attended by Milovanović and Tolimir.⁵⁰⁵⁶ There is no evidence Miletić was present during the meeting. Taking into consideration the persons attending the meeting, Directive 7 may well have been discussed. However, the Trial Chamber has no basis to draw any conclusion as to the substantive content of the discussion at the meeting. The Trial Chamber further finds that based on the available evidence the actual date of Directive 7 cannot be established. Nevertheless, the Trial Chamber is satisfied that at least on 17 March 1995, the Directive was finalised since on this date it was forwarded to the corps.

1651. Paragraph 5 of Directive 7 concerned the assignment of units and ordered the Drina Corps to carry out "complete physical separation of Srebrenica from Žepa [...] as soon as possible, preventing even communication between individuals in the two enclaves" and "[b]y planned and well-thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for inhabitants of Srebrenica and Žepa".⁵⁰⁵⁷ The Trial Chamber is satisfied that this paragraph fell within the jurisdiction of the Administration for Operations and Training, and accordingly, as Chief of Administration for Operations and Training, **Miletić** played a role in providing the underlying information for this paragraph.⁵⁰⁵⁸

1652. In order to draft Directive 7, **Miletić** required an in-depth knowledge of the vision on the role of the VRS in implementing its strategic objectives. The Trial Chamber recalls that **Miletić** joined the Main Staff in July 1992 and was transferred to the Administration of Operations and Training at least as of 1 May 1993. He became the Chief of this Administration at least from 1 September 1994, in which position he was responsible for drafting orders and directives.⁵⁰⁵⁹ The Trial Chamber is satisfied that through his position and function at the Main Staff, **Miletić** gained

⁵⁰⁵⁶ Ex. 5D01322, "Diary of the Radovan Karadžić's secretary for the year 1995", p. 31. Kosovac testified that all participants mentioned in the diary maintained by Karadžić's secretary as having attended the 16 March meeting were necessary and indispensable for Directive 7 to be prepared. Slobodan Kosovac, T. 30240–30242 (16 Jan 2009). *See also ibid.*, T. 30086–30087 (14 Jan 2009).

⁵⁰⁵⁷ Ex. P00005, "RS Supreme Command Directive 7, 8 March 1995", para. 5.

⁵⁰⁵⁸ According to Obradović, paragraph 5 was put together by the Administration for Operations and Training and the "arms organs", and **Miletić** would have played a role in it. He also testified that **Miletić** was familiar with the final text of Directive 7. Ljubomir Obradović, T. 28346, 28352 (17 Nov 2008). According to Skrbčić, the Assistant Commander for Organisation, Mobilisation and Personnel Affairs, none of the sections of the Directive were within **Miletić**'s jurisdiction. He testified that Karadžić would have given out the tasks in paragraph 5. Petar Skrbčić, T. 15519–15521, 15523 (17 Sept 2007). Kosovac was of the same opinion with regard to paragraph 5 but added that to his knowledge, "the VRS adhered to the standard to involve commanders of the corps as much as possible in the decision-making process whenever the possibilities allowed that." Slobodan Kosovac, T. 30099–30102 (14 Jan 2009). The Trial Chamber, having considered the content of paragraph 5 deals with combat operations, is satisfied this paragraph fell within **Miletić**'s purview. In addition, the Trial Chamber accepts the evidence of Obradović on this matter. Obradović was knowledgeable on the issue following his position as chief of the Operations Department within the Administration for Operations and Training in 1995. The Trial Chamber considers the evidence of Kosovac and Skrbčić to be speculative on this point.

⁵⁰⁵⁹ *See supra*, paras. 1622, 1626. Prior to Directive 7, **Miletić** for example drafted the Combat Order for Operation *Spring-93*, aimed at the "liberation of Žepa and Goražde", and Directive 6, which included references to the Strategic Objectives. Ex. P02742, "VRS Main Staff Combat order for the liberation of Žepa and Goražde, signed by Milovanović, 1 May 1993", p. 15; Ex. P03919, "RS Supreme Command Directive 6, 11 November 1993", p. 8.

the required knowledge of the larger political and military context of the conflict and the goals and strategies of RS. The Trial Chamber is satisfied that **Miletić** used this knowledge in drafting Directive 7.

1653. The Trial Chamber finds that **Miletić** was well-acquainted with the final text of Directive 7, including the part setting out the criminal objective to forcibly remove the Bosnian Muslims from the enclaves.⁵⁰⁶⁰ The Trial Chamber also finds that through the process of drafting the document and the final document itself, a copy of which **Miletić** kept in his strong box at the Main Staff,⁵⁰⁶¹ **Miletić** had indepth knowledge of the political leadership's vision on the role of the VRS in implementing its strategic objectives. Considering that Directive 7 was forwarded to the Corps on 17 March 1995, the Trial Chamber is convinced that at least from 17 March, **Miletić** was familiar with the final version of Directive 7.

1654. Subsequent to the issuance of Directive 7, **Miletić** was entrusted with the task of drafting VRS Main Staff Directive 7/1.⁵⁰⁶² Directive 7/1 was based on Directive 7 and laid out a military technical series of orders and instructions for the Corps to implement and made direct references to Directive 7.⁵⁰⁶³ Directive 7/1 was available for review at the Main Staff.⁵⁰⁶⁴

(ii) Role in the Convoy Approval Process

1655. As described previously, notification was required of all convoys passing through RS, though different procedures applied to UNPROFOR convoys than to humanitarian aid convoys.⁵⁰⁶⁵

1656. Requests for the passage of UNPROFOR convoys were sent to the VRS and were normally decided by Mladić or Milovanović, who marked "yes" or "no" at the top of the page of the original request, together with their initials indicating approval or denial.⁵⁰⁶⁶ **Miletić** at times also initialled the requests.⁵⁰⁶⁷ **Miletić** also signed the documents—notifications—that were subsequently drawn up and sent to UNPROFOR.⁵⁰⁶⁸

⁵⁰⁶⁰ See *supra*, paras. 199, 762.

⁵⁰⁶¹ See *supra*, para. 200.

⁵⁰⁶² Ex. 5D00361, "VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995".

⁵⁰⁶³ *Ibid.*, p. 2. Directive 7/1 does not repeat the language of Directive 7 on the creation of an unbearable situation for the population of Srebrenica and Žepa. See *supra*, paras. 202–203, 763–765.

⁵⁰⁶⁴ Ljubomir Obradović, T. 28331 (17 Nov 2008).

⁵⁰⁶⁵ See *supra*, paras. 214–215, 217, 222.

⁵⁰⁶⁶ See *supra*, para. 216.

⁵⁰⁶⁷ Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", p. 3. See also Bogdan Sladojević, T. 14398 (27 Aug 2007); Ex. P02952, "Notes from meeting between Smith, Bachelet, Miletić and Milosević, 19 September 1995", p. 3, para. 5 (stating that when discussing the issue of convoys to Goražde, Miletić had said that "he would grant clearance if a convoy bid was put in for Goražde"); Ex. P02438a, "Intercept, 28 October 1995, 11:20" (a conversation in which Milovanović requested to be put through to 155, which was answered by an unidentified person. Milovanović then said "I needed Miletić or one of those who give permits"). The Trial

1657. Between 1 January and 28 April 1995, **Miletić** initialled at least 82 UNPROFOR requests attached to VRS Main Staff letters, relating mainly to 12 and 16 January; and 18–19 April.⁵⁰⁶⁹ Fifty of these initialled documents involved approvals and 32 denials.⁵⁰⁷⁰ Of the total of 1,413 initials found on UNPROFOR convoy requests, those of Mladić are found on 652 (481 approvals and 163 denials), those of Milovanović on 302 (131 approvals and 165 denials), those of Tolimir on 293 (242 approvals and 47 denials), and others initialled 84 times.⁵⁰⁷¹ The Trial Chamber does not have initialled UNPROFOR requests from after 28 April in evidence.

1658. Requests for passage of humanitarian aid convoys, other than UNPROFOR, went through the State Committee for Cooperation with the United Nations and International Humanitarian Organisations and its Coordinating Body for Humanitarian Operations.⁵⁰⁷² The VRS was informed of the State Committee's views.⁵⁰⁷³ The Trial Chamber has found that the VRS still had input in the final decision on the approval of humanitarian aid convoys.⁵⁰⁷⁴

1659. As explained previously, the VRS Main Staff sent notifications for approved and denied UNPROFOR convoys to UNPROFOR. The Main Staff also sent notifications to subordinate units concerning approved UNPROFOR and other humanitarian aid convoys.⁵⁰⁷⁵ In the absence of Milovanović, **Miletić** signed these notifications.⁵⁰⁷⁶

1660. Out of the 353 VRS Main Staff convoy-related notifications addressed to UNPROFOR or one of the Corps, dating from 1 January to 28 April 1995, that were the subject of stipulations

Chamber considers the notes of the meeting between Smith, Bachelet, **Miletić** and Milosević and the intercepted conversation of 28 October 1995 as further evidence of **Miletić**'s authority in the convoy approval procedure.

⁵⁰⁶⁸ Ljubomir Obradović, T. 28464–28465 (19 Nov 2008) (testifying Đurđić drafted the approval or refusal document based on the orders of the staff of Mladić. These documents, information notes, were signed by **Miletić** as Đurđić was not authorised to sign them); Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", p. 2 (stipulating that out of the 353 VRS Main Staff convoy-related documents addressed to UNPROFOR or one of the Corps, dating from 1 January to 28 April 1995, 109 were signed by **Miletić**. His name was type-signed 67 times); Slavko Kralj, T. 29259–29261 (4 Dec 2008) (testifying that only in exceptional cases and if the convoy was really important, **Miletić** could be talked into signing. This was not common practice. Alternatively, **Miletić** would ask the convoy to wait until his superiors came back or he obtained approval from Milovanović to sign the document.).

⁵⁰⁶⁹ Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", p. 2 and Annex 3.

⁵⁰⁷⁰ *Ibid.*, Annex 3.

⁵⁰⁷¹ Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", pp. 2–3.

⁵⁰⁷² *See supra*, paras. 220–221.

⁵⁰⁷³ *See supra*, para. 221.

⁵⁰⁷⁴ *See supra*, para. 223.

⁵⁰⁷⁵ *See supra*, paras. 216–217, 222. Occasionally, the notifications also referred to items that were denied.

⁵⁰⁷⁶ Slobodan Kosovac, T. 30190 (15 Jan 2009), T. 30480–300481 (21 Jan 2009); Slavko Kralj, T. 29272 (4 Dec 2008). *See also* Ex. 5D00759, "Expert report, Functioning of the VRS, by Military expert Slobodan Kosovac, 30 March 2008", paras. 190–191 ("190. Major General Radivoje Miletić participated in decision-making regarding the approving of humanitarian aid and the passage of convoys. 191. Documents signed by General Radivoje Miletić were notifications, which did not have the character of orders." When asked to explain what he meant when he had written that "Miletić participated in the decision-making process" Kosovac testified this referred to **Miletić**'s role in forwarding the information. Slobodan Kosovac, T. 30480 (21 Jan 2009)). *See also* Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", Appendix, Table 3.

between **Miletić** and the Prosecution, 109 were signed by **Miletić**. His name was type-signed 67 times.⁵⁰⁷⁷ The Trial Chamber has furthermore in evidence six Main Staff notifications concerning UNPROFOR convoys sent after April 1995.⁵⁰⁷⁸ All six notifications are signed by **Miletić**. The Trial Chamber also has evidence that after 28 April, the Main Staff sent 11 notifications to its subordinate units concerning humanitarian convoys, other than UNPROFOR.⁵⁰⁷⁹ Of these, seven notifications are signed by **Miletić**.

⁵⁰⁷⁷ Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", p. 2. Milovanović's name was type-signed 232 times and signed 125 times; Tolimir's name was type-signed 2 times and signed 4 times; Mladić's name was type-signed 24 times and signed 17 times; type-signed and signed by others on 28 and 96 occasions. *Ibid.* The documents that are the subject of the Stipulations primarily comprise VRS Main Staff correspondence with UNPROFOR concerning the disposition of convoy requests, as well as related notifications and instructions issued by the VRS Main Staff to its subordinate corps. *Ibid.*, p. 1. The Trial Chamber has three additional notifications from between 1 January and 28 April 1995 in evidence type-signed **Miletić** that are not included in the Stipulations. Ex. P02651a, "VRS Main Staff document to military post 7111 signed Miletić, 14 April 1995" (notifying approval of 4 UNPROFOR convoys and non-approval of 13 UNPROFOR convoys); Ex. P02652b, "VRS Main Staff notification of humanitarian convoys to Command Military Post 7111 and VP 7102, signed by Miletić, 14 April 1995" (notifying approval of 7 humanitarian convoys); Ex. P03989, "VRS Main Staff notification UNPROFOR convoys to Command of military posts 7111 and 7598 signed by Miletić, 18 April 1995" (notifying approval of 7 UNPROFOR convoys, partial approval of 1 UNPROFOR convoys, and non-approval of 11 UNPROFOR convoys).

⁵⁰⁷⁸ Ex. P02497, "VRS Main Staff Notification of UNPROFOR convoys for Žepa, Goražde, and Srebrenica addressed to various brigades, signed by Miletić, 18 June 1995" (3 approvals); Ex. P02554, "VRS Main Notification of UNPROFOR convoys to the Sarajevo-Romanija Corps and the Drina Corps, signed by Miletić, 1 July 1995" (approval of 8 convoys—of which 2 conditionally—and refusal of 2 convoys); Ex. P02556, "VRS Main Staff Notification re UNPROFOR convoys to the Drina Corps, signed by Miletić, 3 July 1995" (departure of personnel from Srebrenica approved; return of convoy to Srebrenica denied); Ex. P02558, "VRS Main Staff notification re UNPROFOR convoys to Military Posts 7598 and 7111, 5 July 1995, signed by Miletić (2 approvals, 2 partial approvals, including 1 departure of personnel approved whereas return of the convoy was denied); Ex. P02565, "VRS Main Staff notification re UNPROFOR convoys to Military Post 7111, signed by Miletić, 12 July 1995" (1 approval); Ex. P02586, "VRS Main Staff notification to Military Post 7111 re approved movement UNPROFOR staff, signed by Miletić, 27 July 1995" (1 approval).

⁵⁰⁷⁹ Ex. 5D00856, "VRS Main Staff Document to the military posts 7102, 7111, 7161, 7001 regarding humanitarian aid convoys, type-signed Manojlo Milovanović, 12 May 1995" (approval of convoys for 13, 15–16, 18 May); Ex. 5D00903, "VRS Main Staff notification concerning humanitarian convoys, signed Manojlo Milovanović, 12 May 1995" (approval of convoys for 13–14, 16–18 May); Ex. 5D00905, "VRS Main Staff notification to Drina Corps and East Bosnia Corps regarding humanitarian aid convoys, signed by Manojlo Milovanović, 19 May 1995" (approval of convoys for 20–21, 23–26 May; request for satellite equipment not approved); Ex. 5D00907, "VRS Main Staff notification on humanitarian convoys to military postcodes 7111 and 7102, signed by Milovanović, 21 May 1995" (approval of 1 convoy on 30 May); Ex. P02714, "VRS Main Staff notification concerning UNHCR convoys, type-signed Miletić, 2 June 1995" (approval of convoys on 3–4, 6–8 June; not approved the Swedish construction project for Srebrenica, one truck of school supplies, 60 litres of oil for saws); Ex. P02717, "VRS Main Staff notification to Drina Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995" (approval of 1 convoy of departing MSF staff on 13 June; exit approved, rotation not approved); Ex. 5D01429, "VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995" (approval of convoys on 13–15 June; not approved 1 truck of school supplies, 60 litres of oil for saws); Ex. P04062, "VRS Main Staff Notification to the Drina Corps on authorization of humanitarian aid convoys by Miletić, 30 June 1995" (approval of convoys on 4–5 July; not approved 1 truck of school supplies); Ex. P02570, "VRS Main Staff Notification re movement ICRC and UNHCR to various Military Posts, signed by Miletić, 18 July 1995" (approval of movement of ICRC and UNHCR staff on 19–21 June); Ex. P02551, "VRS Main Staff notification to Military Post 7111 concerning movement of UN civilian observers, type-signed Miletić, 29 June 1995" (approval of movement of UN civilian observers on 30 June); Ex. P02661a, "VRS Main Staff notification to East Bosnia Corps, Drina Corps, Sarajevo-Romanija Corps and Herzegovina Corps, signed by Miletić, 26 July 1995 (approval of travel permits for visits of ICRC teams to reception areas and prisons 26–29 July).

(iii) Role in the Operations in Srebrenica and Žepa

1661. As previously elaborated, **Miletić** kept the President of RS updated of the preparations and the military activity in the area of the Drina Corps through daily and interim Main Staff reports.⁵⁰⁸⁰ He based these reports on the daily and interim reports to the VRS Main Staff from the Drina Corps and other units.⁵⁰⁸¹ Furthermore, during the daily morning briefings at the Main Staff, **Miletić**, as “the best-informed [officer] on the situation in various theatres of war”, briefed everyone attending on any problems.⁵⁰⁸²

1662. **Miletić**’s authority, his coordinating role at the Main Staff, and the level of his knowledge are further exemplified by his acts and his involvement in the operations concerning Srebrenica and Žepa. As detailed below, **Miletić** was informed of the details of the operations and their implementation; he was in direct contact with subordinate units, including at brigade level, and was the person to turn to for advice.

a. 28 June to 6 July 1995

1663. On 28 June 1995, Karadžić went to the Drina Corps Command in Vlasenica, where he met with Krstić. Karadžić enquired how much time Krstić needed to set off for Srebrenica and told him to try to keep the preparations as short as possible.⁵⁰⁸³

1664. Following Karadžić’s visit to the Drina Corps Command, the Main Staff kept him updated on the combat readiness of the forces for the Srebrenica operation. More specifically, the 2 and 3 July Main Staff reports to Karadžić, type-signed **Miletić**, state that unengaged forces were preparing for “forthcoming combat operations”.⁵⁰⁸⁴ On 4 July, Karadžić was informed that the Corps units were “at the level of combat readiness that was ordered” and that they were “regrouping their forces in order to completely close off the Srebrenica enclave”.⁵⁰⁸⁵ On 5 July, it was reported that the “grouping of forces [...] was carried out”.⁵⁰⁸⁶ The Main Staff report to Karadžić on 6 July,

⁵⁰⁸⁰ See *supra*, paras. 1638–1639.

⁵⁰⁸¹ *Ibid.*

⁵⁰⁸² Manojlo Milovanović, T. 12311 (31 May 2007). T. 12188–12189 (29 May 2007). See also *supra*, para. 1637.

⁵⁰⁸³ See *supra*, para. 242.

⁵⁰⁸⁴ Ex. P02889, “VRS Main Staff Report, type-signed Miletić, 2 July 1995”, p. 3 (“[u]nengaged forces are being prepared for forthcoming combat operations”); Ex. P02890, “VRS Main Staff Report, type-signed Miletić, 3 July 1995”, p. 4 (“[f]orces that are not engaged are carrying out preparations for forthcoming combat operations”).

⁵⁰⁸⁵ Ex. P03164, “VRS Main Staff situation report, type-signed Miletić, 4 July 1995”, p. 3 (“Corps units are at the level of combat readiness that was ordered, they are firmly holding on to the lines reaches, regrouping their forces in order to completely close off the Srebrenica enclave”).

⁵⁰⁸⁶ Ex. P03166, “VRS Main Staff Situation Report, type-signed Miletić, 5 July 1995”, p. 3.

type-signed **Miletić**, states that the Drina Corps was prepared for active combat in the areas of Srebrenica and Žepa.⁵⁰⁸⁷

b. 7–11 July 1995

1665. **Miletić** submits that he was in Belgrade between 7 and 11 July 1995.⁵⁰⁸⁸ The Prosecution is not “contesting in any real way General Miletić’s quasi-alibi of being in Belgrade from the 7th through the 11th”.⁵⁰⁸⁹ The Trial Chamber is of the view that it has not been established that **Miletić** was at the Main Staff during this period.⁵⁰⁹⁰

1666. On 9 July, Krstić reported from the Drina Corps IKM to the Main Staff and Drina Corps Command, that the units had “created conditions for extending the attack toward Srebrenica”.⁵⁰⁹¹ That same day, Karadžić issued an order authorising the capture of Srebrenica town.⁵⁰⁹² At 11:50 p.m., Tolimir sent a telegram to the Commander of the Drina Corps stating that Karadžić had “been informed of successful combat operations around Srebrenica” and “agreed with the continuation of operations for the take over of Srebrenica, disarming of Muslim terrorists gangs and complete demilitarisation of the Srebrenica enclave”.⁵⁰⁹³ The Main Staff report of 9 July, type-signed **Miletić**, reported that the forces conducting active combat operations around the Srebrenica enclave were advancing according to plan.⁵⁰⁹⁴ Further, the Main Staff report of 11 July, type-signed **Miletić**, states that VRS forces had entered the town of Srebrenica and that an interim report would

⁵⁰⁸⁷ Ex. P02895, “VRS Main Staff Situation Report, type-signed Miletić, 6 July 1995”, p. 4.

⁵⁰⁸⁸ Miletić Final Brief, paras. 450–451.

⁵⁰⁸⁹ Prosecution Closing Argument, T. 34072 (2 Sept 2009). The Prosecution submits that **Miletić** would have been briefed while in Belgrade, or at least upon his return to Crna Rijeka. *Ibid.*, T. 34072–34073 (2 Sept 2009).

⁵⁰⁹⁰ The Trial Chamber is satisfied that on Saturday 8 July **Miletić** was in Belgrade to celebrate his daughter’s birthday and his recent promotion to the rank of General. Maja Spiroski, T. 29414–29419 (9 Dec 2008); Zoran Matejić, Ex. 5D01393, “92 *ter* statement”, pp. 1–2 (30 May 2008); Ivan Đokić, Ex. 5D01392 “92 *ter* statement” (29 May 2008), p. 1; Ranko Klacar, T. 29430–29431, 29437–29438 (9 Dec 2008).

⁵⁰⁹¹ Ex. 7D00762, “Interim Combat Report from the Drina Corps Forward Command Post signed by Radislav Krstić, 9 July 1995”, para. 2.

⁵⁰⁹² Prosecution Adjudicated Facts Decision, Annex, Fact 101. *See also* Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”; Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* statement”, BT. 6132 (19 Jan 2004).

⁵⁰⁹³ Ex. P00033, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”, paras. 1–2. Through the telegram, Karadžić ordered that during the continued operations members of UNPROFOR and the Muslim civilian population be fully protected (para. 3). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 101.

⁵⁰⁹⁴ Ex. P03170, “VRS Main Staff Situation report, signed by Miletić, 9 July 1995”. The report does not refer to the details mentioned in Ex. 7D00762, “Interim Combat Report from the Drina Corps Forward Command Post signed by Radislav Krstić, 9 July 1995”, although according to the stamps on these documents, Ex. P03170 was received after the Drina Corps interim report. The Trial Chamber is satisfied that the information in the Drina Corps interim combat report reached the Main Staff. In light of its finding that **Miletić** was absent from the Main Staff at that time, the Trial Chamber considers it of less relevance whether the information reached the officers of the Administration for Operations and Training who drafted the Main Staff report to Karadžić on this day or whether, as **Miletić** argues, it was received by or transmitted to Tolimir directly. As found *infra*, the Trial Chamber is convinced **Miletić** was briefed upon his return to the Main Staff.

be issued later.⁵⁰⁹⁵ It has not been established **Miletić** was at the Main Staff when these reports were issued. Therefore, it cannot be assumed **Miletić** had knowledge of the content of the above documents at the time they were issued.

c. 12 July 1995

1667. On 12 July in the morning, **Miletić** was collected in Belgrade and returned to the Main Staff in Crna Rijeka.⁵⁰⁹⁶ Upon his return, it would be impossible for **Miletić** to effectively carry out his functions as Chief of Operations and Training, and any tasks undertaken for the Chief of Staff, without being fully informed of recent developments and the current state of key military actions. Of these, the attack on and the fall of Srebrenica would have been one of the most important at that time. The Trial Chamber is therefore satisfied **Miletić** was briefed in detail about all the developments and the situation in Srebrenica as soon as he arrived back at Crna Rijeka.⁵⁰⁹⁷

1668. As will be detailed below, following his return to the Main Staff and in the absence of Milovanović, **Miletić** continued to be in charge of receiving daily and interim (combat) reports and drafting daily Main Staff reports updating the President on the events. The information included details on the situation at the front, the transportation of the civilian population out of Srebrenica and Žepa, and the taking of POWs. **Miletić** furthermore played a role in monitoring the movement of the column of Bosnian Muslims.

1669. In the evening of 12 July, the VRS Main Staff report, type-signed **Miletić**, informed the President with regard to the Srebrenica enclave that “the enemy tried to pull out together with the women and children towards Ravni Buljin and Konjević Polje”.⁵⁰⁹⁸ The report further states that in the “[e]ngagement of units in the execution of the *Krivaja-95* tasks: all the combat tasks are going ahead as planned. During the day, they liberated Potočari, and they continue advancing in order to liberate all of the settlements in the Srebrenica enclave. [...] part of our units and MUP units have organised ambushes in order to destroy Muslim extremists who have not surrendered and who are attempting to break out from the enclave in the direction of Tuzla.”⁵⁰⁹⁹ The 12 July report also states that “[i]n the area of responsibility of the Drina Corps, the population is being taken by

⁵⁰⁹⁵ Ex. P03019, “VRS Main Staff report, situation on the battlefield, type-signed by Miletić, 11 July 1995”, pp. 3–4.

⁵⁰⁹⁶ Maja Spiroski, T. 29416 (9 Dec 2008). *See also* Zoran Matejić, Ex. 5D01393, “92 *ter* statement”, p. 2 (30 May 2008); Velo Pajić, T. 28793–28794 (25 Nov 2008).

⁵⁰⁹⁷ **Miletić** was duty-bound to brief Milovanović during his absence and upon his return to the VRS Main Staff. Manojlo Milovanović, T. 12303 (31 May 2007). *See also* Dragiša Masal, T. 29068 (1 Dec 2008); Ex. 5D01278, “Summary of intercepted conversation involving Milovanović and Miletić, 18 April 1995, 09:46 hours,” (a conversation during which **Miletić** updated Milovanović on the situation on the fronts). The Trial Chamber is satisfied that in order to do so, **Miletić** had to be fully briefed himself.

⁵⁰⁹⁸ Exs. P00044, P02748, “VRS Main Staff Daily Combat Report, 12 July 1995”, p. 3.

⁵⁰⁹⁹ *Ibid.*, p. 4.

organised transport from Srebrenica towards Kladanj. During the day, about 10,000 Muslims are estimated for transport.”⁵¹⁰⁰ The information contained in the report was well-known at the Main Staff.⁵¹⁰¹

d. 13 July 1995

1670. On 13 July, Krstić gave an order to commence the military operation against the Žepa enclave.⁵¹⁰² In the Main Staff daily report to the President, type-signed **Miletić**, it was reported that “[c]ombat groups from other Corps units are in the final stages of preparations aimed at settling the issue of the Žepa enclave”.⁵¹⁰³ The report also addresses the situation in Srebrenica. It states that the “enemy from the former enclave of Srebrenica is in a state of total disarray, and the troops are surrendering in large numbers to the VRS. A 200 to 300-strong group of soldiers managed to break through to the general sector of Mt. Urdč, from where they are trying to break through to the territory under Muslim control.”⁵¹⁰⁴ It was further reported that there was “organised and planned transfer of the population from Srebrenica to the territory under Muslim control”.⁵¹⁰⁵

1671. Also on 13 July, around 3 p.m., Tolimir issued an order to the Command of the Military Police Battalion of the Protection Regiment, which included proposals on the procedure for POWs. Mladić and Gvero were copied.⁵¹⁰⁶ In the last paragraph, the order states that once the Commander of the Military Police Battalion received the order, “he shall contact General Miletić and receive from him additional orders and verify if the proposal has been approved by [Mladić]”.⁵¹⁰⁷ Later that day, Mladić issued an order which included a number of Tolimir’s proposals.⁵¹⁰⁸

⁵¹⁰⁰ Exs. P00044, P02748, “VRS Main Staff Daily Combat Report, 12 July 1995”, p. 4.

⁵¹⁰¹ Nedeljko Trkulja, T. 15096–15098 (10 Sept 2007).

⁵¹⁰² Ex. P00114, “Drina Corps Order signed by Krstić, 13 July 1995”, p. 1.

⁵¹⁰³ Ex. P00047, “VRS Main Staff daily combat report, type-signed Miletić, 13 July 1995”, p. 3. See also Ex. P00049, “VRS Main Staff daily combat report, type-signed Miletić, 15 July 1995”, p. 3; Ex. P00050, “VRS Main Staff daily combat report, type-signed Miletić, 16 July 1995”, p. 4 (“Part of the Corps units continue with offensive combat operations around the Žepa enclave, which will be described in the forthcoming interim report”); Ex. P03057, “VRS Main Staff daily combat report, signed by Miletić, 17 July 1995”, p. 4 (“main forces are carrying out combat operations in sector Žepa”); Ex. P03061, “VRS Main Staff daily combat report, signed by Miletić, 18 July 1995”, p. 6 (“parts of the troops have been carrying out in the Žepa sector, scouring the terrain, blocking and destroying the broken-up Muslim formations”).

⁵¹⁰⁴ Ex. P00047, “VRS Main Staff daily combat report, type-signed Miletić, 13 July 1995”, p.3.

⁵¹⁰⁵ *Ibid.* On the same day, the Drina Corps reported that “[s]o far the transport of 15,000 Muslims from Potočari to Kladanj has been organised”. Ex. P00136, “Drina Corps regular combat report, signed by Krstić, 13 July 1995”, p. 1.

⁵¹⁰⁶ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995”.

⁵¹⁰⁷ *Ibid.*, p. 2. Savčić did not remember drafting the report and did not believe he did as the lay-out is not correct. He testified that he was not in a position to send proposals to Mladić (he wondered why the report did not go out in Tolimir’s name as it concerned his proposals); the heading reads “Borike” and he did not set up the command post at Borike; and the document was not dated. Savčić however did not exclude the possibility he drafted the document dictated by Tolimir. Milomir Savčić, T. 15262–15263 (12 Sept 2007). Simić testified, based on the handwritten notes on the document, that it had been dispatched (although it did not carry a stamp). However, based on the

1672. **Miletić**'s role with regard to the order from Tolimir was that of intermediary, follow up with Mladić and transmit his decision on the proposals.⁵¹⁰⁹ The Trial Chamber notes that **Miletić** was personally mentioned in the order as the person to be contacted. The Trial Chamber finds that this shows his vital coordinating role at the Main Staff in the flow of information.

e. 14 July 1995

1673. On 14 July, Tolimir sent a request to the Main Staff, addressed personally to **Miletić**, stating that in order to monitor combat activities around Žepa and have a complete review of the Drina Corps Command radio network with brigade commands, it was necessary to incorporate the VRS Main Staff in the work plan of the Drina Corps communications system with radio and encryption equipment.⁵¹¹⁰ Tolimir sent the request to **Miletić** as he was standing in for Milovanović with regard to organising work at the command post; since the Armoured Units, which included the communications officers, were directly subordinate to Milovanović, in his absence, **Miletić** conveyed tasks and was responsible for discipline and order in these Units.⁵¹¹¹

1674. That same day at 10:27 p.m., a conversation was intercepted, in which a person identified as "Vilotić" called Palma⁵¹¹² and asked for Obrenović.⁵¹¹³ As Obrenović was in the field, Vilotić asked for the duty officer and was transferred to Jokić. In the conversation, Jokić confirmed that his Chief was in the field as there were problems at Perunica with "a large group going this way towards [...] the asphalt".⁵¹¹⁴ Jokić further stated that they had been promised reinforcements from "the blues", which had not yet arrived.⁵¹¹⁵ Vilotić responded "Well, see /about it/ with that Vasić, fuck him..."

document alone he could not conclude if **Miletić** was aware the VRS had at least 1,000 prisoners under its control. Novica Simić, T. 28726–28727 (24 Nov 2008).

⁵¹⁰⁸ Ex. 5DP00035, "VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995".

⁵¹⁰⁹ Petar Skrbić, T. 15616–15617 (19 Sept 2007); Novica Simić, T. 28726–28728 (24 Nov 2008); Milomir Savčić, T. 15313 (13 Sept 2007).

⁵¹¹⁰ Ex. P00183, "1st PLPBR document regarding communications device to VRS Main Staff, Miletić, type-signed by Zdravko Tolimir, 14 July 1995". Babić testified he was at the Main Staff in July 1995 and that the network was not formed. Vojislav Babić, T. 29190 (3 Dec 2008). He further testified that Ex. P00183 contained several technical irregularities. During cross-examination, the Prosecution put to Babić what it called an "original" from the Drina Corps collection, and Babić confirmed it also had a number of technical irregularities. He admitted that in war regulations sometimes would be overlooked. *Ibid.*, T. 29190–29192, 29214–29218 (3 Dec 2008). Pajić also testified he was in Crna Rijeka in July 1995 but he did not remember any order on the forming of such a network and to his knowledge it was not formed. Velo Pajić, T. 28787, 28790 (25 Nov 2008). The Trial Chamber does not consider Babić and Pajić's testimony to affect the credibility of the document. Further, for purposes of assessing **Miletić**'s involvement, the Trial Chamber considers it of limited relevance whether the radio network was formed. **Miletić** was not responsible for deciding the request. **Miletić**'s role was to forward the information to the relevant person and provide advice, enabling the receiver to make an informed final decision.

⁵¹¹¹ Ljubomir Obradović, T. 28374–28375 (18 Nov 2008).

⁵¹¹² "Palma" was the code name for the Zvornik Brigade. Prosecution Adjudicated Facts Decision, Annex, Fact 87.

⁵¹¹³ Ex. P01166a, "Intercept 14 July 1995, 22:27 hours", p. 1; PW-168, T. 15998–15999 (28 Sept 2007).

⁵¹¹⁴ Ex. P01166a, "Intercept 14 July 1995, 22:27 hours", p. 1.

⁵¹¹⁵ *Ibid.*

everything available should be gathered...you must raise them all, Jokić, sound the alert down there in the town” and “[e]veryone who can carry a rifle should go up”.⁵¹¹⁶ After that, he stated “[c]arry out my order immediately”.⁵¹¹⁷ Jokić told Vilotić that Obrenović was really “engaged to the hilt”, to which Vilotić responded “All right, don’t /tell/ me that.”⁵¹¹⁸ Vilotić then told Jokić to get in touch with Vasić and to block the group.⁵¹¹⁹ From the context of events that were occurring on 14 July and the reference made to Obrenović, the Trial Chamber is satisfied that the Jokić referred to in the conversation is Dragan Jokić, Duty Officer of the Zvornik Brigade, and that Vasić is Dragomir Vasić, Head of the Zvornik SJB. The Trial Chamber is also satisfied that “Vilotić” in the conversation is the Accused **Miletić**.⁵¹²⁰

1675. The VRS Main Staff report of 14 July to the President, type-signed **Miletić**, refers to “a major concentration of the enemy forces” whose objective was “most probably” joining the forces pulling out of Srebrenica. The same report states that large numbers of Bosnian Muslim fugitives were surrendering.⁵¹²¹

f. 15 July 1995

1676. On 15 July, Mladić was in Belgrade in negotiations with Smith.⁵¹²² **Miletić** was present at the VRS Main Staff.

1677. Dragan Obrenović, Chief of Staff and Deputy Commander of the Zvornik Brigade, called **Miletić**, through extension 155, and requested his permission to open the VRS defence lines in order for the column of Bosnian Muslims to pass.⁵¹²³ **Miletić** denied the request and ordered that all the available equipment and manpower be used to fight the column and destroy it.⁵¹²⁴ The Trial Chamber is satisfied that this further evidences that **Miletić** had knowledge of the column and

⁵¹¹⁶ Ex. P01166a, “Intercept 14 July 1995, 22:27 hours”, p. 1.

⁵¹¹⁷ *Ibid.*

⁵¹¹⁸ *Ibid.*, pp. 1–2.

⁵¹¹⁹ *Ibid.*, p. 2.

⁵¹²⁰ See PW-168 T. 15997 (closed session) (28 Sept 2007) (testifying that he was not familiar with any VRS General named Vilotić nor had he ever heard of anyone named Vilotić); Richard Butler, T. 19973–19974 (18 Jan 2008) (testifying that when he first saw the intercept and recognized the name, he went back to the VRS materials to determine whether there existed a General Vilotić. He could not find anyone called Vilotić.).

⁵¹²¹ Ex. P00048, “VRS Main Staff Daily Combat Report, type-signed Miletić, 14 July 1995”, p. 3.

⁵¹²² Ex. P02942, “Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milošević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan”, p. 1.

⁵¹²³ See *supra*, para. 553; PW-168, T. 15873 (closed session) (26 Sept 2007).

⁵¹²⁴ PW-168, T. 15874 (closed session) (26 Sept 2007). According to PW-168, **Miletić** asked at the end of the conversation why Obrenović used unsecure equipment and slammed the phone down. PW-168 agreed with the Defence that this was a strange comment as the Zvornik Brigade did not have a secure phone line which **Miletić** should have known as Chief of Operations. PW-168 further testified he had understood the conversation as **Miletić** giving Obrenović an order on behalf of Mladić. *Ibid.*, T. 16643–16644 (19 Oct 2007).

monitored its movement. The Trial Chamber considers it a clear example of his position and authority and his involvement with the events on the ground.

1678. In the evening of the same day, a conversation between Baki and an unidentified person was intercepted, during which they discussed “equipment” “and what goes with it” “that General Miletić ordered” to be sent to Pandurević.⁵¹²⁵ Another conversation was intercepted a few minutes later, in which reference was again made to Miletić and that “he insisted that it must go during the night, to get to Vinko”.⁵¹²⁶ Although the nature of the equipment referred to in the conversation has not been established, the Trial Chamber is satisfied that the conversation refers to the Accused **Miletić** and **Pandurević**. The Trial Chamber also considers these intercepts as evidence of the coordinating role **Miletić** played at the Main Staff and the direct contact he had with the Zvornik Brigade.

1679. The 15 July VRS Main Staff daily combat report to the President, type-signed **Miletić**, again reported on combat activities and the movement of the column in the area of the Drina Corps. The report also states that during the course of the day several enemy groups surrendered.⁵¹²⁷

g. 16 July 1995

1680. On 16 July, **Pandurević** reported to the Drina Corps Command that he had opened up a corridor for Bosnian Muslim civilians to pass through and that he was still fighting the 28th Division.⁵¹²⁸ This was reported up the chain of command and reached the Main Staff as well as the President.⁵¹²⁹ It is evident that **Miletić** received this information since he ordered Nedeljko Trkulja and Bogdan Sladojević to visit the Headquarters of the Zvornik Brigade—the Standard Barracks—to investigate the opening of the corridor.⁵¹³⁰ Upon return to Crna Rijeka on 18 July, Trkulja reported orally to **Miletić** about the opening of the corridor.⁵¹³¹

h. 17–24 July 1995

⁵¹²⁵ Ex. P02367c, “Intercept, 15 July 1995, 22:26 hours” (the same conversation is captured in Ex. P01182a, “Intercept, 15 July 1995, 22:25 hours”, pp. 2–3). PW-168 testified “[w]e had received a multiple rocket launcher, and maybe that had something to do with this conversation. I think that is the combat asset that we see referred to here.” He however was not sure. PW-168, T. 16004 (closed session) (28 Sept 2007).

⁵¹²⁶ Ex. P02368c, “Intercept, 15 July 1995, 22:28 hours” (this conversation is also captured in Ex. P01182a, “Intercept, 15 July 1995, 22:25 hours”, p. 3).

⁵¹²⁷ Ex. P00049, “VRS Main Staff daily combat report, type-signed Miletić, 15 July 1995”, p. 3.

⁵¹²⁸ PW-168, T. 16013 (closed session) (28 Sept 2007); Ex. P01188a, “Intercept, 16 July 1995, 13:55 hours”.

⁵¹²⁹ Ex. P00050, “VRS Main Staff Daily Combat Report, type-signed Miletić, 16 July 1995”, p. 4. *See also* Ex. P01195a, “Intercept 16 July 1995, 16:15 hours” (which recorded a conversation between a VRS Main Staff duty officer and Mladić mentioning that the President had been informed by Karišik that Pandurević had arranged passage for the Bosnian Muslims).

⁵¹³⁰ Nedeljko Trkulja, T. 15114–15116 (10 Sept 2007); Bogdan Sladojević, T. 14366–14368 (27 Aug 2007) *See also supra*, paras. 559–561.

⁵¹³¹ Nedeljko Trkulja, T. 15114–15117 (10 Sept 2007); Bogdan Sladojević, T. 14379 (27 Aug 2007).

1681. During the operation in Žepa, **Miletić** continued to provide daily VRS Main Staff reports to the President of RS of the combat situations in Žepa.⁵¹³² The reports were drafted by **Miletić** personally, Obradović or possibly Krsto Đerić, if present.⁵¹³³ **Miletić** received information about the front at Žepa through the reporting system and the Administration of Operations and Training's role in the Žepa negotiations consisted of forwarding information to involved persons.⁵¹³⁴ During the Žepa Operation, **Miletić** also issued instructions to units in the field and coordinated between the Main Staff and the field.

1682. At around 8 p.m. on 17 July, during an intercepted conversation, Mladić told Krstić "I didn't accept the Turks' conditions". He told Krstić "full steam ahead" and to "get in touch with Miletić on the secure line, full steam ahead".⁵¹³⁵ Given the context of the events taking place and the participants in the conversation, the Trial Chamber is satisfied that the conversation refers to Žepa and that the Miletić referred to is the Accused **Miletić**. The intercept furthermore shows again **Miletić**'s vital coordinating role at the Main Staff, including between Krstić and Mladić during the Žepa operation.

1683. Also on 17 July, a conversation was intercepted between Trivić and Colonel Janković. Trivić called Badem⁵¹³⁶ and asked for Janković. He told Janković that **Miletić** had said he (Janković) should write down what he wanted to do and send it urgently by code up to Tolimir. The Commander would then decide with Tolimir and send his reply to Janković.⁵¹³⁷

1684. On 19 July, a VRS Main Staff order was issued regarding the transport of people and the pull-out of war booty from Žepa. According to the order, Colonel Milisav Jovanović—Chief of the Quarter Master's Department in the Logistics Sector of the VRS Main Staff⁵¹³⁸—was in charge of the collection and pulling out of the war booty. If need be, Jovanović was to secure a police unit through **Miletić**.⁵¹³⁹

⁵¹³² See, e.g., Ex. P00050, "VRS Main Staff Daily Report type-signed Miletić, 16 July 1995"; Ex. P03057, "VRS Main Staff Situation Report signed by Miletić, 17 July 1995"; Ex. P03061, "VRS Main Staff Situation Report signed by Miletić, 18 July 1995".

⁵¹³³ Ljubomir Obradović, T. 28270 (14 Nov 2008), T. 28290 (17 Nov 2008).

⁵¹³⁴ *Ibid.*, T. 28270 (14 Nov 2008), T. 28290–28292 (17 Nov 2008), T. 28367, 28393–28394 (18 Nov 2008).

⁵¹³⁵ Ex. P01231a, "Intercept, 17 July 1995 at 19:50 hours".

⁵¹³⁶ "Badem" was the code name for the Bratunac Brigade. Prosecution Adjudicated Facts Decision, Annex, Fact 87. See also PW-168, T. 15993 (28 Sept 2007); PW-131, T. 4634 (27 Nov 2006).

⁵¹³⁷ Ex. P01237a, "Intercept, 17 July 1995 at 20:55 hours". Considering the circumstances and context of this conversation, the Trial Chamber is satisfied that Janković in the conversation is Radislav Janković of the Main Staff Intelligence Administration and that the conversation concerns the evacuation of MSF Staff from Srebrenica.

⁵¹³⁸ Ratko Miljanović, T. 28939 (27 Nov 2008).

⁵¹³⁹ Ex. 5D01113, "VRS Main Staff document, regarding transport of civilians from Žepa, signature illegible, 19 July 1995". Ratko Miljanović, T. 28938–28939 (27 Nov 2008), T. 28985 (28 Nov 2008).

1685. On 20 July, Krstić sent a request to **Miletić** “personally”, requesting the engagement of the VRS Main Staff Military Police Battalion headed by Major Malinić for the collection of war booty and prevention of looting in the Žepa enclave.⁵¹⁴⁰

1686. During the Žepa operation, both the Drina Corps and Tolimir, who was an Assistant Commander of the Main Staff and in rank above **Miletić**, sent their requests and reports addressed to **Miletić** personally.⁵¹⁴¹ This shows that it was well-known and accepted that **Miletić** played the role of focal point at the VRS Main Staff for all incoming information and made sure that the relevant persons were informed. On 21 July, Tolimir reported to the VRS Main Staff, addressed to **Miletić** personally, regarding the situation in Žepa.⁵¹⁴² The report states, *inter alia*, “[w]e believe that we would be in a more advantageous position for direct negotiations after we inflict los[s]es on the enemy's manpower” and “[t]he most convenient means for [the enemy's] destruction would be usage of chemical weapons or aerosol grenades and bombs. Using these means we would accelerate the surrender of Muslims and fall of Žepa.”⁵¹⁴³ The report concludes “[w]e believe that we could force Muslims to surrender sooner if we would destroy groups of Muslims [*sic*] refugees fleeing from the direction of Stublić, Radava and Brloška Planina”.⁵¹⁴⁴

1687. That same day, 21 July, the Main Staff report, type-signed **Miletić**, informed the President that forces of the Drina Corps continued their offensive operations carrying out combat tasks around the Žepa enclave.⁵¹⁴⁵

⁵¹⁴⁰ Ex. P03015, “Drina Corps Command document requesting the engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995”. Considering the reference to Malinić, the Trial Chamber is satisfied the request referred to the Military Police Battalion of the 65th Protection Regiment, which was commanded by Zoran Malinić.

⁵¹⁴¹ See, e.g., Ex. P03015, “Drina Corps Command document requesting the engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995”; Ex. P02794, “Rogatica Brigade document, to Miletić personally, ‘Situation in Žepa’, type-signed Tolimir, 21 July 1995”. Milovanović testified this report was “completely legal”. It was sent to **Miletić** since Tolimir was not able to get in touch with the Commander of the VRS Main Staff, while he knew **Miletić** would be at the VRS Main Staff and could communicate the information to Mladić, who would make a decision. **Miletić** was not asked to answer but only served as an intermediary between Tolimir and the Commander. Manojlo Milovanović, T. 12378, 12386–12387, 12390 (1 June 2007).

⁵¹⁴² Ex. P02794, “Rogatica Brigade document, to Miletić personally, ‘Situation in Žepa’, type-signed Tolimir, 21 July 1995”. Obradović testified that the report arrived at the VRS Main Staff addressed to **Miletić** and that the report is on the situation in Žepa, but that he did not understand why it was addressed to **Miletić**. He admitted a possible explanation could be that **Miletić** had more authority on 21 July than he normally had (as other officers were in the field); however, he considered it not logical for an Assistant Commander to act as subordinated to **Miletić**. Ljubomir Obradović, T. 28391–28392 (19 Nov 2008).

⁵¹⁴³ Ex. P02794, “Rogatica Brigade document, to Miletić personally, ‘Situation in Žepa’, type-signed Tolimir, 21 July 1995”.

⁵¹⁴⁴ *Ibid.* The Trial Chamber has no evidence suggesting that Tolimir’s proposal to use chemical weapons was considered or implemented. The Trial Chamber however considers this to be of limited relevance with regard to **Miletić**’s role as intermediary. **Miletić** was not responsible for deciding on the request. His role was to ensure information reached the relevant persons to enable them to make informed decisions.

⁵¹⁴⁵ Ex. P03020, “VRS Main Staff situation report, type-signed Miletić, 21 July 1995”.

1688. On 23 July, a conversation between **Miletić** and an unidentified caller was intercepted.⁵¹⁴⁶ The caller greeted **Miletić** saying “Hi Mićo” and then informed him “it’s open”.⁵¹⁴⁷ The caller asked if everything was all right and whether “Tošo” had come. **Miletić** informed the caller that “Tošo” was waiting for him at the agreed place. The caller asked **Miletić** if there was anything that needed to be signed to which **Miletić** responded some things had come in but it all could wait. **Miletić** was subsequently instructed to wait for the caller at “272” and to bring the caller’s suitcase.⁵¹⁴⁸ Considering the context, content and circumstances of the conversation and that **Miletić** was clearly speaking to someone superior to him in the chain of command, the Trial Chamber is satisfied that **Miletić** was speaking to Mladić; and that “Tošo” is Tolimir. The Trial Chamber considers the intercept as further evidence of **Miletić**’s coordinating role. It also evidences that **Miletić** was in direct contact with Mladić and that he was referred to as “Mićo”.

1689. On 24 July, a conversation was intercepted between “General” and Tolimir.⁵¹⁴⁹ Tolimir told the General “he is asking whether you’ll be coming here”.⁵¹⁵⁰ The General responded he would not be coming but to tell “(Dinko?) to be on standby with the unit, they are not to move without my order”.⁵¹⁵¹ Tolimir confirmed he understood but that “Miletić told [him] that [he] would have to go down there to regulate this thing tomorrow, strictly that all those who are supposed to go through to Goražde can go through, because there have been a lot of problems today about that, but we have resolved them” and that he had to “regulate it down there with them about the convoys”.⁵¹⁵² The General responded to Tolimir “[y]ou have nothing to do with that” and that Tolimir was “completely taking over from [him] in the command here”.⁵¹⁵³ Taking into account the events at the time, the subject of the conversation, and the reference to “General”, the Trial Chamber is satisfied that this concerns a conversation between Mladić and Tolimir and refers to the removal of Bosnian Muslims from Žepa. The Trial Chamber further considers the intercept shows **Miletić**’s authority conveying instructions to Tolimir and coordinating from the Main Staff the different sections of the VRS.

⁵¹⁴⁶ Ex. P01315a, “Intercept, 23 July 1995, 13:59 hours”.

⁵¹⁴⁷ *Ibid.*

⁵¹⁴⁸ *Ibid.*

⁵¹⁴⁹ Ex. P01327a, “Intercept, 24 July 1995, 19:24 hours”.

⁵¹⁵⁰ *Ibid.*

⁵¹⁵¹ *Ibid.*

⁵¹⁵² *Ibid.*

⁵¹⁵³ *Ibid.*

i. 25 July 1995

1690. On 25 July, Tolimir, who was involved in the Žepa negotiation representing the VRS, issued a report on the agreement on disarmament of Žepa to the Main Staff, to either **Miletić** or **Gvero** personally.⁵¹⁵⁴ The report, *inter alia*, suggests that the text of the agreement be sent to the State Commission for Exchange of War Prisoners. It states the Bosnian Muslims in Žepa had accepted the agreement and agreed to the status of POW until all VRS POWs were exchanged. It recommends the Commission demand all VRS POWs be released between 25 and 28 July as the Bosnian Muslims could take advantage of the signed agreement “under pressure from Sarajevo”. It was the Commission’s duty to submit the list of POWs the VRS was demanding and to tell its counterpart that all other issues were within the competences of the VRS negotiators and Žepa representatives.⁵¹⁵⁵

1691. On the evening of 25 July, General Smith met with Mladić and Torlak, President of the Executive Board in Žepa, and a member of the Žepa War Presidency.⁵¹⁵⁶ On the same evening, the RS Exchange Commission attended a meeting with the Bosnian Muslim side at Sarajevo Airport. Following the meeting, the Main Staff was updated and informed by telephone that the Bosnian Muslim Government accepted the “proposed (signed) agreement in its entirety on condition that both civilians and able-bodied men are evacuated together from the enclave of Žepa”, and it

⁵¹⁵⁴ Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”. According to Milovanović, the document was addressed “personally to General Gvero or General Miletić”, since Tolimir did not know which of them was at the VRS Main Staff and he was sending the document to the VRS Main Staff to be handed to whomever the messenger would find. Manojlo Milovanović, T. 12377 (1 June 2007). Jovanović testified he had never seen the document before. He stated the document was possibly addressed to **Gvero** or **Miletić** because they were the only officers present in the Operations Centre at the VRS Main Staff, which he based on the document’s first sentence “[w]e send you this to forward to another corps command to the Sarajevo Romanija Corps”, giving them a “courier’s task”. Sasa Jovanović, T. 33949 (6 July 2009). According to Obradović, the role of the person to whom the document was addressed was to pass it on, not to make any decisions as the agreement had already been reached on the ground. When asked if the tasks in the document were in accordance with **Miletić**’s tasks standing in for Milovanović, Obradović responded **Miletić** “would have to act on this document if it reached him, or he would take it to the commander or ask for the approval of the person who is replacing the commander, deputising for him, and he would inform him, and then he would do what the document asks him to do.” He did not recollect any efforts of the Operations Department to avoid having General Smith going to Žepa. He also did not draw up requests to UNPROFOR. Colonel Miloš Đurđić was in charge of contacts with UNPROFOR concerning convoys requests and **Miletić** worked on this with him. He did not know who worked on this specific issue. Ljubomir Obradović, T. 28397–28400 (18 Nov 2008), T. 28463–28465 (19 Nov 2008). There is a hand-written note on the document which reads “received”. Obradović did not recognise the hand-writing. *Ibid.*, T. 28477 (19 Nov 2008). The Trial Chamber considers that the fact **Miletić** was mentioned as the addressee of this document, next to **Gvero**, one of the Assistant Commanders, shows again that his authority and coordinating role at the Main Staff were well-known and accepted. *See also* Ex. P01328a, “Intercept, 25 July 1995, 07:09 hours” (a conversation between “Ljubo” and an unidentified person X. In the course of the conversation, X told Ljubo “they’ve sort of accepted that agreement and signed it [...] I sent the text of the agreement last night [...] it’s over at Mileć’s, and a subsequently a telegram this morning....Miletić or Gvero with regard to UNPROFOR and the ICRC, so have Miloš go there to fetch it and have them inform you about the telegram”). The Trial Chamber considers the intercept as evidence that **Miletić** was kept fully informed of the developments in Žepa.

⁵¹⁵⁵ Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”.

emphasised that it was important that civilians, disarmed soldiers and able-bodied men were evacuated together from Žepa, demanding guarantees that they would not be killed.⁵¹⁵⁷ During the same phone call, **Miletić** and Lieutenant Colonel Jovica Karanović from the Sector for Intelligence and Security at the Main Staff spoke with Bulajić, the President of the Commission for the exchange of POWs.⁵¹⁵⁸ They discussed the details of the agreement and **Miletić** and Karanović insisted the VRS would not vary from the signed agreement of the 24 July.⁵¹⁵⁹

1692. Again later that day, the Main Staff daily report, type-signed **Miletić**, relayed to the President that “[o]perations around Žepa have ceased for the moment as an agreement was signed on the surrender of the Muslims”.⁵¹⁶⁰

j. 26 July–1 August 1995

1693. On 26 July, the VRS Main Staff daily report, type-signed **Miletić**, informed the President that “[u]nits engaged in Žepa are securing the evacuation of the Muslim population”.⁵¹⁶¹

1694. On 28 July, a conversation was intercepted between an unidentified caller and Dragan.⁵¹⁶² During the conversation, Dragan told the other interlocutor that “General Miletić was looking for you, he was asking why it hasn’t started yet”, to which the other person responded “[t]ell him it’ll start in half an hour because a part of the unit has not arrived” and “[t]hey’re leaving at six [...] that’s what they should tell the guys up there”.⁵¹⁶³ According to PW-168, it concerned a conversation between Dragan Obrenović and the duty officer of the Drina Corps, discussing the dispatch of a unit from the Zvornik Brigade to the 2nd Krajina Corps following an order from the VRS Main Staff.⁵¹⁶⁴ Based on the evidence before it and the time and content of the intercept, the Trial Chamber is satisfied the intercept is a conversation between Dragan Obrenović and the duty officer of the Drina Corps Command and that the Miletić referred to is the Accused **Miletić**. The Trial Chamber is convinced that the conversation refers to the dispatch of a unit from the Zvornik

⁵¹⁵⁶ Ex. 6D00108, “UN document re situation in Žepa by Col. Baxter”, p. 3.

⁵¹⁵⁷ Ex. P00190, “VRS Main Staff Intelligence and Security Report, type-signed Jovica Karanović, 25 July 1995”.

⁵¹⁵⁸ *Ibid.*; Ex. 6D00007, “Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995”, p. 3, Art. 2(4) (appointing Dragan Bulajić as the President of the Commission for the exchange of POWs).

⁵¹⁵⁹ Ex. P00190, “VRS Main Staff Intelligence and Security Report, type-signed Jovica Karanović, 25 July 1995”.

⁵¹⁶⁰ Ex. P03021, “VRS Main Staff situation report, type-signed Miletić, 25 July 1995”, p. 3.

⁵¹⁶¹ Ex. P03022, “VRS Main Staff situation report, type-signed Miletić, 26 July 1995, p. 4.

⁵¹⁶² Ex. P01370c, “Intercept, 28 July 1995, 17:30 hours”; PW-168, T. 16025 (28 Sept 2007).

⁵¹⁶³ Ex. P01370c, “Intercept, 28 July 1995, 17:30 hours”.

⁵¹⁶⁴ See PW-168, T. 16025–16026 (closed session) (28 Sept 2007); Ex. P03078, “Order to form a brigade and dispatch it as assistance from the VRS Main Staff signed by Ratko Mladić, 26 July 1995”. See also Ex. P03077, “Drina Corps Order to form a light infantry brigade and dispatch it on a combat mission, signed Radislav Krstić, 20 July 1995”; Ex. 7DP00351, “Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 28 July 1995”.

Brigade to the 2nd Krajina Corps. The Trial Chamber considers the intercept as evidence of **Miletić's** authority and his involvement in following up on the reassignment of units.

1695. On 29 July, the VRS Main Staff received a report from the Rogatica Brigade, stating that it had “unconfirmed information that the elements of the Muslim military forces from the former enclave of Žepa are trying to break through on the right bank of the Drina River, in the area of the village of Jagoštica and the village of Zemljice probably with intention to surrender to the forces of the Serbian MUP”.⁵¹⁶⁵ Measures were taken to verify the information.⁵¹⁶⁶ In the daily Main Staff report to the President that day, type-signed **Miletić**, it was written that “[f]rom the Žepa enclave, [the enemy] tried a breakthrough in the village of Donje Štitarevo sector, intending to get to the territory of [...] Federal Republic of Yugoslavia. This formation was encircled, routed and then destroyed.”⁵¹⁶⁷ Units of the Drina Corps were “setting up ambushes to prevent passage of enemy groups from the former enclaves of Žepa and Srebrenica and linking up with the forces on the front”.⁵¹⁶⁸

1696. On 30 July, a conversation was intercepted around 10:15 p.m.⁵¹⁶⁹ The first part of the intercept concerned a conversation between Savo and Rajko. Rajko stated: “Our flag is up there on ‘Ž’, [...] but it is not over yet”. Rajko further informed Savo of the request of UNPROFOR General Smith for a meeting the next day regarding Žepa, Sarajevo, and the use of “Rapid Reaction Forces”. Rajko told Savo that he would transfer the caller to Mićo so that Savo will “tell him everything”.⁵¹⁷⁰ Subsequently, Mićo came on the line and told Savo all it’s going well and “that thing is mainly going over there, where the boss, Mladić, used to be, today it came...and we are slowly putting it into the pocket and I’m hoping to be, today it will finally be finished”.⁵¹⁷¹ Subsequently, Savo put Mladić through to Mićo, who greeted Mićo by saying “any news, buddy?” Mićo responded “this thing where you were yesterday, it is going well”. Mladić asked if the flag was where he ordered it to be, which Mićo confirmed. Mladić then told Mićo to “[f]ollow the situation, step it up over there, the situation is changing as I want it to”, and “[y]ou know what is needed over there”. Mićo confirmed and told Mladić “[h]e is asking to meet you tomorrow” concerning Žepa, Sarajevo, and the use of rapid reaction forces. Mladić then told Mićo to tell “him” he [Mladić] would wait for

⁵¹⁶⁵ Ex. P02792, “Rogatica Brigade report to the VRS Main Staff regarding a meeting with UNPROFOR concerning evacuation of civilians from Žepa, type-signed Dragomir Pećanac, 29 July 1995”, p. 2.

⁵¹⁶⁶ Ex. P02792, “Rogatica Brigade report to the VRS Main Staff regarding a meeting with UNPROFOR concerning evacuation of civilians from Žepa, type-signed Dragomir Pećanac, 29 July 1995”, p. 3.

⁵¹⁶⁷ Ex. P03023, “VRS Main Staff situation report, type-signed Miletić, 29 July 1995”, p. 4.

⁵¹⁶⁸ *Ibid.*, pp. 4–5.

⁵¹⁶⁹ Ex. P01376d, “Intercept, 30 July 1995, 22:15 hours”.

⁵¹⁷⁰ *Ibid.*, p. 1.

⁵¹⁷¹ *Ibid.*, p. 1.

“him” at 12 p.m. at Mrkonjić Grad and to tell “him” to come by helicopter.⁵¹⁷² In the context of the events taking place on and around 30 July, the Trial Chamber is convinced that Mićo is **Miletić** updating Mladić. The conversation shows the close cooperation between Mladić and **Miletić** and that **Miletić** was coordinating and relaying information between different sections of the VRS. The Trial Chamber is further satisfied that the meeting Mladić asked **Miletić** to arrange concerned a meeting between Mladić and Smith.

1697. Again on 31 July, the daily Main Staff report, type-signed **Miletić**, updated the President on the escape attempts of Bosnian Muslims. The report states that information had been received that “the enemy [was] building rafts in the Crni Potok sector”, which is close to Žepa,⁵¹⁷³ and trying to escape across the Drina to Serbia.⁵¹⁷⁴ The report further informed the President that Drina Corps forces were setting up ambushes for groups from the Srebrenica and Žepa enclaves and searching the terrain in the Žepa enclave.⁵¹⁷⁵

1698. On 1 August 1995, Captain Carkić, the Chief of Security for the Rogatica Brigade, issued a report on the movement of “routed enemy groups in the Žepa enclave” to the Main Staff, addressed to **Miletić** personally.⁵¹⁷⁶ He reported that “around 25 persons from Žepa surrendered [to the VRS and MUP]. During the night and today, this number increased to 53. Another 100 balija are expected in Bajina Bašta today. At the same time, the largest group of balija was registered (around 1,000 men) in the general area of Crni Potok. They all seem to be attempting to cross over to the right bank. [...] the number of balija will remain in hiding in the general area of Žepa, especially in the area of the former Žepa – Srebrenica “corridor”.”⁵¹⁷⁷

1699. On 2 August, a conversation was intercepted between Krstić and **Popović**. **Popović** informed Krstić that **Beara** had just called and told him that he had come back “from there” that morning. **Popović** further told Krstić that **Beara** had “said he reported to Miletić” and “[t]here are about 500-600 of them over there”.⁵¹⁷⁸ The Trial Chamber considers this intercept as evidence that **Miletić** was kept fully informed on the situation of the Bosnian Muslim men fleeing from Žepa and that **Miletić** was the person to whom information about this issue was reported.

⁵¹⁷² Ex. P01166a, “Intercept 14 July 1995, 22:27 hours”, p. 2.

⁵¹⁷³ PW-111, T. 7012 (7 Feb 2007).

⁵¹⁷⁴ Ex. P03024, “VRS Main Staff situation report, type-signed Miletić, 31 July 1995”, p. 4.

⁵¹⁷⁵ *Ibid.*

⁵¹⁷⁶ Ex. P03036, “Document to VRS Main Staff, Miletić, Krstić, and Drina Corps concerning movement of enemy groups in the Žepa enclave, type-signed Zoran Carkić, 1 August 1995”. Carkić reported that “the Muslim forces in Žepa [...] have been broken up into a number of small or large groups which are now trying to break out of the encirclement along various routes”. He specified which directions enemy groups were expected and along which axes Sarajevo had recently suggested a breakthrough by the army. *Ibid.*, p. 2.

⁵¹⁷⁷ *Ibid.*, p. 2.

⁵¹⁷⁸ Ex. P01395c, “Intercept, 2 August 1995, 13:00 hours”.

(e) Findings

1700. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Participation in the Joint Criminal Enterprise to Forcibly Removea. First Category Joint Criminal Enterprisei. Prosecution's Allegations

1701. It is the Prosecution's position that **Miletić** contributed to the JCE to Forcibly Remove by drafting Directive 7 and by taking part in the implementation of the Directive.⁵¹⁷⁹ The Prosecution alleges that **Miletić** played a key role in organising and implementing "the policy set out in Directive 7 to restrict humanitarian aid to the Muslim populations of Srebrenica and Žepa" by signing convoy approval notifications to subordinate units, which allegedly included detailed instructions and carried the force of orders.⁵¹⁸⁰

1702. The Prosecution also submits that **Miletić** contributed to the JCE to Forcibly Remove by monitoring the state of the Muslim forces and their surrender, and the activities of the VRS units in the enclaves.⁵¹⁸¹ Additionally, **Miletić** acted in furtherance of the JCE by monitoring the transfer of the civilian population, and the VRS' efforts to search and clear Žepa of remaining Bosnian Muslims.⁵¹⁸² **Miletić** was allegedly also "kept informed of the flight of the Bosnian Muslim men from Žepa to Serbia".⁵¹⁸³ According to the Prosecution, **Miletić** passed all information he gained to Mladić, Karadžić, and others.⁵¹⁸⁴ Allegedly, **Miletić**'s acts constituted crucial components of and contributions to the JCE to Forcibly Remove the Bosnian Muslim population from the enclaves. His knowledge, as transferred to Mladić, Karadžić, and other members of the JCE, allowed them to make informed decisions in carrying out the operation and policy to forcibly remove the Bosnian Muslims from the enclaves.⁵¹⁸⁵

1703. The Trial Chamber has already found there was a JCE with a common purpose to forcibly remove the civilian population from the Srebrenica and Žepa enclaves, and that in accordance with

⁵¹⁷⁹ Indictment, paras. 75(a)(i)–75(a)(ii); Prosecution Final Brief, paras. 1663, 1669–1685.

⁵¹⁸⁰ Indictment, para. 75(a)(ii); Prosecution Final Brief, paras. 219, 222, 1680.

⁵¹⁸¹ Indictment, paras. 75(b)(i)–75(b)(iii).

⁵¹⁸² *Ibid.*, paras. 75(c)(i)–75(c)(ii).

⁵¹⁸³ *Ibid.*, para. 75(c)(iii).

⁵¹⁸⁴ *Ibid.*, paras. 75(b)(i)–75(b)(iii), 75(c)(i)–75(c)(ii).

⁵¹⁸⁵ Prosecution Final Brief, para. 1687.

this plan thousands of Bosnian Muslim civilians were forcibly removed from the enclaves in July and August 1995.⁵¹⁸⁶ It further found that the plan to forcibly remove the civilian population from the Srebrenica and Žepa enclaves was set out in Directive 7.⁵¹⁸⁷

ii. Drafting of Directives

1704. The Trial Chamber has already found that **Miletić** drafted Directive 7 and that he relied on his broad knowledge of the larger political and military context of the conflict and the goals and strategies of RS, in the process. The Trial Chamber also found **Miletić** was well-acquainted with the Directive's final text, including the incriminatory parts.⁵¹⁸⁸ **Miletić** not only drafted the Directive, but also kept a copy in his "strong box" at the Main Staff.⁵¹⁸⁹ **Miletić** furthermore drafted Directive 7/1, a final copy of which was also available at the Main Staff.⁵¹⁹⁰ The Trial Chamber is therefore convinced that from the early stages **Miletić** had full knowledge of the common plan to forcibly remove the Bosnian Muslim civilian population from the Srebrenica and Žepa enclaves as set out in Directive 7.

1705. In Directive 7, **Miletić** elaborated the role of the VRS in implementing its strategic objectives. The Directive was addressed, and through the Main Staff sent, to all the Corps. Thus, regardless of whether he physically drafted the Directive or inserted the words in the criminal parts,⁵¹⁹¹ by his central role in the drafting process, **Miletić** provided the addressees with an overview of the political leadership's broader vision, upon the authority of the Supreme Commander. This also included the goals for the Srebrenica and Žepa enclaves and how these were to be achieved. In other words, **Miletić** informed the addressees of the plan. The Trial Chamber is satisfied that in doing so, **Miletić** contributed to the JCE to Forcibly Remove.

1706. Main Staff Directive 7/1 was a continuation of the policy and goals set out in Directive 7, regardless of whether it repeated the criminal language of Directive 7.⁵¹⁹² Directive 7/1, referring to Directive 7, elaborated on and specified the operations regarding the Srebrenica and Žepa enclaves, which operations were to include, to **Miletić**'s knowledge, the unlawful removal of its Bosnian Muslim inhabitants. Therefore, by drafting this Directive, **Miletić** made a further contribution to the plan to remove the Bosnian Muslims from the enclaves.

⁵¹⁸⁶ See *supra*, Chapter V, Section B.2; Chapter IV, Section G.2.

⁵¹⁸⁷ See *supra*, paras. 1085–1086.

⁵¹⁸⁸ See *supra*, para. 1653.

⁵¹⁸⁹ See *supra*, para. 200.

⁵¹⁹⁰ See *supra*, para. 1654.

⁵¹⁹¹ See *supra*, paras. 199, 762, 1651.

⁵¹⁹² See *supra*, paras. 763–765.

iii. Restriction of Humanitarian Aid and UNPROFOR Re-Supply

1707. As one of the means to achieve the goal to forcibly remove the civilian population, Directive 7 provided that logistical support to UNPROFOR and supply of material resources for the Muslim population in the enclaves be reduced and limited “through the planned and unobtrusively restrictive issuing of permits”.⁵¹⁹³ The Trial Chamber has already found that the VRS deliberately restricted humanitarian aid to the enclaves and resupply of UNPROFOR in implementation of the plan set out in Directive 7, thereby creating a very dire situation for the Bosnian Muslim population in the enclaves and incapacitating UNPROFOR.⁵¹⁹⁴

1708. The Trial Chamber recalls that on a few days in April, **Miletić** initialled UNPROFOR convoy requests, indicating approval or denial.⁵¹⁹⁵ **Miletić** furthermore signed a significant amount of notifications to UNPROFOR and to subordinate units between January and July 1995, which included instructions on approved convoys as well as, occasionally, items that were denied.⁵¹⁹⁶ The notifications were of a mandatory nature—without prior notification no convoy was allowed passage—which was known to **Miletić**.⁵¹⁹⁷

1709. The Trial Chamber has found that over the period of March to July 1995, particularly in the latter stages, the instruction in Directive 7 to “reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population” “through the planned and unobtrusively restrictive issuing of permits”,⁵¹⁹⁸ was implemented.⁵¹⁹⁹ The Trial Chamber is satisfied that the relevant authorities, including those in the VRS, gradually restricted humanitarian aid to the population and denied UNPROFOR supplies and personnel. As described previously, the processes in place for convoy approvals for humanitarian organisations and UNPROFOR were complex and implicated various civilian and military authorities and personnel.⁵²⁰⁰ From the evidence before it as described above, the Trial Chamber is satisfied that **Miletić** was one of the authorities who had a role in the convoy approval and notification procedure. Further, the Trial Chamber finds that **Miletić**, through his involvement in this process, implemented the instructions of Directive 7 regarding humanitarian aid and UNPROFOR with full knowledge as to the overall aim of these restrictions. By example, the Trial Chamber notes two notifications signed by **Miletić** and sent just prior to the start of the military attack on Srebrenica,

⁵¹⁹³ See *supra*, paras. 199, 766.

⁵¹⁹⁴ See *supra*, para. 767.

⁵¹⁹⁵ See *supra*, para. 1657.

⁵¹⁹⁶ See *supra*, para. 1660.

⁵¹⁹⁷ See *supra*, paras. 214–215, 227, 222.

⁵¹⁹⁸ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, para. 6.1.

⁵¹⁹⁹ See *supra*, para. 767.

⁵²⁰⁰ See *supra*, Chapter III, Sections C.4.(a)–(c).

which notified the subordinate units that the departure of certain UNPROFOR personnel was approved, whereas their return was not approved.⁵²⁰¹

1710. On this basis the Trial Chamber finds that **Miletić**'s involvement in, and use of the convoy approval and notification procedure to create the conditions for forcible transfer, constituted an additional contribution to the common purpose of the JCE.

iv. Monitoring and Coordination

1711. As Chief of Operations and Training and, at the time relevant to the Indictment, taking over certain tasks from Milovanović, **Miletić** played an essential role at the Main Staff before, during, and after the attack on Srebrenica and Žepa. The Trial Chamber will however not assess **Miletić**'s criminal liability on the basis of his title, but based on the actions he carried out in this capacity.

1712. The Trial Chamber is convinced that considering the scale and scope of the military attack and the operations to forcibly remove the Bosnian Muslim civilian population from the Srebrenica and Žepa enclaves, coordination from the Main Staff level was essential. **Miletić**, with his in-depth knowledge of the strategies and goals of the VRS, was at the centre of this coordination.

1713. **Miletić** received and read all reports from the Corps and the 65th Protection Regiment.⁵²⁰² He was in direct contact with the forces in the field. He was kept abreast of all developments in the field and the implementation of Mladić's orders, and more specifically of the progress of the operation.⁵²⁰³ The Trial Chamber is satisfied that **Miletić** forwarded the knowledge he gained to Mladić, Karadžić and others, and that this enabled them to take informed decisions.

1714. During the Main Staff morning briefings, **Miletić** updated Mladić and the present Assistant Commanders. He furthermore kept the President of RS informed through daily Main Staff reports.⁵²⁰⁴ The updates **Miletić** provided were comprehensive and included details on the situation at the front, the transportation of the civilian population out of Srebrenica and Žepa, and the taking of POWs.⁵²⁰⁵ Based on the information provided by **Miletić**, the Assistant Commanders and Chiefs of Administrations would study the issues pointed out and provide proposals to Mladić in their

⁵²⁰¹ Ex. P02556, "VRS Main Staff Notification re UNPROFOR convoys to the Drina Corps, signed by Miletić, 3 July 1995"; Ex. P02558, "VRS Main Staff notification re UNPROFOR convoys to Military Posts 7598 and 7111, 5 July 1995 signed by Miletić".

⁵²⁰² See *supra*, paras. 1625, 1635–1636, 1639.

⁵²⁰³ *Ibid.*

⁵²⁰⁴ See *supra*, paras. 1635, 1638.

⁵²⁰⁵ See *supra*, para. 1638. See also *supra*, Chapter V, Section B.7.(d)(iii).

respective fields of expertise.⁵²⁰⁶ Because of his comprehensive knowledge, **Miletić** was a key advisor to Milovanović, and in the latter's absence, **Miletić** advised Mladić directly.⁵²⁰⁷ At the same time, **Miletić** was the person responsible for forwarding Mladić's decision and orders to the relevant units and thereby he ensured the flow of information from the Main Staff to the subordinate units. **Miletić** was the "soul of the Main Staff of the VRS",⁵²⁰⁸ and the person "best informed on the situation in various theatres of the war".⁵²⁰⁹

1715. Based on the evidence adduced, the Trial Chamber is satisfied that in the exercise of his functions, **Miletić** had an important impact on the functioning and operation of the Main Staff and the VRS as a whole. The Trial Chamber is convinced that **Miletić** had full knowledge of the situation in the Srebrenica and Žepa enclaves before, during, and after the attack. The Trial Chamber accepts that **Miletić** was away from the Main Staff during the heart of the attack on the Srebrenica enclave. However, considering the evidence cumulatively, the Trial Chamber finds that this does not diminish his coordinating role throughout the implementation of the plan—from March through August—to unlawfully remove the Bosnian Muslims from the enclaves. The Trial Chamber is satisfied that through these acts, **Miletić** contributed again to the forcible transfer of the Bosnian Muslims from the Srebrenica and Žepa enclaves.

v. Conclusion

1716. The evidence before the Trial Chamber establishes beyond reasonable doubt that from inception, through implementation to fruition, **Miletić** played a pivotal role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa. **Miletić** made continuous contributions at all stages. He drafted Directive 7, which set out the common plan. He participated in the processes by which the enclaves were incrementally deprived of sufficient humanitarian aid and through which the supplies and the forces of DutchBat were depleted, creating an untenable situation for the population and incapacitating UNPROFOR.⁵²¹⁰ Furthermore, **Miletić** was at the heart of the Main Staff and served as a "hub" for information. He played the key role in receiving and distributing information from and to the relevant actors, both superior and subordinate including the RS President. Thus, in the lead up to the attack on Srebrenica,⁵²¹¹ on critical days when the population was physically moved from there, and during the Žepa campaign, **Miletić** skilfully and efficiently

⁵²⁰⁶ See *supra*, para. 1637.

⁵²⁰⁷ See *supra*, paras. 1625, 1627–1628, 1630, 1636–1637.

⁵²⁰⁸ Manojlo Milovanović, T. 12309 (31 May 2007).

⁵²⁰⁹ *Ibid.*, T. 12311 (31 May 2007).

⁵²¹⁰ See *supra*, Chapter III, Section C.5.

⁵²¹¹ The Trial Chamber notes **Miletić**'s absence from the Main Staff from 7 to 11 July 1995. However, the Trial Chamber is satisfied that this does not affect its finding on **Miletić**'s overall role.

used his unique position of knowledge to inform and advise. Through this function he enabled the decisions taken to successfully implement the plan, resulting in the forced removal of thousands of Bosnian Muslims from the enclaves. Considering all the individual acts and contributions cumulatively, the Trial Chamber finds that **Miletić** made a significant contribution to the common plan.

1717. With knowledge of the plan, **Miletić** carried out his tasks in relation to the JCE to Forcibly Remove efficiently and effectively and during different phases of the plan. The Trial Chamber is of the view that the only reasonable inference from this and all the evidence before it is that **Miletić** shared the common intent of the JCE.

1718. In conclusion, the Trial Chamber finds that **Miletić** participated in the JCE to Forcibly Remove the Bosnian Muslim civilians from the Srebrenica and Žepa enclaves, that cumulatively his acts amount to a significant contribution, and that he shared the common criminal intent with the other members of the JCE.

(ii) The Knowledge Requirement for a Crime under Article 5 of the Statute

1719. **Miletić** is responsible for a crime against humanity under Article 5 of the Statute if his acts were part of the widespread and systematic attack against the civilian population and if at the time he knew of that attack and that his crimes comprised a part thereof.⁵²¹² As already outlined, **Miletić** was well familiar with the attack on the civilian population in the enclaves from its inception and he had a broad overview of it so as to be fully aware of its widespread and systematic nature.⁵²¹³ Further, **Miletić**'s acts, which constituted a contribution to the JCE, were clearly tied to the attack and were such in nature that **Miletić** could not but know that they contributed to and formed part of that attack on a civilian population. Therefore, the Trial Chamber concludes that **Miletić** knew of the widespread and systematic attack against the civilian populations of Srebrenica and Žepa and he further knew that his acts formed part of that attack. As such, the Trial Chamber finds that **Miletić** meets the knowledge requirement for commission of a crime under Article 5 of the Statute.

⁵²¹² See *supra*, paras. 751, 757–758.

⁵²¹³ As set out in Chapter IV, Section B.2.(b), the attack started with Directive 7 and comprised several elements, *inter alia*, restrictions of humanitarian aid and re-supply of UNPROFOR, the military attack on the enclaves, and the busing out of the civilians from Potočari and Žepa. As elaborated above, **Miletić** had full knowledge of these elements: he drafted Directive 7, he was the focal point at the Main Staff for any information concerning the attack on Srebrenica and Žepa and monitored the busing out of the civilian population from the enclaves. See *supra*, paras. 1649, 1661–1699.

(iii) Count 7: Inhumane Acts (Forcible Transfer)

1720. The Trial Chamber has already found that thousands of Bosnian Muslims were forcibly transferred from Srebrenica and Žepa.⁵²¹⁴ The Trial Chamber has also found that the forcible transfer amounts to “other inhumane acts” and constitutes a crime against humanity.⁵²¹⁵

1721. **Miletić** was an active participant in the JCE to Forcibly Remove and meets the knowledge requirement for crime against humanity.⁵²¹⁶ The Trial Chamber finds that, through his participation in the JCE to Forcibly Remove, **Miletić** committed forcible transfer, an inhumane act, as a crime against humanity punishable under Article 5(i) of the Statute.

1722. The Trial Chamber further finds that **Miletić** planned forcible transfer with regard to the Bosnian Muslims from Srebrenica and Žepa. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of inhumane acts (forcible transfer) through his participation in the JCE to Forcibly Remove.

(iv) Count 8: Deportation

1723. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute the crime of deportation. **Miletić** can thus not be held responsible for deportation as a crime against humanity. Accordingly, the Trial Chamber finds **Miletić** not guilty of the crime of deportation.

(v) Counts 4 and 5: Murder

1724. The Prosecution alleges that pursuant to the third category of liability through participation in the JCE to Forcibly Remove, it was foreseeable to **Miletić** that certain individual “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Forcibly Remove.⁵²¹⁷

1725. The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.⁵²¹⁸ The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.⁵²¹⁹ The Trial Chamber has found that these “opportunistic” killings constitute murder both as a crime against humanity and a violation of the laws and customs of war.⁵²²⁰ The Trial

⁵²¹⁴ See *supra*, paras. 936, 962. But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–20.

⁵²¹⁵ See *supra*, paras. 937, 962.

⁵²¹⁶ See *supra*, para. 1719.

⁵²¹⁷ Indictment, paras. 31, 48, 83.

⁵²¹⁸ See *supra*, paras. 359, 361, 455, 457, 463, 497.

⁵²¹⁹ See *supra*, para. 449; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

⁵²²⁰ See *supra*, para. 796.

Chamber has also found, by majority, Judge Kwon dissenting, that the “opportunistic” killings in Potočari were a natural and foreseeable consequence of the JCE to Forcibly Remove.⁵²²¹

1726. The Trial Chamber recalls its finding that **Miletić** was an active participant in the JCE to Forcibly Remove.⁵²²² **Miletić** was one of the most knowledgeable persons in the Main Staff when it came to the VRS operations and that included this operation to forcibly remove. He also held a key coordinating role. The Trial Chamber, by majority, Judge Kwon dissenting, finds that as a result of **Miletić**’s level of involvement, his broad overview of this massive scale operation, and knowledge of events as described above, he—probably above everyone—was in a position to foresee that this large scale forced movement of the population would result in “opportunistic” killings in Potočari.

1727. Therefore, the Trial Chamber, by majority, Judge Kwon dissenting, is convinced beyond reasonable doubt that it was foreseeable to **Miletić** that “opportunistic” killings would be perpetrated in Potočari by members of the VRS in the course of the forcible transfer operation, and that by participating in the JCE, he willingly took this risk. **Miletić** also meets the knowledge requirement for crimes against humanity.⁵²²³ As such, the Trial Chamber, by majority, Judge Kwon dissenting, concludes that **Miletić** is criminally responsible for murder as a crime against humanity pursuant to third category JCE.⁵²²⁴ The Trial Chamber notes that **Miletić** is also charged with murder as a war crime. The Trial Chamber however considers that in the circumstances of “opportunistic” killings arising from a JCE to Forcibly Remove—encompassing forcible transfer as other inhumane acts constituting a crime against humanity—his criminal responsibility is for murder as a crime against humanity and not as a war crime.

(vi) Count 6: Persecution

1728. The Trial Chamber has found that persecution was committed, *inter alia*, through the forcible transfer of thousands of Bosnian Muslims from Srebrenica and Žepa, cruel and inhumane treatment, and terrorising Bosnian Muslim civilians, and that these acts amount to crimes against humanity.⁵²²⁵ The Trial Chamber has also found that these acts formed an intrinsic part of the common plan to forcibly remove the Bosnian Muslim population from the enclaves.⁵²²⁶

1729. The Trial Chamber has already found that **Miletić** shared the common purpose and was an active member of the JCE to Forcibly Remove. The Trial Chamber has also found that **Miletić**

⁵²²¹ See *supra*, para. 1088; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–26.

⁵²²² See *supra*, paras. 1716–1718.

⁵²²³ See *supra*, para. 1719.

⁵²²⁴ See Judge Kwon’s Dissenting Opinion, *infra*, paras. 27–28.

⁵²²⁵ See *supra*, paras. 994–995, 998–999, 1002–1003.

⁵²²⁶ See *supra*, paras. 1086–1087.

committed forcible transfer through his participation in the JCE to Forcibly Remove. However, in order to be criminally responsible for persecution, **Miletić** needs to have acted with the specific intent to discriminate on political, racial or religious grounds.⁵²²⁷ The Trial Chamber is satisfied that **Miletić** possessed such specific intent with reference to forcible transfer. The operation to remove the populations from Srebrenica and Žepa was specifically directed at the Bosnian Muslim population. This was clearly set out in the plan as laid down in Directive 7. As found above, **Miletić** had full knowledge of this Directive, the plan it encompassed and who was targeted. Based on this and all other evidence before it, the Trial Chamber finds that **Miletić** carried out his acts relating to forcible transfer with the specific intent to discriminate on political, racial or religious grounds.

1730. The Trial Chamber also finds that through his participation in the JCE to Forcibly Remove, **Miletić** committed acts of cruel and inhumane treatment and terrorising civilians. As set out above, the crimes agreed in the common plan were specifically directed at the Bosnian Muslim population of the enclaves. As such, the Trial Chamber is satisfied that **Miletić** possessed the required persecutory intent in relation to the cruel and inhumane treatment and terrorising civilians.

1731. The Trial Chamber has already found that **Miletić** meets the knowledge requirement for crimes against humanity. The Trial Chamber accordingly finds that **Miletić** planned and committed, through participation in the JCE to Forcibly Remove, persecution through forcible transfer, cruel and inhumane treatment, and terrorising Bosnian Muslim civilians. However, the Trial Chamber is of the view that his conduct is most appropriately described as committing persecution through the underlying acts of forcible transfer, cruel and inhumane treatment, and terrorising civilians, committed through his participation in the JCE to Forcibly Remove with persecutory intent. As the Trial Chamber has assessed the charges against **Miletić** of persecution, other than through “opportunistic” killings, pursuant to first category JCE liability,⁵²²⁸ it is not necessary to address these acts in relation to the third category of JCE.

1732. The Trial Chamber will now address persecution through “opportunistic” killings. As there is no evidence **Miletić** planned, instigated, or ordered persecution through “opportunistic” killings, the Trial Chamber will consider whether **Miletić** can be found criminally responsible for these acts pursuant to third category JCE.

1733. At the outset, the Trial Chamber holds that for an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the accused need not have the specific

⁵²²⁷ See *supra*, paras. 964, 968–969.

⁵²²⁸ See *supra*, paras. 1728–1730.

intent for the extended crime.⁵²²⁹ What the Prosecution needs to establish is that it was reasonably foreseeable to the accused that the extended crime would be committed and that it would be committed with the required specific intent.⁵²³⁰

1734. The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.⁵²³¹ The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.⁵²³² The Trial Chamber has found that these “opportunistic” killings constitute persecution as a crime against humanity.⁵²³³ The Trial Chamber has also found, by majority, Judge Kwon dissenting, that the “opportunistic” killings in Potočari were a natural and foreseeable consequence of the JCE to Forcibly Remove.⁵²³⁴

1735. The Trial Chamber, by majority, Judge Kwon dissenting, has already found that it was foreseeable to **Miletić** that “opportunistic” killings would be perpetrated in Potočari by members of the VRS in the course of the forcible transfer operation and that he willingly took this risk.⁵²³⁵ The Trial Chamber, by majority, Judge Kwon dissenting, is further satisfied that it was foreseeable to **Miletić** that these would be carried out with persecutory intent. By participating in the JCE, **Miletić** willingly took this risk. The Trial Chamber has already found that **Miletić** meets the knowledge requirement for crimes against humanity. Therefore, the Trial Chamber finds by majority, Judge Kwon dissenting,⁵²³⁶ that **Miletić** is responsible for persecution through “opportunistic” killings as a crime against humanity pursuant to third category JCE.

⁵²²⁹ See *supra*, para. 1031.

⁵²³⁰ See *supra*, paras. 1030–1031.

⁵²³¹ See *supra*, paras. 359, 361, 455, 457, 463, 497.

⁵²³² See *supra*, para. 449; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

⁵²³³ See *supra*, para. 991.

⁵²³⁴ See *supra*, paras. 1088; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–26.

⁵²³⁵ See *supra*, para. 1727; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–26.

⁵²³⁶ See Judge Kwon’s Dissenting Opinion, *infra*, paras. 27–28.

8. Milan Gvero

(a) The Case against Gvero

1736. The Prosecution alleges that **Milan Gvero** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of murder, persecution, inhumane acts (forcible transfer), and deportation.⁵²³⁷ Specifically, the Prosecution alleges that **Gvero** was a member of a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).⁵²³⁸

1737. The Prosecution alleges that **Gvero** assisted in the attack on Srebrenica knowing that one of its main objectives was to force the Muslim population to leave the enclave.⁵²³⁹ As the person responsible within the VRS Main Staff for propaganda, self-protection and co-operation with UNPROFOR, he released false statements concerning the attacks on the enclaves to the media, the international organisations and the public, in order to assist in the take-over of Srebrenica enclave;⁵²⁴⁰ and he kept Karadžić informed about his communication with the international forces.⁵²⁴¹

1738. It is further alleged that **Gvero** acted to prevent and control outside international protection of the enclaves by denying access to international organisations and providing assistance in restricting the supplies and humanitarian aid convoys to the population of Srebrenica and Žepa.⁵²⁴² He threatened and pressured UNPROFOR in order to stop air strikes during the operation.⁵²⁴³

1739. The Prosecution alleges that **Gvero** actively participated in and exercised control over the movement of people out of the enclaves by organising and coordinating the capture and detention of Muslim men from Srebrenica and by facilitating the movement of wounded Muslims from the enclave.⁵²⁴⁴

⁵²³⁷ Indictment, paras. 46–47, 48, 49–71, 76, 83, 84, 88. **Gvero** is charged under Counts 4 and 5 with murder, as both a crime against humanity punishable under Article 5(a) of the Statute and a violation of the laws or customs of war punishable under Article 3 of the Statute; under Count 6 with persecutions, a crime against humanity punishable under Article 5(h) of the Statute; under Count 7 with inhumane acts (forcible transfer), as a crime against humanity punishable under Article 5(i); and finally under Count 8 with deportation as a crime against humanity punishable under Article 5(d) of the Statute.

⁵²³⁸ Indictment, para. 76.

⁵²³⁹ *Ibid.*, paras. 76(a)(ii), 76(b)(i); Prosecution Final Brief, paras. 1770–1777.

⁵²⁴⁰ Indictment, paras. 76(a)(i), 76(b)(i); Prosecution Final Brief, paras. 1778–1780.

⁵²⁴¹ Indictment, para. 76(b)(ii); Prosecution Final Brief, para. 1789.

⁵²⁴² Indictment, para. 76(c)(ii); Prosecution Final Brief, paras. 1765–1769.

⁵²⁴³ Indictment, para. 76(c)(i); Prosecution Final Brief, paras. 1781–1793.

⁵²⁴⁴ Indictment, paras. 76(d)(i) and (ii); Prosecution Final Brief, paras. 1794–1816.

(b) Preliminary Issues

1740. **Gvero** submits that during the course of this trial, the evidence presented in relation to his alleged role in Žepa has changed and expanded the case against him to a significant degree. As a result, the Prosecution has greatly expanded the ambit of its allegations.⁵²⁴⁵

1741. The Trial Chamber recalls its “Decision on Prosecution Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal”, 8 May 2009 (“Decision”), which admitted evidence concerning **Gvero**’s presence in Žepa during the time relevant to the Indictment, stating that “this piece of evidence does not expand the charges against **Gvero**” as he is already charged with, *inter alia*, being a member of the JCE to Forcibly Remove as alleged in the Indictment.⁵²⁴⁶ On 15 May 2009, **Gvero** requested the Trial Chamber to grant certification to appeal the Decision;⁵²⁴⁷ but this was denied.⁵²⁴⁸ Consequently, the Trial Chamber finds the issue of **Gvero**’s alleged expanded role in Žepa has already been considered and dismisses **Gvero**’s argument.

1742. **Gvero** also contends that the allegation of his role in restricting UN humanitarian aid to Srebrenica and Žepa is not properly pleaded and that he therefore was not put on notice of it.⁵²⁴⁹

1743. The Trial Chamber finds that this allegation falls within the frame of **Gvero**’s charges as set forth in the Indictment, particularly “[p]reventing and controlling outside international protection of the enclaves, including air strikes and international monitoring.”⁵²⁵⁰ The Trial Chamber further notes that **Gvero**’s relationship with UNPROFOR and his assistance in the restriction of humanitarian aid was addressed in the Prosecution Pre-Trial Brief.⁵²⁵¹ Therefore, **Gvero** was put on notice of this allegation. Accordingly, the Trial Chamber dismisses **Gvero**’s argument.

1744. **Gvero** further contends that his purported knowledge of and steps towards implementing the Strategic Goals and Directive 4 prior to 8 March 1995 constitute an example of “prejudicial surprise”, since these allegations are absent from the Indictment, the Prosecution’s Pre-Trial Brief and Opening Statements. **Gvero** submits that these matters should only be considered relevant for

⁵²⁴⁵ Gvero Final Brief, para. 399.

⁵²⁴⁶ Decision, para. 78. *See also* Indictment, para. 76.

⁵²⁴⁷ *See* Motion on Behalf of Milan Gvero Seeking Certification to Appeal the Decision on the Prosecution’s Second Motion to Reopen its Case, 15 May 2009.

⁵²⁴⁸ *See* Decision on Gvero Motion Seeking Certification to Appeal the Decision on the Prosecution’s Second Motion to Reopen its Case, 3 June 2009.

⁵²⁴⁹ Gvero Closing Arguments, T. 34702 (11 Sept 2009).

⁵²⁵⁰ Indictment, para. 76(c).

⁵²⁵¹ Prosecution Pre-Trial Brief, para. 279.

background and context to the allegations in the Indictment, as they fall outside its temporal scope.⁵²⁵²

1745. The Trial Chamber concurs with the jurisprudence of this Tribunal, according to which the Prosecution is under an obligation to state the material facts underpinning the charges in the Indictment, while no such requirement exists for the evidence proffered to prove such facts.⁵²⁵³ In determining whether material facts have been pleaded, the Indictment must be read in its entirety.⁵²⁵⁴ **Gvero** is charged with being a member of a JCE to Forcibly Remove the Muslim population from Srebrenica and Žepa, from about 8 March 1995 through the end of August 1995.⁵²⁵⁵ The common purpose is a material fact concerning the existence of a JCE and, as such, must be pleaded in the Indictment.⁵²⁵⁶

1746. In the present case, the common purpose of the JCE was clearly set out in paragraph 49 of the Indictment. The existence of the Strategic Goals and Directive 4, of 1992, constitutes evidence relevant to the alleged JCE and to the Accused's knowledge of its common purpose. As such, it did not need to be pleaded.⁵²⁵⁷

(c) Position and Function

(i) Role of the Assistant Commander for Morale, Legal and Religious Affairs

1747. During the time relevant to the Indictment, **Milan Gvero** was the Assistant Commander for Morale, Legal and Religious Affairs of the Main Staff of the VRS ("Assistant Commander for Morale").⁵²⁵⁸ **Gvero** held this position from April 1992 throughout the war.⁵²⁵⁹ He was directly subordinated to the Commander of the VRS Main Staff, **Mladić**.⁵²⁶⁰ The Sector for Morale, Legal and Religious Affairs ("Sector for Morale") was based in Han Pijesak; however, **Gvero** was

⁵²⁵² Gvero Closing Arguments, T. 34702–34703 (11 Sept 2009).

⁵²⁵³ *Stakić* Appeal Judgement, para. 116. *See also Kupreškić* Appeal Judgement, para. 88 (stating that "the question whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence").

⁵²⁵⁴ *Stakić* Appeal Judgement, para. 117. *See also Kupreškić* Appeal Judgement, para. 89 (stating that "the materiality of a particular fact cannot be decided in the abstract. It is dependent on the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused").

⁵²⁵⁵ Indictment, paras. 49, 76.

⁵²⁵⁶ *See Stakić* Appeal Judgement, para. 118; *Kvočka* Appeal Judgement, para. 42.

⁵²⁵⁷ *See further discussion, supra*, paras. 1607–1609.

⁵²⁵⁸ Manojlo Milovanović, T. 12242 (30 May 2007); Božo Momčilo, T. 14081, 14087 (22 Aug 2007). **Gvero** was appointed Assistant Commander for Morale, Legal and Religious Affairs on 25 April 1992. Ex. P02739, "Information regarding appointments of Mladić and Gvero by Decree of 25 April 1992", p. 1.

⁵²⁵⁹ Gvero Opening Statement, T. 615 (23 Aug 2006); Ex. P02739, "Information regarding appointments of Mladić and Gvero by Decree of 25 April 1992".

⁵²⁶⁰ Manojlo Milovanović, T. 12152–12154 (29 May 2007), T. 12304–12305 (31 May 2007); Novica Simić, T. 28593 (21 Nov 2008).

travelling on a regular basis to Crna Rijeka, where the VRS Main Staff headquarters was located.⁵²⁶¹

1748. In terms of authority, generally assistant commanders had input in the decision-making process within the VRS Main Staff by presenting proposals, positions or opinions; however, they were not able to issue combat orders to subordinate units, unless authorised by Mladić.⁵²⁶² As the Assistant Commander for Morale, **Gvero** only had the authority to issue executive orders within the purview of his Sector.⁵²⁶³

1749. The Prosecution alleges that **Gvero** was “controlling the Main Staff Information Centre” headed by Milovan Milutinović.⁵²⁶⁴ **Gvero** contends that the Prosecution has erroneously conflated the “Morale Sector’s sub-department for Information and Political Propaganda Activities” overseen by **Gvero** and the “VRS Main Staff Information Centre” headed by Milutinović and falling directly under Mladić’s authority. **Gvero** argues these were two separate organs.⁵²⁶⁵ In light of all the evidence presented, the Trial Chamber is satisfied that the Sector for Morale had a sub-department for information and political propaganda activities (“Centre for Information and Propaganda”) that was headed by Milovan Milutinović.⁵²⁶⁶

⁵²⁶¹ Bogdan Sladojević, T. 14404 (27 Aug 2007); Nedeljko Trkulja, T. 15082-15085 (10 Sept 2007).

⁵²⁶² Manojlo Milovanović, T. 12242-12243, 12249 (30 May 2007), T. 12304 (31 May 2007); Nedeljko Trkulja, T. 15141 (10 Sept 2007). *See also* Novica Simić, T. 28593, 28596-28599 (21 Nov 2008). *See also supra*, para. 107.

⁵²⁶³ Novica Simić, T. 28598-28599 (21 Nov 2008). Simić testified that the Sector for Morale had five to six staff. *Ibid.* Manojlo Milovanović, T. 12242-12243, 12249 (30 May 2007), T. 12304 (31 May 2007). Several witnesses testified that **Gvero** was never in command of any military unit and he did not have any say in how units were used by the Main Staff. Nedeljko Trkulja, T. 15141-15142 (10 Sept 2007); Slavko Čulić, T. 33875 (2 July 2009); Petar Skrbicić, T. 15638 (19 Sept 2007).

⁵²⁶⁴ Prosecution Final Brief, para. 1750.

⁵²⁶⁵ Gvero Closing Arguments, T. 34730-34731 (11 Sept 2009).

⁵²⁶⁶ Slobodan Kosovac, T. 30386-30387 (20 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, pp. 18-19; Nedeljko Trkulja, T. 15140 (10 Sept 2007). In addition to the testimony heard in support of the conclusion that **Gvero**’s Sector for Morale had a sub-department for information and propaganda activities, several documents support such finding. *See* Ex. P03178, “VRS Main Staff Personnel Employment Records”, pp. 11-12 (listing a centre for information and propaganda activities as a sub-department of **Gvero**’s Sector for Morale, headed by Milovan Milutinović); Ex. P03179, “Report on the state of morale in the VRS to Drina Corps, signed by Gvero, 8 Feb 1993” (in which **Gvero** refers to the “Information and Psychological Propaganda Activities / centre”); Ex. P04154, “Drina Corps Command proposal to the Assistant Commander for Morale, Religious and Legal Affairs, concerning ‘Correctness of informing the public about the carrying out of combat operations’, signed by Živanović, 8 July 1995” (where Živanović is telling **Gvero** to “more immediately engage the Press Center of the Main Staff VRS”); Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995 (referring to the VRS Main Staff “Press Centre”; the Sector for Morale is among the recipients of this order); Ex. P03097, “‘Ninth Circle of Information Hell’, Article by Gvero on book written by Milovan Milutinović, ‘How I Led the Media War’”, pp. 6-7 (in which **Gvero** stated that Milovan Milutinović was the head of the Main Staff “Information Service and Information and Propaganda Centre” since 1992). *See also* Ex. P02788, “Order regarding transportation of loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Tolimir, 15 July 1995” (stating that Milovan Milutinović was the head of the “Centre for Information and Propaganda Activities” of the VRS Main Staff). The Trial Chamber notes there is a certain inconsistency in the terminology used in the aforementioned documents, in relation to the department for information and propaganda falling under **Gvero**’s purview. For reasons of clarity, the Trial Chamber will refer to the “Centre for Information and Propaganda” throughout this Judgement. The Trial Chamber was also presented

1750. **Gvero** was primarily responsible for building up and monitoring the state of morale of the VRS troops, which was an important part of combat readiness.⁵²⁶⁷ It was **Gvero**'s duty to assess the various factors by which morale was affected, in order to make sure that the fighting spirit was kept at a maximum level.⁵²⁶⁸ This involved, *inter alia*, monitoring the situation within units, including the mental and physical stress to which they were exposed, losses of men and equipment, and the influence of such losses on combat morale. Further, it was among **Gvero**'s tasks to participate in the combat decision-making process by proposing moral guidance and psychological security measures to unit commanders, in order to maintain combat morale of units and individuals.⁵²⁶⁹

1751. **Gvero** was also, at times, dispatched to the field to assess the situation in the units and to raise morale. For instance, pursuant to an order from Mladić on 12 May 1995, "in order to ensure a more efficient execution of tasks from directive no 7/1 for 1995 and the realisation of the planned *Spreča-95* and *Plamen-95* operations", three teams composed of VRS Main Staff officers had to be formed and "engaged in providing help, in uniting combat operations and establishing the situation" in the Bratunac Brigade.⁵²⁷⁰ **Gvero** was part of one of these teams tasked, *inter alia*, to "assess the situation in the units engaged pursuant to plan *Plamen-95*, and provide the necessary support to extend the operation".⁵²⁷¹

1752. As the Assistant Commander for Morale, one of **Gvero**'s tasks was the dissemination of information and propaganda for the troops in support of the aims of the war, in the preparation for and during the course of combat operations. This involved analysing the international political

with evidence that may suggest that there was another centre for information falling directly under the Main Staff Commander. See Novica Simić, T. 28585–28586 (20 Nov 2008) (testifying that there was a "centre for information of VRS", which was a separate organ of the VRS Main Staff, directly falling under the Main Staff Commander; and that it was not part of the Sector for Morale). However, when giving such testimony, Simić was being questioned by **Gvero** about Ex. P03178, "VRS Main Staff Personnel Employment Records". As stated above, the Trial Chamber is satisfied—even taking Simić's testimony into account—that Ex. P03178 indicates that the Sector for Morale's sub-department for information and propaganda activities was headed by Milovan Milutinović. Therefore, the Trial Chamber considers this evidence unsupportive of a finding that there was another centre for information and propaganda within the VRS Main Staff; and it is satisfied this evidence does not affect the finding that the Centre for Information and Propaganda headed by Milutinović fell under **Gvero**.

⁵²⁶⁷ Manojlo Milovanović, T. 12245–12246 (30 May 2007); Novica Simić, T. 28591, 28593 (21 Nov 2008). See, e.g., Ex. P03179, "Report on the state of morale in the VRS to Drina Corps, signed by Gvero, 8 February 1993"; Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić".

⁵²⁶⁸ Novica Simić, T. 28699 (24 Nov 2008). See also Ex. P03182, "VRS Main Staff Report, signed by Gvero, 4 August 1995"; Ex. P03184, "Report on the characteristics of the combat situation in the western part of RS, signed by Gvero, 21 September 1995".

⁵²⁶⁹ See Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić", p. 4. See also Ex. P03182, "VRS Main Staff Report, signed by Gvero, 4 August 1995"; Ex. P03184, "Report on the characteristics of the combat situation in the western part of RS, signed by Gvero, 21 September 1995".

⁵²⁷⁰ Ex. 5D00714, "VRS Main Staff order, signed by Mladić, 12 May 1995".

⁵²⁷¹ *Ibid.*, pp. 1–2. See also Slavko Čulić, T. 33865–33868 (2 July 2009) (testifying that on 27 July 1995, **Gvero** went to the headquarters and IKM of the Šipovo Brigade, of which Čulić was the Commander, to monitor the situation within the unit, the level of combat morale, activities, issues to be resolved with the civilian authorities, and other issues of importance for the unit).

context in which the Bosnian Serb political and military leaders were making their decisions.⁵²⁷² Such information would be passed down the chain of command and explained to the soldiers by the respective commanders and assistants for morale at the corps level.⁵²⁷³ For example, in the 2 July *Krivaja-95* combat order, in the section titled “Morale-psychological preparation of the men for the execution of the task”, the Drina Corps Command instructed the brigade commanders to: “[p]ut the emphasis on the boosting [of] combat morale, stressing the success of our units in crushing the enemy offensive during the last month. Point out the significance of dividing and reducing in size the Srebrenica enclave for the safety of Serbian villages and civilians in central Podrinje. Supply the units as well as possible with military equipment for executing this task.”⁵²⁷⁴

1753. In relation to external propaganda, a component of **Gvero**’s role was to remain attuned to the perception of the VRS in the international media.⁵²⁷⁵ Evidence however suggests that, in practice, **Gvero** was limited in what he could actually do in relation to the media, since the media outlets and resources of RS were controlled by the state leadership.⁵²⁷⁶ During the war, there was an

⁵²⁷² Petar Skrbić, T. 15567–15571 (18 Sept 2007); Ex. P04208, “Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić”; Ex. P03097, “‘Ninth Circle of Information Hell’, Article by Gvero on book written by Milovan Milutinović, ‘How I Led the Media War’”, pp. 3–4; Ex. P02764, “Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006”, paras. 2.10–2.11; Slobodan Kosovac, T. 30386–30389 (20 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, pp. 18–19. *See, e.g.*, Ex. P03180, “Article entitled ‘Gvero describes the just struggle waged by the Serbs in Bosnia’, published in Srpska Vojska, 15 July 1993”. Simić testified that he would receive such information concerning the international situation through reports sent from **Gvero**, and then he would include this information in the combat order, “so that soldiers would understand the circumstances within which [they] were acting”. Novica Simić, T. 28695–28698 (24 Nov 2008). *See* Ex. 5D00974, “Order from the East Bosnian Corps Command, 25 March 1995”, pp. 5–6.

⁵²⁷³ Ex. P04208, “Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić” Novica Simić, T. 28697–28698 (24 Nov 2008). *See, e.g.*, Ex. P03179, “Report on the state of morale in the VRS to Drina Corps, signed by Gvero, 8 February 1993”, p. 11; Ex. P03184, “Report on the characteristics of the combat situation in the western part of RS, signed by Gvero, 21 September 1995”; Ex. P03182, “VRS Main Staff Report, signed by Gvero, 4 August 1995”. *See also* Ex. 5D00974, “Order from the East Bosnian Corps Command, 25 March 1995”, pp. 5–6 (stating under “Moral and psychological preparations” that, before the commencement of operations, all members of the participating commands and units were to be informed by the relevant organ at the corps level about “the objective, importance and tasks of the operation”, focusing in particular on the international situation in which the operation was being carried out; the situation on the RS front; the political, economic, and military importance of this area for RS; the forces and resources involved in the operation and the command and control system; and other measures undertaken to motivate and boost the combat morale).

⁵²⁷⁴ Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 8. Other combat orders had a similar section concerning moral and psychological preparation for the execution of tasks. *See, e.g.*, Ex. 1D01294, “Order for active combat operations, sent by the Bratunac Brigade Command to Commands of the 1st, 2nd, 3rd and the 4th Infantry Battalion, signed by Blagojević, 5 July 1995”, p. 6.

⁵²⁷⁵ *See, e.g.*, Ex. 6D00129, “VRS Main Staff document regarding prevention of reprisal and treatment of journalists and representatives of international organisations, 20 June 1992”. *See also* Ex. P03097, “‘Ninth Circle of Information Hell’, Article by Gvero on book written by Milovan Milutinović, ‘How I Led the Media War’”; Ex. P04148, “Drina Corps Command – Request to VRS Main Staff, Morale, Religious and Legal Affairs Section, signed by Živanović, 13 April 1993”.

⁵²⁷⁶ Milomir Savčić, T. 15341 (13 Sept 2007); Petar Skrbić, T. 15555–15556 (18 Sept 2007).

International Press Centre, headed by Karadžić's daughter and based in Pale, which had control over the media.⁵²⁷⁷

1754. **Gvero's** responsibility for legal affairs was mainly administrative.⁵²⁷⁸ **Gvero** also had some responsibility in relation to military courts, the Military Prosecutor's Office and the Military Disciplinary Court.⁵²⁷⁹ Additionally, religious affairs fell within **Gvero's** remit.⁵²⁸⁰

1755. There is evidence indicating that, among **Gvero's** duties was cooperation with international organisations.⁵²⁸¹ In July 1995, **Gvero** had various contacts with UNPROFOR, ICRC and UNHCR, concerning the situation in the Srebrenica enclave, prisoners of war, and the transport of wounded and sick people.⁵²⁸² However, the Trial Chamber finds that maintaining contacts with UNPROFOR and international humanitarian organisations did not fall directly within **Gvero's** responsibilities in his capacity as the Assistant Commander for Morale; rather, it was a higher level function of Mladić and Milovanović, who would specifically authorise **Gvero**, or other generals, to engage in contact

⁵²⁷⁷ Branimir Grulović, T. 23766, 23791–23793 (22 July 2008); Petar Skrbić, T. 15556 (18 Sept 2007); Ex. P03540, "Intercept between Sonja Karadžić and Colonel Stevanović, 5 August 1995, 18.30 hours", p. 2 (recording Sonja Karadžić saying that, pursuant to an order by the President of RS, permits for the passage of journalists could be issued only by the International Press Centre).

⁵²⁷⁸ Manojlo Milovanović, T. 12247 (30 May 2007) (testifying that **Gvero's** role covered deficiencies in the army that were not subject to prosecution, such as violations of discipline amongst the units, to the extent that they were relevant for their morale); Richard Butler, T. 19607 (14 Jan 2008). *See also* Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić", p. 4 (stating, under section 2. c), that among the duties of the Assistant Commander for Morale was "fast and energetic reaction to occurrences of lack of organisation, failure to respect the chain of command, lack of discipline, panic, etc., and taking appropriate measures").

⁵²⁷⁹ Manojlo Milovanović, T. 12246–12247 (30 May 2007). Milovanović testified that from the beginning of the war, military courts were supposed to be under the Ministry of Defence; but they were not, in practice, because the Ministry of Defence was not equipped for that. *See also* Richard Butler, T. 19607 (14 Jan 2008). *See also supra*, para. 108.

⁵²⁸⁰ Manojlo Milovanović, T. 12246–12247 (30 May 2007); Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić", p. 7. *See also* Ex. 6DP02516, VRS Main Staff, Sector for Moral, Religious and Legal Affairs – Celebration of Saint Vid's day - Request for analysis, signed by Gvero, 16 July 1995." **Gvero's** tasks included establishing contacts with religious communities and proposing measures and activities for the celebration of religious holidays. *Ibid.*

⁵²⁸¹ Novica Simić, T. 28606 (21 Nov 2008); Milenko Jevđević, T. 29797 (16 Dec 2008); Petar Skrbić, T. 15568–15571 (18 Sept 2007).

⁵²⁸² *See* Novica Simić, T. 28605–28606 (21 Nov 2008); Cornelis Nicolai, T. 18448 (29 Nov 2007), T. 18550 (30 Nov 2007). *See also, e.g.,* Ex. P02906, "Notes of telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours"; Ex. P02968, "Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours"; Ex. P02907, Notes of telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours"; Ex. P02947, "UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995", p. 1; Ex. P04156, "ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995", p. 3; Ex. P04157, "ICRC interview to Deutsche Welle, 20 July 1995"; Ex. P02942, "Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milosević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan"; Ex. P02978, "Notes of a telephone conversation between Nicolai and Marković, 16 July 1995, 15:00 hours".

with such organisations.⁵²⁸³ There were also occasions in which **Gvero** would accompany Mladić or other VRS officers to attend meetings with DutchBat.⁵²⁸⁴

1756. In the absence of Mladić and Milovanović from the VRS Main Staff, the other assistant commanders reported to “the most senior officer” present.⁵²⁸⁵ **Gvero** would at times be the most senior officer present at the VRS Main Staff; and in such circumstances he could—upon authorisation from Mladić—play a role falling outside his normal responsibilities.⁵²⁸⁶ For example, on 13 July 1995, an order type-signed **Gvero** was issued from the VRS Main Staff concerning the prevention of passage of Bosnian Muslims towards Tuzla and Kladanj;⁵²⁸⁷ **Gvero** also received two proposals from Tolimir concerning treatment and accommodation of prisoners of war, and an order from Mladić on the prevention of leakage of military secrets in relation to prisoners of war, addressed to him at the VRS Main Staff.⁵²⁸⁸ On 19 July, Milovanović—VRS Chief of Staff—upon arrival at the VRS Main Staff in Crna Rijeka reported directly to **Gvero**.⁵²⁸⁹ On 25 July 1995, Tolimir sent a document to **Gvero** or **Miletić** at the VRS Main Staff, proposing to request UNPROFOR to send a colonel rather than a general to Žepa.⁵²⁹⁰ This evidence shows **Gvero** acting

⁵²⁸³ Slobodan Kosovac, 30436–30437 (21 Jan 2009); Milomir Savčić, T. 15356 (13 Sept 2007); Manojlo Milovanović, T. 12248 (30 May 2007). See Ex. P02947, “UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995”, p. 1 (stating that “Mladić has appointed General Gvero to be responsible for managing the humanitarian and refugee problem”). See also Ex. P02936, “UNPROFOR Report re Meetings in Sarajevo and Pale, 20 April 1995, 22 April 1995”; Ex. P02950, “UNPROFOR Report re Meeting between Smith and Mladić, 25 August 95”.

⁵²⁸⁴ See Ex. P02936, “UNPROFOR Report re Meetings in Sarajevo and Pale, 20 April 1995, 22 April 1995”; Ex. P02950, “UNPROFOR Report re Meeting between Smith and Mladić, 25 August 95”.

⁵²⁸⁵ Manojlo Milovanović, T. 12305 (30 May 2007). See also *ibid.*, T. 12367–12372 (1 June 2007). See also *supra*, para. 106.

⁵²⁸⁶ Manojlo Milovanović, T. 12203–12205 (29 May 2007), T. 12305 (30 May 2007). Without specifying a timeframe, Trkulja said that as **Gvero** was the oldest in the Main Staff, he would sign orders drafted by **Miletić** on the basis of instructions from the Commander at the Forward Command Post. Nedeljko Trkulja, T. 15098–15101 (10 Sept 2007), T. 15151, 15183–15184 (11 Sept 2007).

⁵²⁸⁷ Ex. P00045, “VRS Main Staff Order to the Drina Corps to prevent the passage of Muslim groups towards Tuzla and Kladanj, type-signed Gvero, 13 July 1995”. Trkulja testified that **Gvero** did not possess the skills and knowledge required to draft a very complex combat order, such as this. Trkulja stated that **Gvero** did not draft “anything remotely similar” to this order and that **Gvero** did not have experience in dealing with such documents. Therefore, **Gvero** was not even in part responsible for this order and someone else could have signed on behalf of him. According to Trkulja, this order would have been drafted by **Miletić**. Nedeljko Trkulja, T. 15150–15154, 15182–15185 (11 Sept 2007). See also Manojlo Milovanović, T. 12371–12372 (1 June 2007) (testifying that the issuing of the combat order in itself would not be in keeping with the law unless Mladić previously authorised **Gvero** to sign the executive order). In the circumstances, the Trial Chamber is satisfied that whether or not drafted by **Gvero**, this order was issued under Mladić’s authority and **Gvero** knew of its content.

⁵²⁸⁸ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995” (this document was addressed to **Gvero** “for his information”); Ex. P00131, “Information regarding accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”; Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995” (this order was addressed, *inter alia*, to the Sector for Morale). In relation to Ex. P00131, Milovanović testified that seemingly, **Gvero** received this document because he was the “most senior general” at the command post on that day. Manojlo Milovanović, T. 12367–12369 (1 June 2007).

⁵²⁸⁹ Manojlo Milovanović, T. 12203–12205 (29 May 2007). Milovanović stated that on that occasion, “as a disciplined soldier” he reported directly to **Gvero** because he was the most senior officer present at the VRS Main Staff. *Ibid.*

⁵²⁹⁰ Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, p. 2. According to Milovanović, the document was addressed “personally to General Gvero or General Miletić”, since Tolimir did not know which of them was at the VRS Main Staff and he was sending the

beyond his normal tasks of Assistant Commander for Morale. The Trial Chamber therefore concludes that **Gvero** was the most senior officer present at the VRS Main Staff headquarters for at least part of 13 July, 19 July and 25 July 1995.

1757. **Gvero** was one of the four founding generals of the VRS; he was the oldest officer in the VRS Main Staff and very well respected.⁵²⁹¹ **Gvero** was considered a “nostalgic of the former Yugoslavia”, an advocate of “brotherhood and unity”. However, **Gvero** had a conflict with Karadžić, which escalated throughout the war.⁵²⁹² Karadžić thought of **Gvero** as a communist and called him “a red plague, the devil of the Main Staff, somebody who was stalling the work of the Main Staff.”⁵²⁹³

(d) Acts and Conduct

(i) Knowledge of Strategic Objectives and Directives

1758. The Strategic Objectives were adopted by the Assembly of the Serbian People in BiH in May 1992.⁵²⁹⁴ The Trial Chamber does not have evidence that **Gvero** was present on that occasion. However, on 2 September 1992, **Gvero** addressed a meeting held in Bijeljina where these “strategic objectives of the war were put forth.”⁵²⁹⁵ The meeting was attended by, *inter alia*, Karadžić,

document to the VRS Main Staff to be handed to whomever the messenger would find. Manojlo Milovanović, T. 12377 (1 June 2007). Jovanović testified he had never seen the document before. He stated the document was possibly addressed to **Gvero** or **Miletić** because they were the only officers present in the Operations Centre at the VRS Main Staff, which he based on the document’s first sentence “we send you this to forward to another corps command to the Sarajevo Romanija Corps”, thus giving them a “courier’s task”. Sasa Jovanović, T. 33948–33949 (6 July 2009).

⁵²⁹¹ Novica Simić, T. 28600 (21 Nov 2008), T. 28691 (24 Nov 2008); Nedeljko Trkulja, T. 15098 (10 Sept 2007); Manojlo Milovanović, T. 12152 (29 May 2007); Ex. P03938 (confidential).

⁵²⁹² Milomir Savčić, T. 15346–15347 (13 Sept 2007). *See also* Ex. 6D00137, Letter from Karadžić to **Gvero**, 18 December 1994” (where Karadžić is telling **Gvero** that his behaviour is a confirmation that he has “no respect whatsoever for the institution of the President of the Republic and Supreme Commander”); Ex. P02756, “Letter from the President of RS to **Gvero**, 17 July 1995” (where Karadžić is warning **Gvero** that he acted contrary to some of his directives concerning contacts with international organisations and that he took decisions outside his competence, in relation to the sick and injured). *See infra*, para. 1797.

⁵²⁹³ Petar Skrbicić, T. 15555 (18 Sept 2007). On 14 July 1995, during a meeting, Karadžić said to Skrbicić that “he was not an old lady and that he would certainly remove” **Gvero**. *Ibid.*, T. 15487 (17 Sept 2007). According to Skrbicić, as a result of these ongoing disputes between **Gvero** and Karadžić, Mladić “marginalised, sidelined, General **Gvero**, to protect him from that unpleasantness, so that General **Gvero** did not perform but a part of the duties that were actually in his purview”. Skrbicić also testified that **Gvero** was moved from Crna Rijeka to Han Pijesak at one point. Furthermore, Skrbicić testified that **Gvero** mentioned his resignation to him, but Skrbicić warned him that a general could not resign. *Ibid.*, T. 15562–15564 (18 Sept 2007). Savčić also testified that **Gvero** was probably removed from his post once or even more. Milomir Savčić, T. 15346–15347 (13 Sept 2007). *See also* Manojlo Milovanović, T. 12255–12256 (30 May 2007) (generally testifying that in April 1995, there was an open conflict between the VRS Main Staff and the Supreme Command, though he was not aware of whether **Gvero** personally came into conflict with Karadžić).

⁵²⁹⁴ *See supra*, para. 89.

⁵²⁹⁵ Novica Simić, T. 28649–28654 (21 Nov 2008); Ex. P03927, “War Diary of Novica Simić, Jan 1992 to Jan 1993”, p. 35.

Krajišnik and Mladić.⁵²⁹⁶ As for Directive 4, no evidence was presented concerning **Gvero**'s involvement in its issuance. However, **Gvero** was present at a military and political seminar held in Zvornik on Mladić's order, a few days after Directive 4 was issued, during which some of the tasks for the Drina Corps pursuant to this Directive were discussed.⁵²⁹⁷

1759. At the beginning of 1995, **Gvero** attended and addressed the Briefing on Combat Readiness where the "future political and military goals and strategies of conducting the war and peace negotiations" were discussed; more specifically, political and military priorities of RS, the "already adopted strategic goals", and "the most important tasks [of the VRS] in 1995".⁵²⁹⁸ The Trial Chamber finds that by participating in the combat readiness briefing, **Gvero** gained a wide and substantive knowledge of the strategies and goals of the political leadership of RS.

1760. The combat readiness briefing of January resulted in Directive 7.⁵²⁹⁹ Directive 7, dated 8 March, which was drafted pursuant to the "full-method",⁵³⁰⁰ includes a section for "Moral and Psychological Support"—under the heading "Support for Combat Actions"—stating in relevant part that:

[e]xternally a more aggressive propaganda and information presence should be maintained, aimed at gaining allies, deepening discord in the coalition, unmasking the biased and hostile activities of certain individuals and parts of UNPROFOR and some humanitarian organisations and undermining the enemy's fighting morale. This is to be achieved through planned and organised information and propaganda activities coordinated from State level.⁵³⁰¹

It further reads that:

State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the

⁵²⁹⁶ Novica Simić, T. 28649–28654 (21 Nov 2008).

⁵²⁹⁷ Ex. P04402, "Extract of notebook seized by NATO forces during a search of residences of the family of Radovan Karadžić on 25-26 May 2005", p. 1; Ex. P04221, "VRS Main Staff Order to Drina Corps Command, signed by Mladić, 20 November 1992"; Ex. P04222, "Timetable for a Military and Political Seminar in the Drina Corps for 23 November 1992, approved by Mladić, signed by Milovanović" (stating that the "situation, results, further tasks and capabilities" of the Drina Corps in the areas of, *inter alia*, Višegrad, Goražde, Bratunac and Zvornik were discussed at the seminar); Vinko Pandurević, T. 32073–32080 (25 Feb 2009).

⁵²⁹⁸ Ex. 5D00967, "Schedule briefing on Combat Readiness in 1994, 29 and 30 January 1995, signed by Mladić".

⁵²⁹⁹ See *supra*, para. 1648.

⁵³⁰⁰ See *supra*, para. 1649. Kosovac testified that this section of Directive 7 was not attributable to the Sector for Morale. He stated that: "There are some sentences that might be sentences used by this department, but most of the sentences are sentences that would be attributed to the commander and government or the government of Republika Srpska." Slobodan Kosovac, T. 30377–30379 (20 Jan 2009). However, when questioned by **Gvero**, Kosovac could not confirm that it was "not indispensable" for the Assistant Commander for Morale, Religious and Legal Affairs to participate in the preparation of Directive 7, because "to do so would be to disparage a very important sector". *Ibid.*, T. 30241-30242 (16 Jan 2009). Kosovac concluded that, based on the events that had taken place and the details in the diary of Karadžić's secretary, the meeting in President Karadžić's office on 16 March 1995 was held with every person who was essential for the preparation of Directive 7; but "if there had been more people it would not have been amiss." *Ibid.*; Ex. 5D01322, "Diary of the Radovan Karadžić's secretary for the year 1995", p. 31. See also Slobodan Kosovac, T. 30086–30087 (14 Jan 2009).

⁵³⁰¹ Ex. P00005, "RS Supreme Command Directive 7, 8 March 1995", p. 14, para. 6.1.

Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.⁵³⁰²

1761. Directive 7/1, which was issued at the end of March reads—in the section for “Moral and Psychological Support”—in relevant part that:

[t]hrough planned and coordinated informative and propaganda activities with state organs and media institutions, expose the bias of UNPROFOR and the international community, which are allowing the enemy to arm freely and continually attack Serbian defensive positions from the “protected zone” of Tuzla.⁵³⁰³

It continues:

[c]oordinate giving information to the public about combat actions in the operation and psychological and propaganda activities directed against the enemy through the Centre for Information and Propaganda Activities of the VRS Main Staff.⁵³⁰⁴

(ii) Involvement in the Procedures for the Passage of Convoys

1762. Towards the end of 1994 and at the beginning of 1995, **Gvero** was involved, in some instances, in the procedures for the passage of UNPROFOR and humanitarian convoys throughout the territory of RS.⁵³⁰⁵ For example, on 8 December 1994, **Gvero** notified the Drina Corps Command that the passage of a MSF team along the route Belgrade-Zvornik-Bratunac-Srebrenica and back was approved.⁵³⁰⁶ With regard to several notifications of approval for the passage of UNPROFOR convoys or helicopter missions, between January and April 1995, the Trial Chamber is satisfied each of them bears **Gvero**’s handwritten initials.⁵³⁰⁷

1763. The Trial Chamber has not been presented with evidence of **Gvero**’s involvement in the approval of UNPROFOR or humanitarian convoys after April 1995. However, there is evidence indicating that on 20 April 1995, during a meeting attended by Karadžić, Koljević, Krajišnik, **Gvero**, Akashi and Smith, Smith complained to **Gvero** about fuel restrictions. **Gvero** replied that he had intelligence that UNPROFOR and, in particular, UNPROFOR troops in Srebrenica were

⁵³⁰² Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 14, para. 6.1.

⁵³⁰³ Ex. 5D00361, “VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995”, para. 6.1.

⁵³⁰⁴ *Ibid.*

⁵³⁰⁵ *See supra*, paras. 214–226.

⁵³⁰⁶ Ex. P04153, “VRS Main Staff – Information re approval on carrying out the Coordinating Body’s approval for helicopter sortie, sent to the Drina Corps Command, type-signed Gvero, 8 December 1994”.

⁵³⁰⁷ Ex. P04039, VRS Main Staff, Authorisation to UNPROFOR for medical evacuation, signed by Miletić, 4 February 1995”; Ex. P03999, “VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 22 February 1995” (containing 15 approvals, each bearing **Gvero**’s handwritten signature); Ex. P04040, “VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 21 April 1995” (containing 11 approvals, each bearing **Gvero**’s handwritten signature). *See also* Ex. P04036, “VRS Main Staff - Information sent to UNPROFOR in Sarajevo re approved helicopter missions, signed by Milovanović, 6 January 1995”, p. 4; Ex. P04028, “UNPROFOR Request for a helicopter mission to VRS Main Staff, signed by Gen. Brinkman, 20 January 1995”, p. 7 (although **Gvero**’s handwritten signature is not visible, on both these documents there is a handwritten note by an unidentified person, indicating that “Gvero and Tošo” should see them).

supplying the ABiH with fuel. **Gvero** further maintained that he knew UNPROFOR had sufficient reserves.⁵³⁰⁸

(iii) Involvement in Srebrenica

1764. In April 1995, Živanović requested **Gvero** and “his bodies” to “engage themselves with projecting information to the Muslims of Srebrenica on the means of their safe evacuation from the combat zone”, drawing **Gvero**’s attention to the situation of enemy forces in Srebrenica and the large number of civilians who had fled there.⁵³⁰⁹ On 8 July 1995, while the attack on Srebrenica was ongoing,⁵³¹⁰ Živanović sent a proposal to **Gvero** at the VRS Main Staff to “more immediately engage” the Centre for Information and Propaganda and to place the Milići and Bratunac radio stations under its jurisdiction, because the events connected to Srebrenica deserved “propaganda coverage of the highest possible level”.⁵³¹¹ Živanović further stated that “[t]he Muslim population in the Srebrenica enclave is attentively following both the above-mentioned radio stations, which is a good opportunity to, from our side, work on this enclave by the media.”⁵³¹² The Trial Chamber notes that no further evidence was presented concerning the VRS Main Staff’s actual use of these radio stations during operation *Krivaja-95*.

1765. On 9 July 1995, around noon, **Gvero** went to the Drina Corps IKM at Pribićevac, accompanied by Trišić—the Assistant Commander for Logistics of the Bratunac Brigade—where **Gvero** had an informal exchange with Momčilović—who was Trišić’s subordinate—and with Davidović—the President of the Executive Council of Bratunac.⁵³¹³ Some evidence suggests that **Gvero** passed by the IKM to check the situation in the troops and to distribute newspapers, during a trip to or from Belgrade.⁵³¹⁴

⁵³⁰⁸ Ex. P02936, “UNPROFOR Report re Meetings in Sarajevo and Pale-20 Apr 1995, 22 April 1995”, para. 9; Rupert Smith, T. 17492–17493 (5 Nov 2007).

⁵³⁰⁹ Ex. P04148, “Drina Corps Command – Request to VRS Main Staff, Morale, Religious and Legal Affairs Section, signed by Živanović, 13 April 1993”.

⁵³¹⁰ See *supra*, paras. 249–250.

⁵³¹¹ Ex. P04154, “Drina Corps Command proposal to the Assistant Commander for Morale, Religious and Legal Affairs, concerning ‘Correctness of informing the public about the carrying out of combat operations’, signed by Živanović, 8 July 1995”.

⁵³¹² Ex. P04154, “Drina Corps Command proposal to the Assistant Commander for Morale, Religious and Legal Affairs, concerning ‘Correctness of informing the public about the carrying out of combat operations’, signed by Živanović, 8 July 1995”.

⁵³¹³ Božo Momčilović, T. 14080–14082, 14095 (22 Aug 2007); PW-162, T. 9184 (private session) (21 Mar 2007), T. 9194–9196 (private session) (22 Mar 2007), T. 9332 (23 Mar 2007); Milenko Jevđević, T. 29701–29702 (15 Dec 2008); Dragoslav Trišić, T. 27116–27119, 27138–27139 (21 Oct 2008). When **Gvero** arrived at Pribićevac, which is a village located at about 20 kilometres from Bratunac, he first went in the rear logistics sector of the 3rd Battalion of the Bratunac Brigade, where he sat down for coffee with Dragoslav Trišić and Srblislav Davidović. **Gvero** was then accompanied by Trišić to the Drina Corps IKM, which was about 250 to 300 metres away. Dragoslav Trišić, T. 27116–27119 (21 Oct 2008); PW-162, T. 9332 (23 Mar 2007).

⁵³¹⁴ See Božo Momčilović, T. 14093–14094 (22 Aug 2007) (testifying that, presumably, **Gvero** had arrived from Belgrade since he brought magazines and daily newspapers that were easily found there and that were later

1766. **Gvero**, Trišić and Davidović went to see Krstić.⁵³¹⁵ The Trial Chamber has heard conflicting evidence about the actual place where the encounter between **Gvero** and Krstić took place;⁵³¹⁶ and it is not satisfied that **Gvero** went to the observation post with Krstić to observe the combat action. Shortly after, **Gvero**, Krstić, Trišić, Davidović, Colonel Vukota⁵³¹⁷ and Jevđević⁵³¹⁸ sat together at a table for about an hour and a half.⁵³¹⁹ According to Trišić, they were talking about “military activities that were underway at that time”, though “there wasn’t much talk about the Srebrenica operation”.⁵³²⁰ Even though the specific details of the conversation are unknown, the Trial Chamber is satisfied that the only reasonable inference is that the military activities concerning Srebrenica were discussed, considering the date, location and participants of this meeting. After the meeting, **Gvero**, Trišić and Davidović left towards Bratunac.⁵³²¹

1767. Late on 9 July, Karadžić issued an order authorising the VRS to capture Srebrenica town, which was sent by Tolimir from the Main Staff to the IKM in Pribićevac, by way of a telegram addressed to **Gvero** and Krstić personally.⁵³²² Evidence has been presented suggesting that **Gvero** had left the IKM at the time the telegram arrived.⁵³²³ Whether **Gvero** received the telegram or not at the IKM does not affect the fact that it was personally addressed to him, which the Trial Chamber is of the view shows that informing **Gvero** was of importance and that Tolimir knew of **Gvero**’s whereabouts.

distributed to the troops at the IKM); PW-162, T. 9332 (23 Mar 2007) (testifying that Gvero was on his way to or from Belgrade and that he dropped by the IKM to see Krstić and to visit the brigade or the battalion); Nedeljko Zoranović, T. 33902–33906 (3 July 2009) (testifying that he drove Gvero to and from Belgrade on one occasion and that, on the way back, he stopped somewhere between Zvornik and Vlasenica; he conceded that it might have been on 9 July 1995).

⁵³¹⁵ Božo Momčilović, T. 14083 (22 Aug 2007); Milenko Jevđević, T. 29701 (15 Dec 2008).

⁵³¹⁶ Jevđević testified that **Gvero** went to see Krstić at the observation post, from where the combat action from Zeleni Jadar towards the Bojna feature could be observed. Milenko Jevđević, T. 29701 (15 Dec 2008). *But see* Božo Momčilović, T. 14094 (22 Aug 2007), testifying that, while at the IKM **Gvero** did not go to the elevation points to observe Srebrenica. *See also* Dragoslav Trišić, T. 27118 (21 Oct 2008), testifying that they “were in one place the whole time and that’s where this conversation took place.”

⁵³¹⁷ Vukota was a colonel in the Skelani Brigade. Momir Nikolić, T. 33269 (27 Apr 2009); Mirko Trivić, T. 11803 (18 May 2007).

⁵³¹⁸ Jevđević was the Commander of the Signals Battalion of the Drina Corps. Milenko Jevđević, T. 29480 (10 Dec 2008).

⁵³¹⁹ Božo Momčilović, T. 14083–14084, 14095–14096 (22 Aug 2007); PW-162, T. 9332 (23 Mar 2007).

⁵³²⁰ Dragoslav Trišić, T. 27117–27119, 27138–27139 (21 Oct 2008).

⁵³²¹ Božo Momčilović, T. 14083–14084 (22 Aug 2007); Dragoslav Trišić, T. 27118 (21 Oct 2008).

⁵³²² Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995” (stating that Karadžić “has agreed with the continuation of operations for the takeover of Srebrenica, disarming of Muslim terrorist gangs and complete demilitarisation of the Srebrenica enclave”). *See also supra*, para. 252.

⁵³²³ Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995” (indicating that the document was received at 23:50 hours). *See* Božo Momčilović, T. 14133 (22 Aug 2007), testifying that the communication must have been received at the IKM after **Gvero** had left. Milovanović also testified that, as the document was addressed personally to **Gvero** and Krstić, Tolimir knew that they were at the IKM, because if Tolimir had thought they were at the Main Staff, it would have been addressed to there instead. However, Milovanović was not able to state whether **Gvero** actually was at the IKM when the document arrived. Manojlo Milovanović, T. 12362–12363 (31 May 2007).

1768. On 10 July, while the VRS was advancing on Srebrenica town, Nicolai notified the VRS that as a response to their attacks, NATO air support was approved.⁵³²⁴ On the same day, a *communiqué* released from the VRS Main Staff reported that **Gvero**, “on the occasion of the recent events around Srebrenica” had stated: “[o]ur combat activities at the moment are directed towards simply neutralising the Muslim terrorists, and are in no way directed against civilians or members of UNPROFOR. [...] The civilians from Srebrenica who wish to do so can in an organised and safe manner leave the settlement. All in all, there is no reason for the media and foreigners to get involved in the Muslim war propaganda.”⁵³²⁵

1769. On the morning of 11 July, following the shelling of Bravo Company Compound, DutchBat sent urgent requests for NATO air support to defend Srebrenica town, but no assistance was forthcoming until around 2:30 p.m. on 11 July, when NATO bombed the VRS tanks advancing towards Srebrenica town.⁵³²⁶ Soon after the air support had started, Franken heard a message from one of his officers held in custody by the VRS, over a radio of a DutchBat APC in Bratunac, that air support had to stop immediately, otherwise the VRS would shell DutchBat positions, including areas where refugees were, and the captured soldiers would be killed.⁵³²⁷

1770. Later that afternoon, **Gvero** called the UNPROFOR headquarters in Sarajevo, saying that unless the air support stopped immediately, “General Nicolai, in the capacity of the Commander’s deputy, would be held responsible for all further developments and the destiny of his men and the civilian population in Srebrenica”.⁵³²⁸ During the phone call, **Gvero** denied attacking DutchBat,

Jevđević testified that the telegram arrived while they were all probably asleep; it could also have arrived on 10 July. Milenko Jevđević, T. 29704 (15 Dec 2008).

⁵³²⁴ Joseph Kingori, T. 19233–19235 (13 Dec 2007); Robert Franken, T. 2473–2474 (16 Oct 2006); Cornelis Nicolai, T. 18482–18485 (29 Nov 2007); Ex. P02976, “Notes of a telephone conversation between Nicolai and VRS HQ, 10 July 1995 at 19:20 hours”. UNMO reported that from morning until 12:30 p.m., over 100 detonations were confirmed in Srebrenica; and from 12:50 p.m. to 1:53 p.m., 49 shells were also recorded. Additionally, at 11 a.m., two heavy shells, probably 155mm artillery shells, hit the direct surrounding of the hospital where 2,000 civilians had gathered for refuge, and six of them were killed. Ex. P00505, “UNMO Report, 10 July 95”, p. 3; Ex. P00501, “UNMO Report, 10 July 95, 10:25”; Prosecution Adjudicated Facts Decision, Annex, Fact 106.

⁵³²⁵ Ex. P02753, “‘Srebrenica–The Muslim War Trump Card’, statement by Gvero, 10 July 1995”, p. 2. See Milenko Jevđević, T. 29687 (15 Dec 2008), testifying that he was aware that some UNPROFOR soldiers had surrendered and they were being treated correctly by the VRS, as described in Ex. 6D00022, “Document from the Drina Corps IKM, to the Main Staff, 9 July 1995”.

⁵³²⁶ Prosecution Adjudicated Facts Decision, Annex, Fact 113. See also *supra*, para. 253.

⁵³²⁷ Robert Franken, T. 2845–2846 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 95; Pieter Boering, T. 1920 (19 Sept 2009).

⁵³²⁸ Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours”; Ex. P02374a (confidential); Cornelis Nicolai, T. 18486–18488, 18512 (29 Nov 2007). According to Nicolai, **Gvero**’s message meant that unless the air support stopped, the DutchBat compound in Potočari and surrounding areas would be shelled. In cross-examination, Nicolai confirmed that notes of the telephone conversation between **Gvero** and himself did not reflect that the compound in Potočari was to be shelled; however, he maintained his position stating that “at the moment of this conversation, when General Gvero pointed out the consequences, I took that as being the threat of shelling the compound”. Nicolai further testified that this threat was taken very seriously at the headquarters in Sarajevo. Cornelis Nicolai, T. 18486–18487, 18509–18517 (29 Nov 2007). Butler testified

instead claiming that it was the ABiH that was attacking UNPROFOR positions; and that he therefore could not have done anything to stop the fighting, because neither UNPROFOR nor the civilian population in Srebrenica was being attacked by the VRS.⁵³²⁹

1771. Approximately an hour after this conversation, at about 5:30 p.m., **Gvero** issued a “Warning on treatment of UNPROFOR personnel in the enclave of Srebrenica” from the VRS Main Staff, addressed to the Drina Corps. The document stated that, “[i]n relation to the total situation in the enclave of Srebrenica [...] the attitude of the [VRS] personnel towards UNPROFOR personnel and units in the area of Srebrenica is in the focus of attention. To that end, the Drina Corps Command, acting through its subordinate commands, will ensure utmost decency in the attitude towards UNPROFOR personnel [...] and prevent any actions and provocations directed against UNPROFOR units in the enclave.”⁵³³⁰

1772. Immediately after the phone call between **Gvero** and Nicolai in the afternoon of 11 July, two other conversations were intercepted from the VRS Main Staff, during which only one interlocutor can be heard,⁵³³¹ and the Trial Chamber is satisfied this is **Gvero**.

1773. During the first conversation, which took place at 16.23 hours, **Gvero** reiterated what he had just told Nicolai, that the VRS had not attacked UNPROFOR, but “if they were fired on at all, then they were fired on by those who they [were] protecting: the Muslims”; and he further reported that he had asked Nicolai to “stop the operation immediately and get those planes out of our sky”.⁵³³² At the end of the phone call, **Gvero** stated: “[e]verything is going according to plan, don’t worry.”⁵³³³

1774. In the second intercepted conversation, which was recorded 20 minutes later, **Gvero** stated: “President, Serbian silver, the Serbian church, the Serbian flag. [...] They are in the air again. They are setting us up again, like before.”⁵³³⁴

that he did not expect that anyone below Mladić would have the authority to make such a threat. Richard Butler, T. 19801 (16 Jan 2008).

⁵³²⁹ Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995 at 16:15 hours”; Ex. P02374a (confidential); Cornelis Nicolai, T. 18488 (29 Nov 2007).

⁵³³⁰ Ex. 6D00207, “VRS Main Staff, Warning on treatment of UNPROFOR personnel in the Srebrenica enclave, to the Drina Corps Command and IKM, signed by Gvero, 11 July 1995”.

⁵³³¹ Ex. P01096a (confidential); Ex. P02375a (confidential). Ex. P02375a indicates that **Gvero** was the “only one present at the Supreme Command Headquarters”. The Trial Chamber considers the reference to “Supreme Command Headquarters” is a reference to the Main Staff headquarters instead. See PW-145, T. 7268–7270 (19 Feb 2007), testifying that what is written on the document might have been a mistake.

⁵³³² Ex. P01096a (confidential). See also Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours”; Ex. P02374a (confidential).

⁵³³³ Ex. P01096a (confidential).

⁵³³⁴ Ex. P02375a (confidential).

1775. **Gvero** challenges the Prosecution's allegation that the other interlocutor in these two conversations was Karadžić.⁵³³⁵ In support, he notes the poor relationship between him and Karadžić at the time, which was inconsistent with the tone and content of the conversation, as well as the fact that there were various individuals whom **Gvero** might refer to as "President".⁵³³⁶ The Trial Chamber has carefully considered the two intercepts in terms of their content and in the context of the other relevant evidence. The Trial Chamber⁵³³⁷ is satisfied that these two conversations were between Karadžić and **Gvero**.⁵³³⁸ In so finding, the Trial Chamber notes its assessment that the conversations do not evidence a friendly exchange but rather a respectful one. Whatever the relationship issues may have been between **Gvero** and Karadžić at the time, such a respectful tone was appropriate for a conversation with the President; and **Gvero** evidenced a similar respect even when responding to Karadžić's harsh criticism of him over the removal of the wounded and sick.⁵³³⁹ While there is evidence as to a plurality of individuals whom, at the time, may properly have been addressed as "President",⁵³⁴⁰ the references in these intercepts cannot be read isolated from the content and context of the conversations. These calls follow almost directly

⁵³³⁵ Gvero Final Brief, pp. 193–202, paras. 260–279.

⁵³³⁶ Gvero Final Brief, pp. 193–196, paras. 260–265. When questioned in relation to Ex. P01096a (confidential), Skrbic agreed with **Gvero** that "this friendly exchange and the relationship full of respect between the collocutors would not reflect the relationship that General Gvero and President Karadžić [had] in July". Petar Skrbic, T. 15565–15566 (18 Sept 2007). *But see* PW-145, T. 7239–7241 (9 Feb 2007), testifying that, though he could not identify Karadžić as one of the participants in the conversation, from the way **Gvero** was addressing the other interlocutor he assumed and concluded that it was, in fact, Karadžić.

⁵³³⁷ **Judge Kwon's Separate Opinion:** I respectfully disagree with the majority's finding that **Gvero** was reporting to Karadžić in the intercepted conversations of 11 July 1995. I note that only **Gvero** could be heard at the time when the conversations were intercepted, and that the name "Karadžić" was not mentioned during these conversations. PW-145 testified that he concluded that **Gvero** was addressing Karadžić based on the tone of his language and the fact that he said "President". *PW-145, T. 7239-7241 (9 Feb 2007)*. However, I find this to be speculative. The Trial Chamber actually listened to the audio recording of these conversations during the hearing. *PW-145, T. 7263–7264 (19 Feb 2007)*. The mood of the conversations seemed quite relaxed and some laughter was heard at one point. Recalling the Trial Chamber's finding that **Gvero** and Karadžić had a personal conflict and their relationship deteriorated throughout the war, *see supra, para. 1757*, I rely on Skrbic's testimony that the "friendly exchange" in the intercepted conversations does not reflect the difficult relationship between **Gvero** and Karadžić in July 1995. *See supra, fn. 5336; Petar Skrbic, T. 11556 (18 Sept 2007)*. Furthermore, Karadžić was not the only one who could have been addressed as "President" in the territory of RS in July 1995. There is evidence before the Trial Chamber that **Gvero** addressed other persons as "President" in intercepted conversations. *See Ex. 6D00043, "Intercept Gvero – Krajišnik, 28 April 2004"; Ex. 6D00021, "Document dated 14 October 1994, handover to the International Tribunal, including intercept"*. In light of the foregoing, I am not satisfied that in the above intercepted conversations **Gvero** was talking to Karadžić. However, my conclusion does not change the nature of the dialogue, namely a report to somebody at a higher echelon. As such, it will not affect the Trial Chamber's finding with regard to **Gvero**'s participation in the JCE to Forcibly Remove.

⁵³³⁸ Ex. P01096a (confidential); Ex. P02375a (confidential). The Trial Chamber unanimously finds there is sufficient evidence connecting the first conversation (Ex. P01096a) to the second one (Ex. P02375a), to be satisfied that they took place between the same persons. In reaching its conclusion, the Trial Chamber has considered that on Ex. P02375a it is stated that "[t]wenty minutes later a new conversation started between the same persons. We again only heard **Gvero**, while Karadžić could not be heard". The Trial Chamber further notes that, in both intercepts **Gvero** refers to "President".

⁵³³⁹ *See infra, para. 1797; Ex. P02757, "Letter to the President of the RS, signed by Gvero, 18 July 1995"*.

⁵³⁴⁰ *See* Petar Skrbic, T. 15564–15565 (18 Sept 2007); Momčilo Krajišnik, T. 21581 (2 June 2008); Ex. 6D00007, "Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the United Nations and International Humanitarian Organisations, signed by Karadzic, 14 March 1995" (indicating that

after an important exchange between **Gvero** and General Nicolai, UNPROFOR Chief of Staff, regarding the situation in Srebrenica and the NATO air strikes. **Gvero** describes the essence of the conversation and the message conveyed to Nicolai regarding the cessation of air strikes. Given the timing of the calls, the content of the conversations and the fact that Karadžić is the only President directly implicated in the Srebrenica campaign so as to require information of this nature on an immediate basis, the Trial Chamber⁵³⁴¹ is satisfied that **Gvero** was talking to Karadžić about his conversation with UNPROFOR. Further, the Trial Chamber is satisfied that **Gvero** was referring to the plan to take-over the Srebrenica enclave and to forcibly remove the civilian population when he stated “[e]verything is going according to plan, don’t worry”.⁵³⁴² Again in the context of the conversations, the Trial Chamber is satisfied this is the only reasonable inference to draw in the circumstances.

1776. In the evening of 11 July, **Gvero** spoke on the phone to General Gobillard at UNPROFOR headquarters.⁵³⁴³ **Gvero** reiterated that the VRS had not attacked UNPROFOR or civilians, but it had only responded to attacks by Muslim “armed terrorists who should have been disarmed according to the Agreement concluded by the parties under the auspices of UNPROFOR”.⁵³⁴⁴ **Gvero** further claimed that a large number of UN vehicles had been stolen by the ABiH and were used against the VRS.⁵³⁴⁵ **Gvero** promised he would do “everything to keep the situation under control”; he ensured Gobillard that steps would be taken “to establish contact with the commander of the UN unit and reach agreement on further actions”; and he guaranteed the safety of UN soldiers and Muslim civilians in the enclave.⁵³⁴⁶ In ending this conversation, **Gvero** stated he would have full insight into the situation in Srebrenica the following morning; he suggested to Gobillard that another telephone conversation be conducted at that time and that meanwhile no air power be used.⁵³⁴⁷ During this conversation, Gobillard drew **Gvero**’s attention to the fact that, as they were speaking, there were no aircrafts over the region of Srebrenica. **Gvero** further stated that the

Nikola Koljević was appointed President of the State Committee for Cooperation with the UN). *See also* Gvero Final Brief, paras. 262–264.

⁵³⁴¹ *But see* Judge Kwon’s Separate Opinion, *supra*, fn. 5337.

⁵³⁴² *See supra*, para. 1773; Ex. P01096a (confidential).

⁵³⁴³ Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 1; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”. Fortin testified that on 11 July, General Gobillard had called the Main Staff in order to speak to Mladić, but he was told that the only person available was **Gvero**. Louis Fortin, T. 18427, 18384 (28 Nov 2007).

⁵³⁴⁴ Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 1; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”. *See also* Louis Fortin, T. 18254–18256 (26 Nov 2007).

⁵³⁴⁵ Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”. According to Fortin, this was not true as the vehicles were in use at blocking positions by DutchBat soldiers. Louis Fortin, T. 18256–18257 (26 Nov 2007), T. 18426 (28 Nov 2007).

⁵³⁴⁶ Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”; Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2.

decision to call in the planes was “irrational in both military and human terms. However, the order to stop the bombings was rational”.⁵³⁴⁸

1777. During the night of 11 to 12 July, a column of Bosnian Muslim men left the Srebrenica enclave attempting to break through the defence lines of the VRS in the Bratunac area towards Tuzla.⁵³⁴⁹ On 13 July, VRS orders to block the column in the areas of responsibility of Bratunac, Zvornik and Vlasenica were issued.⁵³⁵⁰ One of these orders was type-signed **Gvero** and instructed the Commands of the Drina Corps, the Zvornik Brigade, the Birač Brigade, and the Vlasenica Brigade, to prevent the passage of Bosnian Muslims towards Tuzla and Kladanj.⁵³⁵¹ As the Assistant Commander for Morale, **Gvero** could not issue orders to subordinate units, unless authorised by the Commander of the VRS Main Staff.⁵³⁵² This order began by stating that, “[b]ased on the instructions received, and following defeat in the Srebrenica enclave, the men from the enclave fit for military service were tasked with crossing over to Tuzla and Kladanj in groups and carrying weapons.” The units were then ordered to “detect, block, disarm and capture detected Muslim groups and prevent them from crossing over to the Muslim territory”.⁵³⁵³ These instructions were passed down the chain of command.⁵³⁵⁴

1778. In the early afternoon of 13 July, Tolimir issued an order to the Command of the Military Police Battalion of the Protection Regiment, which included proposals on the procedure for prisoners of war. Mladić and **Gvero** were copied.⁵³⁵⁵ This order included the prohibition of filming prisoners and an instruction to place the prisoners “indoors or in the area protected from sighting from the ground or the air”.⁵³⁵⁶ In the evening of 13 July, at around 10:30 p.m., Tolimir sent another document regarding “accommodation of prisoners of war”, to **Gvero** personally at the Main Staff.⁵³⁵⁷ Tolimir was informing **Gvero** that, in case he was unable to find adequate accommodation

⁵³⁴⁷ Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”; Louis Fortin, T. 18260 (27 Nov 2007).

⁵³⁴⁸ Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”; Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2. *See also* Louis Fortin, T. 18260 (27 Nov 2007).

⁵³⁴⁹ *See supra*, para. 268.

⁵³⁵⁰ *See supra*, para. 379.

⁵³⁵¹ Ex. P00045, “VRS Main Staff Order to the Drina Corps to prevent the passage of Muslim groups towards Tuzla and Kladanj, type-signed Gvero, 13 July 1995”. *See also* Ex. P00686, “Srebrenica Military Narrative (Revised) – Operation Krivaja 95, 1 November 2002”, p. 120.

⁵³⁵² *See supra*, para. 1748. *See also supra*, para. 107.

⁵³⁵³ Ex. P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed Gvero, 13 July 1995”, p. 1.

⁵³⁵⁴ *See, e.g.*, Ex. P00117, “Drina Corps Order preventing passage of Muslim groups to Tuzla and Kladanj, signed by Živanović, 13 July 1995”. The Drina Corps order reiterates the language of Ex. P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed Gvero, 13 July 1995”.

⁵³⁵⁵ Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995”.

⁵³⁵⁶ *Ibid.*

for all the prisoners of war from Srebrenica, space had “been arranged for 800 prisoners of war in the [Rogatica Brigade] in Sjemeč”.⁵³⁵⁸

1779. Later that night, Mladić issued an order to the Drina Corps in line with Tolimir’s proposal and instructed that certain measures be taken in order to “prevent the leakage of confidential information classified as military secrets”.⁵³⁵⁹ It directed to refrain from giving information on prisoners of war and evacuated civilians; and to prevent the entry of all local and foreign journalists, except those of the Centre for Information and Propaganda.⁵³⁶⁰ Among the recipients of the order was the Sector for Morale.⁵³⁶¹ **Gvero** was therefore well aware of it.

(iv) Involvement in Žepa

1780. On 19 July 1995, when Milovanović arrived at the VSR Main Staff in Crna Rijeka, sometime close to dark, he enquired with **Gvero** about Mladić’s whereabouts; and **Gvero** told him that “Mladić was negotiating with somebody about Žepa and it was most likely that [Bosnian] Serb forces would also go into Žepa”.⁵³⁶²

1781. The following day, **Gvero** was at the Jela Restaurant, to celebrate the retirement of Živanović and the promotion of Krstić to Drina Corps Commander.⁵³⁶³ During the luncheon, Mirko Trivić—the Commander of the Romanija Brigade—asked **Gvero** to intervene and cooperate with Krstić on the issue of replacement of troops within his unit, since it had a bearing on morale and therefore fell within **Gvero**’s purview.⁵³⁶⁴

1782. On the same day, 20 July, in the Žepa enclave, loudspeakers were broadcasting a message that there was no chance for the Bosnian Muslim population and that the area was now controlled

⁵³⁵⁷ Ex. P00131, “Information on accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”. See also Manojlo Milovanović, T. 12368 (1 June 2007).

⁵³⁵⁸ Ex. P00131, “Information on accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”, p. 1.

⁵³⁵⁹ Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

⁵³⁶⁰ *Ibid.*, paras. 4–5. See *supra*, fn. 5266.

⁵³⁶¹ Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

⁵³⁶² Manojlo Milovanović, T. 12203–12205 (29 May 2007).

⁵³⁶³ *Ibid.*, T. 12204 (29 May 2007); Mirko Trivić, T. 11874–11875, 11878–11879 (21 May 2007).

⁵³⁶⁴ Mirko Trivić, T. 11870, 11872, 11879 (21 May 2007), T. 11900 (22 May 2007). Trivić testified this was the only time he saw and talked to **Gvero** during the Žepa operation. *Ibid.* The Trial Chamber notes that there is inconsistency in Trivić’s evidence with regard to when this conversation took place. Trivić first stated that the conversation took place after the “truce had been agreed upon”, five or six days after 19 July 1995. He then said that it occurred on 20 or 21 July 1995. *Ibid.*, T. 11870–11872 (21 May 2007). On examination-in-chief by the Prosecution, Trivić testified that he did not remember where the conversation was held, but on cross-examination he agreed that he possibly talked to **Gvero** and Krstić during the luncheon at the Jela Restaurant celebrating the retirement of Živanović and the promotion of Krstić to Corps Commander, on 20 July 1995. *Ibid.*, T. 11872, 11878–11879 (21 May 2007).

by Mladić.⁵³⁶⁵ A few days before, on 15 July, Tolimir had issued an order to the Security Department of the 1st Krajina Corps, to transport a 5,000 Watt loudspeaker to the Rogatica Garrison.⁵³⁶⁶ The arrangements were to be made between Captain Boško Guduraš from the Press Centre of the 1st Krajina Corps and Milovan Milutinović, the Chief of the Centre for Information and Propaganda overseen by **Gvero**.⁵³⁶⁷

1783. On 23 July, UNPROFOR Colonel Baxter called **Gvero** and asked him to set up a meeting between Smith and Mladić as soon as possible, in order to discuss the situation in Žepa.⁵³⁶⁸ **Gvero** agreed that “such a meeting would be useful and [he] suppose[d] it could take place, unless some extraordinary events occur during that time”, such as “groundless and irrational bombing, attack on [the VRS] forces, support to the Muslims and similar”.⁵³⁶⁹ This meeting subsequently took place, on 25 July at the Jela Restaurant, and it will be discussed below.

1784. In the early hours of 25 July, following the 24 July 1995 Agreement,⁵³⁷⁰ Tolimir sent a report on the agreement on disarmament of Žepa to the VRS Main Staff, addressed to either **Gvero** or **Miletić**, proposing to request UNPROFOR to send a colonel rather than a general to Žepa, to avoid a scenario similar to when General Morillon went to Srebrenica in 1993.⁵³⁷¹ In the document, Tolimir further addressed the risk that Bosnian Muslims could “take advantage of the signed agreement, under the pressure from Sarajevo, which they have already tried to do so by bringing up the issue of prisoners from Srebrenica”.⁵³⁷² During the same morning, in an intercepted conversation with a certain “Šubara”, **Gvero** stated—from the VRS Main Staff headquarters⁵³⁷³—that “we’re going to allow everything”, in relation to an agreement signed on the previous night.⁵³⁷⁴

⁵³⁶⁵ See *supra*, para. 943.

⁵³⁶⁶ Ex. P02788, “Order regarding transportation of loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Tolimir, 15 July 1995”.

⁵³⁶⁷ Ex. P02788, “Order regarding transportation of loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Tolimir, 15 July 1995”; Slobodan Kosovac, T. 30386–30387 (20 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, pp. 18–19. See *supra*, para. 1749.

⁵³⁶⁸ Ex. P01320d, “Intercept, 23 July 1995, 21:20 hours”, p. 1.

⁵³⁶⁹ *Ibid.*, pp. 1–2.

⁵³⁷⁰ Ex. 6D00030, “Agreement on disarmament of the military-able population in the enclave of Žepa, 24 July 1995”. See *supra*, para. 771.

⁵³⁷¹ Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, p. 2. See also Ex. P01328a, Intercept, 25 July 1995, 07:09 hours”, p. 2 (indicating that by the morning of 25 July, **Gvero** had received the text of the Agreement); Ex. 6D00030, “Agreement on disarmament of the military-able population in the enclave of Žepa, 24 July 1995”.

⁵³⁷² Ex. P00191, “Document re agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, p. 1.

⁵³⁷³ Ex. P01334a (confidential). The Trial Chamber notes this intercepted conversation was recorded on frequency “836.000 MHz”, which is the same frequency on which the conversations between **Gvero** and Nicolai, and between **Gvero** and Gobillard were recorded on 11 July, when **Gvero** was at the VRS Main Staff headquarters. Ex. P02374a (confidential); Ex. P02379c, Intercept 11 July 1995, 18:00 hours”. See *supra*, paras. 1770, 1776. The Trial Chamber is therefore satisfied **Gvero** was at the VRS Main Staff headquarters when he was speaking to “Šubara” on 25 July 1995.

⁵³⁷⁴ Ex. P01334a (confidential).

He further stated that “those of military age won’t be able to go. They’ll go to reception centres and they’ll be registered. We’re doing everything in compliance with International Laws of War.”⁵³⁷⁵ The Trial Chamber is satisfied that **Gvero** was present at the VRS Main Staff for parts of 25 July 1995 as the most senior officer.

1785. At 12:30 p.m. on 25 July, Smith, Mladić, **Gvero** and Tolimir met at the Jela Restaurant in Han Pijesak, to discuss the situation in Žepa. **Gvero** accompanied Mladić at this meeting and said little.⁵³⁷⁶ Afterwards, Smith and Mladić travelled separately to Žepa.⁵³⁷⁷ **Gvero** did not go to Žepa on that day.⁵³⁷⁸

1786. On 26 July, the convoys with Bosnian Muslim civilians leaving Žepa town stopped at the UNPROFOR check-point at Bokšanica, where Mladić boarded each bus.⁵³⁷⁹ **Gvero** went there to get approval from Mladić to travel to Krajina.⁵³⁸⁰ At the check-point, **Pandurević**, Krstić, Tolimir, and Bosnian Muslim representatives were also present.⁵³⁸¹ After Mladić had finished inspecting the buses, he had a “rather heated” conversation with **Gvero**.⁵³⁸² Eventually, Mladić gave **Gvero** his oral approval to go to Krajina.⁵³⁸³

⁵³⁷⁵ Ex. P01334a (confidential).

⁵³⁷⁶ Ex. P02747, “UN Report of Meeting between Smith and Mladić, 25 July 1995”, p. 1; Rupert Smith, T. 17544–17545 (6 Nov 2007), T. 17722 (8 Nov 2007); Emma Sayer, T. 21081, 21117, 21119 (6 Feb 2008). Smith’s interpreter Sayer was also present at the meeting. *Ibid.*, T. 21081, 21116 (6 Feb 2008). *See also* Ex. 6D00108, “UN document re situation in Žepa by Col. Baxter”, p. 2; Sasa Jovanović, T. 33948 (6 July 2009); Ex. P01339a, “Intercept, 25 July 1995, 10:44 hours” (where “X” is telling “Y” to “[t]ell **Gvero** to be at the place where he is supposed to receive[sic.] Smith at 1130”).

⁵³⁷⁷ Rupert Smith, T. 17545 (6 Nov 2007); Emma Sayer, T. 21083 (6 Feb 2008).

⁵³⁷⁸ *See* Nedeljko Zoranović, T. 33890 (3 July 2009).

⁵³⁷⁹ Hamdija Torlak, T. 9747 (30 Mar 2007). *See supra*, para. 717.

⁵³⁸⁰ 6DPW-02, T. 33844 (2 July 2009); Sasa Jovanović, T. 33917 (3 July 2009); Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”. **Gvero** set off from Han Pijesak around noon and the journey took approximately one hour. Nedeljko Zoranović, T. 33891 (3 July 2009); 6DPW-02, T. 33844 (2 July 2009). Once at the checkpoint, **Gvero** had to wait as Mladić was boarding buses and talking to the passengers. Sasa Jovanović, T. 33919 (3 July 2009). Jovanović testified that **Gvero** had to wait in a room for Mladić to finish “urgent business”, before he could talk to him. He also stated that **Gvero** had been trying to get in touch with Mladić for several days, but Mladić was avoiding contacts with any officers that were not working on “the Bokšanica thing”. *Ibid.*, T. 33919–33920 (3 July 2009). *See also* 6DPW-02, T. 33850, 33858 (2 July 2009); Milenko Jevđević, T. 29696–29699 (15 Dec 2008); Ex. P01311a, “Intercept, 23 July 1995, 08:29 hours”.

⁵³⁸¹ Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”; Ex. P02491 (confidential). *See also* Sasa Jovanović, T. 33917 (3 July 2009).

⁵³⁸² Sasa Jovanović, T. 33920 (3 July 2009); 6DPW-02, T. 33850 (2 July 2009). **Gvero** had been aware of the crisis at the Krajina front-line for a couple of days, but he could not leave the Main Staff without Mladić’s approval, so he asked Mladić to let him go to Mrkonjić Grad; at one point, **Gvero** said “I am wasting time here with 10 or 12 Muslim villages, and at the same time two towns with the greatest majority of Serbs” “were falling”. Mladić was angry after the conversation. Sasa Jovanović, T. 33920–33921 (3 July 2009), T. 33928–33929 (6 July 2009). Jovanović further testified that “the events in Krajina became increasingly more dramatic and alarming, and [**Gvero**] decided to personally go to that part of RS to be able to analyse the situation, the developments, and to do something to recapture those two towns.” *Ibid.*, T. 33921 (3 July 2009).

⁵³⁸³ Sasa Jovanović, T. 33921 (3 July 2009). Mladić said to **Gvero**: “Pack yourself and go and report to Milovanović”. *Ibid.*

1787. **Gvero** left immediately towards Han Pijesak, with his driver and his escort,⁵³⁸⁴ where he stayed very briefly and then departed towards Banja Luka.⁵³⁸⁵ During the journey, **Gvero** dropped by the Drina Corps headquarters at Vlasenica.⁵³⁸⁶ **Gvero** remained in Banja Luka for 15 to 20 days.⁵³⁸⁷

1788. The Trial Chamber notes there is some conflicting evidence in relation to **Gvero**'s presence in Žepa. Smith testified that, on 27 July after meeting with Mladić, he left Bokšanica and driving into Žepa he encountered **Gvero**.⁵³⁸⁸ **Gvero** told Smith that he [**Gvero**] was now in charge of Žepa.⁵³⁸⁹ Smith's alleged encounter with **Gvero** is partly supported by Sayer's testimony.⁵³⁹⁰

1789. Given the consistency between Smith and Sayer's testimonies, and based on all the evidence presented,⁵³⁹¹ the Trial Chamber believes an encounter between Smith and **Gvero** did take place, though it considers the evidence insufficient to determine the date of this meeting and the content of the conversation. Thus, the Trial Chamber is not satisfied that **Gvero** was present in Žepa on 27 July 1995.

(v) Involvement in the Transport of the Wounded and Sick out of RS

1790. On 11 July 1995, DutchBat officers moved some of the Bosnian Muslim wounded and sick from the hospital in Srebrenica to Potočari.⁵³⁹² Members of the VRS threatened to kill the wounded

⁵³⁸⁴ Nedeljko Zoranović, T. 33892–33893, 33897 (3 July 2009); Sasa Jovanović, T. 33921 (3 July 2009).

⁵³⁸⁵ Nedeljko Zoranović, T. 33893 (3 July 2009). Zoranović testified the journey lasted about three to four hours; and **Gvero** reached Banja Luka in the afternoon. *Ibid.*, T. 33894 (3 July 2009). *But see* 6DPW-02, testifying that the journey lasted six to eight hours and they reached Banja Luka late at night. 6DPW-02, T. 33850–33851 (2 July 2009). The Trial Chamber does not consider that this discrepancy affects its finding that **Gvero** went to Banja Luka on 26 July.

⁵³⁸⁶ Nedeljko Zoranović, T. 33893–33894 (3 July 2009); Ex. 6D00346, "Records of transfer of vehicle, 26 July 1995"; 6DPW-02, T. 33850, 33855 (2 July 2009).

⁵³⁸⁷ Nedeljko Zoranović, T. 33894 (3 July 2009); 6DPW-02, T. 33851 (2 July 2009).

⁵³⁸⁸ Rupert Smith, T. 17556–17557 (6 Nov 2007).

⁵³⁸⁹ *Ibid.*, T. 17556–17557 (6 Nov 2007), T. 17827 (9 Nov 2007). Smith further stated that this conversation took place through an interpreter. *Ibid.*

⁵³⁹⁰ Emma Sayer, T. 21133, 21137–21138 (6 Feb 2008). Sayer testified that she recalled meeting **Gvero** at the entrance to Žepa and that Smith and herself were on their way back to Sarajevo, while Colonel Coiffet and Captain Dibb stayed. She however did not recall **Gvero** saying that he was in command or in charge of the Žepa operation. She had the impression **Gvero** was going to see Colonel Coiffet and Captain Dibb and that "he was going to see what was left, you know, what was going on, what the situation was at that time in Žepa", which she understood to mean that he was going to see whether any UNPROFOR personnel was left in the enclave. *Ibid.*, T. 21089, 21091 (6 Feb 2008).

⁵³⁹¹ See Nedeljko Zoranović, T. 33892–33893, 33899 (3 July 2009); Sasa Jovanović, T. 33921–33923 (3 July 2009). See also Petar Skrbic, T. 15594 (18 Sept 2007) (testifying that on 27 July he went towards the western part of RS and **Gvero** was already there); Slavko Čulić, T. 33866–33868 (2 July 2009) (testifying that on 27 July he saw **Gvero** in Krajina).

⁵³⁹² Robert Franken, T. 2628–2629 (18 Oct 2006); Vincent Egbers, T. 2717–2718 (18 Oct 2006), T. 2918, 2929 (20 Oct 2006); Pieter Boering, T. 1940 (21 Sept 2006); Joseph Kingori, T. 19265 (14 Dec 2007). Kingori also testified that some of the wounded in Srebrenica were taken directly to Bratunac, "but that was much later". *Ibid.*

and sick that remained in the Srebrenica hospital unless UNMO moved them.⁵³⁹³ In the early afternoon of 12 July, DutchBat General Nicolai contacted the VRS Main Staff.⁵³⁹⁴ Nicolai talked with **Gvero**, informing him of a meeting held that morning at the Hotel Fontana, between the DutchBat Commander and Mladić, on the matter of the “evacuation of the refugees” from Srebrenica.⁵³⁹⁵

1791. Nicolai and **Gvero** had a disagreement about transporting the wounded by air.⁵³⁹⁶ Nicolai stated that a formal request to send helicopters into Srebrenica would be forwarded to the VRS headquarters and he sought **Gvero**’s cooperation in this matter.⁵³⁹⁷ **Gvero** stated that the use of helicopters in that zone was not permissible or justifiable as the safety could not be guaranteed to any aircraft. **Gvero** suggested that all further action be consistent with what had been agreed between the DutchBat Commander and Mladić in Srebrenica.⁵³⁹⁸ The Trial Chamber considers that **Gvero** was referring to the third Hotel Fontana meeting, held on 12 July at around 10 a.m.⁵³⁹⁹ At this meeting it was agreed that the evacuation of the Bosnian Muslim civilian population would be carried out by the VRS and RS police, under UNPROFOR’s supervision and escort; however, the “wounded and sick” were not specifically mentioned. **Gvero** reiterated that the offer was for the wounded to be treated in “our hospitals”; he suggested that evacuation be carried out by land and ensured that it would be safe.⁵⁴⁰⁰ At the end of this conversation, **Gvero** told Nicolai that his further request for a fuel/food convoy into Srebrenica would be taken into consideration.⁵⁴⁰¹

1792. On 15 July, a meeting was held in Belgrade attended by, *inter alia*, Smith, Milošević and Mladić, during which the situation in the Srebrenica enclave was discussed.⁵⁴⁰² Towards the end of

⁵³⁹³ Joseph Kingori, T. 19264–19266, 19269–19270 (14 Dec 2007). Kingori also testified that on 13 July, there were still some wounded and sick in the Srebrenica hospital. *Ibid.*, T. 19269 (14 Dec 2007).

⁵³⁹⁴ Cornelis Nicolai, T. 18493 (29 Nov 2007); Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a, (confidential).

⁵³⁹⁵ Cornelis Nicolai, T. 18494–18495 (29 Nov 2007); Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential).

⁵³⁹⁶ Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential); Cornelis Nicolai, T. 18554 (30 Nov 2007).

⁵³⁹⁷ Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential).

⁵³⁹⁸ Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential); Cornelis Nicolai, T. 18554 (30 Nov 2007).

⁵³⁹⁹ See *supra*, para. 289.

⁵⁴⁰⁰ Ex. P01119a (confidential); Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1.

⁵⁴⁰¹ Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 2.

⁵⁴⁰² Ex. P02942, “Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milošević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan”, pp. 1–2; Rupert Smith, T. 17530–17532 (6 Nov 2007).

the meeting, it was decided that **Gvero** would meet with UNHCR the following day, at noon, at the Jahorina Hotel, to discuss the transport of wounded Bosnian Muslims.⁵⁴⁰³

1793. On 16 July, it was orally agreed between **Gvero** and representatives of the ICRC and UNHCR, that some of the wounded and sick in Potočari were to be transported by DutchBat to Bratunac in the morning of 17 July, with vehicles provided by UNHCR and ICRC. It was further agreed that on 17 July, ICRC teams would carry out evacuation of about 100 wounded Muslims from Bratunac to Tuzla;⁵⁴⁰⁴ but that men fit for military service would be separated from the group and kept in hospitals in RS.⁵⁴⁰⁵ **Gvero** also ensured ICRC representatives that “the ICRC would be given access to all detainees once security conditions in the area allowed”.⁵⁴⁰⁶

1794. On 17 July, UNMO and DutchBat officer Franken met with Colonel Radislav Janković—an intelligence officer of the Main Staff—Momir Nikolić and Miroslav Deronjić, to discuss the issue of wounded Bosnian Muslims who remained in the DutchBat compound in Potočari and in the Bratunac Hospital.⁵⁴⁰⁷ The Bosnian Serb delegation told Franken to hand over the wounded to them; however, Franken did not think it was a good idea.⁵⁴⁰⁸ It was decided that the wounded had to be checked before they would be transported.⁵⁴⁰⁹ Momir Nikolić insisted on accompanying the

⁵⁴⁰³ Ex. P02942, “Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milosević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan”, p. 3. Smith believed that such a meeting took place. Rupert Smith, T. 17533 (6 Nov 2007). Nicolai instead testified that he did not receive information that **Gvero** had actually met with the UNHCR on or about 16 July 1995. Cornelis Nicolai, T. 18498–18499 (29 Nov 2007). *But see* Ex. P02978, “Notes of a telephone conversation between Nicolai and Marković, 16 July 1995, 15:00 hours” (indicating that Marković told Nicolai that **Gvero** was having a meeting with UNHCR on that day); Ex. P01191a (confidential) (indicating that **Gvero** was at the meeting with UNHCR representatives concerning the evacuation agreement).

⁵⁴⁰⁴ Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”. *See also* Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995”, p. 1 (stating that an oral agreement was reached with **Gvero** early that week, in Pale); Ex. P04156, “ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995”, p. 3 (stating that there was a meeting on 16 July with Bosnian Serb military authorities in Jahorina). The Trial Chamber is satisfied the aforementioned documents refer to the meeting at the Jahorina hotel on 16 July, between **Gvero**, UNHCR and ICRC. *See also* Ex. 6D00320, “ICRC notification to the State Committee for Cooperation with International Organisations, 16 July 1995”; Ex. P01200a, “Intercept, 16 July 1995, 19.48 hours”.

⁵⁴⁰⁵ Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”, p. 1.

⁵⁴⁰⁶ Ex. P04156, “ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995”, p. 3. *See* Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995” (in which the spokesman of the ICRC Belgrade Office said that, during a meeting held at Pale a few days before, an oral agreement was reached with **Gvero**, according to which the ICRC delegates were “in principle authorised” to visit the Bosnian Muslims from Srebrenica who were being detained by the VRS. He further stated that **Gvero** “agreed with the usual conditions for ICRC visits to detention centres”).

⁵⁴⁰⁷ Prosecution Adjudicated Facts Decision, Annex, Fact 224; Robert Franken, T. 2514-2515 (16 Oct 2006). Franken stated that Janković was the head of the Bosnian Serb delegation. *Ibid.* *See also* Ex. P00453, “Declaration signed by Franken, Deronjić and Mandžić on 17 July 1995, p. 2.

⁵⁴⁰⁸ Robert Franken, T. 2515 (16 Oct 2006).

⁵⁴⁰⁹ Ex. P00524, “UNMO Sit Report, 17 July 1995”.

ICRC members to the infirmary in the DutchBat compound in Potočari,⁵⁴¹⁰ as he believed there were war criminals among the wounded.⁵⁴¹¹

1795. In the afternoon of 17 July, a second meeting was held to discuss the details of the transport of the wounded.⁵⁴¹² In addition to the participants in the first meeting, MSF and ICRC representatives were present.⁵⁴¹³ It was decided that after being checked, the wounded from the DutchBat compound in Potočari would be taken to Bratunac; and from there, seven wounded males would stay in Bratunac hospital, while the rest of the wounded would be taken by ICRC to Tuzla.⁵⁴¹⁴

1796. In a report of 17 July 1995, the ICRC referred to approximately 100 wounded and sick in Potočari and Bratunac that “must be transferred as a matter of urgency”.⁵⁴¹⁵ The transfers were carried out.⁵⁴¹⁶ The ICRC communicated in a press release that 88 wounded people had been evacuated from Bratunac and Potočari to Tuzla on 17 and 18 July, by three medical teams, with the agreement of **Gvero**, and that some of them were in “very serious condition”.⁵⁴¹⁷ Further, according to the ICRC, the Bosnian Serbs refused 23 wounded men of military age authorization to leave. They were kept in the Bratunac hospital and the ICRC considered them prisoners of war.⁵⁴¹⁸

1797. On 17 July, Karadžić warned **Gvero** that he had acted contrary to some of his directives concerning contacts with international organisations and he “made decisions about the evacuation of sick and injured, for which the State Committee for Cooperation with the UN and International Humanitarian Organisations [was] in charge of.”⁵⁴¹⁹ In response to this warning, the following day **Gvero** wrote a letter to Karadžić, stating that: “I have carried out all the activities mentioned in your document as ordered by my immediate superior”—the Commander of the Main Staff. “All the activities were carried out and motivated by the need for the fight of the Serbian people and army to

⁵⁴¹⁰ Robert Franken, T. 2516 (16 Oct 2006). Franken testified that they went to the “hospital”. Franken also testified that DutchBat officers accompanied Nikolić during the checks. *Ibid.* The Trial Chamber finds that Franken was referring to the hospital in Potočari.

⁵⁴¹¹ Robert Franken, T. 2516 (16 Oct 2006).

⁵⁴¹² Ex. P00524, “UNMO Sit Report, 17 July 1995”.

⁵⁴¹³ *Ibid.*

⁵⁴¹⁴ *Ibid.*, p. 1 (also stating that the wounded were checked before they were allowed to leave, in the presence of UNMO and a representative of the ICRC).

⁵⁴¹⁵ Ex. P04156, “ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995”, p. 2. *See also* Ex. 6D00320, “ICRC notification to the RS State Committee for Cooperation with International Organisations, 16 July 1995”.

⁵⁴¹⁶ Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995”, p. 2. *See also* Ex. P02570, “VRS Main Staff order regarding movement of international humanitarian organizations, signed by Miletić, 18 July 1995” (referring to an UNHCR team travelling to Bratunac on 19 July “to monitor medical evacuation”).

⁵⁴¹⁷ Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995”; Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995”, p. 2 (referring to 87 wounded people “evacuated” with the agreement of **Gvero**). *See also supra*, para. 349.

⁵⁴¹⁸ Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995”; Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”.

be successful, as can be seen from the successes of the VRS in Srebrenica, Žepa and on other fronts.”⁵⁴²⁰

1798. On 19 July, an agreement signed between Smith and Mladić stated, *inter alia*, that ICRC representatives would be granted access to reception points by the end of 20 July.⁵⁴²¹ On 26 July 1995, prisoners at Batković were registered by the ICRC, which had no restrictions on access to the detention centre.⁵⁴²²

(e) Findings

1799. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Joint Criminal Enterprise to Forcibly Remove

1800. The Trial Chamber notes that the centrepiece of the Prosecution’s case against **Gvero** is his commission of crimes through participation in the JCE to Forcibly Remove, as alleged in the Indictment.⁵⁴²³ The Trial Chamber will therefore begin with an examination of **Gvero**’s alleged participation in this JCE.

a. Knowledge of the Plan

1801. The Trial Chamber is satisfied that **Gvero** had knowledge of the Strategic Objectives and Directive 4 and thereby understood the plans of the RS leadership, aimed at the creation of a separate State for the Serbian people in BiH. Through Directive 4 specifically, **Gvero** knew of the tasks for the VRS in order to achieve these goals: primarily, to defeat the Bosnian Muslim forces and to remove the civilian population from the Srebrenica and Žepa enclaves.⁵⁴²⁴

1802. Directive 7 elaborated on those tasks. The Trial Chamber has found above that Directive 7 set out a joint plan to forcibly remove the civilian population from Srebrenica and Žepa.⁵⁴²⁵ Directive 7/1 articulated the VRS’s role in implementing that plan.⁵⁴²⁶ It has not been established that **Gvero**, or his Sector, provided the actual text for parts of Directive 7. However the Trial

⁵⁴¹⁹ Ex. P02756, “Letter from the President of RS to Gvero, 17 July 1995.”

⁵⁴²⁰ Ex. P02757, “Letter to the President of the RS, signed by Gvero, 18 July 1995”.

⁵⁴²¹ Ex. P02265, “Agreement between Smith and Mladić, 19 July 1995”.

⁵⁴²² Ex. 2D00522, “ICRC update on ICRC activities in the former Yugoslavia”; Ahmo Hasić, T. 1282–1283 (7 Sept 2006); Ljubomir Mitrović, T. 23646 (11 July 2008); Novica Simić, T. 28568–28569 (20 Nov 2008); PW-139, T. 3687 (7 Nov 2006). *See also supra*, para. 595.

⁵⁴²³ Indictment, para. 76.

⁵⁴²⁴ *See supra*, paras. 89, 91.

⁵⁴²⁵ *See supra*, para. 1085.

Chamber is satisfied that, with his background knowledge of the strategies since 1992 and through the full-method according to which Directive 7 was drafted, **Gvero** provided input in relation to his area of responsibility.⁵⁴²⁷ On the totality of the evidence, the Trial Chamber is satisfied that the only reasonable inference is that **Gvero** was well aware of Directive 7 and its content. In reaching this conclusion, the Trial Chamber has taken into consideration the importance of Directive 7, being a main policy document, and **Gvero**'s previous knowledge of and involvement in the strategies of RS. Further, as the Assistant Commander for Morale, **Gvero** was responsible for implementing the objectives set out in Directive 7 in relation to "Moral and Psychological Support".⁵⁴²⁸

1803. In light of the foregoing, the Trial Chamber is satisfied that **Gvero** knew of the plan to forcibly remove the populations from Srebrenica and Žepa from its inception. **Gvero** thereby understood and knew of the role of the VRS in implementing this policy, as well as of the methods agreed, such as the restrictions in access to humanitarian aid and the military attack on the enclaves.

b. Participation in the Joint Criminal Enterprise

i. General Role

1804. Before considering the specific Prosecution's allegations as to **Gvero**'s contribution to JCE, it is important to consider the overall role played by **Gvero** within the VRS Main Staff during the course of the *Krivaja-95* and Žepa operations.

1805. According to Directive 7, the implementation of the strategy to forcibly remove the population from the Srebrenica and Žepa enclaves was heavily dependant on the participation of the VRS. Further, the nature of the VRS' role was such that members of the Main Staff had a crucial role in overseeing that implementation. **Gvero** was amongst the most senior officers in the VRS Main Staff and there is evidence that he played an important role in that respect. **Gvero**'s involvement is noticeable throughout the *Krivaja-95* and Žepa operations: he was provided with crucial information and was involved at critical junctures. As an example, **Gvero** was personally present at the IKM in Pribićevec on 9 July 1995 with Krstić, the then Commander of the Drina Corps, who was leading the VRS' advances on Srebrenica.⁵⁴²⁹

⁵⁴²⁶ See *supra*, para. 1086.

⁵⁴²⁷ See *supra*, paras. 1758–1760. See also *supra*, para. 116.

⁵⁴²⁸ See *supra*, para. 1760. See also *supra*, para. 116.

⁵⁴²⁹ See *supra*, paras. 1765–1766.

1806. As the Assistant Commander for Morale, **Gvero** had an important role to play in VRS' operations: the *Krivaja-95* and the *Žepa* operations were no exception. To properly carry out his functions, **Gvero** had to be informed of the major developments in the campaign so that he would be in a position to intervene, as might be necessary, if issues of morale arose or dissemination of information might be needed. The evidence clearly indicates that **Gvero** was a specific recipient of key documents and was generally informed as to the progress of the military action. For example, on 9 July, Tolimir's telegram forwarding Karadžić's order to capture Srebrenica town was sent to Krstić and **Gvero** at the IKM. Whether **Gvero** received it or not, this evidences that Tolimir, the Assistant Commander for Security and Intelligence, considered it important for **Gvero** to be aware of a key development of this nature. Similarly on 13 July, Tolimir and Mladić sent instructions concerning prisoners of war, personally addressed to **Gvero** at the VRS Main Staff.⁵⁴³⁰ In relation to *Žepa*, **Gvero** received timely information on the progress of the negotiations.⁵⁴³¹

1807. The need for **Gvero** to be kept up to date on central aspects of the campaigns and any related policy decisions was enhanced by the fact that, in addition to his regular responsibilities, on some occasions **Gvero** was present at the VRS Main Staff as the most senior officer.⁵⁴³² In that capacity, the other assistant commanders would report to him and he could be called upon to intervene directly in the ongoing military action. Specifically, for parts of the day on 13, 19 and 25 July 1995, **Gvero** was present at the VRS Main Staff as the most senior officer. For example, on 13 July an order type-signed **Gvero** was issued from the Main Staff, calling for the capture of men from the column. While not directly relevant to the forcible transfer operation,⁵⁴³³ this evidences the important role **Gvero** was entrusted with in the VRS Main Staff.

1808. With these general considerations in mind, the Trial Chamber will now consider the specific allegations of the Prosecution as to **Gvero**'s contribution to the JCE.

ii. Restrictions of Humanitarian Aid

1809. The Prosecution alleges that **Gvero** participated in the JCE to Forcibly Remove by blocking the UN's and other international organisations' access into Srebrenica.⁵⁴³⁴ The Trial Chamber has found above that the VRS restricted access of humanitarian aid to the enclaves, pursuant to a policy

⁵⁴³⁰ See *supra*, paras. 1778–1779.

⁵⁴³¹ See *supra*, paras. 1780, 1783–1785.

⁵⁴³² See *supra*, para. 1756.

⁵⁴³³ It has been found above that the transfer of the detained Bosnian Muslim men separated in Potočari or surrendered and/or captured from the column did not constitute forcible transfer. See *supra*, para. 934.

⁵⁴³⁴ Indictment, para. 76(c)(ii).

set out in Directive 7.⁵⁴³⁵ The evidence before the Trial Chamber demonstrates that **Gvero** had some role in the process of approving humanitarian convoys.⁵⁴³⁶ However, there is little evidence before the Trial Chamber to establish that he had any substantive role after the issuance of Directive 7. Further, there is no evidence that he contributed in any way to the restrictions, incrementally or otherwise, since the only document initialled by **Gvero** after Directive 7 contains approvals for the passage of convoys.⁵⁴³⁷ In these particular circumstances, the Trial Chamber is not satisfied that **Gvero's** involvement in the overall process for humanitarian aid contributed to the JCE significantly or otherwise.

iii. Transport of the Wounded and Sick out of RS

1810. The Prosecution also alleges that **Gvero** was involved in facilitating and overseeing the transport of the wounded as part of the JCE to Forcibly Remove the Bosnian Muslim populations out of the enclaves.⁵⁴³⁸ The Trial Chamber has found that **Gvero** was involved in and facilitated the transfer of a group of wounded and sick from Srebrenica to Tuzla on 17 and 18 July 1995.⁵⁴³⁹ This group of wounded and sick consisted of civilians, since the able-bodied men were separated by the VRS and kept in RS hospital.⁵⁴⁴⁰ The Geneva Conventions protect civilians against forcible removal.⁵⁴⁴¹ Wounded and sick, whether civilians or not, are in addition afforded special consideration.⁵⁴⁴² However, wounded and sick can lawfully be transferred without their consent on

⁵⁴³⁵ See *supra*, para. 767.

⁵⁴³⁶ See *supra*, paras. 1762–1763.

⁵⁴³⁷ Ex. P04040, “VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 21 April 1995”. See *supra*, para. 1762.

⁵⁴³⁸ See Indictment, para. 76(d)(ii).

⁵⁴³⁹ See *supra*, paras. 1790–1798.

⁵⁴⁴⁰ See *supra*, paras. 1793–1796.

⁵⁴⁴¹ Geneva Convention IV, Articles 49, 147; Additional Protocol II, Article 17.

⁵⁴⁴² Article 3 Common to the Geneva Conventions (stating at para. 2 that “[t]he wounded and sick shall be collected and cared for”); Additional Protocol II, Article 7 (stating at para. 1 that “[a]ll the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected”). The Commentary to Additional Protocol II explains with regard to Article 7(1) that “[t]he concepts of respect and protection are taken from the [Geneva] Conventions, the first concept having been introduced in the 1906 revision and the second concept in 1929. The verb ‘to respect’ means to spare, ‘not to attack’; it is an obligation to abstain from any hostile act, to which is added the duty to protect. ‘To protect’ means ‘to come to someone’s defence, to lend help and support’.[...] This implies taking measures to remove the wounded, sick and shipwrecked, if possible, from the scene of combat and shelter them, and to ensure that they are effectively respected, i.e. that no one takes advantage of their weakness in order to mistreat them, steal their belongings, or harm them in any other way. The duty to respect and protect is incumbent on everyone, both on the members of the armed forces or armed groups and on the civilian population.” Commentary on Additional Protocols, para. 4635. Furthermore, the Commentary states that “[n]o distinction is made between members of the armed forces and civilians or according to whether they belong to the one party or the other concerned; the obligation to respect and protect is general and absolute.” *Ibid.*, para. 4642. Para. 2 of Article 7 states that “[i]n all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.” See also Additional Protocol I, Article 10. The Commentary to Additional Protocol II explains with regard to Article 7(2) that “[h]umane treatment is a general principle which applies at all times and in all places; it follows from respect

medical grounds, but no distinction may be made on any other ground.⁵⁴⁴³ Accordingly, it is for the Prosecution to demonstrate that, in the present circumstances the transfer of the wounded and sick was unlawful, by proving that it was conducted for reasons other than medical necessity.

1811. The transportation of wounded and sick civilians was carried out by ICRC during 17 and 18 July, through an agreement with **Gvero**.⁵⁴⁴⁴ The Trial Chamber has considered the context in which this transfer was conducted; the involvement of the international organisations in carrying out the transfer; the ICRC reports stating it had to be carried out for urgent reasons as some of the casualties were seriously injured; and the absence of other evidence relating to the reasons for this transfer. In light of this, the Trial Chamber finds that the Prosecution has not proven that the transfer of wounded and sick civilians to Tuzla was motivated by reasons other than medical and was therefore unlawful. No evidence was presented on the fate of the wounded and sick that may have remained in the hospitals in Srebrenica and Bratunac, and in the DutchBat compound in Potočari. In addition, **Gvero**'s suggestion to Nicolai on 12 July that the medical evacuation be carried out by land instead of through the air can be interpreted in several ways.⁵⁴⁴⁵ The Prosecution argues that it was aimed at or assisted in blocking international organisations' access into the enclave.⁵⁴⁴⁶ The Chamber is of the view that the statement can be interpreted as an action to block access by international organisations, but another reasonable inference is that air evacuations were at the time not safe and therefore could not be approved, as **Gvero** said to Nicolai during the same conversation. The Trial Chamber notes that the transfer of civilians from Potočari on 12 and 13 July was conducted with DutchBat present on the spot. The argument that blocking further international organisations access to the area furthered or facilitated the forcible transfer is therefore tenuous and speculative. In these circumstances, the Trial Chamber considers **Gvero**'s involvement with the wounded and sick did not constitute a contribution to the JCE to Forcibly Remove.

and protection. This is a reaffirmation in this particular context of the principle already contained in Article 4 (Fundamental guarantees), paragraph 1." Commentary on Additional Protocols, para. 4644.

⁵⁴⁴³ See Article 3 Common to the Geneva Conventions; Additional Protocol II, Articles 7, 17. Article 17(1) reads: "[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." The Commentary to Additional Protocol II explains with regard to Article 7(2) that "[t]he only factors allowed for giving priority in medical care and attention are matters of urgency and medical ethics." Commentary on Additional Protocols, para. 4647.

⁵⁴⁴⁴ See *supra*, para. 1796.

⁵⁴⁴⁵ See *supra*, para. 1791.

⁵⁴⁴⁶ Indictment, para. 76(c)(ii); Prosecution Final Brief, para. 1808.

iv. War Propaganda, Misleading Information and Threats

1812. The Prosecution has made allegations relating to **Gvero**'s role in disseminating false information to the media and directly to international organisations.⁵⁴⁴⁷ In addition, the Prosecution alleges that **Gvero** threatened and pressured UNPROFOR Commander Nicolai in an effort to stop NATO bombings.⁵⁴⁴⁸ While framed as individual contributions, the Trial Chamber will consider these particular allegations together, given their interrelationship.

1813. Whether it was amongst his regular responsibilities or not,⁵⁴⁴⁹ the evidence illustrates clearly that during the *Krivaja-95* and *Žepa* operations, **Gvero** was entrusted with key functions related to external propaganda and interaction with international organisations, aimed at supporting the plan to forcibly transfer the populations of Srebrenica and *Žepa*.

1814. On 10 July 1995—after the VRS had launched a military assault on the enclave, taken over UN OP's and moved to capture Srebrenica town itself—**Gvero** issued a statement to the media, concerning the attack on the enclave, in which he explained that the VRS' combat activity was directed towards neutralising Muslim terrorists and was not directed against civilians or members of UNPROFOR. His conclusion was that “there is no reason for the media and foreigners to get involved in the Muslim war propaganda.”⁵⁴⁵⁰

1815. Considering that **Gvero** knew of the plan to take-over the Srebrenica enclave and to forcibly remove the civilian population, and the action which had been taken to implement it, this was unquestionably a misleading press release. While of course the release of false information to the media and international authorities does not constitute a criminal act, the purpose of the release was not an innocent one. The only reasonable inference as to the goal behind this *communiqué* is that it was intended to mislead, in particular the international authorities concerned with protecting the enclave, with a view to delaying any action on their part which might thwart the VRS' military efforts.

1816. The next day, after NATO had initiated air strikes against the VRS forces advancing on the town, **Gvero** formed part of a concerted response from the VRS to stop the bombing. **Gvero** called UNPROFOR headquarters in Sarajevo and spoke with General Nicolai. He adopted his earlier tactic of falsely asserting that this was only the VRS responding to attacks.⁵⁴⁵¹ At this time, **Gvero** had the

⁵⁴⁴⁷ Indictment, paras. 76(a)(i), 76(b)(i).

⁵⁴⁴⁸ *Ibid.*, para. 76(c)(i).

⁵⁴⁴⁹ *See supra*, paras. 1747–1757.

⁵⁴⁵⁰ Ex. P02753, “‘Srebrenica—The Muslim War Trump Card’, statement by Gvero, 10 July 1995”, p. 2. *See supra*, para. 1768.

⁵⁴⁵¹ *See supra*, para. 1770.

additional knowledge that the VRS had already taken-over Srebrenica town and that Bosnian Muslims had fled into the DutchBat compound in Potočari.⁵⁴⁵² Armed with this information, **Gvero** told Nicolai that unless air support stopped immediately, Nicolai “would be held responsible for all further developments and the destiny of his men and the civilian population in Srebrenica.”⁵⁴⁵³ It is true that no overt threatening language was used nor were possible reprisals against the people gathered in Potočari specifically referenced. Nevertheless, Nicolai interpreted and understood this to be a threat with respect to the UNPROFOR members and the civilian population gathered in Potočari. Given all the circumstances, especially the timing of the call, the knowledge of **Gvero** as to the situation on the ground and the related VRS’ efforts to stop the bombing, the Trial Chamber is satisfied that this was intended as and constituted a threat. In essence, **Gvero** was warning that failure to stop the NATO air strikes could result in dire consequences for UNPROFOR and the civilians in Potočari; and the responsibility for those people would fall on Nicolai.

1817. Strategically, soon after this conversation **Gvero** issued a warning to VRS personnel about the treatment of UNPROFOR personnel.⁵⁴⁵⁴ The Trial Chamber is satisfied, from the timing and content of the document, that it was designed to ensure that no further actions were taken in relation to UNPROFOR that might provoke a response and interfere with efforts to end the NATO air strikes.

1818. The Trial Chamber is unable to conclude that **Gvero**’s discussion with Nicolai constituted a determinative factor in the NATO decision to suspend air support, since there had been prior attempts by the VRS to stop the bombing.⁵⁴⁵⁵ Nevertheless, the Trial Chamber is satisfied that this was precisely **Gvero**’s aim. Moreover, the Trial Chamber considers that at this stage of the military assault, with the ABiH forces no longer a factor and UNPROFOR overrun, NATO air strikes were essentially the only means by which the VRS’ advance towards and capture of the enclave could be halted. From the VRS’ perspective, this was the last significant obstacle to the completion of the plan to take over the Srebrenica enclave and forcibly remove its inhabitants.

1819. Further evidence as to the significance of **Gvero**’s actions comes from the intercepted conversations between **Gvero** and Karadžić⁵⁴⁵⁶, which followed shortly after **Gvero**’s

⁵⁴⁵² See *supra*, paras. 253–255, 263.

⁵⁴⁵³ Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours”. See *supra*, para. 1770.

⁵⁴⁵⁴ See *supra*, para. 1771.

⁵⁴⁵⁵ See *supra*, para 1770. See also Louis Fortin, T. 18261 (27 Nov 2007) (testifying that, “if [he] remembered correctly” air support was suspended because the VRS threatened to kill some of the DutchBat soldiers in their custody).

⁵⁴⁵⁶ But see Judge Kwon’s Separate Opinion, *supra*, fn. 5337.

communication with Nicolai.⁵⁴⁵⁷ **Gvero** recounts the essence of his discussion with the UNPROFOR Chief of Staff and assures the President that “[e]verything is going according to plan, don’t worry.”⁵⁴⁵⁸ As the evidence before the Trial Chamber does not establish that **Gvero** had general responsibility for communications with Karadžić, this conversation demonstrates that the content of his discussions with Nicolai was of sufficient import to be specifically relayed to the President of RS.

1820. On the basis of these acts taken in combination, the Trial Chamber is satisfied that **Gvero** played a limited but important role in supporting the VRS’ military action, which was essential to the success of the plan to forcibly transfer. As a senior assistant commander, cloaked with authority from the highest echelons, **Gvero** took steps to block protective action in favour of the enclave by international authorities, notably UNPROFOR and NATO. The Trial Chamber is satisfied that by disseminating false information and issuing a serious threat, whether effective or not in the end, **Gvero** made a contribution to the JCE which by its nature cannot be classified as other than significant.

1821. In relation to the Žepa operation, the Trial Chamber is satisfied that **Gvero** knew of the VRS’ advance towards Žepa and of the negotiations taking place with Bosnian Muslim representatives and he was aware of the busing out of the women, children and the elderly from the enclave.⁵⁴⁵⁹ The Trial Chamber infers this from **Gvero**’s conversation with Milovanović on 19 July;⁵⁴⁶⁰ from **Gvero**’s receipt of the 24 July Agreement;⁵⁴⁶¹ from the intercepted conversation between **Gvero** and “Šubara” on 25 July;⁵⁴⁶² and from **Gvero**’s presence at the meeting at the Jela Restaurant on 25 July and at the Bokšanica checkpoint on 26 July.⁵⁴⁶³ However, having considered the evidence in its totality, while **Gvero** was clearly knowledgeable and informed as to the illegal purpose of and developments in the Žepa campaign throughout, there is no evidence before the Trial Chamber of any actions on his part which contributed directly to it.

⁵⁴⁵⁷ See *supra*, paras. 1772–1775.

⁵⁴⁵⁸ See *supra*, para. 1773; Ex. P01096a (confidential).

⁵⁴⁵⁹ See *supra*, Chapter III, Section K.

⁵⁴⁶⁰ See *supra*, para. 1789.

⁵⁴⁶¹ See *supra*, para. 1784.

⁵⁴⁶² *Ibid.*

⁵⁴⁶³ See *supra*, paras. 1785–1786. The Trial Chamber considers the evidence relating to the use of loudspeakers is not sufficient to establish that the 5,000 Watt loudspeaker was ever transported and used in the enclave or that **Gvero** had knowledge of it. See *supra*, para. 1782.

v. Conclusion

1822. The Trial Chamber is of the view that **Gvero**, with his detailed knowledge of the strategic aim to remove the Bosnian Muslim population from the enclaves, made a significant contribution to the common purpose of the JCE, through his efforts to delay and block international protective intervention. The Trial Chamber further notes that, as evidenced by his actions and the forceful manner in which they were carried out, the only reasonable inference is that **Gvero** also shared the intent. In addition, **Gvero**'s own words in the intercepted conversations—"[e]verything is going according to plan, don't worry"—make his intentions clear, evidencing not just knowledge but a shared intent.⁵⁴⁶⁴ Therefore, the Trial Chamber finds **Gvero** is a participant in the JCE to Forcibly Remove.

(ii) The Knowledge Requirement for a Crime under Article 5 of the Statute

1823. **Gvero** is responsible for a crime against humanity under Article 5 of the Statute if his acts were part of the widespread and systematic attack against the civilian population and if at the time, he knew of that attack and that his crimes comprised a part thereof.⁵⁴⁶⁵

1824. The Trial Chamber has already found that there was a widespread and systematic attack directed against a civilian population with several components, culminating in the military action against Srebrenica.⁵⁴⁶⁶ As established above, **Gvero** knew of Directive 7, which sets out the attack as part of the joint plan to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa.⁵⁴⁶⁷ Therefore, **Gvero** knew of the attack against the civilian population. Further, **Gvero**'s acts and conduct as described above are clearly tied to the attacks on Srebrenica and Žepa, and **Gvero**—with his overview of the forcible transfer operation from its inception—knew that this was the case. The Trial Chamber finds that **Gvero** meets the knowledge requirement for crimes against humanity under Article 5 of the Statute.

(iii) Count 7: Inhumane Acts (Forcible Transfer)

1825. It has been found that forcible transfer of the women, children and elderly from Srebrenica and Žepa was committed by the VRS in July 1995.⁵⁴⁶⁸ **Gvero** was found to be a participant in the JCE to Forcibly Remove.⁵⁴⁶⁹ Further, as found above, **Gvero** meets the knowledge requirement for

⁵⁴⁶⁴ Ex. P01096a (confidential). *See supra*, para. 1773.

⁵⁴⁶⁵ *See supra*, paras. 757–758.

⁵⁴⁶⁶ *See supra*, para. 760.

⁵⁴⁶⁷ *See supra*, paras. 1802–1803, 1805–1807.

⁵⁴⁶⁸ *See supra*, Chapter IV, Section G.2.(a)(i), (iv) and (b)(ii), (iv).

⁵⁴⁶⁹ *See supra*, para. 1822.

Article 5.⁵⁴⁷⁰ The Trial Chamber therefore finds **Gvero** criminally responsible for the commission of the forcible transfer of the Bosnian Muslims from Srebrenica and Žepa,⁵⁴⁷¹ through his participation in the JCE to Forcibly Remove.⁵⁴⁷²

1826. The Trial Chamber finds **Gvero** guilty of inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i) of the Statute.

(iv) Count 8: Deportation

1827. The Trial Chamber has found that the elements of the crime of deportation are not met.⁵⁴⁷³ Therefore, **Gvero** cannot be held liable and is found not guilty of deportation as a crime against humanity punishable under Article 5(d) of the Statute.

(v) Counts 4 and 5: Murder

1828. The Prosecution alleges that **Gvero** committed murder through “opportunistic” killings in Potočari, Bratunac, the Kravica Supermarket, and the Petkovci School between 12 and 15 July 1995, pursuant to the third category of JCE by his participation in the JCE to Forcibly Remove.⁵⁴⁷⁴

1829. The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.⁵⁴⁷⁵ The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.⁵⁴⁷⁶ The Trial Chamber has found these “opportunistic” killings constitute murder both as a crime against humanity and a violation of the laws and customs of war.⁵⁴⁷⁷ The Trial Chamber has also found, by majority, Judge Kwon dissenting, that the “opportunistic” killings in Potočari were a natural and foreseeable consequence of the JCE to Forcibly Remove.⁵⁴⁷⁸

1830. **Gvero** was found to be a participant in the JCE to Forcibly Remove from its inception.⁵⁴⁷⁹ However, it has not been demonstrated that **Gvero** was involved in any of the logistical aspects of the forcible transfer operation, neither that he was present in Potočari to see the conditions there.

⁵⁴⁷⁰ See *supra*, para. 1824.

⁵⁴⁷¹ The Trial Chamber notes that, although it was found above (in para. 1821) that **Gvero** did not directly contribute to the forcible transfer operation in Žepa, through his participation in the JCE to Forcibly Remove he is criminally responsible for the forcible transfer operations in Srebrenica and in Žepa.

⁵⁴⁷² See *supra*, Chapter V, Section B.8.(e)(i)b.

⁵⁴⁷³ See *supra*, para. 962.

⁵⁴⁷⁴ Indictment, paras. 31, 46–47, 83. The Indictment further clarifies that the term “opportunistic” is intended to describe “killings and other criminal acts carried out by individual soldiers, acting on their own, likely without orders from superior officers”. *Ibid.* para. 83.

⁵⁴⁷⁵ See *supra*, paras. 359, 361, 455, 457, 463, 497.

⁵⁴⁷⁶ See *supra*, para. 449. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

⁵⁴⁷⁷ See *supra*, para. 796.

⁵⁴⁷⁸ See *supra*, para. 1088. See Judge Kwon’s Dissenting Opinion, *infra*, para. 21–26.

His acts evidence that he was involved in the JCE in the planning and development stages and subsequently, through his role as the Main Staff most senior officer and through his interventions with international organisations and entities. Thus, the Trial Chamber is not satisfied the only reasonable inference is that **Gvero**, through his knowledge and through the level of his involvement in the forcible transfer operation would foresee that “opportunistic” killings would be perpetrated by members of the VRS in the course of the forcible transfer. Therefore the Trial Chamber is also not satisfied that in this particular circumstance he willingly took the risk.

1831. The Trial Chamber finds **Gvero** not guilty for murder as a crime against humanity punishable under Article 5(a) of the Statute and murder as a violation of the laws or customs of war punishable under Article 3 of the Statute.

(vi) Count 6: Persecution

1832. The Trial Chamber has found that persecution as a crime against humanity was committed, *inter alia*, through the forcible transfer of thousands of Bosnian Muslims from Srebrenica and Žepa, through cruel and inhumane treatment and through the terrorising of Bosnian Muslim civilians.⁵⁴⁸⁰ The Chamber has also found that these acts formed part of the common purpose of the JCE to Forcibly Remove.⁵⁴⁸¹

1833. It has been found above that **Gvero** was a participant in the JCE to Forcibly Remove and that he meets the knowledge requirement for crimes against humanity.⁵⁴⁸² However, in order for **Gvero** to be held criminally responsible for persecution, it must be proved that he acted with the specific intent to discriminate on political, racial or religious grounds.⁵⁴⁸³ The Trial Chamber is satisfied **Gvero** possessed such specific intent. The operation to remove the populations from Srebrenica and Žepa and the crimes agreed in the common plan were specifically directed at the Bosnian Muslim populations of the enclaves. This was clearly set out in the plan as laid down in Directive 7. As found above, **Gvero** had full knowledge of this Directive, the strategy it encompassed and the people targeted.⁵⁴⁸⁴ Based on this and on the totality of the evidence before it, the Trial Chamber is satisfied that **Gvero** carried out his acts with the specific intent to discriminate on political, racial or religious grounds. The Trial Chamber therefore finds **Gvero** criminally responsible for committing persecution through the underlying acts of forcible transfer, cruel and

⁵⁴⁷⁹ See *supra*, Chapter V, Section B.8.(e)(i).

⁵⁴⁸⁰ See *supra*, paras. 992–999, 1002–1003.

⁵⁴⁸¹ See *supra*, paras. 1086–1087.

⁵⁴⁸² See *supra*, para. 1822, 1824.

⁵⁴⁸³ See *supra*, paras 968–969.

⁵⁴⁸⁴ See *supra*, paras. 1802–1803.

inhumane treatment and terrorising civilians, committed through his participation in the JCE to Forcibly Remove with persecutory intent.⁵⁴⁸⁵

1834. In relation to “opportunistic” killings, the Trial Chamber recalls its finding in the context of murder, that it was not foreseeable to **Gvero** that “opportunistic” killings would be a probable consequence of the JCE to Forcibly Remove.⁵⁴⁸⁶ Accordingly, the Trial Chamber finds **Gvero** cannot be held accountable for persecution through “opportunistic” killings as a crime against humanity.

1835. The Prosecution also alleges that pursuant to the third category of liability through participation in the JCE to Forcibly Remove, it was foreseeable to **Gvero** that certain “persecutory acts” would be carried out by the Bosnian Serb Forces as part of the JCE to Forcibly Remove.⁵⁴⁸⁷ As the Trial Chamber has assessed these charges of persecution—other than through “opportunistic” killings—pursuant to the first category JCE liability, it is not necessary to address **Gvero**’s alleged responsibility for “persecutory acts” under the third category of JCE.

1836. The Trial Chamber finds **Gvero** guilty for persecution as a crime against humanity punishable under Article 5(h) of the Statute.

⁵⁴⁸⁵ See *supra*, Chapter V, Section B.8.(e)(i)b.

⁵⁴⁸⁶ See *supra*, para. 1830.

⁵⁴⁸⁷ Indictment, para. 83.

9. Vinko Pandurević

(a) The Case against Pandurević

1837. The Prosecution alleges that **Pandurević** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.⁵⁴⁸⁸ Specifically, the Prosecution alleges that **Pandurević** was a member of a joint criminal enterprise to summarily execute and bury the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).⁵⁴⁸⁹

1838. **Pandurević** is also charged as a commander for the acts of his subordinates, with the same crimes referred to above, pursuant to Article 7(3) of the Statute.⁵⁴⁹⁰

(b) Position and Function

1839. **Vinko Pandurević** was born on 25 June 1959 in the village of Jasik, in the Sokolac municipality in BiH.⁵⁴⁹¹ In July 1982, upon graduation from the military academy, **Pandurević** became a second lieutenant and was sent to serve as a platoon commander in the School of Reserve Officers in Ljubljana, Slovenia.⁵⁴⁹² In 1989, **Pandurević** received a master’s degree in Humanities from the School of Sociology, Political Sciences, and Journalism in Slovenia.⁵⁴⁹³ From June to late December 1992, **Pandurević** was Commander of the Višegrad Brigade.⁵⁴⁹⁴ **Pandurević** assumed command of the Zvornik Brigade in December 1992, although he was not formally appointed as commander of the Brigade until October 1993.⁵⁴⁹⁵ On 7 January 1993, **Pandurević** achieved the rank of major. On 23 June 1994, he was promoted to the rank of lieutenant colonel and in

⁵⁴⁸⁸ Indictment, paras. 26–37, 39, 45–71, 77, 83–84, 88–91. **Pandurević** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

⁵⁴⁸⁹ Indictment, paras. 39, 77.

⁵⁴⁹⁰ *Ibid.*, paras. 93, 94. **Pandurević** is charged with responsibility for the criminal acts of his subordinates described in paragraphs 30.6–30.15, 31.4, 32, 39, 42, 44, 54, 67, 77, 80, and 82 of the Indictment. *See* Indictment, para. 94.

⁵⁴⁹¹ Vinko Pandurević, T. 30662 (27 Jan 2009).

⁵⁴⁹² *Ibid.*, T. 30667–30668 (27 Jan 2009).

⁵⁴⁹³ *Ibid.*

⁵⁴⁹⁴ *Ibid.*, T. 30678–30679 (27 Jan 2009).

⁵⁴⁹⁵ Ex. 7DP00372, “Detail of Professional Military Personnel for Vinko Pandurević”, pp. 4, 14–15; Vinko Pandurević, T. 30693–30694 (27 Jan 2009).

December 1995, to the rank of colonel. In June 1997, he received the rank of major general in the VRS and in March 2001, was appointed to the rank of general in the Army of Yugoslavia.⁵⁴⁹⁶

1840. **Pandurević** left the Zvornik Brigade in April 1996.⁵⁴⁹⁷ He was then assigned to the position of Deputy Chief of the Operations Department of the Administration for Operations and Training in the Main Staff.⁵⁴⁹⁸ **Pandurević** remained in this position for one month and then received permission to take leave to study and subsequently spent most of his time thereafter in Belgrade where he stayed until November 1996 as he pursued his PhD.⁵⁴⁹⁹ In November 1996, **Pandurević** was informed by President Biljana Plavšić at a meeting in Pale that he had been selected for the position of “Assistant for Morale and Legal and Religious Affairs” of the General Staff (the Main Staff having been renamed General Staff).⁵⁵⁰⁰ Shortly thereafter, however, **Pandurević** was reassigned and appointed “Deputy Chief of the General Staff”.⁵⁵⁰¹ **Pandurević** remained in this position until September 1997 when he left to attend the National Defence School in Belgrade, from which he graduated in early 1999.⁵⁵⁰² **Pandurević** retired from the Army of Yugoslavia in 2002.⁵⁵⁰³

1841. During the time relevant to the Indictment, **Pandurević** was Commander of the Zvornik Brigade.⁵⁵⁰⁴

(c) Acts and Whereabouts

(i) 1–10 July 1995

1842. On 1 July 1995, **Pandurević** was first briefed about the *Krivaja-95* operation⁵⁵⁰⁵ during a meeting with several brigade commanders called by Krstić in Pribićevac, where the Drina Corps IKM was located.⁵⁵⁰⁶ Later on 1 July, **Pandurević** presided over a meeting at the Standard Barracks

⁵⁴⁹⁶ Ex. 7DP00372, “Detail of Professional Military Personnel for Vinko Pandurević”; Vinko Pandurević, T. 30669 (27 Jan 2009); Vinko Pandurević, T. 30669 (27 Jan 2009). **Pandurević** was promoted in July 1983 to the rank of lieutenant; in 1987 to the rank of captain; and in 1991 to the rank of captain first class. Vinko Pandurević, T. 30668–30669 (27 Jan 2009).

⁵⁴⁹⁷ Vinko Pandurević, T. 31247 (11 Feb 2009).

⁵⁴⁹⁸ *Ibid.*

⁵⁴⁹⁹ *Ibid.*, T. 31248–31249 (11 Feb 2009).

⁵⁵⁰⁰ Vinko Pandurević, T. 31250–31252 (11 Feb 2009); Bogdan Sladojević, T. 14411 (27 Aug 2007).

⁵⁵⁰¹ *Ibid.*, T. 31255 (11 Feb 2009).

⁵⁵⁰² *Ibid.*, T. 31255–31259 (11 Feb 2009). **Pandurević** acquired the rank of Major General in the VRS on 28 June 1997. Vinko Pandurević, T. 30669 (27 Jan 2009).

⁵⁵⁰³ Vinko Pandurević, T. 31259 (11 Feb 2009).

⁵⁵⁰⁴ *See infra*, paras. 2027–2031. *But see* Judge Kwon’s Separate Opinion, *infra*, paras. 47–59.

⁵⁵⁰⁵ *See supra*, paras. 242–245.

⁵⁵⁰⁶ Vinko Pandurević, T. 30839–30840 (29 Jan 2009). Apart from **Pandurević**, the Commanders of the Birač Brigade (or Šekovići Brigade), Milići Brigade, Sokolac Brigade, Goražde Brigade, Vlasenica Brigade and Bratunac Brigade attended the meeting. Milenko Lazić, T. 21728, 21748–21749 (4 June 2008) (describing how the Brigade Commanders were informed about the operation but not providing specific dates). After arriving in Pribićevac, Krstić, **Pandurević**, and the other brigade commanders visited several areas from which they carried out reconnaissance for the *Krivaja-95* operation. Vinko Pandurević, T. 30839–30841 (29 Jan 2009). Around this time

during which **Pandurević** said that he was going to Srebrenica with a certain number of troops and that during his absence Obrenović would be in charge.⁵⁵⁰⁷

1843. On 2 July, **Pandurević** received the *Krivaja-95* Orders.⁵⁵⁰⁸ Additionally, on 2 July, pursuant to the *Krivaja-95* Operation, **Pandurević** was given an oral order by Krstić to command TG-1,⁵⁵⁰⁹ which was to be ready to depart on 4 July.⁵⁵¹⁰ The deputy commander of TG-1 was Milan Jolović, who was known by the nickname “Legenda” and commanded the Drina Wolves, members of which were part of TG-1.⁵⁵¹¹

1844. On 4 July, **Pandurević** and approximately 400 men comprising TG-1 set off from the Standard Barracks.⁵⁵¹² TG-1’s 1st and 2nd echelons, or the infantry segment, led by **Pandurević** marched on the Zvornik-Bratunac-Bjelovac-Skelani-Zeleni Jadar axis, while its 3rd echelon, which

in 1995, about 955 soldiers had already been engaged outside the Zvornik Brigade’s zone of responsibility. Vinko Pandurević, T. 30840 (29 Jan 2009); Ex. 5D00351, “Regular Combat Report from 1st Zvornik Infantry Brigade to the Drina Corps Command, signed by Pandurević, 20 June 1995”. Given that, **Pandurević** did not expect that he would be asked to extend the brigade’s resources even further. Vinko Pandurević, T. 30840 (29 Jan 2009). Additionally, the regular combat report dated 1 July instructed that the Brigade should form a company to be sent to the area of Glamoc in the 2nd Krajina Corps where combat was taking place, thus **Pandurević** did not consider it “probable” that a new task would be given on 1 July. Vinko Pandurević, T. 30842–30843 (29 Jan 2009); Ex. 7D01022, “Regular Combat Report from the 1st Zvornik Infantry Brigade to the Drina Corps Command signed by Pandurević, 1 July 1995”, para. 2. Given that reconnaissance occurred only one day prior to the operation, **Pandurević** also said that the *Krivaja-95* operation appeared to be an “ad hoc” operation; such a short reconnaissance period usually occurred only at the level of a battalion or company. Vinko Pandurević, T. 30841–30842 (29 Jan 2009).

⁵⁵⁰⁷ Lazar Ristić, T. 10041–10042 (16 Apr 2007). See also Milan Marić, Ex. P03138, BT. 11559 (6 July 2004).

⁵⁵⁰⁸ Vinko Pandurević, T. 30843–30844 (29 Jan 2009); PW-168, T. 15807 (closed session) (26 Sept 2007); Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja 95, 2 July 1995”. See also *supra*, paras. 244–245.

⁵⁵⁰⁹ Vinko Pandurević, T. 31441–31443 (13 Feb 2009). Obrenović was called back to the Brigade from sick leave to assist in setting up the TG-1. Miodrag Dragutinović, T. 12671 (15 June 2007); PW-168, T. 15794–15795 (closed session) (25 Sept 2007).

⁵⁵¹⁰ Ex. P00318, “Zvornik Brigade Order to the Chief of Security signed by Pandurević, 2 July 1995”, para. 3. See also Vinko Pandurević, T. 30846 (29 Jan 2009); Lazar Ristić, T. 10041 (16 Apr 2007). See also Miodrag Dragutinović, T. 12575 (13 June 2007), T. 12671 (15 June 2007); PW-168, T. 15807 (26 Sept 2007).

⁵⁵¹¹ Vinko Pandurević, T. 30848 (29 Jan 2009); PW-168, T. 15807–15808 (closed session) (26 Sept 2007); Ex. P00318, “Zvornik Brigade Order to the Chief of Security signed by Pandurević, 2 July 1995”, para. 2.1. In July 1995, one part of the Drina Wolves was engaged in the *Krivaja-95* operation as a component of TG-1, while another part was engaged in the Sarajevo theatre of war. Miodrag Dragutinović, T. 12673–12674 (15 June 2007); PW-168, T. 15807–15808 (26 Sept 2007); Ex. P00318, “Zvornik Brigade Order to the Chief of Security signed by Pandurević, 2 July 1995”, para. 2.2.

⁵⁵¹² Vinko Pandurević, T. 30851 (29 Jan 2009); PW-168, T. 15810 (closed session) (26 Sept 2007); Miodrag Dragutinović, T. 12671–12672 (15 June 2007). See also Ex. 7D00242, “Marching Order from the Tactical Group from the Zvornik Brigade, signed by Pandurević, 3 July 1995”. **Pandurević** was accompanied by team of about four people, including probably two policeman and two drivers. PW-168, T. 16430 (closed session) (16 Oct 2007). One of his drivers between 4 and 15 July 1995 was likely Dragan Stević. PW-168, T. 16430 (closed session) (16 Oct 2007). **Pandurević** also took his operations officer, Miodrag Dragutinović, with him. PW-168, T. 16430–16431 (closed session) (16 Oct 2007). In court, Dragutinović drew the route taken by TG-1. Miodrag Dragutinović, T. 12675–12678 (15 June 2007); Ex. 7DIC00123, “Map 7D64 marked by the witness, 15 June 2007”; Ex. 7DIC00126, “Map 7D624 marked by the witness”. PW-168 confirmed the route drawn by Miodrag Dragutinović on Map 7D64. PW-168, T. 16433–16434 (closed session) (16 Oct 2007). See also Ostojica Stanišić, T. 11598–11599 (16 May 2007), T. 11710–11711 (17 May 2007).

was the armoured mechanised company, led by Major Milutinović, went along the Zvornik-Bratunac-Bjelovac-Pribićevac route.⁵⁵¹³

1845. On 5 July, the 1st and 2nd echelons of TG-1 deployed next to the Zeleni Jadar River.⁵⁵¹⁴ **Pandurević**, along with other commanders, reported to Krstić at the Drina Corps IKM in the Pribićevac area, where they received their specific orders for the *Krivaja-95* operation.⁵⁵¹⁵ On 5 July, **Pandurević** used the RU-1 radio relay equipment at the Drina Corps IKM in Pribićevac to contact the Zvornik Brigade command to request that missing grenades be supplied to the “tank company”.⁵⁵¹⁶

1846. On 6 July, the attack on Srebrenica started in the early morning before dawn.⁵⁵¹⁷ TG-1 was unable to make any progress that day as the forces of the 28th Division put up a strong resistance.⁵⁵¹⁸ On 7 July, **Pandurević** called the Zvornik Brigade Command to request that some teaching materials be photocopied and delivered to the students of the School of Technology.⁵⁵¹⁹

⁵⁵¹³ Vinko Pandurević, T. 30852–30853 (29 Jan 2009). *See also* Miodrag Dragutinović, T. 12675–12678 (15 June 2007). According to **Pandurević**, Ex. 7D01058 accurately depicts the movement of TG-1 from 4 to 14 July, while Ex. 7D01059 accurately depicts the movements of **Pandurević** himself from 4 to 14 July. Vinko Pandurević, T. 30918–30919 (30 Jan 2009); Ex. 7D01058, “Video of movement of TG-1 in Operation Krivaja 95 and Stupčanica 95 (Appendix 12 to Military Expert Report 7D00891)”; Ex. 7D01059, “Video of movement of the commander of the Zvornik Infantry Brigade from 4 to 17 July 1995 (Appendix 13 to Military Expert Report 7D00891)”. *See also* Ex. 7D01066, “Map of Engagement of TG-1 in actions (Appendix 20 to Military Expert Report 7D00891)”. According to **Pandurević**, on the map (Ex. 7D01066), the yellow arrows indicate the starting positions of the units planned to be used in the *Krivaja-95* operation. Vinko Pandurević, T. 30853 (29 Jan 2009). Pink arrows indicate movement of the units. Vinko Pandurević, T. 30853 (29 Jan 2009). Blue arrows indicate positions of the ABiH 28th Division forces. Vinko Pandurević, T. 30853 (29 Jan 2009). Orange arrows represent break through in depth by VRS forces northwest of Srebrenica. Vinko Pandurević, T. 30853 (29 Jan 2009).

⁵⁵¹⁴ Vinko Pandurević, T. 30852 (29 Jan 2009). *See also* Mirko Trivić, T. 11800–11801 (18 May 2007).

⁵⁵¹⁵ Mirko Trivić, T. 11801–11803, 11809 (18 May 2007). At the IKM in Pribićevac that day, Trivić recalled seeing Lieutenant-Colonel Kosorić, who briefed them about the situation and gave an estimate of the enemies’ strength according to their intelligence, and Colonel Vičić, the operations person, who assigned them their tasks. Mirko Trivić, T. 11808 (18 May 2007), T. 11930 (22 May 2007). Vičić did not issue any orders as he was an operations officer and could only convey orders that had been issued by the commander. Mirko Trivić, T. 11930 (22 May 2007).

⁵⁵¹⁶ Vinko Pandurević, T. 30919–30920 (30 Jan 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 96 (noting rounds of tank ammunition); Ex. 7D01075, “Duty Operations Officer Diary 4–7 July 1995, translation”, p. 1 (showing that at 5 p.m. **Pandurević** called and asked for ammunition). **Pandurević** said that when he called the brigade command while he was outside the brigade’s defence zone, he called the operations duty officer because he always knew that person would be there, whereas he never knew whether the Chief of Staff would be present. Vinko Pandurević, T. 31457 (13 Feb 2009).

⁵⁵¹⁷ Vinko Pandurević, T. 30855 (29 Jan 2009); ; Miodrag Dragutinović, T. 12679 (15 June 2007); Lazar Ristić, T. 10042 (16 Apr 2007). *See also supra*, para. 249.

⁵⁵¹⁸ Vinko Pandurević, T. 30856 (29 Jan 2009); Ex. 7D00761, “Interim Combat Report from the Drina Corps Forward Command Post, signed by Radislav Krstić, 6 July 1995”.

⁵⁵¹⁹ Vinko Pandurević, T. 30919, 30921–30922 (30 Jan 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 101 (showing **Pandurević** called from Zeleni Jadar and discussed materials to be taken to the faculty); *cf.* Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”, p. 84. During the period of 4 to 14 July 1995, while he was away from Zvornik, **Pandurević** made two calls to the Zvornik Brigade Command, including this 7 July call as well as one on 5 July. Vinko Pandurević, T. 30919 (30 Jan 2009). Other than these two calls, **Pandurević** had no contact with the Zvornik Brigade Command. Vinko Pandurević, T. 30922–30923 (30 Jan 2009).

1847. Combat continued on 8 July, and TG-1 successfully took the Biljeg and Tri Sise features, on which positions of the 28th Division were located.⁵⁵²⁰ An UNPROFOR OP was also located on the Biljeg feature.⁵⁵²¹ **Pandurević** was personally present at the Biljeg OP, where he encountered some DutchBat soldiers inside the OP.⁵⁵²² The Dutchbat soldiers were told to go in the direction of Bratunac and were escorted there.⁵⁵²³ **Pandurević**'s forces also encountered UNPROFOR personnel in the Zeleni Jadar sector and told them to leave in the direction of Bratunac.⁵⁵²⁴

1848. On 9 July, combat continued, and two more features were taken and TG-1 reached the planned line,⁵⁵²⁵ thus the VRS was able to fully control the boundaries of the enclave and prevent any communication between Srebrenica and Žepa.⁵⁵²⁶ As a result, **Pandurević** believed that TG-1 had completed its assigned task under the Krivaja 95 operation.⁵⁵²⁷

1849. On 10 July, some of the fighting occurred in the village of Pusmulici and smoke could be seen coming from the houses.⁵⁵²⁸ On that day, while **Pandurević** and TG-1 were gathered in the area of Bojna village,⁵⁵²⁹ Krstić ordered the forces to proceed with the attack and take the town of Srebrenica the next day.⁵⁵³⁰ This order from Krstić was in accordance with the order issued earlier

⁵⁵²⁰ Vinko Pandurević, T. 30856–30857 (29 Jan 2009).

⁵⁵²¹ *Ibid.*, T. 30857–30858 (29 Jan 2009). See also Miodrag Dragutinović, T. 12687 (15 June 2007). Dragutinović testified that “Fire was never opened at the Dutch Battalion, but in light of the fact that the units of the 28th Division were positioned so close to the Dutch Battalion, they may have gotten the impression that fire was opened at them but no shell, no round, caused any damage to the structures of the Dutch Battalion”. Miodrag Dragutinović, T. 12687–12688 (15 June 2007). See also Vinko Pandurević, T. 30857 (29 Jan 2009) (testifying that the positions of the 28th Division were in line with the UNPROFOR OP); Milenko Jevđević, T. 29605–29606 (12 Dec 2008) (stating that “Krstić did not find it in his interest to have the complications—to have complications regarding the UNPROFOR situation, so he ordered his commanders to go around them, to bypass them by every possible means, both with infantry and everything else. But the commanders complained that the formations of the 28th Division, which were defending themselves in that area, had infiltrated into the improvised shelters of UNPROFOR and were firing from there on our units. And this complicated the combat situation significantly”).

⁵⁵²² Vinko Pandurević, T. 30858 (29 Jan 2009).

⁵⁵²³ Vinko Pandurević, T. 30857–30858 (29 Jan 2009). See also Miodrag Dragutinović, T. 12688 (15 June 2007). Pursuant to Krstić's order, UNPROFOR forces were to be instructed to go in the direction of Bratunac. Vinko Pandurević, T. 30858 (29 Jan 2009). According to **Pandurević**, he ordered that the DutchBat soldiers be escorted and no UNPROFOR property was to be taken by his soldiers. Vinko Pandurević, T. 30858 (29 Jan 2009).

⁵⁵²⁴ Vinko Pandurević, T. 30857–30858 (29 Jan 2009). According to **Pandurević**, the Drina Wolves forces of TG-1, including Legenda, reported that there were [DutchBat] soldiers at that point, “and the order was conveyed for them to go first to Pribićevac and from there to proceed towards Bratunac”. Vinko Pandurević, T. 30858 (29 Jan 2009). According to Dragutinović, after the positions of the 28th Division in the sector of Biljeg and Three Teats were taken, “the soldiers who were the first to reach the defence lines of the 28th Division established a contact with the soldiers of the Dutch Battalion” and “a proposal was made to [the DutchBat soldiers] to withdraw with their unit along the Zeleni Jadar-Pribićevac axis” and that the VRS forces “would make it possible for them to go back via Pribićevac and Sase to their base in Potočari”. Miodrag Dragutinović, T. 12688 (15 June 2007).

⁵⁵²⁵ Vinko Pandurević, T. 30858–30859 (29 Jan 2009); Ex. 7D00762, “Interim Combat Report from the Drina Corps IKM signed by Krstić, 9 July 1995”, para. 2.

⁵⁵²⁶ Vinko Pandurević, T. 30859 (29 Jan 2009).

⁵⁵²⁷ *Ibid.*, T. 30860 (29 Jan 2009).

⁵⁵²⁸ *Ibid.*, T. 30864 (29 Jan 2009).

⁵⁵²⁹ Bojna borders Srebrenica town to the south. Ex. P02116, “Map Krivaja 95–Srebrenica and Bratunac”.

⁵⁵³⁰ Miodrag Dragutinović, T. 12573, 12577 (13 June 2007), T. 12686–12687, 12689 (15 June 2007). See also Vinko Pandurević, T. 30866 (29 Jan 2009).

by Karadžić on 9 July authorising the VRS to capture Srebrenica town.⁵⁵³¹ **Pandurević** relayed to the TG-1 forces an order by Krstić not to destroy or damage any buildings in the Srebrenica area.⁵⁵³²

(ii) 11 July 1995

1850. On the morning of 11 July, **Pandurević** was orally given specific tasks by Krstić for further advancement towards the Srebrenica town.⁵⁵³³ On 11 July at the Bojna feature when Krstić was assigning tasks, **Pandurević** first observed the presence of soldiers from the 10th Sabotage Detachment.⁵⁵³⁴ Pursuant to Krstić's order, **Pandurević** and TG-1 prepared to continue their attack and to enter Srebrenica town from the axis of Bojna village, around the Zeleni Jadar-Srebrenica road.⁵⁵³⁵ According to **Pandurević**, his task was to continue operations along the road, reach the town, and capture the surrounding hills.⁵⁵³⁶ **Pandurević** considered that it was important to capture the hill positions surrounding the town of Srebrenica in order to ensure that the 28th Division could not launch an attack on his forces from those features once TG-1 entered the town. At around 4 p.m., TG-1 took control of these features.⁵⁵³⁷

1851. Around 4 p.m. on 11 July 1995, **Pandurević** and TG-1 entered Srebrenica town and based its command at the police station.⁵⁵³⁸ In the afternoon, when Mladić, Krstić and other VRS officers, including **Popović**, walked through the empty streets of Srebrenica,⁵⁵³⁹ **Pandurević** met with them or accompanied them along part of the way.⁵⁵⁴⁰ After seeing Mladić, **Pandurević** deployed his

⁵⁵³¹ See *supra*, para. 252.

⁵⁵³² Miodrag Dragutinović, T. 12688 (15 June 2007).

⁵⁵³³ Vinko Pandurević, T. 30867 (29 Jan 2009), T. 30874–30875 (30 Jan 2009). **Pandurević** was not sure whether he received the order on the evening of 10 July; but he was certain that all units involved received details about the attack on the morning of 11 July. Vinko Pandurević, T. 30866 (29 Jan 2009). See also Miodrag Dragutinović, T. 12577 (13 June 2007) (testifying that the order was issued on 10 July but that missions were given to the units on 11 July).

⁵⁵³⁴ Vinko Pandurević, T. 30867 (29 Jan 2009), T. 30880 (30 Jan 2009).

⁵⁵³⁵ Miodrag Dragutinović, T. 12577 (13 June 2007), T. 12689 (15 June 2007); Vinko Pandurević, T. 30866–30867 (29 Jan 2009).

⁵⁵³⁶ Vinko Pandurević, T. 30867 (29 Jan 2009). **Pandurević** stated that those parts of the town which could be observed from TG-1's positions were completely empty. Vinko Pandurević, T. 30867–30868 (29 Jan 2009). According to **Pandurević**, radio communications indicated that the 28th Division was retreating and leaving the town towards the north. Vinko Pandurević, T. 30867–30868 (29 Jan 2009).

⁵⁵³⁷ Vinko Pandurević, T. 30875–30876 (30 Jan 2009).

⁵⁵³⁸ *Ibid.*, T. 30879 (30 Jan 2009); Mirko Trivić, T. 11995–11996 (23 May 2007); Miodrag Dragutinović, T. 12689 (15 June 2007); Ex. P01577, "Srebrenica Trial Video", 00:30:36, 00:31:12–00:31:15.

⁵⁵³⁹ Mirko Trivić, T. 11825–11826 (21 May 2007); PW-109, T. 14883–14585 (closed session) (31 Aug 2007); Jean-René Ruez, T. 1326–1327 (7 Sept 2006); Ex. P02047, "Srebrenica Trial Video", 00:20:30–00:20:33, 00:25:02; Ex. P02047, "Srebrenica Trial Video", 00:18:35–00:33:15.

⁵⁵⁴⁰ Ex. P02047, "Srebrenica Trial Video", 00:30:36, 00:31:12–00:31:15; Jean-René Ruez, T. 1330 (8 Sept 2006). Ex. P02047, "Srebrenica Trial Video", 00:31:13. See also Mirko Trivić, T. 11996 (23 May 2007); PW-109, T. 14584–14585 (closed session) (31 Aug 2007); Vinko Pandurević, T. 30876–30879 (30 Jan 2009).

troops in keeping with the tactical situation and continued moving through the town to its centre.⁵⁵⁴¹

Pandurević spent the night of 11 July at the police station in Srebrenica.⁵⁵⁴²

(iii) 12 July 1995

1852. There is contradictory evidence regarding an alleged meeting between **Pandurević** and Obrenović on the morning of 12 July. According to PW-168, early in the morning of 12 July around 7:45 a.m., **Pandurević** briefly “dropped by” the Zvornik Brigade Command, “coming from somewhere”.⁵⁵⁴³ While he was there, according to PW-168, Obrenović and **Pandurević** had an exchange in the corridor during which Obrenović briefed **Pandurević** regarding the situation with the 28th Division breaking through the Zvornik Brigade lines.⁵⁵⁴⁴ However, according to

⁵⁵⁴¹ Vinko Pandurević, T. 30882 (30 Jan 2009). **Pandurević** did not see any civilians in the town except for some elderly people at the UNPROFOR base. Vinko Pandurević, T. 30882 (30 Jan 2009).

⁵⁵⁴² Miodrag Dragutinović, T. 12689–12690 (15 June 2007); Vinko Pandurević, T. 30885, 30888 (30 Jan 2009).

⁵⁵⁴³ PW-168, T. 15984–15986 (closed session) (28 Sept 2007), T. 16461 (closed session) (17 Oct 2007). PW-168 gave this testimony when presented with an intercept from 12 July in which there is reference to the “commander” being present at the Standard Barracks. See Ex. P01102a, “Intercept, 12 July 1995, 07:40 hours”. In the intercept (between two people who are not clearly identified), the first person says “Obrenović...” and then asks “Where is your commander?” In response, the second person states “As far I know, he’s here”. Subsequently, the first person says “He’s not, he isn’t answering. Listen, please tell him that I called, that Mane, Laco’s deputy, will call him, that the police in Konjević Polje have been told to do the same as the Engineering Battalion are doing, and that he can give orders to them through the commander of the Engineering Battalion,” to which the second person responds “OK.” Ex. P01102a, “Intercept, 12 July 1995, 07:40 hours”. PW-168 identified this conversation as being between Obrenović and the duty officer from the Corps Command. PW-168, T. 16458–16460 (closed session) (17 Oct 2007). With reference to the intercept, PW-168 testified that after the Duty Officer from the Corps Command had called, Obrenović, who knew from someone at the Zvornik Brigade (possibly the duty officer or a courier) that **Pandurević** was around, looked for him, found him on the ground level of the brigade command and conveyed to him what he had been told, and **Pandurević** said that he would deal with the problem. PW-168, T. 15986 (closed session) (28 Sept 2007) (testifying that the Zvornik Brigade duty officer told Obrenović that **Pandurević** was at the Standard Barracks), T. 16461, 16471, 16476–16477 (closed session) (17 Oct 2007) (later testifying that he could not recall who exactly informed Obrenović that **Pandurević** was there), T. 16824–16825 (closed session) (23 October 2007) (repeating that he did not remember who told Obrenović about **Pandurević**’s presence at the command on 12 July). **Pandurević**, however, interpreted the intercepted conversation from 7:40 a.m. on the morning of 12 July to mean that an unidentified caller dialled Obrenović’s number at the brigade command, which was answered by the duty operations officer because Obrenović was not present and the reference to the “commander” thus refers here to Obrenović. Vinko Pandurević, T. 30894–30895 (30 Jan 2009); Ex. P01102a, “Intercept, 12 July 1995, 07:40 hours”. Additionally, in contrast to PW-168’s account, there is no mention or record of **Pandurević** being present at the Zvornik Brigade Command on 12 July in the Zvornik Brigade Duty Officer notebook, logbook, or the Zvornik Brigade war diary. See Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 113–119; Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”; Ex. 7DP00384, “Zvornik Brigade War Diary, 12 May– 15 October 1995”, pp. 3-4. Mihajlo Galić, the Assistant Chief of Staff for Personnel for the Brigade, testified that he did not see **Pandurević** in the Zvornik area during the period of 4 to 15 July and that he had not heard of **Pandurević**’s presence there from anyone else there during that period. Mihajlo Galić, T. 10579–10580, 10626 (26 Apr 2007). Milan Marić and Ljubo Bojanović, who were duty officers that day, were both present at the Standard Barracks but neither mentioned having seen **Pandurević** there on 12 July. See Ljubo Bojanović, Ex. P03135, “confidential – 92 quater transcript”, BT. 11688–11689 (8 July 2004). On 12 July, between 8 and 9 a.m., Milan Marić took over as duty operations officer in the presence of Obrenović. Milan Marić, Ex. P03138, “92 quater transcript”, BT. 11561, 11565 (6 July 2004); see also Ljubo Bojanović, Ex. P03135, “confidential – 92 quater transcript”, BT. 11689 (8 July 2004) (stating that he believed that Marić was the Duty Officer on 12 July).

⁵⁵⁴⁴ PW-168, T. 16472, 16475 (closed session) (17 Oct 2007). According to PW-168, Obrenović did not express his concern about the 28th Division because Mladić, the Corps Commander and all the other commanders were “up there” and they “knew what they were doing”. PW-168, T. 15986 (closed session) (28 Sept 2007), T. 16471–16472, 16475 (closed session) (17 Oct 2007).

Pandurević, he was not present at the Standard Barracks on the morning of 12 July and he did not speak to Obrenović that day.⁵⁵⁴⁵ According to **Pandurević**, at 7:55 a.m. that morning, he was in Srebrenica.⁵⁵⁴⁶ In light of the conflicting evidence and given the burden of proof, the Trial Chamber finds that the evidence is insufficient to establish that **Pandurević** went to the Standard Barracks and met with Obrenović on 12 July.

1853. On 12 July, **Pandurević** reported to Bojna, where he attended a meeting convened by Krstić at approximately 9 a.m.⁵⁵⁴⁷ Colonel Vičić, Colonel Andrić and Colonel Trivić were also present at the meeting.⁵⁵⁴⁸ Krstić ordered the units to head towards the Srebrenica-Viogor-Suceska axis, search the terrain for evidence of the whereabouts of the 28th Division along that axis, and then gradually move towards Žepa.⁵⁵⁴⁹

1854. Around 6 p.m. on 12 July, **Pandurević** met with Krstić when he arrived to inspect the units.⁵⁵⁵⁰ Krstić indicated that TG-1 should prepare for combat activities in the Žepa sector and instructed **Pandurević** to continue marching the next day and that he would receive more concrete tasks for combat operations with regard to Žepa.⁵⁵⁵¹

1855. Later in the evening of 12 July 1995, **Pandurević** attended a meeting with Mladić, Krstić Živanović and other VRS commanders at the Bratunac Brigade Headquarters.⁵⁵⁵² At the meeting, Mladić ordered the units to proceed towards Žepa the following day.⁵⁵⁵³ During the meeting, Trivić

⁵⁵⁴⁵ Vinko Pandurević, T. 30896–30897 (30 Jan 2009).

⁵⁵⁴⁶ *Ibid.*, T. 30896 (30 Jan 2009).

⁵⁵⁴⁷ Mirko Trivić, T. 11832–11836 (21 May 2007); Vinko Pandurević, T. 30897 (30 Jan 2009) (testifying that he was called to report to Bojna “just before the meeting”).

⁵⁵⁴⁸ Vinko Pandurević, T. 30896–30897 (30 Jan 2009); Mirko Trivić, T. 11835 (21 May 2007). On 12 July 1995, Mirko Trivić was the Commander of the Romanija Brigade. Mirko Trivić, T. 11795 (18 May 2007). On 12 July 1995, Svetozar Andrić was the Commander of the Birač Brigade. Ex. P00692, “Diagram showing Main Staff VRS Structure–July 1995”. On 12 July 1995, Obrad Vičić was the Chief of Operations and Training of the Drina Corps. Ex. P00692, “Diagram showing Main Staff VRS Structure–July 1995”. **Pandurević** did not remember whether Colonel Blagojević was present. Vinko Pandurević, T. 30897 (30 Jan 2009).

⁵⁵⁴⁹ Vinko Pandurević, T. 30898–30899 (30 Jan 2009); Mirko Trivić, T. 11835–11836 (21 May 2007). According to Pandurević, by the afternoon of 12 July, his units had left the area of Srebrenica, advancing as planned towards Žepa and making it to the area of Viogor and Mount Jahorina. Vinko Pandurević, T. 30899–30901 (30 Jan 2009). See also Ex. P00886, “Zvornik CJB document to Republika Srpska MUP Office of the Minister, Pale, Bijelina Public Security Department, Bijeljina Police Forces Headquarters, signed by Dragomir Vasić, 13 July 1995”.

⁵⁵⁵⁰ Vinko Pandurević, T. 30901 (30 Jan 2009); Miodrag Dragutinović, T. 12583 (13 June 2007); PW-109, T. 14593–14594 (closed session) (31 Aug 2007) (testifying that around 4 or 5 p.m. on 12 July, he took Krstić to “some point on a hill-side between Bratunac and Srebrenica” where Krstić met and addressed some subordinate brigade commanders, including Pandurević); Mirko Trivić, T. 11836–11837 (21 May 2007) (testifying that in the afternoon of 12 July he “received an assignment from Krstić in the area of Viogor village” to go to the Bratunac Brigade Command that evening for a meeting).

⁵⁵⁵¹ Miodrag Dragutinović, T. 12583 (13 June 2007); Vinko Pandurević, T. 30904 (30 Jan 2009). According to Dragutinović, however, no concrete orders were conveyed on the evening of 12 July. Miodrag Dragutinović, T. 12584 (13 June 2007).

⁵⁵⁵² See *supra*, para. 376.

⁵⁵⁵³ Milenko Jevdević, T. 29607–29608 (12 Dec 2008); Mirko Trivić, T. 11841–11842 (21 May 2007); Vinko Pandurević, T. 30884–30885 (30 Jan 2009). See also Mirko Trivić, T. 11876–11877 (21 May 2007); Ex. P04309, “Personal diary of Mirko Trivić”, p. 29. **Pandurević** described the meeting as more of a “monologue by one man

and **Pandurević** requested a replacement of the troops to carry out the Žepa operation, as their troops needed rest, but Mladić denied the request.⁵⁵⁵⁴ **Pandurević** also expressed to Mladić that they should establish contact with the 28th Division as soon as possible and assign forces to engage in combat with it, while the rest of the forces should remain in Srebrenica and Bratunac to stabilise the situation on the ground.⁵⁵⁵⁵ According to **Pandurević**, Mladić simply responded, “You heard the order, you heard what the tasks are, prepare units, and proceed towards Žepa ASAP”.⁵⁵⁵⁶

(iv) 13 July 1995

1856. On the morning of 13 July, Mladić and Krstić went to Viogor where Mladić addressed the units and commanders, including **Pandurević** and Trivić.⁵⁵⁵⁷ Mladić ordered the tactical groups to be ready to march towards Žepa pursuant to the task of taking the Žepa enclave.⁵⁵⁵⁸

1857. On the same day, **Pandurević** and TG-1 marched along the designated route towards Žepa and encountered problems in the road, including anti-tank mines.⁵⁵⁵⁹ **Pandurević** and his forces stopped to refuel in Vlasenica around midnight, then continued moving towards Han Pijesak, and

[Mladić] and issuing task[s]”, and that it did not last long. Vinko Pandurević, T. 30884 (30 Jan 2009). **Pandurević** testified that there was no mention or discussion at the meeting about prisoners or a plan to kill able-bodied Muslim men. Vinko Pandurević, T. 30888 (30 Jan 2009), T. 31855 (20 Feb 2009). *See also* Mirko Trivić, T. 11848 (21 May 2007).

⁵⁵⁵⁴ Mirko Trivić, T. 11842–11843 (21 May 2007).

⁵⁵⁵⁵ Vinko Pandurević, T. 30885 (30 Jan 2009). *See also* Milenko Jevđević, T. 29608 (12 Dec 2008).

⁵⁵⁵⁶ *Ibid.*

⁵⁵⁵⁷ Vinko Pandurević, T. 30904–30905 (30 Jan 2009); Mirko Trivić, T. 11853–11854 (21 May 2007); Miodrag Dragutinović, T. 12586–12588 (13 June 2007).

⁵⁵⁵⁸ Miodrag Dragutinović, T. 12587 (13 June 2007). *See also* Ex. P04309, “Personal diary of Mirko Trivić” p. 31 (“General Mladić addressed the soldiers – the task is clear – liberate Žepa”). *See also* Ex. 7D00941, “Order to March No. 4 from the command of the 1st Zvornik Infantry Brigade, signed by Vinko Pandurević, 13 July 1995”, pp. 1–2. **Pandurević** testified that he issued his order orally and saw the written order prepared by Dragutinović for the first time in court. This exhibit also contains **Pandurević**’s signature but he testified that he did not think that he had signed it. Vinko Pandurević, T. 30906–30907 (30 Jan 2009). *See also* Mirko Trivić, T. 11862–11863 (21 May 2007) (testifying that on the morning of 13 July 1995, he had already been given the assignment to act as a backup force to elements of the Zvornik Brigade that were under the command of **Pandurević** in the Žepa operation).

⁵⁵⁵⁹ Vinko Pandurević, T. 30907–30908 (30 Jan 2009); PW-168, T. 15994 (closed session) (28 Sept 2007); Mirko Trivić, T. 11862–11863 (21 May 2007). Prior to going to Snagovo, on 13 July, PW-168 had no information about the whereabouts of **Pandurević**. In the early evening of 13 July, PW-168 knew that **Pandurević** and his forces were moving towards Žepa but did not know their exact location. PW-168, T. 15754 (closed session) (25 Sept 2007), T. 15825, 15841 (closed session) (26 Sept 2007), T. 15993–15994 (closed session) (28 Sept 2007); Ex. 7D00091, “Vehicle work log for Nisan for July 1995”. **Pandurević** explained the entries in Ex. 7D00091 for the dates of 11 through 14 July, saying that his driver, Stević, sometimes registered the actual routes and “sometimes he just filled it in in order to justify the mileage he made in the course of a day”. Thus, according to **Pandurević**, these entries reflect the actual route he took only “to a very low extent”. He did not travel from Srebrenica to Bratunac on 13 July, and he did not travel from Srebrenica to Han Pijesak on 14 July. Vinko Pandurević, T. 30912–30913 (30 Jan 2009).

stopped at around 2 a.m. on 14 July in the village of Rijeka, where they spent the night.⁵⁵⁶⁰ During the entire night, **Pandurević** had no contact with the Zvornik Brigade.⁵⁵⁶¹

(v) 14 July 1995

1858. On 14 July around 10 a.m., **Pandurević** reported to Krstić at the Drina Corps IKM at Krivače and received the combat order pursuant to *Stupčanica-95*.⁵⁵⁶² **Pandurević**'s task pursuant to this order was to attack the enemy and advance towards Žepa.⁵⁵⁶³ Pursuant to the order, **Pandurević** deployed his units and launched an attack, with his lines about 10 kilometres from the village of Žepa.⁵⁵⁶⁴ The fighting was sporadic that day and the positions did not change.⁵⁵⁶⁵

(vi) 15 July 1995

1859. On the morning of 15 July, **Pandurević** ordered the units of TG-1 to proceed with combat activities in support of the *Stupčanica-95* operation.⁵⁵⁶⁶ **Pandurević**, who at the time was in the vicinity of Podžeplje, was called by Milenko Jevđević to report to Krstić at the Drina Corps IKM at Krivače.⁵⁵⁶⁷ In light of reported problems on the combat lines of the Zvornik Brigade and Obrenović's urgent request for reinforcements,⁵⁵⁶⁸ Krstić ordered **Pandurević** and his forces to return to the Zvornik Brigade area of responsibility to block or crush the column, "prevent the consequences of a possible attack on Zvornik",⁵⁵⁶⁹ and prevent the column from joining up with the forces of the ABiH 2nd Corps.⁵⁵⁷⁰

⁵⁵⁶⁰ Vinko Pandurević, T. 30907–30908, 30911 (30 Jan 2009); Miodrag Dragutinović, T. 12589 (13 June 2007); Ex. 7D00091, "Vehicle work log for Nisan for July 1995".

⁵⁵⁶¹ Miodrag Dragutinović, T. 12590 (13 June 2007).

⁵⁵⁶² Vinko Pandurević, T. 30913 (30 Jan 2009); Miodrag Dragutinović, T. 12591–12592 (13 June 2007); Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995". See also, para. 682.

⁵⁵⁶³ Vinko Pandurević, T. 30914 (30 Jan 2009). See also Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995". According to **Pandurević**, he understood that his task was to neutralise or destroy the Žepa Brigade of the ABiH but that neither civilians nor UNPROFOR were his targets. Vinko Pandurević, T. 30915–30917 (30 Jan 2009); Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995", para. 9(c). See also Miodrag Dragutinović, T. 12592 (13 June 2007). See also *supra*, para. 682.

⁵⁵⁶⁴ Vinko Pandurević, T. 30917–30918 (30 Jan 2009); Miodrag Dragutinović, T. 12592 (13 June 2007).

⁵⁵⁶⁵ Vinko Pandurević, T. 30918 (30 Jan 2009). See also Miodrag Dragutinović, T. 12592–12593 (13 June 2007).

⁵⁵⁶⁶ Vinko Pandurević, T. 30940 (30 Jan 2009).

⁵⁵⁶⁷ *Ibid.*, T. 30940–30941 (30 Jan 2009), T. 30947–30948 (2 Feb 2009); Milenko Jevđević, T. 29620 (12 Dec 2008). **Pandurević** left for the Drina Corps IKM at 8:00 a.m. and came back at 9:00 a.m. Miodrag Dragutinović, T. 12596–12597 (14 June 2007).

⁵⁵⁶⁸ See *supra*, para. 551. Krstić told **Pandurević** that "it seemed that Obrenović was in too much of a panic for no reason." Vinko Pandurević, T. 31483 (16 Feb 2009). **Pandurević** said that Krstić believed that the enemy forces were there and presented a danger, but believed that Obrenović was blowing the threat out of proportion because he was "fear-stricken". Vinko Pandurević, T. 31483 (16 Feb 2009).

⁵⁵⁶⁹ Ex. 5D7D00686, "Order to return elements of Zvornik Brigade, signed by Krstić, 15 July 1995".

⁵⁵⁷⁰ *Ibid.*; Vinko Pandurević, T. 30942–30943 (30 Jan 2009), T. 30947, 30952–30954, 30961 (2 Feb 2009), T. 31481–31483 (16 Feb 2009); Milenko Jevđević, T. 29620 (12 Dec 2008). See *supra*, para. 551. According to **Pandurević**, Krstić gave him the same task that the Corps Command had previously given to Obrenović, to stop, block, disarm, capture, or destroy the column. Vinko Pandurević, T. 31482–31483 (16 Feb 2009); see also Ex. 5D7D00686,

1860. Shortly after meeting with Krstić, **Pandurević** contacted the Zvornik Brigade command at 8:55 a.m. and again at 9:10 a.m. and spoke to Sreten Milošević, the Assistant Commander for Logistics in the Zvornik Brigade, and Miladin Mijatović, another member of the Zvornik Brigade Logistics Organ,⁵⁵⁷¹ about the combat situation in the area.⁵⁵⁷² Around the same time on the morning of 15 July, while at the Drina Corps IKM, **Pandurević** was informed that Šemso Muminović, Commander of the 24th Division of the ABiH 2nd Corps in Nežuk, had tried to contact him and had left a frequency upon which they could communicate.⁵⁵⁷³

1861. After meeting with Krstić, **Pandurević** proceeded to Zvornik with his TG-1 unit and arrived at the Standard Barracks around noon.⁵⁵⁷⁴ Upon his arrival at the Standard Barracks on 15 July, **Pandurević** had a brief conversation with Obrenović in the corridor.⁵⁵⁷⁵ At this point, Obrenović informed **Pandurević** that pursuant to Mladić's order, **Beara** and **Popović** had brought a large number of prisoners from Bratunac to the Zvornik sector, where they were executing them and that, according to Jokić, there were enormous problems with the guarding, execution, and burial of

"Order to return elements of Zvornik Brigade, signed by Krstić, 15 July 1995". According to PW-168, Obrenović had been ordered by Živanović to stop the column. PW-168, T. 15840–15841 (closed session) (26 Sept 2007).

⁵⁵⁷¹ PW-168, T. 15999–16000 (closed session) (28 Sept 2007); Zvonko Bajagić, T. 32487–32488 (9 Mar 2009) (stating that Mijatović was a "logistics man" and that as far as he knew Mijatović was "with the Zvornik Brigade").

⁵⁵⁷² Ex. P01172c, "Intercept, 15 July 1995, 08:55 hours" (recording conversation in which **Pandurević** speaks with Milošević and then with Mijatović); Ex. P01174c, "Intercept, 15 July 1995, 09.10 hours" (recording the conversation between **Pandurević** and Mijatović); Vinko Pandurević, T. 30949–30950 (2 Feb 2009), T. 31485–31486 (16 Feb 2009), T. 31820–31822 (19 Feb 2009); PW-168, T. 15999 (closed session) (28 Sept 2007). During the first conversation at 8:55 a.m., Milošević reported to **Pandurević** that there was an attack that morning at 5:00 a.m., but the situation was "now good", but indicated there were problems in the area where Obrenović was located and thus handed the conversation on to Mijatović who had more information on that situation. Mijatović then reported to **Pandurević** that they had some men missing and some injured and that there were no major problems on the line, but indicated their men who were setting up ambushes encountered some problems. Mijatović also informed **Pandurević** that they had information that indicated that "Naser came in from Križevici with a group" and was "now heading to meet the ones coming from Srebrenica". In response to this information, **Pandurević** instructed Mijatović to check the situation and report back. Ex. P01172c, "Intercept, 15 July 1995, 0855 hours". Shortly thereafter, **Pandurević** called back and was connected to Mijatović by Jokić. Ex. P01174c, "Intercept, 15 July 1995, 0910 hours". Mijatović informed **Pandurević** that everything was in order and stable on the line and that he had talked to the "Chief" who told Mijatović that "they have huge forces; the estimate is 4,000–5,000 here in the surroundings" and suggested that their "men return if they can". Ex. P01174c, "Intercept, 15 July 1995, 09.10 hours". Mijatović also reported to **Pandurević** that there was "a huge column of Turks" there in "the area of Snagovo, Planinci and Dovedova/all the way to Vedova/glava" and again that Naser was in Križevici with one group. Ex. P01174c, "Intercept, 15 July 1995, 09:10 hours".

⁵⁵⁷³ Vinko Pandurević, T. 30948–30949 (30 Jan 2009), T. 30976–30977 (2 Feb 2009). See also Ex. P01171c, "Intercept, 15 July 1995, 08:34 hours" (recording an entry at 8:34 a.m. stating "Šemso Muminović is asking for V. Pandurević to call him on 144. 985 MHz."). This same information was given to **Pandurević** when he arrived later that day at the brigade IKM. Vinko Pandurević, T. 30976–30977 (2 Feb 2009).

⁵⁵⁷⁴ PW-168, T. 15886 (closed session) (27 Sept 2007); Vinko Pandurević, T. 30954–30955 (2 Feb 2009). At 9:39 a.m., the Duty Officer at the Drina Corps Headquarters informed Dragan Jokić, Duty Officer at the Standard Barracks, that **Pandurević** and his TG-1 units were returning to the Standard Barracks from Žepa. Ex. P01176a "Intercept, 15 July 1995, 09:39 hours"; Vinko Pandurević, T. 30956–30957 (2 Feb 2009); PW-168, T. 15869 (26 Sept 2007). See also Miodrag Dragutinović, T. 12599 (14 June 2007); Mirko Trivić, T. 11863 (21 May 2007).

⁵⁵⁷⁵ PW-168, T. 15879 (closed session) (26 Sept 2007). The Trial Chamber notes that there is conflicting evidence on the occurrence of a conversation between Obrenović and **Pandurević** in the corridor around noon on 15 July. Having considered all evidence relevant to this issue, the Trial Chamber has found *infra* that this conversation occurred as described by PW-168. See *infra*, paras. 1934–1959.

prisoners.⁵⁵⁷⁶ **Pandurević** then asked why the civilian protection was not performing the burials.⁵⁵⁷⁷ Obrenović did not know about that and just shrugged in response.⁵⁵⁷⁸ **Pandurević** then inquired about what had happened with the 4th and 7th Battalions, and Obrenović updated him about the combat situation.⁵⁵⁷⁹ Obrenović told him that the two battalions were in place, that the forces of the 28th Division were at a strength of up to 10.000 men, in two columns, which were “meshing everything that stands before them”, and had already entered the defence sector of the two battalions.⁵⁵⁸⁰ After briefing **Pandurević**, Obrenović then told him that **Borovčanin** and Vasić were waiting in Obrenović’s office with some other officers.⁵⁵⁸¹

1862. Subsequently, in the office of the Chief of Staff, **Pandurević** met with Obrenović, **Borovčanin**, Vasić, Danilo Zoljić, and Miloš Stupar.⁵⁵⁸² During the meeting, **Pandurević** requested information about the situation on the front, and Obrenović informed him that the 28th Division intended to continue moving across Crni Vrh and Planinci and come out at Nežuk.⁵⁵⁸³ Obrenović described that his orders from the Corps Command were to stop the advance of the column.⁵⁵⁸⁴ During the meeting, **Borovčanin** also briefed **Pandurević** on the state and disposition of his MUP units.⁵⁵⁸⁵

1863. During the meeting, the suggestion was made to allow the forces of the 28th Division in the column to pass through.⁵⁵⁸⁶ **Pandurević** rejected the proposal as he believed that he needed further

⁵⁵⁷⁶ PW-168, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007), T. 16538–16539 (closed session) (18 Oct 2007). PW-168 testified that earlier on the morning of 15 July, upon returning to Standard Barracks around 11 a.m., Obrenović was stopped by Dragan Jokić while en route to his office at which time Jokić told Obrenović that **Beara** and **Popović** had brought in prisoners “from Bratunac, and from up there Bratunac and Srebrenica, in order to shoot them there”, that “there were huge problems with guarding and burying the prisoners”, and that **Beara**, **Popović** and **Nikolić** “were taking whomever wherever they wanted”. PW-168, T. 15868–15871 (closed session) (26 Sept 2007), T. 16517–16518 (closed session) (17 Oct 2007). Jokić also told Obrenović that **Popović** ordered Jokić not to write down or report anything concerning these events. PW-168, T. 15871 (closed session) (26 Sept 2007). See also PW-168, T. 16551 (closed session) (18 Oct 2007).

⁵⁵⁷⁷ PW-168, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007).

⁵⁵⁷⁸ *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

⁵⁵⁷⁹ *Ibid.*

⁵⁵⁸⁰ PW-168, T. 15879 (closed session) (26 Sept 2007), T. 16535 (closed session) (18 Oct 2007).

⁵⁵⁸¹ *Ibid.*, T. 15879–15880 (closed session) (26 Sept 2007).

⁵⁵⁸² Vinko Pandurević, T. 30959 (2 Feb 2009), T. 31486 (16 Feb 2009); PW-168, T. 15872–15873, 15878–15880 (closed session) (26 Sept 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 50, 102–103, 105. PW-168 did not remember whether Danilo Zoljić was at the meeting, but mentioned that a captain nicknamed “Zlaja” was present. PW-168, T. 16523–16524 (closed session) (17 Oct 2007). **Pandurević** and **Borovčanin** did not mention a person named “Zlaja” being present at the meeting.

⁵⁵⁸³ Vinko Pandurević, T. 30959–30960 (2 Feb 2009); PW-168, T. 15883–15884 (closed session) (27 Sept 2007).

⁵⁵⁸⁴ Vinko Pandurević, T. 31487–31488 (16 Feb 2009). According to PW-168, it was evident that **Pandurević** had received orders from the Drina Corps or the Main Staff to block the column. PW-168, T. 15883 (closed session) (27 Sept 2007), T. 16532, 16541, 16542 (closed session) (18 Oct 2007).

⁵⁵⁸⁵ Vinko Pandurević, T. 30962 (2 Feb 2009). According to PW-168, **Pandurević** asked **Borovčanin** if he was going to let his units participate in combat with the 28th Division. **Borovčanin** answered that he had authorisation for his units to participate in the fighting, and that “he had a detachment there and that one was on the way from either Janja or Bijeljina.” PW-168, T. 15883–15884 (closed session) (27 Sept 2007).

⁵⁵⁸⁶ Vinko Pandurević, T. 30963 (2 Feb 2009), T. 31486 (16 Feb 2009); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–105; PW-168, T. 15883–15884 (closed session) (27 Sept 2007).

information on the combat situation. Pursuant to the order from Krstić, he therefore ordered the forces to cut off the column in order to neutralise the forces of the 28th Division.⁵⁵⁸⁷ According to **Pandurević**, the meeting had a sense of urgency to it and lasted approximately 20 minutes.⁵⁵⁸⁸ At the conclusion of the meeting, **Pandurević** ordered Obrenović to take command of the forces of the 4th Battalion in Baljkovica, while **Borovčanin** took his units to the Parlog and Baljkovica area, and **Pandurević** went to the Kitovnice IKM.⁵⁵⁸⁹ **Pandurević** also ordered how the Drina Wolves and “the two police detachments”⁵⁵⁹⁰ should be used, and he issued assignments.⁵⁵⁹¹

2007). The suggestion was supported by Obrenović, Vasić, and **Borovčanin**. PW-168, T. 15873–15874 (closed session) (26 Sept 2007), T. 15883–15884 (closed session) (27 Sept 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–105.

⁵⁵⁸⁷ Vinko Pandurević, T. 30962–30963 (2 Feb 2009), T. 31498–31499 (16 Feb 2009); PW-168, T. 15883–15884 (closed session) (27 Sept 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 March 2002”, pp. 104–105. According to **Pandurević**, “[t]he overall plan was to strengthen the forward defence line or, rather, the positions of the 4th and 7th Battalions and prevent at any cost a break-through by the forces from the front, and then by cutting off the forces of the 28th Division, both from the flank and across, to neutralise the forces of the 28th Division.” Vinko Pandurević, T. 30962 (2 Feb 2009).

⁵⁵⁸⁸ Vinko Pandurević, T. 31980 (23 Feb 2009); PW-168, T. 15883–15884 (closed session) (27 Sept 2007). According to **Pandurević**, at no time during the meeting on 15 July did anyone mention POWs, and at no time did Obrenović mention that he had tasked any of the brigade’s military police to **Nikolić**. Vinko Pandurević, T. 30964 (2 Feb 2009), T. 31486, 31494 (16 Feb 2009). **Pandurević** could not explain why Obrenović did not say anything to him at that time about the prisoners. Vinko Pandurević, T. 32058–32059 (25 Feb 2009).

⁵⁵⁸⁹ Vinko Pandurević, T. 30964 (2 Feb 2009). *See also* PW-168, T. 16541–16542 (closed session) (18 Oct 2007). According to PW-168, **Pandurević** told Obrenović that he was going to be commanding from the Kitovnice IKM and ordered Obrenović to command the 4th Battalion from its *ad hoc* command post in Baljkovica. Later in the afternoon, when **Pandurević** was still at the Kitovnice IKM and Obrenović at Baljkovica, they discussed the communications devices. PW-168, T. 16541–16542 (closed session) (18 Oct 2007). The Kitovnice IKM was 15 kilometres from the Standard Barracks, in the direction of the village of Orahovac. Milorad Birčaković, T. 11013 (7 May 2007); Lazar Ristić, T. 10167 (17 Apr 2007), marking Ex. 3DIC00087, “Map 3D94 marked by the witness, 18 Apr 2007” (showing the location of the Kitovnice IKM). On 15 July at around noon, to reach Kitovnice from the Standard Barracks, **Pandurević** did not go through Orahovac because the road was not safe and instead took the Zvornik–Jardan–Cer–Kitovnice route as it was more secure at the time. Vinko Pandurević, T. 30965 (2 Feb 2009); Ex. P02232, “Draft English Translations covering 11 to 20 July 1995–Tactical Intercepts Notebook for 1 July to 24 Nov 1995”, p. 12 (recording that men should not be sent via Križevici, which is near Orahovac).

⁵⁵⁹⁰ This is likely a reference to the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment, which were engaged in fighting the 28th Division in Baljkovica. *See* Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 106; PW-160, T. 8706 (13 Mar 2007); Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995”, p. 4 (“In the afternoon [of 15 July], an offensive MUP combat group comprising the 2nd and 4th Special Police Detachments with one tank, one praga and a BOV (20/3), a mortar platoon and the 1st Company of the Zvornik PJP was sent in the direction of Donja Baljkovica and Crni Vrh to block the area and prevent a break through towards Zvornik by a strong enemy column coming from the direction of Cerska.”).

⁵⁵⁹¹ PW-168, T. 15883 (closed session) (27 Sept 2007). *See also* Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 March 2002”, p. 105 (stating that **Pandurević** “said that they should continue as they were ordered to” and subsequently **Borovčanin** went to the field); Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995”, p. 4 (reporting that on the afternoon of 15 July an “offensive MUP combat group” was sent in the direction of Baljkovica and Crni Vrh to block the area and prevent the enemy column from breaking through towards Zvornik).

1864. **Pandurević** arrived at the Kitovnice IKM at around 1 p.m. or a little later on 15 July.⁵⁵⁹² Upon arriving at the IKM, **Pandurević** went to the OP about 300 metres from the IKM from where he could observe the entire area of combat operations.⁵⁵⁹³

1865. At around 2 p.m. in the afternoon of 15 July, Branko Grujić, the President of the SDS party in Zvornik, visited **Pandurević** at the IKM.⁵⁵⁹⁴ According to **Pandurević**, Grujić did not stay long but asked **Pandurević**, “how come there were prisoners in some schools on the territory of [the] Zvornik municipality,” mentioning the schools in Petkovci and Pilica.⁵⁵⁹⁵ Grujić also said that “his party activists in the local communes had conveyed this information to him and that there was concern in the local community where these people were situated.”⁵⁵⁹⁶ **Pandurević** responded that he “did not have any specific information about this” and that he “would check to see what it was all about.”⁵⁵⁹⁷

1866. No one present at the IKM was able to provide **Pandurević** with any information about the prisoners, thus he asked Major Ljubo Bojanović, an officer from the Zvornik Brigade Operations Organ, when Bojanović arrived sometime later that day.⁵⁵⁹⁸ According to **Pandurević**, Bojanović stated that “he knew that some buses with prisoners had passed by the command and that they had gone in the direction of Bijeljina” but that he did not know “whether they stopped in some schools in the Zvornik area or not” and that “he didn’t know that the command of the Zvornik Brigade had received any task concerning prisoners of war.”⁵⁵⁹⁹

⁵⁵⁹² Vinko Pandurević, T. 30968 (2 Feb 2009).

⁵⁵⁹³ *Ibid.* Ljubo Bojanović testified that he believed that the assistant commander for security, the assistant chief of staff for communications, as well as the officer for intelligence and reconnaissance information, Mica Petković, were also present at the IKM with **Pandurević**. Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11723 (8 July 2004)

⁵⁵⁹⁴ Vinko Pandurević, T. 30983 (2 Feb 2009). *See also* PW-168, T. 16552–16553 (18 Oct 2007); Miodrag Dragutinović, T. 12805 (18 June 2007). Dragutinović learned about the conversation between **Pandurević** and Grujić on 15 July from Ljubo Bojanović, who had been at the IKM with **Pandurević** on 15 July, after Bojanović returned to the Standard Barracks. Miodrag Dragutinović, T. 12805 (18 June 2007). According to Dragutinović’s source, Bojanović, **Pandurević** was notified about prisoners being held in various schools in the area of Zvornik and the number of those prisoners by Grujić at the IKM on 15 July. Miodrag Dragutinović, T. 12806 (18 June 2007).

⁵⁵⁹⁵ Vinko Pandurević, T. 30983 (2 Feb 2009). **Pandurević** testified that he thought that Grujić mentioned the school in Petkovci and the school in Pilica. *Ibid.*, T. 30983 (2 Feb 2009), T. 31521 (16 Feb 2009).

⁵⁵⁹⁶ Vinko Pandurević, T. 30983 (2 Feb 2009).

⁵⁵⁹⁷ *Ibid.*, T. 30983–30984 (2 Feb 2009). According to **Pandurević**, Grujić then asked “questions about the situation on the ground, because his native village was Baljkovica, and then he left.” Vinko Pandurević, T. 30984 (2 Feb 2009).

⁵⁵⁹⁸ Vinko Pandurević, T. 30984 (2 Feb 2009). **Pandurević** conceded that, although he could have, he did not attempt to contact anyone else to get information before Bojanović arrived at the IKM. Vinko Pandurević, T. 31567 (16 Feb 2009). *See also* Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11716, 11724 (8 July 2004) (testifying that he carried out duties in cooperation with the duty operations officer that had been established prior to **Pandurević**’s departure and that he went to the Kitovnice IKM on the afternoon of 15 July).

⁵⁵⁹⁹ Vinko Pandurević, T. 30984 (2 Feb 2009).

1867. In the afternoon on 15 July, **Pandurević** contacted Muminović to determine why Muminović had tried to reach him earlier that morning.⁵⁶⁰⁰ Muminović wanted **Pandurević** to let the whole column of the 28th Division pass through in the area of Nežuk.⁵⁶⁰¹ **Pandurević** responded that he was willing to discuss the situation and to let civilians and unarmed men in the column pass, but that those who were armed must surrender.⁵⁶⁰² According to **Pandurević**, Muminović refused.⁵⁶⁰³ Shortly thereafter, **Pandurević** again called Muminović and suggested that he should designate a place for the civilians to gather so they could pass through, and that those who were armed could pass as well, but only after they laid down their weapons.⁵⁶⁰⁴ **Pandurević** believed that this course of action would accomplish the orders he had been given from the Corps Command because it would neutralise the 28th Division.⁵⁶⁰⁵ Muminović refused and ended the conversation.⁵⁶⁰⁶

1868. **Pandurević** issued an interim combat report at around 7:25 p.m. on 15 July.⁵⁶⁰⁷ **Pandurević** dictated the report to Bojanović at the Kitovnice IKM's OP.⁵⁶⁰⁸

1869. In the first three paragraphs of the report, **Pandurević** provided an overview of the status of the enemy forces, efforts by Brigade forces to secure the area, the intensity of the enemy attacks, and casualties suffered by the Brigade.⁵⁶⁰⁹

⁵⁶⁰⁰ Vinko Pandurević, T. 30977 (2 Feb 2009). Due to Muminović's earlier attempt to contact him, **Pandurević** believed that Muminović had something to offer and that the situation could potentially be resolved without fighting. *Ibid.*, T. 30974 (2 Feb 2009).

⁵⁶⁰¹ *Ibid.*, T. 30977 (2 Feb 2009).

⁵⁶⁰² *Ibid.*, T. 30978 (2 Feb 2009); Ex. 7D00656, "Recorded conversation between Šemso Muminović and Vinko Pandurević on 15 July 1995".

⁵⁶⁰³ Vinko Pandurević, T. 30978 (2 Feb 2009).

⁵⁶⁰⁴ *Ibid.*, T. 30978 (2 Feb 2009); Ex. 7D00656, "Recorded conversation between Šemso Muminović and Vinko Pandurević on 15 July 1995".

⁵⁶⁰⁵ Vinko Pandurević, T. 30979 (2 Feb 2009). **Pandurević** described his reason for making this offer to Muminović as follows: "I would have been able to carry out the task in this way while saving many lives, or I could carry out the task using fire-power. I opted for this version, this possibility, and I knew that Šemso knew well that the greater the pressure of his forces from the front line, the more fierce would be my firing on the blocked forces of the 28th Division, and that this was what led him to ask for a conversation with me". Vinko Pandurević, T. 30981–30982 (2 Feb 2009). **Pandurević** said that he had done similar things before, notably in 1993. Vinko Pandurević, T. 30982 (2 Feb 2009), T. 32094–32097 (25 Feb 2009) (describing an occasion in which a corridor was opened to permit passage of Muslim civilians in 1993). *See also* Ex. P04229, "Regular Combat Report from 1st Zvornik Infantry Brigade to the Drina Corps Command, signed by Pandurević, 31 Jan 1993".

⁵⁶⁰⁶ Vinko Pandurević, T. 30978 (2 Feb 2009). In all, **Pandurević** said that he had five or six radio conversations with Muminović on 15 July, and the audio recording of Ex. 7D00656 is a recording of the third conversation. Vinko Pandurević, T. 30979–30980 (2 Feb 2009).

⁵⁶⁰⁷ Ex. P00329, "Zvornik Brigade Daily Interim Combat Report, signed by Vinko Pandurević, 15 July 1995"; Vinko Pandurević, T. 30986–30990 (2 Feb 2009); PW-168, T. 16551 (closed session) (18 Oct 2007).

⁵⁶⁰⁸ Vinko Pandurević, T. 30985 (2 Feb 2009); Ljubo Bojanović, Ex. P03135, "confidential – 92 quater transcript", BT. 11725–11726, 11728 (8 July 2004). *See also* Mihajlo Galić, T. 10503 (25 Apr 2007) (testifying that he recognised the signature on the report as the "short version" of **Pandurević**'s signature and the handwriting on the report as that of Ljubo Bojanović). **Pandurević** testified that he did not read the report after he dictated it, but simply initialled it and sent it to the communications centre at Zvornik to be encrypted and sent to the Corps Command. Vinko Pandurević, T. 30986 (2 Feb 2009).

1870. Subsequently, in the fourth and fifth paragraphs of the report, **Pandurević** stated:

An additional burden for us is the large number of prisoners distributed throughout schools in the brigade area, as well as obligations of security and restoration of the terrain.

This command cannot take care of these problems any longer, as it has neither the material nor other resources. If no one takes on this responsibility I will be forced to let them go.⁵⁶¹⁰

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1871. In the early morning hours of 16 July, the ABiH 2nd Corps attacked the positions of the 4th, 6th, and 7th Battalions of the Zvornik Brigade which were deployed on the front line in the area of Baljkovica.⁵⁶¹¹ At 7:06 a.m. from the Kitovnice IKM, **Pandurević** informed an unidentified person that there had been fighting all morning.⁵⁶¹²

⁵⁶⁰⁹ Ex. P00329, "Zvornik Brigade Daily Interim Combat Report, signed by Vinko Pandurević, 15 July 1995". The report portrays a rather intense picture of the combat situation, with the Brigade's forces under heavy attack by the enemy and all Brigade forces being fully engaged. By some accounts, the description in these paragraphs accurately reflected the situation on the ground at the time. *See, e.g.*, Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", pp. 138–142 (some entries noting heavy attacks or requests for reinforcements); Eileen Gilleece, T. 6730–6731 (1 Feb 2007); Ex. P02408, "Investigative notes of an interview with Milenko Živanović and Vinko Pandurević, 2 October 2001", p. 4; PW-168, T. 15837 (closed session), 15840–15841 (closed session), 15864–15866 (closed session) (26 Sept 2007), T. 15994–15995 (closed session) (28 Sept 2007); Ex. P01150a (confidential); Ex. P01166d, "Intercept, 14 July 1995, 22:27 hours". *See also* Prosecution Final Brief, para. 1428. In support of this position, the Prosecution points to other reports coming out of the Zvornik Brigade during this time period, intercepts, the Duty Operation Officer Notebook, and the testimony of various witnesses including that of PW-168. Additionally, the reference to killed and wounded soldiers in the report is confirmed by the Zvornik Brigade Regular Combat Report for 15 July and the Duty Operations Officer Notebook, which record the names of five soldiers who were killed that day. *See* Ex. 5DP00328, "Zvornik Brigade Daily Combat Report 06-217"; Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", pp. 137, 140, 142, 144. However, according to **Pandurević**, portions of the report were inaccurate as to the actual military situation faced by the Zvornik Brigade. Vinko Pandurević, T. 30968–30969, 30988 (2 Feb 2009) (also testifying that the combat situation on 15 July was in fact calm and there was little combat taking place) *See also* some entries in Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", pp. 136–143 (entries where the situation is noted as normal or under control). According to **Pandurević**, in the report, he significantly downplayed the numbers of the column. *See also* Pandurević Final Brief, para. 11.2.5. Obrenović gave **Pandurević** a higher number than 3,000 during the meeting held earlier in the day, but **Pandurević** reduced that estimate for the report. Vinko Pandurević, T. 30987 (2 Feb 2009). According to **Pandurević**, the information in paragraph 3 of the report accurately reflected the military situation as it was known to him. Vinko Pandurević, T. 30990–30991 (2 Feb 2009).

⁵⁶¹⁰ Ex. P00329, "Zvornik Brigade Daily Interim Combat Report, signed by Vinko Pandurević, 15 July 1995". *See infra*, paras. 1943–1948, 1962–1964. With respect to the translation of this report, CLSS made a clarification in relation to "throughout the schools" and "obligations of security and restoration of the terrain". The BCS phrase translated as "throughout the schools" could be paraphrased as "in various schools" or "in several schools", but gives no indication of whether or not this refers to all the schools in that area. In the phrase "obligations of security and restoration of the terrain", it is impossible to ascertain whether "security" refers to the terrain, the prisoners mentioned previously, or something else entirely; the term "restoration" relates directly to the terrain. Internal Memorandum re. Opinion on Exhibit P00329, 11 September 2009.

⁵⁶¹¹ Vinko Pandurević, T. 31012 (2 Feb 2009), T. 31022–31023 (3 Feb 2009); Lazar Ristić, T. 10097 (16 Apr 2007); PW-168, T. 15891 (closed session) (27 Sept 2007) (testifying that the fighting escalated around that time on 16 July). PW-168 testified that the Zvornik Brigade forces were surrounded and could not send their wounded anywhere and around the same time, one Bratunac Brigade company of about 60 soldiers had simply vanished. PW-168, T. 15891 (closed session) (27 Sept 2007), T. 16833 (closed session) (23 Oct 2007). According to PW-168, that morning, the ABiH 2nd Corps used anything to attack the Zvornik Brigade forces, causing surrounding villages to come under fire, and at one point, only 30 meters separated the two combating forces. PW-168,

1872. Between 9 and 10 a.m. on 16 July, Obrenović, who was in the area of the command post of the 4th Battalion, contacted **Pandurević** to inform him that a wounded officer from the 28th Division, Semsudin Salihović, had provided information about the 28th Division, specifying that its situation was very grave.⁵⁶¹³ Salihović indicated that his forces included 7,000 soldiers, with 3,000 under arms, but that he had lost a real count during the fighting.⁵⁶¹⁴ On **Pandurević's** order, Salihović was permitted to return to the 28th Division and communicate to the 28th Division that **Pandurević** would establish contact in order to negotiate passage of the column.⁵⁶¹⁵ However, once Salihović returned to his forces, the 28th Division mounted another attack.⁵⁶¹⁶

1873. Around 10 a.m. **Pandurević** established contact with Šemso Muminović, and ultimately sometime between noon and 1 p.m., they agreed to open a corridor to allow passage of the column through the Zvornik Brigade territory to the territory held by the ABiH 2nd Corps.⁵⁶¹⁷ Additionally, it was agreed that some members of the ABiH 2nd Corps could enter the corridor and assist in evacuating the wounded.⁵⁶¹⁸ The agreement was implemented around 1 or 2 p.m. on 16 July, and the passage of the 28th Division continued until nightfall.⁵⁶¹⁹ During this time, **Pandurević** was in

T. 15891 (closed session) (27 Sept 2007). According to **Pandurević**, the attacks that day did not break the defence lines of the Brigade's battalions. Vinko Pandurević, T. 31030 (3 Feb 2009).

⁵⁶¹² Ex. P01183c, "Intercept, 16 July 1995, 07:06 hours"; PW-168, T. 16012–16013 (28 Sept 2007). During this conversation, Pandurević informed the unidentified person ("X") they had most of the enemy forces surrounded in the Baljkovica sector. **Pandurević** also stated that "when the mass poured forward" deep in the rear of the Zvornik-held territory, the VRS troops fled, enabling the enemy forces to take two self-propelled guns. Ex. P01183c, "Intercept, 16 July 1995, 07:06 hours". In addition, **Pandurević** mentioned that he had some wounded men "down there" and was not able to get them out of there; "X" subsequently informed **Pandurević** that help would be arriving for him from the west and that he should use it as he sees fit. Ex. P01183c, "Intercept, 16 July 1995, 07:06 hours".

⁵⁶¹³ Vinko Pandurević, T. 31031–31032 (3 Feb 2009); PW-168, T. 15890–15893 (closed session), 15897 (closed session) (27 Sept 2007); Lazar Ristić, T. 10155–10156 (17 Apr 2007).

⁵⁶¹⁴ PW-168, T. 15892 (closed session) (27 Sept 2007). According to PW-168's estimate, 28th Division's forces numbered between 7,000 and 10,000, with half of them armed. PW-168, T. 15897 (closed session) (27 Sept 2007).

⁵⁶¹⁵ Vinko Pandurević, T. 31031 (3 Feb 2009); PW-168, T. 15892 (closed session) (27 Sept 2007), T. 16565–16566 (18 Oct 2007); Lazar Ristić, T. 10155–10156 (17 Apr 2007).

⁵⁶¹⁶ PW-168, T. 15892 (closed session) (27 Sept 2007). *See also* Lazar Ristić, T. 10156 (17 Apr 2007).

⁵⁶¹⁷ Vinko Pandurević, T. 31031–31032, 31034 (3 Feb 2009); Miodrag Dragutinović, T. 12707–12708 (15 June 2007); PW-168, T. 15893–15894 (closed session) (27 Sept 2007); Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", p. 5 ("At 1300 hours, the Commander of the Zvornik Brigade, **Vinko Pandurević**, and the Commander of the Muslim side, Šemso Muminović, agreed to open a one-kilometre wide corridor in the areas of Parlog and Baljkovica to allow all Muslim soldiers to get out."). The column of the 28th Division was allowed to pass with all that they carried and were permitted to choose the point at which to pass through the lines. PW-168, T. 16542–16543 (closed session), 16563 (closed session) (18 Oct 2007).

⁵⁶¹⁸ Vinko Pandurević, T. 31034 (3 Feb 2009).

⁵⁶¹⁹ *Ibid.*, T. 31034–31035 (3 Feb 2009); PW-168 15894 (closed session) (27 Sept 2007). *See also* Lazar Ristić, T. 10157 (17 Apr 2007). Implementation of the agreement was supervised by both sides who had agreed that should one party violate the agreement, fighting could resume. The initial 24-hour period in which the corridor was opened was extended until around 5 or 6 p.m. on 17 July in order for all the Bosnian Muslims present in the area to pass through. Vinko Pandurević, T. 31034–31035 (3 Feb 2009); T. 31088, 31093 (9 Feb 2009); PW-168, T. 15904–15905 (closed session) (27 Sept 2007), T. 16543 (closed session) (18 Oct 2007). *See also* Ostojica Stanišić, T. 11719 (17 May 2007) (confirming that a ceasefire, that lasted about 32 hours, had been agreed upon to allow the column to pass). Thereafter, the defence lines were re-established. Vinko Pandurević, T. 31093–31094 (9 Feb 2009). According to **Pandurević**, it was necessary to open the corridor "in order to save human lives", but at the time, opening the corridor was not his only military option. Vinko Pandurević, T. 31041 (3 Feb 2009). For

almost constant contact with Muminović.⁵⁶²⁰ **Pandurević** personally witnessed the column moving through the corridor and estimated that 5,000 to 6,000 people passed through,⁵⁶²¹ while PW-168 estimated that around 7,000 to 10,000 people passed through the corridor, half of whom were armed.⁵⁶²²

1874. The agreement to open the corridor for the passage of the column countered the orders that **Pandurević** had received from his superiors,⁵⁶²³ and **Pandurević** initially did not attempt to contact anyone from his superior command regarding this agreement.⁵⁶²⁴ At 1:55 p.m. on 16 July, **Pandurević** communicated to the Drina Corps Command that he had set up a corridor for Bosnian Muslim civilians to pass through and that he was still fighting the 28th Division.⁵⁶²⁵ During the afternoon of 16 July, the Main Staff and the Drina Corps Command made several unsuccessful attempts to communicate with **Pandurević**.⁵⁶²⁶ However, **Pandurević** did not send a report to the Drina Corps Command until later that evening.⁵⁶²⁷

1875. At 4:40 p.m., the Zvornik Brigade Duty Officers Notebook records a message from Zlatar that **Popović** must go to **Pandurević** in the field.⁵⁶²⁸ Additionally, in an intercepted conversation on 16 July at 4:43 p.m., an unidentified speaker says that the “boss” wants either **Popović** or Drago

example, alternatively, he could have “betrayed the agreement”, waited until people were in the corridor, and then opened fire. Vinko Pandurević, T. 31041 (3 Feb 2009).

⁵⁶²⁰ Vinko Pandurević, T. 31042 (3 Feb 2009).

⁵⁶²¹ *Ibid.*, T. 31075 (3 Feb 2009). **Pandurević** testified that those passing through the corridor included some people “wearing uniforms, some [who] were wearing civilian clothes, some were armed, some were unarmed”. Vinko Pandurević, T. 31075 (3 Feb 2009).

⁵⁶²² PW-168, T. 15897 (closed session) (27 Sept 2007).

⁵⁶²³ *See supra*, para. 1859.

⁵⁶²⁴ Vinko Pandurević, T. 31044 (3 Feb 2009). According to **Pandurević**, he did not call Krstić first to seek permission to open the corridor because Krstić had given him a clear task and he would not have gotten permission. Vinko Pandurević, T. 32023–32024, 32026 (23 Feb 2009).

⁵⁶²⁵ PW-168, T. 16012–16014 (closed session) (28 Sept 2007); Ex. P01188a, “Intercept, 16 July 1995, 13:55 hours” (communication between Pandurević (“Palma 1”) and the Drina Corps Command (“Zlatar 1”). During the intercepted conversation, **Pandurević** informs the Drina Corps Command that they “made a small corridor so that the civilians could pull out” and that the VRS was still fighting. Ex. P01188a, “Intercept, 16 July 1995, 13:55 hours” PW-168 explained that these statements by **Pandurević** were lies because at this point in time not only were civilians passing through the corridor, but the army was not engaged in fighting with the 28th Division. PW-168, T. 16014–16015 (closed session) (28 Sept 2007). According to PW-168, **Pandurević** made these misrepresentations in order to appease the Superior Command because **Pandurević** had been ordered to stop the column and destroy it. PW-168, T. 16014–16015 (closed session) (28 Sept 2007).

⁵⁶²⁶ Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, pp. 148–149 (entry at 1525 hours showing request from Zlatar (Drina Corps Command) for **Pandurević** to call or send a report; similar entries at 1620, 1640, and 1705 hours); Ex. P01192b, “Intercept, 16 July 1995, 15:29 hours” (showing similar communication from the Main Staff); Ex. P01194a, “Intercept, 16 July 1995, 16:02 hours” (showing Krstić being told that **Pandurević** could not be reached); Ex. P01195a (confidential); Vinko Pandurević, T. 31044–31046, T. 31048–31050 (3 Feb 2009), T. 31085 (9 Feb 2009). **Pandurević** knew that the Drina Corps Command and the Main Staff had requested him to report that afternoon; however, he did not respond. Vinko Pandurević, T. 31044, 31047 (3 Feb 2009). *See also* PW-168, T. 16544, 16546–16547 (closed session) (18 Oct 2007) (indicating that **Pandurević** initially tried to avoid contact with the superior command because opening the corridor was in contravention of the orders he had been given).

⁵⁶²⁷ Ex. 7DP00330, “Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 16 July 1995; Vinko Pandurević, T. 31051–31062 (3 Feb 2009).

Nikolić to go visit “Vinko” to see “what’s going on there”.⁵⁶²⁹ Later, in an intercepted conversation at 9:16 p.m., **Popović** indicates that he did in fact visit **Pandurević** earlier that day, saying that he “was just up there” and “was with the boss personally”.⁵⁶³⁰ **Popović** also says to Rašić that he, Rašić, “got his interim report”.⁵⁶³¹ With respect to this intercepted conversation, **Pandurević** agreed that **Popović** was possibly speaking about his interim combat report of 16 July and that **Popović**’s mention of the “boss” was probably a reference to him.⁵⁶³² **Pandurević** however denied that he saw and met with **Popović** on 16 July.⁵⁶³³ Despite his denial, the Trial Chamber is satisfied that based on the evidence the only reasonable inference that can be drawn is that **Popović** visited **Pandurević** in the late afternoon of 16 July.

1876. **Pandurević** dictated the interim combat report for 16 July to Captain Milisav Petrović, Chief of Communications, at approximately 5 p.m.⁵⁶³⁴ Although it was prepared by 6:10 p.m., it was not actually sent before 8 p.m.⁵⁶³⁵ In the report, **Pandurević** stated that, in light of the situation, he decided “to open a corridor [...] for the civilian population – about 5,000 of them [...] It is likely that a certain number of soldiers got out among the civilians, but all who passed, passed through unarmed.”⁵⁶³⁶ It concludes with the sentence, “I consider that the Krivaja 95 operation is not complete as long as a single enemy soldier or civilian remains behind the front line”.⁵⁶³⁷

1877. According to **Pandurević**, the interim combat report did not fully reflect the events that took place and was deliberately written inaccurately by him in many respects.⁵⁶³⁸ In particular, **Pandurević** wrote that “all who passed, passed through unarmed”.⁵⁶³⁹ According to **Pandurević**, this was inaccurate because those who were passing through the corridor included persons who were armed, and this was his personal attempt to protect himself because opening the corridor was contrary to the orders which he had received on 15 July and he wanted to avoid punishment for his actions.⁵⁶⁴⁰ Additionally, he portrayed the combat situation inaccurately “in such a way that [he]

⁵⁶²⁸ Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995”, p. 149.

⁵⁶²⁹ Ex. P01225f, “Intercept of conversation between X and Y, 16 July 1995, 16:43 hours”.

⁵⁶³⁰ Ex. P01201a, “Intercept, 16 July 1995, 21:16 hours” (conversation between **Popović** and Ljubo Rakić, a Drina Corps duty officer); Ljubo Rakić, T. 22187–22188 (16 June 2008) (testifying that he had understood **Popović** to mean that he had visited **Pandurević** in the Baljkovica area of combat). *See also* Richard Butler, T. 20019–20022 (18 Jan 2008).

⁵⁶³¹ Ex. P01201a, “Intercept, 16 July 1995, 21:16 hours”.

⁵⁶³² Vinko Pandurević, T. 32244 (27 Feb 2009).

⁵⁶³³ *Ibid.*, T. 31050 (3 Feb 2009). *See also* Pandurević Final Brief, para. 830.

⁵⁶³⁴ Vinko Pandurević, T. 31051–31052, 31064 (3 Feb 2009). Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Vinko Pandurević, 16 July 1995”.

⁵⁶³⁵ Vinko Pandurević, T. 31052 (3 Feb 2009).

⁵⁶³⁶ Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Vinko Pandurević, 16 July 1995”.

⁵⁶³⁷ *Ibid.*,

⁵⁶³⁸ Vinko Pandurević, T. 31055–31059 (3 Feb 2009); Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Vinko Pandurević, 16 July 1995”.

⁵⁶³⁹ Vinko Pandurević, T. 31059 (3 Feb 2009).

⁵⁶⁴⁰ *Ibid.*, T. 31059–31060 (3 Feb 2009).

could represent to the [Drina] [C]orps [C]ommand through the report that the situation was more dramatic and more grave than it really was, hoping that they would understand [his] actions in putting a stop to the fighting and opening up the corridor".⁵⁶⁴¹ Similarly, PW-168 testified that when **Pandurević** reported to the Drina Corps on the opening of the corridor, he exaggerated the loss of trenches in order to justify his decision to open the corridor and lied about the fact that the corridor was also open for those who were armed.⁵⁶⁴²

1878. **Pandurević** had not seen Obrenović on 16 July prior to dictating the combat report for that day because Obrenović was engaged in combat operations.⁵⁶⁴³ Around 6 p.m. on 16 July, pursuant to **Pandurević**'s order, Obrenović reported to **Pandurević** at the Kitovnice IKM, along with Milan Jolović, "Legenda".⁵⁶⁴⁴

1879. According to **Pandurević**, after reporting the situation on the ground, Obrenović had a conversation with him, in which **Pandurević** asked about POWs in Zvornik relating to the information he had received from Grujić.⁵⁶⁴⁵ According to **Pandurević**, Obrenović said that on the evening of 13 July, **Drago Nikolić** passed on information from the Security Organ that pursuant to an order of the VRS Main Staff, prisoners were to be transferred to Zvornik to be screened and the prisoners who were suspected of war crimes would be sent to Batković and the rest would be exchanged.⁵⁶⁴⁶ Obrenović told **Pandurević** that **Nikolić** had said that it was his, **Nikolić**'s, obligation to wait for the arrival of these prisoners and that these prisoners would come under security escort.⁵⁶⁴⁷ **Nikolić** said that he needed Obrenović to provide him with a number of military policemen, thus Obrenović placed Jasikovac and five or six policemen at **Nikolić**'s disposal.⁵⁶⁴⁸ According to **Pandurević**, Obrenović said nothing about **Nikolić** mentioning executions.⁵⁶⁴⁹

1880. During this conversation on 16 July as alleged by **Pandurević**, Obrenović also said that on the evening of 14 July Dragan Jokić told him that **Beara** and some other men had been in the brigade command and had requested from representatives "of the authorities" some machinery to bury the people who were shot at Orahovac.⁵⁶⁵⁰ Jokić said that some machines had been mobilised

⁵⁶⁴¹ Vinko Pandurević, T. 31059 (3 Feb 2009).

⁵⁶⁴² PW-168, T. 15898–15900 (closed session) (27 Sept 2007).

⁵⁶⁴³ Vinko Pandurević, T. 31064 (3 Feb 2009).

⁵⁶⁴⁴ *Ibid.*, T. 31064 (3 Feb 2009), T. 31375 (12 Feb 2009). At this time, Obrenović was "with Legenda somewhere along the corridor". *Ibid.*, T. 31375–31376 (12 Feb 2009).

⁵⁶⁴⁵ *Ibid.*, T. 31065 (3 Feb 2009).

⁵⁶⁴⁶ Vinko Pandurević, T. 31066–31067 (3 Feb 2009), T. 32362 (2 Mar 2009).

⁵⁶⁴⁷ *Ibid.*, T. 31067 (3 Feb 2009).

⁵⁶⁴⁸ *Ibid.*, T. 31067 (3 Feb 2009), T. 31307 (11 Feb 2009).

⁵⁶⁴⁹ *Ibid.*, T. 31380 (12 Feb 2009).

⁵⁶⁵⁰ *Ibid.*, T. 31067–31068 (3 Feb 2009). **Pandurević** said that Obrenović did not say anything about prisoners still being held at the school in Orahovac. *Ibid.*, T. 31520 (16 Feb 2009).

and used to bury the dead.⁵⁶⁵¹ Obrenović also asked Jokić at that time about the two engineers who had been withdrawn from the field to operate the machines.⁵⁶⁵² **Pandurević** asked Obrenović whether he had informed anyone else of this and Obrenović said he had not, in light of what he heard from **Nikolić** and that this had happened pursuant to an order of the Main Staff.⁵⁶⁵³ **Pandurević** asked Obrenović whether any member of the Zvornik Brigade had participated in what happened at Orahovac, and Obrenović said that he had no information that any member, including **Nikolić**, had participated in the executions.⁵⁶⁵⁴ **Pandurević** testified that he did not call **Nikolić** for information about the prisoners because he had sent Obrenović for information and placed more trust in what Obrenović, rather than **Nikolić**, had to say.⁵⁶⁵⁵

1881. Obrenović also mentioned to **Pandurević** that earlier on 16 July, while Obrenović was with the 6th Battalion, Ostoja Stanisić, the Commander of the Battalion, told him that prisoners had been held in the school in Petkovci and these men were executed at the Crveni Mulj dam and in the vicinity of the school itself.⁵⁶⁵⁶ Obrenović said that Stanisić told him that no members of the 6th Battalion took part in the executions but that—at the villagers' request—some members of the 6th Battalion collected bodies from around the school and drove them to the dam.⁵⁶⁵⁷ According to

⁵⁶⁵¹ Vinko Pandurević, T. 31068 (3 Feb 2009).

⁵⁶⁵² *Ibid.*, T. 31383 (12 Feb 2009).

⁵⁶⁵³ *Ibid.*, T. 31068 (3 Feb 2009).

⁵⁶⁵⁴ *Ibid.*, T. 31068 (3 Feb 2009).

⁵⁶⁵⁵ Vinko Pandurević, T. 31542 (16 Feb 2009). **Pandurević** did not attempt to call **Drago Nikolić** himself for information, although he conceded that he could have ordered **Nikolić** to report to him to discuss the situation. Vinko Pandurević, T. 31539–31540 (16 Feb 2009). He also said that if **Nikolić** knew about prisoners, he did not need to wait for **Pandurević's** order to report, but should have reported to **Pandurević** on his own. Vinko Pandurević, T. 31541 (16 Feb 2009). He said that that was because his information was that the operation had been conducted “from the highest level” and that he could not have “conducted a selective investigation in order to establish what an x, y, z policeman had done without establishing at the same time what **Nikolić**, Trbić, and others did, and under whose orders they had done what they did.” Vinko Pandurević, T. 31543 (16 Feb 2009). When asked if he issued “any order to ensure that members of [his] military police company would not be involved in guarding or any other manner with the prisoners”, **Pandurević** stated that he did not issue any such order. Vinko Pandurević, T. 31543 (16 Feb 2009). **Pandurević** further stated that he did not order Jasikovac to report him with information because “according to the information that [he] had on the 16th in the evening, things had already taken place at those locations, and [he] fully believe[d] that those policemen in question were no longer engaged anywhere.” Vinko Pandurević, T. 31543 (16 Feb 2009). Additionally, **Pandurević** stated that at that point in time “[a]ccording to [his] information, no member of the Zvornik Brigade had participated in the executions.” Vinko Pandurević, T. 31544 (16 Feb 2009). **Pandurević** also stated that on the morning of 18 July, he met with Jokić and asked him about the use of the engineering resources in burials. Vinko Pandurević, T. 31544 (16 Feb 2009).

⁵⁶⁵⁶ Vinko Pandurević, T. 31069–31070 (3 Feb 2009), T. 31521 (16 Feb 2009).

⁵⁶⁵⁷ *Ibid.*, T. 31069–31070 (3 Feb 2009), T. 31521–31522 (16 Feb 2009). **Pandurević** admitted that he did not call the 1st Battalion to inform them not to be involved or participate in any executions at Pilica, even though he knew at that point there had been executions at other places where prisoners were held. *Ibid.*, T. 31534–31535 (16 Feb 2009). He also said that he did not call Stanisić at the 6th Battalion even though he knew from Obrenović that members of the 6th Battalion had helped move bodies. *Ibid.*, T. 31536–31537 (16 Feb 2009). He insisted he did not contact the 6th Battalion because whatever had happened in Petkovci was “over”. *Ibid.*, T. 31538 (16 Feb 2009). Asked to clarify his answer as to whether he might have thought at that time that some prisoners at Petkovci might still be alive, **Pandurević** said that after Stanisić spoke to Obrenović on 16 July, **Pandurević** “knew that there were none left, no one was alive.” *Ibid.*, T. 31539 (16 Feb 2009).

Pandurević, following this alleged conversation at the Kitovnice IKM, he sent Obrenović to the Zvornik Brigade headquarters to gather more information about the killings.⁵⁶⁵⁸

1882. The Trial Chamber has considered **Pandurević**'s evidence as to the occurrence and content of this conversation between himself and Obrenović on the evening of 16 July. [REDACTED] As the Trial Chamber has found *infra*,⁵⁶⁵⁹ **Pandurević**'s account of this conversation on 16 July does not raise a reasonable doubt that he was first informed of the murder operation by Obrenović on 15 July. In light of this finding, the Trial Chamber does not accept **Pandurević**'s recounting of what Obrenović told him about his conversation with **Nikolić**, specifically that there was no mention of executions. Further, the Trial Chamber does not find credible **Pandurević**'s assertion that Obrenović specifically denied involvement on the part of the Zvornik Brigade and **Nikolić** in the executions at Orahovac. However, the Trial Chamber otherwise accepts that **Pandurević** had a conversation with Obrenović on 16 July and that at this point **Pandurević** acquired additional information about the operation, as he described.⁵⁶⁶⁰

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1883. According to **Pandurević**, on 17 July between 5 and 5:30 a.m., Obrenović came to the IKM.⁵⁶⁶¹ At this point, Obrenović told **Pandurević** that he had met with Trbić, the Duty Officer, who "confirmed the killings in Orahovac and Petkovci" and said that prisoners were accommodated in the schools in Pilica and Ročević and had been executed there.⁵⁶⁶² Trbić said that **Beara** had been in the area and "was in charge of that business."⁵⁶⁶³ Trbić also told Obrenović that he had seen **Popović** in Zvornik.⁵⁶⁶⁴

⁵⁶⁵⁸ Vinko Pandurević, T. 31070 (3 Feb 2009).

⁵⁶⁵⁹ See *infra*, para. 1958.

⁵⁶⁶⁰ See also *infra*, fn. 5875.

⁵⁶⁶¹ Vinko Pandurević, T. 31083 (9 Feb 2009). The Trial Chamber notes that there is contradictory evidence on whether Obrenović or, alternatively, Pandurević spent the night of 16 July at the IKM. According to PW-168, Obrenović had spent the night of 16 July at the Kitovnice IKM whereas **Pandurević** went home that night and returned to the IKM the morning of 17 July. PW-168, T. 15901 (closed session) (27 Sept 2007). Contrary to PW-168's account, however, **Pandurević** testified that he stayed at the IKM on the night 16 July and that Obrenović left the IKM around 7 p.m. that evening. Vinko Pandurević, T. 31071, 31077 (3 Feb 2009). Other evidence also indicates that Obrenović did not spend the night of the 16 July at the IKM and instead had left the IKM and was engaged with a resubordinated unit from the Krajina some distance away from the IKM on the evening of 16 July, while **Pandurević** was present throughout the night at the IKM. Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", pp. 151, 153, 154. The Zvornik Duty Officers notebook also recorded that Obrenović was at home that night and had to be woken up at 4:30 a.m. on the morning of 17 July. Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", p. 154. In light of the evidence, the Trial Chamber is of the view that PW-168 was mistaken on this issue. However the Trial Chamber notes that the issue of whether it was Obrenović or **Pandurević** who slept at the IKM is generally not significant or relevant. See also *supra*, para. 33.

⁵⁶⁶² Vinko Pandurević, T. 31084 (9 Feb 2009), T. 31548–31549 (16 Feb 2009).

⁵⁶⁶³ Vinko Pandurević, T. 31084 (9 Feb 2009).

⁵⁶⁶⁴ *Ibid.*, T. 31701 (18 Feb 2009). Obrenović also heard from Jokić that **Popović** had been at the Standard Barracks. *Ibid.*, T. 31700–31701 (18 Feb 2009).

1884. According to **Pandurević**, Obrenović also mentioned in that conversation that some machinery from the Zvornik Brigade's engineering company had been used to bury dead bodies and that executions had taken place "in the vicinity of Drina, of those from Ročević, and that those from Pilica had been executed at Branjevo" and "that the executions had been carried out by the soldiers from the 10th Sabotage Detachment and some soldiers who had arrived from Bratunac".⁵⁶⁶⁵

1885. Further, according to **Pandurević's** account, Obrenović also informed him that there had been a number of calls to the brigade command from the Corps Command and VRS Main Staff, and that even the President had shown interest in the opening of the corridor and the passing of the column.⁵⁶⁶⁶ **Pandurević** told Obrenović that they would resume the conversation about prisoners and executions after the column had finished passing.⁵⁶⁶⁷

1886. The Trial Chamber has considered **Pandurević's** account of the above-described conversation between Obrenović and himself on the morning of 17 July.⁵⁶⁶⁸ Ultimately, whether or not he received this information from Obrenović at this point as described by **Pandurević**, the Trial Chamber is satisfied that by 17 July he had this further knowledge about the murder operation in the area of Zvornik as well as knowledge of the involvement of the Zvornik Brigade.

1887. At 8:45 a.m. on 17 July, three officers from the VRS Main Staff, Colonel Nedeljko Trkulja, Colonel Bogdan Sladojević, and Colonel Milovan Stanković met with **Pandurević** at the Kitovnice IKM.⁵⁶⁶⁹ The VRS Main Staff officers discussed with **Pandurević** the combat situation, why the corridor had been opened, and whether the VRS forces would be able to defend themselves if the ABiH 2nd Corps attacked the following day.⁵⁶⁷⁰ The purpose of the Main Staff officers' visit was to investigate and review **Pandurević's** actions in opening the corridor for the passage of the

⁵⁶⁶⁵ Vinko Pandurević, T. 31084 (9 Feb 2009), T. 31549, 31552–31553 (16 Feb 2009).

⁵⁶⁶⁶ Vinko Pandurević, T. 31085 (9 Feb 2009).

⁵⁶⁶⁷ *Ibid.*, T. 31085–31086 (9 Feb 2009).

⁵⁶⁶⁸ [REDACTED]

⁵⁶⁶⁹ Vinko Pandurević, T. 31090–31092 (9 Feb 2009), T. 31555–31556 (16 Feb 2009); Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996", p. 4 ("0845 hrs – A group of commanding officers led by Colonel Trkulja came to the Brigade's IKM in order to review the conditions in new situation and they returned at 1500 hrs."); Miodrag Dragutinović, T. 12709–12710 (15 June 2007); Bogdan Sladojević, T. 14369–14370, 14372–14373 (27 Aug 2007). *See also* Ex. P00927, "Main Staff Order no. 03/4-1670, re integration of operations to crush lagging Muslim forces, signed by Mladić, 17 July 1995", para. 1 (stating that three officers from the Main Staff, Colonels Nedo Trkulja, Milovan Stanković, and Bogdan Sladojević, were to be sent). These men were sent to investigate the opening of the corridor for the passage of the Bosnian Muslim column. *See supra*, paras. 560–561.

⁵⁶⁷⁰ PW-168, T. 15910–15911 (closed session) (27 Sept 2007). Obrenović also explained to these Main Staff officers that the morale amongst the troops was very low, and that they were tired, had sustained a lot of losses, and would not be able to defend themselves. PW-168, T. 15911 (closed session) (27 Sept 2007). During the officers' visit, **Pandurević** also told Stanković that he was "establishing contact with the Muslim side in order to deal with the problem of casualties". Bogdan Sladojević, T. 14375–14376 (27 Aug 2007); *see also* Vinko Pandurević, T. 31092 (9 Feb 2009).

column.⁵⁶⁷¹ Sladojević and Trkulja left the IKM in the afternoon of 17 July 1995, between 3 and 4 p.m.⁵⁶⁷² **Pandurević** was never disciplined for his actions in letting the column pass.⁵⁶⁷³

1888. On 17 July, **Pandurević** was again in contact with Šemso Muminović, and they agreed that the opening of the corridor should be extended until 6 p.m.⁵⁶⁷⁴ Thus, the process of the column passing through the corridor continued that day.⁵⁶⁷⁵ **Pandurević** also ordered Miladin Mijatović to use loudspeakers to call members of the 28th Division and direct them to the corridor, as Muminović had lost contact with most of them.⁵⁶⁷⁶

1889. There is evidence that later that day on 17 July, Obrenović and **Pandurević** drove from the Zvornik Brigade IKM to Orahovac.⁵⁶⁷⁷ While driving through the Orahovac sector, they passed a meadow where there were about ten bodies of people who had been killed.⁵⁶⁷⁸ At this point, Obrenović told **Pandurević** that on 15 July “a man”⁵⁶⁷⁹ in Baljkovica had told him that **Nikolić** had been in Orahovac and took part in the “shooting” there.⁵⁶⁸⁰ **Pandurević** said nothing in response.⁵⁶⁸¹ Then, one of the soldiers who was travelling with Obrenović and **Pandurević** in the car commented that up in Konjević Polje, where he had come from, “there was even more fierce fighting and around the road there was such scenes which were even more horrible than what we had just seen.”⁵⁶⁸² **Pandurević** however denied that he drove through Orahovac with Obrenović on 17 July and that Obrenović at such a point told him about **Nikolić**’s involvement in executions at

⁵⁶⁷¹ Vinko Pandurević, T. 31091 (9 Feb 2009); PW-168, T. 15911–15912 (closed session) (27 Sept 2007), T. 16543–16544 (closed session) (18 Oct 2007); Bogdan Sladojević, T. 14373, 14406–14407 (27 Aug 2007).

⁵⁶⁷² Bogdan Sladojević, T. 14377–14378 (27 Aug 2007).

⁵⁶⁷³ Vinko Pandurević, T. 31950 (23 Feb 2009); PW-168, T. 16659 (closed session) (19 Oct 2007) (testifying that neither Obrenović nor **Pandurević** was ever sanctioned for having opened the corridor). **Pandurević** testified that from the statement of Colonel Sladojević, who was one of the three colonels to visit the IKM to investigate on 17 July, he later learned that there was a proposal to remove him from his post but nothing came of it. Vinko Pandurević, T. 31950 (23 Feb 2009). Although he was never formally punished, he was “hindered” later in his career “due to the ban on education and appointment to appropriate positions imposed by my superior in the army”. Vinko Pandurević, T. 31950 (23 Feb 2009).

⁵⁶⁷⁴ Vinko Pandurević, T. 31088, 31093 (9 Feb 2009). During his contact with Muminović over the radio on 17 July, **Pandurević** also discussed prisoner exchanges. Vinko Pandurević, T. 31136–31137 (9 Feb 2009); PW-168, T. 15901 (closed session) (27 Sept 2007). *See also* Miodrag Dragutinović, T. 12712 (15 June 2007).

⁵⁶⁷⁵ Vinko Pandurević, T. 31085 (9 Feb 2009).

⁵⁶⁷⁶ *Ibid.*, T. 31089 (9 Feb 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 156.

⁵⁶⁷⁷ PW-168, T. 15902 (closed session) (27 Sept 2007). According to PW-168, since Obrenović had lost his vehicle during combat, **Pandurević** dropped Obrenović at Orahovac, where Obrenović was to gather the units who had been sent to help them and put together a battalion “to break through the road of the Crni Vrh-Šekovići direction because that whole area was practically cut off”. *Ibid.*, T. 15902 (27 Sept 2007).

⁵⁶⁷⁸ *Ibid.*, T. 15902–15903 (closed session) (27 Sept 2007).

⁵⁶⁷⁹ According to PW-168, on 15 July 1995, late in the afternoon, as Obrenović was standing in front of the command of the 4th Battalion in Baljkovica, an elderly soldier who was “probably a member of the logistics who were assisting there”, asked Obrenović about “the prisoners that had been brought to the centre of the village [Orahovac]”. *Ibid.*, T. 15888–15889 (closed session), 15902 (closed session) (27 Sept 2007), T. 17001 (closed session) (26 Oct 2007).

⁵⁶⁸⁰ *Ibid.*, T. 15902 (closed session) (27 Sept 2007).

⁵⁶⁸¹ PW-168, T. 15903 (closed session) (27 Sept 2007).

⁵⁶⁸² PW-168, T. 15902 (27 Sept 2007).

Orahovac.⁵⁶⁸³ According to **Pandurević**, instead, on the evening of 17 July he drove through Orahovac and observed disturbed earth next to the road at a point between the villages of Križeviči and Orahovac.⁵⁶⁸⁴ 1890. Despite **Pandurević**'s denial, having assessed the evidence on the drive through Orahovac, the Trial Chamber is satisfied that on 17 July Obrenović and **Pandurević** drove through Orahovac at which point he was given the information as described in the account above.⁵⁶⁸⁵

1891. Despite the request from the Corps for an interim combat report, **Pandurević** decided not to send one on 17 July.⁵⁶⁸⁶ On the evening of 17 July at the IKM, **Pandurević** discussed with Obrenović sending an interim combat report the next day, and they concluded that the report should include their knowledge of the executions in the Zvornik area.⁵⁶⁸⁷

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1892. After the corridor was closed, on 18 July and during the subsequent few days, elements of the Zvornik Brigade participated in searching the terrain for ABiH soldiers.⁵⁶⁸⁸ During these searches, some ABiH soldiers were killed and others were captured.⁵⁶⁸⁹ Pursuant to an order by **Pandurević**, during this period, Bosnian Muslim soldiers who surrendered were to be handed over

⁵⁶⁸³ Vinko Pandurević, T. 31368–31369 (private session) (12 Feb 2009).

⁵⁶⁸⁴ *Ibid.*, T. 31113 (9 Feb 2009), T. 31369–31370 (private session) (12 Feb 2009). *But see* Ex. 7D00091, "Vehicle work log. Nisan for July 95", p. 2 (which appears to note two trips on 17 July between 7 a.m. and 11 p.m.).

⁵⁶⁸⁵ However, **Pandurević** admitted and the Trial Chamber is satisfied that while travelling through Orahovac after leaving the IKM on the evening of 17 July, **Pandurević** saw that the ground had been disturbed next to the road. Vinko Pandurević, T. 31113 (9 Feb 2009). According to **Pandurević**, when he saw this, he "understood that what Obrenović had told [him about the executions] was actually true". Vinko Pandurević, T. 32434 (3 Mar 2009). Additionally, **Pandurević** testified that with respect to Obrenović telling him that prisoners had been executed at Orahovac, he understood it the way Obrenović told him and that Obrenović had explained that it took place on the evening of 14 July. Vinko Pandurević, T. 32434 (3 Mar 2009). **Pandurević** further testified that regarding the likely fate of all the prisoners, his conclusion was that "all these unfortunate men had their fate sealed." Vinko Pandurević, T. 32434 (3 Mar 2009).

⁵⁶⁸⁶ Vinko Pandurević, T. 31089–31090 (9 Feb 2009).

⁵⁶⁸⁷ *Ibid.*, T. 31095 (9 Feb 2009).

⁵⁶⁸⁸ *Ibid.*, T. 31099, 31133–31134 (9 Feb 2009) (stating that the Podrinje Detachment, the East Bosnia Corps, and the 4th and 7th Battalions and their intervention platoons were amongst the units that participated); Ex. 7D00093, "Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 20 July 1995"; PW-168, T. 15905 (closed session) (27 Sept 2007) (testifying that in the first three or four days after the closing of the corridor, the Zvornik Brigade intensively "combed" the terrain in order to cleanse it of straggler enemy forces that presented a danger for the units); Ljubo Bojanović, Ex. P03135, "confidential – 92 quater transcript", BT. 11734–11735 (8 July 2004). *See also* Miodrag Dragutinović, T. 12603–12604 (14 June 2007). Dragutinović said that "[q]uite a few armed soldiers of the 28th Division were left behind and they constantly tried to break through." Miodrag Dragutinović, T. 12710–12711 (15 June 2007).

⁵⁶⁸⁹ Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", p. 164 (stating that "[a]nother 28 were liquidated and three were captured"); Vinko Pandurević, T. 31130 (9 Feb 2009). According to **Pandurević**, additional groups from the column were also allowed to pass through on 18 July. Vinko Pandurević, T. 31097–31098 (9 Feb 2009).

to the Zvornik Brigade Military Police.⁵⁶⁹⁰ The Military Police detained the prisoners in the military prison of the Standard Barracks, pending their transfer to Batković.⁵⁶⁹¹

1893. During the day of 18 July, **Pandurević** was at the temporary location of the 4th Battalion Command, between Parlog and Baljkovica.⁵⁶⁹² On the morning of 18 July, **Pandurević** had brief meetings with Obrenović and Jokić in Baljkovica. Jokić confirmed for **Pandurević** “the engagement of the engineering machinery BGH-700 and one machine from the Birač holding enterprise and one machine from the stone quarry from Jasanica” in the burial of bodies.⁵⁶⁹³

1894. Following the meetings with Obrenović and Jokić, **Pandurević** wrote the interim combat report of 18 July.⁵⁶⁹⁴ The report was dictated to Miomir Tinović at the Standard Barracks at approximately noon and issued at 1:17 p.m.⁵⁶⁹⁵

1895. Paragraph four of this report stated:

During the last ten days or so the municipality of Zvornik has been swamped with Srebrenica Turks. It is inconceivable to me that someone brought in 3,000 Turks of military age⁵⁶⁹⁶ and placed them in schools in the municipality, in addition to the 7,000 or so who have fled into the forests. This has created an extremely complex situation and the possibility of the total occupation of Zvornik in conjunction with the forces at the front. These actions⁵⁶⁹⁷ have stirred up great discontent among the people and the general opinion is that Zvornik is to pay the price for the taking of Srebrenica.⁵⁶⁹⁸

⁵⁶⁹⁰ Vinko Pandurević, T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007). *See also supra*, para. 592.

⁵⁶⁹¹ Miodrag Dragutinović, T. 12711–12712, 12740 (15 June 2007), T. 12818 (18 June 2007). *See also* Vinko Pandurević, T. 31818 (19 Feb 2009). *See also supra*, para. 592.

⁵⁶⁹² Vinko Pandurević, T. 31097 (9 Feb 2009). *See also Ibid.*, T. 31039–31040 (3 Feb 2009), T. 31080 (9 Feb 2009) (regarding the temporary location of the 4th Battalion Command).

⁵⁶⁹³ *Ibid.*, T. 31099, 31110–31112 (9 Feb 2009).

⁵⁶⁹⁴ *Ibid.*, T. 31099 (9 Feb 2009); Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”.

⁵⁶⁹⁵ Vinko Pandurević, T. 31101, 31122 (9 Feb 2009) ; Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”. *See also* Miodrag Dragutinović, T. 12603 (14 June 2007) (testifying that he saw **Pandurević** at the command).

⁵⁶⁹⁶ **Pandurević** testified that the reference to “3,000 Turks of military age” placed in schools in the municipality was, although deliberately cryptic, explicit enough for the Corps Command to know to what he was referring. Vinko Pandurević, T. 31104–31105 (9 Feb 2009), T. 32206 (27 Feb 2009).

⁵⁶⁹⁷ According to **Pandurević**, the reference to “these actions” was a reference to the Bosnian Muslim men being killed in Zvornik. Vinko Pandurević, T. 32205–32206 (27 Feb 2009).

⁵⁶⁹⁸ Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”, para. 4. According to **Pandurević**, when he dictated the report, he believed that Krstić was in possession of “certain information” regarding the killings, but **Pandurević** did not know the extent of Krstić’s knowledge. Vinko Pandurević, T. 31106, 31111 (9 Feb 2009). **Pandurević** testified that with respect to his knowledge at this time of the treatment of prisoners in Zvornik, he had knowledge of that which Obrenović had previously told him. He knew that the POWs were prisoners of the Main Staff, and that their transport to Zvornik had been organised by the Security Organs. He knew “that the prisoners had been accommodated in the facilities which were not military facilities, i.e., facilities which were not within the jurisdiction of the Zvornik Brigade”; and he further knew “that there would be no execution on the spot, that there would be the screening followed by an exchange”, and “that the execution or shootings started out of the blue”. Vinko Pandurević, T. 31109–31111 (9 Feb 2009). According to **Pandurević**, it would have been pointless for him to report to the Security Organ any suspected criminal act regarding the prisoners because the Superior Commands of the Security Organs were involved. Vinko Pandurević, T. 31111–

1896. According to PW-168, **Pandurević**'s reference to "the great discontent" was an understatement as many people and troops in the Zvornik area could not understand why "those people" had been brought to their area and had been killed, or why they had been brought to populated areas.⁵⁶⁹⁹ Additionally, according to PW-168, after opening the corridor, **Pandurević** was in "a state of disgrace", and that he likely coloured the aforementioned report accordingly.⁵⁷⁰⁰

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1897. **Pandurević** was at the Standard Barracks throughout 19 July.⁵⁷⁰¹ A combat report, type-signed **Pandurević**, dated 19 July, sent to the Drina Corps Command, stated that during the search of the terrain two Bosnian Muslim soldiers had been captured and 13 had been eliminated.⁵⁷⁰² Additionally, an entry for 19 July in the Duty Officer's Notebook states that "[a]nother 28 were liquidated and three were captured."⁵⁷⁰³ According to **Pandurević**, this entry indicates that during the scouring of the terrain there was combat, with 28 enemy soldiers killed and three captured.⁵⁷⁰⁴

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1898. The terrain was still being scoured for ABiH soldiers on 20 July,⁵⁷⁰⁵ and **Pandurević** was again at the Standard Barracks.⁵⁷⁰⁶ The regular combat report for 20 July noted that the R Battalion was providing traffic protection along the Orahovac-Crni Vhr road, and units of the Drina Wolves, the 4th and 7th Battalions, the 16th Company of the Krajina Brigade, together with PJP units from the Zvornik CJB under the command of Dragomir Vasić, were searching the terrain.⁵⁷⁰⁷ During this period, according to **Pandurević**, there was a clear order in effect that all prisoners captured during the searching of the terrain "should be brought to Standard alive".⁵⁷⁰⁸ By 20 July, the brigade already had a number of prisoners and **Pandurević** sought to have them exchanged.⁵⁷⁰⁹

31112 (9 Feb 2009). Thus, his only option was to inform the Corps Commander and he believed that the interim combat report of 18 July sufficiently reported on this matter to Krstić. Vinko Pandurević, T. 31112 (9 Feb 2009).

⁵⁶⁹⁹ PW-168, T. 15951–15952 (closed session) (27 Sept 2007).

⁵⁷⁰⁰ *Ibid.*, T. 15952 (closed session) (27 Sept 2007).

⁵⁷⁰¹ Vinko Pandurević, T. 31131 (9 Feb 2009).

⁵⁷⁰² Ex. P00336, "Zvornik Brigade Daily Combat Report, type-signed Vinko Pandurević, 19 July 1995", para. 2.

⁵⁷⁰³ Vinko Pandurević, T. 31130 (9 Feb 2009); Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", p. 164.

⁵⁷⁰⁴ Vinko Pandurević, T. 31130 (9 Feb 2009). According to PW-168, from 17 to 29 July 1995, every day, but also during the night, there would be attacks by the ABiH 2nd Corps in coordination with people trying to get out of the Zvornik Brigade terrain. PW-168, T. 15905 (closed session) (27 Sept 2007).

⁵⁷⁰⁵ Vinko Pandurević, T. 31133 (9 Feb 2009); PW-168, T. 15905 (closed session) (27 Sept 2007).

⁵⁷⁰⁶ Vinko Pandurević, T. 31134 (9 Feb 2009).

⁵⁷⁰⁷ *Ibid.*, T. 31981–31982 (23 Feb 2009); Ex. 7D00093, "Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 20 July 1995". See also Ex. 4D00652, "Order from the Zvornik CJB Crime Police Department signed by Commander of the Zvornik CJB Staff, 19 July 1995", para. 2; Vinko Pandurević, T. 31134 (9 Feb 2009).

⁵⁷⁰⁸ Vinko Pandurević, T. 32258 (27 Feb 2009). See also Vinko Pandurević, T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007); *supra*, para. 1892. **Pandurević** testified that this order was

1899. Around 20 July, ten wounded Bosnian Muslim prisoners were transferred from the Zvornik Hospital to the clinic of the Zvornik Brigade.⁵⁷¹⁰ The presence of these wounded Bosnian Muslim prisoners at the Zvornik Brigade created problems because wounded Serbs were also present in the infirmary.⁵⁷¹¹ Informed of the potential problems faced by the wounded Bosnian Muslim men, **Pandurević** ordered Obrenović to put measures in place to prevent any possible problems and ordered that the Zvornik Brigade troops not be allowed to enter the infirmary.⁵⁷¹²

1900. Pursuant to **Pandurević**'s order, Obrenović inspected the security situation with respect to the wounded Bosnian Muslims and instructed Dr. Begović that nobody should enter the prisoners' room, aside from the medical personnel.⁵⁷¹³ The wounded Bosnian Muslim men were also guarded by Zvornik Military Police.⁵⁷¹⁴

followed and he had no knowledge of any actions to the contrary. Vinko Pandurević, T. 32258–32259 (27 Feb 2009). After the corridor was closed, on one occasion some of the soldiers of the 28th Division who handed themselves over to the Zvornik Brigade forces set off a bomb killing some of the Zvornik Brigade soldiers. PW-168, T. 15906 (closed session), 15908 (closed session) (27 Sept 2007). As a result of this incident, according to PW-168, **Pandurević** issued an order that "nothing should be risked" when confronting such straggler soldiers. PW-168, T. 15906 (closed session), 15908 (closed session) (27 Sept 2007). PW-168 indicated that thereafter while some units would take prisoners, others would just fire at "everything that they saw" when sweeping the terrain, resulting in killings without justification. PW-168, T. 15906 (closed session), 15908 (closed session) (27 Sept 2007). Subsequently, on 20 or 21 July 1995, **Pandurević** insisted that prisoners be captured according to proper procedure. PW-168, T. 15909 (closed session) (27 Sept 2007). After that order, those units combing the terrain "had a little bit more prisoners than before". PW-168, T. 15909 (closed session) (27 Sept 2007).

⁵⁷⁰⁹ Vinko Pandurević, T. 31137 (9 Feb 2009); Ex. 7D00969, "Interim report regarding exchange by the Command of the 1st Zvornik Infantry Brigade sent to the Command of the Drina Corps, 20 July 1995"; *see also* Miodrag Dragutinović, T. 12817–12818 (18 June 2007). *See also supra*, para. 592.

⁵⁷¹⁰ *See supra*, paras. 570–572. PW-168 testified that around 20 July 1995, a group of Bosnian Muslims was transferred from Zvornik Medical Centre to the Zvornik Brigade Outpatient Clinic. PW-168, T. 15913 (closed session) (27 Sept 2007). According to **Pandurević**, he learned of the existence of wounded POWs transferred from Milići Hospital to the Brigade when he returned from the IKM, either on 18 or 19 July. Vinko Pandurević, T. 31169 (10 Feb 2009). According to Dr. Begović, **Pandurević** did not come to the medical centre of the Brigade while wounded prisoners were there, and Begović saw Pandurević for the first time only sometime after the ten wounded men had been removed. Zoran Begović, Ex. P02481, "92 *ter* statement" (2 Apr 2003), p. 3; Zoran Begović, T. 9135–9136 (21 March 2007).

⁵⁷¹¹ PW-168, T. 15913–15914 (closed session) (27 Sept 2007).

⁵⁷¹² PW-168, T. 15912–15914 (closed session) (27 Sept 2007). Additionally, according to **Pandurević**, he also instructed that the wounded Bosnian Muslims be treated in the same way as any other wounded person. Vinko Pandurević, T. 31169 (10 Feb 2009).

⁵⁷¹³ Vinko Pandurević T. 31169 (10 Feb 2009); PW-168, T. 15914 (closed session) (27 Sept 2007); Zoran Begović, T. 9134 (21 Mar 2007), Ex. P02481, "92 *ter* statement" (2 Apr 2003), pp. 2–3. Additionally, a guard was stationed at the door. PW-168, T. 15914 (closed session) (27 Sept 2007). Obrenović also informed Dr. Begović that it was not necessary to register the patients in the logbook and that any medical records that were created would travel with the prisoners once they left the infirmary at the Standard Barracks. Zoran Begović, T. 9144, 9155–9156 (21 Mar 2007). According to **Pandurević**, he did not give the order that the wounded prisoners should not be registered and that was done on Obrenović's own initiative. Vinko Pandurević, T. 31713 (18 Feb 2009). Other evidence suggests that Obrenović may not have raised the issue of registering the patients with Begović. PW-168, T. 16737–16738 (closed session) (22 Oct 2007). **Pandurević** said that the whole arrangement with the wounded Muslims was unusual and that if Obrenović did tell Begović—as per Begović's testimony—not to enter the Muslim's names in the registry, this would have been inappropriate "direct meddling" with "procedure and professional conduct". Vinko Pandurević, T. 31710–31713 (18 Feb 2009).

⁵⁷¹⁴ Zoran Begović, T. 9140 (21 Mar 2007); PW-168, T. 15914 (closed session) (27 Sept 2007). *See supra*, para. 572.

1901. Following the arrival of the wounded Bosnian Muslim prisoners, **Pandurević** communicated with the Superior Command requesting that they resolve the problem of the wounded prisoners because the Brigade was not equipped for looking after and guarding them.⁵⁷¹⁵

1902. By 22 July, the detention facility for prisoners at the Standard Barracks was full and **Pandurević** wanted an exchange to occur and the prisoners to be transported away from the Brigade.⁵⁷¹⁶ In an interim combat report from 22 July, **Pandurević** informed the Drina Corps Command that the Brigade had captured 23 Bosnian Muslim soldiers and requested instructions as to what should be done with the prisoners and that the Exchange Commission start work as soon as possible.⁵⁷¹⁷

1903. On 23 July 1995, the Zvornik Brigade was still scouring the terrain.⁵⁷¹⁸ At 8 a.m. on 23 July, **Pandurević** informed Colonel Cerović, Assistant for Moral, Legal and Religious Affairs of the Drina Corps, that he was “still catching Turks”.⁵⁷¹⁹ During the conversation, **Pandurević** also raised the issue of prisoners and where they should be sent.⁵⁷²⁰ Specifically, **Pandurević** told

⁵⁷¹⁵ PW-168, T. 15914 (closed session) (27 Sept 2007). *See also* Vinko Pandurević, T. 31137 (9 Feb 2009) (testifying that by 20 July the brigade had a number of prisoners and he was seeking a way to have them exchanged). PW-168 testified that shortly after the arrival of the prisoners, “[f]or a few days after that, the commander would talk to the superior command asking them to resolve the problem of the wounded. His explanation was just as I’ve told you, that the brigade was not equipped for looking after the wounded or guarding the prisoners. We would hear about that at the morning briefings. One of the two of us were supposed to report to the superior command, and when he was there, he would be the one who would report to them obviously.” PW-168, T. 15914 (27 Sept 2007).

⁵⁷¹⁶ Vinko Pandurević, T. 31141–31142, 31144–31146 (9 Feb 2009). *See also supra*, para. 592. On the morning of 23 July, Ljubo Bojanović, the Zvornik Brigade Duty Officer that day, told Krstić that the Brigade’s detention facility was full. Ex. P01307a, “Intercept, 23 July 1995, 06:40 hours”. *See also* Ex. 7DP00340, “Zvornik Brigade Interim Combat Report No. 06-229, signed by Pandurević, 22 July 1995”.

⁵⁷¹⁷ Vinko Pandurević, T. 31142, 31146 (9 Feb 2009); Ex. 7DP00340, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 22 July 1995”, para. 3; Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 176. *See also supra*, para. 592. Dragutinović confirmed that the report was in his own handwriting and that although it was “the commander’s document”, it was written by him (Dragutinović). Miodrag Dragutinović, T. 12712 (15 June 2007). With respect to the reference to a prisoner exchange in the report, Dragutinović testified that during the “combat operations in the area of Baljkovica, Memici, some of our soldiers went missing, some were captured. From the communications between the enemy and our command, through Muminović and **Pandurević**, there were some indications that they were in favour of direct exchange for some of their soldiers who had been captured and who they knew to be still on our side. As for our soldiers who had been captured and were on the other side, their families found out about it somehow and pressured us a great deal to accept the exchange. However, we had no authorisation to do that. Therefore, we asked the corps command to hand down some instructions or to send a commission for exchange if they thought that was the best thing to do. Otherwise, we needed them to tell us what to do with the prisoners, to wait for the commission or to send them on to Batkovići.” Miodrag Dragutinović, T. 12712–12713 (15 June 2007). With regard to the reference to the “commission of exchange” in the report, **Pandurević** explained that “we had a certain number of prisoners of war and we were already thinking and seeking a way to have them exchanged or to allocate a location where they would be sent.” Vinko Pandurević, T. 31137 (9 Feb 2009). With respect to the combat situation, on 21 July at 5 a.m., the ABiH 2nd Corps attacked and the ABiH forces engaged on the front were much stronger that day than they had been on 16 July. Vinko Pandurević, T. 31138 (9 Feb 2009). The attack on 21 July lasted until noon and the Brigade’s defence lines were held. Vinko Pandurević, T. 31139 (9 Feb 2009). On 22 July, more attacks occurred. Vinko Pandurević, T. 31140–31141 (9 Feb 2009).

⁵⁷¹⁸ PW-168, T. 16023 (closed session) (28 Sept 2007).

⁵⁷¹⁹ Vinko Pandurević, T. 31131, 31146 (9 Feb 2009); PW-168, T. 16016 (closed session), 16023 (closed session) (28 Sept 2007); Ex. P01309a, “Intercept, 23 July 1995, 08:00 a.m.”.

⁵⁷²⁰ Ex. P01309a, “Intercept, 23 July 1995, 8:00 a.m.” *See also* Vinko Pandurević, T. 31170 (10 Feb 2009).

Colonel Cerović that the Brigade had some prisoners, including some wounded ones, and that he did not know what to do with them.⁵⁷²¹ **Pandurević** inquired into whether the prisoners could be exchanged for some 100 prisoners from the Eastern Bosnian Corps who were captured by the ABiH 2nd Corps at Lisaca, and raised the possibility of sending the prisoners to Batković.⁵⁷²²

1904. During the conversation, **Pandurević** also told Cerović that he had received a letter instructing that the wounded prisoners be sent to Zvornik Hospital but expressed that there was a problem with that and thus requested a solution to the matter.⁵⁷²³ A few minutes after this conversation, Cerović called back and instructed Ljubo Bojanović, the Zvornik Brigade Duty Officer, to pass on the following message to **Pandurević**: “What Vinko and I were just talking about will arrive at your place by 1700 hrs. The boss, Lt. Col. **Popović** will arrive and say what needs to be done regarding the work we talked about.”⁵⁷²⁴ On the same day, 23 July, the vehicle log for a car assigned to **Popović** recorded that this car travelled from Vlasenica to Zvornik.⁵⁷²⁵

1905. Sometime thereafter, Obrenović learned from the Zvornik Brigade duty officer that very early in the morning, the wounded prisoners were driven away.⁵⁷²⁶ According to PW-168, later on the same day that Obrenović learned that the prisoners had been taken away, Obrenović asked **Pandurević** about the matter of the wounded prisoners.⁵⁷²⁷ **Pandurević** replied that **Popović** had arrived with an order from Mladić that the prisoners be “liquidated”, and that the wounded were taken from **Nikolić** and driven away.⁵⁷²⁸ According to PW-168, this conversation between

⁵⁷²¹ Ex. P01309a, “Intercept, 23 July 1995, 8:00 a.m.”

⁵⁷²² *Ibid.* See also PW-168, T. 16024–16025 (closed session) (28 Sept 2007).

⁵⁷²³ Ex. P01309a, “Intercept, 23 July 1995, 8:00 a.m.”

⁵⁷²⁴ *Ibid.*, See also Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 177 (stating “0830 hrs. – Lieutenant Colonel Cerović relayed a message for commander that LTC **Popović** will arrive by 17:00 hours”); Vinko Pandurević, T. 32262–32263 (27 Feb 2009), PW-168, T. 15915 (closed session) (27 Sept 2007).

⁵⁷²⁵ Ex. P00197, “Vehicle log for VW GOLF P-7065 assigned to Vujadin Popović from 1 to 31 July 1995”, p. 4.

⁵⁷²⁶ PW-168, T. 15914–15916 (closed session) (27 Sept 2007). See also Zoran Begović, Ex. P02481, “92^{ter} statement” (2 Apr 2003), p. 3; Zoran Begović, T. 9134–9135, 9147 (21 Mar 2007) (testifying that the men were taken away early in the morning without being escorted by any medical staff, which was contrary to the standard practice for the transfer of a patient and that their medical records were also left behind at the infirmary). The Trial Chamber notes that the exact date on which the wounded prisoners removed from the Brigade is unclear, but it is clear that they were taken away very early in the morning.

⁵⁷²⁷ PW-168, T. 15915 (closed session) (27 Sept 2007).

⁵⁷²⁸ PW-168, T. 15915–15916 (closed session) (27 Sept 2007). The Trial Chamber has found that the ten wounded Bosnian Muslim men were killed. See *supra*, para. 577. PW-168 testified that the men were taken “from Drago Nikolić and driven away”. PW-168, T. 15915 (closed session) (27 Sept 2007). It is unclear whether this is a mistake in the transcript and that it should read “by Drago Nikolić”, or whether the prisoners were in the care of **Nikolić** and were handed over to **Popović**. In a memo from CLSS, it was confirmed that the English interpretation “from Drago Nikolić” is correct, but CLSS also stated that the original in BCS is ambiguous and could also be construed to mean “[...] that the wounded were taken by Drago Nikolić”. Internal Memorandum re. Verification of accuracy of interpretation in case no. IT-05-88-T, hearing of 27 September 2007, confidential, 4 December 2009.

Obrenović and **Pandurević** about **Popović** coming to deal with the wounded prisoners took place only after the wounded men had already been taken away from the Brigade.⁵⁷²⁹

1906. **Pandurević** did not remember receiving the message that **Popović** would come to the Standard Barracks and did not see him there on 23 July.⁵⁷³⁰ **Pandurević** also denied ever having authorised the execution of the Bosnian Muslim prisoners.⁵⁷³¹ According to **Pandurević**, on the morning of 24 July 1995, Obrenović reported that the wounded Bosnian Muslim men were taken with other prisoners to the Batković detention centre in Bijeljina.⁵⁷³²

1907. The Trial Chamber is convinced that on 23 July **Pandurević** was informed that **Popović** would come later that day to take care of the situation of the wounded prisoners who were being held at the Zvornik Brigade. In reaching this conclusion, the Trial Chamber finds particularly relevant the evidence of the intercepts showing a sequence of conversations as well as the related entry in the Duty Officer Notebook. Additionally, in light of the importance of the message that **Popović** would come to deal with the wounded prisoners, the Trial Chamber is convinced that the message was in fact conveyed to **Pandurević** that day.

1908. At 10 a.m. on 23 July, **Pandurević** held a briefing at the Standard Barracks attended by Obrenović, Dragutinović, and Brigade battalion and division commanders.⁵⁷³³ At the briefing, **Pandurević** demanded that “part of the prisoners who were held in [the Zvornik Brigade] detention be evacuated as soon as possible to Batković”.⁵⁷³⁴ The briefing lasted at least one hour, and

⁵⁷²⁹ PW-168, T. 15915 (closed session) (27 Sept 2007).

⁵⁷³⁰ **Pandurević** testified that he knew transport of the wounded had been approved but did not remember receiving Cerović’s message about **Popović** arriving from Ljubo Bojanović. Vinko Pandurević, T. 31148–31149 (9 Feb 2009), T. 32262–32264 (27 Feb 2009). **Pandurević** testified that he did not see **Popović** at the Standard Barracks on 23 July nor did he know if **Popović** took the prisoners. Vinko Pandurević, T. 31149 (9 Feb 2009), T. 32265–32269 (27 Feb 2009). However, by 23 July, **Pandurević** was aware that **Popović** was in the area and that **Popović** was involved in executing prisoners. Vinko Pandurević, T. 32261–32262 (27 Feb 2009).

⁵⁷³¹ Vinko Pandurević, T. 31170 (10 Feb 2009). According to **Pandurević**, at the morning briefing of 23 July, he heard that “the first group of prisoners” was sent to Batković. Vinko Pandurević, T. 31160 (10 Feb 2009). According to **Pandurević**, prisoners brought to the Standard Barracks were recorded in Brigade records; the number of prisoners was noted in regular combat reports on a daily basis and in the duty operation officer’s notebook; and prisoners were duly transferred to Batković. See Pandurević Final Brief, para. 861.

⁵⁷³² Vinko Pandurević, T. 31170 (10 Feb 2009). Novaković learned from a soldier at the Standard Barracks that the Bosnian Muslim men had been taken for exchange near Patkovača in Bijeljina. Radivoje Novaković, Ex. P02480, “92 ter statement” (6 Mar 2003), p. 3. According to Begović, Obrenović had told him that the men would be exchanged in Bijeljina, and Begović learned from a military police officer that the men had left by bus, but did not know in what circumstances. Zoran Begović, Ex. P02481 “92 ter statement” (2 Apr 2003), p. 3; Zoran Begović, T. 9134, 9144, 9164–9165 (21 Mar 2007). According to Begović’s account, another group of four or five wounded Muslim prisoners arrived and they, too, were treated and then sent for exchange to Bijeljina soon thereafter. Zoran Begović, T. 9136, 9148–9149 (21 Mar 2007). The men’s names do not appear on the list of persons exchanged at the Batković Detention Centre. See Ex. P03522 (confidential). See also *supra*, para. 576.

⁵⁷³³ PW-168, T. 16592–16593 (closed session) (18 Oct 2007); Miodrag Dragutinović, T. 12740 (15 June 2007); Vinko Pandurević, T. 31149–31150 (9 Feb 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook”, p. 177.

⁵⁷³⁴ Miodrag Dragutinović, T. 12740 (15 June 2007) (also adding that **Pandurević** “demanded that from the corps command”).

afterwards, **Pandurević** and Obrenović had a discussion in **Pandurević**'s office about recent events and, in particular, about the murder operation that had been carried out in the area of Zvornik.⁵⁷³⁵

1909. **Pandurević** described this conversation between himself and Obrenović that evening as follows. **Pandurević** and Obrenović discussed why no one from the corps command had requested further information on the prisoners, and why none of the battalion commanders mentioned prisoners or executions at the briefing.⁵⁷³⁶ Obrenović had no more information about these issues than in their previous discussions. Obrenović also said that he did not understand what had happened.⁵⁷³⁷ During the conversation, **Pandurević** expressed that he was surprised that no one from the corps had reacted, and the two of them agreed "at that point in time that was all that we could do."⁵⁷³⁸ **Pandurević** also told Obrenović that he was expecting to return any day to Žepa and to talk to Krstić personally about this matter.⁵⁷³⁹ Additionally, at this point, the two discussed whether to conduct an investigation, according to **Pandurević**'s account, but decided that his 18 July interim combat report was "the most that [they] were able to do", and that after he met personally with Krstić, they would know if something more should be done.⁵⁷⁴⁰ According to **Pandurević**, their reasons for those conclusions were that they understood that it would be illusory to conduct an investigation in the usual way and that "sometimes the truth, if it comes too early, can have more negative consequences than if it were to be a bit delayed."⁵⁷⁴¹

⁵⁷³⁵ Vinko Pandurević, T. 31151–31153 (9 Feb 2009); PW-168, T. 15948 (closed session) (27 Sept 2007), T. 16593–16594 (closed session) (18 Oct 2007) (testifying that after the meeting Obrenović talked with **Pandurević** about the execution of prisoners in schools in the municipality of Zvornik).

⁵⁷³⁶ Vinko Pandurević, T. 31151–31152 (9 Feb 2009). According to **Pandurević**, this was the third or fourth conversation between them since 18 July that related to the prisoners and their fate. Vinko Pandurević, T. 31153 (9 Feb 2009). With respect to his mood at the time of his conversation with Obrenović on 23 July, **Pandurević** said it was difficult to describe "the anger, the rage, the nausea a person feels at a time like that". Vinko Pandurević, T. 31153 (9 Feb 2009). **Pandurević** further stated "what sort of a brain could have decided something like that, but according to the information that we had, we knew that the order had come from General Mladić." Vinko Pandurević, T. 31154 (9 Feb 2009). According to Pandurević, during the conversation that day, he expressed this rage by saying something to the effect of, "[W]ho put this in our laps? Who placed this in Zvornik because if something like this happens in the area of Zvornik, everybody would logically assume that this was something that was committed by the Zvornik Brigade, leaving aside the gravity of the crime itself". Vinko Pandurević, T. 31154 (9 Feb 2009).

⁵⁷³⁷ Vinko Pandurević, T. 31153 (9 Feb 2009).

⁵⁷³⁸ *Ibid.*

⁵⁷³⁹ *Ibid.* Beginning on 23 July, Cerović would tell **Pandurević** every day to be ready to return to the Žepa area. Vinko Pandurević, T. 31175 (10 Feb 2009); Ex. 7D00604, "Intercept 2006 hours Cerović – General Krstić". However, on 26 July, **Pandurević** was told by Major Jevđević that he would probably not have to go to Žepa "since the guns have been silent for two days already". Vinko Pandurević, T. 31175–31176 (10 Feb 2009); Ex. P01353a, "Intercept, 26 July 1995 at 08.00 hours".

⁵⁷⁴⁰ Vinko Pandurević, T. 31154 (9 Feb 2009).

⁵⁷⁴¹ *Ibid.* **Pandurević** testified that it was a deliberate choice not to raise the prisoners or killings at the briefing with the assembled commanders. **Pandurević** stated that he had not received any information back from the corps command (in response to his 18 July interim combat report), and that he "wasn't able to launch or initiate such a major issue in front of such a large number of people for a number of reasons; one of them being that matters like that when the concealment of evidence is possible and other kinds of actions are possible, should not be then launched other than in a much smaller circle and in a different way". Vinko Pandurević, T. 31155 (9 Feb 2009).

1910. PW-168 also provided an account of this conversation between **Pandurević** and Obrenović on 23 July. According to PW-168, at one point, Obrenović asked **Pandurević** why the prisoners were brought to Zvornik, and “what were we in that sense where these people were shot? What were we supposed to do?”⁵⁷⁴² **Pandurević** responded that he had written “an interim report”⁵⁷⁴³ and also said that “[i]t's known Mladić ordered this. Those who did it are known, and whoever reads the reports, it would be clear to them.”⁵⁷⁴⁴ Obrenović then said, “[w]ell, still, it was all happening here at our area”,⁵⁷⁴⁵ to which **Pandurević** replied, “[i]t's all the Drina Corps area and it's also the area of the Main Staff. What is more he ordered they did it. Whoever reads the report, it will be clear to them.”⁵⁷⁴⁶ **Pandurević** ended with the remark, “with Mladić up there, we are all doomed.”⁵⁷⁴⁷

1911. Having considered the evidence, the Trial Chamber is satisfied that the conversation between Obrenović and **Pandurević** took place and that it covered the topics of their frustration and lack of understanding as to why the prisoners were brought to Zvornik, what they should have done and should do in response to the situation of the prisoners and executions, and **Pandurević**'s 18 July interim report. In essence, the Trial Chamber is satisfied that both accounts of the 23 July conversation, as described above, are accurate.

1912. On 23 July 1995, four Bosnian Muslim men who had survived the execution at Branjevo Military Farm and later surrendered to a Serbian soldier were brought to the Standard Barracks detention facility after having been arrested by the 1st Battalion of the Zvornik Brigade.⁵⁷⁴⁸ At the Standard Barracks, Jeremić took statements from three of the Muslim prisoners,⁵⁷⁴⁹ and Jeremić's colleague in the Crime Prevention Service, Čedo Jović, took a statement from the fourth prisoner, Fuad Đozić.⁵⁷⁵⁰ The four Muslims revealed they had received help from two VRS soldiers.⁵⁷⁵¹

⁵⁷⁴² PW-168, T. 15949 (closed session) (27 Sept 2007).

⁵⁷⁴³ *Ibid.*

⁵⁷⁴⁴ *Ibid.*, T. 15949–15950 (closed session) (27 Sept 2007). According to PW-168, when **Pandurević** was talking about “the reports”, he told Obrenović that he had ordered that “the orders” be copied into “the war diary, and he was thinking of the interim reports that he was sending out in those days, the 15th, the 16th, up until the 18th” of July 1995. *Ibid.*, T. 15950 (closed session) (27 Sept 2007).

⁵⁷⁴⁵ *Ibid.*, T. 15950 (closed session) (27 Sept 2007).

⁵⁷⁴⁶ *Ibid.*

⁵⁷⁴⁷ *Ibid.* At 8 p.m. on 23 July, **Pandurević** left the Standard Barracks for the day. Vinko Pandurević, T. 31159 (10 Feb 2009). According to **Pandurević**, Obrenović stayed behind, with instructions from **Pandurević** to begin resolving the transport of the prisoners to Batković with the corps command. Vinko Pandurević, T. 31160 (10 Feb 2009).

⁵⁷⁴⁸ PW-168, T. 15916–15917. (closed session) (27 Sept 2007); Ex. P00392, “Zvornik Military Police document, statement of Almir Halilović”, pp. 1–2; Ex. P00389, “Zvornik Military Police document, statement of Kivirić, Sakib”, p. 1; Ex. P00390, “Zvornik Military Police document, statement of Mustafić, Emin”, p. 1; Ex. P00391, “Zvornik Military Police document, statement of Đozić, Fuad”, p. 1. *See supra*, paras. 584–586. According to **Pandurević**, he did not know about the capture of these four Muslims by the 1st Battalion of the Zvornik Brigade, but he only heard about it from the testimony of PW-168. Vinko Pandurević, T. 32324–32325 (2 Mar 2009).

⁵⁷⁴⁹ Nebojša Jeremić, T. 10430–10433 (24 Apr 2007); Ex. P00392, “Zvornik Military Police document, statement of Almir Halilović”; Ex. P00389, “Zvornik Military Police document, statement of Sakib Kivirić”; Ex. P00390, “Zvornik Military Police document, statement of Emin Mustafić”; Ex. P00391, “Zvornik Military Police document, statement of Fuad Đozić”. *See supra*, para. 586.

⁵⁷⁵⁰ Nebojša Jeremić, T. 10418–10419, 10433 (24 Apr 2007). *See supra*, para. 586.

There is evidence that **Nikolić** discussed the situation of the four Muslims with **Pandurević**, telling **Pandurević** that they had escaped from an execution site.⁵⁷⁵² **Pandurević** then responded that **Nikolić** should stay on after the briefing.⁵⁷⁵³ According to **Pandurević**, however, this conversation between himself and **Nikolić** never took place.⁵⁷⁵⁴ A couple of days later, the four Muslims “just disappeared”.⁵⁷⁵⁵ The Trial Chamber has assessed the evidence and despite **Pandurević**’s denial, is satisfied that the exchange between **Nikolić** and **Pandurević** about the four men occurred as described by PW-168.

1913. From 23 to 26 July, between 140 and 150 POWs who had been captured by the Zvornik Brigade were transferred to Batković.⁵⁷⁵⁶

(xii) 26–31 July 1995

1914. On 26 July 1995, **Pandurević** and Legenda went to Bokšanica to receive an order from Mladić to go to a different part of the front-line.⁵⁷⁵⁷ In addition to Mladić, **Gvero**, Krstić, Tolimir, and Hamdija Torlak were also present at the Bokšanica checkpoint on 26 July.⁵⁷⁵⁸ At that time, the front-line was somewhere between Grahovo and Drvar, and Mladić ordered them to head to that

⁵⁷⁵¹ PW-168, T. 15916–15917 (closed session) (27 Sept 2007).

⁵⁷⁵² *Ibid.*, T. 15916–15917, 15925 (closed session) (27 Sept 2007). According to PW-168, the discussion took place after the corridor was closed on 17 July 1995. PW-168, T. 15916 (closed session) (27 Sept 2007).

⁵⁷⁵³ PW-168, T. 15916–15917, 15925 (closed session) (27 Sept 2007).

⁵⁷⁵⁴ Vinko Pandurević, T. 32347 (2 Mar 2009). **Pandurević** further stated that there were many more enemy soldiers in the detention unit of the Zvornik Brigade and they were all transported to the Batković camp. “There was no reason to treat these ones here in a different way. While I was studying the materials, I did see criminal charges that were brought by Drago Nikolić, I saw the statements of these men. One can’t see that they had survived execution. One can only see that they were lost and were captured. I didn’t have any reason to treat them any differently than anybody else.” Vinko Pandurević, T. 32324–32325 (2 Mar 2009).

⁵⁷⁵⁵ PW-168, T. 15916–15917 (closed session) (27 Sept 2007). PW-168 stated that he learned this information around the time that it happened, however he did not testify as to how he learned this. The four Bosnian Muslims were reported missing following the fall of Srebrenica and have not yet been identified or confirmed dead through DNA analysis. Ex. P03159a (confidential), pp. 39, 52, 93, 126; Ex. P02413, “Updated Report by Helge Brunborg – Missing and Dead from Srebrenica: The 2005 Report and List”, p. 1. The Trial Chamber is satisfied beyond a reasonable doubt that these four Bosnian Muslim men were killed sometime after 23 July 1995. *See supra*, para. 589.

⁵⁷⁵⁶ Vinko Pandurević, T. 31163–31169 (10 Feb 2009); T. 32325 (2 Mar 2009); Ex. P03522 (confidential); Ex. 3DP00344, “Regular Combat Report Zvornik Brigade Command to the Drina Corps Command signed by Commander Lieutenant Colonel Vinko Pandurević, 25 July 1995”, para. 3; Ex. 3DP00346, “Zvornik Brigade Regular Combat Report, type-signed Pandurević, 26 July 1995”, para. 2. *See also supra*, para. 593. According to **Pandurević**, prior to transfer, these POWs were all treated fairly. Vinko Pandurević, T. 31168–31169 (10 Feb 2009).

⁵⁷⁵⁷ Sasa Jovanović, T. 33915, 33918–33919 (3 July 2009). *See also* Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”. *See also* **Pandurević**’s vehicle log which records a trip from Zvornik to Rogatica (near Žepa) on 26 July, Ex. 7D00091, “Vehicle work log Nisan for July 95”, p. 4. On 26 July, Jovanović saw **Gvero** as well as Krstić, Tolimir, **Pandurević**, and Legenda. Sasa Jovanović, T. 33917 (3 July 2009). This was the only occasion Jovanović saw **Pandurević** at Bokšanica. Sasa Jovanović, T. 33925 (3 July 2009).

⁵⁷⁵⁸ Sasa Jovanović, T. 33915, 33917–33918 (3 July 2009); Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”.

area.⁵⁷⁵⁹ While **Pandurević** was present at the Bokšanica checkpoint, buses were arriving containing Muslims from Žepa.⁵⁷⁶⁰

1915. On 27 July, **Pandurević** went to the IKM at Godjenje and met with Krstić, pursuant to an order he received on the previous day.⁵⁷⁶¹ **Pandurević** wanted to discuss with Krstić an order for the Zvornik Brigade to allocate forces to a unit from the Drina Corps to be sent to the 2nd Krajina Corps.⁵⁷⁶² He also viewed the meeting as an opportunity to discuss with Krstić the Zvornik Brigade interim combat reports of 15, 16, and 18 July.⁵⁷⁶³ During the visit to the IKM, **Pandurević** had a private conversation with Krstić in which he referred to his interim combat reports and asked Krstić if he had any more specific information relating to prisoners executed in the Zvornik area.⁵⁷⁶⁴ According to **Pandurević**, Krstić essentially told him that it was not something that should be his concern and that he would deal with the problem in the appropriate way.⁵⁷⁶⁵

1916. From 29 July onwards, **Pandurević** was engaged in touring and inspecting the Brigade Battalions in preparation for sending some men from the Brigade to the area of the 2nd Krajina Corps pursuant to an order of the Drina Corps.⁵⁷⁶⁶ **Pandurević** remained in the defence area of the Zvornik Brigade until 31 July or 1 August.⁵⁷⁶⁷

⁵⁷⁵⁹ Sasa Jovanović, T. 33919 (3 July 2009). Jovanović testified that he could hear snippets of Mladić's orders. Sasa Jovanović, T. 33919 (3 July 2009). Since there was a crisis at the part of the front-line facing Drvar in the Bosnian Krajina, Mladić ordered **Pandurević** and Legenda to move elements of the Zvornik Brigade to stop an advance by the Croatian Army and to recapture Grahovo. Sasa Jovanović, T. 33919 (3 July 2009). *See also* Vinko Pandurević, T. 31186 (10 Feb 2009).

⁵⁷⁶⁰ Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995", 14:24, 14:50. In the footage, **Pandurević** can be seen at the UN checkpoint at Bokšanica on 26 July with Mladić, Krstić, and Gvero immediately prior to and during part of the transfer of Muslim civilians through the checkpoint. Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995". During the footage, Mladić announced: "The Turks are coming, come over here boys". Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995". Subsequently, Mladić, Gvero, Krstić, and **Pandurević** lined up alongside the road through the checkpoint, and several seconds later, busses containing Muslims from Žepa pass by them. Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995", 14:24, 14:50. According to **Pandurević**, there were no combat actions in Žepa at this time, and he thought that the evacuation of civilian population from Žepa was underway at that time but did not have specific information about the manner in which this evacuation was being executed. Vinko Pandurević, T. 31180 (10 Feb 2009).

⁵⁷⁶¹ Vinko Pandurević, T. 31172–31173, 31176–31177 (10 Feb 2009). *See also* Ex. 7D00609, "Intercept 23.20, Pandurević – DKZO – Palma – Zlatar – Uran – IKM DK".

⁵⁷⁶² Vinko Pandurević, T. 31177 (10 Feb 2009).

⁵⁷⁶³ *Ibid.*

⁵⁷⁶⁴ *Ibid.*, T. 31178–31179 (10 Feb 2009).

⁵⁷⁶⁵ *Ibid.*, T. 31179 (10 Feb 2009).

⁵⁷⁶⁶ *Ibid.*, T. 31186 (10 Feb 2009); Ex. 7DP00124, "Drina Corps Order, signed by Krstić, 29 July 1995" ("very urgent" order for preparing units of the corps for "full combat readiness"). **Pandurević** explained that there was a critical situation requiring this urgent order for combat readiness because of attacks by the Croatian Army against the RS during Operation Storm. Vinko Pandurević, T. 31186 (10 Feb 2009). *See* Ex. 7D00729, "Marching Order from the Zvornik Brigade Command, signed by Pandurević, 28 July 1995".

⁵⁷⁶⁷ Miodrag Dragutinović, T. 12605–12607 (14 June 2007).

(xiii) 3 August–15 September 1995

1917. On 3 August 1995, **Pandurević** was appointed the Commander of a brigade tasked with going to Krajina.⁵⁷⁶⁸ For the absence of **Pandurević**, Obrenović was appointed acting Brigade Commander for the Zvornik Brigade, which was documented in a formal order issued by Krstić on 8 August.⁵⁷⁶⁹ From 3 to 7 August, **Pandurević** was engaged in forming and preparing the 2nd Drina Brigade which was to go to the Krajina.⁵⁷⁷⁰

1918. On 7 August, **Pandurević** left from Kozluk with the new brigade for the 2nd Krajina Corps zone in Drvar, some 600 to 700 kilometres away from the Zvornik Brigade.⁵⁷⁷¹ He was engaged in combat operations until 16 September, when he and his new brigade returned to Zvornik.⁵⁷⁷² During this period, **Pandurević** called the Zvornik Brigade several times to report losses and describe the events in the Krajina.⁵⁷⁷³ **Pandurević** also had contact with the Drina Corps; however, according to **Pandurević**, during this time, he never heard about any plan to exhume and rebury bodies in Zvornik, nor did have notice of the provision of fuel to the Zvornik Brigade on 14 September.⁵⁷⁷⁴

⁵⁷⁶⁸ Vinko Pandurević, T. 31187 (10 Feb 2009); Ex. 7D00615, "Order from the Drina Corps Command, signed by Krstić, 3 Aug 1995".

⁵⁷⁶⁹ PW-168, T. 15923–15924 (closed session) (27 Sept 2007); T. 16621–16622 (19 Oct 2007); Vinko Pandurević, T. 31191–31193 (10 Feb 2009); Ex. 5D00452 (confidential). According to PW-168, when Obrenović was standing in for the Brigade Commander during the period of 7 August 1995 and 26 September 1995, he practically was the Brigade Commander. PW-168, T. 15924 (closed session) (27 Sept 2007), T. 16053–16054 (closed session) (9 Oct 2007), T. 16176 (closed session), 16189–16190 (closed session) (10 Oct 2007), T. 16596 (closed session) (18 Oct 2007).

⁵⁷⁷⁰ Vinko Pandurević, T. 31188 (10 Feb 2009); Ex. 7D00611, "Document from Zvornik Brigade Command on Preparation of Units and commands to form the 2nd Drina Light Infantry Brigade, signed by Pandurević, 3 August 1995".

⁵⁷⁷¹ Vinko Pandurević, T. 31196–31197 (10 Feb 2009); PW-168, T. 15923 (closed session) (27 Sept 2007), T. 16053–16054 (closed session) (9 Oct 2007), T. 16175–16178 (closed session) (10 Oct 2007), T. 16596 (closed session) (18 Oct 2007), T. 17193–17194 (closed session) (31 Oct 2007); Miodrag Dragutinović, T. 12613–12614 (14 June 2007), T. 12721–12722 (15 June 2007); Milomir Savčić T. 15348–15349 (13 Sept 2007). *See also* Damjan Lazarević, T. 14526 (30 Aug 2007); Ex. 7D00252, "Drina Corps Order, type-signed Pandurević, 6 Aug 1995".

⁵⁷⁷² The Prosecution suggests that **Pandurević** returned to Zvornik from the Krajina on the evening of 15 September. Prosecution Final Brief, para. 1520 (relying on an entry in a vehicle log for **Pandurević** which indicates his car travelled to Zvornik on 15 September, *see* Ex. 7D00770, "Vehicle Log for Nisan T-2175 for Sept 1995", p. 3). However, the Trial Chamber is not satisfied that **Pandurević** returned to Zvornik before 16 July based on the following evidence: *See* Vinko Pandurević, T. 31202 (10 Feb 2009); Ex. 7DP00379, "Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995", p. 119 (recording on 16 Sept "Vinko **Pandurević** came back at 1130 hrs"); Miodrag Dragutinović, T. 12722–12724, 12727–12728 (15 June 2007); Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996", pp. 121–122 (containing an entry for 16 September 1995 stating "Today at 1130 hrs the 2nd DB/Drina Brigade/ led by Lieutenant Colonel **Vinko Pandurević** returned to Zvornik from the area of responsibility of the 2nd KK/Krajina Corps/"); PW-168, T. 15921–15923 (closed session) (27 Sept 2007), T. 17190–17191 (closed session) (31 Oct 2007). *See also* Ex. 7D00439, "Report, signed by Pandurević, 23 Oct 1995" (for details of his movements during the period he commanded the unit in the Krajina).

⁵⁷⁷³ Vinko Pandurević, T. 31203 (10 Feb 2009).

⁵⁷⁷⁴ *Ibid.*, T. 31204–31206 (10 Feb 2009). According to **Pandurević**, on 14 September, he was "in the village of Velagići at the intersection of the roads between Bosanski Petrovac and Ključ" about 500 kilometres away from Zvornik. *Ibid.*, T. 32270 (27 Feb 2009).

(xiv) 16–17 September 1995

1919. **Pandurević** returned to the Zvornik Brigade at 11:30 a.m on 16 September.⁵⁷⁷⁵ He was in the Zvornik Brigade for two days, during which time, he was engaged in matters pertaining to the 2nd Drina Brigade he had taken to the Krajina, including dissolving the unit, returning the equipment, and bringing the units back to their former place.⁵⁷⁷⁶

1920. On 16 September, **Pandurević** spoke to Krstić and they agreed that he should go to Vlasenica that day to report.⁵⁷⁷⁷

1921. Prior to **Pandurević**'s return to the Zvornik Brigade command, on 14 September, according to PW-168, Obrenović received information about a telegram regarding the delivery of five tonnes of fuel for Milorad Trbić.⁵⁷⁷⁸ This was an unusual procedure as the Brigade would normally have only two tonnes of fuel reserve.⁵⁷⁷⁹ Obrenović therefore called the duty officer at the Drina Corps to follow up but the latter "had no idea" about the matter.⁵⁷⁸⁰ A few minutes later, Obrenović received a call from **Popović**, who asked how he knew about the fuel, to which Obrenović replied that he had heard about it from the Zvornik Brigade duty officer.⁵⁷⁸¹ **Popović** responded that "the duty officers messed things up and that they had no clue", after which the conversation ended.⁵⁷⁸² Later that day, the Zvornik Brigade received a Main Staff order approving 5,000 litres of D-2 Diesel for engineering works for Captain Trbić.⁵⁷⁸³ There is evidence that on 16 September, Obrenović spoke

⁵⁷⁷⁵ Ex. 7DP00379, "Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995", p. 119; Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996", pp. 121–122; PW-168, T. 15921–15923 (closed session) (27 Sept 2007), T. 17190–17191 (closed session) (31 Oct 2007); Miodrag Dragutinović, T. 12721–12723, 12727–12728 (15 June 2007); Vinko Pandurević, T. 31202 (10 Feb 2009).

⁵⁷⁷⁶ PW-168, T. 15924 (27 Sept 2007); Vinko Pandurević, T. 31208–31209 (10 Feb 2009). **Pandurević** testified that he was not engaged with any matters of the Zvornik Brigade upon his return. Vinko Pandurević, T. 31208–31209 (10 Feb 2009). Additionally, according to **Pandurević**, on 16 September, he was not in command of the Zvornik Brigade because he was still commander of the 2nd Drina Brigade. Vinko Pandurević, T. 32302–32303 (2 Mar 2009).

⁵⁷⁷⁷ Vinko Pandurević, T. 32273–32274 (27 Feb 2009). According to **Pandurević**, during their conversation, Krstić did not say anything about the operation to rebury the executed prisoners. Vinko Pandurević, T. 32276–32277 (27 Feb 2009).

⁵⁷⁷⁸ PW-168, T. 15921–15922 (closed session) (27 Sept 2007), T. 17006 (closed session) (26 Oct 2007).

⁵⁷⁷⁹ *Ibid.*, T. 15921 (closed session) (27 Sept 2007).

⁵⁷⁸⁰ *Ibid.*, T. 15921 (closed session) (27 Sept 2007), T. 17006 (closed session) (26 Oct 2007).

⁵⁷⁸¹ *Ibid.*

⁵⁷⁸² *Ibid.*, T. 15921 (closed session) (27 Sept 2007).

⁵⁷⁸³ *Ibid.*, T. 15921 (closed session) (27 Sept 2007), T. 17006 (closed session) (26 Oct 2007); Ex. P00041, "Main Staff Order on assignment of fuel, type-signed Mladić, 14 Sept 95"; Ex. P00042, "VRS Main Staff Order No. 10/34/2-3-701, issuing 5,000 litres of D-2 diesel fuel, type-signed Zarko Ljuboječić, 14 Sept 1995". See also Ex. 3D00217, "Excerpt from exhibit P379 - Duty Officer's Notebook for 27Jul-29Oct95 - Entry for 14 Sep 95" (noting receipt of the telegrams concerning the fuel order). Although the Main Staff order (Ex. P00041) states the fuel be delivered to the Standard Barracks in Zvornik, to "Captain Milorad Trpić", PW-168 confirmed this was most likely a typographical error by the teleprinter operator and that it should read Captain Milorad Trbić. PW-168, T. 15922 (closed session) (27 Sept 2007). The Prosecution also noted a translation error on the English version of Ex. P00041: the first two lines of the order read "General Staff of the Army of Republica Srpska", where it should read "Main Staff of the Army of Republica Srpska". PW-168, T. 15922 (closed session) (27 Sept 2007).

to Pandurević and informed Pandurević about fuel order from 14 September for Milorad Trbić,⁵⁷⁸⁴ to which **Pandurević** replied that he would look into the matter when he went to the Drina Corps Command in Vlasenica later that day.⁵⁷⁸⁵ In accordance with this account, upon returning from the Drina Corps Command later that day, **Pandurević** told Obrenović that **Popović** “and his people” were going to carry out reburials and that the fuel was for that assignment.⁵⁷⁸⁶ According to **Pandurević**, however, no such conversations between Obrenović and himself occurred on 16 September, nor did he go to Vlasenica that day.⁵⁷⁸⁷ According to **Pandurević**’s account, on the evening of 16 September, he saw Obrenović at the brigade command, but Obrenović did not mention any fuel to him at that point.⁵⁷⁸⁸ The Trial Chamber notes that there is conflicting evidence as to whether a conversation took place between Obrenović and Pandurević about the fuel order as well as to whether Pandurević went to Vlasenica on 16 July. With respect to the reburial operation, the Trial Chamber recalls its finding that reburial is not a crime under the Statute.⁵⁷⁸⁹ In the Trial Chamber’s view, it is thus unnecessary to make a finding on whether or not these events occurred.

1922. On the morning of 17 September, **Pandurević** went to the Standard Barracks.⁵⁷⁹⁰ According to **Pandurević**, he had planned to report to Krstić in Vlasenica that day but when he arrived at the

⁵⁷⁸⁴ PW-168, T. 15921 (closed session) (27 September 2007).

⁵⁷⁸⁵ *Ibid.*, T. 15921–15922 (closed session) (27 Sept 2007); T. 17006–17007 (closed session) (26 Oct 2007).

⁵⁷⁸⁶ *Ibid.*, T. 15922 (closed session) (27 Sept 2007). *See also* Ex. 7D00770, “Vehicle log for Nisan T-2175” (recording a trip from Zvornik to Vlasenica on 16 September). In reference to this entry in the vehicle log, **Pandurević** said, “When I arrived in Zvornik on the 16th, I talked to Krstić and there was an agreement that I should go to Vlasenica that day to report to him about what the brigade had been doing and that is why the driver wrote down this route. If you look at the mileage, you will see that the 100 kilometres it would take me to travel from Zvornik to Vlasenica and back are not factored in. So I didn’t go to Vlasenica that day; if you do the calculation, you’ll see that”. Vinko Pandurević, T. 32274 (27 Feb 2009).

⁵⁷⁸⁷ Vinko Pandurević, T. 31209–31210 (10 Feb 2009); T. 32273–32274, 32276–32277 (27 Feb 2009). **Pandurević** also asserts that Obrenović was not at the Standard Barracks when **Pandurević** returned with his unit from the Krajina as Obrenović was visiting the battalions all day. Vinko Pandurević, T. 31211, 31223 (10 Feb 2009). *See also* Miodrag Dragutinović, T. 12724 (15 June 2007); 7DP00379, “Zvornik Brigade Duty Officer Notebook for period 27-07-95 through 29-10-95”, p. 120 (recording “Obren in the 7th and headquarters support teams in the 2nd pb”); Ex. 7D00261, “Work of Vehicle, Machine and Generator Log” (recording a trip made in a Mercedes driven by Ljubiša Danojlović from Zvornik to Memići and then back to Zvornik); Ex. 7D00670 (confidential) (this Zvornik Brigade regular combat report for 16 September 1995 states that “[a] team of officers from the Brigade Command is inspecting the 2nd pb, in order to assess overall conditions in the unit, and particularly the functioning of RiK/command and control/. The Brigade Commander inspected the position of the 7th pb defence area in Staro Selo.”). In regard to this entry in the Zvornik Brigade Duty Officer Notebook, **Pandurević** stated that the “7th battalion was in Memici, and Obrenovic was also very often referred to as just Obren.” Vinko Pandurević, T. 31212 (10 Feb 2009). With respect to the vehicle log, it is noted that Ljubiša Danojlović was Obrenović’s driver during the war. PW-168, T. 16770 (closed session) (23 Oct 2007), T. 16607 (closed session) (19 Oct 2007). Interpreting the cited portion of the 16 September combat report, PW-168 confirmed that the brigade commander referred to in the cited entry was Obrenović. PW-168, T. 17191–17192 (31 Oct 2007).

⁵⁷⁸⁸ Vinko Pandurević, T. 31209–31210 (10 Feb 2009), T. 32271 (27 Feb 2009) (private session). **Pandurević** said that he was not told anything about the fuel “because it wasn’t anything that concerned the Zvornik Brigade.” Vinko Pandurević, T. 32277 (27 Feb 2009). It appears that, according to **Pandurević**’s account, he learned of the fuel order and discussed the matter of reburials with Obrenović in November, when Obrenović returned to the Zvornik Brigade after commanding a unit in the Krajina. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32315 (2 Mar 2009).

⁵⁷⁸⁹ *See supra*, para. 1032.

⁵⁷⁹⁰ Vinko Pandurević, T. 31210–31211 (10 Feb 2009). *See also* PW-168, T. 15924 (closed session) (27 Sept 2007). **Pandurević** spent the night of 16 July in Celopek. Vinko Pandurević, T. 31209 (10 Feb 2009).

Standard Barracks on the morning of 17 July he was informed by the duty officer that he should call Krstić on the phone before he headed for Vlasenica.⁵⁷⁹¹ Subsequently, at around 9 a.m., **Pandurević** reported on the phone to Krstić and asked for ten days leave and told Krstić that if there was no pressing need for him to go to Vlasenica, he would rather not travel there.⁵⁷⁹² Krstić granted both requests.⁵⁷⁹³ After the telephone conversation with Krstić, **Pandurević** went back to Čelopek, booked accommodations in Montenegro, and departed with his girlfriend the morning of 18 September.⁵⁷⁹⁴

(xv) 25–27 September 1995

1923. According to the Prosecution, **Pandurević** returned to the Zvornik Brigade command and resumed his duties on 25 September.⁵⁷⁹⁵ According to this account, on 25 September, **Pandurević** went to the Drina Corps Command in Vlasenica, met with Krstić, and held a briefing with the Zvornik Brigade battalion commanders and “core members of the command”.⁵⁷⁹⁶

⁵⁷⁹¹ Vinko Pandurević, T. 31210 (10 Feb 2009). *See also* Ex. 7DP00379, “Zvornik Brigade Duty Officer Notebook for period 27-07-95 through 29-10-95”, p. 122 (recording “Lieutenant-Colonel **Pandurević** to not go to Vlasenica, Inform General /illegible/ not to go to Vlasenica in the afternoon”). In explaining this entry in the notebook, **Pandurević** said, “I was supposed to go to Vlasenica on the 17th to meet with the General Krstić. However, the general or somebody on his behalf, but it says here as reported by general that I should call the general before I left and that I should not go there in the afternoon, which means that although I did talk to the general, I did not meet with him face to face. I did not go to Vlasenica on that day.” Vinko Pandurević, T. 31214 (10 Feb 2009).

⁵⁷⁹² Vinko Pandurević, T. 31210–31211 (10 Feb 2009). *See also* PW-168, T. 15924 (closed session) (27 Sept 2007). During his telephone conversation with Krstić, **Pandurević** briefed Krstić, informing him that “the Brigade had accomplished its task, that the troops had been redistributed to their original garrisons”. Vinko Pandurević, T. 31210 (10 Feb 2009).

⁵⁷⁹³ Vinko Pandurević, T. 31210 (10 Feb 2009). *See also* Ex. 7DP00379, “Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995”, p. 122.

⁵⁷⁹⁴ Vinko Pandurević, T. 31211 (10 Feb 2009).

⁵⁷⁹⁵ Prosecution Final Brief, para. 1524. PW-168 testified that **Pandurević** returned to the Zvornik Brigade on 25 September 1995. PW-168, T. 16608-16610 (closed session) (19 Oct 2007). In support of its argument regarding Pandurević’s return on this date, the Prosecution also points to: Ex. P02926, “Zvornik Brigade Regular Combat Report No. 06-298, type-signed Vinko Pandurević, 25 Sept 1995” (recording that the “commander” went to the Drina Corps Command and presented a report); Ex. P02929, “Intercept, 25 Sept 1995, 15:40 hours” (intercepted conversation in which **Pandurević** indicates that he physically present at the Zvornik Brigade Command). There is also an intercept, dated 23 September, in which Captain Petrović from the Zvornik Brigade advised Krstić that **Pandurević** was to return to the Zvornik Brigade on Monday evening (25 September) and Krstić ordered Petrović to tell **Pandurević** to come to see him (Krstić) at seven o’clock on Monday (25 Sept). Ex. P04294, “Intercept, 23 Sept 1995, 19:25 hours”.

⁵⁷⁹⁶ Ex. P02926, “Regular Combat Report from the 1st Zvornik Infantry Brigade to the Drina Corps Command, signed by Pandurević, 25 Sept 1995”; PW-168 T. 16607–16608 (closed session) (19 Oct 2007) (testifying that on 25 September, Obrenović attended a briefing held by **Pandurević** at the Corps Command in Vlasenica). The regular combat report for 25 September notes that at 3 p.m., “the Brigade Commander, having returned from the Corps where he presented his report, held a meeting with the ... core members of the command”. Ex. P02926, “Regular Combat Report from the Zvornik Brigade to the Drina Corps Command, signed by Pandurević, 25 Sept 1995”. However, according to **Pandurević**, this statement in the report refers to Obrenović, who had visited Vlasenica that day. Vinko Pandurević, T. 32350 (2 Mar 2009); Ex. 7D00261, “VWL September – Danojlović Ljubiša, Mercedes” (entry for 25 September, Zvornik-Vlasenica-Zvornik); PW-168, T. 16607 (closed session) (19 Oct 2007) (confirming that Obrenović did go to Vlasenica on 25 September). The Prosecution submits that the Zvornik Brigade transportation records indicate that two vehicles from the Zvornik Brigade Command made trips to Vlasenica on 25 September. *See* Ex. 7D00261, “VWL September – Danojlović Ljubiša, Mercedes”; Ex. P04405, “Vehicle log for Mercedes P-4687 for 17-30 September 1995”. The Prosecution thus argues that both **Pandurević**

1924. Contrary to the Prosecution's account, **Pandurević** testified that he did not go to the Standard Barracks on 25 September and instead returned to the Standard Barracks on 26 September 1995.⁵⁷⁹⁷ According to **Pandurević**, on 25 September, he called the Brigade Command and received a message that Krstić had ordered him to cut short his leave and return.⁵⁷⁹⁸ After receiving the message, **Pandurević** left Montenegro and returned to Zvornik.⁵⁷⁹⁹ In the afternoon, **Pandurević** used the telephone in a friend's apartment in Zvornik to call Krstić and was connected to Krstić through the switchboard at the Standard Barracks to give the impression that he was present at the Brigade command.⁵⁸⁰⁰ **Pandurević** said that in this conversation, he pretended that "Legenda" was with him.⁵⁸⁰¹ **Pandurević** did not want to travel to Vlasenica that day, so he pretended that he was back at the Standard Barracks and busy.⁵⁸⁰²

1925. Having assessed all of the evidence, the Trial Chamber finds that **Pandurević** returned to the Standard Barracks on 25 September. In reaching this finding, the Trial Chamber finds particularly relevant the evidence that Krstić ordered **Pandurević** to return to the Brigade on 25 September as well as intercepted conversation on 25 September between **Pandurević** and Krstić. In the view of the Trial Chamber, **Pandurević** would not have lied to Krstić about his presence at the

and Obrenović went to Vlasenica on 25 September. On 25 September, Obrenović travelled to Vlasenica in preparation of taking the command of a new unit, the 2nd Drinski Brigade. He was driven by his driver Ljubiša Danojlović. PW-168, T. 16607-16608 (closed session) (19 Oct 2007); Ex. 7D00261, "VWL September – Danojlović Ljubiša, Mercedes - BCS version".

⁵⁷⁹⁷ Vinko Pandurević, T. 31229-31230 (10 Feb 2009). *See also* Ex. 7DP02925. "Zvornik Brigade Command Roster for Sept 1995" (with **Pandurević** listed as entry 31 in BCS version). This record of the presence of personnel in the command of the Zvornik Brigade for September 1995 records an S (free) for **Pandurević** for all the days from 17 to 25 September. Ex. 7DP02925. "Zvornik Brigade Command Roster for Sept 1995"; Vinko Pandurević, T. 31234 (11 Feb 2009). On 26 September, a cross appears in the record, denoting that **Pandurević** had returned to the command and was occupying his post. Ex. 7DP02925. "Zvornik Brigade Command Roster for Sept 1995" (with **Pandurević** listed as entry 31 in the BCS version); Vinko Pandurević, T. 31234 (11 Feb 2009). According to **Pandurević**, his pre-trial brief is erroneous to the extent it appears that he was claiming to have been in command of the Zvornik Brigade on 25 September. Vinko Pandurević, T. 32302-32303 (2 Mar 2009). In support of his account that he did not return to the command on 25 September, **Pandurević** pointed out an entry in the Duty Officer Notebook which he alleges shows him calling the Brigade Command that day after 3 p.m. from his friend's home and leaving the telephone number. Vinko Pandurević, T. 32350-32352 (2 Mar 2009); Ex. 7DP00379, "Zvornik Brigade Duty Operations Officer Notebook, covering 27 July to 29 Oct 1995", p. 137.

⁵⁷⁹⁸ Vinko Pandurević, T. 31223 (10 Feb 2009).

⁵⁷⁹⁹ *Ibid.*

⁵⁸⁰⁰ *Ibid.*, T. 31225-31227 (10 Feb 2009), T. 32295-32297 (2 Mar 2009); Ex. P02929, "Intercept, 25 Sept 1995 at 15.40 hours".

⁵⁸⁰¹ Vinko Pandurević, T. 31229 (10 Feb 2009), T. 32297-32298 (2 Mar 2009).

⁵⁸⁰² *Ibid.*, T. 31229 (10 Feb 2009), T. 32299 (2 Mar 2009). An intercepted conversation on 23 September between Krstić and Captain Milisav Petrović, Chief of Communications at the Zvornik Brigade, shows that Krstić wanted **Pandurević** to go and see him on 25 Sept at 7:00. *Ibid.*, T. 32279-32281 (27 Feb 2009); Ex. P04294, "Intercept, 23 Sept 1995 at 19.25 hours". **Pandurević** was shown vehicle logs that the Prosecution alleged showed that he had made a trip to Vlasenica on 25 September. **Pandurević** described why that was not a correct interpretation of the vehicle logs, saying "You see that the handwriting is the same on the whole page [of the vehicle log], and this is Ljubiša Danojlović's handwriting, and you can see that this is Dragan Obrenović's signature, not mine. And nowhere in this travel log do you see Bogdan Pandurević's handwriting. He was a possible reserve. That's why his name was recorded here, as a possible reserve driver." Vinko Pandurević, T. 32301-32302 (2 Mar 2009); Ex. 7D00261, "Work of vehicle, machine and generator log"; Ex. P04405, "Vehicle log for Mercedes P-4687, 17 – 30 Sept 1995".

Brigade command. The Trial Chamber, however, notes that the date of his return to the Standard Barracks in September is of little relevance to the ultimate determination of **Pandurević's** responsibility.

1926. Around 9 a.m. on 26 September, **Pandurević** went to the Standard Barracks.⁵⁸⁰³ He met briefly with Obrenović, who was preparing for his command of a new brigade.⁵⁸⁰⁴ Obrenović left around noon on 26 September, together with the unit of the Drina Corps he was to command in the Krajina.⁵⁸⁰⁵ Subsequently, **Pandurević** took up the regular duties as commander, including talking to the officers of the Staff and the operatives and becoming informed of the situation in the Brigade.⁵⁸⁰⁶

⁵⁸⁰³ Vinko Pandurević, T. 31229–31230 (10 Feb 2009).

⁵⁸⁰⁴ *Ibid.*, T. 31230 (10 Feb 2009); Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996", p. 127. On 26 September 1995, General Krstić ordered Obrenović to go to the Krajina. A unit of the Drina Corps was formed; Krstić designated Obrenović as its commander and sent him to the Krajina as part of the 1st Krajina Corps. PW-168, T. 15925 (closed session) (27 Sept 2007), T. 16788 (closed session) (23 Oct 2007); Ex. 7DP00158, "Drina Corps Command Order, signed by Krstić, 26 Sept 1995".

⁵⁸⁰⁵ Vinko Pandurević, T. 31230 (10 Feb 2009); PW-168, T. 15925 (closed session) (27 Sept 2007), T. 16610 (closed session) (19 Oct 2007), T. 17193–17195 (closed session) (31 Oct 2007); Miodrag Dragutinović, T. 12732–12734 (15 June 2007); Ex. 7DP00158, "Drina Corps Command Order, signed by Krstić, 26 Sept 1995".

⁵⁸⁰⁶ Vinko Pandurević, T. 31238–31240 (11 Feb 2009). Two briefings were held at the Brigade, one on the 26 September and another on 27 September. Ex. P7D00680, "Regular Combat Report from Zvornik Brigade Command to Drina Corps Command, signed by Pandurević, 26 September 1995", para. 2 (noting that the Brigade Commander held a briefing for the Battalion Commanders and Artillery Battalion Commanders); Ex. 7DP00379, "Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995", p. 140 (noting a briefing held by **Pandurević** for the Battalion Commanders and Artillery Battalion Commanders on 27 September); Vinko Pandurević, T. 31239–31240 (11 Feb 2009), T. 32304 (2 Mar 2009). *See also* Miodrag Dragutinović, T. 12733–12734 (15 June 2007). According to **Pandurević**, a few days after he returned to the Brigade on 26 September, he learned "that some trucks had passed through Zvornik and that these trucks were carrying some sort of material which left behind an unbearable stench". Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304–32305 (2 Mar 2009). He discussed this information with Dragutinović, who told him that the trucks had probably been transporting corpses and that this had happened during the night and the local citizens were upset by this. Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304–32305 (2 Mar 2009). Dragutinović said the operation had lasted for five or six days. Vinko Pandurević, T. 31244 (11 Feb 2009), T. 32304–32305 (2 Mar 2009). **Pandurević** asked whether the brigade had been assigned any task or issued any order in relation to this transportation but Dragutinović denied any involvement of the Zvornik Brigade in this operation. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32278 (27 Feb 2009). According to Pandurević, he also asked Dragan Jokić if the Zvornik Brigade engineering unit or any other Zvornik Brigade unit was involved in the reburial, but Jokić denied that the Zvornik Brigade was involved and said that he had seen Autotransport company lorries carrying bodies. Vinko Pandurević, T. 32278 (27 Feb 2009). **Pandurević** did not discuss this issue in detail with anyone else, nor did he undertake any investigation. Vinko Pandurević, T. 31243 (11 Feb 2009). Additionally, according to **Pandurević**, after Obrenović returned from the Krajina in late October 1995, **Pandurević** asked whether him had been informed of the reburials. Vinko Pandurević, T. 31243 (11 Feb 2009). According to **Pandurević's** account, Obrenović told him that just before **Pandurević's** return from the Krajina, Obrenović had been at the Corps Command in Vlasenica and became aware that Mladić personally approved fuel for the relocation of corpses, and that the Engineers Battalion of the Drina Corps participated. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32315 (2 Mar 2009). Obrenović also told **Pandurević** that the operation "was being conducted by the very top, the highest authorities in the army and that no task had been issued to the [Brigade] in that respect". Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32315 (2 Mar 2009). **Pandurević** undertook no further investigation. Vinko Pandurević, T. 31243–31244 (11 Feb 2009). **Pandurević** testified that he thought that it was better for him not to get "mixed up in it in any way". Vinko Pandurević, T. 31243–31244 (11 Feb 2009). **Pandurević** had no direct information as to who was in charge of the exhumation and reburials but he concluded that it was the Security Organs, because, as **Pandurević** testified, "no tasks had been issued to any of the commands for them to pass the orders down the chain of command and deal with this matter." Vinko Pandurević, T. 31244 (11 Feb 2009).

1927. There is evidence that on 26 September, **Popović** came to the Zvornik Brigade with a large map asking for **Pandurević** and **Nikolić**.⁵⁸⁰⁷ Obrenović confirmed their presence and **Popović** went upstairs.⁵⁸⁰⁸ Given the timing of the visit and the fact that, according to PW-168, **Pandurević** had previously told Obrenović on 16 September that **Popović** would carry out the reburials, PW-168 assumed **Popović** was at the Zvornik Brigade Headquarters to discuss this matter.⁵⁸⁰⁹ The Trial Chamber, however, cannot reach a conclusion as to whether **Popović** met **Pandurević** on this date and if so, what was discussed at such a meeting.

(d) Findings

1928. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Murder

a. The Joint Criminal Enterprise to Murder

1929. The Trial Chamber will begin with an examination of **Pandurević**'s alleged participation in the JCE to Murder. The Trial Chamber has found that in July 1995 a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.⁵⁸¹⁰ The first two elements required for a finding of liability through participation in a JCE have thus been satisfied. The Trial Chamber will now turn to the third element: participation of the accused in the common purpose.

1930. The Trial Chamber recalls that in order for **Pandurević** to incur liability pursuant to the first category of JCE, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Pandurević** must have shared the intent with other members of the JCE to Murder to carry out the common purpose and must have significantly contributed to that common purpose.

i. Knowledge of the Common Purpose

1931. The Trial Chamber will first examine whether **Pandurević** knew of the common purpose. The Trial Chamber has found that the plan to murder the able-bodied Bosnian Muslim males from

⁵⁸⁰⁷ PW-168, T. 15925–15926 (closed session) (27 Sept 2007).

⁵⁸⁰⁸ *Ibid.*, T. 15926 (closed session) (27 Sept 2007).

⁵⁸⁰⁹ *Ibid.*, T. 15921–15922 (closed session), 15926 (closed session) (27 Sept 2007).

⁵⁸¹⁰ *See supra*, para. 1072.

Srebrenica was in place as of the morning of 12 July 1995, and that in the days following 12 July the plan was expanded.⁵⁸¹¹ On the evening of 12 July, **Pandurević** attended a meeting with Mladić, Krstić, Živanović, and other VRS commanders at the Bratunac Brigade Headquarters.⁵⁸¹² The Prosecution alleges that at this meeting, **Pandurević** would have learned of the plan to kill the able-bodied Bosnian Muslim males who had been separated in Potočari and were detained in Bratunac.⁵⁸¹³ However, there is insufficient evidence for the Trial Chamber to find that the murder operation was discussed or mentioned at the meeting.⁵⁸¹⁴ In addition, there is no evidence that the murder plan was otherwise communicated to **Pandurević** at this time. Therefore, the Prosecution has failed to establish that **Pandurević** became aware of the common purpose at the meeting on 12 July.

1932. The Prosecution further alleges that by the evening of 13 July, **Pandurević** knew that the murder plan included thousands of Bosnian Muslim men who had been taken prisoner by that time.⁵⁸¹⁵ This allegation is based on a telephone conversation on the evening of 13 July, during the course of which **Nikolić** indicated to Obrenović that **Pandurević** was already informed about the plan to bring a large number of Bosnian Muslim prisoners to Zvornik, where they would be executed pursuant to an order from Mladić.⁵⁸¹⁶ There is no other evidence which indicates that **Pandurević** was aware of the plan at this time. The Trial Chamber finds that the several layers of hearsay underlying this statement make it insufficiently reliable to establish that, by this point, **Pandurević** knew of the common plan to murder.

1933. On the morning of 15 July at the Krivače IKM, **Pandurević** met with Krstić, who ordered **Pandurević** to return to Zvornik.⁵⁸¹⁷ The Prosecution alleges that at this meeting, Krstić would have informed **Pandurević** that the murder operation was being carried out in the Zvornik area by, *inter alia*, elements of the Zvornik Brigade.⁵⁸¹⁸ The Prosecution argues that at this time Krstić knew of the murder operation and knew that prisoners had been brought to Zvornik to be executed.⁵⁸¹⁹ According to the Prosecution, in briefing **Pandurević** on the situation faced by the Zvornik Brigade, Krstić thus would not only have informed him of the threat posed by the Bosnian Muslim column but also of the “security threat and the demand of the Zvornik Brigade’s resources—both in

⁵⁸¹¹ See *supra*, paras. 1051–1052.

⁵⁸¹² See *supra*, para. 1855.

⁵⁸¹³ Prosecution Final Brief, paras. 1355-1356, 1387-1388. Generally, the only evidence presented on the content of the meeting was that at this time Mladić praised his commanders on the success in Srebrenica and ordered the units to proceed towards Žepa. See *supra*, para. 1855.

⁵⁸¹⁴ See *supra*, para. 1855.

⁵⁸¹⁵ See Prosecution Final Brief, paras. 1389-1392.

⁵⁸¹⁶ *Supra*, paras. 470, 1345. See also Prosecution Final Brief, para. 1390.

⁵⁸¹⁷ *Supra*, para. 1859.

⁵⁸¹⁸ Prosecution Final Brief, paras. 1393-1404.

⁵⁸¹⁹ Prosecution Final Brief, paras. 1393, 1403-1404.

men and materials—caused by the murder operation.”⁵⁸²⁰ While **Pandurević** agreed that at the time of their meeting on 15 July, Krstić probably knew about the execution of the Bosnian Muslim prisoners, he denied that Krstić said anything to him regarding the prisoners.⁵⁸²¹ While the timing of and the participants in this meeting support a reasonable inference that the killings were discussed, this is not the only possible reasonable inference. Given the urgent circumstances concerning the column, the conversation may well have been limited to the military action. This is what **Pandurević** asserted in his testimony.⁵⁸²² In light of the totality of the evidence, including his testimony, the Trial Chamber is not satisfied that **Pandurević** acquired knowledge of the common purpose at this meeting on 15 July.

1934. There is conflicting evidence as to whether a conversation between **Pandurević** and Obrenović occurred upon **Pandurević**’s return to the Standard Barracks around 12 p.m. on 15 July. The Trial Chamber has considered the evidence before it as to what, if anything, Obrenović told **Pandurević** on 15 July regarding the guarding, execution, and burial of prisoners in the Zvornik municipality. It is a significant question as it directly relates to the knowledge that **Pandurević** had on 15 July about the execution of prisoners. Several pieces of evidence are relevant to this question, including the two versions of events testified to by PW-168 and **Pandurević**, the Borovčaniin Statement, the evidence of Eileen Gilleece and her investigative note to file, the 92 *quater* evidence of Ljubo Bojanović, and **Pandurević**’s 15 July Interim Combat Report. The Trial Chamber has carefully examined the evidence in its totality keeping in mind that the burden of proof rests on the Prosecution and that **Pandurević** need only raise a reasonable doubt as to his knowledge.

1935. The evidence of PW-168 and **Pandurević** is in direct conflict. According to PW-168, upon **Pandurević**’s arrival at the Standard Barracks, Obrenović received a call from the Zvornik Brigade reception area informing him that **Pandurević** had entered the building.⁵⁸²³ Obrenović then stepped out of his office, where the meeting between him and other officers was already underway, and intercepted **Pandurević** in the corridor of the first floor.⁵⁸²⁴ They greeted each other and talked halfway down the corridor, opposite the operations office.⁵⁸²⁵ Obrenović first conveyed to **Pandurević** that pursuant to Mladić’s order, **Beara** and **Popović** had brought a large number of

⁵⁸²⁰ Prosecution Final Brief, para. 1398.

⁵⁸²¹ Vinko Pandurević, T. 31476–31477 (13 Feb 2009), T. 32194 (26 Feb 2009). In reference to this meeting with Krstić, **Pandurević** further stated that at that point there was no tactical or military reason for him to be informed of such activities which were unconnected to the combat operations. *Ibid.*, T. 32195–32196 (26 Feb 2009).

⁵⁸²² See Vinko Pandurević, T. 31476–31477 (13 Feb 2009), T. 32194–3296 (26 Feb 2009).

⁵⁸²³ PW-168, T. 15878–15879 (closed session) (26 Sept 2007).

⁵⁸²⁴ *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

⁵⁸²⁵ *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

prisoners from Bratunac to the Zvornik sector, where they were executing them.⁵⁸²⁶ Obrenović also told **Pandurević** that earlier, when Obrenović came back from the field, Jokić had informed him that there were enormous problems with the guarding, execution, and burial of prisoners.⁵⁸²⁷ **Pandurević** then asked why the Civilian Protection was not performing the burials.⁵⁸²⁸ Obrenović did not know about that and just shrugged in response.⁵⁸²⁹ Obrenović then told **Pandurević** that **Borovčanin** and Vasić were waiting in Obrenović's office with some other officers, so instead of going to **Pandurević**'s office they went to Obrenović's office.⁵⁸³⁰

1936. Contrary to PW-168's account, however, **Pandurević** denied that any such conversation occurred in the hallway.⁵⁸³¹ According to **Pandurević**, when he arrived at Standard Barracks on 15 July, he instead went immediately to the office of the Chief of Staff, Obrenović, and did not see or speak to Obrenović in the corridor.⁵⁸³²

1937. Additionally, although no evidence was given as to the subject matter of the discussion, according to the evidence of Bojanović, admitted under Rule 92 *quater*, a conversation between Obrenović and **Pandurević** took place on 15 July at the Kitovnice IKM, just prior to the drafting of the Interim Combat Report.⁵⁸³³ However, both **Pandurević** and Obrenović denied such a meeting or conversation⁵⁸³⁴ and there is no corroborative evidence of Bojanović's untested evidence on the point. As an explanation, **Pandurević** indicated that the conversation with Obrenović at the IKM actually took place on 16 July and Bojanović must have been confused as to the date.⁵⁸³⁵ **Pandurević** testified that it was at this time – on the evening of 16 July – that he and Obrenović first had a conversation about the prisoners and executions.⁵⁸³⁶ However **Pandurević**'s recounting

⁵⁸²⁶ PW-168, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007), T. 16538–16539 (closed session) (18 Oct 2007).

⁵⁸²⁷ *Ibid.*, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007), T. 16538–16539 (closed session) (18 Oct 2007).

⁵⁸²⁸ *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

⁵⁸²⁹ *Ibid.*

⁵⁸³⁰ *Ibid.*, T. 15879–15880 (closed session) (26 Sept 2007).

⁵⁸³¹ Vinko Pandurević, T. 31366–31367 (12 Feb 2009). **Pandurević** testified that when he arrived at Standard Barracks he “immediately went up to the first floor where [his] office was and also the office of the Chief of Staff.” Vinko Pandurević, T. 30958 (2 Feb 2009). **Pandurević** further described his arrival as follows: “In front of me was my escort, the soldier escorting me, and at the steps in front of the office of the operations duty officer, he stopped and I went on down the corridor towards my office [...] There was nobody else in the corridor at that point in time [...] Since my job was urgent, I went straight to the office of the Chief of Staff.” *Ibid.*, T. 30958 (2 Feb 2009).

⁵⁸³² Vinko Pandurević, T. 30958, 30964 (2 Feb 2009), T. 31486 (16 Feb 2009).

⁵⁸³³ See Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11724, 11728 (8 July 2004) (first testifying that the conversation between **Pandurević** and Obrenović lasted 30 to 45 minutes, and later changing it to 45 minutes to one hour).

⁵⁸³⁴ See Vinko Pandurević, T. 31586–31587 (17 Feb 2009) (explaining that Bojanović was elderly, liked to drink, and just got the date of the conversation wrong); PW-168, T. 17002–17004 (closed session) (26 Oct 2007) (testifying that Bojanović was mistaken and that on the afternoon and evening of 15 July, Obrenović was at the command post of the 4th Battalion in Baljkovica and was not at the IKM).

⁵⁸³⁵ Vinko Pandurević, T. 31586–31587 (17 Feb 2009).

⁵⁸³⁶ *Ibid.*, T. 31375 (12 Feb 2009).

of the content of that discussion varies considerably from what PW-168 alleged that Obrenović told **Pandurević** on 15 July.⁵⁸³⁷

1938. Bearing in mind the burden of proof, the Trial Chamber considers first the Prosecution case on this issue of **Pandurević**'s knowledge of the prisoners in the area of Zvornik on 15 July, which rests significantly on the evidence of PW-168.

1939. [REDACTED]^{5838 5839 5840}

1940. Contextually, PW-168's account of the conversation and its timing is plausible in the circumstances, given that the information was important because of the security implications for the Zvornik Brigade. It is difficult to conceive that an experienced Chief of Staff such as Obrenović would fail to immediately mention the detention and execution of prisoners to the Commander upon his return from a period of absence, even when the Security Branch was in charge of the operation. Even if the column of the ABiH 28th Division was the central priority and the involvement of the Zvornik Brigade with the prisoners was limited, the security threat alone posed by those prisoners, destined for execution, was a matter requiring the Commander's urgent attention and awareness. **Pandurević** himself in his 15 July Interim Combat Report corroborates this in so far as he alludes to issues arising from the detention of prisoners in the Zvornik area.⁵⁸⁴¹

1941. **Pandurević** challenged PW-168 with statements from other purported⁵⁸⁴² participants in the 15 July meeting who did not describe Obrenović leaving the office to meet **Pandurević** in the corridor upon his return to the Standard Barracks around 12 p.m. that day. PW-168, however, repeatedly and firmly maintained his account of what happened.⁵⁸⁴³ None of the witnesses whose

⁵⁸³⁷ See *supra*, paras. 1879–1881. Specifically, according to PW-168's account, on 15 July, Obrenović gave **Pandurević** only brief information, particularly informing him that prisoners had been brought to the area pursuant to Mladić's order in order to be executed and that there were problems with the detention, execution, and burial of these prisoners. By contrast, according to **Pandurević**'s account of the 16 July conversation, Obrenović provided him with several pieces of information about the murder operation, including details about a few locations where he had heard that prisoners had been held and executed, some involvement of the Zvornik Brigade in burials, and **Nikolić**'s request for military police to assist him in waiting for the arrival of prisoners on the evening of 13 July. Additionally, according to **Pandurević**'s account, Obrenović specifically told him that he had no knowledge that any member of the Zvornik Brigade had participated in the executions. See *supra*, paras. 1879–1881.

⁵⁸³⁸ [REDACTED]

⁵⁸³⁹ [REDACTED]

⁵⁸⁴⁰ [REDACTED]

⁵⁸⁴¹ The Trial Chamber is satisfied that in the first part of the sentence of the fourth paragraph of the report, the statement "[a]n additional burden for us is the large number of prisoners distributed throughout schools in the brigade area" refers to the security issues arising from the detention of prisoners. See Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

⁵⁸⁴² While PW-168 confirmed Vasić's presence at the meeting, he did not remember whether Zoljić was present. PW-168, T. 15872 (closed session) (26 Sept 2007), T. 16523–16524 (closed session) (17 Oct 2007). **Borovčanin** did indicate that Zoljić was present. Ex. P02853, "Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 Mar 2002", p. 105.

⁵⁸⁴³ See PW-168, T. 16528–16538 (closed session) (18 Oct 2007).

statements were put to PW-168 were called *vive voce* before the Trial Chamber, nor were their statements or transcripts tendered pursuant to Rule 92 *bis*.⁵⁸⁴⁴ The Trial Chamber has also considered **Borovčanin**'s account as contained in his interview but finds it to be vague and ambivalent on the matter at issue.⁵⁸⁴⁵ In these combined circumstances, the Trial Chamber does not consider that there is evidence before it which raises a reasonable doubt as to PW-168's assertion that Obrenović met with **Pandurević** in the corridor before they both entered the general meeting underway in Obrenović's office.

1942. The Trial Chamber also notes that there are two key pieces of evidence which corroborate PW-168's evidence that critical information about the prisoners and the executions was conveyed to **Pandurević** by Obrenović on 15 July prior to the writing of the Interim Combat Report. These two pieces of evidence include **Pandurević**'s 15 July Interim Combat Report itself and the evidence of Eileen Gilleece.

1943. The Trial Chamber has reviewed the 15 July Interim Combat Report in detail, paragraph by paragraph, and in its totality. The Trial Chamber has also considered the evidence of the various witnesses who have commented on it, including **Pandurević** himself.

1944. In the fourth paragraph of the 15 July Interim Combat Report, **Pandurević** states: "An additional burden for us is the large number of prisoners distributed throughout the schools in the brigade area, as well as obligations of security and restoration of the terrain."⁵⁸⁴⁶ The Prosecution submits that the "additional burden" referred to by **Pandurević** in this paragraph includes, first, the burden of guarding or securing the prisoners at the schools ("obligations of security") and, second, the burden of burying the dead prisoners ("restoration of the terrain" or "*asanacija terena*").⁵⁸⁴⁷

1945. **Pandurević** denied that this was the meaning of the Interim Combat Report and proffered an alternative explanation for the content of his report. **Pandurević** argues that the mention of the "additional burden" with respect to prisoners placed in schools throughout the area does not relate to the subsequent mention of "obligations of security and restoration of the terrain" and thus that

⁵⁸⁴⁴ See Ex. 7D00699 (confidential); Ex. 7D00693 (confidential).

⁵⁸⁴⁵ See Ex. P02853, "Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 Mar 2002", pp. 103, 104. **Borovčanin** explained that on 15 July, he, Vasić, Obrenović and some Zvornik Brigade officers were present at a meeting at the Standard Barracks. According to **Borovčanin**, during the meeting, he and the others "asked [Obrenović] whether he was in a position to contact the person who gave him such order [regarding the column] in order to present [...] the situation better and maybe change that, and [Obrenović] telephoned someone and [Borovčanin] heard him [...] presenting [their proposal] and [Obrenović] returned and said 'I have exact orders to close this line,' and during that conversation Lieutenant Colonel Pandurević arrived." *Ibid.*, p. 103. **Borovčanin** also later stated that **Pandurević** "appeared" during the meeting. *Ibid.*, p. 104. The Trial Chamber considers these statements from **Borovčanin**'s interview to be unclear and vague on the specific point as to whether Obrenović left the room at any time and whether he did so to greet Pandurević.

⁵⁸⁴⁶ Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

this paragraph does not refer to the burden of guarding and burying of prisoners.⁵⁸⁴⁸ According to **Pandurević**, the reference to “additional burden” refers to the fact that the local Serb population were concerned by the presence of prisoners in their midst and may contact the soldiers on the lines.⁵⁸⁴⁹ Further, **Pandurević** argued that there is a grammatical link between the word “*obezbedjenje*” and the word “*terena*” and thus in the report it must be read as “*obezbedjenje terena*”, thus describing an operation in the field not guarding of prisoners.⁵⁸⁵⁰ According to **Pandurević**, in using this term in the 15 July Interim Combat Report, he was referring to the “extra personnel required for the operations of clearing up the battle field and the support and protection of his units in the field.”⁵⁸⁵¹ Additionally, according to **Pandurević**, the term “*asanacija*” is used in the report to refer, not to the burying of prisoners, but to the obligation to protect and sanitize the combat area, which would include “the rescue and removal of wounded during combat, the removal of dead bodies during combat, as well as the removal of dead and wounded once the battle is over, and the clearing up of harmful and hazardous waste.”⁵⁸⁵² According to **Pandurević**, this term thus refers to such activities in connection to the combat situation with respect to the Muslim column in the area of Baljkovica at the time.⁵⁸⁵³

1946. The Trial Chamber has assessed this evidence being vigilant to the fundamental principle that **Pandurević** need only raise another reasonable interpretation and that the burden of proof rests with the Prosecution.

1947. The Trial Chamber accepts, as argued by **Pandurević**, that the linguistic evidence adduced establishes that the last phrase of paragraph four—transcribed in English as “obligations of security”—should be read together in interpretation of the word “*asanacija*” with the result that “obligations of security” and “restoration” both relate to the word “terrain”. In accordance with this construction, the entire phrase “obligations of security and restoration of the terrain” thus describes an activity related to the terrain or ground. While accepting this grammatical construction of this sentence in paragraph four, the Trial Chamber does not accept that this phrase, “obligations of security and restoration of the terrain”, as it is used in the context of the report is a reference to operations related to the battlefield as submitted by **Pandurević**.

⁵⁸⁴⁷ Prosecution Final Brief, paras. 1434–1436.

⁵⁸⁴⁸ Vinko Pandurević, T. 30992 (2 Feb 2009), T. 32208–33209 (27 Feb 2009).

⁵⁸⁴⁹ *Ibid.*

⁵⁸⁵⁰ Pandurević Final Brief, paras. 763–764.

⁵⁸⁵¹ *Ibid.*, para. 765. **Pandurević** submits that the use of the term “obligations of security” of the terrain in the report referred specifically to such combat activities undertaken by the R Battalion, not to securing prisoners. Vinko Pandurević, T. 31008 (2 Feb 2009). *See also* Pandurević Final Brief, paras. 766–771.

⁵⁸⁵² Pandurević Final Brief, paras. 752, 756. *See also* Vinko Pandurević, T. 30994 (2 Feb 2009).

⁵⁸⁵³ Pandurević Final Brief, paras. 753–756. *See also* Vinko Pandurević, T. 30994 (2 Feb 2009). In this respect, **Pandurević** also expressed that evacuating wounded soldiers from the battlefield required “at least two or three

1948. The Trial Chamber is satisfied that the fourth paragraph of the 15 July Interim Combat Report is a self-contained section dedicated to the subject of the prisoners. In the view of the Trial Chamber, there is no other reasonable interpretation of this paragraph. Paragraphs three and four are completely distinct, dealing with two separate subject matters—the battle situation with the column (paragraph 3) and the prisoners (paragraph four). Even according to the most favourable translation of paragraph four to the benefit of the Accused, it is simply not reasonable to conclude that a paragraph which begins with reference to the additional burden of prisoners somehow reverts—in mid sentence—to security obligations and the need for restoration of the terrain connected to the combat situation. The Trial Chamber finds that in the first part of the sentence of paragraph four of the 15 July Interim Combat Report, **Pandurević** is cryptically referring to the additional burden for the Brigade of guarding prisoners as well as the security concerns caused by the presence of those prisoners in Zvornik.⁵⁸⁵⁴ The Trial Chamber further finds that in the second part of the sentence of that paragraph, **Pandurević** is referring to the burden to the Brigade of assisting with the burial of the prisoners who had been brought by others to the Zvornik area for execution.⁵⁸⁵⁵ The 15 July Interim Combat Report alone, on its face, is thus strong evidence that on 15 July, **Pandurević** was aware not only of prisoners but also of executions in the Zvornik area.

1949. In the view of the Trial Chamber, the 15 July Interim Combat Report not only evidences **Pandurević**'s knowledge but also corroborates PW-168's evidence as to the information that Obrenović conveyed to **Pandurević** on 15 July. According to PW-168, Obrenović recounted that prisoners had been brought to the Zvornik area for execution and that Jokić, Chief of Engineering for the Zvornik Brigade, had reported that there were problems with securing and burying them. This parallels the main points in paragraph 4 of the 15 July Interim Combat Report, with the exception of the reference to the schools, and is consistent with Obrenović being the main, though not exclusive, source of information for the critical paragraph. In so far as the schools are concerned, according to PW-168, this did not come from Obrenović.⁵⁸⁵⁶ On this point, **Pandurević** and PW-168 appear to agree that this particular piece of information came from another source—

soldiers who are fit to take him to the field hospital and therefore you have fewer men to be used in fighting, so this is certainly a burden." *Ibid.*, T. 30994–30995 (2 Feb 2009).

⁵⁸⁵⁴ See Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995" ("An additional burden for us is the large number of prisoners distributed throughout the schools in the brigade area [...]").

⁵⁸⁵⁵ See Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995" ("[...] as well as obligations of security and restoration of the terrain").

⁵⁸⁵⁶ PW-168, T. 16552 (18 Oct 2007).

specifically, according to **Pandurević**, from Branko Grujić, the President of the SDS party in Zvornik, when Grujić visited him at the IKM in the afternoon of 15 July.⁵⁸⁵⁷

1950. In addition to the 15 July Interim Combat Report, there is the evidence of Eileen Gilleece. It is evident that the interview conducted by Gilleece was irregular in nature and did not conform to appropriate rules of procedure in many respects.⁵⁸⁵⁸ In this respect, the Trial Chamber notes that the interview was not recorded on audio or video tape, that there were possible difficulties with respect to the interpreter and proper translations during the interview, and that **Pandurević** was never offered the opportunity to read, comment on, correct, or sign Gilleece's notes, either at the time of the interview or at the time of its conversion into the investigative note to file ("Gilleece Investigative Note").⁵⁸⁵⁹ Additionally, in the Gilleece Investigative Note, there are clear instances of mistakes in the terminology used, the way in which some matters are described, and mistakes in relation to dates.⁵⁸⁶⁰ As a result, every statement contained therein must be carefully scrutinized in the context of the surrounding circumstances of the interview.

1951. However, the striking reality remains that Gilleece knew virtually nothing of the factual circumstances surrounding the Srebrenica investigation.⁵⁸⁶¹ She claimed no knowledge of the key individuals within the VRS or the Zvornik Brigade at that time, their positions or relationships. It is this complete lack of knowledge which makes the following sentence in the Gilleece Investigative Note so compelling in its probative value: "On the 15th of July, Pandurević received information from the Chief of Staff that a number of POWs were put in Zvornik Municipality by the Supreme Command and Corps."⁵⁸⁶²

1952. [REDACTED]^{5863 5864}

⁵⁸⁵⁷ Vinko Pandurević, T. 30983 (2 Feb 2009). *See also* PW-168, T. 16552–16553 (18 Oct 2007); Miodrag Dragutinović, T. 12805 (18 June 2007). In particular, Grujić during this visit asked **Pandurević** "how come there were prisoners in some schools on the territory of Zvornik municipality," mentioning the schools in Petkovci and Pilica. Vinko Pandurević, T. 30983 (2 Feb 2009); *see supra*, para. 1865.

⁵⁸⁵⁸ *See* Vinko Pandurević, T. 31268–31270, 31282–31283 (11 Feb 2009); Eileen Gilleece, T. 6736, 6744, 6748, 6751–6752 (1 Feb 2007).

⁵⁸⁵⁹ *See* Vinko Pandurević, T. 31268–31271, 31282–31283 (11 Feb 2009). The Investigative Note was prepared by Gilleece based on handwritten notes, taken contemporaneously by Gilleece and military analyst Robert Cooper during the meeting with Živanović and **Pandurević**. Eileen Gilleece, T. 6736–6737 (1 Feb 2007).

⁵⁸⁶⁰ *See* Eileen Gilleece, T. 6755–6757 (1 Feb 2007). *See also* Vinko Pandurević, T. 31274–31279, 31382, 31285–31287 (11 Feb 2009). Apparent inaccuracies and mistakes in her note include, for example, that she notes that **Pandurević** described **Beara** as "Head of Security for the Supreme Headquarters of the Corps" and she attributes **Pandurević** with saying "the zone of intelligence has no other zone of attack", although this is clearly nonsensical. Ex. 7D01154a, "Investigative notes of an interview with Milenko Živanović and Vinko Pandurević (redacted)", pp. 3–4.

⁵⁸⁶¹ *See* Eileen Gilleece, T. 6726, 6744 (1 Feb 2007).

⁵⁸⁶² Ex. 7D01154a, "Investigative notes of an interview with Milenko Živanović and Vinko Pandurević (redacted)", p. 3.

⁵⁸⁶³ [REDACTED]

⁵⁸⁶⁴ [REDACTED]

1953. Those pieces of evidence, along with PW-168 direct testimony, taken together, satisfy the Trial Chamber as to **Pandurević**'s knowledge on 15 July. **Pandurević**'s testimony to the contrary, as will be discussed below, under close scrutiny, fails to raise a reasonable doubt in this regard.

1954. Through his testimony, **Pandurević** has proffered an alternative version of events.⁵⁸⁶⁵ The Trial Chamber has carefully considered this evidence bearing in mind the burden of proof. For the reasons detailed below, the Trial Chamber finds significant problems with **Pandurević**'s evidence which—taken together—prevent it from raising a reasonable doubt as to his knowledge.

1955. First, there is his testimony as to the source and nature of the information upon which **Pandurević** based paragraph four of the 15 July Interim Combat Report. It is **Pandurević**'s position that he first learned of the presence of prisoners in schools from Grujić on the afternoon of 15 July.⁵⁸⁶⁶ Even affording the most favourable interpretation to him in terms of a translation,⁵⁸⁶⁷ the Trial Chamber notes that **Pandurević** recounts more information in the report than what he allegedly received from Grujić. According to **Pandurević**'s account, however, Grujić was essentially his only source for the information referenced in the 15 July Interim Combat Report. **Pandurević** also testified that later on 15 July, he also spoke to Bojanović about the prisoners, approximately one hour before the report was drafted.⁵⁸⁶⁸ In the view of the Trial Chamber, even accepting this account by **Pandurević**, Bojanović ultimately added nothing to what Grujić had said, other than corroborating that buses with prisoners had at least passed through the Zvornik area.⁵⁸⁶⁹

1956. According to **Pandurević**, Grujić said that he had learnt from his party activists in the local communes that there were prisoners in some schools on the territory of the Zvornik municipality and this had created concerns in the local communities.⁵⁸⁷⁰ However, there was no mention by Grujić of numbers other than a reference to two schools,⁵⁸⁷¹ thus, raising the question as to where the reference in the 15 July Interim Combat Report to a “large number of prisoners” came from. Further, Grujić was a local politician, a civilian, with no first hand knowledge, relating minimal information obtained from others about “prisoners” in the area. He provided no details as to the circumstances of the detention of these prisoners and, most significantly, he apparently said nothing

⁵⁸⁶⁵ See *supra*, paras. 1936–1937.

⁵⁸⁶⁶ See *Pandurević* Final Brief, para. 114.

⁵⁸⁶⁷ See *supra*, fn. 5610.

⁵⁸⁶⁸ See *supra*, para. 1866.

⁵⁸⁶⁹ See *supra*, para. 1866.

⁵⁸⁷⁰ See *supra*, para. 1865. When asked about his understanding regarding the presence of prisoners in schools, **Pandurević** stated, “I knew about their presence in schools based on what I had been told by Mr. Grujić, and I understood this to be a temporary place for them, especially when Ljubo Bojanović provided additional information, saying that he knew that buses passed by the barracks but that the Zvornik Brigade had not been given any task relating to them.” Vinko Pandurević, T. 32433–32434 (3 Mar 2009).

⁵⁸⁷¹ According to **Pandurević**, Grujić mentioned schools in Petkovci and Pilica. See *supra*, para. 1865.

about the role of the Zvornik Brigade with respect to them. Thus, based on the limited information from Grujić and Bojanović, how then does **Pandurević** conclude, as referenced in his report, that these prisoners constitute an “additional burden” to him and his troops.⁵⁸⁷²

1957. Furthermore, the Trial Chamber notes that **Pandurević** is a seasoned, intelligent army commander, well disciplined and familiar with his duties to his superior command. His 15 July Interim Combat Report, by his own account, was a brave act and, together with his 18 July Interim Combat Report, it was the sole instance up to that point of anyone bold enough to include a reference in writing to the prisoners.⁵⁸⁷³ The tone of the fourth paragraph in the 15 July Interim Combat Report is strong and critical. In light of these considerations, in the view of the Trial Chamber, it thus strains credulity to accept that **Pandurević** would challenge his superiors in such a fashion on the basis of a single hearsay report, devoid of detail, conveyed to him by a civilian authority such as Grujić. Further, according to **Pandurević**’s own evidence, he would have known only that some prisoners were detained at schools in the area of Zvornik. The words and tone of the report—on every interpretation—convey a much more significant concern about security and the drain on resources than that which could be triggered by such limited information. Therefore, the Trial Chamber concludes that **Pandurević**’s evidence, considered in reference to the 15 July Interim Combat Report itself, is insufficient to raise a reasonable doubt as to source or nature of his knowledge on 15 July.

1958. [REDACTED]^{5874 5875}

1959. Assessing the evidence cumulatively, the Trial Chamber is ultimately satisfied beyond all reasonable doubt that on 15 July **Pandurević** was told by Obrenović about the detention, execution, and burial of prisoners in the Zvornik area as described by PW-168.

1960. Based on the information conveyed to him by Obrenović, **Pandurević** thus knew that pursuant to Mladić’s order, **Beara** and **Popović** had brought a large number of prisoners from Bratunac to Zvornik where they were being executed, and that according to Jokić, there were

⁵⁸⁷² The opening part of the paragraph about the situation of the prisoners reads an additional burden “for us”, which the Trial Chamber concludes refers thus to **Pandurević** and his Brigade. See Ex. P00329, “Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995”.

⁵⁸⁷³ See Pandurević Final Brief, paras. 804–806. The Trial Chamber recalls that PW-168 testified that Jokić had told Obrenović that **Popović** had ordered that nothing be written down or reported on the subject of the prisoners. PW-168, T. 16550–16551 (closed session) (18 Oct 2007), T. 15871 (26 Sept 2007). See also Richard Butler, T. 20819 (31 Jan 2008) (in reference to **Pandurević**’s 15 and 18 July Interim Combat Reports, stating “they’re extremely explicit documents in what they describe with respect to the prisoners” and confirming that he had not found any other written reports, made before 23 July 1995, which refer so explicitly to the prisoners as these two reports by **Pandurević**).

⁵⁸⁷⁴ [REDACTED]

⁵⁸⁷⁵ [REDACTED]

enormous problems with the guarding, execution and burial of these prisoners.⁵⁸⁷⁶ In light of this knowledge on the part of **Pandurević**, the Trial Chamber therefore finds that at this point on 15 July he knew of the plan to murder the able-bodied Bosnian Muslim males from Srebrenica.

1961. With regard to the conversation between Obrenović and **Pandurević** on 15 July, the Trial Chamber notes that according to PW-168's account, in response to Obrenović's information about the murder operation, **Pandurević** asked him why the Civilian Protection was not performing the burials.⁵⁸⁷⁷ The Prosecution submits that this response by **Pandurević** demonstrates that **Pandurević** already had knowledge of the murder operation prior to his return to Zvornik on 15 July.⁵⁸⁷⁸ However, the Trial Chamber is not satisfied that there are no other reasonable inferences that can be drawn from this response by **Pandurević** and therefore will not infer such prior knowledge on the part of **Pandurević** based on his response to Obrenović.

1962. The Prosecution also alleges that **Pandurević**'s statement "I will be forced to let them go"⁵⁸⁷⁹ in the 15 July Interim Combat Report indicates that on 15 July he knew that some of the Bosnian Muslim prisoners in the area of Zvornik were still alive and that he "had the ability and opportunity to save them, but deliberately chose not to."⁵⁸⁸⁰ According to **Pandurević**, however, his reference in the report to being forced to "let them go" meant the column of the ABiH 28th Division, and the terms "these problems" and "this responsibility" referred only to the column, and not to prisoners.⁵⁸⁸¹

1963. Having considered the 15 July Interim Combat Report and evidence relevant to it, the Trial Chamber finds that the reference to "let them go" in **Pandurević**'s report refers to the column of the ABiH 28th Division and not the prisoners.⁵⁸⁸² In reaching this finding, the Trial Chamber notes that this sentence is found in paragraph five of the report, separate from the self-contained comments in paragraph four, which the Trial Chamber has found refer to the situation of the prisoners. Paragraph five begins with a reference to the inability of the Command to take care of these "problems" anymore.⁵⁸⁸³ In the view of the Trial Chamber, this is a summary sentence referring to all of the

⁵⁸⁷⁶ See *supra*, para. 1861.

⁵⁸⁷⁷ See *supra*, para. 1861.

⁵⁸⁷⁸ Prosecution Final Brief, para. 1415.

⁵⁸⁷⁹ In the 15 July Interim Combat Report, paragraph five states "This command cannot take care of these problems any longer as it has neither the material nor other resources. If no one takes on this responsibility I will be forced to let them go." Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

⁵⁸⁸⁰ Prosecution Final Brief, para. 1442. See also Prosecution Final Brief, paras. 1421, 1423.

⁵⁸⁸¹ Vinko Pandurević, T. 31009–30010 (2 Feb 2009); see also *ibid.*, T. 32213–32214 (27 Feb 2009). **Pandurević** also testified that at the time he wrote the Interim Combat Report, he did not know the number of prisoners nor how many schools they were at. *Ibid.*, T. 31010 (2 Feb 2009).

⁵⁸⁸² See *supra*, para. 1870.

⁵⁸⁸³ Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

information conveyed above, most of which relates to the combat situation and the column. Additionally, the statement “I will be forced to let them go” in paragraph five is directly followed, in paragraph six, by a sentence on the subject of **Pandurević** having made an offer to Muminović concerning the column.⁵⁸⁸⁴ In the view of the Trial Chamber, the sentence containing the reference to “let them go” is thus linked to and must be read in conjunction with this following sentence which clearly references the column.

1964. Furthermore, whatever **Pandurević**’s responsibilities may have been with respect to the prisoners, the evidence is abundant that another part of the VRS—the Security Branch—had brought them to the Zvornik area, leaving **Pandurević** with limited direct control over the prisoners. This is in stark contrast to the circumstances of the combat situation and the column. The Trial Chamber also recalls **Pandurević**’s testimony that “the tone of [his] entire report was set so as to enable [him] to say at the end that [he] would be forced to let the column go especially after the conversation that [he] had had with Semso Muminović.”⁵⁸⁸⁵ Having assessed the 15 July Interim Combat Report in its totality, the Trial Chamber is of the view that **Pandurević**’s intention in the report was to build a case to justify his plan to open a corridor for the safe passage of the column. In these circumstances, the mention of ‘letting them go’ is a logical statement with reference to the column. Based on all of these considerations, the Trial Chamber is satisfied that paragraph five refers to the column and not to the prisoners. In light of this finding, the Trial Chamber therefore rejects the Prosecution’s allegation with regard to **Pandurević**’s alleged knowledge, based on the statement in this paragraph of the 15 July Interim Combat Report.

1965. In the days following his return on 15 July, **Pandurević** received additional information from individuals, including Obrenović and Jokić, about the events that had transpired in the Zvornik area with respect to the detention, execution, and burial of the Bosnian Muslim prisoners and the involvement of elements of the Zvornik Brigade in those events.⁵⁸⁸⁶ Based on the information that was conveyed to him in this period, **Pandurević** came to know about detentions, executions, and burials in Pilica, Petkovci, Ročević, Orahovac, and Branjevo Military Farm.⁵⁸⁸⁷ At the latest by late afternoon of 18 July, **Pandurević** also possessed greater knowledge of the scale of the murder operation, as illustrated by his reference to 3,000 Bosnian Muslim men that had been brought to the

⁵⁸⁸⁴ In the 15 July Interim Combat Report, paragraph six states: “I made an offer to the commander of the other side to separate out the civilians and have the others surrender, but he refused asking that they should all be released together.” Ex. P00329, “Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995”.

⁵⁸⁸⁵ Vinko Pandurević, T. 31011 (2 Feb 2009) (making this statement in explanation of why, in his report, he threatened to let the ABiH 28th Division go).

⁵⁸⁸⁶ See *supra*, paras. 1879–1884, 1889, 1893.

⁵⁸⁸⁷ See *supra*, paras. 1879–1881, 1883–1884, 1889.

area of Zvornik and allusion to their execution there in the 18 July Interim Combat Report.⁵⁸⁸⁸ Ultimately, considering the extent of the information known by **Pandurević** by this time, the Trial Chamber is satisfied that on 18 July he was aware of the scale of the murder operation. The Trial Chamber notes that the extent of his knowledge of the murder operation is further confirmed by the content of his subsequent discussion with Obrenović on 23 July.⁵⁸⁸⁹

ii. Intent to Carry Out the Common Purpose

1966. Having found that **Pandurević** was aware of the common purpose of the JCE to Murder, the Trial Chamber will now consider whether **Pandurević** possessed the requisite intent to carry out this common purpose. The Trial Chamber finds that there is simply no evidence to establish that **Pandurević** shared the intent, with other participants of the JCE, to commit the crimes that formed the object of the JCE. Not only is there an absence of acts or omissions by **Pandurević** or other evidence from which intent could be inferred, but there is also evidence which tends to negate the suggestion of any such intent on the part of **Pandurević** to carry out the common purpose. In particular, the Trial Chamber considers **Pandurević**'s opening of the corridor for the passage of the Bosnian Muslim column at Baljkovica, in contravention of the order from the Superior Command, and his efforts to send captured prisoners to the Batković detention centre or to have these prisoners exchanged, as acts which contradict the existence of any such intent.⁵⁸⁹⁰

1967. Although the Trial Chamber finds that **Pandurević** lacked the intent to carry out the common purpose of the JCE, the Trial Chamber will nevertheless briefly address the issue of any alleged contribution by **Pandurević** to that purpose.

iii. Contribution to the Common Purpose

1968. With respect to **Pandurević**'s contribution to the common purpose, the Prosecution submits that upon his return to Zvornik on 15 July he was fully informed about the participation of members of his brigade in the detention, guarding, transport, murder, and burial of the Bosnian Muslim prisoners in the area of Zvornik.⁵⁸⁹¹ The Prosecution thus alleges that having this information, **Pandurević** authorised the further participation of elements of the Zvornik Brigade in the murder operation in the following days.⁵⁸⁹² The Prosecution also submits that **Pandurević** contributed to

⁵⁸⁸⁸ See *supra*, para. 1895.

⁵⁸⁸⁹ See *supra*, paras. 1908–1911.

⁵⁸⁹⁰ See *supra*, paras. 1873–1874, 1892, 1898, 1902–1903, 1913.

⁵⁸⁹¹ Prosecution Final Brief, paras. 1413, 1415, 1421.

⁵⁸⁹² Prosecution Final Brief, paras. 1480, 1494. See also *ibid.*, paras. 1423, 1489–1491, 1495, 1496–1497.

the common purpose through the murder of a group of Muslims near Nežuk by a unit of the 16th Krajina Corps under his command, his role in the murder of the wounded prisoners from Milići Hospital, and his complicity in the murder of the four Branjevo Military Farm survivors.⁵⁸⁹³

1969. The Trial Chamber recalls that **Pandurević** was absent from Zvornik from 4 to 15 July. During this period, Obrenović was deputising for him and received orders from the Corps Command and acted upon them as well as issued orders to units of the Zvornik Brigade, without seeking the approval of, or consulting with, **Pandurević**.⁵⁸⁹⁴ During his absence from Zvornik, **Pandurević** had minimal contact with the Brigade and there is no evidence that he was aware of the events transpiring in the Zvornik area, including the murder operation, let alone that he contributed to them.⁵⁸⁹⁵

1970. For the period of 15 to 23 July, after **Pandurević** had returned to the Zvornik Brigade and during which the vast majority of the remaining victims were executed and buried, there is no evidence before the Trial Chamber that **Pandurević** himself participated or that he ordered, authorised or otherwise approved the participation of his subordinates in the murder operation.

1971. The Prosecution submits that because of his knowledge of the murder operation and the involvement of his Brigade on 15 July, **Pandurević** can be considered to have “authorised” the continued participation of his troops and that this constituted a significant contribution to the JCE.⁵⁸⁹⁶ The Trial Chamber has considered this argument. According to the jurisprudence, such authorisation can arise from commission or omission.⁵⁸⁹⁷ As there is no evidence of any positive acts to authorise his troops’ involvement, the Trial Chamber has assessed the argument from the perspective of whether **Pandurević**’s knowledge and lack of action constitutes commission by omission in terms of a contribution to the JCE.

1972. The Trial Chamber recalls that **Pandurević** returned to the Zvornik Brigade headquarters on 15 July at noon, at which point he acquired some knowledge of the murder operation.⁵⁸⁹⁸ Specifically, he was made aware that members of the VRS Security Organ had brought a large number of prisoners into the area to be executed. He was also informed obliquely of some

⁵⁸⁹³ *Ibid.*, paras. 1498-1515. See also Indictment, paras. 30.13-30.15, 39(c).

⁵⁸⁹⁴ PW-168, T. 16185-16186 (closed session) (10 Oct 2007). See also Miodrag Dragutinović, T. 12702 (15 June 2007) (testifying that while away from the Zvornik Brigade and commanding TG-1, **Pandurević** did not issue any orders to the Zvornik Brigade, nor was he notified of orders given by the superior command to the Zvornik Brigade); PW-168, T. 16049 (closed session) (9 Oct 2007), T. 16191-16193 (10 Oct 2007) (testifying that during **Pandurević**’s absence, Obrenović bore full responsibility for the units of the Zvornik that remained in its standard positions, *i.e.*, in the defence area in Zvornik). See also *supra*, paras. 1842, 1844, 1861.

⁵⁸⁹⁵ See *supra*, paras. 1845-1846, 1960.

⁵⁸⁹⁶ See Prosecution Final Brief, paras. 1468, 1480, 1494, 1540.

⁵⁸⁹⁷ See *Blaškić* Appeal Judgement, paras. 663-664.

⁵⁸⁹⁸ See *supra*, para. 1861.

involvement on the part of the Zvornik Brigade. However, having considered the precise information provided by Obrenović on 15 July, the Trial Chamber is not convinced that it was sufficient in itself or in combination with the information provided by Grujić, to find that at this point **Pandurević** knew that members of the Zvornik Brigade were committing or aiding and abetting crimes. Notably, he was neither told nor did he seek any specifics as to the involvement of the Zvornik Brigade in the murder operation, Brigade members' knowledge of the executions, or the particular responsibilities of his Chief of Security in the operation. While undoubtedly the information triggered his obligations under superior responsibility as will be discussed later, for the purposes of assessing his participation in the crimes and contribution to the JCE, the Trial Chamber is not satisfied that the knowledge requirement for commission by omission has been met. In essence, it cannot be said that at this point **Pandurević** knew that his men were committing crimes and he tacitly authorised their continuing participation.

1973. The Trial Chamber notes that, by his own account, on the evening of 16 July, during a conversation with Obrenović at the Kitovnice IKM, **Pandurević** became aware that members of the Zvornik Brigade had participated in guarding prisoners who had been detained in the Zvornik area and had participated in the burials of the executed prisoners.⁵⁸⁹⁹ However, by the time at which **Pandurević** acquired this knowledge on the evening of 16 July, members of the Zvornik Brigade were no longer engaged in activities connected to the detention and execution of the prisoners in the area of Zvornik.⁵⁹⁰⁰

1974. With respect to the murder of the four Bosnian Muslim men near Nežuk on 19 July, the Trial Chamber has previously found that there is insufficient evidence to establish beyond reasonable doubt that members of the 16th Krajina Brigade, who were resubordinated to the Zvornik Brigade, were involved in the killings of the four men.⁵⁹⁰¹ Furthermore, there is no evidence that **Pandurević** had knowledge of these killings or in any way planned, instigated, ordered or otherwise aided and abetted in the planning, preparation or execution of the murder of the four men at Nežuk.

1975. With regard to the four Branjevo Military Farm survivors, the Trial Chamber recalls that it has found that **Nikolić** informed **Pandurević** of the capture of these four men and the fact that they

⁵⁸⁹⁹ See *supra*, paras. 1879–1882. The Trial Chamber recalls that it has accepted **Pandurević**'s account of the occurrence and content of a conversation between himself and Obrenović on the evening of 16 July and has found that at this time, he acquired additional information, building upon the information he received previously on 15 July, about the murder operation carried out in Zvornik.

⁵⁹⁰⁰ See *supra*, paras. 475–534.

⁵⁹⁰¹ See *supra*, para. 569.

were survivors of executions.⁵⁹⁰² Additionally, the Trial Chamber is satisfied that **Pandurević** and **Nikolić** met after the briefing to discuss these prisoners.⁵⁹⁰³ However, as in the case of **Nikolić**, in the absence of evidence as to the content of their subsequent conversation or as to any actions by **Pandurević**, there is more than one possible inference that can be drawn as to **Pandurević**'s involvement in the killings.⁵⁹⁰⁴ Thus, while the Trial Chamber has found that the four Branjevo Military Farm survivors were murdered,⁵⁹⁰⁵ it is not satisfied beyond reasonable doubt that **Pandurević** was involved in their murder.

1976. The Trial Chamber has found *infra*, by majority, Judge Kwon dissenting, that **Pandurević** is responsible for aiding and abetting by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital around 23 July. The Trial Chamber has found **Pandurević** responsible due to his failure to take measures to prevent **Popović** from taking the prisoners away with the knowledge that **Popović** was involved in the murder operation and that the prisoners would thus probably be killed.⁵⁹⁰⁶ The Trial Chamber, however, does not consider **Pandurević**'s omission in this respect to amount to a significant contribution by him to the common purpose of the JCE.

1977. With respect to **Pandurević**'s alleged contribution to the common purpose of the JCE, the Trial Chamber also recalls its finding that reburial is not a crime under the Statute. Moreover, in the case of **Pandurević** specifically, the evidence is insufficient to support a finding that he was involved in the reburial operation that was conducted in September and October 1995.⁵⁹⁰⁷

1978. Considering his lack of involvement in the murder operation, the Trial Chamber therefore finds that **Pandurević** did not significantly contribute to the common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.

⁵⁹⁰² See *supra*, para. 1912.

⁵⁹⁰³ See *supra*, para. 1912.

⁵⁹⁰⁴ See *supra*, para. 1912. The Trial Chamber in this regard also notes that there is no evidence linking **Pandurević** to the disciplinary measures initiated against the two men, Neško and Slobodan Đokić, who helped the four Bosnian Muslim men. With respect to such disciplinary measures, the Trial Chamber recalls that these two men were brought to the Standard Barracks to be interrogated in connection with their assistance to the four prisoners, and later **Nikolić** ordered Jeremić to draft an order on behalf of the Brigade Commander imposing a penalty of 60 days military imprisonment for the two men. See *supra*, para. 587. There is also a document signed by **Nikolić** for the detention of Neško and Slobodan Đokić for three days from 24 July 1995. See Ex. P00385, "Judgment against Neško and Slobodan Đokić (for aiding four Bosnian Muslim males)". However, there is no documentation directly linking the arrest and disciplinary measures to **Pandurević**. Additionally, with regard to **Nikolić**'s authority to issue such a detention, according to **Pandurević**, "[t]he security organ, acting *ex officio* and in compliance with their obligations according to the rules, estimated that this constituted cooperation with the enemy and punished these two men by imposing three days of -- in detention, and then submitted a criminal charge to the prosecutors. This did not require any authorisations either from the commander or from someone else." Vinko Pandurević, T. 32333 (2 Mar 2009). **Pandurević** further stated, "I don't remember at all punishing anyone for cooperating with the enemy. If there is any such order, I would really like to see it, but I don't remember doing any such thing." *Ibid*.

⁵⁹⁰⁵ See *supra*, para. 589.

⁵⁹⁰⁶ See *infra*, paras. 1988–1991.

⁵⁹⁰⁷ See *supra*, paras. 1921, 1927, fn. 5806.

iv. Conclusion

1979. In light of **Pandurević**'s lack of intent to further the common purpose of the JCE and lack of significant contribution, the Trial Chamber finds that **Pandurević** was not a participant in the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica.

b. Other Modes of Liability

1980. The Prosecution also alleges that **Pandurević** committed, planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.⁵⁹⁰⁸ The Trial Chamber has found that **Pandurević** had no intent to murder. In addition, there is no evidence before the Trial Chamber of any acts or omissions on his part that would constitute other Article 7(1) forms of responsibility, except for aiding and abetting which is discussed below, in relation to the crime of murder.

c. Aiding and Abetting the Murder of the Wounded Prisoners from Milići Hospital

1981. The Prosecution submits that **Pandurević** assisted in the execution of the ten wounded Bosnian Muslim prisoners from Milići Hospital, alleging that the removal of these prisoners from the Zvornik Brigade infirmary and their subsequent summary execution around 23 July were done with the knowledge and under the authority of **Pandurević**.⁵⁹⁰⁹ In particular, the Prosecution argues that **Pandurević** failed to take measures to prevent these wounded prisoners in his custody from being taken away by **Popović**, although **Pandurević** knew that their lives were in danger in light of his knowledge that **Popović** had been involved in the murder operation.⁵⁹¹⁰ The Prosecution submits that **Pandurević** intentionally breached his duty to protect these wounded prisoners and was "compliant" with the orders to kill them.⁵⁹¹¹

1982. The Trial Chamber recalls that during the period in which members of the Zvornik Brigade were searching the terrain on 18 July and during the subsequent few days, **Pandurević** made arrangements for the transfer or exchange of prisoners taken into custody by his troops.⁵⁹¹² On 23 July, **Pandurević** was in contact with the Drina Corps requesting instructions as to where to send or

⁵⁹⁰⁸ Indictment, paras. 88–90.

⁵⁹⁰⁹ Indictment, paras. 30.15, 39(c)(vi).

⁵⁹¹⁰ Prosecution Final Brief, paras. 1507–1508.

⁵⁹¹¹ *Ibid.*, para. 1511.

⁵⁹¹² *See supra*, paras. 1892, 1898, 1902–1903, 1913.

what to do with the wounded Bosnian Muslim prisoners in his custody.⁵⁹¹³ The Trial Chamber has previously concluded that **Pandurević** was informed later that day that **Popović** would come to take care of the situation of the wounded prisoners who were being held at the Zvornik Brigade.⁵⁹¹⁴ As previously found, the Trial Chamber is also satisfied that the wounded men were placed in the custody of **Popović** on 23 July and that **Popović** was responsible for the death of these ten men.⁵⁹¹⁵

1983. Having considered the evidence of **Pandurević**'s conduct prior to the removal of the wounded prisoners, the Trial Chamber is satisfied that in requesting instructions and assistance with respect to these wounded prisoners, **Pandurević**'s intent was to arrange for them to be exchanged or transported to a camp in the same manner as other prisoners. Nothing in the circumstances surrounding his request—in particular the open way in which he dealt with the matter—suggests that he sought assistance in arranging for the murder of these prisoners. In reaching this conclusion, the Trial Chamber finds particularly relevant the evidence of **Pandurević**'s inquiry with the Drina Corps Command whether these prisoners could be exchanged or transferred to Batković.⁵⁹¹⁶ The Trial Chamber is thus not satisfied that **Pandurević** possessed the intent to murder the ten wounded Bosnian Muslim prisoners.

1984. In light of his lack of intent in this respect, the Trial Chamber will now turn to the issue of whether **Pandurević** aided and abetted the murder of the ten wounded Bosnian Muslim prisoners. In the case of **Pandurević**, there is no evidence before the Trial Chamber of any positive acts on his part that may have aided or abetted the murder of the wounded men. The Trial Chamber notes that nothing in the evidence shows that he was present at the clinic when the prisoners were taken away, or that he ordered their release into the custody of **Popović**.⁵⁹¹⁷ In fact, the evidence before the Trial Chamber is devoid of any detail as to the circumstances under which these men were removed from the Zvornik Brigade. However, the Trial Chamber must also consider if **Pandurević**'s conduct can properly constitute aiding and abetting by omission.

1985. The Trial Chamber recalls the jurisprudence that provides for aiding and abetting by omission.⁵⁹¹⁸ Specifically, where a person fails to discharge a legal duty and by this failure assists, encourages or lends moral support to the perpetration of a crime and has a substantial effect on the commission of that crime, he or she may be held criminally responsible.⁵⁹¹⁹ The person must have

⁵⁹¹³ See *supra*, paras. 1903–1904.

⁵⁹¹⁴ See *supra*, para. 1907.

⁵⁹¹⁵ See *supra*, para. 1156.

⁵⁹¹⁶ See *supra*, para. 1903.

⁵⁹¹⁷ See *supra*, paras. 1899–1901, 1903–1905.

⁵⁹¹⁸ See *supra*, para. 1019.

⁵⁹¹⁹ See *supra*, para. 1019.

the ability to act and must know the essential elements of the crime and that his or her omission assists the commission of the crime.⁵⁹²⁰

1986. The Trial Chamber will first address whether **Pandurević** had a legal duty to protect the ten wounded prisoners. As discussed earlier, around 20 July, the ten men were transferred to the clinic of the Zvornik Brigade, of which **Pandurević** was informed, and were held at the Brigade for several days.⁵⁹²¹ The Trial Chamber also recalls that following the arrival of these prisoners, **Pandurević** ordered Obrenović to inspect the security situation with respect to the prisoners and to put measures in place to secure them.⁵⁹²² Additionally, in the days they were held at the Brigade, the wounded prisoners were also guarded by Zvornik Brigade Military Police.⁵⁹²³ Based on these facts, the Trial Chamber is thus satisfied that on 23 July the Zvornik Brigade had custody and control of the ten wounded prisoners from Milići Hospital who were being held at the Brigade. The Trial Chamber recalls that, in accordance with the laws and customs of war, all state agents who have custody of prisoners owe them a duty of protection.⁵⁹²⁴ The Trial Chamber further notes that the duty to protect does not end with the transfer of custody to other units as an agent charged with the responsibility of prisoners has an ongoing duty in any hand-over to assure himself or herself that the prisoners will not be harmed.⁵⁹²⁵ As the Commander of the Zvornik Brigade, **Pandurević** therefore had a duty to protect these prisoners and to treat them humanely and that duty did not end with their transfer into **Popović**'s custody.⁵⁹²⁶

1987. The Trial Chamber will now consider whether in the circumstances, **Pandurević** had an ability to act, such that there were means available to him to fulfill this duty. In the view of the Trial Chamber, upon learning that **Popović** was coming to deal with the prisoners, **Pandurević** could have intervened to protect them. Several options were open to him. Prior to **Popović**'s arrival, **Pandurević** could have arranged for the transfer of the prisoners himself and had them transported to a POW camp or another location for exchange. He could even have moved them temporarily to another facility in order to be able to advise **Popović** that they were no longer at the Brigade. **Pandurević** could also have taken the step of calling in the ICRC to register the men. **Pandurević** was present at the Standard Barracks throughout the day of 23 July, and thus he could have instructed the military police to inform him of **Popović**'s arrival. At that point, he could have told

⁵⁹²⁰ See *supra*, paras. 1019–1020. See also *Ntagerura et al.* Appeal Judgement, para. 335.

⁵⁹²¹ See *supra*, paras. 1899, 1905.

⁵⁹²² See *supra*, para. 1899.

⁵⁹²³ See *supra*, para. 1900.

⁵⁹²⁴ *Mrkšić and Šljivančanin* Appeal Judgement, para. 73. The Trial Chamber also recalls that breach of the duty to protect prisoners of war as imposed by the laws and customs of war may give rise to individual criminal responsibility. *Mrkšić and Šljivančanin* Appeal Judgement, para. 151. See also *supra*, para. 1019.

⁵⁹²⁵ *Mrkšić and Šljivančanin* Appeal Judgement, para. 74.

⁵⁹²⁶ *Mrkšić and Šljivančanin* Appeal Judgement, para. 74.

Popović that the men were no longer there or he could have simply exercised his power and authority as brigade commander to prevent **Popović** from taking custody of them. Based on these considerations, the Trial Chamber finds that **Pandurević** had the means to fulfil his duty towards the prisoners in his custody.

1988. The Trial Chamber finds that despite his ability to do so, **Pandurević** took no action to fulfill his duty towards the wounded prisoners on 23 July. By failing to act, upon learning of **Popović's** impending arrival, and thus making it possible for **Popović** to take the prisoners, **Pandurević** assisted in the subsequent murder of the prisoners by **Popović**. The Trial Chamber therefore finds that **Pandurević's** failure to discharge his legal duty to protect the wounded prisoners assisted in and substantially contributed to the murder of the ten men. The Trial Chamber is therefore satisfied that the requisite elements for the *actus reus* of aiding and abetting by omission have been met.

1989. The Trial Chamber will now consider whether **Pandurević** had the requisite *mens rea* for aiding and abetting the murder of the ten wounded prisoners. To incur criminal responsibility by way of aiding and abetting by omission, **Pandurević** had to know the essential elements of the crime to be committed and that his failure to act would assist the commission of that crime.⁵⁹²⁷ By 23 July, he had knowledge of **Popović's** key role in the execution of the Bosnian Muslim men who had been detained in the area of Zvornik. **Pandurević** had received information to this effect from Obrenović on 15 and 17 July.⁵⁹²⁸ In light of **Pandurević's** knowledge of **Popović's** involvement in the murder operation, the Trial Chamber, by majority, Judge Kwon dissenting, finds that, upon learning that he would come to resolve the issue of the prisoners, **Pandurević** knew it was probable that the wounded prisoners would be murdered once they were transferred into **Popović's** custody.

1990. Additionally, knowing that the killing of the prisoners was the probable outcome of their being taken into **Popović's** custody, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Pandurević** must have also realised that, given his responsibility for the prisoners, if he failed to take action to ensure their continued protection, he would be assisting **Popović** to carry out the murders. The Trial Chamber, by majority, Judge Kwon dissenting, thus finds that the only reasonable inference is that **Pandurević** knew that it was probable the prisoners would be killed and that if he failed to act, his omission would assist in the murder of the prisoners. Accordingly, the requisite elements for the *mens rea* of aiding and abetting have been met.

⁵⁹²⁷ See *supra*, para. 1019.

⁵⁹²⁸ See *supra*, paras. 1861, 1883.

1991. In light of the foregoing, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.

(ii) Forcible Transfer

a. The Joint Criminal Enterprise to Forcibly Remove

1992. The Trial Chamber will begin with an examination of **Pandurević**'s alleged participation in the joint criminal enterprise to forcibly remove. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim populations from Srebrenica and Žepa.⁵⁹²⁹

i. Knowledge of the Common Purpose

1993. The Trial Chamber will first assess whether **Pandurević** knew of the common purpose to forcibly remove the Bosnian Muslim populations from both enclaves. **Pandurević** knew of the 20 March 1995 Order from Živanović which was addressed to the Drina Corps Brigade Commands, including specifically that of the Zvornik Brigade.⁵⁹³⁰ The 20 March Order reiterated the criminal objective described in Directive 7, stating “[b]y 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 and Žepa”.⁵⁹³¹

1994. Additionally, as Commander of TG-1, **Pandurević** received and read the two *Krivaja-95* Orders, which were issued to the brigade commands and defined the objectives and general tasks of the unit he was to command pursuant to the *Krivaja-95* operation.⁵⁹³² These orders expressly referred to Directive 7 and Directive 7/1 in outlining the tasks of the combat groups participating in the operation.⁵⁹³³ Moreover, the *Krivaja-95* combat order specified that one of the objectives of the operation was “to create conditions for the elimination of the enclaves”,⁵⁹³⁴ which the Trial Chamber has previously found refers to the goal expressed in Directive 7 to forcibly remove the civilian populations from the enclaves by creating a situation “with no hope of further survival or

⁵⁹²⁹ See *supra*, para. 1087.

⁵⁹³⁰ Vinko Pandurević, T. 30822 (29 Jan 2009). See also *supra*, para. 201.

⁵⁹³¹ Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6. See also Vinko Pandurević, T. 30822 (29 Jan 2009) (confirming that in the spring of 1995 he received the Drina Corps order). Whether or not **Pandurević** knew earlier in 1992 or 1993 of Directive 4, the Trial Chamber is satisfied the relevant issue is whether he knew of the operation as of March 1995.

⁵⁹³² See *supra*, para. 1843.

⁵⁹³³ See *supra*, paras. 244–245.

⁵⁹³⁴ Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja 95, 2 July 1995”, para. 4.

life for the inhabitants of Srebrenica and Žepa.”⁵⁹³⁵ Thus, although **Pandurević** may not have been specifically familiar with Directive 7 and its contents, it can be concluded that he nevertheless was aware of the criminal objective described in this document by virtue of his knowledge of the 20 March 1995 Order as well as the *Krivaja-95* Orders.

1995. Based on the aforementioned evidence, the Trial Chamber is satisfied that **Pandurević** had knowledge of the plan to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves.

ii. Intent to Carry Out the Common Purpose

1996. Having found that **Pandurević** had knowledge of the common purpose of the JCE, the Trial Chamber will now consider whether **Pandurević** shared the intent, with the other participants of the JCE, to carry out the common purpose to remove the Bosnian Muslim populations from Srebrenica and Žepa. The Trial Chamber will first address whether **Pandurević**’s intent to carry out the common purpose can be inferred from his participation in the attack on the enclaves. In assessing his intent, the Trial Chamber must be cognizant of the dual purpose of the *Krivaja-95* Operation as well as the military context in which **Pandurević** acted pursuant to the operation directed against Srebrenica. On one hand, the *Krivaja-95* Operation partly implemented the common plan of the JCE by creating circumstances that led to the forcible displacement of the Bosnian Muslim population of Srebrenica. However, the operation also had the legitimate military objective to secure the demilitarisation of the enclave. Thus, **Pandurević**’s actions during the attack were part of an operation that included a legitimate military aim, while at the same time supporting the plan to forcibly remove the Bosnian Muslim populations from the two enclaves.

1997. The Trial Chamber will now consider **Pandurević**’s acts with a view to assessing his intent. The Trial Chamber recalls that in the beginning of July 1995, **Pandurević** commanded TG-1 in the military attack on Srebrenica pursuant to the *Krivaja-95* Orders.⁵⁹³⁶ During this combat operation, in the days leading up to the taking of the enclave, **Pandurević** and his TG-1 units took several features in the area around Srebrenica, thus assisting the VRS to control the boundaries of the enclave and prevent any communication between Srebrenica and Žepa.⁵⁹³⁷ Additionally, during the course of these events, the forces under **Pandurević**’s command removed UNPROFOR soldiers from their OPs, including those at the Biljeg OP and another in the Zeleni Jadar sector.⁵⁹³⁸ The Trial

⁵⁹³⁵ Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10.

⁵⁹³⁶ See *supra*, paras. 1843–1851.

⁵⁹³⁷ See *supra*, paras. 1847–1848.

⁵⁹³⁸ See *supra*, para. 1847.

Chamber finds that the disabling of these UNPROFOR OPs was a further step towards enabling the VRS to take over the Srebrenica enclave and remove the civilian population of Srebrenica.

1998. On 10 and 11 July, **Pandurević** was ordered by Krstić to advance towards and take control of Srebrenica town, and pursuant to these orders, **Pandurević** and TG-1 continued their attack and captured features on the hills immediately surrounding Srebrenica town.⁵⁹³⁹ Although the VRS forces shelled civilian targets in the town of Srebrenica during this period,⁵⁹⁴⁰ there is no evidence before the Trial Chamber to attribute responsibility for the indiscriminate shelling of civilians specifically to **Pandurević**'s units.⁵⁹⁴¹ Ultimately, in the afternoon of 11 July, **Pandurević** and TG-1 entered Srebrenica town, and **Pandurević** walked through the town, which was empty at the time because the population had left, and there he would have seen the town as it presented itself.⁵⁹⁴²

1999. With respect to the military operation against Žepa, on 12 July, **Pandurević** was instructed to advance towards Žepa.⁵⁹⁴³ On 13 July, while addressing the soldiers, Mladić ordered that the forces, including those of **Pandurević**, were to take the Žepa enclave.⁵⁹⁴⁴ On 14 July, pursuant to the order from Krstić for *Stupčanica-95*, the military operation against the Žepa enclave, **Pandurević** and his forces launched an attack against the enemy forces several kilometres away from the village of Žepa.⁵⁹⁴⁵ These combat activities continued the next morning.⁵⁹⁴⁶ However, later in the morning of 15 July, **Pandurević** was ordered by Krstić to return to Zvornik, and thus he and his troops withdrew from the area, ceasing their involvement in the Žepa operation.⁵⁹⁴⁷ In this respect, **Pandurević**'s participation in the attack on Žepa was very limited.

2000. Considering the acts described above cumulatively, one reasonable inference is that **Pandurević** participated in the military operation against Srebrenica in order to further the common purpose of forcibly removing the Bosnian Muslim population of the Srebrenica enclave. However, taking into account the legitimate military aspect of the *Krivaja-95* operation, an equally reasonable inference is that **Pandurević**, as a commander at the tactical level, carried out his orders and undertook the actions described above with the intent to achieve the military objective of defeating the ABiH 28th Division forces in both enclaves. To that end, the disabling of the OPs, while illegal, could potentially be considered to have been reasonably necessary for the legitimate military aim of

⁵⁹³⁹ See *supra*, paras. 1849–1850.

⁵⁹⁴⁰ See *supra*, paras. 253, 255, 257.

⁵⁹⁴¹ The Trial Chamber, however, is satisfied that from his position, **Pandurević** would have been aware of the shelling of the town and the extent of the shelling.

⁵⁹⁴² See *supra*, para. 1851.

⁵⁹⁴³ See *supra*, paras. 1853–1855.

⁵⁹⁴⁴ See *supra*, para. 1856.

⁵⁹⁴⁵ See *supra*, para. 1858.

⁵⁹⁴⁶ See *supra*, para. 1859.

⁵⁹⁴⁷ See *supra*, para. 1859.

the operation.⁵⁹⁴⁸ In this context, the Trial Chamber also notes that the majority of **Pandurević**'s military activities pursuant to the *Krivaja-95* Operation occurred prior to Karadžić's order for the VRS forces to take the town of Srebrenica.⁵⁹⁴⁹ In light of these considerations, the Trial Chamber therefore finds that intent to carry out the common purpose cannot be inferred from **Pandurević**'s participation in the *Krivaja-95* Operation.

2001. Besides these military acts during the operation, as described above, there are no other acts by **Pandurević** from which to infer intent on his part to further the common purpose to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa. In particular, the Trial Chamber recalls that there is no evidence that **Pandurević** was involved in the planning to forcibly remove the Bosnian Muslim populations from the enclaves. The Trial Chamber also notes that there is no evidence that **Pandurević** and his TG-1 forces were involved in specifically targeting civilians during their participation in the attack on Srebrenica. Furthermore, **Pandurević** was not involved in the actual transfer of the Bosnian Muslim people from Potočari. There is also insufficient evidence that soldiers from TG-1 under **Pandurević**'s command participated in the transfer operation in Potočari. Several witnesses testified that they saw soldiers from the Drina Wolves in Potočari on 12 July.⁵⁹⁵⁰ However, the only evidence before the Trial Chamber that suggests that these soldiers were involved in tasks in Potočari related to the "transportation of the women and children to Kladanj and the separation and detention of the able-bodied Muslim men"⁵⁹⁵¹ comes from Momir Nikolić.⁵⁹⁵² In light of the fact that his testimony on this point is uncorroborated and quite vague, the Trial Chamber is of the view that such evidence is insufficient to find that members of the Drina Wolves assisted in the separation and transportation of the Bosnian Muslims in Potočari.

2002. Besides arguing that his criminal intent can be inferred from his actions, the Prosecution also points to a report from April 1995 signed by **Pandurević** as additional evidence that he shared

⁵⁹⁴⁸ The Trial Chamber recalls that there is evidence that the ABiH forces were positioned in the immediate vicinity or directly next to the UN OPs. *See supra*, fn. 5521.

⁵⁹⁴⁹ *See supra*, paras. 252, 1846–1848.

⁵⁹⁵⁰ *See* Momir Nikolić, T. 33012–33013 (22 Apr 2009); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 18 (stating that he saw some of the Drina Wolves but had the impression they were passing through and later he found out that they had an assignment elsewhere); PW-100, T. 14810–14811 (5 Sept 2007) (stating that he saw members of the Drina Wolves at the DutchBat compound and on the left arm of the Drina Wolves' uniforms there was an insignia of a wolf's head); Dragoslav Trišić, T. 27069 (20 Oct 2008), T. 27110, 27119–27120 (21 Oct 2008) (stating that from the patches on the sleeves depicting the words "The Army of the Republika Srpska" with the insignia of the Drina Wolves, he concluded that a small number of soldiers were from the Zvornik Brigade. Shown Ex. 7D00063, "Photography of Military Insignia", he however could not recognise the insignia on the document).

⁵⁹⁵¹ Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2. *See also* Momir Nikolić, T. 33012 (22 Apr 2009).

⁵⁹⁵² *See supra*, fn. 1156.

the intent of the RS and VRS leadership to forcibly remove the Bosnian Muslim population from parts of eastern Bosnia.⁵⁹⁵³ The relevant portions of the report are as follows:

The moment has come when the issue of liberating the Serbian lands from the *poturice*⁵⁹⁵⁴ [...] will be finally resolved in the area by a resolute and successful action of our forces. [...] One should not be short-sighted and fail to see that precisely by doing this they have given us a unique chance to push them away from us for all time [...] The adequate response of our forces meant that we realised that there would be no peace and security in Semberija and Donje Podrinje until the *poturice* were completely defeated and driven out of this area. In the fight for a single Serbian territory, our response to the enemy offensive, enemy combat operations have been going on for one month in our Brigade's zone of responsibility. [...] Therefore, let us gather our strength with determination and focus it on the most important goal at the moment driving the enemy away from this area forever and defeating him.⁵⁹⁵⁵

2003. Although **Pandurević** admitted that he signed the document, he also testified that it was written by Nenad Simić, the Zvornik Brigade's Assistant Commander for Morale, Religious and Legal Affairs.⁵⁹⁵⁶ According to **Pandurević**, he did not read the entire document but only glanced at it before signing it.⁵⁹⁵⁷ **Pandurević** explained that he only glanced at the document because this was the practice for documents which were not directly related to combat activities.⁵⁹⁵⁸ Ultimately, responsibility for this document lies in a formal sense with **Pandurević** as the signatory of the document and generally as the Commander of the Brigade from which it was produced.⁵⁹⁵⁹ However, in the absence of additional information, **Pandurević** raised a reasonable doubt as to whether the document was in fact written by him and thus specifically reflected his own personal views. In addition, the Trial Chamber views the report as a propaganda document written for the purpose of strengthening the morale of the troops and thus finds the report to be unconvincing as evidence of **Pandurević**'s alleged intent in this respect. Accordingly, for the purposes of evaluating criminal responsibility, the Trial Chamber considers the report to be an insufficient basis on which to conclude that **Pandurević** possessed the necessary criminal intent to carry out the common purpose.

2004. The Prosecution also argues that **Pandurević**'s acts prior to July 1995 further evidence his intent to carry out the common purpose of the JCE.⁵⁹⁶⁰ In this regard, the Prosecution has made submissions on the opening of a corridor by **Pandurević** for the passage of civilians in Kamenica in

⁵⁹⁵³ See Ex. P02920, "Zvornik Brigade report, signed by Vinko Pandurević, 25 April 1995"; Prosecution Final Brief, paras. 1320-1322.

⁵⁹⁵⁴ *Poturice* is a derogatory term for Slavic Muslims.

⁵⁹⁵⁵ Ex. P02920, "Zvornik Brigade report, signed by Vinko Pandurević, 25 April 1995", pp. 1, 3.

⁵⁹⁵⁶ Vinko Pandurević, T. 30832 (29 Jan 2009).

⁵⁹⁵⁷ *Ibid.*, T. 30833 (29 Jan 2009). During his testimony, **Pandurević** also stated that it should never have been written and that he should not have signed it because "there are certain parts and sections that, as they are, should never have been included in this kind of report." *Ibid.*

⁵⁹⁵⁸ Vinko Pandurević, T. 32046 (25 Feb 2009).

⁵⁹⁵⁹ See *ibid.*, T. 32046-32047 (25 Feb 2009) ("Since my signature is here, I am responsible. [...] The commander is responsible in principle [for the content of the document]").

⁵⁹⁶⁰ See Prosecution Final Brief, paras. 1281, 1285-1306, 1317-1319.

February 1993,⁵⁹⁶¹ the alleged shelling of civilians by **Pandurević**'s forces in 1993,⁵⁹⁶² the alleged destruction of a mosque in Konjević Polje⁵⁹⁶³ and participation in the burning of houses by

⁵⁹⁶¹ Prosecution Final Brief, paras. 1285-1288. The Prosecution maintains that in early 1993, **Pandurević** participated in the VRS military operations in the Kamenica, Cerska and Konjević Polje areas pursuant to Directive 4 and the 24 November 1992 order. Prosecution Final Brief, para. 77. *See also* Ex. P04226, "Drina Corps Command Combat Order for the liberation of Kamenica, Cerska and Konjević Polje, signed by Živanović, 11 February 1993"; Ex. P03029, "Decision for further operations from the Drina Corps to Zvornik Light Infantry Brigade signed by Živanović, 24 November 1992"; Milenko Lazić, T. 21831 (5 June 2008) (testifying that "[i]t is obvious that the contents of item 1, one would say, stem out of the directive"); Richard Butler, T. 19681 (15 Jan 2008). The Prosecution further asserts that "[t]his campaign started with an attack at Kamenica, where a corridor was opened to facilitate the removal of the Muslim civilian population" and that opening the corridor helped implement Directive 4 and the 24 November 1992 order. Prosecution Final Brief, paras. 77, 1287. On 1 February 1993, during combat operations, **Pandurević** conveyed an offer to the Muslim forces to permit the civilian population in Kamenica to freely leave the area of combat, and after this message was conveyed, a large number of civilians left the area of combat activities. Ex. 7D01006, "Zvornik Light Infantry Brigade Regular Combat Report signed by Major Vinko Pandurević, 1 February 1993", para. 2; Vinko Pandurević, T. 30794 (28 Jan 2009), T. 30799 (29 Jan 2009); Milenko Jevđević, T. 29892 (17 Dec 2008). *See also* Ex. P04253, "1st Zvornik Infantry Brigade Regular Combat Report signed by Vinko Pandurević, 2 February 1993". The Prosecution asserts that at the time the decision was taken to open the corridor, the VRS knew that the Bosnian Muslim population in this area was suffering from lack of food, "the impossibility of prompt delivery of humanitarian aid; and the impossibility of normal living conditions due to the constant firing of [the VRS] artillery." Prosecution Final Brief, para. 1286. *See* Ex. P04226, "Drina Corps Command Combat Order for the liberation of Kamenica, Cerska and Konjević Polje, signed by Živanović, 11 February 1993", para. 1. *See also* Ex. P04232, "Drina Corps Regular Combat Report, signed by Milenko Živanović, 1 February 1993", para. 3. The Prosecution thus argues that in these circumstances and in light of Directive 4 and the 24 November 1992 Order, the corridor at Kamenica was opened "as part of the coordinated campaign to forcibly remove the Muslim civilian population." Prosecution Final Brief, para. 1286. According to **Pandurević**, however, the purpose of this proposal to open a corridor for the passage of civilians was humanitarian, and he had no orders to cause the civilian population to move out of Kamenica. Vinko Pandurević, T. 30799 (29 Jan 2009), T. 32096-32097 (25 Feb 2009). *See also* Milenko Jevđević, T. 29892-29893 (17 Dec 2008). *See also* Pandurević Closing Arguments, T. 34768 (14 Sept 2009) (arguing that the Prosecution has "fundamentally misunderstood" Kamenica).

⁵⁹⁶² Prosecution Final Brief, paras. 1289-1297. On 12 March 1993, UNPROFOR reported shelling by VRS forces of Muslim civilians and UNPROFOR forces in Konjević Polje, and at 2:24 p.m. on that day, a UN officer in Konjević Polje requested that "Maj Pandorović (the local BSA Commander at Zvornik GR CQ4816) be urged to stop shelling as civilians were being caught in the fire." Ex. P04252, "UNPROFOR HQ BH Command (Main) Kiseljak, SitRep for 12 March 1993", p. 2. *See also* Ex. P00486, "UN Economic and Social Counsel Report No. E/CN.4/1994/3, by Tadeusz Mazowiecki, Special Rapporteur, 5 May 1993", paras. 21-24. Shortly thereafter, another round landed, reportedly killing two civilians and injuring three children, and although later that afternoon the UN command received information that the VRS was "in the process of checking fire", more rounds were fired, damaging a UN vehicle and in another instance killing ten civilians. Ex. P04252, "UNPROFOR HQ BH Command (Main) Kiseljak, SitRep for 12 March 1993", p. 2. The Prosecution maintains that **Pandurević** was aware of and involved in this attack on Muslim civilians on 12 March. Prosecution Final Brief, para. 1296-1297. **Pandurević**, however, denied that the Zvornik Brigade was responsible for this shelling of the Muslim population and UNPROFOR soldiers in Konjević Polje. Vinko Pandurević, T. 32125-32126 (26 Feb 2009). In response to the UN report about the shelling on 12 March 1993, **Pandurević** stated, "[t]he artillery of the Zvornik Brigade could not observe its own fire from the positions where it was and we never fired randomly. [...] We never fired without observing, and we were simply unable to observe that location. So I'm not aware of these details." *Ibid.*, T. 32125 (26 Feb 2009). *See also* *Ibid.*, T. 32126 (26 Feb 2009) (rejecting the Prosecution's assertion that the artillery was deliberately designed to drop on civilians, explaining, "[n]o, it is not deliberately designed because how could I know where people are in that broad space if I can't see that space and have no information. [...] And, at that time I didn't receive any protests from [the UN]").

⁵⁹⁶³ Prosecution Final Brief, para. 1305-1306. In 1993, the Konjević Polje mosque was destroyed several days after VRS units under **Pandurević**'s command entered that area. Vinko Pandurević, T. 32129 (26 Feb 2009). Almost one year later, in February 1994, pursuant to a Drina Corps order, the Zvornik Brigade Engineering Company removed the rubble of the destroyed mosque. Ex. P04288, "Order on Removal of remains of destroyed mosque in Konjević Polje from Drina Corps Command signed by Chief of Staff Colonel Milutin Skočajić, 24 February 1994"; Ex. P04291, "Zvornik Brigade Regular Combat Report, type-signed Maj. Vinko Pandurević, 28 February 1994", para. 9; Vinko Pandurević, T. 32132-32134 (26 Feb 2009) (also explaining that the Drina Corps "believed that the Zvornik Brigade had more machinery at their disposal and for that reason they assigned this task to [the Brigade]"). **Pandurević** denies that he and his forces were responsible for destroying the mosque. Vinko Pandurević, T. 32129

Pandurević's forces in the spring of 1993,⁵⁹⁶⁴ and the alleged participation of **Pandurević's** brigade in restricting humanitarian aid convoys in April 1995.⁵⁹⁶⁵

2005. With respect to these arguments by the Prosecution, the Trial Chamber first notes that **Pandurević's** acts in 1993 have little, if any, bearing on the assessment of his intent in 1995 in the period relevant to the Indictment. However, the Trial Chamber has considered and evaluated the evidence and submissions of both the Prosecution and **Pandurević** on each of these issues.

2006. With regard to the opening of a corridor at Kamenica, the Trial Chamber considers that this event is not particularly useful in assessing **Pandurević's** intent in light of the differing positions on the motivations underlying the decision to allow the passage of the civilians and the limited evidence in general on this matter. The Trial Chamber also finds that there is insufficient evidence to conclude that **Pandurević** was responsible for shelling civilians in April 1993, as alleged by the

(26 Feb 2009). The Prosecution concedes that the identity of the individuals who destroyed the mosque is unknown, but maintains that the destruction of the mosque in Konjević Polje and the subsequent "removal of its remains to a site for 'waste material' is emblematic of the VRS's intention to permanently remove the Muslim civilian population from this area and **Pandurević's** knowledge of, and involvement in, the process." Prosecution Final Brief, paras. 83, 1306.

⁵⁹⁶⁴ Prosecution Final Brief, paras. 1298-1304. The Prosecution submits that **Pandurević** knew of, and participated in, the strategy of burning Muslim houses and villages evidenced by information contained in Zvornik Brigade combat reports in early 1993, including specifically reports for 4 and 10 March 1993. Prosecution Final Brief, paras. 82, 1298, 1302-1303. *See* Ex. P04245, "1st Zvornik Infantry Brigade Regular Combat Report signed by Vinko Pandurević, 4 March 1993", p. 1 (stating "Duga Njiva and Glodi have been taken and facilities in Glodi burnt."); Ex. P04247, "1st Zvornik Infantry Brigade Regular Combat Report signed by Vinko Pandurević, 10 March 1993" (stating "[w]e propose that houses should not be torched when taking control of Konjevića Polje, but that they be inhabited by people from Tuzla and other areas"). In regard to the March report, the Prosecution argues that a "plain reading of this report indicates that up to that point, **Pandurević's** units had been burning villages after the Muslim population had fled." Prosecution Final Brief, para. 82. **Pandurević**, however, denied that civilian homes were burned in Muslim villages by forces under his command. Vinko Pandurević, T. 32114, 32117-32120 (26 Feb 2009) (further stating that, "[u]nless there was fire coming from certain fortified buildings they might have been burned or set on fire by fire from weapons, and in that context, I do not rule out the possibility of any house being actually burned". *Ibid.* T. 32120 (26 Feb 2009)). In regard to the suggestion he made in the March report, that houses should not be torched, **Pandurević** explained that he made this suggestion not because his forces had been burning houses prior to that, but because he noticed that houses had been burned by returning local Serb civilians at the place where he emerged with his forces. *Ibid.*, T. 32121-32122 (26 Feb 2009).

⁵⁹⁶⁵ Prosecution Final Brief, paras. 1317-1319. The Prosecution argues that the Zvornik Brigade, under **Pandurević's** command, implemented the policy laid out in Directive 7 to restrict humanitarian aid convoys. *See ibid.*, paras. 1317-1319. According to the Prosecution, while "**Pandurević** may not have been obstructing the passage of convoys purely on 'his own initiative,' **Pandurević** would have known that the orders above were designed to restrict aid to the enclaves and facilitate that unlawful objective." *Ibid.*, para. 1319. *See* Ex. 5D00320, "Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 2 April 1995", p. 2 (reporting that the Zvornik Brigade confiscated a "veld steriliser" from an UNPROFOR convoy en route to Srebrenica); Ex. 5D00321, "1st Zvornik PBR Infantry Brigade Regular Combat Report, signed by Vinko Pandurević, 4 April 1995", para. 10 (reporting that the Brigade confiscated from an MFS convoy four tonnes of laundry detergent, 1,500 bottles of floor detergent, 744 litres of hair shampoo, towels, alcohol beverages, coffee and cigarettes, lighters, and rolling papers). Regarding these confiscated materials, **Pandurević** testified that his brigade had received orders to confiscate them. Vinko Pandurević, T. 32142 (26 Feb 2009). With respect to convoys generally, **Pandurević** stated that "pursuant to the orders received from superior commands and the usual procedure, the contents of these convoys were examined in accordance with the documents that they carried with them" and that the "brigade didn't have any powers to either allow or reject the passage of convoys" and "if certain commodities or other items were detected that were not permissible to be transported in that way, then the superior command would be advised, and they would tell us what to do in that situation." *Ibid.*, T. 30809-30810 (29 Jan 2009).

Prosecution.⁵⁹⁶⁶ With respect to the destruction of the mosque, the Trial Chamber does not find the Prosecution's arguments convincing, or even relevant, and notes that there is no evidence to indicate that **Pandurević**'s forces were involved in its destruction. With regard to the burning of civilian houses, the Trial Chamber finds that the evidence is not sufficient to prove that houses were burned in Glodi, especially in consideration of **Pandurević**'s explanation of the information contained in the report.⁵⁹⁶⁷ Additionally, the Trial Chamber finds that the evidence cited by the Prosecution with respect to other similar incidents fails to demonstrate that **Pandurević** and his forces engaged in such activities, but rather simply indicates that generally some houses had been burnt. Finally, in the view of the Trial Chamber, the evidence regarding the alleged restriction of humanitarian aid convoys by the Zvornik Brigade is not particularly significant or relevant as evidence of acts from which to infer **Pandurević**'s alleged intent to carry out the common purpose of the JCE.

iii. Conclusion

2007. Overall, the Trial Chamber finds that there is insufficient evidence to conclude beyond reasonable doubt that **Pandurević** intended to carry out the common purpose to forcibly remove the Bosnian Muslim populations of Srebrenica and Žepa. Thus, it has not been established that **Pandurević** was a participant in the JCE to Forcibly Remove.

b. Other Modes of Liability

2008. The Prosecution also alleges that **Pandurević** committed, planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.⁵⁹⁶⁸ The Trial Chamber has found that **Pandurević** had no intent to forcibly transfer. In addition, there is no evidence before the Trial Chamber of any acts or omissions on his part that would constitute other Article 7(1) forms of responsibility, except for aiding and abetting which is discussed below, in relation to the crime of forcible transfer.

⁵⁹⁶⁶ The Trial Chamber also specifically notes that it is not evident from the available evidence that **Pandurević** actually received the request from the UN officer. Therefore, there is insufficient evidence to demonstrate that **Pandurević** knew that civilians were being shelled and thus the inference cannot be made that he intended such a result.

⁵⁹⁶⁷ **Pandurević** testified that houses in Glodi were not burned, and in reference to the statement in the report, commented that he did not "know which facilities they are referring to as being burnt." Vinko Pandurević, T. 32118–32119 (26 Feb 2009). **Pandurević** further explained that "when you'll speak about facility in military terms, that involves firing positions and cover. Whereas a house is a house. That's how it is called. When it is called in military terms, it's a facility. It could be a bunker, a shelter, and there were such facilities in Glodjansko Brdo and Glodi." *Ibid.*, T. 32119 (26 Feb 2009).

⁵⁹⁶⁸ Indictment, paras. 88–89, 91.

c. Aiding and Abetting Forcible Transfer

2009. Having found that **Pandurević** lacked the intent to further the common purpose of the JCE, the Trial Chamber will now address his contribution to the forcible transfer solely in the context of aiding and abetting. At the outset, the Trial Chamber recalls that **Pandurević**'s participation in the military attack on the Žepa enclave was very limited, in light of the fact that he was ordered to return to Zvornik on 15 July.⁵⁹⁶⁹ In light of his minimal participation in this attack, the Trial Chamber considers that such participation does not constitute a substantial contribution to the forcible transfer and therefore finds that **Pandurević** did not aid and abet the forcible transfer of the Bosnian Muslim population from Žepa.

2010. The Trial Chamber will now consider whether **Pandurević** is responsible for aiding and abetting forcible transfer through his participation in the military attack on, and takeover of, the Srebrenica enclave. The Trial Chamber recalls that **Pandurević** had knowledge of the common plan to forcibly remove the civilian populations from the enclaves. The Trial Chamber has previously found that **Pandurević** had knowledge of this criminal objective by virtue of his knowledge of the 20 March 1995 Order as well as the *Krivaja-95* Orders. The Trial Chamber is thus convinced that at the time when **Pandurević** participated in the attack on Srebrenica pursuant to the *Krivaja-95* Operation, he knew that such participation assisted in the commission of the forcible transfer of the Bosnian Muslim population of the Srebrenica enclave.

2011. The Trial Chamber recalls that **Pandurević** and his forces not only disabled two OPs in the area surrounding the enclave but were also involved in taking over the enclave itself. These actions pursuant to the military operation enabled the VRS to exert control over the enclave and thus remove its civilian population. Although **Pandurević**'s intent may have been to pursue the legitimate military objectives of the operation, the Trial Chamber is satisfied that his actions nonetheless had a substantial effect in the realisation of the forcible transfer and that he knew that his participation in the attack on the enclave assisted in the commission of this crime. The Trial Chamber is therefore satisfied that **Pandurević**'s participation in the military attack and takeover of the Srebrenica enclave substantially contributed to the forcible transfer of the civilian population from Srebrenica.

2012. In light of these findings, the Trial Chamber therefore finds that **Pandurević** aided and abetted the crime of forcible transfer.

⁵⁹⁶⁹ See *supra*, paras. 1858–1859.

(iii) “Opportunistic” Killings

2013. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Pandurević** that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of both the JCE to Murder and the JCE to Forcibly Remove.⁵⁹⁷⁰ As **Pandurević** was not a member of the JCE to Murder or the JCE to Forcibly Remove, he cannot be found responsible under third category JCE liability for the “opportunistic” killings.⁵⁹⁷¹

(iv) Superior Responsibility

2014. The Prosecution also, or alternatively, alleges that **Pandurević** is criminally responsible as a superior under Article 7(3) of the Statute, for failing to take necessary and reasonable measures to prevent and/or punish the crimes committed by his subordinates.⁵⁹⁷²

2015. The Trial Chamber will first address the underlying criminal acts for which the Prosecution alleges that **Pandurević** had a duty to prevent and/or punish pursuant to his superior responsibility. The Trial Chamber will then assess whether the other requisite elements for superior responsibility have been established to determine whether **Pandurević** is criminally responsible under Article 7(3) of the Statute. Specifically, in this respect, the Trial Chamber will examine whether there existed a superior-subordinate relationship between **Pandurević** and the said perpetrators at the relevant time. If such a relationship is established, the Trial Chamber will determine whether **Pandurević** knew or had reason to know of the commission of the crimes by his subordinates, and if so, whether he took any necessary and reasonable measures to prevent or punish the crimes in question.

a. Crimes Committed by Subordinates

2016. By virtue of superior responsibility pursuant to Article 7(3) of the Statute, the Prosecution alleges that **Pandurević** is liable for crimes committed by members of the Zvornik Brigade during the murder operation in the area of Zvornik.⁵⁹⁷³ Specifically, these crimes include their participation in the detention, execution, and burial of the Bosnian Muslim prisoners from 13 to 17 July, the execution of the four Branjevo Military Farm survivors around 23 July, the execution of the wounded Bosnian Muslim prisoners from Milići Hospital around 23 July, and the reburial operation

⁵⁹⁷⁰ Indictment, paras. 31, 37. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

⁵⁹⁷¹ *See supra*, paras. 1979, 2007.

⁵⁹⁷² Indictment, para. 93; Prosecution Final Brief, paras. 1238, 1631-1633.

⁵⁹⁷³ *See* Indictment, paras. 93, 94.

carried out between August and November 1995.⁵⁹⁷⁴ Additionally, the Prosecution alleges that **Pandurević** incurs liability for the involvement of members of the 16th Krajina Brigade in the execution of four Bosnian Muslim men near Nežuk on 19 July.⁵⁹⁷⁵

2017. The Trial Chamber has found that, in the period between 13 July and the morning of 16 July, members of the Zvornik Brigade participated in guarding the detained Bosnian Muslim prisoners and in transporting the prisoners to execution sites in the area of Zvornik.⁵⁹⁷⁶ Based on the totality of the evidence regarding their participation, the Trial Chamber is satisfied that during this period, members of the Zvornik Brigade provided practical assistance that had a substantial effect on the commission of the executions of the prisoners. These acts of assistance specifically included guarding prisoners held at Grbavci School in Orahovac, Kula School, and Ročević School as well as transporting and escorting prisoners to the execution sites in Orahovac and Kozluk.⁵⁹⁷⁷ The Trial Chamber has also found that at least one member of the Zvornik Brigade participated in shooting the prisoners on 14 July at the execution site in Orahovac⁵⁹⁷⁸ and that at least one member of the Zvornik Brigade participated in shooting the prisoners at the execution site in Kozluk on 15 July.⁵⁹⁷⁹ Therefore, the Trial Chamber finds that there is sufficient evidence to establish that at least two members of the Zvornik Brigade committed murder and that members of the Zvornik Brigade aided and abetted the murder of Bosnian Muslim prisoners who were brought from Bratunac to the Zvornik area and executed between 14 and 16 July. The Trial Chamber further recalls its findings as to **Nikolić's** involvement in the murder operation.⁵⁹⁸⁰

2018. The Trial Chamber has also found that Zvornik Brigade personnel and resources were mobilised for the digging of graves and the burying of bodies during the period of 14 to 17 July.⁵⁹⁸¹ The Trial Chamber recalls its earlier finding that on the afternoon of 14 July, members of the

⁵⁹⁷⁴ Indictment, paras. 30.6-30.12, 30.14-30.15, 31.4, 32, 39, 42, 44, 80, 82, 94. With respect to reburials, the Trial Chamber reiterates that during closing arguments, the Prosecution conceded that reburial itself does not constitute a crime punishable pursuant to the Statute. Prosecution Closing Arguments, T. 34279 (4 Sept 2009). The Prosecution also alleges that the reburial operation was a natural and foreseeable consequence of the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica. Indictment, para. 32. The Trial Chamber, however, has found that as reburial is not a crime under the Statute, none of the Accused may be held criminally responsible for it under the third category of joint criminal enterprise. *See supra*, para. 1032.

⁵⁹⁷⁵ Indictment, paras. 30.13, 94. The Prosecution also alleges that **Pandurević** is liable under Article 7(3) for the criminal conduct of the TG-1 forces under his command in the attacks on the Srebrenica and Žepa enclaves, and the participation of his subordinates in the forcible transfer. *Ibid.*, paras. 54, 67, 77, 80, 82, 94. The Trial Chamber however finds that as it has found **Pandurević** responsible for aiding and abetting forcible transfer under Article 7(1), it need not consider his responsibility under Article 7(3) in this regard. *See supra*, para. 2012. Further, the Trial Chamber has already found, by majority, Judge Kwon dissenting, **Pandurević** to be criminally responsible for the murder of the ten wounded prisoners from Milići Hospital under Article 7(1). *See supra*, para. 1991. *See* Judge Kwon's Dissenting Opinion, *infra*, paras. 60-66.

⁵⁹⁷⁶ *See supra*, paras. 476-478, 481, 483, 514-520, 522, 527-528, 531, 534.

⁵⁹⁷⁷ *See supra*, paras. 476-478, 481, 483, 514-520, 522, 527-528, 531, 534.

⁵⁹⁷⁸ *See supra*, para. 484.

⁵⁹⁷⁹ *See supra*, para. 519.

⁵⁹⁸⁰ *See supra*, paras. 1389-1392, 1415, 1420, 1422, 1426.

Zvornik Brigade Engineering Company participated in digging a large pit at the field near the Grbavci School in Orahovac and continued to dig graves throughout the afternoon and into the evening, while the killings took place there that day.⁵⁹⁸² Based on the totality of the evidence of their participation, the Trial Chamber is satisfied that these members of the Zvornik Brigade provided practical assistance that had a substantial effect on the commission of the executions at Orahovac and thus that these Zvornik Brigade members aided and abetted the murder of the Bosnian Muslim prisoners executed at Orahovac on 14 July.

2019. With respect to the murder of the four Bosnian Muslim men near Nežuk on 19 July, the Trial Chamber has previously found that there is insufficient evidence to establish beyond reasonable doubt that members of the 16th Krajina Brigade were involved in the killing of the four men.⁵⁹⁸³ The Trial Chamber also recalls its finding that there is insufficient evidence to find **Nikolić** responsible beyond reasonable doubt for the murder of the four Branjevo Military Farm survivors and the ten wounded Bosnian Muslim prisoners from Milići Hospital.⁵⁹⁸⁴ Accordingly, for these murders, **Pandurević** cannot bear responsibility under Article 7(3) as it has not been proven that such crimes were committed by subordinates of **Pandurević**.

2020. In light of these findings, the Trial Chamber therefore limits its consideration to **Pandurević**'s alleged superior responsibility only for those crimes committed by members of the Zvornik Brigade during the murder operation between 13 and 16 July 1995, as identified and found above.⁵⁹⁸⁵

b. Superior-Subordinate Relationship

2021. For **Pandurević** to be held individually responsible pursuant to Article 7(3) of the Statute, it must first be established that a superior-subordinate relationship existed at the time between **Pandurević** and the perpetrators. The Trial Chamber will now examine whether such a relationship existed between **Pandurević** and members of the Zvornik Brigade at the time of the commission of their crimes during the murder operation.

2022. The jurisprudence of the Tribunal places emphasis on the existence of effective control to establish superior responsibility under Article 7(3) of the Statute. The Trial Chamber notes that effective control is assessed in this context in order to determine the existence of a superior-

⁵⁹⁸¹ See *supra*, paras. 479, 489–490, 501, 521–522, 542–543, 545–547..

⁵⁹⁸² See *supra*, para. 489.

⁵⁹⁸³ See *supra*, para. 569.

⁵⁹⁸⁴ See *supra*, paras. 1379–1380.

⁵⁹⁸⁵ See *supra*, paras. 2017–2018.

subordinate relationship between the relevant individuals. As the Appeals Chamber has held, “[t]he basis of the superior-subordinate relationship is the power of the superior to control the actions of his subordinates.”⁵⁹⁸⁶

2023. Thus, the test of effective control relates to the relationship between the individuals and is not limited to a consideration of whether actual control is being exercised at any given moment. Otherwise the responsibility would be significantly narrowed – restricted to those who were in control and not reaching those who could have taken that control to prevent these crimes or punish them. Thus, in assessing effective control for these purposes, the issue is not whether the superior was in command or exercising control at any given moment but rather whether he or she had the material ability to prevent or punish the perpetrators of the crimes. It is this ability that evidences a superior-subordinate relationship. As stated by the Appeals Chamber even more specifically, “it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences.”⁵⁹⁸⁷

2024. In addition, the Trial Chamber notes that while the three components—superior-subordinate relationship; knowledge or reason to know; and failure to take measures—should be considered individually, there are factors that may be relevant to all of these. The physical location of a superior, responsibilities at the time, the information flow, and communication facilities with subordinates are all considerations which may affect the ability to control, knowledge and what is a reasonable measure available at the critical time. However, in considering such factors in relation to effective control, the issue is not solely whether these factors affect the ability to control, but rather whether they did so in a manner or to such an extent so as to alter an existing superior or subordinate relationship between the relevant parties.

2025. It is also necessary to distinguish the military concept of the “singleness of command” from the assessment of effective control. For the proper functioning of an army, there can be only one individual in command of any particular unit at one time. However, as the test for the superior-subordinate relationship rests on the ability to effectively control—as opposed to the exercise of that control—there is no exclusivity to a determination of effective control. It is clear from the jurisprudence that the superior-subordinate relationship may be direct or indirect. Thus “what is required is the establishment of the superior’s effective control over the subordinate, whether that subordinate is immediately answerable to that superior or more remotely under his command.”⁵⁹⁸⁸

⁵⁹⁸⁶ *Kordić and Čerkez* Appeal Judgement, para. 840.

⁵⁹⁸⁷ *Čelebići* Trial Judgement, para. 378.

⁵⁹⁸⁸ *Halilović* Trial Judgement, para. 63.

Similarly, in *Strugar* it was recognized that the test of effective control implies that “more than one person may be held responsible for the same crime committed by a subordinate”.⁵⁹⁸⁹ Clearly, therefore, effective control is not limited at any point in time to one individual.

2026. In addition, given the underlying purpose of the law relating to superior responsibility, a superior cannot rely on a principle of singleness of command, designed to ensure army efficiency, in order to escape responsibilities which relate to the suppression of the gravest of crimes. In essence, for it to be effective, that responsibility cannot be reserved exclusively for those who were exercising control or were “in command” and thereby could prevent or punish, but must also extend to those who had the material ability to do so.

2027. The Trial Chamber will now analyse the issue of **Pandurević**’s superior responsibility, beginning with the issue of his superior-subordinate relationship. The Trial Chamber finds⁵⁹⁹⁰ that throughout the relevant period in July 1995, including the period from 4 to 15 July, **Pandurević** was the Commander of the Zvornik Brigade, in title and in substance. There was no order replacing him on either a temporary or a permanent basis. While **Pandurević** was absent and assigned another military task from 4 to 15 July, his effective control of the Zvornik Brigade was not affected. Although Obrenović was “in command” of those parts of the Zvornik Brigade which remained in the Zvornik area, he assumed command functions in the absence of the Commander in the role of the Deputy Commander, as would be the case during any other temporary absence.⁵⁹⁹¹ Notably, in contrast to the situation of **Pandurević**’s absence in August 1995, no formal order was issued in July appointing Obrenović as acting Brigade Commander for the Zvornik Brigade.⁵⁹⁹² Additionally, an individual was designated to serve as the acting Chief of Staff of the Brigade in August 1995 during the period when Obrenović was the acting Brigade Commander and thus could not fulfil his normal duties as Chief of Staff.⁵⁹⁹³ By contrast, an acting Chief of Staff was not

⁵⁹⁸⁹ *Strugar* Trial Judgement, para. 365. *Accord Blaškić* Trial Judgement, para 303, referring to *Aleksovski* Trial Judgement, para. 106.

⁵⁹⁹⁰ *But see* Judge Kwon’s Separate Opinion, *infra*, paras. 47–59.

⁵⁹⁹¹ PW-168 testified that “as a Chief of Staff and a deputy, when the commander left from the command post [Obrenović] automatically became deputy commander.” PW-168, T. 15810 (closed session) (26 Sept 2007). “In July 1995, [...] [Obrenović] was not in command of the brigade. [He] was the Chief of Staff and the Deputy, and [he] commanded some of the units of the Zvornik Brigade which were in the defence area in Zvornik.” PW-168, T. 16049 (closed session) (9 Oct 2007). According to PW-168, “The practical commander by appointment was Lieutenant Colonel Vinko Pandurević. He was the commander. [Obrenović] was the Chief of Staff. And the practical situation was that the commander had gone to Srebrenica on the 4th with the unit, and [Obrenović] as the Chief of Staff was commanding a part of the Zvornik Brigade, or the part of the Zvornik Brigade that remained in its Standard positions”. PW-168, T. 16467–16468 (closed session) (17 Oct 2007). *See also* Miodrag Dragutinović, T. 12701 (15 June 2007) (confirming that Obrenović was in command of the Zvornik Brigade during **Pandurević**’s absence from 4 to 15 July 1995), T. 12612–12613 (14 June 2007) (testifying that in the absence of the Commander, the Chief of Staff as Deputy Commander would take over and report to the Superior Command).

⁵⁹⁹² *See supra*, para. 1917.

⁵⁹⁹³ *See* Ex. 5D00452 (confidential).

appointed for the period of July.⁵⁹⁹⁴ Furthermore, **Pandurević** himself acknowledged that he remained formally the Commander of the Zvornik Brigade throughout this period.⁵⁹⁹⁵ The Trial Chamber is thus satisfied⁵⁹⁹⁶ that throughout July 1995, **Pandurević** possessed *de jure* authority over members of the Zvornik Brigade.

2028. The Trial Chamber, however, recalls that while the possession of *de jure* powers may suggest a material ability to prevent or punish the criminal acts of subordinates, such authority, without more, provides only some evidence of such effective control.⁵⁹⁹⁷ The Trial Chamber therefore must also consider whether **Pandurević** had *de facto* authority over the Zvornik Brigade during this period. The Trial Chamber is satisfied that on a general basis, throughout his tenure as the Brigade Commander, **Pandurević** had clear *de facto* authority which accompanied his position as Commander. While he had arrived to an undisciplined brigade, which demonstrated a distinct lack of respect for authority, under his command and, certainly by 1995, the Zvornik Brigade was under the clear authority of **Pandurević**.⁵⁹⁹⁸

2029. The Trial Chamber turns then to the specific circumstances of July 1995, notably the period of 4 to 15 July, when **Pandurević** was physically absent from the Zvornik area and occupied with command functions in Srebrenica and Žepa. The Trial Chamber is satisfied⁵⁹⁹⁹ that while this absence clearly limited what **Pandurević** knew about the actions of his Brigade and to some extent narrowed the reasonable measures available to him, it did not in any way alter his ability to control the Brigade in terms of a superior-subordinate relationship. Whether physically at Standard Barracks or elsewhere, **Pandurević**, at all times, retained the ability to exercise control over the Zvornik Brigade. Whether he chose to do so or whether there may have been communication problems in no way changed the superior-subordinate relationship that existed. Specifically, while his contact with the Brigade during his absence was very limited and the subject matter discussed marginal, that contact evidences that he did not hesitate to continue to assert his authority with respect to the Brigade when he deemed it necessary to do so.⁶⁰⁰⁰

2030. The Trial Chamber has also found that during the same time period, Obrenović, as Deputy Commander, was in command of the Zvornik Brigade, with respect to those units which remained

⁵⁹⁹⁴ See PW-168, T. 16617 (closed session) (19 Oct 2007).

⁵⁹⁹⁵ See Vinko Pandurević, T. 31437 (13 Feb 2009).

⁵⁹⁹⁶ But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

⁵⁹⁹⁷ See *supra*, para. 1038.

⁵⁹⁹⁸ See for example Vinko Pandurević, T. 30706–30708 (27 Jan 2009); PW-168, T. 15740–15743 (closed session) (25 Sept 2007), T. 16060–16063, 16071–16073, 16083–16084 (closed session) (9 Oct 2007). See also Pandurević Final Brief, paras. 339–344, 353.

⁵⁹⁹⁹ But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

⁶⁰⁰⁰ See *supra*, paras. 1845–1846.

in the Zvornik area at that time.⁶⁰⁰¹ However, the Trial Chamber further finds⁶⁰⁰² that this situation did not interfere with **Pandurević**'s relationship to members of the Brigade, including Obrenović himself. As noted above, Obrenović assumed command as Deputy Commander, just as he would do on any other occasion. In fulfilling his command functions, Obrenović gave orders and received commands without contacting **Pandurević** and without any intervention from him. However, this evidences only that Obrenović was in command at that point in time and responsible for the actions of the troops under his command. But this does not change the fact that Obrenović was still a subordinate of **Pandurević**, as were all members of the Zvornik Brigade. [REDACTED]⁶⁰⁰³

2031. It was open to **Pandurević** to retake command at any point as he so clearly did upon his return on 15 July. While the Trial Chamber finds that there was no substantive contact between **Pandurević** and the brigade during his absence,⁶⁰⁰⁴ it was still open to him to assert his authority as commander at any time. In so doing, he would have to take into consideration the singleness of command principle, but this does not alter his overall authority and control over his troops. Albeit reluctantly, **Pandurević** himself acknowledged this point to a degree during cross examination by the Prosecution when he indicated that he "could have issued orders" to the Zvornik Brigade members he spoke with on the telephone on the morning of 15 July, prior to his return to the Standard Barracks.⁶⁰⁰⁵ According to **Pandurević**, he nevertheless did not issue orders at that time prior to his return because he "was not in command of the brigade" as that "would amount to dual command, not single authority because Dragan Obrenović had already issued them tasks, and they were in the process of carrying [them] out and that would only create confusion."⁶⁰⁰⁶ While it was open to him to refrain from giving orders in those particular circumstances in deference to singleness of command, it would not have been had the information he received at that time alerted him to criminal activity on the part of his Brigade. In essence, whether or not **Pandurević** chose to exercise control over his Brigade, the Trial Chamber is satisfied⁶⁰⁰⁷ that **Pandurević** always maintained *de facto* and *de jure* authority during the period of 4 to 15 July.

2032. One final argument needs to be addressed regarding the issue of effective control. **Pandurević** argues that during the period of the murder operation in July, he no longer had effective control, at least with reference to **Nikolić**, because of the lead role being played by the Security Branch in the murder operation. **Pandurević** accepts that in general, as the Commander of

⁶⁰⁰¹ See *supra*, para. 2027.

⁶⁰⁰² But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

⁶⁰⁰³ [REDACTED]

⁶⁰⁰⁴ See *supra*, paras. 1844–1860, 1969.

⁶⁰⁰⁵ Vinko Pandurević, T. 31438 (13 Feb 2009).

⁶⁰⁰⁶ *Ibid.*

⁶⁰⁰⁷ But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

the Zvornik Brigade, he possessed *de jure* authority over **Nikolić**.⁶⁰⁰⁸ However, **Pandurević** argues that as a matter of practical reality and in light of the functional chain of command of the Security Organ, his ability to effectively control the Brigade's Security Organ and **Nikolić** specifically was limited in certain situations, including in particular during the murder operation in July 1995.⁶⁰⁰⁹

2033. There is no evidence before the Trial Chamber to support a finding that because of the role of the Security Branch and the Superior Command, **Pandurević** lost *de facto* control over **Nikolić** or any other members of the Zvornik Brigade. In this respect, the Trial Chamber notes that at the commencement of his involvement in the murder operation, **Nikolić** still recognised and abided by the chain of command in the Zvornik Brigade. On the night of 13 July, he sought Obrenović's authorisation not only with regard to his brigade task at the time—his responsibility as the Duty Officer—but also with reference to the use of military police to assist him. Also, when it comes to **Pandurević** himself, while he may have been unable to control the actions of **Popović** and **Beara** who were not his subordinates, there is no evidence that he lost that capacity with reference to **Nikolić**. The Trial Chamber is satisfied that the involvement of the Security Branch and the Superior Command did not alter **Pandurević**'s *de facto* control of **Nikolić** or any other member of the Zvornik Brigade.⁶⁰¹⁰

2034. The Trial Chamber is therefore satisfied⁶⁰¹¹ that during July of 1995, there existed at all times a superior-subordinate relationship between **Pandurević** and members of the Zvornik Brigade. On this basis, the Trial Chamber finds⁶⁰¹² that during July 1995, including from 4 to 15 July when he was physically absent, the first element of superior responsibility has been established with respect to **Pandurević** and the members of the Zvornik Brigade.

2035. From August to mid-September of 1995, **Pandurević** was temporarily replaced as Commander of the Zvornik Brigade while absent on assignment in the Krajina.⁶⁰¹³ Specifically, Obrenović was named Acting Commander for this period.⁶⁰¹⁴ The Trial Chamber therefore finds that **Pandurević** did not possess *de jure* or *de facto* authority over members of the Zvornik Brigade during this period.⁶⁰¹⁵

⁶⁰⁰⁸ Pandurević Final Brief, para. 272.

⁶⁰⁰⁹ *Ibid.*, paras. 272, 275-277, 315.

⁶⁰¹⁰ *But see* Judge Kwon's Separate Opinion, *infra*, paras. 47-59.

⁶⁰¹¹ *But see* Judge Kwon's Separate Opinion, *infra*, paras. 47-59.

⁶⁰¹² *Ibid.*

⁶⁰¹³ *See supra*, paras. 1917-1918.

⁶⁰¹⁴ *See supra*, para. 1917.

⁶⁰¹⁵ The Trial Chamber also notes, however, that during the period of this absence, no crimes are alleged to have been committed by members of the Zvornik Brigade such that possible superior responsibility could be triggered.

c. Knowledge or “Reason to Know”

2036. Having determined that **Pandurević** had effective control over the members of the Zvornik Brigade at the time relevant to the Indictment, the Trial Chamber will now address whether **Pandurević** had the requisite *mens rea* as to trigger his duty to prevent and/or punish under Article 7(3) of the Statute. In order to hold a superior responsible under Article 7(3), it must be established that he or she knew or had reason to know that his or her subordinates were committing or were about to commit crimes within the jurisdiction of the Tribunal.⁶⁰¹⁶ At the outset, the Trial Chamber recalls that a superior can be found to have reason to know only if information was available to him or her which would have put the superior on notice of offences committed by his or her subordinates.⁶⁰¹⁷ The Trial Chamber also recalls that the information required to put a superior on notice need not be specific, but rather it must put that superior on notice of possible unlawful acts by his or her subordinates.⁶⁰¹⁸

2037. The Trial Chamber finds that there is insufficient evidence that prior to his return to the Standard Barracks on 15 July, **Pandurević** knew or had reason to know that his subordinates had committed or were committing crimes in relation to the detention, execution, and burial of the Bosnian Muslim prisoners in the area of Zvornik. The Trial Chamber therefore finds that the knowledge requirement for superior responsibility under Article 7(3) has not been met for the period prior to 12 p.m. on 15 July. The Trial Chamber, however, has previously found that upon **Pandurević**'s return to Standard Barracks at around 12 p.m. on 15 July, Obrenović informed him about the murder operation that was being carried out in the area of Zvornik. Specifically, at this point, **Pandurević** was told that pursuant to Mladić's order, **Beara** and **Popović** had brought a large number of prisoners from Bratunac to the Zvornik sector where they were executing them, and that Jokić had informed Obrenović that there were enormous problems with the guarding, execution, and burial of the prisoners.⁶⁰¹⁹ Based on this evidence, the Trial Chamber has also previously found that **Pandurević** knew of the murder operation in the area of Zvornik.⁶⁰²⁰

2038. In the view of the Trial Chamber, the information conveyed by Obrenović was also sufficient to alert **Pandurević** to the possibility that members of the Zvornik Brigade were providing practical assistance to the murder operation, such as through guarding and burying prisoners, and thus to put **Pandurević** on notice of possible crimes committed by his subordinates. In reaching this conclusion, the Trial Chamber finds particularly relevant the fact that **Pandurević**

⁶⁰¹⁶ See *supra*, para. 1040.

⁶⁰¹⁷ See *supra*, para. 1041.

⁶⁰¹⁸ See *supra*, para. 1042.

⁶⁰¹⁹ See *supra*, para. 1861.

⁶⁰²⁰ See *supra*, para. 1960.

was specifically told that it was Jokić who informed Obrenović that there were problems with the guarding, executions, and burial of the prisoners. The mere fact that the source of the information was Jokić, the Chief of Engineering of the Zvornik Brigade, was sufficient to put **Pandurević** on notice of the possible involvement of Zvornik Brigade members in those criminal activities. Another factor considered by the Trial Chamber is that Obrenović, the Chief of Staff of the Brigade, intercepted **Pandurević** in the hallway immediately upon his return to the Standard Barracks to convey this information even while other urgent matters, such as the presence of the ABiH 28th Division near Zvornik, required **Pandurević**'s immediate attention. In the view of the Trial Chamber, under these particular circumstances, this would have put **Pandurević** on notice of the likelihood that members of the Brigade, not simply individuals from outside the Brigade, were involved in the murder operation and thus were engaged in illegal acts so as to justify further inquiry on his part to ascertain whether such acts had been or were indeed being committed.

2039. The Trial Chamber also notes that **Pandurević**'s reference to the "additional burden for us" in his 15 July Interim Combat Report indicates that at the time he wrote this report on 15 July he had some notice or awareness of involvement of the Zvornik Brigade in the securing of prisoners detained in the area of Zvornik.⁶⁰²¹

2040. Based on the totality of the evidence, the Trial Chamber is thus satisfied that at around noon on 15 July, **Pandurević** possessed sufficiently alarming information to put him on notice of the risk that crimes had been or were about to be committed by his subordinates so as to justify further inquiry or the taking of measures. The Trial Chamber therefore finds beyond reasonable doubt that by around noon on 15 July, **Pandurević** had reason to know that his subordinates had committed, were committing or about to commit crimes in relation to the detention, execution, and burial of the Bosnian Muslim prisoners in the area of Zvornik.

d. Failure to Take Necessary and Reasonable Measures

2041. Having found that **Pandurević** had reason to know that his subordinates were about to commit or had committed crimes against Bosnian Muslim prisoners in the area of Zvornik, the Trial Chamber will now determine whether **Pandurević** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

⁶⁰²¹ Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995". *See also supra*, para. 1870.

i. Duty to Prevent

2042. The Trial Chamber will first consider whether **Pandurević** failed to take measures that were necessary and reasonable to prevent the commission of crimes by his subordinates during the murder operation in the area of Zvornik. The Trial Chamber has found that **Pandurević** acquired reason to know of the criminal conduct of his subordinates upon his return to Standard Barracks at around 12 p.m. on 15 July when Obrenović informed him of the situation of the prisoners in Zvornik. **Pandurević**'s duty to prevent the commission of criminal acts by his subordinates thus arose from the moment he received this information from Obrenović on 15 July.

2043. The Trial Chamber recalls its findings that on the afternoon of 15 July, members of the Zvornik Brigade assisted in transporting and escorting prisoners detained at Ročević School to the execution site at the gravel pit near Kozluk, and during the executions at that site, at least one member of the Zvornik Brigade participated in the shooting.⁶⁰²² Additionally, the Trial Chamber has found that on 15 and 16 July, members of the Zvornik Brigade guarded prisoners at the Kula School, who were then executed at Branjevo Military Farm.⁶⁰²³ Thus, in the period after **Pandurević** acquired reason to know so as to trigger his duty to prevent, the Trial Chamber has found that members of the Zvornik Brigade aided and abetted murder and at least one member of the Brigade committed murder.

2044. There is no evidence before the Trial Chamber to indicate that in the afternoon of 15 July or during the day of 16 July **Pandurević** took any steps to prevent or stop the participation of members of the Zvornik Brigade in the detention, execution, and burial of the prisoners. In particular, when Obrenović conveyed the information to him in the corridor on 15 July, there is no evidence that **Pandurević** at that point asked Obrenović whether members of the Zvornik Brigade were involved. Instead, **Pandurević** asked Obrenović why the civilian authorities were not performing the burials. Nor is there evidence that **Pandurević** attempted to inquire with anyone else about the involvement of the Zvornik Brigade in the murder operation while he was present at Standard Barracks on 15 July.

2045. The Trial Chamber recalls **Pandurević**'s account that in the late afternoon of 15 July when Bojanović arrived at the IKM, he asked Bojanović if he had any information about the situation of the prisoners who had been brought to the area of Zvornik.⁶⁰²⁴ According to **Pandurević**, Bojanović "didn't know that the command of the Zvornik Brigade had received any task concerning prisoners

⁶⁰²² See *supra*, paras. 518–520.

⁶⁰²³ See *supra*, paras. 531, 534.

⁶⁰²⁴ See *supra*, para. 1866.

of war.”⁶⁰²⁵ **Pandurević** conceded that, although he could have, he did not attempt to contact anyone else to get information about the prisoners before Bojanović arrived at the IKM on 15 July.⁶⁰²⁶ Additionally, **Pandurević** testified that he did not ask the brigade duty officer, who was **Nikolić** at the time, for any information regarding the prisoners.⁶⁰²⁷

2046. To follow up on the alarming information that he received from Obrenović, **Pandurević** in the least, as an initial step, could have inquired and attempted to ascertain whether members of the Zvornik Brigade were involved in the murder operation. The evidence establishes that **Pandurević** did not make any such inquiry on 15 July, except for his conversation with Bojanović in the late afternoon. The Trial Chamber however finds this attempt by **Pandurević** to inquire further into the matter was wholly insufficient with respect to his duty to prevent pursuant to Article 7(3). The Trial Chamber considers that, at the very least, it was incumbent upon **Pandurević** to immediately make inquiries once he had received the information from Obrenović on 15 July, including particularly to react at that time by asking Obrenović further questions about any involvement by members of the Brigade in the operation. Furthermore, **Pandurević** could and should have questioned Jokić, in addition to Obrenović, that day in light of the specific information that **Pandurević** received.

2047. According to **Pandurević**’s account, in the evening of 16 July, he asked Obrenović whether any members of the Zvornik Brigade had participated in what had happened in the area of Zvornik and then requested that Obrenović gather more information for him on the killings that had occurred in the area.⁶⁰²⁸ However, this action by **Pandurević** took place only after the crimes committed by his subordinates, as found by the Trial Chamber, were complete, and thus such action is not pertinent to the consideration of measures taken by **Pandurević** to satisfy his duty to prevent under Article 7(3).

2048. Beyond inquiry, even if **Pandurević** did not know the precise details as to the exact acts of his subordinates or the extent of their participation in the murder operation on 15 July, he nonetheless could have taken steps to ensure that no member of the Brigade assisted or participated in the crimes. For instance, on 15 July, **Pandurević** could and should have immediately issued orders to the Zvornik Brigade Battalion Commanders to the effect that all Zvornik Brigade members cease or refrain from participation in any aspect of the executions occurring in the area. In the view of the Trial Chamber, such a withdrawal of his forces was a necessary and reasonable measure that was clearly within **Pandurević**’s power and a measure that he could have taken in

⁶⁰²⁵ See *supra*, para. 1866.

⁶⁰²⁶ See *supra*, fn. 5598.

⁶⁰²⁷ Vinko Pandurević, T. 31574 (17 Feb 2009).

⁶⁰²⁸ See *supra*, paras. 1880–1881.

order to effectively prevent the commission of crimes by his subordinates with respect to the murder operation.

2049. Ultimately, the Trial Chamber recalls that a superior must use every means within his or her material ability, based on the circumstances prevailing at the time the superior acquires the requisite knowledge or has reason to know of the commission of crimes by his or her subordinates.⁶⁰²⁹

Pandurević did not meet this standard. The evidence before the Trial Chamber shows that **Pandurević** did not genuinely attempt to take any measures within his material powers in order to prevent any future or continued participation of his subordinates in the murder operation.

2050. The Trial Chamber further notes that as the Commander of the Zvornik Brigade, **Pandurević** had the requisite authority and ability to order members of the Brigade not to participate in the murder operation. Moreover, at the time that he acquired the necessary knowledge to trigger his duty to prevent under Article 7(3), **Pandurević** was physically present at the Standard Barracks. Consequently, he was clearly in a position to effectively communicate with his staff, acquire further information about the whereabouts and acts of the members of the Zvornik Brigade, and order the members of the Brigade to withdraw and return to the Standard Barracks. In light of these considerations, the Trial Chamber therefore considers that such measures as discussed above were within his material ability at the time he acquired knowledge on 15 July. **Pandurević**, however, failed to take such measures or any other necessary and reasonable measures within his material ability to prevent the commission of crimes by members of the Zvornik Brigade during the murder operation on the afternoon of 15 July and on 16 July.

2051. The Trial Chamber acknowledges and recognises that **Pandurević** undoubtedly had urgent matters to address when he returned to Zvornik on 15 July in light of the combat situation in the area of Baljkovica.⁶⁰³⁰ However, regardless of other matters that required his attention, **Pandurević**, as a superior within the meaning of Article 7(3), had a legal obligation to take action to prevent his subordinates from engaging in criminal conduct. Moreover, as outlined above, the Trial Chamber

⁶⁰²⁹ *Blaškić* Appeal Judgement, paras. 72, 417, 499. See also *Bagilishema* Appeal Judgement, para. 35.

⁶⁰³⁰ In relation to this issue, the Trial Chamber notes the following testimony of **Pandurević**: "What you have to understand [...] is that we are talking about two separate operations that were taking place in the area of Zvornik. One operation or one task, rather, was the one under my direct authority for which I had been sent back to Zvornik and this was fighting the 28th Division, and that was the main task of the Zvornik Brigade. The second activity or operation that could have been taking place in any other place without me knowing anything about it beyond my influence was the operation to bring in, incarcerate, and kill prisoners of war. The fact that the area where those people were brought to and killed was close to the area of responsibility of the Zvornik Brigade does not impose my obligation or responsibility to take care of that. That's why it was not my concern because I had other priorities. I had my priority task for which I had been brought back." Vinko Pandurević, T. 31577 (17 Feb 2009). See also *Ibid.*, T. 31011–31012 (2 Feb 2009) (explaining one of the reasons why he did not try and find out more about the prisoners Grujić had told him about on 15 July: "First of all, General Krstić had sent me back with a clear task. He did not give me any alternative information or information of any other kind. All he gave me was a combat task.").

finds that there were necessary and reasonable measures that could have been immediately taken by **Pandurević** in order to prevent the commission of the crimes by his subordinates when he initially received the alarming information from Obrenović. The Trial Chamber further notes that the measures available to **Pandurević**, as outlined above, would not have entailed a lengthy or substantial undertaking on his part such that it would have prevented or impeded him from carrying out his other duties. He also had the option of delegating the responsibility to investigate or take immediate action to a subordinate. The Trial Chamber therefore finds that **Pandurević** failed to take the necessary and reasonable measures to prevent the criminal acts committed by members of the Zvornik Brigade on the afternoon of 15 July and on 16 July.

ii. Duty to Punish

2052. The Trial Chamber has found that on 15 July **Pandurević** acquired reason to know of possible criminal conduct by his subordinates during the murder operation. The Trial Chamber will now examine whether, after this point in time, **Pandurević** took measures that were necessary and reasonable to punish the criminal conduct of those subordinates as to satisfy his obligation under Article 7(3).

2053. There is no evidence before the Trial Chamber that **Pandurević** punished or took any disciplinary measures against any of his subordinates for their criminal conduct in relation to the detention and execution of Bosnian Muslim males in the area of Zvornik in July 1995.⁶⁰³¹ The Trial Chamber also recalls **Pandurević**'s own testimony that he did not punish any of his subordinates for acts against Bosnian Muslims during the war.⁶⁰³² However, a superior is not required to dispense punishment personally but may discharge his or her duty to punish by initiating an investigation and reporting the matter to the competent authorities.⁶⁰³³

2054. There is no evidence to indicate that **Pandurević** requested the Military Prosecutor's Office to conduct an investigation or that he instructed the Zvornik Brigade Crime Prevention Service to conduct an investigation and forward on to the Military Prosecutor a report on potential criminal

⁶⁰³¹ The Trial Chamber recalls that Lazar Ristić testified that he never witnessed an investigation within his battalion or at the Zvornik Brigade level concerning the events in Orahovac on 14 July 1995 nor was he aware of an order issued by **Pandurević** investigating the events or instigating any disciplinary action with respect to any soldier involved in the events. Lazar Ristić, T. 10203–10204 (18 Apr 2007). [REDACTED] Nebojša Jeremić also testified that he was not aware of anyone in the Zvornik Brigade requesting the Military Prosecutor's Office to conduct an investigation into the rumoured executions at Orahovac and Pilica and as far as he knew, neither he nor anyone in the Crime Prevention Service was ever instructed to conduct an investigation into those executions. Nebojša Jeremić, T. 10439–10440 (24 Apr 2007).

⁶⁰³² Vinko Pandurević, T. 32066 (25 February 2009).

⁶⁰³³ *Boškoski and Tarčulovski* Appeal Judgement, para. 230; *Hadžihasanović and Kubura* Appeal Judgement, para. 154. See also *supra*, para. 1045.

offences committed by brigade members. However, **Pandurević** submits that he nevertheless discharged his duty to punish through his reporting of the matter in his interim combat reports for 15 and 18 July as well as in his meeting with Krstić on 27 July.⁶⁰³⁴ According to **Pandurević**, through this reporting to his superiors, he thus “delegated his responsibility to punish the crimes.”⁶⁰³⁵ He further submits that, under the circumstances of the case, he “did all that was reasonable to discharge his duty to report matters” and that “[t]o expect him to report the matter beyond his immediate superior, when he believes that the organs of the Corps and Main Staff are involved in the commission of crimes, is unrealistic.”⁶⁰³⁶

2055. At the outset, the Trial Chamber notes that, in general, reporting to the Military Prosecutor is a reasonable and necessary measure to be undertaken by a superior if he or she learns or suspects that a crime has been committed. Under the applicable law governing military courts, when a brigade commander discovers that a crime has been committed, the commander has a duty to report it to the Military Prosecutor or the Brigade’s Security Organ.⁶⁰³⁷ Generally, the responsibility for investigating criminal acts within the structure of a brigade of the VRS fell within the authority of the Security Organ and Military Police.⁶⁰³⁸ In the Zvornik Brigade, the Crime Prevention Service, within the Military Police Company of the Brigade, had the responsibility to conduct investigations into serious offences, gather documentation, and then forward such information on to the Military Prosecutor.⁶⁰³⁹ According to Nebojša Jeremić, who worked in the Service during the relevant period, if the Crime Prevention Service had been ordered to conduct an investigation, such as into the murder operation, it was **Nikolić**, the Chief of Security in the Zvornik Brigade, who normally would issue such an order.⁶⁰⁴⁰

⁶⁰³⁴ Pandurević Final Brief, para. 1101.

⁶⁰³⁵ *Ibid.*, para. 1102.

⁶⁰³⁶ Pandurević Final Brief, para. 1104.

⁶⁰³⁷ Branislav Ristivojević, T. 28078 (12 Nov 2008).

⁶⁰³⁸ *Ibid.*, T. 28075 (12 Nov 2008).

⁶⁰³⁹ Nebojša Jeremić, T. 10419–10420, T. 10471–10472 (24 Apr 2007), T. 10485 (25 Apr 2007). With regard to the general procedure for such an investigation, Jeremić testified that members of the Crime Prevention Service gathered documentation that must accompany criminal reports, such as statements from soldiers of the Zvornik Brigade and witnesses. If the criminal act in question was more serious, such as murder, the members of the Service worked in cooperation with the civilian police. The Crime Prevention Service would then send all the documentation to the Military Prosecutor’s Office in Bijeljina, together with a criminal report. Nebojša Jeremić, T. 10420–10420 (24 Apr 2007). When there was suspicion of the commission of criminal offence, there were no disciplinary proceedings within the framework of the Zvornik Brigade. If the Brigade had already instituted disciplinary procedures, then they would be suspended upon a suspicion that a criminal act had been committed and the case would be forwarded to the responsible Military Prosecutor’s Office. *Ibid.*, T. 10471 (24 Apr 2007). The Military Prosecutor’s Office or the Military Court would be informed of potential criminal offences committed by Zvornik Brigade soldiers through notification in the form of reports by the Crime Prevention Service. Nebojša Jeremić, T. 10485 (25 Apr 2007). The Crime Prevention Service passed criminal complaints in their possession to the Military Prosecutor’s Office, along with statements and other relevant material. *Ibid.*, T. 10471–10472 (24 Apr 2007).

⁶⁰⁴⁰ Nebojša Jeremić, T. 10440 (24 Apr 2007). **Nikolić** was the immediate superior of Jeremić within the Crime Prevention Service. *Ibid.*, T. 10447 (24 Apr 2007).

2056. Given that **Pandurević** had information about **Nikolić's** involvement in the murder operation,⁶⁰⁴¹ the Trial Chamber finds that it was unreasonable under the circumstances for him to report the matter to the Security Organ. Alternatively, **Pandurević** potentially could have issued the order for an investigation directly to the Crime Prevention Service himself. However, the Trial Chamber considers that while technically this was an option available to him, in reality, this was not a practical option under the prevailing circumstances of the time, particularly considering that the Crime Prevention Service fell within the purview of the Security Organ.

2057. The remaining option available to **Pandurević** at the time thus was to report the matter directly to the Military Prosecutor himself. In the case at hand, however, very little evidence was presented on the VRS Military Prosecutor and its functioning during the relevant period in 1995, particularly in regard to the issue of its functional relationship with, and independence from, the Main Staff. There is some evidence to show that the Military Prosecutor was in fact not independent from the Main Staff.⁶⁰⁴² Ultimately, there is insufficient evidence before the Trial Chamber to demonstrate that the Military Prosecutor was independent and that a report to this body represented a realistic option for **Pandurević** when this was a Main Staff operation authorised by Mladić.⁶⁰⁴³

⁶⁰⁴¹ See *supra*, paras. 1879, 1889.

⁶⁰⁴² According to Butler, in 1992, the military prosecutor's office was under the administration of the VRS, and **Gvero** in particular. Richard Butler, T. 19607–19608 (14 Jan 2008). Later in the war, in 1993 or 1994, the Ministry of Defense took over responsibility for the military courts. *Ibid.*, T. 20209–20210 (22 Jan 2008). However, there is evidence that **Gvero** retained some degree of control or monitoring power over the work of the military courts even after 1993. See Manojlo Milovanović, T.12246-12247 (30 May 2007) (testifying that **Gvero** “was to monitor the work of military courts in contact with an appropriate section in the Ministry of Defence.”).

⁶⁰⁴³ The Trial Chamber also notes that in March and April 1996, Karadžić ordered investigations to be carried out into crimes that may have been committed during the war. In March 1996, Karadžić ordered the VRS Main Staff and the Ministry of the Interior to “form a mixed expert commission of three members each to fully investigate and determine the facts regarding the alleged discovery of two decomposed bodies at the scene of earlier battles with the Muslim side in the Pilica area, Zvornik Municipality.” Ex. P00022, “Order from the Main Staff of the VRS signed by Radovan Karadžić, 23 March 1996” (the order further indicated that the commission should produce a written report on its findings to be sent to Karadžić). See also Richard Butler, T. 20959–20960 (1 Feb 2008) (testifying that Karadžić initiated an investigation involving the events of Srebrenica either late 1995 or early 1996 and that there was also an investigation initiated by the military prosecutor's office at approximately March or April of 1996. The two investigations may have been under the umbrella of the one investigation.) Additionally, in April 1996, Karadžić ordered a “detailed investigation to be carried out of the locations where victims of armed conflict in and around Srebrenica” were to be found with a view to determining “whether any intentional murder of civilians, of wounded or of prisoners of war occurred or whether any crime was committed representing breaches of The Hague or Geneva Conventions”. Ex. P00021, “Order from the President of the Republic and the Commander in Chief of the Armed Forces Dr. Radovan Karadžić, 1 April 1996” (the order further noted that “[t]he perpetrators of any such crime should be identified so that legal criminal proceedings against such perpetrators could be initiated without any delay”). The order was to be implemented by “the Main Staff of the Republika Srpska Army; the Ministers of Defence, of the Interior and of the Justice and Administration; the Supreme Court; the Supreme Military Court; the Public Prosecutor of the Republika Srpska and the Military Prosecutor of the Republika Srpska Army.” Ex. P00021, “Order from the President of the Republic and the Commander in Chief of the Armed forces Dr. Radovan Karadžić, 1 April 1996”. In September 1996, the MUP issued a report on the results of its investigation in response to Karadžić's April 1996 order, and essentially concluded that, in “the period when Srebrenica was liberated”, it was the Muslim army that was responsible for murders of other Muslims and that other deaths were suicides. Ex. P00023, “Report from the Ministry of Interior with information concerning the period when Srebrenica was liberated signed by Minister Dragan Kijac, 23 September 1996”. See also Richard Butler, T. 20960 (1 Feb 2008). The Trial Chamber considers that this evidence tends to indicate that an investigation by the Military Prosecutor would not have produced a genuine result and thus that it is unlikely that

Having considered the available evidence and giving the benefit to the Accused, the Trial Chamber therefore finds that the Prosecution has failed to demonstrate that reporting to the Military Prosecutor was a practical option available to **Pandurević** at the time.

2058. In assessing the actions taken by **Pandurević**, the Trial Chamber emphasizes that a superior is not obliged to perform the impossible⁶⁰⁴⁴ and that the measures required of the superior are limited to those which are feasible under the circumstances and are within his or her power.⁶⁰⁴⁵ Nevertheless, a superior still must use every means within his or her material ability under the circumstances prevailing at the time when the superior has reason to know of criminal acts committed by his or her subordinates.⁶⁰⁴⁶

2059. According to **Pandurević**'s own account, on the evening of 16 July at the IKM, **Pandurević** asked Obrenović about the situation of the prisoners in the Zvornik area. At this point, Obrenović provided him with more detailed information regarding the murder operation and involvement of the members of the Zvornik Brigade in guarding and burial tasks.⁶⁰⁴⁷ Following this conversation, he sent Obrenović to the Zvornik Brigade headquarters to gather more information about the killings.⁶⁰⁴⁸ Additionally, on the morning of 18 July, **Pandurević** had brief meetings with Obrenović and Jokić in Baljkovica, during which Jokić confirmed for **Pandurević** that engineering machinery belonging to the Zvornik Brigade was used in the burial of bodies of executed prisoners.⁶⁰⁴⁹ In the view of the Trial Chamber, in these ways, **Pandurević** took some measures to investigate and gather further information about the crimes that occurred in the area of Zvornik and any involvement of his subordinates in the commission of those crimes.

2060. As discussed previously, **Pandurević**'s interim combat reports for 15 and 18 July allude to the detention and executions of the Bosnian Muslim prisoners who had been brought to the Zvornik area.⁶⁰⁵⁰ According to **Pandurević**, when he dictated the 18 July Interim Combat Report in particular, he believed that Krstić was in possession of certain information regarding the killings, but **Pandurević** did not know the extent of his knowledge.⁶⁰⁵¹ Further, in **Pandurević**'s view, it

an effort by **Pandurević** to report to the Military Prosecutor would have led to the investigation or punishment of members of the Zvornik Brigade for their involvement in the murder operation.

⁶⁰⁴⁴ *Blaškić* Appeal Judgement, para. 417.

⁶⁰⁴⁵ *See Krnojelac* Trial Judgement, para. 95.

⁶⁰⁴⁶ *Blaškić* Appeal Judgement, paras. 72, 417, 499. *See also Bagilishema* Appeal Judgement, para. 35.

⁶⁰⁴⁷ *See supra*, paras. 1879–1881.

⁶⁰⁴⁸ *See supra*, para. 1881.

⁶⁰⁴⁹ *See supra*, para. 1893.

⁶⁰⁵⁰ *See supra*, paras. 1870, 1895, 1948, 1965.

⁶⁰⁵¹ Vinko Pandurević, T. 31106, 31111 (9 Feb 2009). **Pandurević** further testified that he believed that the 18 July Interim Combat Report sufficiently reported on this matter to Krstić. *Ibid.*, T. 31112 (9 Feb 2009). With regard to the reporting to his superiors in the 18 July Report, **Pandurević** also explained: "I [...] sent a report to the Corps in which I mentioned POWs, and I expected that if the Corps did not know anything about this, they would ask for

was pointless for him to report to the Security Organ any suspected criminal act regarding the prisoners because he knew that “the Superior Commands of the Security Organs” were involved, and his only option therefore was to inform the Corps Commander of the matter.⁶⁰⁵² The Trial Chamber also recalls PW-168’s account that **Pandurević**, in a revealing and striking comment, expressed to Obrenović that “with Mladić up there, we are all doomed.”⁶⁰⁵³

2061. During Obrenović’s and **Pandurević**’s conversation on 23 July, when they spoke about the executions that had been carried out in the Zvornik area and what they should have done and should do in response to what had happened, **Pandurević** indicated that he had written his 18 July Report.⁶⁰⁵⁴ In the view of the Trial Chamber, this conversation, viewed in conjunction with other testimony from **Pandurević**, supports the reasonable inference that **Pandurević** intended his report to be a means to convey to his superiors information about the events in Zvornik and considered it to be a means to express his disapproval and denunciation of the crimes that occurred in this respect.

2062. Having considered all of the relevant evidence, the Trial Chamber is satisfied that his 15 and 18 July Interim Combat Reports were a means—potentially the only such realistic available means—for **Pandurević** to communicate and report to the competent authorities about the crimes that were committed in the area of Zvornik.⁶⁰⁵⁵ The Trial Chamber also recalls that **Pandurević** raised the issue of the execution of prisoners in Zvornik with Krstić in person on 27 July.⁶⁰⁵⁶ Specifically, **Pandurević** asked Krstić if he had any more specific information about the matter, to which Krstić responded that it was not something that should be **Pandurević**’s concern and that he, Krstić, would deal with the problem in the appropriate way.⁶⁰⁵⁷

some additional information or they would order me as to what to do. However, I never received any feedback from the Corps with this regard.” *Ibid.*, T. 31012 (2 Feb 2009).

⁶⁰⁵² Vinko Pandurević, T. 31111–31112 (9 Feb 2009). **Pandurević** further testified, “It was my duty as the commander, once I learned that a crime had been committed, to inform my superior and then he in turn would inform the prosecutor and the court, and I also had the option to engage the security organs -- or, rather, I knew that the security organs had instructions laid down by the military prosecutor on how to act in legal criminal matters when a crime was committed that was under the jurisdiction of the military court. It was their official duty so that they could launch and conduct an investigation. [...] I did not have the authority to investigate officers from higher commands. All I could do was to inform the corps commander and to expect him to initiate the appropriate mechanisms and to launch an investigation into these crimes.” *Ibid.*, T. 31111–31112 (9 Feb 2009).

⁶⁰⁵³ PW-168, T. 15950 (closed session) (27 Sept 2007). *See supra*, para. 1910.

⁶⁰⁵⁴ *See supra*, para. 1910.

⁶⁰⁵⁵ The Trial Chamber specifically notes the testimony of expert Branislav Ristivojević that the law did not cover or provide direction as to whom the Brigade Commander should report in case the suspected perpetrator of the crime in question is from the Security Organ, Military Police, or Military Prosecutor. According to Ristivojević, in such a situation, the Brigade Commander would fulfil his duty by reporting the crime to his Corps Commander. Branislav Ristivojević, T. 28079–28082 (12 Nov 2008).

⁶⁰⁵⁶ *See supra*, para. 1915.

⁶⁰⁵⁷ *See supra*, para. 1915.

2063. The Trial Chamber has also considered the prevailing circumstances at the time that **Pandurević** had reason to know of the participation of members of the Zvornik Brigade in the murder operation. Specifically, the Trial Chamber is convinced that, as reflected in his conversations with Obrenović on 15, 16, and 23 July, **Pandurević** had knowledge that the detention, execution, and burial of the Bosnian Muslim men in the area of Zvornik had been conducted pursuant to orders of the Main Staff, particularly Mladić and the Security Branch. In light of this fact, the Trial Chamber considers that **Pandurević** had limited options in terms of reasonable means available to him and within his material ability in order to discharge his duty to punish crimes committed during that operation. The normal avenues open to a Commander were effectively unrealistic in his situation. In particular, it is evident that referring the matter to the Security Organ, to his direct superior or even to the Commander of the VRS for investigation and punishment in the usual manner was not possible when all of them were implicated in planning, ordering and executing these horrific crimes.

2064. As recounted above, there is no evidence of an alternative independent avenue being open to him. Despite these obvious limitations, **Pandurević** did take some measures to address the crimes that had occurred through his Interim Combat Reports of 15 and 18 July and by raising the issue with Krstić in person on 27 July. In most instances, such action would be insufficient to fulfil the obligation on a superior to punish. However, the Trial Chamber is satisfied that, in these very particular and extraordinary circumstances, there were no other reasonable means available to **Pandurević** and within his material ability to pursue punishment for the crimes committed in the murder operation. Furthermore, there is no evidence before the Trial Chamber that this situation significantly changed later during **Pandurević's** remaining time as Commander of the Zvornik Brigade so as to provide him with other options in terms of necessary and reasonable measures.

2065. In light of the foregoing, the Trial Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that **Pandurević** failed to take the necessary and reasonable measures to punish his subordinates required to discharge his duty under Article 7(3) of the Statute.

e. Conclusion

2066. Based on these findings, the Trial Chamber therefore finds that **Pandurević** had reason to know that crimes were being committed by his subordinates during the murder operation. As a superior within the meaning of Article 7(3), **Pandurević** was therefore legally obligated to take the necessary and reasonable measures to prevent the commission of the crimes by the members of the Zvornik Brigade. **Pandurević**, however, took no such measures to prevent their crimes of murder

and aiding and abetting murder.⁶⁰⁵⁸ The Trial Chamber therefore finds beyond reasonable doubt that **Pandurević** is criminally responsible under Article 7(3) of the Statute.

(v) Counts

a. The Knowledge Requirement for a Crime under Article 5 of the Statute

2067. **Pandurević** is responsible for a crime against humanity under Article 5 of the Statute if his acts were part of the widespread and systematic attack against the civilian population, and if at the time he knew of that attack and that his acts comprise a part thereof.⁶⁰⁵⁹

2068. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica.⁶⁰⁶⁰ As established previously, **Pandurević** had knowledge of the 20 March Drina Corps Order,⁶⁰⁶¹ through which the plan for the transfer of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves was to be implemented.⁶⁰⁶² Additionally, **Pandurević** participated in the *Krivaja-95* Operation and the takeover of the Srebrenica enclave and thus knew of the military attack on Srebrenica, a protected civilian enclave. In these circumstances, it is clear that he knew that his acts constituted part of the attack.

2069. With respect to the wounded Bosnian Muslim prisoners from Milići Hospital, the Trial Chamber has found that these men were wounded as a result of the attack on Srebrenica.⁶⁰⁶³ **Pandurević** was aware that these men, who were brought to the Zvornik Brigade, were Bosnian Muslim and that they had been wounded. Given the timing of these events, the Trial Chamber is satisfied that **Pandurević** knew that these wounded prisoners from Milići Hospital were victims of the attack against the protected enclave.

2070. Based on the evidence, the Trial Chamber is satisfied that **Pandurević**'s acts and omission were tied to the attack on Srebrenica and that **Pandurević** knew that this was the case. The Trial Chamber therefore finds that the knowledge requirement for the commission of a crime under Article 5 of the Statute has been met.

⁶⁰⁵⁸ See *supra*, para. 2043.

⁶⁰⁵⁹ See *supra*, para. 758.

⁶⁰⁶⁰ See *supra*, para. 785.

⁶⁰⁶¹ Ex. P00203, "Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995".

⁶⁰⁶² See *supra*, para. 1993.

⁶⁰⁶³ See *supra*, para. 577.

b. Counts 4 and 5: Murder

2071. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims from Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.⁶⁰⁶⁴ The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to Murder or as a natural and foreseeable consequence of it.⁶⁰⁶⁵

2072. The Trial Chamber has found that **Pandurević** was not a participant in the JCE to Murder. However, the Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.⁶⁰⁶⁶ He also knew at the time of his omission that the victims were taking no active part in the hostilities. **Pandurević** had the knowledge required for a crime against humanity and for a war crime.⁶⁰⁶⁷ Therefore, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Pandurević** is criminally responsible for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.

2073. In addition, the Trial Chamber has also found that, as superior within the meaning of Article 7(3) of the Statute, **Pandurević** failed to take the necessary and reasonable measures required to prevent members of the Zvornik Brigade from participating in the murder of Bosnian Muslim prisoners in the area of Zvornik on 15 and 16 July.⁶⁰⁶⁸ **Pandurević** is therefore criminally responsible, pursuant to Article 7(3), for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.

c. Count 3: Extermination

2074. The Trial Chamber has found that the large-scale murders of men and boys from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5. These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it.

2075. The Trial Chamber has found that **Pandurević** was not a participant in the JCE to Murder based on his lack of intent and lack of significant contribution to the common purpose. There is no evidence to suggest that **Pandurević** committed, planned, instigated, or ordered the large-scale

⁶⁰⁶⁴ See *supra*, paras. 744–748, 759–789.

⁶⁰⁶⁵ See *supra*, paras. 1050, 1082.

⁶⁰⁶⁶ See *supra*, para. 1991.

⁶⁰⁶⁷ See *supra*, paras. 748, 2068–2070.

murders of the men and boys from Srebrenica, nor is there sufficient evidence from which to conclude that **Pandurević** possessed the requisite *mens rea* for the crime of extermination.

2076. The Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.⁶⁰⁶⁹ In the view of the Trial Chamber, there is sufficient evidence to conclude that **Pandurević** knew that the crime of extermination was being committed at the time of his failure to act on 23 July with respect to the ten wounded prisoners. Upon his return to Zvornik on 15 July, **Pandurević** learned that a large number of prisoners had been brought from Bratunac to Zvornik and were being executed pursuant to an order by Mladić.⁶⁰⁷⁰ Later, in his 18 July Interim Combat Report, **Pandurević** makes reference to 3,000 Bosnian Muslim males having been brought to and executed in the area of Zvornik.⁶⁰⁷¹ Based on this report, the Trial Chamber is therefore satisfied that by at least 18 July, **Pandurević** had knowledge of the large-scale murders of the men and boys from Srebrenica.

2077. The murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital was an appalling and inexcusable criminal act. **Pandurević's** responsibility for these murders, albeit through aiding and abetting by omission, can only be condemned without reservation. However, **Pandurević's** responsibility for the murder of the prisoners from Milići Hospital must be considered and decided upon strictly within the context of extermination as it occurred in this case. Under this count, **Pandurević** is not being charged for these murders in isolation, but within the context and for the purpose of extermination. It is precisely within this context that his responsibility must be assessed.

2078. The Trial Chamber emphasises that each human life is precious and the murder of ten persons is of the utmost gravity under any circumstance. However, for the purpose of this Count, the Trial Chamber must decide if in aiding and abetting by omission the murder of these ten Bosnian Muslims, **Pandurević** substantially contributed to the commission of extermination. It does not follow that every additional killing automatically amounts to a substantial contribution to the extermination. The Trial Chamber does not consider this issue to be a mere numerical one. One has to consider all of the circumstances surrounding the extermination and the effect of the alleged murders within that context. The evidence shows that on 23 July the mass-killing operation was substantially over and extermination was already a reality. The murder of the ten wounded Bosnian

⁶⁰⁶⁸ See *supra*, para. 2051.

⁶⁰⁶⁹ See *supra*, para. 1991.

⁶⁰⁷⁰ See *supra*, para. 1861.

⁶⁰⁷¹ See Ex. P00334, "Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995", para. 4. See also *supra*, paras. 1895, 1965.

Muslim prisoners obviously added another ten victims to the thousands of Bosnian Muslim men and boys who had already been killed. However, as such, given the other circumstances, it cannot be said to be a substantial contribution to the extermination in this case which had already materialised. The Trial Chamber is not satisfied that **Pandurević**'s contribution by omission that resulted in the murder of ten more Bosnian Muslims amounts to a substantial contribution to the commission of extermination. Accordingly, the Trial Chamber finds that **Pandurević** did not aid and abet the crime of extermination.

2079. The Trial Chamber therefore finds that **Pandurević** is not criminally responsible for extermination as a crime against humanity. Further, the Trial Chamber recalls its finding that **Pandurević** is responsible pursuant to Article 7(3) for murder with respect to the murder of Bosnian Muslim prisoners in the area of Zvornik on 15 and 16 July. Given the finding that he had "reason to know" and thus the obvious limitations of his knowledge, as well as the fact that his Article 7(3) responsibility was triggered at a late stage in the murder operation, the Trial Chamber is not satisfied that **Pandurević** is responsible pursuant to Article 7(3) for the crime of extermination.

d. Count 1: Genocide

2080. The Trial Chamber has found that genocide was committed by members of the VRS Main Staff and the VRS Security Organ, including **Beara** and **Popović**, in relation to the Muslims of Eastern Bosnia, as part of the Bosnian Muslims.⁶⁰⁷² The Trial Chamber has also found that the genocide was committed through the killings and infliction of serious bodily and mental harm caused in the course of, and by, the murder operation.⁶⁰⁷³

2081. The Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.⁶⁰⁷⁴ As such, **Pandurević** aided and abetted the underlying act of murdering members of the group, as articulated in Article 4(2)(a) of the Statute. The Trial Chamber will therefore now examine whether **Pandurević** aided and abetted murder with genocidal intent.

2082. The Prosecution submits that **Pandurević**'s genocidal intent is evidenced by the existence of a genocidal plan and his involvement in it, including specifically his participation in the attack on

⁶⁰⁷² See *supra*, para. 863.

⁶⁰⁷³ See *supra*, para. 861.

⁶⁰⁷⁴ See *supra*, para. 1991.

the Srebrenica and Žepa enclaves as well as his acts and omissions with respect to the murder operation carried out in the area of Zvornik.⁶⁰⁷⁵

2083. As further evidence of **Pandurević**'s genocidal intent, the Prosecution submits that "**Pandurević** clearly indicated that he was aware of the genocidal plan to murder the Muslim men" when he "expressed his irritation that the civil protection units were not performing the burials" during his conversation with Obrenović on 15 July.⁶⁰⁷⁶ The Trial Chamber however has found that an inference as to **Pandurević**'s knowledge cannot be drawn from this response by **Pandurević**. Accordingly, the Trial Chamber finds that the evidence of **Pandurević**'s response is insufficient evidence from which to conclude that **Pandurević** had knowledge of the genocidal plan and from which to infer genocidal intent on his part.⁶⁰⁷⁷

2084. The Prosecution also alleges that **Pandurević**'s reference to "let them go" in his 15 July Interim Combat Report indicates that **Pandurević** knew that some of the Bosnian Muslim prisoners in the area of Zvornik were still alive and that he "had the ability and opportunity to save them but deliberately chose not to."⁶⁰⁷⁸ According to the Prosecution, "[b]y consciously choosing not to release those prisoners and instead asking for someone else to come and take over the murder operation so that he could concentrate his resources on fighting the Muslim column, **Pandurević** confirmed his intent to destroy those Muslim men."⁶⁰⁷⁹ The Trial Chamber, however, has previously found that the reference to "let them go" in **Pandurević**'s 15 July Report refers to the column of the ABiH 28th Division and not the prisoners,⁶⁰⁸⁰ and thus accordingly rejects the Prosecution's submission with respect to **Pandurević**'s alleged genocidal intent.

2085. The Prosecution also submits that **Pandurević**'s genocidal intent may be inferred from the language used by **Pandurević** in his brigade reports and documents.⁶⁰⁸¹ In particular, the Prosecution argues that frequent use of derogatory terms, such as "*poturice*", and expressions of rhetoric contained in his reports further support the conclusion that **Pandurević** advocated and shared the goal of the RS and VRS leadership to remove the Muslim population from Eastern Bosnia.⁶⁰⁸² The Prosecution submits that overall, **Pandurević**'s habitual use of derogatory language for Muslims, as evidenced by their regular use in official documents and reports and in other communications between April and July 1995, constitutes further evidence of his ethnic bias against

⁶⁰⁷⁵ Prosecution Final Brief, paras. 1545–1551.

⁶⁰⁷⁶ *Ibid.*, para. 1549.

⁶⁰⁷⁷ *See supra*, paras. 1861, 1961.

⁶⁰⁷⁸ Prosecution Final Brief, para. 1442. *See also ibid.*, paras. 1421, 1423.

⁶⁰⁷⁹ *Ibid.*, para. 1550.

⁶⁰⁸⁰ *See supra*, paras. 1963–1964.

⁶⁰⁸¹ *See* Prosecution Final Brief, paras. 1553–1567.

⁶⁰⁸² *Ibid.*, paras. 1554–1559, 1561–1567.

Muslims.⁶⁰⁸³ Additionally, the Prosecution notes that **Pandurević**'s use of an ethnically derogatory term such as "Turks" to refer to murder victims in his 18 July Interim Combat Report, "is a clear and unmistakable sign" of **Pandurević**'s ethnic hatred "not just towards all Muslims; but specifically towards the one who [were] murdered with his knowledge and involvement."⁶⁰⁸⁴

2086. The Trial Chamber finds that while **Pandurević** may not have been sympathetic towards Bosnian Muslims, the use of derogatory language and rhetoric in brigade documents or the existence of a culture of ethnic bias against Muslims within the Zvornik Brigade⁶⁰⁸⁵ is in no way determinative of his alleged specific intent to commit genocide. Particularly, in light of the absence of other evidence such as acts from which to infer such intent, the Trial Chamber finds that the mere use of such language in itself is not sufficient evidence to establish that **Pandurević** possessed the requisite genocidal intent.

2087. Ultimately, considering the evidence of **Pandurević**'s acts, omissions, words and conduct, individually and cumulatively, the Trial Chamber finds that there is simply no evidence before it of genocidal intent on his part.

2088. The Trial Chamber also finds that the Prosecution has not proven beyond reasonable doubt that at the time of his omission, **Pandurević** had knowledge that other members of the VRS had the requisite specific intent to commit genocide. The Trial Chamber has found that **Pandurević** had knowledge of the common purpose of the JCE to Murder on 15 July and by at least 18 July was aware of the large-scale murders of Bosnian Muslim prisoners in the area of Zvornik pursuant to the orders and direction of the VRS Main Staff and the Security Branch, including **Popović**. **Pandurević** also had sufficient information from which to infer the discriminatory intent on their part against Bosnian Muslims. However, there is no evidence before the Trial Chamber that during the relevant period he learnt of the separations in Potočari, the capture of the men along the Bratunac–Konjević Polje Road, the large component of civilians amongst the prisoners, the details of the executions or the systematic nature of the operation or the other *indicia* of genocide which surrounded the murder operation. In these circumstances, while **Pandurević** was clearly aware of the murderous intent of other members of the VRS, the Trial Chamber is not satisfied beyond reasonable doubt that he possessed sufficient information to be aware of their specific intent to destroy the Bosnian Muslim population of Eastern Bosnia as such.

⁶⁰⁸³ Prosecution Final Brief, paras. 1564–1567.

⁶⁰⁸⁴ *Ibid.*, para. 1566.

⁶⁰⁸⁵ See Prosecution Final Brief, paras. 1568–1576.

2089. Moreover, the Trial Chamber finds that **Pandurević**'s omission with respect to the ten wounded prisoners from Milići Hospital did not substantially contribute to the commission of genocide. In the view of the Trial Chamber, his failure to fulfil his duty to protect the wounded prisoners does not constitute a substantial contribution in light of the scale of the genocidal operation and the stage of near completion that it had reached at the time of his omission on 23 July.

2090. The Trial Chamber finds that there is no evidence to support the conclusion that **Pandurević** aided and abetted murder with genocidal intent. Additionally, the Trial Chamber also cannot find that **Pandurević** aided and abetted genocide through his omission with respect to the wounded prisoners because his omission did not constitute a substantial contribution to the commission of genocide and there is insufficient evidence of his knowledge of the genocidal intent of **Popović** and others. The Trial Chamber therefore finds that **Pandurević** is not criminally responsible for genocide.

e. Count 2: Conspiracy to Commit Genocide

2091. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide;⁶⁰⁸⁶ and to be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.⁶⁰⁸⁷

2092. There is no evidence that **Pandurević** entered into an agreement to commit genocide, and as discussed above, the Trial Chamber has found that he did not possess the requisite specific intent to commit genocide. The Trial Chamber therefore finds that **Pandurević** is not criminally responsible for conspiracy to commit genocide.

f. Count 6: Persecution

2093. The Trial Chamber has found that persecution, a crime against humanity, was committed through murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer.⁶⁰⁸⁸

⁶⁰⁸⁶ *Musema* Trial Judgement, para. 191. See also *Nahimana et al.* Trial Judgement, para. 1041; *Kajelijeli* Trial Judgement, para. 787; *Ntagerura et al.* Trial Judgement, para. 70; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798.

⁶⁰⁸⁷ *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 799(i)–(ii). See also *supra*, para. 820.

⁶⁰⁸⁸ See *supra*, paras. 991–1003.

2094. The Trial Chamber has found that **Pandurević** was not a participant in either of the JCEs. However, the Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital and aided and abetted the forcible transfer of the Bosnian Muslim population from Srebrenica.⁶⁰⁸⁹ Having considered all the evidence relevant to his intent, the Trial Chamber finds that there is insufficient evidence that **Pandurević** assisted in the commission of either of these underlying crimes with discriminatory intent.

2095. The Trial Chamber notes in this context that the Prosecution has alleged that **Pandurević**'s frequent use of derogatory language towards Muslims, such as in brigade reports, provides clear evidence of his ethnic bias against Muslims.⁶⁰⁹⁰ However, in the view of the Trial Chamber, the use of derogatory terms is not sufficient evidence to establish that **Pandurević** possessed discriminatory intent, especially when viewed in consideration of the lack of other evidence to substantiate his alleged intent. The Trial Chamber finds that there is insufficient evidence of acts committed or behaviour demonstrated by **Pandurević** from which to infer his discriminatory intent on his part. The Trial Chamber in this respect also recalls its previous findings that **Pandurević** did not significantly contribute to the common purpose of the JCE to Murder as well as lacked the intent to carry out the common purposes of the JCE to Murder and JCE to Forcibly Remove. Furthermore, in the view of the Trial Chamber, **Pandurević**'s act of opening the corridor for passage of the Bosnian Muslim column, an act that ultimately spared many Bosnian Muslim lives, evidences a lack of persecutory intent on his part.

2096. In light of the insufficient evidence of his discriminatory intent, the Trial Chamber is therefore not satisfied that **Pandurević** aided and abetted the crime of murder and forcible transfer with the specific intent to discriminate on political, racial or religious grounds. Therefore, the Trial Chamber finds that **Pandurević** did not commit persecution.

2097. The Trial Chamber will now address whether **Pandurević** aided and abetted persecution. The Trial Chamber recalls that Judge Kwon is of the view that **Pandurević** is not responsible for aiding and abetting by omission the murder of the ten wounded prisoners from Milići Hospital because he lacked the requisite *mens rea*.⁶⁰⁹¹ Judge Prost is of the opinion that **Pandurević**'s omission does not constitute a substantial contribution to the crime of persecution.⁶⁰⁹² As such, the

⁶⁰⁸⁹ The Trial Chamber finds that there is no evidence that **Pandurević** was involved in cruel and inhumane treatment or terrorising of the civilian population.

⁶⁰⁹⁰ Prosecution Final Brief, paras. 1560–1567.

⁶⁰⁹¹ See Judge Kwon's Dissenting Opinion, *infra*, paras. 60–66. See also *supra*, paras. 1989–1991.

⁶⁰⁹² See Judge Prost's Separate Opinion, *infra*, paras 1–4.

Trial Chamber is not satisfied that **Pandurević** aided and abetted persecution through aiding and abetting by omission the murder of the ten wounded prisoners from Milići Hospital.

2098. With respect to forcible transfer, the Trial Chamber is satisfied that **Pandurević** had knowledge of the discriminatory intent with which the forcible transfer was committed at the time he participated in the military attack and takeover of the Srebrenica enclave. In reaching this conclusion, the Trial Chamber recalls that **Pandurević** had knowledge of the common purpose of the JCE to Forcibly Remove and as a participant in the takeover of Srebrenica, was aware of the indiscriminate attack on the Bosnian Muslim population of the Srebrenica enclave.⁶⁰⁹³ By participating in the attack on the enclave, **Pandurević** also knew that he was thus assisting in the commission of persecution. The Trial Chamber further notes that the military attack on the enclave was specifically directed towards the creation of the conditions and circumstances necessary for the removal of the Bosnian Muslim population from the Srebrenica enclave. In this context, **Pandurević's** acts pursuant to the military operation clearly assisted in the targeting of the Bosnian Muslim population. The Trial Chamber therefore is satisfied that his acts in aiding and abetting the forcible transfer substantially contributed to the commission of persecution.

2099. Therefore, the Trial Chamber is satisfied that he aided and abetted persecution through aiding and abetting the forcible transfer of the Bosnian Muslim civilian population from the Srebrenica enclave. The Trial Chamber therefore finds that **Pandurević** is criminally responsible for persecution as a crime against humanity.

2100. Having found **Pandurević** responsible pursuant to Article 7(1) for persecution with respect to forcible transfer, the Trial Chamber finds it unnecessary to consider his responsibility under Article 7(3). With respect to the underlying act of murder, given the limited nature of **Pandurević's** knowledge as to possible crimes and the involvement of his subordinates, the Trial Chamber is not satisfied that he had reason to know that crimes would be committed with discriminatory intent. In these circumstances, the Trial Chamber is not satisfied that **Pandurević** is responsible for the crime of persecution pursuant to Article 7(3).

g. Count 7: Inhumane Acts (Forcible Transfer)

2101. The Trial Chamber has found that **Pandurević** did not participate in the JCE to Forcibly Remove as he lacked the intent to carry out the common purpose.⁶⁰⁹⁴ Overall, there is no evidence that **Pandurević** committed, planned, instigated, or ordered forcible transfer. However, the Trial

⁶⁰⁹³ See *supra*, paras. 1995, 1997–1998.

Chamber has found that **Pandurević** aided and abetted the forcible transfer of the Bosnian Muslim civilian population from Srebrenica through his participation in the military attack on and takeover over of the enclave.⁶⁰⁹⁵ The Trial Chamber therefore finds that **Pandurević** is criminally responsible for forcible transfer as a crime against humanity.

h. Count 8: Deportation

2102. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Pandurević** is not criminally responsible for deportation as a crime against humanity.

⁶⁰⁹⁴ See *supra*, para. 2007.

⁶⁰⁹⁵ See *supra*, para. 2012.

VI. FINDINGS OF THE TRIAL CHAMBER

2103. The Trial Chamber will first set out each count and then its findings, in relation to each of the Accused.

A. Charges against Vujadin Popović

2104. In relation to the charges brought against **Vujadin Popović**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a) and 7(1) of the Statute, through (a) killings 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, and (d) imposing measures intended to prevent births within the group

Vujadin Popović is **guilty** of planning, ordering and committing genocide pursuant to Articles 4(3)(a) and 7(1) of the Statute, through killings members of the group, and causing serious bodily or mental harm to members of the group.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b) and 7(1) of the Statute

Vujadin Popović is **guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute

Vujadin Popović is **guilty** of planning, ordering and committing extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

Vujadin Popović is **guilty** of planning, ordering and committing murder, as a crime against humanity and as a violation of the laws and customs of war.⁶⁰⁹⁶

⁶⁰⁹⁶ The Trial Chamber recalls its finding that the murders in paragraphs 30.3.1 and 31.2.b of the Indictment were not proven, and the murders in paragraphs 31.1.b. and 31.1.c. of the Indictment were withdrawn.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Vujadin Popović is **guilty** of planning, ordering and committing persecution, a crime against humanity, through murder, and cruel and inhumane treatment.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

Vujadin Popović is **not guilty** of inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

Vujadin Popović is **not guilty** of deportation, a crime against humanity.

B. Charges against Ljubiša Beara

2105. In relation to the charges brought against **Ljubiša Beara**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a) and 7(1) of the Statute, through (a) killings 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, and (d) imposing measures intended to prevent births within the group

Ljubiša Beara is **guilty** of planning, ordering and committing genocide pursuant to Articles 4(3)(a) and 7(1) of the Statute, through killings members of the group, and causing serious bodily or mental harm to members of the group.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b) and 7(1) of the Statute

Ljubiša Beara is **guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute

Ljubiša Beara is **guilty** of planning, ordering and committing extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

Ljubiša Beara is **guilty** of planning, ordering and committing murder, as a crime against humanity and as a violation of the laws and customs of war.⁶⁰⁹⁷

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Ljubiša Beara is **guilty** of planning, ordering and committing persecution, a crime against humanity, through murder, and cruel and inhumane treatment.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

Ljubiša Beara is **not guilty** of inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

Ljubiša Beara is **not guilty** of deportation, a crime against humanity.

C. Charges against Drago Nikolić

2106. In relation to the charges brought against **Drago Nikolić**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a) and 7(1) of the Statute, through (a) killings 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, and (d) imposing measures intended to prevent births within the group

Drago Nikolić is **guilty** of aiding and abetting genocide pursuant to Articles 4(3)(a) and 7(1) of the Statute, through killings members of the group, and causing serious bodily or mental harm to members of the group.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b) and 7(1) of the Statute

Drago Nikolić is **not guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute

Drago Nikolić is **guilty** of planning, ordering and committing extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

Drago Nikolić is **guilty** of planning, ordering and committing murder, as a crime against humanity and as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Drago Nikolić is **guilty** of planning, ordering and committing persecution, a crime against humanity, through murder, and cruel and inhumane treatment.

⁶⁰⁹⁷ The Trial Chamber recalls its finding that the murders in paragraphs 30.3.1 and 31.2.b. of the Indictment were not proven, and the murders 31.1.b. and 31.1.c. of the Indictment were withdrawn.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

Drago Nikolić is not guilty of inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

Drago Nikolić is not guilty of deportation, a crime against humanity.

D. Charges against Ljubomir Borovčanin

2107. In relation to the charges brought against **Ljubomir Borovčanin**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a), 7(1) and 7(3) of the Statute, through (a) killings 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, and (d) imposing measures intended to prevent births within the group

Ljubomir Borovčanin is not guilty of genocide.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b), 7(1) and 7(3) of the Statute

Ljubomir Borovčanin is not guilty of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b), 7(1) and 7(3) of the Statute

Ljubomir Borovčanin is guilty of aiding and abetting extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a), 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3, 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

Ljubomir Borovčanin is guilty of aiding and abetting murder, as a crime against humanity and as a violation of the laws and customs of war.⁶⁰⁹⁸

⁶⁰⁹⁸ The factual allegation underlying the murder is that as alleged in paragraph 30.4 of the Indictment. *See also supra*, paras. 1559, 1561–1563.

Ljubomir Borovčanin is **guilty** of murder pursuant to Art. 7(3) of the Statute, as a crime against humanity and as a violation of the laws and customs of war.⁶⁰⁹⁹

- **Count 6: Persecution**, charged pursuant to Articles 5(h), 7(1) and 7(3) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Ljubomir Borovčanin is **guilty** of aiding and abetting persecution, a crime against humanity, through aiding and abetting murder, and aiding and abetting forcible transfer.⁶¹⁰⁰

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i), 7(1) and 7(3) of the Statute

Ljubomir Borovčanin, by majority, Judge Kwon dissenting, is **guilty** of aiding and abetting inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d), 7(1) and 7(3) of the Statute

Ljubomir Borovčanin is **not guilty** of deportation, a crime against humanity.

E. Charges against Radivoje Miletić

2108. In relation to the charges brought against **Radivoje Miletić**, the Trial Chamber finds:

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

Radivoje Miletić, by majority, Judge Kwon dissenting, is **guilty** of committing murder, a crime against humanity.

- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

⁶⁰⁹⁹ The factual allegation underlying the murder is that as alleged in paragraph 30.4 of the Indictment. *See also supra*, paras. 1526, 1571, and 1576.

⁶¹⁰⁰ *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35.

Radivoje Miletić is **not guilty** of committing murder, as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder, as alleged in paragraph 31 of the Indictment, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Radivoje Miletić is **guilty** of committing and planning persecution, a crime against humanity, through forcible transfer, cruel and inhumane treatment, terrorising civilians, and murder⁶¹⁰¹.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

Radivoje Miletić is **guilty** of committing and planning inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

Radivoje Miletić is **not guilty** of deportation, a crime against humanity.

F. Charges against Milan Gvero

2109. In relation to the charges brought against **Milan Gvero**, the Trial Chamber finds:

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

Milan Gvero is **not guilty** of murder, as a crime against humanity.

- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

Milan Gvero is **not guilty** of murder, as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder, as alleged in paragraph 31 of the Indictment, (b) cruel and inhumane treatment

of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Milan Gvero is **guilty** of committing persecution, a crime against humanity, through forcible transfer, cruel and inhumane treatment, and terrorising civilians.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

Milan Gvero is **guilty** of committing inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

Milan Gvero is **not guilty** of deportation, a crime against humanity.

G. Charges against Vinko Pandurević

2110. In relation to the charges brought against **Vinko Pandurević**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a), 7(1) and 7(3) of the Statute, through (a) killings 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, and (d) imposing measures intended to prevent births within the group

Vinko Pandurević is **not guilty** of genocide.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b), 7(1) and 7(3) of the Statute

Vinko Pandurević is **not guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b), 7(1) and 7(3) of the Statute

Vinko Pandurević is **not guilty** of extermination, a crime against humanity.

⁶¹⁰¹ But see Judge Kwon's Dissenting Opinion, *infra*, paras. 27–28.

- **Count 4: Murder**, charged pursuant to Articles 5(a), 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3, 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

Vinko Pandurević, by majority, Judge Kwon dissenting, is **guilty** of aiding and abetting murder, as a crime against humanity and as a violation of the laws and customs of war.⁶¹⁰²

Vinko Pandurević is **guilty** of murder pursuant to Art. 7(3) of the Statute, as a crime against humanity and as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

Vinko Pandurević is **guilty** of aiding and abetting persecution, a crime against humanity, through aiding and abetting forcible transfer.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i), 7(1) and 7(3) of the Statute

Vinko Pandurević is **guilty** of aiding and abetting inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

Vinko Pandurević is **not guilty** of deportation, a crime against humanity.

⁶¹⁰² The factual allegation underlying the murder is that as alleged in paragraph 30.15 of the Indictment.

VII. CUMULATIVE CONVICTIONS

2111. Cumulative convictions are multiple convictions entered under different statutory provisions in relation to the same conduct. Under the Tribunal's case law, they are permissible if each statutory provision involved has a materially distinct element not contained in the other (the "*Čelebići* test").⁶¹⁰³ An element is materially distinct from another if it requires proof of a fact not required by the other element.⁶¹⁰⁴ Where this test is not met, a conviction will be entered only under the more specific provision. The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.⁶¹⁰⁵

2112. Convictions for the same conduct under Article 3 and Article 5 are permissible.⁶¹⁰⁶ Article 3 requires a close link between the acts of the accused and the armed conflict; this element is not required by Article 5. On the other hand, Article 5 requires proof that the act occurred as part of a widespread or systematic attack against any civilian population; that element is not required by Article 3.⁶¹⁰⁷ Therefore, cumulative convictions for murder as a violation of the laws or customs of war punishable under Article 3 (Count 5) on the one hand, and for murder as a crime against humanity punishable under Article 5(a) (Count 4); extermination as a crime against humanity punishable under Article 5(b) (Count 3); and persecution as a crime against humanity with the underlying act of murder under Article 5(h) (Count 6) on the other, are permissible.

2113. A conviction for persecution, a crime against humanity pursuant to Article 5(h) of the Statute, and another crime under Article 5 of the Statute, on the basis of the same acts, is not impermissibly cumulative.⁶¹⁰⁸ Therefore, cumulative convictions for persecution as a crime against humanity (Count 6) on the one hand, and for the crimes against humanity of extermination (Count 3), murder (Count 4), and forcible transfer as other inhumane acts (Count 7), on the other hand, are permissible.⁶¹⁰⁹

2114. However, convictions for murder as a crime against humanity under Article 5(a) (Count 4) and extermination as a crime against humanity under Article 5(b) (Count 3) based on the same act are impermissibly cumulative. These crimes do not contain materially distinct elements: each

⁶¹⁰³ *Kordić and Čerkez* Appeal Judgement, para. 1033; *Krstić* Appeal Judgement, para. 218; *Čelebići* Appeal Judgement, para. 412.

⁶¹⁰⁴ *Krstić* Appeal Judgement, para. 218; *Čelebići* Appeal Judgement, para. 412.

⁶¹⁰⁵ *Galić* Appeal Judgement, para. 163; *Krstić* Appeal Judgement, para. 218.

⁶¹⁰⁶ *Galić* Appeal Judgement, para. 165; *Kordić and Čerkez* Appeal Judgement, para. 1036; *Kunarac et al.* Appeal Judgement, para. 176; *Jelišić* Appeal Judgement, para. 82.

⁶¹⁰⁷ *Galić* Appeal Judgement, para. 165; *Kordić and Čerkez* Appeal Judgement, para. 1036; *Jelišić* Appeal Judgement, para. 82.

⁶¹⁰⁸ *Naletilić and Martinović* Appeal Judgement, para. 589.

⁶¹⁰⁹ *Krajišnik* Appeal Judgement, para. 391; *Naletilić and Martinović* Appeal Judgement, para. 589; *Stakić* Appeal Judgement, paras. 359–364; *Kordić and Čerkez* Appeal Judgement, paras. 1041–1042.

involves killing within the context of a widespread and systematic attack against a civilian population, and the only element that distinguishes these offences is that extermination requires that the killings occur on a large scale.⁶¹¹⁰

2115. A conviction for genocide under Article 4(3)(a) of the Statute (Count 1) is not impermissibly cumulative with a conviction for a crime against humanity under Article 5 of the Statute (Counts 3, 4, 6, and 7) as each has materially distinct elements from the other. While a conviction for genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, a conviction for crimes against humanity requires proof of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.⁶¹¹¹

2116. The Trial Chamber finds that it follows that a conviction for genocide under Article 4(3)(a) (Count 1) is not impermissibly cumulative with a conviction for murder as a violation of the laws or customs of war punishable under Article 3 (Count 5). While a conviction for genocide requires proof of the special intent noted above, this is not required for a conviction under Article 3. Article 3 requires proof of a close link between the acts of the accused and the armed conflict, which is not a requirement under Article 4.⁶¹¹²

2117. Further, as the requisite intent for conspiracy to commit genocide under Article 4(3)(b) (Count 2) is the same as that for genocide under Article 4(3)(a),⁶¹¹³ the Chamber also finds that it is not impermissibly cumulative to enter a conviction for conspiracy to commit genocide with a conviction for either Article 3 (Count 5) or Article 5 (Counts 3, 4, 6, and 7) crimes.

2118. The Trial Chamber recalls that *Čelebići* test applies when – arising from the same act or omission – there are possible convictions for more than one crime under the Statute. In the case of conspiracy to commit genocide and genocide, the *Čelebići* test has no application since the underlying acts or omissions of the two crimes will always be completely distinct. The separate nature of the two crimes is apparent from the acts of the Accused in the present case⁶¹¹⁴ as well as from the Statute: the *actus reus* of conspiracy to commit genocide is the act of entering into an

⁶¹¹⁰ *Stakić* Appeal Judgement, para. 366. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 542.

⁶¹¹¹ *Krstić* Appeal Judgement, paras. 222–223, 226–227. See also *Nahimana et al.* Appeal Judgement, para. 1029; *Ntagerura et al.* Appeal Judgement, para. 426; *Semanza* Appeal Judgement, para. 318; *Musema* Appeal Judgement, paras. 366–367.

⁶¹¹² *Krstić* Trial Judgement, para. 681.

⁶¹¹³ *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.

⁶¹¹⁴ See *supra*, paras. 1310, 1322, 1175, 1184.

agreement to commit genocide,⁶¹¹⁵ whereas the *actus reus* of genocide is the commission of one of the enumerated acts in Article 4(2).⁶¹¹⁶

2119. Consequently, the *Čelebići* test for determining the permissibility of entering multiple convictions is not applicable. Although it would typically follow that multiple convictions are permissible, the Trial Chamber is of the view that due to the unique nature of the offence of conspiracy, reasons of fairness dictate that it consider whether these convictions should be cumulatively entered in this case.

2120. The ICTY has not directly examined whether an accused may be convicted for both genocide and conspiracy to commit genocide. The ICTR has considered the issue twice. In *Musema*, the Trial Chamber found that convictions for both genocide and conspiracy to commit genocide could not stand:

In the instant case, the Chamber has adopted the definition of conspiracy most favourable to *Musema*, whereby an accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts. Such a definition is in keeping with the intention of the Genocide Convention. Indeed, the “*Travaux Préparatoires*” show that the crime of conspiracy was included to punish acts which, in and of themselves, did not constitute genocide. The converse implication of this is that no purpose would be served in convicting an accused, who has already been found guilty of genocide, for conspiracy to commit genocide, on the basis of the same acts.⁶¹¹⁷

In *Nahimana*, however, the Trial Chamber found that cumulative convictions for genocide and conspiracy to commit genocide were permissible.⁶¹¹⁸ The issue was not discussed in either the *Musema* or *Nahimana* Appeal Judgements.⁶¹¹⁹ Other ICTR cases have either failed to or declined to address the issue.⁶¹²⁰

2121. The ICTR jurisprudence is therefore equivocal. Further, while the *travaux préparatoires* of the Genocide Convention do lend some support to the assertion in the *Musema* Trial Judgement that

⁶¹¹⁵ *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Bagosora et al.* Trial Judgement, para. 2087.

⁶¹¹⁶ *Krstić* Appeal Judgement, para. 6. See also *Nahimana et al.* Appeal Judgement, para. 492.

⁶¹¹⁷ *Musema* Trial Judgement, para. 198. The Trial Chamber notes that the finding was made before the *Čelebići* Appeal Judgement was issued on 20 February 2001.

⁶¹¹⁸ *Nahimana et al.* Trial Judgement, para. 1043.

⁶¹¹⁹ See generally *Musema* Appeal Judgement; *Nahimana et al.* Appeal Judgement, paras. 912, 1023 (reversing *Nahimana*, Barayagwiza and Ngeze’s convictions for conspiracy to commit genocide and therefore finding the question of cumulatively convicting to be moot).

⁶¹²⁰ See *Kambanda* Trial Judgement, para. 3; *Kambanda* Appeal Judgement (Kambanda plead guilty to conspiracy to commit genocide and genocide; the issue of cumulatively convicting was addressed neither at trial nor on appeal); *Niyitegeka* Trial Judgement, paras. 420, 429, 480; *Niyitegeka* Appeal Judgement (Niyitegeka was convicted for both genocide and conspiracy to commit genocide, but the issue of cumulatively convicting was neither addressed at trial nor on appeal); *Kajelijeli* Trial Judgement, paras. 789–793 (Kajelijeli was found guilty of genocide, but not guilty of conspiracy to commit genocide; consequently, with respect to cumulative convictions, the Trial Chamber stated that “in the particular circumstances of the case here under consideration, we do not feel called upon to express a preference regarding which of the *Musema* or *Niyitegeka* approach [*sic*] to follow.”).

convictions for conspiracy to commit genocide and the substantive offence of genocide were not intended to be entered together, the issue does not appear to have been discussed directly.⁶¹²¹

2122. Additionally, the Trial Chamber notes that the Genocide Convention defined conspiracy in accordance with the common law notion of the term.⁶¹²² In most common law countries, convictions may be entered for both conspiracy and the underlying substantive offence,⁶¹²³ but this stance has been roundly criticised.⁶¹²⁴ The Trial Chamber also notes that in civil law countries, convicting for both conspiracy and the underlying offence is not possible.⁶¹²⁵ Given the variety of approaches,⁶¹²⁶ the Trial Chamber finds resort to national jurisprudence to be of limited utility.⁶¹²⁷

2123. The pertinent authority on the question is therefore ambiguous. However, first principles offer some guidance. Although the Trial Chamber has found that the *Čelebići* test is not applicable, it recalls that the fundamental principle animating the concern regarding multiple convictions for

⁶¹²¹ See UN Doc. E/794. In a meeting of the *ad hoc* committee, a proposal for a “preparatory acts” provision was debated. A problem of definition arose during the debates, and as a solution it was noted that: “in the most serious cases where it would be desirable to punish the authors of preparatory acts, that could be effected either under the clause “conspiracy to commit genocide” or the clause “complicity”. If the construction of crematory ovens or the adaptation of motor-cars to the purpose of killing the occupants with noxious gases were at issue, such acts requiring the co-operation of a certain number of persons, would accordingly come under the heading of “conspiracy to commit genocide” even if genocide were not finally committed, and under the heading of “complicity” if genocide were committed.” This indicates that conspiracy was envisioned as applicable when genocide was not actually committed, and when genocide was committed, complicity was the proper charge. See also UN Doc. A/C.6/SR.87. Here, the *ad hoc* commission debated the issue of complicity in genocide. At one point the Yugoslav representative posited a hypothetical concerning attempted murder to illustrate his point that, as the Convention was drafted at that time, an accomplice would not be liable if the murder was not completed. In response, the Iranian representative stated that “punishment of complicity should be limited to the act of genocide so-called.” In his opinion, “the provisions relating to conspiracy to commit genocide [] would ensure punishment in the case mentioned by the Yugoslav representative”; that is, where the act of genocide was not actually committed. It seems that conspiracy’s usefulness was envisioned with respect to instances where there has been no conviction of the substantive act of genocide.

⁶¹²² See *supra*, para. 873.

⁶¹²³ See, e.g., *Pinkerton v. U.S.*, 328 U.S. 640, 643–644 (1946) (U.S. Supreme Court); *Sheppe v. The Queen*, [1980] 2 S.C.R. 22 (Canadian Supreme Court); *Verrier v DPP* [1967] 2 AC 195, [1966] 3 All ER 568 (House of Lords).

⁶¹²⁴ In the U.S., see, e.g., P. Johnson, *The Unnecessary Crime of Conspiracy*, 61 Cal. L. Rev. 1137 (1973); Model Penal Code §1.07(1)(b) (model statutory text promulgated by the American Law Institute prohibits conviction for both the inchoate conspiracy offence and the substantive offence which is its object); *ibid.* at 5.05(1) (limiting punishment for conspiracy to no higher than the punishment for substantive offence). In Canada, see, e.g., Don Stuart, *Canadian Criminal Law: A Treatise*, 4th ed., (2001), pp. 698–700 (since conspiracy is a preventative and incomplete offence, “it inexorably follows that once the completed offence has been committed there is no justification for also punishing the incomplete one”). In the U.K., see, e.g., C.M.V. Clarkson and H.M. Keating, *Criminal Law: Text and Materials*, 4th ed. (1998), p. 512, fn. 97 (convictions for both conspiracy and the underlying offence viewed as “bad practice”); Andrew Ashworth, *Principles of Criminal Law*, 2nd ed. (1997), pp. 455–456, fn. 54.

⁶¹²⁵ *Musema* Trial Judgement, para. 196.

⁶¹²⁶ See *Čelebići* Appeal Judgement, para. 406 (“National approaches vary with respect to cumulative convictions. Some countries allow such convictions, letting the record reflect fully each violation that occurred, and preferring to address any allegations of unfairness in the manner of sentencing. Other countries reserve such convictions for acts resulting in the most severe of crimes, whereas still others require differing statutory elements before cumulative criminal convictions may be imposed.”).

⁶¹²⁷ See *Čelebići* Appeal Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, para. 20 (“[T]o have resort to national jurisdictions is also highly problematic in light of the lack of a uniform approach to this issue, which is complex even in well developed national jurisdictions, requiring solutions

the same act is one of fairness to the accused.⁶¹²⁸ The Trial Chamber notes the real risk of prejudice which lies in allowing cumulative convictions, including the punishment and social stigma inherent in being convicted of a crime, as well as the potential impact on a sentence ultimately served.⁶¹²⁹

2124. The Trial Chamber also finds the unique nature of the offence of conspiracy to be particularly important in this context. The purpose of criminalising an inchoate offence such as conspiracy is to prevent the commission of the substantive offence.⁶¹³⁰ Once the substantive offence is committed, the justification for punishing the prior conspiracy is less compelling.⁶¹³¹ This is particularly true when proof of the substantive offence is the main piece of evidence from which an inference of a prior illegal agreement is drawn and upon which the conspiracy conviction is based.

2125. These are the circumstances in the instant case. The Accused's participation in the JCE to Murder, with genocidal intent, forms the basis for the conviction for genocide. Similarly, the Accused's participation, along with others, in the JCE to Murder, with the same genocidal intent, are the bases from which an inference was drawn that an agreement to commit genocide was formed. In other words, the basis for both convictions is the Accused's participation in an agreement to murder with the requisite intent.

2126. In these circumstances particularly, the Trial Chamber finds that entering a conviction for the substantive offence of genocide renders redundant a conviction for conspiracy. The Trial Chamber is aware that the framers of the Genocide Convention considered conspiracy to commit genocide to be sufficiently serious as to warrant criminalising the mere agreement without preparatory acts, and as a distinct offence from genocide itself.⁶¹³² However, finding that

peculiar to a specific national system. No clear, useful, *common* principle can be gleaned from the major legal systems of the world." (emphasis in original).

⁶¹²⁸ *Kunarac et al.* Appeal Judgement, para. 173 (stating that the Appeals Chamber would scrutinise multiple convictions, guided by "the considerations of justice for the accused"); *Čelebići* Appeal Judgement, para. 412.

⁶¹²⁹ See *Kunarac et al.* Appeal Judgement, para. 169 ("Care, however, is needed in applying the *Čelebići* test for [...] cumulative convictions create 'a very real risk of [...] prejudice' to the accused."), quoting *Čelebići* Appeal Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, para. 23.

⁶¹³⁰ See *Nahimana et al.* Appeal Judgement, para. 678 (discussing the inchoate offence of direct and public incitement to commit genocide, the Appeals Chamber noted that the intention of the drafters of the Genocide Convention was to forestall genocide from being committed); *Kalimanzira* Trial Judgement, para. 510 (discussing the inchoate offence of direct and public incitement to commit genocide, the Trial Chamber noted that "[t]he inchoate nature of the crime allows intervention at an earlier stage, with the goal of preventing the occurrence of genocidal acts."). See also UN Doc. A/C.6/SR.85, UN Doc. A/C.6/SR.84 (*travaux préparatoires* of the Genocide Convention state that "the aim of the Convention is to prevent genocide, rather than punish it.").

⁶¹³¹ See, e.g., Don Stuart, *Canadian Criminal Law: A Treatise*, 4th ed., (2001), pp. 698–700 (since conspiracy is a preventative and incomplete offence, "it inexorably follows that once the completed offence has been committed there is no justification for also punishing the incomplete one"); Model Penal Code §1.07(1)(b) (model statutory text prohibits convictions for both conspiracy and the underlying substantive crime); Mark Kelman, *Interpretive Construction in the Substantive Criminal Law*, 33 Stan. L. Rev. 591 (1981), pp. 656–658 (supporting merger of the conspiracy offence with the substantive offence when both are committed).

⁶¹³² See, e.g., UN Doc. E/AC.25/W.4.

convictions may not stand for both crimes does not change this consideration, nor does it lessen the deterrent effect of criminalising conspiracy to commit genocide.

2127. The Trial Chamber favours the approach adopted in the *Musema* Trial Judgement that the position most favourable to the accused must be paramount. The Trial Chamber considers that the full criminality of the Accused is accounted for by a conviction for genocide and finds that a further conviction for the inchoate crime of conspiracy would be duplicative and unfair to the accused.

VIII. SENTENCING

A. Purpose of Punishment

2128. Retribution and deterrence are the primary purposes of sentencing for crimes falling under the jurisdiction of the Tribunal.⁶¹³³ Retribution is not a desire for revenge but an expression of the outrage of the international community at these crimes.⁶¹³⁴ Accordingly it should be seen as

an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the international risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.⁶¹³⁵

2129. As to deterrence, it aims at both individual and general deterrence.⁶¹³⁶ While the penalties imposed by the Tribunal should be adequate to deter the convicted person from committing any future violation, it must also have the effect of discouraging other potential perpetrators from committing the same or similar crimes.⁶¹³⁷ The Appeals Chamber has held that deterrence should however not be given "undue prominence" in determining a sentence.⁶¹³⁸

2130. Another sentencing purpose is rehabilitation.⁶¹³⁹ In light of the serious nature of the crimes committed under the Tribunal's jurisdiction, it has not played a predominant role in sentencing.⁶¹⁴⁰

B. Applicable Law

2131. Sentencing is governed by Articles 23 and 24 of the Statute and Rules 87(C) and 100 to 106 of the Rules. Article 24(1) of the Statute limits the penalty upon conviction to imprisonment and Rule 101(A) of the Rules states that a convicted person may be sentenced to imprisonment for a maximum term of life. Rule 87(C) of the Rules grants discretion to the Trial Chamber either to impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be

⁶¹³³ *Mrkšić and Šljivančanin* Appeal Judgement, para. 415; *Krajišnik* Appeal Judgement, para. 803; *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185.

⁶¹³⁴ *Krajišnik* Appeal Judgement, para. 804; *Kordić and Čerkez* Appeal Judgement, para. 1075.

⁶¹³⁵ *Kordić and Čerkez* Appeal Judgement, para. 1075 (referring to Supreme Court of Canada judgement *R. v. M. (C.A.)* [1996] 1 S.C.R. 500, para. 80 (emphasis in original)).

⁶¹³⁶ *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, para. 1076.

⁶¹³⁷ *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, paras. 1077–1078.

⁶¹³⁸ *Mrkšić and Šljivančanin* Appeal Judgement, para. 415; *Krajišnik* Appeal Judgement, para. 805; *Čelebići* Appeal Judgement, para. 801.

⁶¹³⁹ *Krajišnik* Appeal Judgement, paras. 802, 806; *Stakić* Appeal Judgement, para. 402. The *Krajišnik* Appeal Judgement has also held that "individual and general affirmative prevention and public reprobation and stigmatisation by the international community should also be purposes of sentencing." *Krajišnik* Appeal Judgement, paras. 802, 807.

⁶¹⁴⁰ *Krajišnik* Appeal Judgement, para. 806; *Čelebići* Appeal Judgement, para. 806.

served consecutively or concurrently, or to impose a single sentence reflecting the totality of the criminal conduct of the accused.⁶¹⁴¹

2132. In imposing a sentence, a Trial Chamber is to take the following factors into account: (1) the gravity of the offence;⁶¹⁴² (2) the individual circumstances of the convicted person, including aggravating and mitigating circumstances;⁶¹⁴³ (3) the general practice regarding prison sentences in the courts of the former Yugoslavia;⁶¹⁴⁴ (4) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served,⁶¹⁴⁵ and (5) the credit to be given for any time spent in detention pending surrender to the Tribunal or pending trial.⁶¹⁴⁶ This list is however not exhaustive and a Trial Chamber is vested with broad discretion in determining an appropriate sentence.⁶¹⁴⁷

2133. While sentencing decisions in other Tribunal cases may serve as guidance to the Trial Chamber if they relate to the same offence and were committed in substantially similar circumstances, this guidance is limited as the Trial Chamber has an overriding obligation to impose a penalty reflecting the gravity of the crime and the individual circumstances of the convicted person.⁶¹⁴⁸ As a result, the sentencing practice of the Tribunal is but one factor which a Trial Chamber must take into account when determining a sentence without being bound by it.⁶¹⁴⁹

1. Gravity of the Offence

2134. The primary consideration in determining the appropriate sentence is the gravity of the offence which has been regarded as the “litmus test.”⁶¹⁵⁰ When assessing the gravity of the offence, the inherent gravity of the crime and the criminal conduct of the convicted person must be considered in the light of the particular circumstances of the case and the form and degree of participation of the convicted person.⁶¹⁵¹ The relevant factors to consider in assessing the gravity of

⁶¹⁴¹ Rule 87(C).

⁶¹⁴² Article 24(2) of the Statute.

⁶¹⁴³ Article 24(2) of the Statute; Rule 101(B)(i)–(ii).

⁶¹⁴⁴ Article 24(1) of the Statute; Rule 101(B)(iii).

⁶¹⁴⁵ Rule 101(B)(iv).

⁶¹⁴⁶ Rule 101(C).

⁶¹⁴⁷ *Strugar* Appeal Judgement, para. 336; *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Limaj et al.* Appeal Judgement, paras. 127.

⁶¹⁴⁸ *Mrkšić and Šljivančanin* Appeal Judgement, para. 376; *Strugar* Appeal Judgement, para. 348; *Blagojević and Jokić* Appeal Judgement, para. 333; *Momir Nikolić* Judgement on Sentencing Appeal, para. 38.

⁶¹⁴⁹ *Milošević* Appeal Judgement, para. 326; *Strugar* Appeal Judgement, paras. 348–349; *Krstić* Appeal Judgement, para. 248; *Čelebići* Appeal Judgement, para. 757.

⁶¹⁵⁰ *Mrkšić and Šljivančanin* Appeal Judgement, para. 375; *Galić* Appeal Judgement, para. 442; *Momir Nikolić* Sentencing Appeal Judgement, para. 11; *Blaškić* Appeal Judgement, para. 683; *Kupreškić et al.* Appeal Judgement, para. 442; *Čelebići* Appeal Judgement, para. 731; *Aleksovski* Appeal Judgement, para. 182.

⁶¹⁵¹ *Mrkšić and Šljivančanin* Appeal Judgement, paras. 375, 407; *Martić* Appeal Judgement, para. 350; *Galić* Appeal Judgement, para. 409; *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731.

the crime include the nature of the offences⁶¹⁵² — war crimes are not inherently less serious than crimes against humanity,⁶¹⁵³ the scale and brutality of the crimes,⁶¹⁵⁴ the number of victims and the effect of the crimes upon the broader targeted group,⁶¹⁵⁵ the consequences of the crimes upon the victims directly injured, that is “the extent of the long-term physical, psychological and emotional suffering of the victim,”⁶¹⁵⁶ the effect on the immediate victim’s relatives,⁶¹⁵⁷ the vulnerability of the victims,⁶¹⁵⁸ and the convicted person’s position of authority.⁶¹⁵⁹

2135. With regard to the gravity of offences committed under Article 7(3) of the Statute, the Appeals Chamber has held that, in addition to the gravity of the convicted person’s own conduct in failing to prevent or punish the underlying crime, the gravity of the underlying crime committed by the convicted person’s subordinates must be taken into consideration.⁶¹⁶⁰

2. Aggravating and Mitigating Circumstances

2136. As a Trial Chamber is required to individualise a penalty for each convicted person, the individual circumstances of the convicted person must be considered in the light of any aggravating and mitigating circumstances.⁶¹⁶¹ Neither the Statute nor the Rules exhaustively define the factors which may constitute aggravating or mitigating circumstances, although any substantial co-operation of the convicted person with the Prosecution is to be considered as a mitigating factor.⁶¹⁶² The Trial Chamber has discretion to decide which factors are aggravating and mitigating circumstances as well as the weight to be given to such factors.⁶¹⁶³ Where an aggravating factor for the purposes of sentencing is at the same time an element of the crime, it cannot also be considered in aggravation of sentence.⁶¹⁶⁴

2137. Only circumstances which have been put specifically before the Trial Chamber, whether in the Indictment or during the trial, may be considered in aggravation,⁶¹⁶⁵ whereas in mitigation,

⁶¹⁵² *Mrkšić and Šljivančanin* Appeal Judgement, para. 400; *Boškoski and Tarčulovski* Trial Judgement, para. 588; *Orić* Trial Judgement, para. 729; *Rajić* Sentencing Judgement, para. 83.

⁶¹⁵³ *Kunarac et al.* Appeal Judgement, para. 171; *Tadić* Sentencing Appeal Judgement, para. 69.

⁶¹⁵⁴ *Mrkšić and Šljivančanin* Appeal Judgement, para. 400.

⁶¹⁵⁵ *Ibid.*, para. 411. See also *Galić* Appeal Judgement, para. 410.

⁶¹⁵⁶ *Ibid.*, para. 400; *Blaškić* Appeal Judgement, para. 683.

⁶¹⁵⁷ *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Appeal Judgement, para. 260.

⁶¹⁵⁸ *Mrkšić and Šljivančanin* Appeal Judgement, para. 400; *Kunarac et al.* Appeal Judgement, para. 352.

⁶¹⁵⁹ *Strugar* Appeal Judgement, para. 353; *Naletilić and Martinović* Appeal Judgement, paras. 609–613, 625–626.

⁶¹⁶⁰ *Hadžihasanović and Kubura* Appeal Judgement, para. 313; *Čelebići* Appeal Judgement, paras. 732, 741.

⁶¹⁶¹ *Čelebići* Appeal Judgement, para. 717.

⁶¹⁶² Rule 101(B)(ii). See also *Momir Nikolić* Sentencing Appeal Judgement, para. 96.

⁶¹⁶³ *Milošević* Appeal Judgement, para. 297; *Mrkšić and Šljivančanin* Appeal Judgement, para. 352; *Zelenović* Sentencing Appeal Judgement, para. 11; *Brdanin* Appeal Judgement, para. 500; *Čelebići* Appeal Judgement, para. 780.

⁶¹⁶⁴ *Blaškić* Appeal Judgement, para. 693; *Vasiljević* Appeal Judgement, paras. 172–173.

⁶¹⁶⁵ *Simba* Appeal Judgement, para. 82; *Čelebići* Appeal Judgement, paras. 763, 789.

factors not directly related to the crime may be included.⁶¹⁶⁶ Furthermore, in contrast to mitigating circumstances which only need to be proven on a balance of probabilities,⁶¹⁶⁷ the existence of aggravating circumstances must be proven beyond reasonable doubt.⁶¹⁶⁸

2138. The Trial Chamber has the discretion to decide whether to consider certain factors as contributing to the gravity of the crime or as aggravating circumstances.⁶¹⁶⁹ However, factors taken into account when evaluating the gravity of the crime cannot be reconsidered as separate aggravating (or mitigating) circumstances and *vice versa*.⁶¹⁷⁰

2139. Aggravating circumstances identified in the jurisprudence have included the abuse of the convicted person's superior position of leadership,⁶¹⁷¹ the duration of the criminal conduct,⁶¹⁷² the active and direct criminal participation under Article 7(1) of the Statute if linked to a high-ranking position of command,⁶¹⁷³ the active participation of a superior in the criminal acts of subordinates in the context of Article 7(3) of the Statute,⁶¹⁷⁴ premeditation and motive,⁶¹⁷⁵ the enthusiasm with which a crime was committed,⁶¹⁷⁶ a discriminatory state of mind where discrimination is not an element of the offence,⁶¹⁷⁷ the vulnerability of the victims⁶¹⁷⁸—women, young, elderly,⁶¹⁷⁹ confined or wounded persons,⁶¹⁸⁰ the number of the victims,⁶¹⁸¹ their status,⁶¹⁸² and the effect of the crimes upon them,⁶¹⁸³ the systemic nature of the crime,⁶¹⁸⁴ the intimidation of witnesses,⁶¹⁸⁵ and the

⁶¹⁶⁶ *Milutinović et al.* Trial Judgement, Vol. 3, para. 1150; *Stakić* Trial Judgement, para. 920; *Kunarac et al.* Trial Judgement, para. 850.

⁶¹⁶⁷ *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Zelenović* Sentencing Appeal Judgement, para. 11; *Brało* Sentencing Appeal Judgement, para. 8; *Blaškić* Appeal Judgement, para. 697.

⁶¹⁶⁸ *Blaškić* Appeal Judgement, para. 686; *Čelebići* Appeal Judgement, para. 763.

⁶¹⁶⁹ *Hadžihasanović and Kubura* Appeal Judgement, para. 317. See also *Vasiljević* Appeal Judgement, para. 157.

⁶¹⁷⁰ *Milošević* Appeal Judgement, paras. 306, 309; *Limaj et al.* Appeal Judgement, para. 143; *Momir Nikolić* Sentencing Appeal Judgement, para. 58; *Deronjić* Sentencing Appeal Judgement, para. 106.

⁶¹⁷¹ *Milošević* Appeal Judgement, paras. 302–303; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Blagojević and Jokić* Appeal Judgement, para. 324; *Galić* Appeal Judgement, para. 412; *Stakić* Appeal Judgement, para. 411; *Babić* Sentencing Appeal Judgement, para. 80.

⁶¹⁷² *Milošević* Appeal Judgement para. 304; *Krajišnik* Appeal Judgement, para. 814; *Blaškić* Appeal Judgement, para. 686; *Kunarac et al.* Appeal Judgement, para. 356.

⁶¹⁷³ *Blaškić* Appeal Judgement, para. 686.

⁶¹⁷⁴ *Ibid.*, para. 686; *Čelebići* Appeal Judgement, paras. 736–737; *Aleksovski* Appeal Judgement, para. 183.

⁶¹⁷⁵ *Blaškić* Appeal Judgement, para. 686, 694. See also *Krstić* Appeal Judgement, para. 258.

⁶¹⁷⁶ *Blaškić* Appeal Judgement, para. 686; *Jelisić* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Appeal Judgement, para. 351.

⁶¹⁷⁷ *Vasiljević* Appeal Judgement, paras. 172–173; *Kunarac et al.* Appeal Judgement, para. 357.

⁶¹⁷⁸ *Krajišnik* Appeal Judgement, para. 814; *Blaškić* Appeal Judgement, para. 686.

⁶¹⁷⁹ *Krajišnik* Appeal Judgement, para. 815; *Kunarac et al.* Appeal Judgement, para. 355.

⁶¹⁸⁰ *Orić* Trial Judgement, para. 732; *Blagojević and Jokić* Trial Judgement, para. 844.

⁶¹⁸¹ *Krajišnik* Appeal Judgement, para. 814–815; *Hadžihasanović and Kubura* Appeal Judgement, paras. 310, 317; *Blaškić* Appeal Judgement, para. 686. But see. *Blagojević and Jokić* Trial Judgement, para. 841 (stating that the number of victims is already reflected in the crimes for which each accused has been convicted, specifically complicity in genocide and extermination, respectively).

⁶¹⁸² *Blaškić* Appeal Judgement, para. 686; *Milutinović et al.* Trial Judgement, Vol. 3, para. 1151. But see. *Blagojević and Jokić* Trial Judgement, para. 843 (stating that the status of the victim, that is, predominantly civilian including women, children and elderly, as part of the definition of the crimes of which the accused have been convicted).

⁶¹⁸³ *Blaškić* Appeal Judgement, para. 686.

⁶¹⁸⁴ *Hadžihasanović and Kubura* Appeal Judgement, paras 349–353.

circumstances of the crimes generally.⁶¹⁸⁶ The absence of a mitigating factor does not itself serve as an aggravating factor.⁶¹⁸⁷ Furthermore, an accused's decision to exercise the right to remain silent may not be considered an aggravating circumstance.⁶¹⁸⁸

2140. On the other hand, the following circumstances have been identified as mitigating factors: co-operation with the Prosecution,⁶¹⁸⁹ the admission of guilt or a guilty plea,⁶¹⁹⁰ the expression of sincere remorse,⁶¹⁹¹ sympathy, compassion or sorrow for the victims of the crimes,⁶¹⁹² voluntary surrender,⁶¹⁹³ good behaviour while in detention,⁶¹⁹⁴ the personal and family circumstances of the convicted person,⁶¹⁹⁵ the post-conflict conduct of the convicted person,⁶¹⁹⁶ the duress under which he acted,⁶¹⁹⁷ indirect or limited participation in the commission of the crime,⁶¹⁹⁸ diminished mental responsibility,⁶¹⁹⁹ age,⁶²⁰⁰ assistance to victims,⁶²⁰¹ fully complying with certain obligations, such as the terms and conditions of provisional release,⁶²⁰² and preventing others from committing crimes.⁶²⁰³ Ill-health of the convicted person is to be considered as a mitigating factor only in

⁶¹⁸⁵ *Čelebići* Appeal Judgement, para. 789.

⁶¹⁸⁶ *Blaškić* Appeal Judgement, para. 686.

⁶¹⁸⁷ *Ibid.*, para. 687.

⁶¹⁸⁸ *Čelebići* Appeal Judgement, para. 783.

⁶¹⁸⁹ Rule 101(B)(ii); *Blagojević and Jokić* Appeal Judgement, para. 344. The accused making himself available to the Prosecution for the interview may be viewed as substantial co-operation. *Lukić and Lukić* Trial Judgement, para. 1054. With regard to the assessment of the co-operation, the Appeals Chamber has held that the Trial Chamber should consider the Prosecution's view on it. If the Trial Chamber ultimately disagrees with the Prosecution's assessment, sufficient reasons should be provided for its divergence. *Momir Nikolić* Sentencing Appeal Judgement, para. 96.

⁶¹⁹⁰ *Jelišić* Appeal Judgement, para. See also *Dragan Nikolić* Sentencing Appeal Judgement, para. 51 (stating that this factor should not be given undue weight).

⁶¹⁹¹ *Lukić and Lukić* Trial Judgement, para. 1053; *Milutinović et al.* Trial Judgement, Vol. 3, para. 1152; *Jokić* Sentencing Judgement, para. 89; *Banović* Sentencing Judgement, para. 71; *Erdemović* Sentencing Judgement, para. 16(iii). Although the convicted person can express sincere regrets without admitting his participation in the crimes, remorse requires acceptance of some moral blameworthiness for personal wrongdoing. *Strugar* Appeal Judgement, para. 365.

⁶¹⁹² *Strugar* Appeal Judgement, para. 366.

⁶¹⁹³ *Blaškić* Appeal Judgement, para. 696.

⁶¹⁹⁴ *Krajišnik* Appeal Judgement, para. 816; *Blaškić* Appeal Judgement, para. 696.

⁶¹⁹⁵ *Krajišnik* Appeal Judgement, para. 816; *Blaškić* Appeal Judgement, para. 696; *Kunarac et al.* Appeal Judgement, paras. 362, 408.

⁶¹⁹⁶ *Jokić* Sentencing Judgement, paras. 90–91, 103; *Plavšić* Sentencing Judgement, para. 94 (stating that significant weight has been given). See also *Blagojević and Jokić* Appeal Judgement, para. 330 (stating that the conduct of an accused that promotes reconciliation in the former Yugoslavia has been considered as a mitigating circumstance regardless of its direct connection to the harm caused by the accused).

⁶¹⁹⁷ *Blaškić* Appeal Judgement, para. 696; *Erdemović* Sentencing Judgement, para. 17 (stating that duress "may be taken into account only by way of mitigation").

⁶¹⁹⁸ *Blaškić* Appeal Judgement, para. 696; *Krstić* Appeal Judgement, para. 273.

⁶¹⁹⁹ *Blaškić* Appeal Judgement, para. 696; *Čelebići* Appeal Judgement, para. 590.

⁶²⁰⁰ *Krajišnik* Appeal Judgement, para. 816; *Blaškić* Appeal Judgement, para. 696.

⁶²⁰¹ *Krajišnik* Appeal Judgement, paras. 816–817.

⁶²⁰² *Blagojević and Jokić* Appeal Judgement, para. 342. See also *Jokić* Sentencing Appeal Judgement, para. 82.

⁶²⁰³ *Blagojević and Jokić* Appeal Judgement, para. 342. See also *Kupreškić et al.* Appeal Judgement, para. 430.

exceptional cases.⁶²⁰⁴ Furthermore, the comparatively low level of the convicted person in the overall command structure need not necessarily lead to a low sentence.⁶²⁰⁵

2141. Whether certain factors related to the character of the convicted person are considered an aggravating or a mitigating circumstance for sentencing purposes depends largely upon the circumstances of each case.⁶²⁰⁶ While in some cases the good character of the convicted person, including lack of prior criminal record, may be considered a mitigating circumstance,⁶²⁰⁷ in other cases it may serve to demonstrate the particularly heinous nature of the crimes committed.⁶²⁰⁸ Likewise, intelligence and good education may constitute either aggravating or mitigating circumstances.⁶²⁰⁹ Good conduct or inappropriate behaviour during trial proceedings have also been considered respectively as a mitigating and aggravating circumstance.⁶²¹⁰

3. General Practice Regarding the Prison Sentences in the Courts of the Former Yugoslavia

2142. A Trial Chamber is not bound by the sentencing practices in the former Yugoslavia although such practices must be taken into account when determining the appropriate sentence to be given.⁶²¹¹ The relevant sources to be looked at include not only the case law of the former Yugoslavia but also pertinent statutory law in force at the time of the commission of the crimes in question.⁶²¹²

⁶²⁰⁴ *Babić* Sentencing Appeal Judgement, para. 43; *Simić* Sentencing Judgement, para. 98. See also *Strugar* Appeal Judgement, para. 392 (stating that post-trial deteriorated health of the convicted person was considered a mitigating circumstance).

⁶²⁰⁵ *Čelebići* Appeal Judgement, para. 847; *Aleksovski* Appeal Judgement, para. 184.

⁶²⁰⁶ *Hadžihasanović and Kubura* Appeal Judgement, para. 328; *Babić* Sentencing Appeal Judgement, para. 49.

⁶²⁰⁷ *Krajišnik* Appeal Judgement, para. 816. See also *Hadžihasanović and Kubura* Appeal Judgement, paras. 325–326 (stating that it is a potential for rehabilitation); *Furundžija* Trial Judgement, para. 284 (stating that this did not have significant weight).

⁶²⁰⁸ *Lukić and Lukić* Trial Judgement, para. 1056; *Simić* Sentencing Judgement, paras. 103–105; *Tadić* First Sentencing Judgement, para. 59. See also *Babić* Judgement on Sentencing Appeal, para. 51 (stating that the convicted person's prior good character was not considered as a mitigating circumstance).

⁶²⁰⁹ *Hadžihasanović and Kubura* Appeal Judgement, paras. 328–329 (also finding that this was a mitigating circumstance); *Stakić* Appeal Judgement, para. 416 (stating that the convicted person's professional background was not regarded as an aggravating factor); *Milutinović et al.* Trial Judgement, Vol. 3, para. 1151 (stating that these were considered to be possible aggravating factors); *Brđanin* Trial Judgement, para. 1114 (stating this was an aggravating factor, however without giving it undue weight).

⁶²¹⁰ *Čelebići* Appeal Judgement, para. 788.

⁶²¹¹ Article 24(1); Rule 101(B)(iii). See *Krstić* Appeal Judgement, para. 260; *Kunarac et al.* Appeal Judgement, paras. 348–349; *Čelebići* Appeal Judgement, para. 813.

⁶²¹² *Milutinović et al.* Trial Judgement, Vol. 3, para. 1154. See also *Dragan Nikolić* Sentencing Appeal Judgement, para. 85; *Krstić* Appeal Judgement, para. 261 (stating that in addition to the relevant law of the former Yugoslavia in force when the crime was committed, the Trial Chamber was entitled to consider how the law evolved subsequently).

2143. Following the break-up of SFRY, Republika Srpska adopted the former SFRY Criminal Code, including the provisions on crimes against humanity without any substantial amendments.⁶²¹³ This law was in force at the time of the commission of the crimes alleged in the Indictment.⁶²¹⁴

2144. Chapter XVI of the SFRY Criminal Code covered the section “Criminal Acts Against Humanity and International Law.” Article 141 on genocide provided as follows:

Whoever, with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, orders killings or serious bodily harm to or gravely impairs the physical and mental health of members of the group or forcibly deports the population, or inflicts on the group conditions of life calculated to bring about its extermination in whole or in part, or imposes measures intended to prevent births within the group, or forcibly transfers children of the group to another group, or whoever with the same intent commits any of the aforementioned offences, shall be punished by no less than five years in prison or by death penalty.⁶²¹⁵

2145. Furthermore, Article 142(1) on war crimes provided as follows:

Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, as the consequence of which death has occurred or serious bodily harm or grave impairment of health; indiscriminate attack affecting civilian population; or killings, tortures or inhumane treatment of the civilian population, [...] causing great suffering or serious injury to body and health; unlawful deportation, transfers, [...] rape; use of measures of intimidation and terror, taking of hostages, collective punishment, unlawful taking to the concentration camps and other unlawful confinements, deprivation of rights to a fair and impartial trial; compelling to serve in the armed forces of an enemy power, in its intelligence service or administration; compelling to compulsory labour, exposing of the population to starvation, confiscation of property, pillage of the civilians' property, unlawful and arbitrary destruction or large-scale appropriation of property not justified by military needs, imposition of unlawful and disproportionately large contribution and requisitions, devaluation of domestic currency or unlawful printing or minting or currency, or whoever commits any of the aforementioned offences shall be punished by no less than five years in prison or by death penalty.⁶²¹⁶

2146. In addition, Article 38(2) of the SFRY Criminal Code provided for a sentence of 20 years in prison instead of the death penalty. In 1998, the Federation of BiH abolished the death penalty and replaced it with imprisonment of 20–40 years for the gravest criminal offences. Meanwhile, in October 2000, Republika Srpska also replaced the death penalty with life imprisonment.

⁶²¹³ Exs. P00419, 4D00375, “Law on Amendments to the Criminal Code of the SFRY” (stating that it was re-named “The Criminal Code of Republic of Srpska”); Ex. P00411, “SFRY Criminal Code, Chapter XVI”; Branislav Ristovojević, T. 27916–27919 (5 Nov 2008); Ex 4D00503, “Report by Branislav Ristovojević”, paras. 3.3–3.4. *See also* Ex P00028 “Military Prosecutor’s Office, VRS Main Staff, Guidelines for Determining the Criteria for Criminal Punishment”, para. 3; Ex. P00409, “Regulations on the Application of the Rules of International Law of War in the Armed Forces of the SFRY 1988.”, paras. 19–22.

⁶²¹⁴ Richard Butler T. 19605 (14 Jan 2008) (stating that this law was applicable to the members of the VRS insofar as these officials and soldiers were governed by the laws of the RS generally). *See also* Branislav Ristovojević, T. 28059–28068, 28083–28088, 28097–28098 (12 Nov 2008) (stating that the law of Republika Srpska obligated the VRS and the MUP to abide by the rules of international laws of war and the general principles of the international laws of war in armed conflict); Ex 4D00503, “Report by Branislav Ristovojević”, paras. 4.1–4.2, 4.8.

⁶²¹⁵ Ex. P00411, “SFRY Criminal Code, Chapter XVI,” Article 141.

⁶²¹⁶ Ex. P00411, “SFRY Criminal Code, Chapter XVI,” Article 142(1).

C. Determination of Sentences

2147. In determining the sentences to be imposed in this case, the Trial Chamber has examined the evidence on the trial record and the submissions of the Prosecution and the Accused. The Prosecution has requested a sentence of life imprisonment for each of the Accused—recommending that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** serve 46 years in custody before becoming eligible for early release, and that **Miletić** and **Gvero** serve a minimum of 30 years in custody before becoming eligible for early release.⁶²¹⁷

1. Gravity of the Crimes

2148. The calculated destruction of the Bosnian Muslims of Srebrenica in July 1995 stands out as one of the worst crimes committed in Europe after the Second World War. The extermination of the Bosnian Muslim males from Srebrenica, accompanied by the forcible transfer and persecution of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves all together encompass the gravest of crimes under international criminal law.

2149. The genocide, extermination, murder and persecution were executed with systematic and cold brutality. Victims were forced to endure dire and inhumane conditions during their transportation and detention, often for extended periods of time.⁶²¹⁸ During the mass executions, soldiers fired into over-crowded rooms,⁶²¹⁹ fired at prisoners—some of whom were blind-folded and had their hands tied behind their backs⁶²²⁰—for hours on end⁶²²¹ or called out the wounded prisoners only to identify and kill them.⁶²²² The forcible transfer of the Bosnian Muslims from Potočari and Žepa was a massive operation, involving the removal of tens of thousands of people over a few days.⁶²²³ The Trial Chamber recalls the heart-wrenching evidence of the “screening” in Potočari, where hundreds of husbands, fathers, sons and brothers were separated from their families.⁶²²⁴

2150. The campaign of persecution on the basis of the ethnicity of the victims was massive in scale and was the underlying motif of both joint criminal enterprises. The manifold persecutory acts that were committed with discriminatory intent⁶²²⁵ were not random or isolated incidents; these

⁶²¹⁷ Prosecution Final Brief, pp. 850–851, paras. 2837–2838, 2841.

⁶²¹⁸ See *supra*, paras 309–315, 325–331, 383–407, 475–478, 495–497, 516, 518, 529–531.

⁶²¹⁹ See *supra*, paras 427–431, 435.

⁶²²⁰ See *supra*, paras. 481, 499, 500, 518, 534, 537, 539.

⁶²²¹ See *supra*, paras. 536–539.

⁶²²² See *supra*, paras. 436, 537–539.

⁶²²³ See *supra*, paras. 341, 342, 719.

⁶²²⁴ See *supra*, paras. 316–324.

⁶²²⁵ The Trial Chamber recalls that the crime of persecution is “particularly grave because it incorporates manifold acts committed with discriminatory intent”. See *Blagojević* Trial Judgement, para. 834.

were crimes committed in a pattern on a large scale accompanied by brutality. These factors increase the gravity of the crimes.

2151. The gravity of these crimes is further demonstrated by their terrible impact on the victims and their relatives. For the thousands who lost their lives at the many execution sites, the consequences were absolute. Those few who survived the executions underwent extreme suffering and severe mental and physical trauma,⁶²²⁶ some only to be later recaptured and killed.⁶²²⁷ Like the few survivors of the executions, the Bosnian Muslim women, children and elderly people forcibly removed from Srebrenica suffered not only their own physical and mental trauma as a result of the conditions of life in Potočari and their separation from their men,⁶²²⁸ but also the sudden loss and disappearance of their male family members⁶²²⁹ or the uncertainty about the fates of the men yet unaccounted for. This has been termed the “Srebrenica Syndrome.”⁶²³⁰ Those who were forcibly removed from Srebrenica also experienced a sharp decline in their standard of life due to the loss of their homes and possessions as a result of the expulsions.⁶²³¹

2152. The sheer scale and cruelty of these crimes and the continuing impact they have had and still have on so many victims and their relatives is overwhelming.⁶²³²

2. General Observations Applicable to All Accused

(a) Aggravating Circumstances

2153. The victims of the crimes were particularly vulnerable. The thousands of Bosnian Muslims separated from their loved ones and forced from their homes in Potočari and Žepa were predominantly women, children and elderly people.⁶²³³ The Bosnian Muslim men who were executed had been rendered helpless before they were murdered; they were unarmed, exhausted, confined and sometimes wounded.⁶²³⁴ The Trial Chamber considers the vulnerability of the victims—both of those who survived the executions and those who did not—as an aggravating factor in sentencing.

⁶²²⁶ See *supra*, para. 847.

⁶²²⁷ See *supra*, 584–589.

⁶²²⁸ See Teufika Ibrahimfendić, Ex. P02228, “92 bis transcript”, KT. 5816 (27 July 2000). See also, e.g., Hanifa Hafizović, Ex. P03230, “92 bis statement” (16 June 2000), p. 3.

⁶²²⁹ See Teufika Ibrahimfendić, Ex. P02228, “92 bis transcript”, KT. 5817 (27 July 2000).

⁶²³⁰ See *Ibid.*

⁶²³¹ See, e.g., Hanifa Hafizović, Ex. P03230, “92 bis statement” (16 June 2000), p. 3; Hafiza Salcihović, Ex. P03232, “92 bis statement” (17 June 2000), p. 4.

⁶²³² See e.g. Teufika Ibrahimfendić, Ex. P02228, “92 bis transcript”, KT. 5816 (27 July 2000).

⁶²³³ See *supra*, paras 316, 715–716.

⁶²³⁴ See *eg.*, para. 518.

2154. The Prosecution further submits that the willing participation of the Accused in the crimes constitutes an aggravating factor relevant to sentencing.⁶²³⁵ The Trial Chamber notes that willingness in the sense of voluntariness is a necessary component of the crimes and therefore does not consider it to be an aggravating factor.⁶²³⁶

(b) Mitigating Circumstances

2155. The Trial Chamber acknowledges that the good behaviour of the Accused during trial and at the UNDU has enhanced its ability to conduct the trial in a fair and expeditious manner. The good behaviour of the Accused during trial and while on provisional release is considered generally as a mitigating circumstance.

2156. Similarly, the fact that none of the Accused had a prior criminal record and all had been men of apparent good character before these events has also been considered generally as a mitigating factor.

3. Individual Observations

(a) Popović

(i) Nature and Extent of the Accused's Involvement

2157. **Popović** played a key role in the organisation and execution of the genocide. **Popović** knew of the plan to murder from the time of its inception, and was privy to each development: from the discussions at Bratunac before the operation began, to the capture of Bosnian Muslim men from the column, to the large scale killings at Zvornik. **Popović** had an overview of the full scale and scope of the murder operation. He visited almost all the major killing sites while prisoners were being detained and thus had visual confirmation of the thousands of individuals destined for execution. He participated vigorously in almost every step of the murder operation.⁶²³⁷

(ii) Aggravating Circumstances

2158. The Prosecution submits that **Popović's** senior position and his abuse of authority should be considered as aggravating circumstances.⁶²³⁸ The Trial Chamber has found that **Popović** held a relatively senior position as Chief of Security in the Drina Corps.⁶²³⁹ In this position of authority, he

⁶²³⁵ Prosecution Final Brief, p. 846, para. 2826.

⁶²³⁶ See *supra* para. 2136.

⁶²³⁷ See *supra*, paras. 1178–1180.

⁶²³⁸ Prosecution Final Brief, p. 845, para. 2822.

⁶²³⁹ See *supra*, para. 1090.

participated in the JCE to Murder at a managerial level organising the killings, sourcing fuel for the operation, coordinating transport for the victims and liaising with other members of the VRS. It was the abuse of this senior position within the VRS which allowed him to utilise the resources at his disposal to orchestrate the crimes.⁶²⁴⁰ The Trial Chamber considers this as an aggravating factor.⁶²⁴¹

2159. The Prosecution argues that the zeal or enthusiasm demonstrated by the Accused while committing the crimes also constitute aggravating factors.⁶²⁴² **Popović** demonstrated his dedication to the murder operation through his robust participation in the mass executions of 14–17 July, and his commitment to completing the murder operation by his involvement in the execution of the patients from the Milići Hospital around 23 July. The zeal with which **Popović** committed the crimes for which he has been found guilty is also demonstrated by his enthusiastic report on the success of the murder operation, giving it a top mark.⁶²⁴³ The Trial Chamber notes that **Popović** ordered the execution of a young boy at the field near Orahovac on 14 July 1995.⁶²⁴⁴ While the order was not ultimately carried out, the giving of such an order displays that **Popović** had no compunction engaging in behaviour of brutality, regardless of the age or vulnerability of the victims involved. The Trial Chamber considers the manifest enthusiasm with which **Popović** committed the crimes to be a relevant aggravating factor.⁶²⁴⁵

(iii) Mitigating Circumstances

2160. As noted, voluntary surrender to the Tribunal may constitute a mitigating factor.⁶²⁴⁶ The Prosecution submits that while **Popović** did surrender to the Tribunal, he did so two and a half years after his indictment was made public.⁶²⁴⁷ In light of the significant delay in **Popović**'s surrender, the Trial Chamber gives limited weight to it as a mitigating factor.

2161. The Trial Chamber notes that **Popović** called a number of witnesses to give evidence as to his general character and demeanour throughout the conflict. These witnesses testified that **Popović** was strongly pro-Yugoslav,⁶²⁴⁸ never showed signs of ethnic intolerance,⁶²⁴⁹ held close personal

⁶²⁴⁰ See, for example, *supra*, paras. 1118–1120, 1126–1130.

⁶²⁴¹ See *Krstić* Trial Judgement, para. 709.

⁶²⁴² Prosecution Final Brief, p. 847, para. 2827.

⁶²⁴³ See *supra*, para. 1142; Ex. P01224a, "Intercept of conversation between Popović and Y, 17 July 1995, 16:22 hours" (recording that **Popović** stated "basically, that all gets an A [...] an A [...] the grade is an A, everything's OK").

⁶²⁴⁴ See *supra*, paras. 1111–1112.

⁶²⁴⁵ See *Dusko Tadić* Sentencing Judgement, 11 Nov 1999, para. 20; *Jelisić* Trial Judgement, 14 Dec 1999, para. 119.

⁶²⁴⁶ See *supra*, para. 2140.

⁶²⁴⁷ Prosecution Final Brief, p. 848, para. 2831.

⁶²⁴⁸ Mićo Vlaisavljević, Ex. 1D01318, "92 bis statement" (7 July 2008) para. 18; Nermin Jusufović, Ex. 1D01317, "92 bis statement" (7 July 2008) para. 8; Boris Mažibrada, Ex. 1D01319 "92 bis statement" (7 July 2008) paras. 11, 17.

⁶²⁴⁹ Nermin Jusufović, Ex. 1D01317, "92 bis statement" (7 July 2008) para. 8; Mićo Vlaisavljević, Ex. 1D01318, "92 bis statement" (7 July 2008) para. 18.

friendships with Muslims and Croats,⁶²⁵⁰ demonstrated numerous instances of concern and kindness for Muslim people he was familiar with,⁶²⁵¹ was a family man⁶²⁵² and was a highly regarded and disciplined officer.⁶²⁵³ The Trial Chamber accepts this evidence but finds that, in light of the crimes for which **Popović** has been convicted, such factors have very little impact in mitigating the severity of his sentence.

2162. The Trial Chamber has noted above that expressions of both remorse, and sympathy for victims,⁶²⁵⁴ can constitute mitigating factors.⁶²⁵⁵ While **Popović** has expressed no remorse, the testimony of PW-172 indicates that there is some evidence that **Popović** was emotionally affected by the crimes which occurred at the Bišina execution site.⁶²⁵⁶ However, in view of the fact that **Popović** played a significant role in orchestrating the murder operation, the Trial Chamber finds that this carries very little weight as a mitigating factor.

(b) Beara

2163. The Trial Chamber notes that **Beara** submits that in the event he is convicted the sentence should not exceed nine years.⁶²⁵⁷

(i) Nature and Extent of the Accused's Involvement

2164. **Beara** was a central figure in the organisation and execution of the genocide. As the most senior officer of the Security Branch—the entity charged with a central directing role—he had the clearest overall picture of the massive scale and scope of the killing operation. Further, from his walk through Bratunac on the night of 13 July, his visits to the various execution sights and the extensive logistical challenges he faced throughout,⁶²⁵⁸ he had a very personal view of the

⁶²⁵⁰ Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 7; Mićo Vlaisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 20.

⁶²⁵¹ Mićo Vlaisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 21 (noting that **Popović** helped Muslims and Croats to get passports to flee from RS); Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) paras. 8–10 (stating that when **Popović** discovered that two Muslim men from his unit had been arrested for selling arms to Muslims he ensured that no action was taken against them), 13 (stating that he facilitated the passage of a Muslim man who had worked to repair an electricity plant in Obrovac).

⁶²⁵² Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) para. 18; Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 6.

⁶²⁵³ Mićo Vlaisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 17; Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) para. 19; Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 10.

⁶²⁵⁴ *Strugar* Appeal Judgement, para. 366.

⁶²⁵⁵ *Ibid.*

⁶²⁵⁶ *See supra*, para. 1147 (referring to **Popović** having tears in his eyes at the Bišina execution site).

⁶²⁵⁷ Beara Closing Arguments, T. 34465–34466 (8 Sept 2009).

⁶²⁵⁸ *See supra*, para. 1313.

staggering number of victims destined for execution. **Beara** was a driving force behind the murder enterprise.⁶²⁵⁹

(ii) Aggravating Circumstances

2165. The Prosecution submits that **Beara** abused his senior position as Chief of Security in the VRS Main Staff, and that this abuse of authority ought to be regarded as an aggravating circumstance.⁶²⁶⁰ **Beara** was a vital member of the JCE to Murder.⁶²⁶¹ As Chief of Security in the VRS Main Staff, cloaked with the authority of Mladić, he gave directions and orders to the subordinate troops who implemented the murder plan. It was the abuse of this senior position within the VRS which allowed him to utilise the resources at his disposal to orchestrate the crimes. The Trial Chamber therefore finds that **Beara** abused his position of authority, which it takes into account as an aggravating factor.

2166. The Prosecution argues that the zeal or enthusiasm demonstrated by the Accused while committing the crimes constitutes an aggravating factor.⁶²⁶² The Trial Chamber finds that **Beara's** involvement in the murder operation was not characterised by a particular “zeal”, but his actions were cold and calculated. Even in the early stages of the murder operation, **Beara's** approach is demonstrated by the conversation he had with Deronjić on the night of 13 July, when he announces his intent to “kill all” the detained men, and without pause to consider or comment upon the horrific nature of his “orders” he launches into a series of heated exchanges about the best location for this reprehensible undertaking.⁶²⁶³

(iii) Mitigating Circumstances

2167. **Beara** submits that his good character before the war in the former Yugoslavia,⁶²⁶⁴ assistance to non-Serbs during the war⁶²⁶⁵ and lack of discriminatory intent towards other ethnic groups⁶²⁶⁶ should each be regarded as mitigating factors. In support of these propositions, **Beara** called a number of witnesses—including members of **Beara's** family—who testified to his character, actions and attitudes toward other ethnic groups.⁶²⁶⁷ Although the Trial Chamber

⁶²⁵⁹ See *supra*, para. 1314.

⁶²⁶⁰ Prosecution Final Brief, p. 845, para. 2823.

⁶²⁶¹ See *supra*, para. 1318.

⁶²⁶² Prosecution Final Brief, p. 847, para. 2827.

⁶²⁶³ See *supra*, para. 1264.

⁶²⁶⁴ Beara Final Brief, paras. 893–894.

⁶²⁶⁵ *Ibid.*, para. 896.

⁶²⁶⁶ *Ibid.*, paras. 895, 897–899.

⁶²⁶⁷ See 2DPW-19, T. 25633–23635, 25640 (11 Sept 2008); Mikajlo Mitrović, T. 25042, 25054 (2 Sept 2008); Milan Alaica, T. 24807–24821 (28 Aug 2008); Alajica Bosko, Ex. 2D00665, “92 *bis* statement” (15 June 2008), p. 2; Slobodan Makivić, Ex. 2D00658, “92 *bis* statement” (27 Mar 2008), p. 4; Dragan Beara, Ex. 2D00661, “92 *bis*

acknowledges this evidence, the fact remains that **Beara** has been found responsible for committing crimes of the highest level of gravity. The Trial Chamber therefore gives very limited weight to **Beara**'s purported good character as a mitigating factor.

2168. **Beara** submits that his surrender to the Tribunal ought to be considered as a mitigating factor,⁶²⁶⁸ highlighting **Beara**'s plea in October 2004 to other fugitive indictees to surrender.⁶²⁶⁹ The Prosecution notes that **Beara** was a fugitive from justice for almost two years⁶²⁷⁰ and that, during this time, he bragged in an interview about how he would not surrender.⁶²⁷¹ The Trial Chamber acknowledges **Beara**'s surrender, but in light of the length of time for which he remained a fugitive it gives that surrender limited weight as a mitigating circumstance.

2169. **Beara** also makes brief reference to his age as a mitigating circumstance, noting that he is now 70 years old.⁶²⁷² The Prosecution submits that the fact of **Beara**'s advanced age is "trivial" and should not materially decrease the appropriate sentence for the crimes committed by him and the massive suffering they inflicted on thousands of people.⁶²⁷³ The Trial Chamber acknowledges that advanced age can be considered as a mitigating factor,⁶²⁷⁴ and gives some minimal weight to it.

2170. **Beara** further submits that the Prosecution in the *Blagojević* case said that **Beara** "can't hold a candle" to Blagojević, and that a "[Main] staff officer is but an empty vessel and only has the power that is given to him by his commander. Beara is nothing but [...] an empty vessel, until Mladić gives him those orders".⁶²⁷⁵ For this reason, **Beara** submits that he should not receive a sentence greater than that imposed on Blagojević.⁶²⁷⁶ The Trial Chamber attaches no importance to this submission considering the overwhelming evidence that the Trial Chamber has received on **Beara**'s authority and role in the events.

statement" (15 Mar 2008), p. 1; Marina Beara, Ex. 2D00662, "92 bis statement" (15 Mar 2008), p. 1; Mirsad Tokić, Ex. 2D00655, "92 bis statement" (11 Apr 2007), p. 1; Rajko Jelusić, Ex. 2D00652, "92 bis statement" (14 Dec 2006), p. 2; Branimir Grulović, T. 23784 (22 July 2008); Marinko Jevđević, T. 23845 (23 July 2008).

⁶²⁶⁸ Beara Final Brief, para. 901. *See also Ibid.*, Annex A.

⁶²⁶⁹ *Ibid.*, para. 902.

⁶²⁷⁰ Prosecution Final Brief, p. 848, para. 2831.

⁶²⁷¹ *Ibid.*, p. 849, para. 2832.

⁶²⁷² Beara Final Brief, para. 909.

⁶²⁷³ Prosecution Final Brief, p. 850, para. 2835.

⁶²⁷⁴ *See, e.g., Plavšić Sentencing Judgement*, paras. 95–106.

⁶²⁷⁵ Beara Opening Statement, T. 554 (23 Aug 2006). *See also* Beara 98 bis Submission, T. 21226, 21230 (14 Feb 2008).

⁶²⁷⁶ Beara Final Brief, para. 908; Beara Closing Arguments T. 34465 (8 Sept 2009).

(c) Nikolić(i) Nature and Extent of the Accused's Involvement⁶²⁷⁷

2171. The Trial Chamber has found above that **Nikolić** played an important role in the JCE to Murder in terms of planning and organising detentions and executions. His contribution can properly be described as persistent and determined; he demonstrated a resolve to carry out his assigned tasks in this murderous operation. However, the Trial Chamber has also determined that **Nikolić** did not share the genocidal intent and his role in the genocide was that of an aider and abettor.⁶²⁷⁸

(ii) Aggravating Circumstances

2172. The Prosecution submits that, although **Nikolić** held the lowest rank (second lieutenant) among the Accused, he used his senior position as Chief of Security to perpetrate heinous crimes in conscious disregard of his duty to follow army regulations and the Geneva Conventions.⁶²⁷⁹ **Nikolić** argues that, as a second lieutenant, he “did not have any importance” and that he lacked the degree of authority as argued by the Prosecution.⁶²⁸⁰

2173. There is some evidence that **Nikolić** abused his authority as Chief of Security of the Zvornik Brigade.⁶²⁸¹ However, **Nikolić** was of relatively low rank and his authority was limited.⁶²⁸² In all the circumstances, the Trial Chamber is not satisfied that abuse of authority as an aggravating factor, as envisaged under the jurisprudence of the Tribunal, has been established in his case.⁶²⁸³

2174. The Prosecution also argues that the zeal or enthusiasm demonstrated by the Accused in committing the crimes constitutes an aggravating factor.⁶²⁸⁴ The Trial Chamber notes that there is

⁶²⁷⁷ The Trial Chamber notes that **Nikolić** requests the Trial Chamber to “recognize the very limited involvement of the Accused in what happened at the School in Orahovac on 14 July 1995 and to determine his responsibility accordingly”. **Nikolić** Final Brief, para. 1685.

⁶²⁷⁸ See *supra*, paras. 1397–1415.

⁶²⁷⁹ Prosecution Final Brief, pp. 845–846, paras. 2822–2823; Prosecution Closing Arguments, T. 34046–34047 (2 Sept 2009).

⁶²⁸⁰ **Nikolić** Closing Arguments, T. 34541 (9 Sept 2009). **Nikolić** referred to the testimony of PW-104, who said that “I believe that a non-commissioned officer was an officer of a lower rank. And in a hierarchy, he did not have much importance”. *Ibid.*; PW-104, T. 8018 (1 Mar 2007).

⁶²⁸¹ The Trial Chamber finds that although **Nikolić** held a low rank in the VRS, he nevertheless held a *de facto* position of authority which he abused in order to commit, through his participation in the JCE to Murder, order and organise the crimes for which the Trial Chamber has found him responsible. An example is when **Nikolić** offered members of the 4th Battalion of the Zvornik Brigade new uniforms in order to stay at Orahovac to commit the executions. See *supra*, para. 1361.

⁶²⁸² See *supra*, para. 1412.

⁶²⁸³ See *supra*, para. 2137.

⁶²⁸⁴ Prosecution Final Brief, p. 847, para. 2827.

some evidence that **Nikolić** was disturbed by what he was asked to do.⁶²⁸⁵ While the evidence shows that **Nikolić** was determined and persistent in organising, planning and executing the murder operation, the Trial Chamber does not find that **Nikolić** carried out his role with a particular enthusiasm. Accordingly, the Trial Chamber does not consider that zeal has been established as an aggravating factor.

(iii) Mitigating Circumstances

2175. During the course of this trial, **Nikolić** presented evidence of his good character.⁶²⁸⁶ Several witnesses of both the Prosecution and the Defence testified that **Nikolić** was devoted and dedicated to his family, well-linked to his community, and never expressed any religious or inter-ethnic intolerance.⁶²⁸⁷ Although the Trial Chamber considers **Nikolić**'s good character as a mitigating circumstance, given the gravity of the crimes for which he has been found responsible, it gives it very limited weight.

2176. **Nikolić** submits that he was a good soldier, who conscientiously discharged his duties and respected his superior officers.⁶²⁸⁸ Given his active involvement in the commission of mass murder in the Zvornik area, the Trial Chamber gives no weight to this factor as a mitigating circumstance.

2177. As noted, voluntary surrender to the Tribunal may constitute a mitigating factor.⁶²⁸⁹ While **Nikolić** surrendered to the Tribunal, he did so two and a half years after his indictment was made public.⁶²⁹⁰ In light of the significant delay in **Nikolić**'s surrender, the Trial Chamber gives this limited weight as a mitigating factor.

2178. The Chamber notes that **Nikolić** admitted to having been "involved" in the "events" at Orahovac for which he says he bears "some responsibility".⁶²⁹¹ Although he expressed no remorse, the Chamber gives some weight to **Nikolić**'s partial acceptance of his responsibility.

⁶²⁸⁵ Milorad Birčaković, T. 11015–11017 (7 May 2007). During cross-examination Birčaković confirmed that he had stated in his previous statement that when **Nikolić** came out of the meeting, he was very angry "because he was not consulted beforehand but was only ordered to find some accommodation" for people coming in for exchange. *Ibid.*, T. 11120 (8 May 2007).

⁶²⁸⁶ **Nikolić** Final Brief, paras. 416–421; **Nikolić** Closing Arguments, T. 34542 (9 Sept 2009).

⁶²⁸⁷ Milisav **Nikolić**, T. 25921, 25941–25942 (18 Sept 2008); Vida Vasić, T. 25936–23937 (18 Sept 2008); Božo Momčilović, T. 14125 (22 Aug 2007); Milan Atlagić, Ex. 3D00465, "92 *bis* statement" (18 Mar 2008, 14 Apr 2008), p. 3; Marinko Milidrag, Ex. 3D00467, "92 *bis* statement" (11 Apr 2008, 21 May 2008), p. 3; Dragan Milošević, T. 25942 (18 September 2008); Milisav **Nikolić**, T. 25904–25909 (17 Sept 2008), 25928 (18 Sept 2008). *See also* **Nikolić** Final Brief, paras. 416–420; **Nikolić** Closing Arguments, T. 34542 (9 Sept 2009).

⁶²⁸⁸ **Nikolić** Closing Arguments, T. 34542 (9 Sept 2009). *See Krstić* Trial Judgement, para. 714 (in which the Trial Chamber considered the "keen sense for the soldiering profession" as a mitigating circumstance).

⁶²⁸⁹ *See supra*, para. 2140.

⁶²⁹⁰ *See* Prosecution Final Brief, p. 848, para. 2831. *See also* **Nikolić** Final Trial Brief, para. 353.

⁶²⁹¹ *See supra*, para. 1365.

(d) Borovčanin(i) Nature and Extent of the Accused's Involvementa. Forcible Transfer

2179. **Borovčanin** submits that if he is found guilty of forcible transfer, the sentence should reflect his minimal role, given he had no say in the decision to forcibly transfer the Bosnian Muslims, and no realistic capacity to prevent it.⁶²⁹² At the time, he submits, there seemed to be many legitimate reasons to allow his units to participate in the operation, not least because with or without his cooperation, the transfer would still have been conducted by the VRS and DutchBat.⁶²⁹³

2180. As previously discussed, **Borovčanin** was not a member of the JCE to Forcibly Remove and he evidenced no intent to commit it. He had no advance knowledge of the plan to forcibly remove and he did not participate in the planning, organization or the execution of the initial stages of the plan. He was brought in late into the operation, after Srebrenica had fallen and when the plan to forcibly transfer was nearing completion. When he was ordered to assist with the physical transfer it was at a point where what **Borovčanin** faced was a humanitarian catastrophe of immense magnitude over which he had no control.

2181. In convicting **Borovčanin** for aiding and abetting forcible transfer, the Trial Chamber noted the jurisprudence of the Tribunal which makes intention—even in terms of intention to assist—not a relevant consideration.⁶²⁹⁴ Although **Borovčanin** has been found responsible for forcible transfer through aiding and abetting, his intent may well have been solely to assist the population gathered there.⁶²⁹⁵ In this regard, the Trial Chamber also notes that, in the circumstances, the only option open to **Borovčanin** was to withdraw his unit from Potočari. While by the jurisprudence he was obliged to do so, the practical reality is that given the late stage of his involvement, withdrawal would have altered nothing in terms of the forcible transfer and it would not have alleviated the misery of the Bosnian Muslims gathered in Potočari that day. In these very unusual and particular circumstances, the Trial Chamber considers that **Borovčanin's** unique role in the forcible transfer diminishes the gravity of his involvement and is taken into account.

⁶²⁹² Borovčanin Final Brief, para. 531.

⁶²⁹³ *Ibid.*

⁶²⁹⁴ *See supra*, paras. 1016–1017.

⁶²⁹⁵ *See supra*, para. 1500.

b. Murder

2182. The circumstances in which **Borovčanin** aided and abetted, by omission, the murder, extermination, and persecution of at least 1, 000 Bosnian Muslim men are particularly egregious. He was present at the scene when the busload of prisoners had already been murdered, and had observed enough to know that further crimes on a horrendous scale would probably be committed. **Borovčanin**'s failure to protect the approximately 1,000 Bosnian Muslim prisoners held in the Kravica Warehouse on 13 July is especially grave because so many lives were at stake and ultimately were lost. His choice to do nothing but extricate himself and eventually his men from the crime site, contributed to the atrocity that Kravica Warehouse is now synonymous with.

2183. The crimes for which **Borovčanin** has been found responsible are particularly heinous, and were part of a widespread and systematic campaign of terror and violence. However, in terms of assessing an appropriate sentence, the Trial Chamber must focus on **Borovčanin**'s specific criminal conduct and the role which he played in the commission of these crimes.

2184. With respect to the mass killing at Kravica Warehouse, **Borovčanin** bears responsibility for aiding and abetting by omission in failing to protect prisoners who had been in his custody. While recognising that the absence of a positive act does not in and of itself reduce the seriousness of criminal conduct,⁶²⁹⁶ the Trial Chamber must look at the particular omission by **Borovčanin** and the circumstances he faced.

2185. The Trial Chamber has found that **Borovčanin** lacked the intent to kill and discriminatory intent. His *mens rea* is based on knowledge of the probable intent of others.

2186. **Borovčanin** had no advance knowledge of this horrendous murder operation nor did he have any involvement in its planning or organisation.⁶²⁹⁷ He and his troops had arrived just prior to these events, in order to participate in a military operation, but were suddenly cast into unexpected roles. As found by the Trial Chamber, the events at the Kravica Warehouse arose suddenly and without warning from the perspective of **Borovčanin**. The decisions at the heart of his criminal omission were taken within a very short time period under extreme conditions. He also faced the challenges of his resubordinated role and the impact that had on his ability to exercise control in the situation. While none of these circumstances justify his criminal conduct, they do diminish the gravity of his omission to some limited extent and thus the Trial Chamber has taken them into account in determining the appropriate sentence for his crime.

2187. **Borovčanin** has been found responsible as well for the initial murders—the killing of the busload of Bosnian Muslim prisoners—at Kravica Warehouse through his failure as a superior to punish his troops. Such a failure is serious particularly given the grave nature of the crimes committed. However, the Trial Chamber notes that **Borovčanin**'s criminal failure occurred after the crimes had been committed and the Trial Chamber has taken that into consideration in determining an appropriate sentence.

(ii) Aggravating Circumstances

2188. The Prosecution submits that **Borovčanin** abused his senior position as Deputy Commander of the RS MUP Special Police Brigade, and that this abuse of authority ought to be regarded as an aggravating circumstance.⁶²⁹⁸ **Borovčanin** argues, however, that he had fewer than 200 men under his command on 12 and 13 July 1995, that he did not participate in any of the decisions that led to the forcible transfer or murder operations and that he had limited capacity to stop operations being directed by senior members of the VRS.⁶²⁹⁹ It is clear that **Borovčanin** occupied a position of authority as a Deputy Commander of the MUP SBP and as the Commander of a joint force of MUP units. However, given the circumstances, including the role of the MUP units in the overall operation, the timing of his involvement and the nature of his acts and omissions, the Trial Chamber is not satisfied that **Borovčanin** abused his superior position in the MUP to commit crimes or encourage others to commit crimes. Thus, the Trial Chamber does not find that he abused his position and will therefore not consider this as an aggravating factor.

2189. The Prosecution submits that the period of time over which the crimes occurred should also be regarded as an aggravating factor, noting that the premeditated and systematic forcible transfer and murder operations were carried out with great speed, but over a long period of time, and with premeditation and zeal.⁶³⁰⁰ On the other hand, **Borovčanin** submits that the events of 13 July 1995 happened abruptly and ended quickly.⁶³⁰¹ Having considered the nature and duration of **Borovčanin**'s involvement, the Trial Chamber rejects the Prosecution submission that **Borovčanin** committed these crimes over a long period of time.

⁶²⁹⁶ See *Blaškić* Appeal Judgement, para. 663 (recognizing the perpetration of a crime by omission as a mode of liability pursuant to Art. 7(1)).

⁶²⁹⁷ See *supra*, paras. 1540–1541.

⁶²⁹⁸ Prosecution Final Brief, p. 845, para. 2823.

⁶²⁹⁹ Borovčanin Final Brief, paras. 530–533.

⁶³⁰⁰ Prosecution Final Brief, p. 847, para. 2827.

⁶³⁰¹ Borovčanin Final Brief, para. 533.

2190. With regard to eagerness or zeal, which can be a relevant aggravating factor,⁶³⁰² the Trial Chamber finds that nothing before it shows that **Borovčanin** participated in the crimes committed with special eagerness or zeal. As such, the Trial Chamber does not consider this an aggravating factor.

(iii) Mitigating Circumstances

2191. The Prosecution argues that **Borovčanin**'s interviews with the Prosecution as cooperation is negligible in light of the gravity of the offences charged.⁶³⁰³ **Borovčanin** submits that his cooperation with the Prosecution ought to be regarded as a mitigating factor, noting **Borovčanin**'s interviews with the Prosecution in February and March 2002 and **Borovčanin**'s voluntary disclosure of the Petrović video footage.⁶³⁰⁴ Considering the length, detail, and content of the interviews and the nature of the video footage provided, the Trial Chamber finds that **Borovčanin** provided substantial cooperation to the Prosecution, regards this cooperation as a mitigating factor, and gives it some weight.

2192. As noted above, voluntary surrender to the Tribunal may constitute a mitigating factor.⁶³⁰⁵ The Prosecution submits that **Borovčanin**'s surrender to the Tribunal should not be regarded as a mitigating factor.⁶³⁰⁶ The Prosecution submits further that **Borovčanin** remained a fugitive for two and a half years before finally surrendering.⁶³⁰⁷ The Trial Chamber notes the relatively long period **Borovčanin** remained a fugitive before surrendering to the Tribunal and thus gives little weight to **Borovčanin**'s surrender as a mitigating factor.

2193. **Borovčanin** submits that his good character, as evidenced in part by his actions after the close of the war in BiH, including his contribution to the implementation of the Dayton Peace Accords, ought to be regarded as a mitigating factor.⁶³⁰⁸ **Borovčanin** also submits that in July 1995 he was still suffering injuries from a previous mine incident and receiving intravenous infusions and that this should be taken into consideration in assessing measures or actions he could have taken

⁶³⁰² See *supra*, para. 2139.

⁶³⁰³ Prosecution Final Brief, p. 848, para. 2830.

⁶³⁰⁴ Borovčanin Final Brief, para. 538.

⁶³⁰⁵ See *supra*, para. 2140.

⁶³⁰⁶ Prosecution Final Brief, pp. 848–849, paras. 2831–2832.

⁶³⁰⁷ *Ibid.* In a statement dated 20 March 2006, filed with a “Defence Application for Leave to Reply and Defence Reply to Prosecution Response to Motion Seeking Provisional Release of Accused Ljubomir Borovčanin”, **Borovčanin** stated that he had made an “utterly unreasonable decision” not to abide by the agreement to surrender on September 2002 and apologised. See Defence Application for Leave to Reply and Defence Reply to Prosecution Response to Motion Seeking Provisional Release of Accused Ljubomir Borovčanin”, 23 Mar 2006, Annex I. See also Decision on Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006, paras. 21–23 (The Pre-Trial Chamber finding that **Borovčanin** provided only “generalised, unsubstantiated and unconvincing reasons for not surrendering in September 2002 and his failure to surrender at any time between September 2002 and April 2005”).

during this period.⁶³⁰⁹ A number of witnesses—both Defence and Prosecution—testified to **Borovčanin**'s good character noting that he was honest, kind, and well-respected.⁶³¹⁰ The Trial Chamber acknowledges this evidence and it has also considered the fact that **Borovčanin** was receiving intravenous infusions on 12 and 13 July. However, considering the serious nature of the crimes for which **Borovčanin** has been found guilty, the Trial Chamber will only give limited weight to **Borovčanin**'s good character as a mitigating factor and no weight to his medical condition.

2194. The Trial Chamber notes **Borovčanin**'s intent to distance himself and his men from guarding Bosnian Muslim prisoners as evidenced by the 15 July meeting at the Standard Barracks, when he expressly said that he did not wish his MUP units to guard the prisoners who were being captured or surrendering from the column.⁶³¹¹ On 15 July, **Borovčanin** also proposed or agreed to opening the corridor in the area of Baljkovica in order to allow Bosnian Muslims to go through toward ABiH-held territory.⁶³¹² The Trial Chamber takes these facts into account as a mitigating factor in sentencing.

(e) Miletić

(i) Nature and Extent of the Accused's Involvement

2195. **Miletić** played a pivotal role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa, and made continuous contributions at all stages. He drafted Directive 7, which set out the common plan. He participated in the processes by which the enclaves were incrementally deprived of sufficient humanitarian aid and through which the supplies and the forces of DutchBat and UKRCoy were depleted, creating an untenable situation for the population and incapacitating UNPROFOR. **Miletić** played the key role in receiving and distributing information from and to the relevant actors, both superior and subordinate, including the RS President. Through this function he enabled the plan to be successfully implemented, resulting in the forced removal of thousands of Bosnian Muslims from the enclaves.⁶³¹³

⁶³⁰⁸ Borovčanin Final Brief, paras. 536–537.

⁶³⁰⁹ *Ibid.*, para. 539.

⁶³¹⁰ See Momir Nikolić, T. 33202 (24 Apr 2009); Milan Stojcinović, T. 27624 (30 Oct 2008); Milomir Savčić, T. 15299 (12 Sept 2007); Predrag Čelić, T. 13512 (28 June 2007); PW-162, T. 9318 (23 Mar 2007); David Grange, Ex. 4D00556, “92 bis statement” (8 Apr 2008), pp. 3–6.

⁶³¹¹ See *supra*, para. 1464.

⁶³¹² See *supra*, para. 1463.

⁶³¹³ See *supra*, para. 1716.

(ii) Aggravating Circumstances

2196. The Prosecution submits that **Miletić** was a “key member” of the VRS Main Staff and perpetrated his crimes through his position “at the apex of the VRS”.⁶³¹⁴ While the Trial Chamber has found **Miletić** was not in a command position, it is satisfied that through his pivotal coordinating role at the Main Staff, **Miletić** had a significant impact on the functioning and operation of the Main Staff and the VRS as a whole.⁶³¹⁵ In this role, **Miletić** clearly occupied a central position of authority. In the case of **Miletić**, he used the authority of his position, the trust placed in him by Milovanović and Mladić and the influence that brought, to organise and carry out the criminal plan to forcibly remove the Bosnian Muslim population from the enclaves. All of **Miletić**’s acts and contributions were cloaked with the authority of his position and it was that power which made them particularly effective. In these circumstances, the Trial Chamber finds by majority, Judge Kwon dissenting, that **Miletić** abused his position of authority within the Main Staff and the VRS and considers this to be an aggravating factor.⁶³¹⁶

2197. The Prosecution further submits that the prolonged basis of the crimes for which **Miletić** has been found guilty, as well as that they were committed systematically, with premeditation and with zeal, should be considered an aggravating factor.⁶³¹⁷ The Trial Chamber has found that **Miletić** was involved in the Srebrenica and Žepa operations from the very beginning—he drafted Directive 7, which formed the basis for the attack on the enclaves.⁶³¹⁸ Thereafter, he remained closely involved during each subsequent step of the implementation of the plan: the restrictions of humanitarian aid resulting in a catastrophic humanitarian situation in the enclaves; the strangulation of UNPROFOR forces; the lead up to and aftermath of the military attack on Srebrenica; the military attack on Žepa; the execution of the plan’s final phase, the busing out of thousands of Bosnian Muslims from the Srebrenica and Žepa enclaves; and finally, the search for any remaining Bosnian Muslims in Žepa. The Trial Chamber, by majority, Judge Kwon dissenting, finds that **Miletić**’s participation was not only prolonged but also systematic, and gives some weight to the prolonged and systematic duration of **Miletić**’s criminal conduct as an aggravating factor.⁶³¹⁹

2198. With regard to zeal and enthusiasm as submitted by the Prosecution, the Trial Chamber has found that **Miletić** carried out his tasks as the Chief of Operations and Training with dedication.⁶³²⁰ The Prosecution has however failed to prove that this dedication amounted to an eagerness

⁶³¹⁴ Prosecution Final Brief, p. 845, paras. 2822–2823.

⁶³¹⁵ See *supra*, paras. 1711–1715, 1628, 1635. See also *supra*, Chapter V, Section B.7(c)–(d).

⁶³¹⁶ See Judge Kwon’s Dissenting Opinion, *infra*, paras. 68–74.

⁶³¹⁷ Prosecution Final Brief, pp. 846–847, paras. 2826–2827.

⁶³¹⁸ See *supra*, paras. 199, 762, 1649.

⁶³¹⁹ See *supra*, Chapter V, Section B.7(d). See Judge Kwon’s Dissenting Opinion, *infra*, paras. 72–74.

specifically to commit the crimes **Miletić** has been found guilty of. As such, the Trial Chamber does not consider this an aggravating factor.

2199. Finally, the Trial Chamber recalls the two meetings in 1999 and 2000 at the Zvornik Brigade Headquarters, during which **Miletić** appealed to the attendees not to provide any information related to the events in Srebrenica to the ICTY.⁶³²¹ The Trial Chamber considers these acts were aimed at obstructing justice, and more particularly at obstructing the work of the Tribunal, and gives due weight to them as an aggravating factor in the determination of **Miletić**'s sentence.

(iii) Mitigating Circumstances

2200. **Miletić** refers to his family situation, and in particular to his wife's health, as a mitigating factor.⁶³²² The Prosecution submits that the personal circumstances of **Miletić**'s advanced age and that he has a family are "trivial" in the balance with the crimes committed and they should not substantially decrease **Miletić**'s punishment.⁶³²³ The Trial Chamber acknowledges that the personal circumstances and family situation of an accused may be considered as mitigating factors.⁶³²⁴ However, in view of the grave nature of the crimes for which **Miletić** has been found guilty, the Trial Chamber accords these circumstances only limited weight in the determination of **Miletić**'s sentence.

2201. **Miletić** furthermore called several witnesses who testified that he is a "mild" and "honourable" man, a "highly professional officer", and "never expressed intolerance towards members of other nations, races or religions."⁶³²⁵ Given the circumstances of this case and the gravity of the crimes committed, which caused irreparable harm to thousands of Bosnian Muslims, the Trial Chamber gives very limited weight to **Miletić**'s purported good character as a mitigating factor.

2202. **Miletić** further refers to his voluntary surrender to the Tribunal as a mitigating factor,⁶³²⁶ which is supported by an official declaration of the Serbian authorities.⁶³²⁷ The Prosecution does not

⁶³²⁰ See *supra*, paras. 1716–1717.

⁶³²¹ See Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", para. 15.

⁶³²² Ex. 5D01442 (confidential). See also Decision on Miletić Motion for Admission of Relevant Information Pursuant to Rule 85(A)(vi), 1 July 2009; Motion by General Miletić for Admission of relevant Information in Accordance with Rule 85(A)(vi) of the Rules on Procedure and Evidence, 2 June 2009, paras. 5–6.

⁶³²³ Prosecution Final Brief, p. 850, para. 2835.

⁶³²⁴ See *supra*, para. 2140.

⁶³²⁵ Maja Spiroski, T. 29416 (9 Dec 2008); Ivan Đokić, Ex. 5D01392, "92 *ter* statement" (29 May 2008), para. 7; Zoran Matejić, Ex. 5D01393, "92 *ter* statement" (30 May 2008), para. 8.

⁶³²⁶ Motion by General Miletić for Admission of relevant Information in Accordance with Rule 85(A)(vi) of the Rules on Procedure and Evidence, 2 June 2009, paras. 5–6.

contest that **Miletić** surrendered voluntarily. The Trial Chamber further notes that the Indictment against **Miletić** was made public on 25 February 2005⁶³²⁸ and that **Miletić** was transferred to the Tribunal on 28 February 2005.⁶³²⁹ The Trial Chamber is satisfied that **Miletić** voluntarily surrendered and takes this into account as a mitigating factor for the determination of his sentence.

(f) Gvero

(i) Nature and Extent of the Accused's Involvement

2203. **Gvero** had detailed knowledge of the strategic aim to remove the Bosnian Muslim population from the enclaves and, through his efforts to delay and block international protective intervention, made a significant contribution to the common purpose of the JCE to Forcibly Remove.⁶³³⁰ However, the Trial Chamber finds that **Gvero's** contribution to the JCE was not decisive for the implementation of the common purpose. **Gvero's** contributions to the JCE were not numerous and there is no evidence of his involvement in the decision-making process with regard to any military action relating to the plan.⁶³³¹

(ii) Aggravating Circumstances

2204. The Prosecution submits that **Gvero** was a "key member" of the VRS Main Staff and that he perpetrated crimes through his position "at the apex of the VRS", and this should be considered as an aggravating factor in sentencing.⁶³³² The Trial Chamber has found that, on some occasions in the relevant period, **Gvero** was the most senior officer present at the Headquarters of the VRS Main Staff. In this capacity and as an Assistant Commander, he clearly carried authority. In the case of **Gvero**, his contributions to the joint criminal enterprise, as found by the Trial Chamber, were carried out in functions which did not form a part of his normal responsibilities, albeit these acts were clearly authorized by Mladić. Even acknowledging that in these instances he had *ad hoc* authority, the extent and nature of his acts do not amount to an abuse of his authority as contemplated by the jurisprudence.⁶³³³

⁶³²⁷ Ex. 5D01445. "Certificate that the accused Radivoje Miletić surrendered voluntarily, issued by the Office of the National Council for Cooperation with the ICTY, signed by Dušan Ignjatović, 11 Mar 2009" (according to which **Miletić** voluntarily surrendered to the RS authorities on 24 February 2005).

⁶³²⁸ *Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*, Case No. IT-04-80-I, Decision on Motion of the Prosecutor to Further Vacate the Order for Non-Disclosure, 25 February 2005.

⁶³²⁹ *See Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*, Case No. IT-04-80-I, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005, para. 2.

⁶³³⁰ *See supra*, Chapter V, Section B.8(d) and (e)(i).

⁶³³¹ *Ibid.*

⁶³³² Prosecution Final Brief, p. 845, para. 2823.

⁶³³³ *See supra*, Chapter V, Section B.8(d). *See also supra*, para. 2139.

2205. The Prosecution further argues that the prolonged duration and the systematic method of commission of the crimes should also be considered as aggravating factors.⁶³³⁴ The Trial Chamber has found that **Gvero** had knowledge of and participated in the JCE to Forcibly Remove from its inception.⁶³³⁵ His involvement was not limited to the initial stages of the plan, but continued throughout its implementation.⁶³³⁶ However, particularly in light of the nature and extent of **Gvero**'s contribution to the JCE, the Trial Chamber does not consider the duration of **Gvero**'s criminal conduct as an aggravating factor in sentencing.

2206. The Prosecution also argues that zeal and enthusiasm can be relevant aggravating factors in sentencing.⁶³³⁷ **Gvero**'s role as Assistant Commander for Morale, Legal and Religious Affairs mainly involved propaganda activities. The Trial Chamber finds there is insufficient evidence indicating that **Gvero** displayed any particular zeal or enthusiasm with reference to his criminal activity. The Trial Chamber does not consider this as an aggravating factor in sentencing.

(iii) Mitigating Circumstances

2207. **Gvero** submits that his voluntary surrender to the Tribunal should be considered a mitigating circumstance.⁶³³⁸ The Trial Chamber has previously noted that **Gvero** voluntarily surrendered and the Prosecution does not contest this.⁶³³⁹ The Trial Chamber therefore considers **Gvero**'s voluntary surrender as a mitigating factor in determining his sentence.

2208. **Gvero** further submits that his age combined with his deteriorating health ought to be regarded as a mitigating factor when determining his sentence.⁶³⁴⁰ The Prosecution argues that the personal circumstances of **Gvero**'s age and the fact that he has a family are "trivial" when considered with reference to the crimes committed and should not materially decrease the appropriate sentence.⁶³⁴¹ While recognising that the balance must take into account the gravity of crimes, the Trial Chamber acknowledges that the personal circumstances of an accused may be considered as mitigating factors.⁶³⁴² The Trial Chamber has considered **Gvero**'s combined advanced age and medical conditions and accords these factors some weight in the determination of his sentence.

⁶³³⁴ Prosecution Final Brief, p. 847, para. 2827.

⁶³³⁵ See *supra*, Chapter V, Section B.8(e)(i).

⁶³³⁶ See *supra*, Chapter V, Section B.8(e)(i)b.

⁶³³⁷ Prosecution Final Brief, p. 847, para. 2827.

⁶³³⁸ **Gvero** Closing Arguments, T. 34742–34743 (11 Sept 2009).

⁶³³⁹ See Decision concerning motion for provisional release of Milan Gvero, 19 July 2005, para. 11; Prosecution Final Brief, paras. 2831–2832.

⁶³⁴⁰ **Gvero** Closing Arguments, T. 34743 (11 Sept 2009).

⁶³⁴¹ Prosecution Final Brief, p. 850, para. 2835.

⁶³⁴² See *supra*, para. 2140.

2209. **Gvero** also makes reference to some evidence presented during this trial in support of his good character, professionalism and inclination towards cooperation.⁶³⁴³ Considering the nature of the crimes **Gvero** has been found responsible for, the Trial Chamber gives very limited weight to **Gvero**'s purported good character as a mitigating factor.

(g) Pandurević

(i) Nature and Extent of the Accused's Involvement

2210. At the outset, the Trial Chamber emphasizes the serious and grave nature of the crimes for which **Pandurević** has been found responsible. These crimes are normally associated with heavy sentences. However, in more than one respect, **Pandurević**'s case presents an uncommon and extraordinary set of facts and circumstances. The Trial Chamber thus must consider the particular circumstances of the case as well as **Pandurević**'s criminal conduct generally and the specific role he played in the commission of these crimes in determining an appropriate sentence.

a. Forcible Transfer

2211. **Pandurević** was not a participant in the JCE to Forcibly Remove.⁶³⁴⁴ He did not share the intent to carry out this common purpose.⁶³⁴⁵ He was not present in Potočari during the transfer operation, nor was he involved in any respect in the planning and design of the operation.⁶³⁴⁶ His responsibility for the crime of forcible transfer arises not from direct participation in the forcible transfer but instead from his participation in the *Krivaja-95* military operation.

2212. The Trial Chamber has found that **Pandurević** participated in the *Krivaja-95* Operation with the knowledge of the criminal plan to forcibly remove the Bosnian Muslim populations of the enclaves and with the knowledge that his acts provided practical assistance to the commission of forcible transfer of the Bosnian Muslim population of the Srebrenica enclave.⁶³⁴⁷ **Pandurević**, however, participated in the military operation also with the knowledge that it had legitimate military objectives in relation to defeating the ABiH.⁶³⁴⁸ In this regard, the Trial Chamber is particularly mindful of the dual purpose of the *Krivaja-95* Operation and **Pandurević**'s role as a

⁶³⁴³ Gvero Final Brief, pp. 115–117, paras. 50–54; Gvero Closing Arguments, T. 34742 (11 Sept 2009). See Zvonko Bajagić, T. 32488–32489 (9 Mar 2009); Novica Simić, T. 28577–28578 (20 Nov 2008); Ex. 6D00312, “1st Krajina Corps Command Security Department – Report to the VRS Main Staff, Security and Intelligence Affairs or Security Administration, signed by Bogojević, 7 February 1995”, p. 1; Ex. 6D00194, “Photograph of bottle labeled Presented to Lieutenant General Milan Gvero”.

⁶³⁴⁴ See *supra*, para. 2000.

⁶³⁴⁵ See *supra*, paras. 2000–2007.

⁶³⁴⁶ See *supra*, para. 2001.

⁶³⁴⁷ See *supra*, paras. 2010–2012.

military commander, acting at a tactical level carrying out arguably justifiable military objectives. In light of these considerations, the Trial Chamber finds that the limited nature of **Pandurević**'s involvement in the forcible transfer diminishes the gravity of his criminal conduct and this has been taken into account in determining his sentence for this crime.

b. Murder

2213. **Pandurević** was not a participant in the JCE to Murder.⁶³⁴⁹ He neither shared the intent to carry out its common purpose, nor did he significantly contribute to it.⁶³⁵⁰ He had no advance knowledge of the heinous murder operation nor did he have any involvement in its planning or execution.⁶³⁵¹ The Trial Chamber recalls that **Pandurević** was absent from the area of the Zvornik and engaged in military operations during the first half of July and that he returned only after the murder operation being carried out in the area of Zvornik was well underway and a significant number of prisoners had already been executed.⁶³⁵²

2214. With regard to the crime of murder, the Trial Chamber has found, by majority, Judge Kwon dissenting, **Pandurević** responsible for his omission on one occasion.⁶³⁵³ His responsibility for this arises not from any positive, intentional acts on his part, but instead from his failure to discharge his legal duty to protect the wounded prisoners from Milići Hospital.⁶³⁵⁴ The Trial Chamber notes that a failure to fulfil a legal duty is a serious form of responsibility, particularly when it contributes, as in this case, to murder. **Pandurević**'s omission thus cannot be trivialized. However, the Trial Chamber has also taken into account the circumstances which **Pandurević** faced—including the high level authorities behind the murder operation—and the nature of his omission. In the view of the Trial Chamber, these factors diminish the gravity of his omission to some limited extent and this has been taken into account in determining his sentence for this crime.

2215. The Trial Chamber has also found that, as a superior within the meaning of Article 7(3) of the Statute, **Pandurević** failed to take the necessary and reasonable measures required to prevent his subordinates' crimes of murder and aiding and abetting murder on 15 and 16 July.⁶³⁵⁵ His failure to prevent was of a very serious nature in that it related to involvement by his troops in a large scale murder operation. At the same time, the Trial Chamber notes the circumstances surrounding this

⁶³⁴⁸ See *supra*, paras. 1996, 2000.

⁶³⁴⁹ See *supra*, para. 1879.

⁶³⁵⁰ See *supra*, paras. 1967, 1978.

⁶³⁵¹ See *supra*, paras. 1969–1970, 1972–1973.

⁶³⁵² See *supra*, paras. 1884, 1861, 1969.

⁶³⁵³ See *supra*, para. 1991; Judge Kwon's Dissenting Opinion, *infra*, paras. 60–66.

⁶³⁵⁴ See *supra*, paras. 1986–1990.

⁶³⁵⁵ See *supra*, para. 2051.

failure, in particular his recent return to the area and the other pressing tasks he faced. The Trial Chamber has considered all these factors in determining an appropriate penalty.

(ii) Aggravating Circumstances

2216. The Prosecution submits that **Pandurević**, as Commander of the Zvornik Brigade, was in a senior command position and abused his command authority to commit the crimes with which he is charged.⁶³⁵⁶ The Trial Chamber has found that **Pandurević** held a senior command position within the VRS as the Commander of the Zvornik Brigade.⁶³⁵⁷ However, given the military character of his contribution in support of the forcible transfer and the nature of his responsibility with respect to murder, the evidence does not demonstrate that **Pandurević** abused his position in committing these crimes and therefore the Trial Chamber does not consider this as an aggravating factor.

2217. Additionally, the Prosecution submits that **Pandurević**'s prolonged and systematic participation in the crimes he is charged with should be considered aggravating circumstances.⁶³⁵⁸ Having considered the nature and duration of **Pandurević**'s involvement in the crimes of which he has been found guilty, the Trial Chamber finds that his acts and omissions in no way constitute prolonged or systematic participation so as to be an aggravating factor.

2218. The Prosecution also argues that the zeal or enthusiasm demonstrated by the Accused in committing the crimes constitute aggravating factors.⁶³⁵⁹ The Trial Chamber notes that it has found that **Pandurević** lacked the intent to carry out the common purpose of the JCE to Murder and the JCE to Forcibly Remove and that his convictions rest on his knowledge of the intent of others, his failure to protect prisoners in his custody or to prevent the criminal conduct of his subordinates.⁶³⁶⁰ The Trial Chamber finds that overall there is absolutely no evidence that **Pandurević** participated in the crimes for which he has been found responsible with eagerness or zeal. Accordingly, the Trial Chamber does not consider this as an aggravating factor.

(iii) Mitigating Circumstances

a. Opening the Corridor at Baljkovica and the Interim Combat Reports

2219. In addition to the limited extent of his involvement in the crimes, the Trial Chamber also considers that **Pandurević**'s act of opening the corridor at Baljkovica on 16 July requires

⁶³⁵⁶ Prosecution Final Brief, p. 845, para. 2823.

⁶³⁵⁷ See *supra*, para. 1841.

⁶³⁵⁸ Prosecution Final Brief, p. 847, para. 2827.

⁶³⁵⁹ *Ibid.*

⁶³⁶⁰ See *supra*, paras. 1979, 1991, 2007, 2012, 2066.

consideration as a mitigating factor. At a time in which other VRS members were actively hunting down, capturing, and executing Bosnian Muslim men without mercy and pursuing a genocidal plan, **Pandurević's** decision to open the corridor and enable the safe passage of thousands of Bosnian Muslim men is striking.⁶³⁶¹ In doing so, thousands of men were potentially spared. He took this decision in contravention of the orders from his superiors and with the knowledge that it would potentially put him in jeopardy.⁶³⁶² **Pandurević's** action in this regard stands out as an instance of courage and humanity in a period typified by human weakness, cruelty, and depravity.

2220. The Prosecution submits that **Pandurević's** decision to open a corridor to allow the column to pass was not taken on humanitarian grounds, but out of military necessity.⁶³⁶³ However, in the view of the Trial Chamber, even if **Pandurević's** motivations in opening the corridor included military considerations and protecting Serb lives, this does not detract from the fact that objectively he saved thousands of lives. The Trial Chamber is overall convinced that **Pandurević's** action in opening the corridor was a clear and compelling instance of assistance to potential victims.

2221. In addition to his actions in Baljkovica, the Trial Chamber also considers the Interim Combat Reports for 15 and 18 July to have been brave acts on the part of **Pandurević**. As found previously, these reports represent the sole instance where a senior member of the VRS, in writing, challenged the Superior Command about the murder operation.⁶³⁶⁴

2222. Ultimately, the Trial Chamber therefore gives significant weight to these acts by **Pandurević** as mitigating factors in the determination of his sentence.

b. Other Mitigating Factors

2223. In addition to his conduct at Baljkovica in July 1995, **Pandurević** submits that on a number of other occasions during the war, he protected Bosnian Muslims from serious harm⁶³⁶⁵ as well as

⁶³⁶¹ See *supra*, para. 1873.

⁶³⁶² See *supra*, paras. 1873–1874, 1885, 1887, 1896.

⁶³⁶³ Prosecution Final Brief, paras. 1598–1607; p. 849, para. 2833.

⁶³⁶⁴ See *supra*, para. 1957.

⁶³⁶⁵ See for example **Pandurević** Closing Arguments, T. 34752 (14 Sept 2009) (submitting that in 1992, while stationed in Višegrad, **Pandurević** protected Muslim civilians from Serb paramilitaries and provided them with food), T. 34753 (14 Sept 2009) (submitting that shortly after becoming Commander of the Zvornik Brigade, **Pandurević** established contact with the commander of the opposing Muslim forces, Šemsudin Muminović, which resulted in regular prisoner exchanges and cease fire agreements which permitted each side to plant crops bi-annually), T. 34754–34755 (14 Sept 2009) (submitting that in January 1993 in or near Kamenica, **Pandurević** made arrangements for the daily passage of Bosnian Muslim civilians, to allow those trapped by combat to cross safely; that in 1993 at Ustiprača, **Pandurević** agreed to and ensured the evacuation of a column of Bosnian Muslim civilians from the area at Ustiprača; and that after **Pandurević** returned to the Zvornik Brigade on 15 July 1995, on 18 July 1995 he ordered that a group of seven to ten Bosnian Muslim teenaged prisoners be released and sent them back to the Muslim side). See also, e.g. Šemsudin Muminović, Ex. 7D01191, “92 bis statement” (11 Apr 2008), pp. 2–3 (stating that in 1993 and 1994, when he was a brigade commander in the ABiH, he and **Pandurević** agreed

acted with considerable tolerance towards Bosnian Muslims, evidencing his “lack of prejudice and general good character”.⁶³⁶⁶ In regard to **Pandurević**’s submissions on his assistance to victims, the Prosecution submits that the evidence presented by him “hold zero value” and that his sentence should not be reduced based upon it.⁶³⁶⁷ The Trial Chamber has considered and accepts this other evidence of **Pandurević**’s good character but gives only limited weight to it as a mitigating factor.

2224. With regard to voluntary surrender as a possible mitigating factor, the Prosecution submits **Pandurević** was a fugitive from justice for almost three and a half years.⁶³⁶⁸ **Pandurević** testified that he did not surrender immediately after learning about the Indictment because he wanted to wait until his two sons had reached an age when he could explain to them the reasons why he had to leave.⁶³⁶⁹ The Trial Chamber recalls that it has previously accepted that **Pandurević** voluntarily surrendered to the Tribunal.⁶³⁷⁰ However, the Trial Chamber finds it necessary to also consider the circumstances of the surrender when determining the weight to be given to this factor.⁶³⁷¹ In this regard, the Trial Chamber notes the long period **Pandurević** remained at large prior to surrendering and the fact that he made his surrender conditional. The Trial Chamber further notes that **Pandurević** provided unsubstantiated and generalized reasons for not surrendering prior to 2005.⁶³⁷² In light of the significant delay in **Pandurević**’s surrender, the Trial Chamber gives only limited weight to it as a mitigating factor.

2225. The Prosecution further submits that the fact that **Pandurević** has a family is “trivial” in the balance with the crimes committed and should not substantially decrease **Pandurević**’s punishment.⁶³⁷³ In view of the grave nature of the crimes for which **Pandurević** has been found

to and arranged for the exchange of POWs and reached several truce agreements, which were each fully respected agreements such as which allowed the Bosnian Muslim civilian population to sow and harvest and were concluded without the consent of **Pandurević**’s superiors); 7DW-14, Ex. 7D01192, “confidential - 92 *ter* statement” (16 May 2008), paras. 3, 6–8, 11 (stating that **Pandurević** negotiated several prisoner exchanges with Ahmet Sjdić, an ABiH brigade commander, in 1992, and on one occasion, **Pandurević** sent a truckload of food to besieged Goražde as a gesture of good will).

⁶³⁶⁶ **Pandurević** Closing Arguments, T. 34751–34755 (14 Sept 2009).

⁶³⁶⁷ Prosecution Final Brief, p. 849, para. 2833.

⁶³⁶⁸ *Ibid.*, p. 848, para. 2831.

⁶³⁶⁹ Vinko Pandurević, T. 31260–31261 (11 Feb 2009).

⁶³⁷⁰ *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Milić, Milan Gvero, Vinko Pandurević, and Milorad Trbić*, Case No. IT-05-88-PT, Decision on Pandurević’s motion for provisional release, 21 July 2008, para. 20.

⁶³⁷¹ *See Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86-AR65.1, Decision on Interlocutory Appeal from Trial Chamber Decision Denying Vinko Pandurević’s Application for Provisional Release, 3 October 2005, paras. 7–8 (the Appeals Chamber holding that it was not unreasonable for the Trial Chamber, based on an assessment of the circumstances of **Pandurević**’s surrender, to discount the probative value of **Pandurević**’s surrender and give more weight to the fact that he remained at large for over three years).

⁶³⁷² *See Prosecutor v. Vinko Pandurević*, Case No. IT-05-86-PT, Defence’s Reply to Prosecution’s Response to Request for Provisional Release for Vinko Pandurević, 17 June 2005, para. 12 (noting that **Pandurević** submitted that he “could not surrender earlier” “due to the circumstances and caring about the security of his family”).

⁶³⁷³ Prosecution Final Brief, para. 2835.

guilty, the Trial Chamber gives limited weight to **Pandurević**'s family situation as a mitigating circumstance.

4. General Practice Regarding Prison Sentences in the Courts of the Former Yugoslavia

2226. In determining the appropriate sentences for each Accused, the Trial Chamber has taken into account the general practice regarding prison sentences in the courts of BiH at the time of the commission of the crimes alleged in the Indictment. It has also considered the statutory law applicable at the time and as subsequently developed.⁶³⁷⁴

5. Life Sentence and Possibility of Early Release

2227. The Prosecution submits that, were the Trial Chamber to determine that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** should be incarcerated for life, it should explicitly state so, in order for the intention of the Trial Chamber to be clearly understood when, eventually, the Accused may be considered for early release according to the requirements of the States' national laws.⁶³⁷⁵

2228. Rule 101(A) provides that a Trial Chamber may impose a sentence "up to and including the remainder of the convicted person's life". The Trial Chamber notes that under the Tribunal's law, eligibility for early release is dependant on the applicable law of the State in which the convicted person is imprisoned, which State shall notify the Tribunal of such eligibility. Ultimately, the President of the Tribunal determines, in consultation with the members of the Sentencing Chamber and the Bureau, whether or not early release should be granted.⁶³⁷⁶ The Trial Chamber declines to make a statement, *a priori*, on any future application for early release pursuant to Article 28 of the Statute and Rule 125 of the Rules.

6. Credit for Time Served in Custody

2229. Pursuant to Rule 101(C), convicted persons are entitled to credit for time spent in detention pending and during trial.

⁶³⁷⁴ Article 24 of the Statute. See *Dragan Nikolić* Sentencing Appeal Judgement, paras. 84–85 (holding that "the International Tribunal, having primacy, is not bound by the law or sentencing practice of the former Yugoslavia. It has merely to take it into consideration." *Ibid.*, para. 84 (footnotes omitted)).

⁶³⁷⁵ Prosecution Final Brief, p. 851, para. 2842.

⁶³⁷⁶ *Dragan Nikolić* Sentencing Appeal Judgement, paras. 94–98.

IX. DISPOSITION

Having considered all of the evidence and the arguments of the parties, and based upon the facts and legal findings as determined by the Trial Chamber in this judgement; We, Judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, decide as follows:

- **Vujadin Popović**

The Accused **Vujadin Popović** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

Count 1: Genocide;

Count 3: Extermination, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war;

Count 6: Persecution, as a crime against humanity.

In relation to the following counts against **Vujadin Popović**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction:

Count 2: Conspiracy to Commit Genocide;

Count 4: Murder, as a crime against humanity.

The Accused **Vujadin Popović** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 7: Inhumane Acts (forcible transfer), a crime against humanity;

Count 8: Deportation, a crime against humanity.

Having given due weight to the mitigating factors, nonetheless, in the face of the grave nature of the crimes perpetrated and **Vujadin Popović**'s significant responsibility for them, the Trial Chamber considers that the only appropriate sentence for him is life imprisonment.

Popović was taken into the custody of the Tribunal in relation to this Indictment on 14 April 2005. Accordingly, he has been in custody now for 1,884 days. Pursuant to Rule 101(C), he is entitled to

credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Ljubiša Beara**

The Accused **Ljubiša Beara** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

Count 1: Genocide;

Count 3: Extermination, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war;

Count 6: Persecution, as a crime against humanity.

In relation to the following counts against **Ljubiša Beara**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction:

Count 2: Conspiracy to Commit Genocide;

Count 4: Murder, as a crime against humanity.

The Accused **Ljubiša Beara** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 7: Inhumane Acts (forcible transfer), a crime against humanity;

Count 8: Deportation, a crime against humanity.

Having given due weight to the mitigating factors, nonetheless, in the face of the grave nature of the crimes perpetrated and **Ljubiša Beara's** central responsibility for them, the Trial Chamber considers that the only appropriate sentence for him is life imprisonment.

Beara was taken into the custody of the Tribunal in relation to this Indictment on 10 October 2004. Accordingly, he has been in custody now for 2,070 days. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Drago Nikolić**

The Accused **Drago Nikolić** is found **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following count:

Count 1: Genocide.

The Accused **Drago Nikolić** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

Count 3: Extermination, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war;

Count 6: Persecution, as a crime against humanity.

In relation to the following count against **Drago Nikolić**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction:

Count 4: Murder, as a crime against humanity.

The Accused **Drago Nikolić** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 2: Conspiracy to Commit Genocide;

Count 7: Inhumane Acts (forcible transfer), a crime against humanity;

Count 8: Deportation, a crime against humanity.

Having given due weight to the mitigating factors, nonetheless, in the face of the grave nature of the crimes perpetrated and **Nikolić's** responsibility for them, the Trial Chamber finds that **Nikolić's** actions warrant a severe penalty. The Trial Chamber sentences **Drago Nikolić** to a sentence of 35 years of imprisonment.

Nikolić was taken into the custody of the Tribunal in relation to this Indictment on 17 March 2005. Accordingly, he has been in custody now for 1,912 days, including the days when he was granted custodial release. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Ljubomir Borovčanin**

The Accused **Ljubomir Borovčanin** is found **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following counts:

Count 3: Extermination, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war;

Count 6: Persecution, as a crime against humanity;

Count 7: Inhumane Acts (forcible transfer), a crime against humanity by majority, Judge Kwon dissenting.

The Accused **Ljubomir Borovčanin** is found **GUILTY** pursuant to Article 7(3) of the Statute, of the following counts:

Count 4: Murder, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war.

In relation to the following count against **Ljubomir Borovčanin**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction, pursuant to Art 7(1) of the Statute:

Count 4: Murder, as a crime against humanity.

The Accused **Ljubomir Borovčanin** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 1: Genocide;

Count 2: Conspiracy to Commit Genocide;

Count 8: Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 17 years of imprisonment appropriately reflects the extent of **Ljubomir Borovčanin**'s criminal responsibility.

Borovčanin was taken into the custody of the Tribunal in relation to this Indictment on 1 April 2005. Accordingly, he has been in custody now for 1,897 days, including the days when he was

granted custodial release. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Radivoje Miletić**

The Accused **Radivoje Miletić** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

Count 4: Murder, as a crime against humanity, by majority, Judge Kwon dissenting;

Count 6: Persecution, as a crime against humanity;

Count 7: Inhumane Acts (forcible transfer), a crime against humanity.

The Accused **Radivoje Miletić** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 5: Murder, as a violation of the laws or customs of war;

Count 8: Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 19 years of imprisonment appropriately reflects the extent of **Radivoje Miletić's** criminal responsibility.

Miletić was taken into the custody of the Tribunal in relation to this Indictment on 28 February 2005. He was granted provisional released several times.⁶³⁷⁷ Accordingly, he has been in custody now for 1,489 days. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Milan Gvero**

The Accused **Milan Gvero** is found **GUILTY**, pursuant to Article 7(1) of the Statute, through committing, of the following counts:

Count 6: Persecution, as a crime against humanity;

⁶³⁷⁷ See *infra*, Annex II, Procedural History, paras. 12, 60.

Count 7: Inhumane Acts (forcible transfer), a crime against humanity.

The Accused **Milan Gvero** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 4: Murder, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war;

Count 8: Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 5 years of imprisonment appropriately reflects the extent of **Milan Gvero**'s criminal responsibility.

Gvero was taken into the custody of the Tribunal in relation to this Indictment on 24 February 2005. He was granted provisional release several times.⁶³⁷⁸ Accordingly, he has been in custody now for 1,494 days. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Vinko Pandurević**

The Accused **Vinko Pandurević** is found **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following counts:

Count 4: Murder, as a crime against humanity, by majority, Judge Kwon dissenting;

Count 5: Murder, as a violation of the laws or customs of war, by majority, Judge Kwon dissenting;

Count 6: Persecution, as a crime against humanity;

Count 7: Inhumane Acts (forcible transfer), a crime against humanity.

The Accused **Vinko Pandurević** is found **GUILTY** pursuant to Article 7(3) of the Statute, of the following counts:

Count 4: Murder, as a crime against humanity;

Count 5: Murder, as a violation of the laws or customs of war.

The Accused **Vinko Pandurević** is found **NOT GUILTY** and therefore acquitted of the following counts:

Count 1: Genocide;

Count 2: Conspiracy to Commit Genocide;

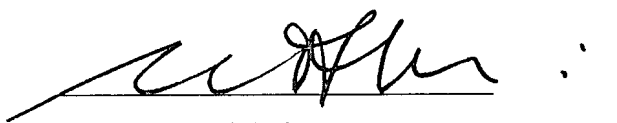
Count 3: Extermination, as a crime against humanity;


Count 8: Deportation, a crime against humanity.


Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 13 years of imprisonment appropriately reflects the extent of **Vinko Pandurević**'s criminal responsibility.⁶³⁷⁹

Pandurević was taken into the custody of the Tribunal in relation to this Indictment on 23 March 2005. Accordingly, he has been in custody now for 1,906 days, including the days when he was granted custodial release. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

Done in English and French, the English text being authoritative.


Judge Carmel Agius
Presiding


Judge O-Gon Kwon


Judge Kimberly Prost

Dated this tenth day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

⁶³⁷⁸ See *infra*, Annex II, Procedural History, paras. 12, 60–61.

⁶³⁷⁹ See Judge Kwon's Dissenting Opinion, *infra*, paras. 67, 75–81.

X. DISSENTING AND SEPARATE OPINIONS OF JUDGE KWON

A. Introduction

1. In addition to several miscellaneous separate opinions, which I have appended in footnotes in the relevant parts of the Judgement,⁶³⁸⁰ I set out my more substantive dissenting and separate opinions here.

B. Some Issues regarding Forcible Transfer

1. Scope of the Victims of Forcible Transfer

2. The majority has included in its analysis of the charges of forcible transfer, the movement of the column of Bosnian Muslim men from Srebrenica who attempted to escape to ABiH-held territory⁶³⁸¹ and convicts **Miletić**, **Gvero**, and **Pandurević** for forcible transfer with regard to the civilian component of the column.⁶³⁸² The majority has also included in its analysis of the charges of forcible transfer, the able-bodied men from Žepa who swam across the Drina River to Serbia⁶³⁸³ and convicts **Miletić** and **Gvero** for forcible transfer with regard to the movement of these men.⁶³⁸⁴ I respectfully disagree with the majority on both those findings, as the movements of these men were not charged, or at least not charged with sufficient particularity in the Indictment.

3. I will first briefly set out the principles of pleading. Then, I will analyse whether the Prosecution charged the movement of the column as forcible transfer and subsequently whether it did so with regard to the men from Žepa who swam across the Drina River.

(a) Principles of Pleading

4. In accordance with Article 21(4)(a) of the Statute, an accused has the right “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. The Prosecution is required to plead all the material facts underpinning the charges in the Indictment: the primary accusatory instrument.⁶³⁸⁵ Whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution

⁶³⁸⁰ By *miscellaneous* separate opinions, I mean those separate opinions, which would not affect the overall conclusion of the Trial Chamber, while differing from the majority’s approach. *See supra*, fn. 849, 2303, 2871, 5025, 5337.

⁶³⁸¹ *See supra*, paras. 914, 926–930, 936.

⁶³⁸² *See supra*, paras. 1721–1722, 1825–1826, 2012.

⁶³⁸³ *See supra* paras. 938, 952–953, 955–958, 962.

⁶³⁸⁴ *See supra*, paras. 1721–1722, 1825–1826.

⁶³⁸⁵ *Martić* Appeal Judgement, para. 162; *Simić* Appeal Judgement, para. 20; *Naletilić and Martinović* Appeal Judgement, para. 23; *Kupreškić et al.* Appeal Judgement, para. 88.

case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.⁶³⁸⁶

5. A defective indictment can in certain circumstances be “cured” if the Prosecutor provides the accused with timely, clear, and consistent information that resolves the ambiguity or clarifies the vagueness, thereby compensating for the failure of the indictment to give proper notice of the charges.⁶³⁸⁷ Such information could, *inter alia* and depending on the circumstances, be supplied in the Prosecution’s pre-trial brief.⁶³⁸⁸ On the other hand, a vague or imprecise indictment, which is not cured by providing the accused with timely, clear, and consistent information, causes prejudice to the accused. The defect can be deemed harmless only if it is established that the accused’s ability to prepare his defence was not materially impaired.⁶³⁸⁹ Where the failure to give sufficient notice of the legal and factual reasons for the charges against the accused violates his right to a fair trial, no conviction can result.⁶³⁹⁰

6. The principle that a defect in the indictment may be cured is however not without limits.⁶³⁹¹ It should not lead to a “radical transformation” of the Prosecution’s case against the accused.⁶³⁹² The risk that expansion of the charges may lead to unfairness and prejudice to the accused should always be borne in mind.⁶³⁹³ Accordingly, an omission of a charge from an indictment, as opposed to a vague or imprecise indictment, cannot be cured by the provision of timely, clear, and consistent information.⁶³⁹⁴

(b) Flight of the Men from Srebrenica in the Column

7. In my opinion, the Prosecution did not charge the movement of the column as forcible transfer in the Indictment. More specifically, the movement of the column is not mentioned in the Indictment under Count 6 (Persecutions) in the paragraph listing the acts of forcible transfer as an

⁶³⁸⁶ *Simić* Appeal Judgement, para. 20; *Stakić* Appeal Judgement, para. 116; *Kupreškić et al.* Appeal Judgement, para. 88.

⁶³⁸⁷ *Martić* Appeal Judgement, para. 163; *Simić* Appeal Judgement, para. 23; *Naletilić and Martinović* Appeal Judgement, para. 26; *Kvočka et al.* Appeal Judgement, paras 33–34; *Kupreškić et al.* Appeal Judgement, para. 114; *Nahimana et al.* Appeal Judgement, para. 325.

⁶³⁸⁸ *Naletilić and Martinović* Appeal Judgement, para. 27; *Nahimana et al.* Appeal Judgement, para. 325; *Ntagerura et al.* Appeals Judgement, para. 130.

⁶³⁸⁹ *Martić* Appeal Judgement, para. 163; *Simić* Appeal Judgement, para. 24; *Nahimana et al.* Appeal Judgement, para. 326.

⁶³⁹⁰ *Naletilić and Martinović* Appeal Judgement, para. 26; *Kvočka et al.* Appeal Judgement, para. 33; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgment, para. 28.

⁶³⁹¹ *Muvunyi* Appeal Judgement, para. 20.

⁶³⁹² *Ibid.*, para. 20, quoting *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-AR73, Appeals Chamber Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 (“*Bagosora et al.* Appeals Chamber Decision”), para. 30.

⁶³⁹³ *Ibid.*

underlying act of persecution.⁶³⁹⁵ Under Count 7 (Forcible Transfer as Inhumane Acts), the flight of the column is mentioned in the introductory part on the JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.⁶³⁹⁶ However, it is not included in the section specifically dealing with the forcible removal of the population from Srebrenica.⁶³⁹⁷ In other words, at both places where the Indictment specifically sets out the charges of forcible transfer of the Bosnian Muslim population from Srebrenica, the movement of the men in the column is omitted.

8. The absence of the movement of the column among the charges of forcible transfer in the Indictment constitutes an incurable defect in the Indictment. Thus, it is my view that including the movement of the column among the charges of forcible transfer at a later stage constitutes an expansion of the charges against the accused as pleaded in the Indictment. It results in a *de facto* amendment of the Indictment by the Trial Chamber, which is clearly unfair and prejudicial to the accused.

9. It may be argued that the references to the movement of the column contained in the Indictment include a general allegation with regard to the movement of the column as forcible transfer, lacking specificity, which could then be “cured” by adding greater detail in a consistent manner in following trial documents. However, even if it were accepted that the references to the column in the Indictment constitute such general allegations, in my view the Prosecution failed to provide timely, clear, and consistent information and thus failed to cure the Indictment.

10. The Pre-Trial Brief describes the movement of the column under the heading “The Attack on the Srebrenica Enclave and the Aftermath of Srebrenica’s Fall”.⁶³⁹⁸ The movement of the column is also mentioned in the description of the operation to forcibly remove the Muslim population of Srebrenica, arguing that the men leaving Srebrenica fled towards the woods out of fear that the “Serbs would harm the able-bodied men of the enclave”.⁶³⁹⁹ This may be interpreted as an attempt on the part of the Prosecution to “cure” the Indictment and include the movement of the column as an *actus reus* of forcible transfer. However, the Prosecution Final Brief leaves a different impression.

⁶³⁹⁴ *Ntagerura et al.* Appeal Judgement, para. 32. See *Muvunyi* Appeal Judgement, para. 20, quoting *Bagosora et al.* Appeals Chamber Decision, para. 30.

⁶³⁹⁵ Indictment, para. 48(e).

⁶³⁹⁶ *Ibid.*, para. 56.

⁶³⁹⁷ *Ibid.*, paras. 61–64.

⁶³⁹⁸ Prosecution Pre-Trial Brief, para. 23.

⁶³⁹⁹ *Ibid.*, para 145. This paragraph is part of the Chapter dealing with the “Summary of Evidence Regarding the Commission of Each Offence”. It is noted that the Prosecution Pre-Trial Brief mentions that the JCE’s common purpose was to forcibly transfer and deport the Bosnian Muslim women and children and elderly from the Srebrenica and Žepa enclaves. See *ibid.*, para. 27.

11. In the Prosecution Final Brief, like in the Prosecution Pre-Trial Brief, the column is referred to in the description of the fall of the Srebrenica enclave.⁶⁴⁰⁰ Furthermore, in the section dealing with the application of facts on the crime of forcible transfer, the Prosecution Final Brief states that “[t]he able-bodied men who fled into the woods and joined the column of men or who fled from the Žepa enclave and swam across the Drina river to Serbia also did so in order to escape the VRS attack on the enclaves”.⁶⁴⁰¹ However, the section dealing specifically with “The forcible removal of the Muslim Population”, tellingly, only describes the separation of the men in Potočari and the forcible transfer of the women, children and elderly. It omits any reference to the column.⁶⁴⁰² Thus, in line with the Indictment, the Prosecution Final Brief does not seem to include the movement of the column as part of the charges under forcible transfer.

12. This vagueness is not only reflected in Prosecution documents; also during trial proceedings, the Prosecution issued ambiguous statements with regard to the charges concerning the column. Albeit termed as being limited to “war crimes”, the Prosecution stated that any attack against the column was “not a subject matter of the indictment”.⁶⁴⁰³ The lack of clarity in the Prosecution position led my learned colleague, Judge Kimberly Prost, to question the Prosecution during the closing arguments concerning the charges with regard to the column.⁶⁴⁰⁴ In response, the Prosecution repeated that the attack against the column was not charged but then stated its position that the members of the column were victims of forcible transfer.⁶⁴⁰⁵ In my opinion, all this shows that until the end of the Trial the Indictment was not clear on the issue of charges concerning the members of the column. This defect cannot be cured by any statement of the Trial Attorney of the Prosecution during the closing arguments of the case.

13. On the side of the Accused, **Borovčanin** and **Nikolić** both argue that they cannot be responsible for forcibly transferring the column.⁶⁴⁰⁶ **Nikolić** submits, more specifically, that the charge of forcible transfer does not apply to the members of the column as they were “targeted by the second joint criminal enterprise [...] to kill the able-bodied men from Srebrenica” and are “not

⁶⁴⁰⁰ Prosecution Final Brief, para 313.

⁶⁴⁰¹ *Ibid.*, para. 2897.

⁶⁴⁰² *Ibid.*, paras. 341–380.

⁶⁴⁰³ T. 7041 (7 Feb 2007). The Prosecution stated, after Mr. Lazarević wondered if the Prosecution was ready to stipulate “this was a military column from the very beginning and [...] it was a legitimate military target”, that the attack on the column was “not a subject matter of the indictment and I think that’s pretty clear”. *Ibid.* See also T. 3381–3382 (1 Nov 2006).

⁶⁴⁰⁴ Prosecution Closing Arguments, T. 34260–34261, 34263 (4 Sept 2009).

⁶⁴⁰⁵ *Ibid.*, T. 34261–34263 (4 Sept 2009).

⁶⁴⁰⁶ The Borovčanin Final Brief states that “The allegation that Borovčanin was responsible for forcibly transferring the column of Muslim combatants out the Srebrenica enclave is logically, factually and legally nonsensical. The column’s departure from the enclave was a military decision taken by the ABiH on 11 July.” Borovčanin Final Brief, para. 82. The Nikolić Final Brief maintains the distinction of the victims of forcible transfer into the three groups identified in the Rule 98 *bis* submissions and argues that the departure of the column does not constitute an incident of forcible transfer. See Nikolić Final Brief paras. 226–231, 1018.

included in the Bosnian Muslim population allegedly forcibly transferred from Srebrenica”.⁶⁴⁰⁷ The language of the Defence Final Briefs however suggests that the issue may have been addressed out of an abundance of caution.⁶⁴⁰⁸

14. In my view, the Prosecution’s position following the Indictment was vague and ambiguous and it has failed to provide clear and consistent information as to whether the movement of the column is charged as forcible transfer. As such, the Prosecution has failed to “cure” the Indictment and the column should be considered as charged with insufficient particularity. Furthermore, this lack of clarity cannot be cured by an abundance of caution from two of the Accused. In my opinion, the Accused have not been clearly informed of the charges against them with regard to the column. Therefore, including the movement of the column in the analysis of the charges under forcible transfer, as the majority has done, is prejudicial to the Accused. Accordingly, I dissent from the majority’s finding thereon, as well as its finding that **Miletić, Gvero, and Pandurević** are responsible for forcible transfer with regard to the civilian component of the column.⁶⁴⁰⁹

(c) Movement of the Able-Bodied Men from Žepa across the Drina River

15. In my opinion, the Prosecution did not charge the movement of the men from Žepa who swam across the Drina River as forcible transfer.

16. Under Count 7 (Forcible Transfer as Inhumane Acts), in paragraph 71, the part dealing with the forcible removal of the Bosnian Muslim population from Žepa as part of the JCE to Forcibly Remove, the Indictment refers to the flight of the Bosnian Muslim men to Serbia out of fear “they would be harmed or killed if they surrendered to the VRS”.⁶⁴¹⁰ This formed the basis for the majority’s conclusion that the Prosecution charged forcible transfer with the regard to the men from Žepa who fled to Serbia.⁶⁴¹¹

17. However, paragraph 84 of the Indictment, which charges the Accused with the crime of deportation states:

⁶⁴⁰⁷ **Nikolić** submitted this argument at the Rule 98 *bis* stage of the proceedings and repeated his argument in his Final Brief. See T. 21266 (14 Feb 2008); **Nikolić** Final Brief, paras. 211–215, 228.

⁶⁴⁰⁸ See **Nikolić** Final Brief, para. 228; **Borovčanin** Final Brief, para. 82.

⁶⁴⁰⁹ In this regard I note that, in my view, even if it were considered that the movement of the column was charged, the majority took an inconsistent approach by distinguishing between the civilian and the military component of the column, and that I would argue that the same conclusion be reached for all members of the column, without distinguishing between the civilian and the military parts of it.

⁶⁴¹⁰ Indictment, para. 71, which reads: [t]he transportation of the women and children of Žepa began on 25 July 1995. On or about the same day, hundreds of mostly able-bodied Muslim men began to flee across the Drina River to Serbia where many of them were registered by the International Committee for the Red Cross (ICRC) and eventually released. The Muslim men fled to Serbia because they feared they would be harmed or killed if they surrendered to the VRS.

⁶⁴¹¹ See *supra*, para. 953.

The crime of deportation was perpetrated, executed and carried out by and through the following means:

- a. the forced movement of Bosnian Muslim men from Žepa, across the Drina River to Serbia, by means of making life unbearable in the enclave by restricting aid to the enclave and instilling fear and terror in the population by shelling civilian areas and attacking the enclave, *as described in paragraph 71 of this Indictment.*⁶⁴¹²

Accordingly, it is my view that paragraph 84 indicates that the flight of the men across the Drina River is mentioned in paragraph 71 of the Indictment simply because this is where the Indictment describes the JCE to forcibly remove, *namely to forcibly transfer and deport*, the Bosnian Muslim population from Srebrenica and Žepa.

18. This is further supported by the description of the alleged underlying acts of the crime of persecution for the events that occurred in Žepa.⁶⁴¹³ In the underlying acts, a distinction is made between the forcible transfer of the women and children and the deportation of the men:

[T]he forcible transfer of Bosnian Muslims from [...] Žepa by means of the forced busing of the women and children to Bosnian Muslim-controlled territory [...], and the deportation of the Bosnian Muslim men from Žepa who were forced to flee from their homes in Žepa to Serbia.⁶⁴¹⁴

19. In my view, based on the above, it can be concluded that the Prosecution intended to only charge the movement of the men from Žepa across the Drina River as deportation. Even if the Indictment is considered ambiguous as to whether the flight of the men across the Drina River is charged as forcible transfer, this has subsequently been “cured” by the Prosecution. While the Pre-Trial Brief does not assist, the Prosecution Final Brief clearly supports the limitation of the charge of forcible transfer from Žepa to the women, children and the elderly. It submits that:

[...] the women, children and elderly Muslims from the Žepa enclave were forcibly displaced to other areas within Bosnia. These crimes should be classified as forcible transfer.

The Bosnian Muslim men who swam from Žepa across the Drina River into Serbia were forcibly displaced across a national border. As a result, these crimes constitute deportation.⁶⁴¹⁵

20. Based on the foregoing, there is little doubt that the Prosecution clearly intended to charge the movement of the men from Žepa across the Drina River as deportation under Count 8 (Deportation) only. Including these men in the analysis of the charges under forcible transfer is incorrect and causes prejudice to the Accused. Accordingly, I dissent from the majority’s finding

⁶⁴¹² Indictment, para. 84 (emphasis added).

⁶⁴¹³ *Ibid.*, para. 48 (c).

⁶⁴¹⁴ *Ibid.*

⁶⁴¹⁵ Prosecution Final Brief, paras. 2909–2910.

thereon, as well as on its finding that **Miletić** and **Gvero** are criminally responsible for forcible transfer with regard to the movement of these men.⁶⁴¹⁶

2. Foreseeability of Opportunistic Killings and Miletić's Responsibility

21. The majority has found that the “opportunistic” killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove the Bosnian Muslim populations from the enclaves.⁶⁴¹⁷ Further, the majority has found that the “opportunistic” killings in Potočari were foreseeable to **Miletić** personally, and accordingly found him criminally responsible under Article 7(1) of the Statute for Count 4 (Murder) and Count 6 (Persecution through murder) as crimes against humanity pursuant to third category JCE.⁶⁴¹⁸

22. The Indictment specifically distinguishes between the JCE to Murder and the JCE to Forcibly Remove. The JCE to Murder encompassed the plan to murder the able-bodied Bosnian Muslim men from Srebrenica, whereas the common purpose of the JCE to Forcibly Remove was to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa.⁶⁴¹⁹ The Trial Chamber has unanimously found that all the alleged “opportunistic” killings were a foreseeable and natural

⁶⁴¹⁶ Even if it is to be found that the crime of forcible transfer has been charged with respect to the able-bodied men who swam across the Drina River out of the Žepa enclave, or if, as a consequence of acquittal of the crime of deportation, forcible transfer is to be analysed in relation to them, I believe that their movement cannot be qualified as a crime against humanity. In my opinion, one of the general requirements under Article 5—that the acts of the perpetrator must be part of the attack against a civilian population—has not been established with regard to the men in Žepa. As previously found by the Trial Chamber, unlike Srebrenica, the ABiH Žepa Brigade soldiers in Žepa chose to remain in the woods around Žepa town and to resist the attack of the VRS militarily. *See supra*, para 955. Although major fighting in Žepa ceased following the 24 July 1995 Agreement, some fighting still continued thereafter. *See supra*, para. 724. After the transportation of the Bosnian Muslim civilians was over, negotiations for the surrender of the able-bodied men in the woods continued until around 29 July 1995. *See supra*, para. 731. On 28 July 1995, UNPROFOR reported that approximately 1,500 ABiH soldiers had remained in the mountains surrounding the Žepa enclave. *See supra*, para. 729. The evidence demonstrates that both the VRS and the ABiH believed that the able-bodied men in the Žepa enclave were “soldiers” and both sides were negotiating prisoner exchanges on the all-for-all basis throughout the negotiations. *See supra*, paras. 675–681, 689–700, 702–709, 725–731. ABiH reports also refer to the able-bodied men in Žepa as “soldiers”. For instance, on or about 30 July 1995, the ABiH reported that approximately 700 or 800 soldiers of the ABiH Žepa Brigade set off in the direction of Poljanice in Žepa where they crossed the Drina River into Serbia and surrendered to the Serbian authorities or JNA. *See supra*, para. 732. In early August 1995, the ABiH reported that around 1,000 “soldiers” were still in the mountains around Žepa, waiting for the right moment to withdraw. *See supra*, para. 736. According to interviews of POWs conducted at the prison in Foča in mid-August 1995, after the fall of the Žepa enclave 800–1,000 ABiH Žepa Brigade soldiers decided to surrender to the JNA by crossing the Drina River, and 400–500 soldiers decided to break through the RS territory in order to link up with the ABiH. *See supra*, para. 737. These interviews also indicate that the group that crossed the Drina River into Serbia was composed “entirely of soldiers”. *See supra*, para 737. Having considered the evidence before the Trial Chamber, I am of the view that the movement of the able-bodied men in Žepa cannot be categorised as a crime against humanity, since the VRS’s acts, at the time when the fighting in Žepa and the transfer of the Bosnian Muslim civilian population from the area were over, were directed against a specific group of individuals, namely, the ABiH Žepa Brigade soldiers in Žepa. Thus, these acts were removed from the attack against the civilian population. *See Mrkšić and Šljivančanin Appeal Judgement*, para. 42. The possibility that a certain number of civilians may have been among the able-bodied men who swam across the Drina River does not change the above conclusion. Accordingly, in my opinion, one of the general requirements of Article 5, i.e., the nexus requirement, has not been satisfied with regard to the men in Žepa.

⁶⁴¹⁷ *See supra*, para. 1088.

⁶⁴¹⁸ *See supra*, paras. 1726–1727, 1735.

⁶⁴¹⁹ Indictment, paras. 27–30, 36, 49, 72, 89–91.

consequence of the JCE to Murder.⁶⁴²⁰ However, in my opinion, none of them were committed in the context and as a consequence of the JCE to Forcibly Remove and, as such, they were not a foreseeable and natural consequence of the JCE to Forcibly Remove.

23. The majority, however, “given the two JCEs alleged in this case and the Trial Chamber’s findings as to the detention of the men being part of the JCE to Murder”, has found that only the killings which occurred in Potočari were a foreseeable consequence of the forcible removal of the population, while at the same time excluding the “opportunistic” killings that took place in the Bratunac and Zvornik areas.⁶⁴²¹ In my opinion, the “opportunistic” killings that took place in Potočari were no different from other “opportunistic” killings in that they also took place only in the context of the JCE to Murder.

24. The Trial Chamber has found that, by the morning of 12 July, the plan to murder the Bosnian Muslim men was formed.⁶⁴²² In accordance with this plan, able-bodied men from Srebrenica who were captured or surrendered from the column were detained at various locations with the specific aim to execute them at a later stage. The same applied to the men in Potočari. These men were separated from the women and children, detained in the White House and later brought to various detention locations in Bratunac.⁶⁴²³ As the Trial Chamber has found, these separations and detentions were part of the plan to murder the men: the men in Potočari were separated and detained with the intention to kill them.⁶⁴²⁴ And thus, although the “opportunistic” killings in Potočari took place at the same location from where the forcible removal of the women, children, and the elderly of Srebrenica came to full fruition, they clearly took place in the context of the JCE to Murder. Therefore, these “opportunistic” killings cannot be considered as a natural and foreseeable consequence of the plan to forcibly remove the Bosnian Muslims from the enclaves.

25. I would have only been able to find differently if the alleged killing had occurred in the context of the forcible removal, such as, for example, killings as a consequence of indiscriminate shelling or for the purpose of terrorising the Bosnian civilian population in order to make them leave the enclave. However, considering the facts of the alleged “opportunistic” killings, I respectfully dissent from the majority finding that these were a natural and foreseeable consequence of the JCE to Forcibly Remove.

⁶⁴²⁰ See *supra*, para. 1082. But see Judge Kwon’s Dissenting Opinion on the killings at the Kravica Supermarket. See *infra*, paras. 40–46

⁶⁴²¹ See *supra*, para. 1088.

⁶⁴²² See *supra*, paras. 1051–1054.

⁶⁴²³ See *supra*, paras. 319–323, 325–331, 338–340, 399.

⁶⁴²⁴ See *supra*, para. 1050.

26. The unreasonableness of the majority's finding that the "opportunistic" killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove is shown in the majority's conclusion that these "opportunistic" killings were not foreseeable to **Gvero**,⁶⁴²⁵ one of the Assistant Commanders at the Main Staff of the VRS who has been found to be a member of the JCE to Forcibly Remove, even after having made a general finding that the "opportunistic" killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove.⁶⁴²⁶ I respectfully submit that this inconsistency in the majority's approach is evidence that its finding that the "opportunistic" killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove itself is not well-founded.

27. As set out above, in my opinion, the "opportunistic" killings did not take place in the context of the JCE to Forcibly Remove. As such, they could not have been foreseeable to **Miletić** as a member of this JCE. Furthermore, there is no evidence that **Miletić** willingly took the risk that "opportunistic" killings would take place in the course of the JCE to Forcibly Remove.

28. Therefore, I would have acquitted **Miletić** of murder as a crime against humanity. Also, I would have not found **Miletić** guilty of persecution through the underlying act of murder as a crimes against humanity.

3. Borovčanin's Responsibility for Forcible Transfer

29. The majority finds that, while there is insufficient evidence to establish that **Borovčanin** shared the common purpose of the JCE or had the intent to forcibly remove the population of Srebrenica, upon seeing the chaotic and desperate situation in Potočari on the morning of 12 July, he came to know that a forcible transfer of the civilian population of Srebrenica was taking place.⁶⁴²⁷ Based on this finding, the majority convicts **Borovčanin** of (1) aiding and abetting forcible transfer (inhumane acts) as a crime against humanity and (2) aiding and abetting persecution through forcible transfer as a crime against humanity, with reference to his act of allowing his subordinates to assist in the transfer of Bosnian Muslim women, children, and the elderly out of Potočari. I respectfully disagree with this majority's finding and consider that **Borovčanin** should not be found guilty of the above two charges.

30. The Trial Chamber has unanimously found that **Borovčanin** was neither involved in the formation of the plan to forcibly remove the Bosnian Muslim population, nor in the steps taken

⁶⁴²⁵ See *supra*, para. 1830.

⁶⁴²⁶ See *supra*, para. 1088.

⁶⁴²⁷ See *supra*, paras. 1480–1495.

prior to 10 July 1995 to implement that plan.⁶⁴²⁸ In addition, I fully agree with the statement of the majority that **Borovčanin**'s participation in the advance towards Potočari and the operation to secure the town and the DutchBat compound—both of which occurred in the early morning of 12 July—does not evidence knowledge on his part of the plan to forcibly remove, nor would the plan have become evident to **Borovčanin** from such participation.⁶⁴²⁹

31. The majority has nonetheless found that the situation on the ground in Potočari on the morning of 12 July was such that the only reasonable inference available on the evidence is that once **Borovčanin** saw the situation, he would have known that the population had been forced out of their homes and the enclave by the attack, into those desperate conditions, and their transport out of the enclave was by compulsion and not a voluntary evacuation.⁶⁴³⁰ I am not satisfied that this is the only reasonable inference available on the evidence. I note that the transport out of the enclave was conducted pursuant to a request from an international body;⁶⁴³¹ the Bosnian Muslim population had expressed a desire to leave the enclave;⁶⁴³² and there is no evidence before the Trial Chamber of obvious physical coercion as the population boarded the buses.⁶⁴³³ An equally reasonable inference can be made that **Borovčanin** understood this to be a voluntary evacuation of the population pursuant to an agreement reached between the parties who met at the Hotel Fontana, and it was on this basis that he ordered the Jahorina Recruits to assist. Therefore, I am not satisfied that **Borovčanin** knew on 12 July that there was a forcible transfer in progress, nor am I satisfied that his actions and those of the Jahorina Recruits evidence such knowledge.

⁶⁴²⁸ See *supra*, para. 1480.

⁶⁴²⁹ See *supra*, para. 1486.

⁶⁴³⁰ See *supra*, paras. 1488–1495.

⁶⁴³¹ At the Hotel Fontana meeting, Karremans stated: “I had a talk with General Nicolai two hours ago, and also with the national authorities about the request on behalf of the population. It’s a request because I’m not in a position to demand anything. We... the Command in Sarajevo has said that the enclave has been lost and that I’ve been ordered by BH Command to take care of all the refugees. And are now approximately 10,000 women and children within the compound of Potočari, and the request of the BH Command is to... let’s say, to negotiate or ask for the withdrawal of the battalion and withdrawal of those refugees, and if there are possibilities to assist that withdrawal.” Ex. P02047, “Srebrenica Trial Video”, 00:46:30–00:48:21; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 19–20.

⁶⁴³² At the first Hotel Fontana meeting, Karremans stated that the request for withdrawal came from the BiH authorities and reported that many women had said: “We are waiting for the buses and can we leave the enclave?”, Ex. P02047, “Srebrenica Trial Video”, 00:48:00–00:48:17, 00:48:49–00:48:54; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 19–20. Further, a United Nations report also reflects the view that the transfer was being done at the request of the international community and the Bosnian Muslims were in favour of it. Ex. 5D00040, “UNPF Policy and Information for the Security Council, 11 July 1995”, p. 2 (stating “UNHCR reports that 80% to 90% of the population of Srebrenica are displaced persons who fled fighting earlier in the war, thus they do not have long-standing ties to homes and property in the enclave, and will probably be interested in leaving for Tuzla. A UNHCR local staff member in Srebrenica reported today that virtually everyone in the enclave wishes to leave”).

⁶⁴³³ Robert Franken, T. 2651–2652 (18 Oct 2006) (testifying that, when the buses arrived in Potočari on 12 July, people were in a hurry to board and were not against transportation out of the town, and that, although some degree of force was used later in order to get such a large number of people on to the buses, no force was used as the people boarded initially); Leendert van Duijn, T. 2381 (28 Sept. 2006) (testifying that the Muslim people were eager to leave and that, other than some reports of abuse of people who wanted to board the buses, he had no information about the Bosnian Muslim people being forced to board the buses).

32. Having played no informed role in the circumstances that led to the dire conditions in Potočari, **Borovčanin** was presented with nothing short of a humanitarian catastrophe when he arrived there on 12 July. The extreme nature of these conditions is well documented elsewhere in the Judgement.⁶⁴³⁴ Although some food supplies were brought in, they were merely a “drop in the sea”.⁶⁴³⁵

33. I am of the opinion that the conditions in Potočari were so desperate that the only viable solution on the ground was to evacuate the Bosnian Muslim population to ABiH-held territory as soon as possible.⁶⁴³⁶ It follows that **Borovčanin** considered that the only option available to him under the circumstances was to allow his troops to assist the transfer of Bosnian Muslim women, children, and the elderly in cooperation with DutchBat. I note in this regard that the majority also found that he did not even intend to forcibly transfer.⁶⁴³⁷ His act of directing his men to assist in this transportation alleviated the immediate suffering he witnessed on 12 July. I find it unacceptable that, according to the reasoning of the majority, the only way for him to have complied with the law on that day was to have stood back and done nothing. In my opinion, withdrawing his troops was not a genuine option in the circumstances, and **Borovčanin** had no other choice than to act in the way that he did.

34. **Borovčanin** returned to Potočari on 13 July and saw the result of the separations as well as the detentions at the White House. While this is very relevant in terms of **Borovčanin**'s knowledge of the JCE to Murder, in so far as the plan to forcibly remove is concerned, I do not consider that this additional knowledge of the detention of the men would lead **Borovčanin** to conclude that the transfer of the remainder of the population was a forcible one. As the Trial Chamber has unanimously found, **Borovčanin** did not know of the plan to murder and could have reasonably believed that the Bosnian Muslim men in Potočari and in Bratunac town were being detained for a lawful screening process.⁶⁴³⁸ Moreover, by this time, the act relevant to his conviction by the majority—*i.e.* ordering his men to assist in the transfer of the Bosnian Muslim women children and the elderly on 12 and 13 July—was practically complete. Therefore, I find that this additional knowledge is not relevant to the forcible transfer charge.

⁶⁴³⁴ See *supra*, paras. 309–315.

⁶⁴³⁵ See *supra*, para. 310.

⁶⁴³⁶ See Leendert van Duijn, T. 2380 (28 Sept. 2006) (“At that time, when all the refugees were gathered at the factory sites, from that moment on, there was no other solution there than to evacuate them, because [...] there was a big possibility that epidemics would break out, people had no food, no water, and the temperature was very high. So from that moment on, there was no other solution [...]").

⁶⁴³⁷ See *supra*, para. 1495.

⁶⁴³⁸ See *supra*, paras. 1507–1509.

35. For the foregoing reasons, I am of the opinion that **Borovčanin** should not have been found guilty of aiding and abetting forcible transfer (inhumane acts) as a crime against humanity, nor should he have been found guilty of aiding and abetting persecution through aiding and abetting forcible transfer.

C. Scope of the JCE to Murder: Trnovo

36. The majority has found that the killing of six Bosnian Muslim men near the town of Trnovo by the Scorpions Unit falls within the scope of the common purpose of the JCE to Murder. In doing so, the majority notes the temporal proximity of the incident and the fact that the victims are from Srebrenica. The majority also observes that “[e]ven without evidence as to how the men arrived at this location or into the custody of the Scorpions, the Trial Chamber, by majority, considers it an unreasonable inference that within the same relative time period, in an adjoining area, there was a separate, distinct murder operation targeting precisely the same victims”.⁶⁴³⁹ I consider this finding to be speculative.

37. The absence of any evidence adduced by the Prosecution as to the circumstances which led to this killing allows one to draw any number of inferences as to why it may have played out in the way that it did. Furthermore, the persons alleged by the Prosecution to be members of the JCE to Murder are all members of the Bosnian Serb Forces.⁶⁴⁴⁰ The Scorpions Unit is alleged to have *participated* in the implementation of the JCE to Murder.⁶⁴⁴¹ However, the Indictment itself notes that this unit is unique in the context of the allegations. It states:

All of the entities referred to in the preceding five paragraphs, except Number 12, the “Scorpions” unit, were units of the VRS or the RS Ministry of Interior, all legally organised and existing under the relevant laws of the RS, and under the command of individuals lawfully appointed under the relevant laws of the RS.⁶⁴⁴²

The singling-out of the Scorpions Unit is telling in this context and, in my view, indicates that this unit was not a member of the JCE to Murder.

38. Given that the perpetrators are not members of the JCE to Murder, the issue before the Trial Chamber is whether the incident is sufficiently linked to the common purpose of the JCE so as to fall within its scope. In my opinion, the Prosecution has failed to prove any link whatsoever between the Scorpions Unit and any element of the Bosnian Serb Forces. There is no evidence before the Trial Chamber concerning how these Bosnian Muslim prisoners came to be in the

⁶⁴³⁹ See *supra*, para. 1080.

⁶⁴⁴⁰ Indictment, paras. 96–97.

⁶⁴⁴¹ *Ibid.*, para. 98 (also alleging that the listed units, including the Scorpions Unit, participated in the JCE to Forcibly Remove).

⁶⁴⁴² *Ibid.*, para. 112.

custody of the Scorpions. Furthermore, all of the other killings found to be within the scope of the JCE to Murder occurred in or around Bratunac and Zvornik, yet Trnovo is 150 kilometres away.⁶⁴⁴³

39. I am of the opinion that, viewed together with the other killings, the incident near Trnovo stands in stark contrast to the rest. It lacks geographic proximity, and there is no link whatsoever between the perpetrators and the participants in the JCE to Murder. Therefore, I am not satisfied beyond reasonable doubt that the incident at Trnovo falls within the scope of the JCE to Murder.

D. Effect of Rule 92 bis Evidence (Kravica Supermarket)

40. The Trial Chamber has found that the testimony of PW-116, admitted pursuant to Rule 92 bis (D),⁶⁴⁴⁴ is the only evidence before the Trial Chamber of specific beatings and killings taking place near the Kravica Supermarket, as alleged in the Indictment.⁶⁴⁴⁵

41. As the Trial Chamber has unanimously stated, jurisprudence of the Tribunal has made it clear that, with regard to Rule 92 bis and 92 quater evidence,⁶⁴⁴⁶ where the witness is not called to give the accused an adequate and proper opportunity to challenge the evidence and to question that witness, the evidence may lead to a conviction only if there is other corroborating evidence.⁶⁴⁴⁷ Evidence which has not been the subject of cross-examination and goes to the acts and conduct of the Accused or is pivotal to the Prosecution case cannot be relied upon as the sole basis to establish a conviction.⁶⁴⁴⁸

42. However, the majority has gone further to state that the application of this jurisprudence must be carefully considered “*in the context of the particular crimes for which this Tribunal has jurisdiction and the nature of the allegations in the specific case*” and that persons tried before this Tribunal are accused of, and ultimately acquitted of or convicted for “*crimes against humanity, war crimes or genocide*”.⁶⁴⁴⁹ The majority has also stated that, as in this instance, in many cases before

⁶⁴⁴³ Ex. P03248, “Stipulation on Trnovo”, para. 1.

⁶⁴⁴⁴ Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in lieu of Viva Voce Testimony Pursuant to Rule 92 bis, 12 September 2006 (granting admission of PW-116’s evidence without cross-examination).

⁶⁴⁴⁵ See *supra*, para. 448. See Indictment, para. 31.3.

⁶⁴⁴⁶ See *supra*, paras. 59–63.

⁶⁴⁴⁷ *Prosecutor v. Stanislav Galić*, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis(C), 7 June 2002, para. 12, n. 34, referring to, for instance, *Solakov v. FYROM*, Judgement of 31 Oct 2001, para. 57 (“In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial.”). See also *Blagojević and Jokić* Appeal Judgement, paras. 316, 318.

⁶⁴⁴⁸ *Prosecutor v. Prlić et al.*, Case No. IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić’s Questioning in Evidence, 23 November 2007, para. 53; *Prosecutor v. Martić*, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber’s Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 20.

⁶⁴⁴⁹ See *supra*, para. 63 (emphasis added).

this Tribunal, the underlying acts which form the basis for a count in an indictment are multiple in nature, often with several layers, such that a finding with respect to one act will not form the basis for conviction of the accused. The majority further observed that this incident near the Kravica Supermarket forms one of several allegations of “opportunistic” killings listed in the Indictment, and appropriately categorised as such, these events, described by PW-116, could never of themselves form the basis of a conviction for *genocide, crimes against humanity or war crimes* as alleged in the Indictment. Based upon this finding and observation, the majority has accordingly held that PW-116’s uncorroborated evidence, in the context of the facts of this case, cannot be classified as evidence which could form the sole or even a decisive basis for the conviction of any of the accused and finally accepted PW-116’s evidence, untested in this case, as a basis for concluding that the alleged beatings and killings have been established by the Prosecution.

43. I must respectfully disagree: the evidence should be assessed in accordance with the jurisprudence with respect to each *separate charge*⁶⁴⁵⁰ against an accused, not in the context of each count such as crimes against humanity or war crimes as a whole, which would generally include multiple separate charges of underlying crimes. The fact that this evidence is not the sole basis for a conviction of crimes of against humanity or war crimes in this case is, in my view, beside the point.

44. The majority’s conclusion that a specific underlying crime which constitutes a separate charge in the indictment can be proven based solely on an untested Rule 92 *bis* transcript is simply unreasonable, because such a finding relies upon the coincidental circumstance of whether or not the Prosecution has successfully proven other underlying crimes which form part of the same count. However, in my view, successful proof of other underlying acts cannot be viewed as “corroborative” evidence of a specific separate charge in the indictment. Of course, the extent of corroboration required in these circumstances is a separate matter to be considered on a case by case basis. Thus, in the case of the Kravica Supermarket charge, it may have been enough corroboration, for example, if there was some forensic evidence or if there was a witness who saw the trucks parked by the side of the road in front of the Kravica Supermarket on the evening of 13–14 July 1995. However, if the reasoning of the majority is to be followed, it would be possible for an underlying crime of mass killing in this case, such as those which took place at the Kravica Warehouse or Branjevo Military Farm, to be proven on the basis of one uncorroborated, untested

⁶⁴⁵⁰ I consider a separate charge to be an allegation which, in a situation where all other charges fail, is capable of forming the basis for a conviction. *See, e.g., Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-PT, T. 301 (16 Dec 2009) (stating “The Trial Chamber has concluded that two of the amendments which were granted involve new charges, for which pleas are required, and specifically that is paragraph 21.15.2, which alleges the execution on or about the 23rd of July, 1995, of approximately 39 Muslim men in Bisina and paragraph 23.1 which alleges the execution and burial on or about 27th July 1995, of three Bosnian leaders from Zepa. As a result, the Trial Chamber is of the opinion that these new charges are relevant to Counts 1, 3, 4, 5, 6, and 7 of the indictment, and, therefore, I will be proceeding to enter pleas with respect to these new charges.”).

witness statement, on the ground that these are one of many allegations of mass killing. I cannot agree with such an approach.

45. The regime created under Rule 92 *bis* is a careful composition developed through international criminal jurisprudence.⁶⁴⁵¹ It strikes a delicate and vital balance ensuring that the trial of an accused is expeditious as well as fair. In this case, this balance would have easily been maintained by the Prosecution calling evidence to corroborate the testimony of PW-116, or simply calling the witness to give evidence *viva voce* or pursuant to Rule 92 *ter*, so that the Accused could cross-examine the witness. This balance should not be disturbed by the Trial Chamber simply to remedy the oversight or failure of the Prosecution to meet the requirements of the jurisprudence. The principle is far too important.

46. In conclusion, for the foregoing reasons, I am not satisfied that the allegation in paragraph 31.3 of the Indictment has been proven.

E. Two Issues regarding Pandurević

1. Effective Control over Zvornik Brigade during the Krivaja-95 Operation

(a) Introduction

47. The majority has found that during July 1995, including from 4 to 15 July, there existed at all times a superior-subordinate relationship between **Pandurević** and members of the Zvornik Brigade.⁶⁴⁵² I agree that **Pandurević** had effective control over members of the Brigade in the period in July following his return to Zvornik on 15 July. However, I respectfully disagree with the majority's position that he exercised effective control over members of Zvornik Brigade during the period in which he was absent commanding TG-1 from 4 July until midday on 15 July.

48. On 2 July, **Pandurević** was appointed the Commander of TG-1, and on 4 July, he and TG-1 departed for Srebrenica, pursuant to the *Krivaja-95* Operation.⁶⁴⁵³ Following their participation in this military operation, on 15 July, upon the order of Krstić, he and the TG-1 forces returned to Zvornik.⁶⁴⁵⁴ The majority has found that during this period from 4 to 15 July in which he was

⁶⁴⁵¹ See O-Gon Kwon, "The Challenge of an International Criminal Trial as Seen from the Bench", *Journal of International Criminal Justice*, 5 (2007), pp. 361–362, in which I stated that Rule 92 *bis* of the Rules is one of the examples of what I would call the "internationalisation" of criminal procedure, in that they combine different features of the common-law and civil-law systems in a unique hybrid fashion unknown to any domestic jurisdiction in the world.

⁶⁴⁵² See *supra*, paras. 2027, 2034.

⁶⁴⁵³ See *supra*, paras. 1843–1844.

⁶⁴⁵⁴ See *supra*, paras. 1859, 1861.

engaged in the *Krivaja-95* Operation, he retained effective control over the Zvornik Brigade.⁶⁴⁵⁵ Essentially, according to the majority position, his absence from Zvornik and separate military assignment during this period ultimately did not alter his normal relationship with the Zvornik Brigade.⁶⁴⁵⁶ However, in my opinion, his relationship with the Brigade was fundamentally altered during this period. In this situation, namely where **Pandurević** assumed command of a separate unit and Obrenović assumed command of the Zvornik Brigade, **Pandurević** both legally and practically no longer possessed the ability to exercise effective control over the Brigade in light of the principle of unity or singleness of command.

(b) Unity/Singleness Command

49. According to the principle of unity or singleness of command, which is a general military principle, only one individual can be in command of one unit or series of units—it is not possible to have two commanders of a brigade at the same time.⁶⁴⁵⁷ Thus within the formation of a brigade, there can be only one brigade commander and that commander has the exclusive right to command all units and members of the brigade.⁶⁴⁵⁸ The reasoning underlying this principle is self-evident, as a brigade or military unit essentially could not function effectively where there are multiple commanders of that one unit. In my view, Obrenović's assumption of command of the Zvornik Brigade in **Pandurević**'s absence in July must be viewed within the context of this central military tenet. Accordingly, Obrenović was the sole Commander of the Brigade during this time and he possessed exclusive authority in this regard.

50. Following from the principle of unity, or singleness, of command, contrary to the majority's finding,⁶⁴⁵⁹ it was therefore not open to **Pandurević** to retake command and assert his authority with respect to the Brigade at any point. **Pandurević** could resume command of the Zvornik Brigade only after Krstić sent him back to Zvornik on 15 July and once he had returned to the

⁶⁴⁵⁵ See *supra*, paras. 2027, 2034.

⁶⁴⁵⁶ See *supra*, paras. 2027–2030.

⁶⁴⁵⁷ See Richard Butler, T. 20773 (31 Jan 2008).

⁶⁴⁵⁸ See PW-168, T. 16622 (closed session) (19 Oct 2007), T. 16791 (closed session) (23 Oct 2007); Richard Butler, T. 20773 (31 Jan 2008); Vinko Pandurević, T. 30726–30727, 30758 (28 Jan 2009) (also stating that a brigade commander could thus not be in command of two units at the same time). This principle is embodied in Article 115 of the JNA Brigade Rules, which states “[t]he brigade commander has the exclusive right to command all brigade units and attached units.” Ex. P00694, “Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigade) from the Federal Secretariat for National Defence 1984”, p. 37. See also Vinko Pandurević, T. 30726 (28 Jan 2009) (testifying that Article 115 is based on this principle); Richard Butler, T. 19619 (14 Jan 2008) (explaining that this provision in Article 115 meant that the brigade commander by law and regulation has the exclusive right to command and “[i]ndividuals from outside that formation, even if they’re higher-ranking individuals, do not have the authority to interfere with that particular commander’s right to command his own brigades”).

⁶⁴⁵⁹ See *supra*, para. 2031.

Standard Barracks and officially resumed his functions as the Brigade Commander that day.⁶⁴⁶⁰ Until that point, **Pandurević** was obligated to focus his attention entirely on his command of TG-1 and the *Krivaja-95* Operation and Obrenović, in the meantime, possessed and retained all of the rights and responsibilities as the acting Brigade Commander in the absence of **Pandurević**. In this situation, in accordance with the principle of unity command, **Pandurević** could not issue orders to the Brigade, make decisions, or otherwise influence the operation of the Brigade.⁶⁴⁶¹ I will consider below the situations on the part of **Pandurević** and Obrenović respectively in more detail.

(c) Pandurević's Situation

51. In accordance with his order from Krstić to command TG-1, **Pandurević** was obligated to concentrate on his newly assigned function as Commander of TG-1 in the *Krivaja-95* Operation. During this period, this assignment was his exclusive task, and he could not and should not have interfered with the business and affairs of the Zvornik Brigade. As stated by Dragutinović, **Pandurević** was “duty-bound to command [TG-1] and only that unit”.⁶⁴⁶² Under these circumstances, **Pandurević** was therefore prevented from carrying out his duties as Commander of the Zvornik Brigade as he was not only required to be outside of the Brigade's zone⁶⁴⁶³ but also obligated to carry out other, distinct duties and responsibilities pursuant to his command of another unit. Moreover, at the time that he departed from Zvornik with TG-1, the duration of his absence was uncertain.⁶⁴⁶⁴

52. Furthermore, during the period in which **Pandurević** commanded TG-1 and was absent from the Brigade, he did not issue any orders to the Brigade, he was not notified of any orders that had been given to the Brigade by the higher command, and he did not contact the Brigade to receive

⁶⁴⁶⁰ **Pandurević** testified that on 15 July, he resumed his function as Commander of the Brigade after Obrenović had completed the briefing in his office, at which point **Pandurević** announced that he was taking over the command. Vinko Pandurević, T. 31436 (13 Feb 2009). **Pandurević** explained that after he was ordered by Krstić to return to Zvornik but before he returned to Standard Barracks, he had still not yet resumed command of the Brigade. Vinko Pandurević, T. 31436 (13 Feb 2009). In this regard, in speaking on the telephone to members of the Brigade on the morning of 15 July before he had left for Zvornik, he did not issue an orders to these individuals because he was not in command of the brigade and such an action would have amounted to “dual command, not single authority because Dragan Obrenović had already issued them tasks”. Vinko Pandurević, T. 31437–31438 (13 Feb 2009).

⁶⁴⁶¹ See Vinko Pandurević, T. 31438 (13 Feb 2009). Furthermore, in such a situation such as that in July 1995 while **Pandurević** was absent, if Obrenović had been required to first seek **Pandurević**'s approval before acting, this essentially would have deprived the Deputy Commander position of its the basic function and role.

⁶⁴⁶² Miodrag Dragutinović, T. 12702 (15 June 2007). See also Vinko Pandurević, T. 31435–31436 (13 Feb 2009).

⁶⁴⁶³ As a note, in my view, the incidental fact that **Pandurević** was not far away from the area of Zvornik does not make any difference in my assessment of his effective control during this period.

⁶⁴⁶⁴ **Pandurević** ultimately was only absent from the Brigade for about eleven days. However, if Krstić had not ordered him to return to Zvornik on 15 July in light of the combat situation facing the Zvornik Brigade, **Pandurević**'s absence would likely have been for a more extended period.

briefings or information regarding its affairs and operations.⁶⁴⁶⁵

53. In my view, **Pandurević**'s limited ability in this respect is supported by evidence before the Trial Chamber. For example, on 13 July when Mladić addressed tactical groups and gave orders for them to proceed to Žepa, **Pandurević** expressed his disagreement with the mission and pointed out his concern that the 28th Division might regroup and break through the direction of Tuzla and thus pose a serious threat to the Zvornik Brigade.⁶⁴⁶⁶ In response, Mladić indicated to **Pandurević** that he had received his assignments, referring to his command of TG-1 and the Žepa operation, he was to carry out those orders, and he should leave the problem of the 28th Division to others.⁶⁴⁶⁷ Thus, although **Pandurević** was concerned that the Zvornik Brigade troops were at risk, so much so that he would openly question Mladić's orders in front of others, ultimately, it was not within his own authority and volition to return to the Zvornik Brigade in order to assist in the defence of the area from the advancing enemy forces and instead he was obligated to continue the military operation in Žepa pursuant to his command of TG-1.

54. In this regard, it is also important to note that, contrary to the majority, I attach no significance to the fact that **Pandurević** contacted the Brigade on two occasions while he was commanding TG-1, once to request the supply of missing grenades for the tank company and another time to request that some teaching materials to be photocopied and delivered. These contacts clearly concerned only incidental matters unrelated to the actual affairs of the Brigade. In my view, such instances of contact do not amount to an assertion of authority by **Pandurević** with respect to the Zvornik Brigade. These two marginal communications ultimately do not affect the legal status of his relationship with Brigade at that time nor are they evidence that he was in a position to issue orders to members of the Zvornik Brigade.

(d) Obrenović's Situation

55. As **Pandurević** could not perform his duties as Commander of the Zvornik Brigade while he was commanding TG-1, Obrenović took over those duties as the acting Commander of the Zvornik Brigade during this period. In my view, Obrenović automatically became the acting

⁶⁴⁶⁵ See Vinko Pandurević, T. 30922–30923 (30 Jan 2009); Miodrag Dragutinović, T. 12702 (15 June 2007) (further stating in this regard that there was no need for **Pandurević** to be kept informed about the situation of the Zvornik Brigade as he and TG-1 had their own specific, separate tasks).

⁶⁴⁶⁶ Miodrag Dragutinović, T. 12587–12588 (13 June 2007).

⁶⁴⁶⁷ Miodrag Dragutinović, T. 12588 (13 June 2007), T. 12698 (15 June 2007).

Commander in the capacity of the Deputy Commander of the Brigade, pursuant to his original order of appointment on 11 April 1993.⁶⁴⁶⁸

56. In its assessment of **Pandurević**'s effective control during this period, the majority noted that for the August-September period, during which he was absent and commanding a unit in the Krajina, there was an order that specifically designated Obrenović as that the acting Brigade Commander, while in the July period there was no such order. However, in my opinion, a formal order of designation was not necessary for him to assume the position of acting Commander of the Brigade.⁶⁴⁶⁹ Such an order was a mere formality and its significance lay only in terms of the remuneration received by Obrenović.⁶⁴⁷⁰ The absence of such an order in July therefore does not change the legal effect of Obrenović's assumption of command in **Pandurević**'s absence during this period. Additionally, although no such formal order was issued in July, there is evidence that prior to **Pandurević**'s departure from Zvornik on 4 July, a public announcement was made to the Zvornik Brigade troops to the effect that Obrenović was taking the command from **Pandurević** and that Obrenović would remain in command until **Pandurević**'s return.⁶⁴⁷¹ According to Marić, he understood this announcement by **Pandurević** to be an official transfer of authority.⁶⁴⁷² Ultimately, in my view, thus, there is no difference between the July period when **Pandurević** was

⁶⁴⁶⁸ Ex. 7D00462, "Order of the Commander of the Drina Corps signed by Commander Colonel Milenko Živanović dated 11 April 1993". This order of appointment gave Obrenović the duty to act in the capacity of deputy commander assume command of the brigade and stand-in for the Commander automatically when **Pandurević** was absent. *See also* Vinko Pandurević, T. 30744–30745 (28 Jan 2009); Miodrag Dragutinović, T. 12613 (14 June 2007); PW-168, T. 16620 (closed session) (19 Oct 2007). In this respect, I also note Article 17 of the regulations of the brigade command authority in the regiment of the JNA, which states that "[i]n the absence of the Commander, the Chief of Staff or the Deputy Commander stand in for him, with all the commander's rights and duties." Ex. 7D00717, "Rules regarding Brigade Commander's Authority, 1965", p. 2. In reference to this provision, **Pandurević** explained that in the absence of the commander, he "may be replaced by the Chief of Staff or the deputy commander with all the rights and responsibilities of the commander, which means that that person acts on behalf of the commander and has to act pursuant to Article 115 of the brigade rules". Vinko Pandurević, T. 30731 (28 Jan 2009).

⁶⁴⁶⁹ Additionally, there is evidence that suggests that there was not a consistent practice of such a formal order being issued by the Corps Command. *See, e.g.*, Vinko Pandurević, T. 30748–30749 (28 Jan 2009) (testifying that no such order was issued formally designating Obrenović's position when he assumed command of the Brigade between February and March 1995 when **Pandurević** was absent during this entire period receiving physiotherapy in Višegrad).

⁶⁴⁷⁰ *See* Vinko Pandurević, T. 30745, 30749 (28 Jan 2009), T. 31192 (10 Feb 2009). *See also* PW-168, T. 16188 (closed session) (10 Oct 2007). Additionally, according to PW-168, one of the reasons why Obrenović was formally designated as acting Commander in an order by the Corps in August 1995, while in the July period he was not, was because in August, Obrenović himself had asked Krstić to have his status "officially regulated, to have an order sent so that it was known and that the situation [was] clear". *Ibid.*, T. 15923 (closed session) (27 Sept 2007).

⁶⁴⁷¹ Milan Marić, Ex. P03138, "92 *quater* transcript", BT. 11559–11560 (6 July 2004). According to Article 60 of the provisional service regulations for the VRS, "[t]he hand-over of duties by commanding officers of squads, platoons and companies (batteries) and the commanders of battalions, regiments, brigades and officers of the same rank, takes place in the form of a ceremony before the unit on parade." Ex. 7DP00417, "Provisional Service Regulations of the VRS, August 1992", p. 18.

⁶⁴⁷² Milan Marić, Ex. P03138, "92 *quater* transcript", BT. 11560 (6 July 2004).

commanding TG-1 and the August-September period when he was commanding the 2nd Drina Corps in the Krajina.⁶⁴⁷³

57. From 4 to 15 July, in **Pandurević**'s absence, Obrenović was vested with all of the rights and duties of the Brigade Commander and had *de jure* authority over the members of the Zvornik Brigade. In his capacity as acting Commander, Obrenović performed the duties of the Brigade Commander and was directly subordinate to the Corps Command, not to **Pandurević**.⁶⁴⁷⁴ During this period, Obrenović was not simply assigning tasks to members of the Brigade in accordance with previous decisions taken by **Pandurević**. Obrenović was carrying out the orders and instructions that he received from the Corps Command and making decisions based on such orders and on his own assessment. In making such decisions and executing orders, he never consulted with nor sought the approval of **Pandurević**,⁶⁴⁷⁵ as he did not need **Pandurević**'s authority to undertake such actions.⁶⁴⁷⁶

(e) Conclusion

58. Based on these considerations, I am therefore of the opinion that **Pandurević** did not possess *de jure* or *de facto* authority over members of the Zvornik Brigade during the period he was commanding TG-1 in Srebrenica and Žepa from 4 to 15 July. Formally speaking, **Pandurević** was still the Commander of the Brigade in title. However, for all intents and purposes, Obrenović during this period was the acting Commander and had assumed all of the rights and duties of the Commander and **Pandurević** did not have the authority to interfere in Obrenović's command during his absence while he was commanding TG-1. As such, in my opinion, **Pandurević** lacked the material ability to prevent or punish the acts of members of the Zvornik Brigade during this

⁶⁴⁷³ The Trial Chamber has held that **Pandurević** did not possess *de jure* or *de facto* authority over members of the Zvornik Brigade during the August-September 1995 period. *See supra*, para. 2035. Accordingly, I consider that, as was the case in the August-September period, **Pandurević** did not possess *de jure* authority over members of the Zvornik Brigade from 4 to 15 July.

⁶⁴⁷⁴ *See* Vinko Pandurević, T. 30758, 30760 (28 Jan 2009) (also testifying that when he was absent commanding TG-1, "the corps commander, General Živanović, was in command of Dragan Obrenović"), T. 30923–30924 (30 Jan 2009). *See also* Miodrag Dragutinović, T. 12613 (14 June 2007), T. 12701 (15 June 2007).

⁶⁴⁷⁵ PW-168, T. 16185–16186 (closed session) (10 Oct 2007), T. 16790 (closed session) (23 Oct 2007); Vinko Pandurević, T. 30293 (30 Jan 2009). For example, when faced by the large number of advancing forces of the ABiH near the area of Zvornik, on 14 July, Obrenović did not contact **Pandurević** but instead contacted the Corps Command about this urgent military situation threatening the defence lines of the Brigade's forces. *See* Ex. 5DP00327, "Zvornik Brigade Interim Combat Report, dated 14 July 1995"; PW-168, T. 16655 (closed session) (19 Oct 2007) (stating that Obrenović drafted this report).

⁶⁴⁷⁶ Otherwise, Obrenović would have been at a loss whether or not, and on which matters, to consult **Pandurević**. *See* Vinko Pandurević, T. 30924 (30 Jan 2009); Miodrag Dragutinović, T. 12613 (14 June 2007), T. 12701 (15 June 2007). *See also* PW-168, T. 16193 (closed session) (10 Oct 2007) (testifying that during his absence in the beginning of July, **Pandurević** did not have responsibility for the units that Obrenović was in command of, i.e., the units of the Zvornik Brigade in the defence area of the Brigade), T. 16788 (closed session) (23 Oct 2007) (stating that during this period in July, Obrenović commanded the units of the Zvornik Brigade who were in the area of Zvornik). [REDACTED]

period in July.

59. In conclusion, for the foregoing reasons, I am not satisfied that **Pandurević** had effective control over members of the Zvornik Brigade during the period between 4 July to midday on 15 July. Therefore, in my opinion, a superior-subordinate relationship, within the meaning of Article 7(3) of the Statute, did not exist between **Pandurević** and members of the Zvornik Brigade during this period.

2. Pandurević's Responsibility for Wounded Prisoners from Milići Hospital

60. The majority has found that **Pandurević** aided and abetted by omission the murder of the ten wounded prisoners from Milići Hospital.⁶⁴⁷⁷ I agree that the Zvornik Brigade had custody and control of these wounded prisoners, that **Pandurević** thus had a legal duty to protect the prisoners, and that his duty did not end with their transfer into **Popović's** custody. However, I respectfully depart from the majority finding that **Pandurević** possessed the requisite *mens rea* for aiding and abetting by omission and thus is responsible for the murder of the ten wounded prisoners.

61. To incur criminal responsibility through aiding and abetting by omission, **Pandurević** had to know the essential elements of the crime to be committed and that his failure to act would assist the commission of that crime.⁶⁴⁷⁸ By 23 July, **Pandurević** had knowledge that **Popović** had been involved in the murder operation carried out in the area of Zvornik based on information conveyed to him by Obrenović on 15 and 17 July.⁶⁴⁷⁹ The majority has found that, in light of this knowledge on his part, the only reasonable inference is that, upon receiving the message that **Popović** would come to resolve the issue of the wounded prisoners, **Pandurević** knew it was probable that the prisoners would be killed once they were transferred into **Popović's** custody.⁶⁴⁸⁰ However, in my view, it does not follow that, based on such knowledge alone, **Pandurević** knew that it was probable that the wounded prisoners would be murdered once they were transferred into **Popović's** custody. Specifically, in my opinion, **Pandurević's** knowledge of **Popović's** previous involvement in the murder operation was insufficient to trigger **Pandurević's** awareness of the probability of the wounded prisoners being murdered in light of particular circumstances at the time.

62. Based on the totality of the evidence of his conduct prior to the removal of the prisoners, the Trial Chamber has found that in requesting assistance with the wounded prisoners, **Pandurević's** intent was to arrange for them to be transferred to a prisoner of war camp and exchanged, not for

⁶⁴⁷⁷ See *supra*, para. 1991.

⁶⁴⁷⁸ See *supra*, para. 1019.

⁶⁴⁷⁹ See *supra*, paras. 1861, 1883.

⁶⁴⁸⁰ See *supra*, paras. 1989–1990.

them to be murdered.⁶⁴⁸¹ As evident in his communications with the Corps Command on 23 July and in the preceding couple of days during the period of the searches of the terrain, **Pandurević** repeatedly requested that arrangements be made for the transfer and exchange of prisoners, including the wounded men, being held at the Zvornik Brigade during this period.⁶⁴⁸² From such efforts by **Pandurević**, a reasonable inference can thus be drawn that at this time he genuinely believed that such transfers and exchanges were to be arranged and carried out by the Corps Command according to ordinary procedures. This conclusion is also supported by the fact that there is evidence before the Trial Chamber that shows that by 18 July, the VRS in general had begun sending prisoners to the Batković prisoner of war camp.⁶⁴⁸³ Furthermore, there is also evidence that during this period, Bosnian Muslim prisoners held at the Zvornik Brigade were in fact transferred to Batković.⁶⁴⁸⁴ Additionally, there is evidence indicating that those prisoners transferred from the Zvornik Brigade to Batković during this period included, at least on one occasion, two Bosnian Muslim prisoners who were wounded and had been treated at Zvornik Hospital and then sent to the Brigade.⁶⁴⁸⁵ These two prisoners in particular were brought to Batković on 24 July,⁶⁴⁸⁶ exactly

⁶⁴⁸¹ See *supra*, para. 1983.

⁶⁴⁸² See Ex. 7D00969, "Interim report regarding exchange by the Command of the 1st Zvornik Infantry Brigade sent to the Command of the Drina Corps, 20 July 1995"; Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", pp. 165-166, 176; Ex. 7DP00340, "Zvornik Brigade Interim Combat Report signed by Pandurević, 22 July 1995", para. 3; Ex. P01309a, "Intercept, 23 July 1995, 8:00 a.m."; Miodrag Dragutinović, T. 12712-12713 (15 June 2007), T. 12817-12818 (18 June 2007); PW-168, T. 15914, 15924 (closed session) (27 Sept 2007), T. 16023-16025 (closed session) (28 Sept 2007); Vinko Pandurević, T. 31137, 31142, 31146 (9 Feb 2009). See also Miodrag Dragutinović, T. 12711-12712, 12740 (15 June 2007), T. 12818 (18 June 2007); Vinko Pandurević, T. 31818 (19 Feb 2009). See also *supra*, paras. 1898, 1901-1904. Additionally, the evidence not only shows that **Pandurević** was attempting to arrange for the transfer of the prisoners but that he had also specifically ordered that Bosnian Muslims captured during searches of the terrain were to be handed over to the Zvornik Brigade Military Police so as to then be detained at Standard Barracks pending their transfer to Batković. See Vinko Pandurević, T. 31818 (19 Feb 2009), T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711-12712, 12740 (15 June 2007). See also *supra*, paras. 592, 1892.

⁶⁴⁸³ Ex. P03522 (confidential); Ex. 3D00017 (confidential); Ljubomir Mitrović, T. 23643-23644 (11 July 2008); Novica Simić, T. 28729-28730 (24 Nov 2008). See also *supra*, paras. 591, 594-596.

⁶⁴⁸⁴ See Ex. 3DP00344, "Regular Combat Report Zvornik Brigade Command to the Drina Corps Command signed by Commander Lieutenant Colonel Vinko Pandurević, 25 July 1995", para. 3 (reporting that 25 enemy soldiers were captured and duly transferred to the Batković collection centre in Bijeljina); Ex. 3DP00346, "Zvornik Brigade Regular Combat Report, type-signed Pandurević, 26 July 1995", para. 2 (reporting that 34 ABiH soldiers were captured and sent to Batković); Vinko Pandurević, T. 31163-31166 (10 Feb 2009).

⁶⁴⁸⁵ Specifically, there is evidence that two Bosnian Muslim men, [REDACTED], who are included in a list of prisoners exchanged in September 1995, were in the custody of the Zvornik Brigade prior to being transferred to Batković. See Ex. 1DP01891 (confidential), p. 42 (listing the names of [REDACTED] in entries 4904 and 4905 of the Zvornik Hospital patient log and recording "Standard" in the notes section for these two entries); Radivoje Novaković, Ex. P02480, "92 *ter* statement" (6 Mar 2003), p. 4 (in reference to the patient log, noting that he remembered these two patients and that they had been given first aid for their wounds at the hospital and were then taken to "Standard" and that the soldiers escorting the prisoners told him that the two prisoners would be exchanged soon); Radivoje Novaković, T. 9053 (20 Mar 2007) (explaining that "Standard" referred the medical ward of the Zvornik Brigade military barracks); Ex. P03522 (confidential), p. 2 (recording that [REDACTED] were brought to Batković on 24 July 1995 and noting that they were both exchanged and departed the camp on 12 September 1995). Besides these two individuals, Dr. Zoran Begović testified that after the ten wounded prisoners from Milići Hospital were taken away from the Zvornik Brigade, there was another group of five Bosnian Muslim men who came to the medical centre of the Zvornik Brigade and were then exchanged at Bijeljina very soon thereafter. Zoran Begović, T. 9149-9150, 9165-9166, 9170 (21 Mar 2007).

⁶⁴⁸⁶ Ex. P03522 (confidential), p. 2.

around the same time that the wounded prisoners from Milići Hospital disappeared from the Brigade.

63. Beyond the evidence of **Pandurević**'s efforts to transfer and exchange the prisoners and of the actual transfers and exchanges taking place at that time, the stage of the murder operation at the time must be taken into account in assessing **Pandurević**'s *mens rea*. In particular, by the end of 16 July, the executions of Bosnian Muslim prisoners, who had been brought from Bratunac and detained in various locations in the area of Zvornik, were essentially complete.⁶⁴⁸⁷ Although **Pandurević** acquired knowledge of this operation and **Popović**'s role in it upon his return to Zvornik, the evidence indicates that by the evening of 16 July, he had the understanding that this particular operation had come to end.⁶⁴⁸⁸

64. Taking into account all of these considerations, I am therefore not convinced that the mere mention of **Popović**'s name, even with **Pandurević**'s knowledge of his previous involvement in the murder operation, would have led **Pandurević** to conclude that wounded prisoners would probably be killed. Having considered the prevailing circumstances, I am of the opinion that after receiving the message on 23 July about **Popović** coming to take the prisoners, it was entirely reasonable for **Pandurević** to have believed at the time that the wounded prisoners were to be taken to a camp and or exchanged following their removal from the Brigade. Accordingly, contrary to the finding of the majority, I do not consider that the only reasonable inference to be drawn from the evidence is that **Pandurević** knew that by failing to act and thus making it possible for **Popović** to take the prisoners, he was assisting in their murder.

65. It is also important to also briefly address PW-168's account of a conversation that occurred between Obrenović and **Pandurević** at some point after the wounded prisoners were taken away from the Brigade by **Popović**. PW-168 testified that later on day that the prisoners were removed, Obrenović asked **Pandurević** about what had been done with the wounded prisoners.⁶⁴⁸⁹ According to PW-168's account, **Pandurević** replied that **Popović** had arrived with an order from Mladić that the prisoners be "liquidated" and that the wounded were taken from **Nikolić** and driven away.⁶⁴⁹⁰ In my view, PW-168's account of this statement by **Pandurević** does not undermine or contradict my position that he lacked the requisite *mens rea* in that he did not know that it was probable that the men would be executed upon being taken away by **Popović**. First, during his testimony, PW-168 made it clear that this conversation between Obrenović and **Pandurević** about **Popović** coming to

⁶⁴⁸⁷ See *supra*, Chapter III, Section G.3.

⁶⁴⁸⁸ See, e.g., Vinko Pandurević, T. 31538–31539, 31543 (16 Feb 2009), T. 32434 (3 Mar 2009). See also *supra*, paras. 1909–1910; fn. 5655, 5685.

⁶⁴⁸⁹ PW-168, T. 15915 (closed session) (27 Sept 2007). See *supra*, para. 1905.

deal with the wounded prisoners took place only after the wounded men had been taken away from the Brigade.⁶⁴⁹¹ Additionally, in the statement attributed to **Pandurević** by PW-168, it is evident that **Pandurević** was describing information that he learned subsequent to the removal of the prisoners. In this regard, I note PW-168's account that **Pandurević** used the term "had arrived" with an order⁶⁴⁹² and the fact that there is no evidence that **Pandurević** was physically present when **Popović** arrived with any such an order and took the prisoners. In light of these considerations, it thus appears that **Pandurević** was conveying to Obrenović information that **Pandurević** acquired only after the prisoners had already taken away from the Brigade. Further, in my view, a reasonable inference can be drawn that after the prisoners were removed, later that morning, **Pandurević** was informed by someone, possibly a member of the Zvornik Brigade or the Corps Command, of the details regarding what had happened to the wounded men. PW-168's account of this conversation simply does not show that **Pandurević** had such knowledge or information prior to the removal of the prisoners and thus at a time when he would have been able to intervene to prevent **Popović** from taking custody of them. This evidence from PW-168 therefore does not have an impact on the evaluation of **Pandurević's** *mens rea* for the purposes of aiding and abetting the murder of the wounded men.

66. Ultimately, based on the reasons outlined above, I consider that the evidence before the Trial Chamber is insufficient to establish beyond reasonable doubt that **Pandurević** knew it was probable that the wounded prisoners would be killed once taken away from the Zvornik Brigade by **Popović** and thus that he knew that if he failed to act, his omission would assist the commission of murder. Accordingly, the *mens rea* requirement for aiding and abetting by omission has not been met and **Pandurević** therefore is not responsible for the murder of the ten wounded prisoners from Milići Hospital.

F. On Sentencing

1. Reflection on My Dissenting Opinions

67. As described in the previous sections, I have dissented on the convictions of **Borovčanin**, **Miletić**, and **Pandurević** each respectively for various crimes. Accordingly, given that I would have convicted **Borovčanin**, **Miletić**, and **Pandurević** of a lesser number of crimes, I would have also imposed different sentences, in proportion to the gravity of the convictions. However, there are further issues pertaining to sentencing, with respect to **Miletić** and **Pandurević**, which I will set out

⁶⁴⁹⁰ PW-168, T. 15915–15916 (closed session) (27 Sept 2007). *See supra*, para. 1905.

⁶⁴⁹¹ PW-168, T. 15915 (closed session) (27 Sept 2007).

⁶⁴⁹² *See* PW-168, T. 15915–15916 (closed session) (27 Sept 2007).

below.

2. Miletić: Abuse of Authority and Prolonged Participation

68. The majority has found that **Miletić** abused his position of authority within the Main Staff and the VRS and that his participation was prolonged, and has accordingly considered these factors as aggravating factors.⁶⁴⁹³ I respectfully disagree.

69. The majority has found that “[**Miletić**] used the authority of his position, the trust placed in him by Milovanović and Mladić and the influence that brought, to organise and carry out the criminal plan to forcibly remove the Bosnian Muslim population from the enclaves; [a]ll of his acts and contribution were cloaked with the authority of his position and it was that power which made them particularly effective”, and thereby has concluded that he abused his position of authority within the Main Staff and VRS and this should aggravate his sentence.⁶⁴⁹⁴

70. I recall the jurisprudence of this Tribunal that, it is the *abuse* of the position of authority which may deserve a harsher sentence, not the position of authority taken alone. In this regard, what matters in determining this factor is the manner in which the authority is exercised.⁶⁴⁹⁵

71. In my view, all of **Miletić**’s acts were part of his regular responsibilities: he did not go beyond the capacity of his position, for example, by enlisting resources at his disposal to commit crimes or by inappropriately exerting influence which emanated from his position to other people in order to commit the crimes. While, as the Chief of Administration for Operations and Training, he played a central role in the drafting process of Directive 7,⁶⁴⁹⁶ there is no evidence as to whether he initiated or inserted the words in the criminal parts of the Directive. **Miletić**’s role and contribution have already been considered in the course of examining the gravity of the crimes and the nature of his involvement, and the fact that **Miletić** fulfilled his task efficiently and effectively and thereby played a coordinating role in the JCE to Forcibly Remove⁶⁴⁹⁷ should not be viewed as an abuse or misuse of his authority which would amount to a separate aggravating factor.

72. As regards the issue of prolonged participation, while the period of 4–5 months from the drafting of the plan until the final implementation of it cannot be characterised as short, ultimately, the crimes **Miletić** has been found guilty of were committed as part of *one* common plan to forcibly remove the Bosnian Muslims from a limited area, *i.e.*, from Srebrenica and Žepa, and the physical

⁶⁴⁹³ See *supra*, paras. 2196–2197.

⁶⁴⁹⁴ See *supra*, para. 2196.

⁶⁴⁹⁵ *Babić* Sentencing Appeal Judgement, para. 80; *Kayishema and Ruzindana* Appeal Judgement, paras. 358–359.

⁶⁴⁹⁶ See *supra*, paras. 1649, 1651–1652, 1704–1705.

⁶⁴⁹⁷ See *supra*, paras. 1716–1717.

removal took place within a relatively short period of time. Therefore, in my view, his participation in the crime or the duration of the crime cannot be considered as prolonged, so that it would constitute a separate aggravating factor.

73. Furthermore, I note that neither of these circumstances (abuse of position of authority and/or prolonged participation) was considered by the Trial Chamber when it came to determining the sentence on **Gvero**, who was one of the Assistant Commanders of the VRS Main Staff and who has been found to be a member of the JCE to Forcibly Remove.⁶⁴⁹⁸ Again, I respectfully submit that this inconsistency in the majority's approach evidences that its decision to consider these aggravating circumstances in determining **Miletić's** sentence is not well-founded.

74. Therefore, in conclusion, I am of the opinion that, in determining **Miletić's** sentence, the above factors, *i.e.*, alleged abuse of his position of authority and prolonged participation, should not have been taken into account as separate aggravating factors.

3. Pandurević

75. Even if **Pandurević** is to be convicted with respect to aiding and abetting by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital, I am of the opinion that the sentence of 13 years of imprisonment is too harsh in light of the nature and the extent of his involvement and several mitigating factors.

76. I reiterate here the Trial Chamber's finding that the limited nature of **Pandurević's** involvement in the forcible transfer diminishes the gravity of his criminal conduct and its observation of the circumstances surrounding his failure to take the necessary and reasonable measures to prevent the criminal acts committed by members of the Zvornik Brigade, as required under Article 7(3) of the Statute, in particular **Pandurević's** recent return to the area and the other pressing tasks he faced.⁶⁴⁹⁹

77. As regards mitigating factors, the Trial Chamber has considered and given significant weight to **Pandurević's** act of opening the corridor at Baljkovica on 16 July as well as his Interim Combat Reports for 15 and 18 July as mitigating factors in the determination of his sentence.⁶⁵⁰⁰ I entirely agree with the Trial Chamber's consideration and assessment of these actions by **Pandurević** in this regard. However, in my opinion, these acts warrant even greater weight in the mitigation of his sentence.

⁶⁴⁹⁸ See *supra*, paras. 1822, 2204–2205.

⁶⁴⁹⁹ See *supra*, paras. 2212, 2215.

⁶⁵⁰⁰ See *supra*, paras. 2219–2222.

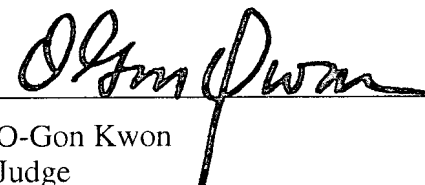
78. **Pandurević's** decision, against the orders of his superiors, to open the corridor at Baljkovica, allowing the passage of the column, saved the lives of thousands of Bosnian Muslims. Even under normal circumstances of combat, such an action would be considered uncommon. But, **Pandurević's** action is even more remarkable in this case in light of the particular surrounding circumstances at the time. In my opinion, this act by **Pandurević** is highly commendable.

79. Additionally, I am particularly struck by the **Pandurević's** Interim Combat Reports for 15 and 18 July. The language used by him in the 18 July report, in particular, to address the executions that had occurred is strong and defiant. It is the sole instance of a subordinate so openly challenging Mladić in relation to murder operation. I am therefore of the opinion that **Pandurević's** bravery in these reports also deserves significant recognition.

80. Overall, these actions by **Pandurević** evidence his character, namely his strength and integrity, as an individual and as a commander. Ultimately, I am of the opinion that his actions must be given much more substantial weight and should be more adequately reflected in the mitigation of his sentence.

81. The crimes for which **Pandurević** has been convicted normally carry a high sentence. However, in the case of **Pandurević**, there are several mitigating factors and circumstances that must be taken into account in the determination of an appropriate sentence for him. In my view, the sentence imposed by the majority does not adequately account for the nature and extent of his involvement and the mitigating circumstances. Therefore, in my opinion, **Pandurević's** sentence should have been further substantially reduced.

Done in English and French, the English text being authoritative.


O-Gon Kwon
Judge

Dated this 10th day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

XI. SEPARATE OPINION OF JUDGE PROST

1. The Trial Chamber, by majority, Judge Kwon dissenting, has convicted **Pandurević** for aiding and abetting by omission the murder of the wounded prisoners from Milići Hospital as a crime against humanity and a war crime.⁶⁵⁰¹ It is further alleged that his omission also aided and abetted the crime of persecution. Given his dissent as to *mens rea*,⁶⁵⁰² Judge Kwon also does not convict him for persecution on this basis. Judge Agius on the other hand would do so. I respectfully disagree with his conclusion on this point.

2. Aiding and abetting by omission requires both the *actus reus* of substantial contribution to the crime committed and the requisite *mens rea* of knowing that it was probable that the crime would be committed.⁶⁵⁰³ I am satisfied that the latter requirement has been met. Just as **Pandurević** knew that it was probable wounded prisoners would be killed once in **Popović**'s custody, he also knew that it was probable **Popović** would carry out the murders with persecutory intent, thus committing persecution.

3. My disagreement, however, centers on the second component of substantial contribution. The nature of aiding and abetting is such that ultimately if convicted, the accused is found responsible for the crime itself. Because of this, in my view, the *actus reus* of substantial contribution must be to the crime as a whole for which the accused is to be convicted. At the heart of the crime of persecution is the discriminatory nature of the act and the specific intent with which it is committed. Thus, any purported contribution to that crime must be assessed in that context. It is not sufficient, in my view, that **Pandurević**, through omission, made a substantial contribution to the crime of murder knowing that the crime would probably be carried out with discriminatory intent. Rather, his contribution must similarly have been to the discriminatory nature of the crime.

4. In this case, **Pandurević** had no discriminatory intent. More significantly in this context, he had no involvement in the circumstances which led to him having custody of the ten wounded prisoners, all of whom were Bosnian Muslims. These prisoners were brought to Standard Barracks on the orders of others⁶⁵⁰⁴ and **Pandurević** neither arranged for their selection nor for their presence there. Ultimately, **Pandurević**'s omission placed the prisoners in harms way and on this basis, he substantially contributed to their murder and has been convicted of that crime. However, I am not satisfied that his omission in any way contributed to the crime of persecution as that crime is

⁶⁵⁰¹ See *supra*, paras. 1991, 2072.

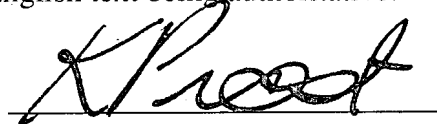
⁶⁵⁰² See *supra*, paras. 60–66.

⁶⁵⁰³ See *supra*, para. 1019.

⁶⁵⁰⁴ See PW-168, T. 15913 (closed session) (27 Sept 2007) (testifying that the wounded men were transferred to the Brigade pursuant to an order of the medical department of either the Main Staff or the Drina Corps)

defined in totality. In my view, a conviction in these circumstances renders the discriminatory component of the crime of persecution meaningless. Therefore, in these circumstances, I would acquit **Pandurević** of persecution with respect to the alleged persecutory act of murder in relation to the wounded prisoners from Milići Hospital.

Done in English and French, the English text being authoritative.

A handwritten signature in black ink, appearing to read 'K Prost', written over a horizontal line.

Kimberly Prost
Judge

Dated this 10th day of June 2010
At The Hague
The Netherlands

[Seal of the Tribunal]

ANNEX 1: GLOSSARY

A. Filings in this Case

Beara Final Brief	Defendant, Ljubiša Beara's Final Trial Brief (confidential), 30 July 2009
Beara Oral Motion for Acquittal	Ljubiša Beara's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21224-21258, 14 February 2008
Beara Pre-Trial Brief	Accused Ljubisa Beara's Rule 65 <i>ter</i> Pre-trial brief (confidential), 12 July 2006
Borovčanin Final Brief	Ljubomir Borovčanin's Final Trial Brief (public with confidential Annex), 30 July 2009
Borovčanin Oral Motion for Acquittal	Ljubomir Borovčanin's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21287-21302, 14 February 2008
Borovčanin Pre-Trial Brief	Accused Borovčanin's Response to the Prosecution's Pre-Trial Brief Pursuant to Rule 65 <i>ter</i> (F)
Gvero Final Brief	Final Brief on Behalf of Milan Gvero (confidential), 30 July 2009
Gvero Oral Motion for Acquittal	Milan Gvero's Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21341-21371, 15 February 2008
Gvero Pre-Trial Brief	General Gvero's Pre-Trial Brief, 12 July 2006
Guidelines	Order Concerning Guidelines on the Presentation of Evidence and the Conduct of Parties during Trial Proceedings, 14 July 2006
Indictment	Indictment, 4 August 2006
Judgement on Motions for Acquittal	Judgement on Motions for Acquittal Pursuant to 98 <i>bis</i> , 3 March 2008
July 2006 Pre-Trial Decision	Decision on Further Amendments and Challenges to the Indictment, 13 July 2006
May 2006 Pre-Trial Decision	Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006
Miletić Final Brief	Final Trial Brief of the Defence for General Miletić (confidential), 30 July 2009

Miletić Oral Motion for Acquittal	Radivoje Miletić's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21305-21339, 15 February 2008
Miletić Pre-Trial Brief	General Miletić Defence Pre-Trial Brief, 12 July 2006
Nikolić Final Brief	Final Trial Brief on Behalf of Drago Nikolić (confidential), 30 July 2009
Nikolić Oral Motion for Acquittal	Drago Nikolić's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21258-21286, 14 February 2008
Nikolić Pre-Trial Brief	Pre-trial Brief on Behalf of Drago Nikolić Pursuant to Rule 65ter (F), 12 July 2006
Pandurević Final Brief	Defence Final Trial Brief on Behalf of Vinko Pandurević (confidential), 30 July 2009
Pandurević Oral Motion for Acquittal	Vinko Pandurević's Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21372-21381, 15 February 2008
Pandurević Pre-Trial Brief	Defence Pre-trial Brief on Behalf of the Accused Vinko Pandurević (partly confidential), 12 July 2006
Popović Adjudicated Facts Decision	Decision on Popović's Motion for Judicial Notice of Adjudicated Facts with Annex, 2 June 2008
Popović Final Brief	Vujadin Popović's Final Brief (confidential), 30 July 2009
Popović Pre-Trial Brief	Pre-Trial Brief of the Defence of Vujadin Popović, 12 July 2006
Prosecution Pre-Trial Brief	Prosecution's Filing of Pre-Trial Brief Pursuant to Rule 65 <i>ter</i> and List of Exhibits Pursuant to Rule 65 <i>ter</i> (E)[sic], 28 April 2006
Prosecution Adjudicated Facts Decision	Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006
Prosecution Final Brief	Prosecution Filing of Final Trial Brief Pursuant to Rule 65ter (E) (confidential), 30 July 2009

B. ICTY Judgements and Decisions

<i>Aleksovski</i> Appeal Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgment, 24 March 2000
<i>Aleksovski</i> Trial Judgement	<i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgment, 25 June 1999
<i>Babić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Milan Babić</i> , Judgment on Sentencing Appeal, Case No. IT-03-72-A, 18 July 2005
<i>Banović</i> Sentencing Judgement	<i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003
<i>Blagojević and Jokić</i> Appeal Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgment, 9 May 2007
<i>Blagojević and Jokić</i> Trial Judgement	<i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgment, 17 January 2005
<i>Blaškić</i> Appeal Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgment, 29 July 2004
<i>Blaškić</i> April 1997 Pre-Trial Decision	<i>Prosecutor v. Blaškić</i> , Case No. IT-95-14-PT, Decision on the Defence Motion to Dismiss the Indictment based upon Defects in the Form Thereof (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997
<i>Blaškić</i> Trial Judgement	<i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgment, 3 March 2000
<i>Boškoski and Tarčulovski</i> May 2006 Pre-Trial Decision	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-PT, Decision on Prosecution's Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Amended Pre-Trial Brief, 26 May 2006
<i>Boškoski and Tarčulovski</i> Appeal Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-A, Judgment, 19 May 2010
<i>Boškoski and Tarčulovski</i> Trial Judgement	<i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgment, 10 July 2008
<i>Bralo</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Judgment on Sentencing Appeal, 2 April 2007

<i>Brđanin</i> Appeal Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007
<i>Brđanin</i> March 2004 Interlocutory Appeal Decision	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-A, Decision on Interlocutory Appeal, 19 March 2004
<i>Brđanin</i> Trial Judgement	<i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004
<i>Brđanin and Talić</i> June 2001 Pre-Trial Decision	<i>Prosecutor v. Radoslav Brđanin and Momir Talić</i> , Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001
<i>Čelebići</i> Appeal Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "PAVO"), Hazim Delić, and Esad Landžo (aka "ZENGA")</i> , Case No. IT-96-21-A, Judgement, 20 February 2001
<i>Čelebići</i> Trial Judgement	<i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "PAVO"), Hazim Delić, and Esad Landžo (aka "ZENGA")</i> , Case No. IT-96-21-T, Judgement, 16 November 1998
<i>Deronjić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005
<i>Dragan Nikolić</i> Sentencing Appeal Judgement	<i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005
<i>Erdemović</i> Appeal Judgement	<i>Prosecutor v. Dražen Erdemović</i> , IT-96-22-A, 7 October 1997
<i>Erdemović</i> Sentencing Judgement	<i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998
<i>Furundžija</i> Appeal Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Appeal Judgment, 21 July 2000
<i>Furundžija</i> Trial Judgement	<i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgment, 10 December 1998
<i>Galić</i> Appeal Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006
<i>Galić</i> Trial Judgement	<i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgment, 5 December 2003
<i>Hadžihasanović and Kubura</i> Appeal Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubara</i> , Case No. IT-01-47-A, Appeal Judgement, 22 April 2008

<i>Hadžihasanović and Kubura</i> Trial Judgement	<i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Judgment, 15 March 2006
<i>Hadžihasanović et al.</i> July 2003 Appeal Decision	<i>Prosecutor v. Enver Hadžihasanović, Mehmed Alagić, and Amir Kubura</i> , Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003
<i>Halilović</i> Appeal Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Appeal Judgment, 16 October 2007
<i>Halilović</i> December 2004 Pre-Trial Decision	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-PT, Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment, 17 December 2004
<i>Halilović</i> Trial Judgement	<i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgment, 16 November 2005
<i>Jelisić</i> Appeal Judgement	<i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgment, 5 July 2001
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<i>Krnojelac</i> Appeal Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgment, 17 September 2003
<i>Krnojelac</i> February 1999 Pre-Trial Decision	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999

<i>Krnojelac</i> May 2000 Pre-Trial Decision	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000
<i>Krnojelac</i> Trial Judgement	<i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgment, 15 March 2002
<i>Krstić</i> Appeal Judgement	<i>Prosecutor v Radislav Krstić</i> , Case No. IT-98-33-A, Judgment, 19 April 2004
<i>Krstić</i> Trial Judgement	<i>Prosecutor v Radislav Krstić</i> , Case No. IT-98-33-T, Judgment, 02 August 2001
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<i>Kunarac et al.</i> Trial Judgement	<i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23&23/1-T, Judgment, 22 February 2001
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<i>Kvočka et al.</i> Appeal Judgement	<i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgment, 28 February 2005
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<i>Milosević</i> Decision on Interlocutory Appeal of 1 November 2004	<i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004
<i>Milošević</i> Decision on Motion for Judgement of Acquittal	<i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004
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<i>Vasiljević</i> Appeal Judgement	<i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004
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Juvénal Kajelijeli v. Prosecutor, Case No. ICTR-98-44A-A, Appeal Judgement, 23 May 2005

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Muhimana Appeal Judgement

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<i>Niyitegeka</i> Appeal Judgement	<i>Eliezer Niyitegeka v. Prosecutor</i> , Case No. ICTR-96-14-A, Judgement, 9 July 2004
<i>Niyitegeka</i> Trial Judgement	<i>Prosecutor v. Eliézer Niyitegekā</i> , Case No. ICTR-96-14-T, Judgment, 16 May 2003
<i>Ntagerura et al.</i> Appeal Judgement	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, Judgement, 7 July 2006
<i>Ntagerura et al.</i> Trial Judgement	<i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe</i> , Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004
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<i>Semanza</i> Trial Judgement	<i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003
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<i>Simba</i> Trial Judgement	<i>Prosecutor v. Aloys Simba</i> , Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005
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<i>Zigiranyirazo</i> Trial Judgement	<i>Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-01-73-T, Judgement and Sentence, 18 December 2008

D. ICJ Judgements

<i>Armed Activities-Congo</i> , ICJ Judgement	<i>Armed Activities on the Territory of the Congo (New Application 2002) (Democratic Republic of the Congo v. Rwanda)</i> , Judgement, 3 Feb. 2006 (<i>Armed Activities on the Territory of the Congo</i>)
ICJ Bosnia Judgement	<i>Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)</i> , Judgement of 26 February 2007
<i>Reservations to the Genocide Convention</i> , ICJ Advisory Opinion	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i> , Advisory Opinion (28 May 1951), 1951 ICJ Rep. 15

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G. Table of other Authorities

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2. International Legal Instruments and Commentaries

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Additional Protocol II

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977

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Draft Genocide Convention, U.N. Doc. E/447	Draft Convention on the Crime of Genocide, U.N. Doc. E/447, 26 June 1947
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Geneva Convention IV	Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, August 12, 1949
Genocide Convention	Convention on the Prevention and Suppression of the Crime of Genocide of 1948, 12 January 1951, 78 U.N.T.S. 277
ICCPR	International Covenant on Civil and Political Rights, 16 December 1966
UDHR	Universal Declaration of Human Rights, 10 December 1948
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955
Statute	The Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827

3. Select list of other Legal Authorities

Henckaerts and Doswald-Beck, <i>Customary International Humanitarian Law, Vol. 1</i>	Customary International Humanitarian Law, Volume 1: Rules, Jean-Marie Henckaerts and Louise Doswald-Beck, ICRC, Cambridge University Press, 2005.
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Schabas, *Genocide in International Law*

William A. Schabas, *Genocide in International Law* (2002 [first ed. 2000])

4. Reports

UN Economic and Social Council's
1978 Genocide Study

UN Economic and Social Council, *Study on the Prevention and Punishment of the Crime of Genocide* (1978)

5. UN Resolutions

United Nations General Assembly Resolution 96(I), adopted 11 December 1946

H. Table of Short Forms

28th Division	28th Division of the Army of Bosnia and Herzegovina
ABiH	Army of Bosnia and Herzegovina
Accused	Vujadin Popović, Colonel Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević.
a.k.a.	also known as
APC	Armoured Personnel Carrier
BCS	The Bosnian-Croatian-Serbian language
Beara Defence	The accused Ljubiša Beara, and/or Counsel for Ljubiša Beara
BiH	Bosnia and Herzegovina
Birač Brigade	Sekovici Brigade
BT	Transcript page from hearings before the <i>Blagojević</i> Trial Chamber, <i>Prosecutor v Vidoje Blagojević and Dragan Jokić</i> , IT-02-60-T
Borovčanin Defence	The accused Ljubomir Borovčanin, and/or Counsel for Ljubomir Borovčanin
Bosnian Serb Forces	Includes VRS forces, MUP forces and paramilitary forces associated with the VRS and/or MUP
BVP	Armoured Infantry Combat Vehicle
CJB	Public Security Centre

CSB	Security Services Centre
Drina Wolves	Podrinje Detachment or Drina Corps Manoeuvre Detachment
DutchBat	Dutch Battalion of UNPROFOR
DutchBat Bravo Company compound	Compound of the Dutch Battalion, Bravo Company, of UNPROFOR at Srebrenica
DutchBat compound	Compound of the Dutch Battalion of UNPROFOR at Potočari
ECtHR	European Court of Human Rights
Ex. Pxxxx	Prosecution exhibit
Ex. 1Dxxxx	Defence exhibit for the accused Vujadin Popović
Ex. 2Dxxxx	Defence exhibit for the accused Ljubiša Beara
Ex. 3Dxxxx	Defence exhibit for the accused Drago Nikolić
Ex. 4Dxxxx	Defence exhibit for the accused Ljubomir Borovčanin
Ex. 5Dxxxx	Defence exhibit for the accused Radivoje Miletić
Ex. 6Dxxxx	Defence exhibit for the accused Milan Gvero
Ex. 7Dxxxx	Defence exhibit for the accused Vinko Pandurević
fn.	Footnote
Gvero Defence	The accused Milan Gvero, and/or Counsel for Milan Gvero
HV	Croatian Army
HVO	Croatian Defence Council
ICC	International Criminal Court
ICJ	International Court of Justice
ICMP	International Commission on Missing Persons
ICRC	International Committee of the Red Cross

ICTR	International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other Such Serious Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994
ICTY	International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991
ILC	International Law Commission
IKM	Forward Command Post
JNA	Yugoslav People's Army (Army of the Socialist Federal Republic of Yugoslavia)
KT	Transcript page from hearings before the <i>Krstić</i> Trial Chamber, <i>Prosecutor v Radislav Krstić</i> , IT-98-33-T
LNU	Last Name Unknown
Miletić Defence	The accused Radivoje Miletić, and/or Counsel for Radivoje Miletić
MSF	Médecins sans frontières
MT	Transcript page from hearings before the <i>Slobodan Milošević</i> Trial Chamber, <i>Prosecutor v Slobodan Milošević</i> , IT-02-54-T
MUP	Ministry of the Interior in Republika Srpska
Nikolić Defence	The accused Drago Nikolić, and/or Counsel for Drago Nikolić
OAT.	Transcript page from hearings before the <i>Orić</i> Appeals Chamber, <i>Prosecutor v Naser Orić</i> , IT-03-68-A
OP	Observation Post
OT.	Transcript page from hearings before the <i>Orić</i> Trial Chamber, <i>Prosecutor v Naser Orić</i> , IT-03-68-T

OTP/Prosecution	Office of the Prosecutor
p.	Page
pp.	Pages
Pandurević Defence	The accused Vinko Pandurević, and/or Counsel for Vinko Pandurević
para.	Paragraph
paras.	Paragraphs
Parties	The Prosecutor and the Defence in <i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević</i>
PJP	Separate Police Units
Popović Defence	The accused Vujadin Popović, and/or Counsel for Vujadin Popović
POW	Prisoner of War
RS	Republika Srpska
Rogatica Brigade	The 1st Podrinje Light Infantry Brigade
Romanija Brigade	2nd Romanija Motorised Brigade
Rules	Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia (IT/32/Rev. 39)
SBP	Special Police Brigade
SBP 2nd Sekovići Detachment	2nd Sekovići Detachment of the RS MUP Special Police Brigade
SFOR	Stabilisation Force (NATO-Bosnia)
SFRY	Socialist Federal Republic of Yugoslavia
SJB	Public Security Station
Standard Barracks	The Zvornik Brigade Headquarters
T.	Transcript page from proceedings before the Trial Chamber in the present case.

TG	Tactical Group
TO	Territorial Defence forces
Tribunal	See: ICTY
UKRCoy	Ukrainian Company of UNPROFOR
UN	United Nations
UNDU	United Nations Detention Unit
UNHCR	United Nations High Commission for Refugees
UNMO	United Nations Military Observer
UNPROFOR	United Nations Protection Force
VRS	Army of the Republika Srpska
VRS Soldier	A person serving in the Army of the Republika Srpska
Žepa Brigade	The 285th Eastern Bosnian Light Brigade of the ABiH
Zvornik Brigade	The 1st Light Infantry Zvornik Brigade
Zvornik Brigade Duty Officer's Notebook	Zvornik Brigade Notebook
Zvornik Brigade IKM Duty Officer's Logbook	Zvornik Brigade Logbook

ANNEX 2: PROCEDURAL HISTORY

1. This case involves seven Accused, 315 witnesses in total, 5,383 exhibits in total amounting to 87,392 page numbers, and 34,915 transcript page numbers.

A. Pre-Trial Proceedings

1. Indictment and Joinder or Severance of Cases

2. The Accused in *Popović et al.* were previously indicted in six separate cases, namely, *Prosecutor v. Vujadin Popović*,¹ *Prosecutor v. Ljubiša Beara*,² *Prosecutor v. Drago Nikolić*,³ *Prosecutor v. Ljubomir Borovčanin*,⁴ *Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*⁵ and *Prosecutor v. Vinko Pandurević and Milorad Trbić*.⁶ On 10 June 2005, the Prosecution filed a joinder motion, seeking to join these cases into a single consolidated indictment.⁷ On 21 September 2005, the Trial Chamber granted the joinder motion.⁸ The Appeals Chamber

¹ *Prosecutor v. Popović*, Case No. IT-02-57-I, Indictment, 26 Mar 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. See *Prosecutor v. Popović*, Case No. IT-02-57-I, Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 26 Mar 2002.

² *Prosecutor v. Beara*, Case No. IT-02-58-I, Indictment, 26 Mar 2002. The Indictment was confirmed by Judge Schomburg. See *Prosecutor v. Beara*, Case No. IT-02-58-I, Order on Review of Indictment Pursuant to Article 19 of the Statute, 26 Mar 2002.

³ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Indictment, 6 Sept 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. See *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 Sept 2002.

⁴ *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Indictment, 6 Sept 2002. The Indictment was confirmed by Judge Schomburg. See *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 Sept 2002; *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order to Lift the Seal of Confidentiality of the Indictment, Arrest Warrant and Non-disclosure Warrant, 27 Sept 2002.

⁵ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-I, Indictment, 8 Feb 2005. The Indictment was confirmed by Judge Liu and placed under seal. See Decision on Review of Indictment and Order for Non-Disclosure, 10 Feb 2005.

⁶ *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 Feb 2005. The Indictment was confirmed by Judge Liu. See Decision on Review of Indictment and Order for Non-Disclosure, 24 Mar 2005; *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 Feb 2005. The Indictment was confirmed by Judge Liu. See Decision on Review of Indictment and Order for Non-Disclosure, 30 Mar 2005. The Prosecution was also ordered to withdraw the initial indictment against Pandurević, confirmed on 2 Nov 1998 by Judge Mumba in the case *Prosecutor v. Krstić, Pandurević and Blagojević*, as amended on 27 Oct 1999.

⁷ *Prosecution v. Popović*, Case No. IT-02-57-PT, *Prosecution v. Beara*, Case No. IT-02-58-PT, *Prosecution v. Nikolić*, Case No. IT-02-63-PT, *Prosecution v. Borovčanin*, Case No. IT-02-64-PT, *Prosecution v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Joinder of Accused, 10 June 2005.

⁸ *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Motion for Joinder, 21 Sept 2005. By order of the President, the Joinder Motion had been assigned to Trial Chamber III. See Order Referring the Joinder Motion, *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, 29 June 2005 and Corrigendum to Order Referring the Joinder Motion, 4 July 2005.

dismissed **Pandurević** and **Miletić**'s appeals against the decision.⁹ The case was assigned to Trial Chamber II on 26 September 2005¹⁰ and Judge Agius was appointed Pre-Trial Judge on 5 October 2005.¹¹

3. On 28 June 2005, the Prosecution filed a motion to amend the indictments against the nine Accused, proposing one consolidated amended indictment.¹² Pursuant to a Trial Chamber order of 13 October 2005,¹³ the Prosecution filed the Consolidated Amended Indictment under a single case number on 11 November 2005. On 7 December 2005, the Trial Chamber ordered the Accused to file any preliminary motions against the form of the Consolidated Amended Indictment by no later than 9 January 2006.¹⁴ **Popović, Nikolić, Borovčanin, Miletić, Gvero, Pandurević** and **Trbić** filed motions challenging the form of the Consolidated Amended Indictment.¹⁵ In March 2006, the Prosecution filed two additional motions seeking to amend the Consolidated Amended Indictment.¹⁶ On 31 May 2006, the Trial Chamber granted the Accused's motions in part and the

⁹ *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-AR73.1, Decision on Vinko Pandurević's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, 24 Jan 2006; *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 27 Jan 2006.

¹⁰ Order Assigning a Case to a Trial Chamber, 26 Sept 2005.

¹¹ Order Designating a Pre-Trial Judge, 5 Oct 2005.

¹² *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Amendments to the Indictments + Annex A, 28 June 2005. In the Motion the Prosecution requested, amongst others, that the charges of genocide, conspiracy to commit genocide and extermination be added in the case of Tolimir and Trbić; the charge of conspiracy to commit genocide be added against **Popović** and **Nikolić**; the charge of complicity to commit genocide be deleted with regard to **Popović, Nikolić** and **Borovčanin**; the charge of forcible transfer of the Bosnian Muslim population to include the forcible transfer of the Bosnian Muslim population from the Žepa enclave and the deportation of the Bosnian Muslim men from Žepa with regard to **Beara, Popović, Pandurević, Trbić, Borovčanin** and **Nikolić**; and to clarify that the charge of forcible transfer not only applies to the women and children, but also to the men who were forcibly bused out of Potočari and those who were captured or surrendered from the column of people fleeing the Srebrenica area. The Prosecution filed a corrigendum, *See* Corrigendum to Prosecution's Consolidated Amended Indictment, confidential, 15 July 2005.

¹³ Order on the Consolidated Amended Indictment, 31 Oct 2005.

¹⁴ Further Order on the Consolidated Amended Indictment, 7 Dec 2005, p. 3. *See* Order on the Consolidated Amended Indictment, 31 Oct 2005.

¹⁵ The Motion of Vujadin Popović Objecting the Form of Consolidated Indictment, 6 Jan 2006; Defence Motion on Behalf of Drago Nikolić Alleging Defects in the Form of the Consolidated Amended Indictment, 29 Dec 2005; Ljubomir Borovčanin's Defence Preliminary Motion on the Form of the Consolidated Amended Indictment, 9 Jan 2006; Preliminary Motion of General Miletić Regarding Defects in the Form of the Indictment, 9 Jan 2006 (French original), 24 Jan 2006 (English translation); General Gvero's Preliminary Motion Challenging Jurisdiction: Indirect Co-Perpetration, 30 Dec 2005; Vinko Pandurević's Preliminary Motion on the Form of the Consolidated Amended Indictment, 5 Jan 2006; Defendant Milorad Trbić's Challenge to the Indictment Pursuant to Rule 72, 8 Jan 2006. In response the Prosecution filed a motion under Rule 72 which included a proposed amended indictment. *See* Consolidated Response to Defence Motions under Rule 72, 23 Jan 2006.

¹⁶ Motion to Amend the Indictment Relating to Ljubomir Borovčanin, 22 Mar 2006; Motion to Amend the Indictment Relating to the 22 Mar 2006 Appeals Chamber Judgement in the Case of *Stakić*, 29 Mar 2006. Miletić, Nikolić, Gvero, Borovčanin and Trbić filed responses. *See* Response of General Miletić to the Prosecutor's Motion to Amend the Indictment, 11 Apr 2006; Defence Consolidated Response on behalf of Drago Nikolić to the Prosecution's Motions to Amend the Indictment dated 22 and 29 Mar 2006, 12 Apr 2006; General Gvero's Preliminary Motion Challenging Jurisdiction: Joint Criminal Enterprise with Common Purpose, 24 Apr 2006; Borovčanin Defence Notification on Joining General Gvero's Preliminary Motion Challenging Jurisdiction: Joint Criminal Enterprise with Common Purpose, 12 Apr 2006. Borovčanin further filed an additional response to

Prosecution motion to amend the Consolidated Amended Indictment in part, which became the Second Consolidated Amended Indictment.¹⁷

4. **Popović, Borovčanin and Pandurević** challenged the form of the Second Consolidated Amended Indictment.¹⁸ On 13 July 2006, the Trial Chamber granted the Accused's motions in part and ordered the Prosecution to make the proposed amendments in the Second Consolidated Amended Indictment.¹⁹ On 4 August 2006, the Prosecution submitted a new version of the Second Consolidated Amended Indictment.²⁰

5. On 26 June 2006, Trbić's case was severed from the present case,²¹ and it was referred to the BiH State Court pursuant to Rule 11 *bis*.²² Tolimir's case was severed from the joint case as he remained at large when the Second Consolidated Amended Indictment became effective.²³ Tolimir was arrested on 31 May 2007 and transferred to the seat of the Tribunal on 1 June 2007.²⁴ The Prosecution attempted to join Tolimir's case with the present case,²⁵ but the Trial Chamber denied the motion.²⁶

2. Transfer, Initial Appearance and Pleas

6. **Popović** was transferred to the Tribunal on 14 April 2005.²⁷ He made his initial appearance on 18 April 2005²⁸ and pleaded not guilty to all charges.²⁹ **Beara** was transferred to the Tribunal on

Prosecution's Motion pertaining only to him. See Borovčanin Defence Submission Regarding Prosecution's Motions to Amend the Indictment, 7 Apr 2006; Defendant Milorad Trbić's Challenge, Pursuant to Rule 72, to the Proposed Indictment Dated 29 Mar 2006, 12 Apr 2006.

¹⁷ Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006. Additionally it granted one of the Prosecution's motions to clarify the form of liability alleged against **Borovčanin** and ordered the Prosecution to amend sections of the Consolidated Amended Indictment.

¹⁸ Response on Behalf of Vujadin Popović to Prosecution Submission pursuant to the Trial Chamber's Decision on the Motion Challenging Indictment pursuant to Rule 72 of the Rules, confidential, 23 June 2006; [Popović] Preliminary Motion Objecting the Form of the Second Consolidated Amended Indictment, 30 June 2006; Borovčanin Defence Preliminary Motion on the Form of the Second Consolidated Amended Indictment, 30 June 2006; Response on Behalf of the Defence of Vinko Pandurević Pursuant to Rule 72 to the Prosecution Submission of the Second Consolidated Amended Indictment, 30 June 2006.

¹⁹ Decision on Further Amendments and Challenges to the Indictment, 13 July 2006.

²⁰ Submission pursuant to the Trial Chamber's Decision on Further Amendments and Challenges to the Indictment and Motion Seeking Leave to Make Additional Minor Corrections, partly confidential, 4 Aug 2006; Order on Operative Indictment and Severance of the Case against Zdravko Tolimir, 15 Aug 2006.

²¹ Decision on Severance of Case against Milorad Trbić with Confidential and *Ex Parte* Annex, 26 June 2006.

²² *Prosecutor v. Milorad Trbić*, Case No. IT-05-88/1-PT, Decision on Referral of Case under Rule 11 *bis* with Confidential Annex, 27 Apr 2007.

²³ Order on Operative Indictment and Severance of the Case Against Zdravko Tolimir, 15 Aug 2006.

²⁴ See *Prosecutor v. Tolimir*, Case No. IT-05-88/2-I, Order Assigning a Case to a Trial Chamber, 1 June 2007.

²⁵ Prosecution's Motion for Joinder of the Accused, 10 June 2007.

²⁶ Decision on Motion for Joinder, 20 July 2007.

²⁷ See *Prosecutor v. Popović*, Case No. IT-02-57-I, Scheduling Order for Initial Appearance, 15 Apr 2005. See also, *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 2 (18 Apr 2005).

²⁸ *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 1–2 (18 Apr 2005).

²⁹ *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 3–6 (18 Apr 2005).

10 October 2004.³⁰ At his initial appearance on 11 November 2004, he pleaded not guilty to all charges.³¹ After the Indictment was amended, **Beara** entered new pleas of not guilty to the additional charges at a further appearance on 13 April 2005.³² **Nikolić** surrendered on 15 March 2005 and was transferred to the Tribunal on 17 March 2005.³³ On 20 April 2005, he entered a plea of not guilty to all charges.³⁴ **Borovčanin** surrendered and was transferred to the Tribunal on 1 April 2005.³⁵ On 5 May 2005, **Borovčanin** entered a plea of not guilty to all charges.³⁶ **Miletić** surrendered on 24 February 2005 and was transferred to the Tribunal on 28 February 2005.³⁷ On 15 April 2005, he entered a plea of not guilty to all charges.³⁸ **Gvero** surrendered and was transferred to the Tribunal on 24 February 2005.³⁹ He pleaded not guilty to all charges.⁴⁰ **Pandurević** was transferred to the Tribunal on 23 March 2005.⁴¹ He entered a plea of not guilty to all charges on 3 May 2005.⁴²

7. Following joinder and consolidation of the Indictment,⁴³ **Popović**, **Beara**, **Nikolić** and **Pandurević** entered new pleas of not guilty to all charges on 4 April 2006.⁴⁴ **Borovčanin** entered new pleas of not guilty to all counts on 4 April 2006 and 13 July 2006, respectively.⁴⁵ On 6 July 2006, **Gvero** and **Miletić** entered new pleas of not guilty to all charges.⁴⁶

3. Assignment of Counsel

8. Mr. Zoran Živanović was assigned as counsel for **Popović** as of 18 April 2005⁴⁷ and Ms. Julie Condon as co-counsel as of 10 July 2006.⁴⁸ Mr. John Ostojić was assigned as counsel for

³⁰ *Prosecutor v. Beara*, Case No. IT-02-58-I, Scheduling Order for Initial Appearance, 11 Oct 2004. *See also*, *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 1–4 (12 Oct 2004).

³¹ *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 11–12 (11 Nov 2004).

³² *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 19–20 (13 Apr 2005).

³³ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Scheduling Order for Initial Appearance, 21 Mar 2005.

³⁴ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, T. 8 (20 Apr 2005).

³⁵ *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Scheduling Order for Initial Appearance, 1 Apr 2005.

³⁶ *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, T. 30–32 (5 May 2005).

³⁷ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Scheduling Order for Initial Appearance, 1 Mar 2005. The Scheduling Order indicated the date incorrectly.

³⁸ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, T. 63–64 (15 Apr 2005).

³⁹ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Scheduling Order for Initial Appearance, 1 Mar 2005.

⁴⁰ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, T. 35–36 (2 Mar 2005).

⁴¹ *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Scheduling Order for Further Initial Appearance, 20 Apr 2005.

⁴² *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, T. 26–27 (3 May 2005).

⁴³ Decision on Motion for Joinder, 21 Sept 2005; Order on the Consolidated Amended Indictment, 31 Oct 2005.

⁴⁴ T. 99–122 (4 Apr 2006).

⁴⁵ T. 112–119 (4 Apr 2006), T. 281 (13 July 2006). *See also* T. 245–248 (13 July 2006) (finding that, with the exception of **Borovčanin** with regard to Counts 1 and 2, the Accused were not required to enter new pleas to the Second Consolidated Amended Indictment).

⁴⁶ T. 224–228 (6 July 2006).

⁴⁷ *Prosecutor v. Popović*, Case No. IT-02-57-I, Decision of the Deputy Registrar, 18 Apr 2005.

⁴⁸ Decision of the Registrar, 10 July 2006.

Beara as of 11 November 2004⁴⁹ and Mr. Christopher Meek as co-counsel as of 3 April 2006.⁵⁰ Ms. Jelena Nikolić was assigned counsel for **Nikolić** as of 10 May 2005⁵¹ and Mr. Stephane Bourgon as co-counsel as of 24 August 2005.⁵² Mr. Aleksandar Lazarević was assigned as counsel for **Borovčanin** as of 4 January 2006⁵³ and Mr. Miodrag Stojanović as co-counsel as of 30 May 2005.⁵⁴ Ms. Natacha Fauveau-Ivanović was assigned as counsel for **Miletić** as of 14 April 2005.⁵⁵ Mr. Dragan Krgović was assigned as counsel for **Gvero** as of 16 March 2005.⁵⁶ Mr. Peter Haynes was assigned as counsel for **Pandurević** as of 7 March 2006⁵⁷ with Mr. Đorđe Sarapa as co-counsel.⁵⁸

4. Pre-Trial Briefs

9. The Prosecution filed its Pre-Trial Brief on 28 April 2006.⁵⁹ **Borovčanin** responded to the Prosecution Pre-Trial Brief on 11 July 2006, and the other six Accused filed their Pre-Trial Briefs on 12 July 2006.⁶⁰

5. Pre-Trial Case Management

10. Following the joinder of the trials, the pre-Trial proceedings lasted 11 months. Four status conferences were held between 10 November 2005 and 6 July 2006.⁶¹ Five Rule 65 *ter* conferences were held between 9 November 2005 and 6 July 2006.⁶² The Pre-Trial Conference took place on 13 July 2006 and the trial commenced on 14 July 2006.⁶³

⁴⁹ *Prosecutor v. Beara*, Case No. IT-05-88-PT, Decision of Deputy Registrar, 11 Nov 2004.

⁵⁰ *Prosecutor v. Beara*, Case No. IT-05-88-PT, Decision of Deputy Registrar, 3 Apr 2006.

⁵¹ *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Decision of Deputy Registrar, 10 May 2005.

⁵² *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, Decision of Deputy Registrar, 24 Aug 2005.

⁵³ Decision of Registrar, 4 Jan 2006. Mr. Lazarević replaced Mr Alan Newman as lead counsel (*Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Deputy Registrar, 9 May 2005) who in turn had succeeded Ms. Colleen Rohan (*Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Registrar, 6 Apr 2005).

⁵⁴ *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Registrar, 30 May 2005.

⁵⁵ *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Decision of Deputy Registrar, 14 Apr 2005.

⁵⁶ *Prosecutor v. Gvero* Case No. IT-04-80-PT, Decision of the Registrar, 16 Mar 2005.

⁵⁷ Decision of the Deputy Registrar, 7 Mar 2006.

⁵⁸ Decision of the Deputy Registrar, 7 Mar 2006.

⁵⁹ Prosecution's Filing of Pre-Trial Brief Pursuant to Rule 65 *ter* and List of Exhibits Pursuant to Rule 65 *ter* (E) (v) [sic] Under Seal, 28 Apr 2006. On 24 May 2006, the Trial Chamber denied **Miletić** motion seeking a BCS translation of the Prosecution Pre-Trial Brief. See Decision on Joint Defence Motions Requesting the Translation of the Pre-Trial Brief and Specific Motions, 24 May 2006.

⁶⁰ Pre-Trial Brief of the Defence of Vujadin Popović, 12 July 2006; Accused Ljubiša Beara's Rule 65 *ter* Pre-Trial Brief, confidential and under Seal, 12 July 2006; Pre-Trial Brief on Behalf of Drago Nikolić pursuant to Rule 65 *ter* (F), 12 July 2006; Borovčanin Defence Response to Prosecution's Pre-Trial Brief, 11 July 2006; General Miletić Defence Pre-Trial Brief, confidential, 12 July 2006 (French original), 21 July 2006 (English translation); General Gvero's Pre-Trial Brief, 12 July 2006; Defence Pre-Trial Brief on Behalf of the Accused Vinko Pandurević, 12 July 2006.

⁶¹ T. 1–46 (10 Nov 2005), T. 77–139 (4 Apr 2006), T. 140–174 (19 May 2006), T. 175–237 (6 July 2006).

⁶² 7 Feb 2005, 28 Oct 2005, 9 Mar 2006 and 28 Apr 2006.

⁶³ Scheduling Order for a Status Conference and for Start of Trial, 6 June 2006. However, the opening statements were not heard until 21 August 2006.

6. Provisional Release

11. On 22 June 2005, **Popović** filed a motion seeking provisional release prior to the joinder of the case.⁶⁴ The Trial Chamber denied the motion,⁶⁵ and this decision was upheld on appeal.⁶⁶ On 7 October 2005, **Nikolić** filed a motion for provisional release,⁶⁷ which was denied by the Trial Chamber.⁶⁸ That decision was upheld on appeal.⁶⁹ On 2 March 2006, **Borovčanin** filed a motion for provisional release.⁷⁰ On 10 May 2006, the Trial Chamber denied the motion for release.⁷¹ **Borovčanin**'s appeal against the decision was dismissed.⁷²

12. In April 2005, **Miletić** and **Gvero** both filed motions for provisional release for the period before trial.⁷³ The Trial Chamber granted both motions on 19 July 2005.⁷⁴ The Prosecution appealed both of the Trial Chamber's decisions,⁷⁵ which were upheld by the Appeals Chamber.⁷⁶ On 6 June 2006, due to the approaching start of the trial, the Trial Chamber suspended the provisional release of both **Gvero** and **Miletić** as of 29 June 2006.⁷⁷ On 20 June 2006, the Trial Chamber ordered **Gvero** and **Miletić** to return to the UNDU no later than 4 July 2006.⁷⁸ On a joint application,⁷⁹ both accused were provisionally released after the pre-trial conference during the summer recess between 14 July and 14 August 2006.⁸⁰

⁶⁴ *Prosecutor v. Popović*, Case No. IT-02-57-I, The Vujadin Popović's Motion for Provisional Release, 22 June 2005.

⁶⁵ *Prosecutor v. Popović*, Case No. IT-02-57-PT, Decision on Motion for Provisional Release, 22 July 2005.

⁶⁶ *Prosecutor v. Popović*, Case No. IT-02-57-AR65.1, The Vujadin Popović's Appeal against the Decision on Provisional Release, 22 Aug 2005.

⁶⁷ Motion Seeking the Provisional Release of Drago Nikolić until the beginning of the Trial Phase of the Proceedings, 7 Oct 2005.

⁶⁸ Decision on Drago Nikolić's Request for Provisional Release, 9 Nov 2005.

⁶⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.1, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Drago Nikolić's Motion for Provisional Release, 24 Jan 2006.

⁷⁰ Defence Application for Provisional Release of the Accused Ljubomir Borovčanin with Annexes I, II, III and V, and Confidential Annex IV, partly confidential, 2 Mar 2006.

⁷¹ Decision on Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006.

⁷² *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.2, Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006.

⁷³ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, General Gvero's Motion for Provisional Release, 5 Apr 2005; *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Request for Provisional Release by General Miletić, partially confidential, 25 Apr 2005 (French original), 4 May 2005 (English translation).

⁷⁴ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Milan Gvero, 19 July 2005, para. 19; *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005, para. 19.

⁷⁵ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-AR65.1, Prosecution's Consolidated Appeal from the Trial Chamber's Decision Granting Provisional Release to Radivoje Miletić and Milan Gvero, 22 Aug 2005.

⁷⁶ *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decisions granting Provisional Release, 19 Oct 2005.

⁷⁷ Order Suspending Provisional Release, 6 June 2006.

⁷⁸ Decision on Joint Defence Motion for Variation of the Order suspending Provisional Release issued on 6 June 2006, 20 June 2006.

⁷⁹ Joint Defence Urgent Submission by the Accused Radivoje Miletić and Milan Gvero, confidential, 11 July 2006.

⁸⁰ Decision on Joint Motion of the Accused Miletić and Gvero for Temporary Provisional Release from 15 July 2006 until the Continuation of Trial, 13 July 2006.

13. **Pandurević** applied for provisional release on 3 June 2005.⁸¹ The Trial Chamber denied the motion on 18 July 2005.⁸² **Pandurević** submitted another motion on 30 January 2006 for release until the beginning of the trial phase of proceedings,⁸³ which was also denied.⁸⁴

7. Assignment of a Bench

14. On 30 June 2006, by order of the President, Judge Agius (Malta, Presiding Judge), Judge Kwon (Republic of Korea), and Judge Prost (Canada) were appointed to the case.⁸⁵ Judge Støle (Norway) was assigned as a reserve judge.⁸⁶

B. Trial Proceedings

1. The Prosecution Case

15. The case for the Prosecution commenced on 21 August 2006⁸⁷ and concluded on 7 February 2008.⁸⁸ The Prosecution adduced evidence from 182 witnesses in total.⁸⁹ Ninety-five witnesses testified *viva voce*. 52 witnesses gave evidence pursuant to Rule 92 *ter*. Twelve expert witnesses testified either *viva voce* or under Rule 92 *ter*.⁹⁰ Five witnesses were subpoenaed pursuant to Rule 54.⁹¹ Two witnesses testified by video-conference link.⁹² Sixty-four *viva voce* and 92 *ter* witnesses were granted protective measures. The Trial Chamber admitted the evidence of 31 witnesses pursuant to Rule 92 *bis*, of whom seven were granted protective measures, and four witnesses pursuant to Rule 92 *quater*. During the Prosecution case, the Trial Chamber granted leave to the Accused to call a joint Defence intercept expert witness.⁹³

16. A total of 2,906 Prosecution exhibits were admitted into evidence.

⁸¹ *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Application for Provisional Release, 3 June 2005.

⁸² *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Vinko Pandurević's Application for Provisional Release, 18 July 2005.

⁸³ Vinko Pandurević's Request for Provisional Release Until the Beginning of the Trial Phase of the Proceedings & Annex A, 30 Jan 2006.

⁸⁴ Decision on Pandurević's Renewed Motion for Provisional Release, 6 June 2006.

⁸⁵ Order assigning Judges to a case before a Trial Chamber, 30 June 2006.

⁸⁶ Order Assigning a Reserve Judge to a Case Before a Trial Chamber, 23 Aug 2006.

⁸⁷ Opening Statement, T. 382 (21 Aug 2006).

⁸⁸ T. 21222–21223 (7 Feb 2008).

⁸⁹ The number includes reopening and rebuttal witnesses called by the Prosecution.

⁹⁰ Among the expert witnesses, Smith and Bulter gave evidence as partially expert witnesses. *See also infra*, paras. 48–52.

⁹¹ Decision on Prosecution Motion for Subpoena, 18 Jan 2007; Decision on Prosecution Motion for Subpoena, 19 Jan 2007; Decision on Prosecution's Motion for Issuance of a Subpoena, 21 Aug 2007; Decision on Prosecution's Motion for Issuance of a Subpoena, 21 Aug 2007; Decision on Prosecution Motion for Subpoena of Dragan Jokić and Decision on Protective Measures, confidential, 29 Aug 2007.

⁹² Decision on Prosecution's confidential motion for testimony of witness 88 to be heard via video link, confidential, 26 June 2007; Decision on Prosecution motion requesting video-conference link testimony of witness 167 and Protective Measures, 23 Aug 2007.

2. Judgement of Acquittal

17. After the closing of the Prosecution case, on 14 and 15 February 2008, six of the Accused made oral submissions for acquittal under Rule 98 *bis*. **Popović** did not make a submission under Rule 98 *bis*.⁹⁴ The Prosecution responded orally to the Accused's submissions on 15 and 18 February 2008.⁹⁵ On 3 March 2008, the Trial Chamber gave an oral decision dismissing the Accused's motions in all respects. In its decision, the Trial Chamber held that there was sufficient evidence on all counts in relation to each of the Accused to support a possible conviction.⁹⁶ Following the decision, the Trial Chamber noted the Prosecution submission made on 18 February 2008, in which the Prosecution conceded that no evidence was adduced in support of the allegations contained in paragraph 31.1.b. and 31.1.c of the Indictment.⁹⁷ Therefore, the Trial Chamber noted that the Accused would not need to address these two allegations.⁹⁸

18. On 10 March 2008, **Nikolić** filed a motion for certification to appeal the Rule 98 *bis* Decision.⁹⁹ The Trial Chamber denied the motion.¹⁰⁰

3. The Defence Cases

19. The Defence cases started with the case for **Popović**, which commenced on 2 June 2008¹⁰¹ and concluded on 8 July 2008.¹⁰² **Popović** adduced evidence from 28 witnesses in total.¹⁰³ Twenty witnesses testified *viva voce*, of whom three were joint witnesses and three were expert witnesses. Two witnesses testified by video-conference link.¹⁰⁴ The Trial Chamber admitted the evidence of ten witnesses pursuant to 92 *bis*.¹⁰⁵

20. The case for **Beara** commenced on 10 July 2008¹⁰⁶ and concluded on 11 September 2008.¹⁰⁷ **Beara** adduced evidence from 45 witnesses in total. Twenty-five witnesses testified *viva voce*, of whom six were expert witnesses and two were joint witnesses, including one joint expert witness.

⁹³ T. 9857–9858 (2 Apr 2007). Đuro Rodić, a joint Defence intercept expert, gave evidence on 24 May and 12 June 2007. T. 12059–12130 (24 May 2007), T. 12452–12525 (12 June 2007).

⁹⁴ T. 21302 (14 Feb 2008).

⁹⁵ T. 21383–21389 (15 Feb 2008), T. 21392–21457 (18 Feb 2008).

⁹⁶ T. 21461–21473 (3 Mar 2008).

⁹⁷ Prosecution Submission Concerning Paragraphs 31.1b and 31.1c of the Indictment, 15 Feb 2008.

⁹⁸ T. 21473 (3 Mar 2008).

⁹⁹ Defence Motion on Behalf of Drago Nikolić seeking Certification of the Trial Chamber Rule 98 *bis* Decision, 10 Mar 2008.

¹⁰⁰ Decision on Motion for Certification of 98 *bis* Decision, 15 Apr 2008.

¹⁰¹ T. 21555 (2 June 2008).

¹⁰² T. 23508 (8 July 2008). *See also* T. 23515 (10 July 2008).

¹⁰³ The number includes one witness called by **Popović** after the case was reopened.

¹⁰⁴ Decision on Popović's Motion Requesting Video-Conference Link Testimony of Two Witnesses, 29 May 2008.

¹⁰⁵ The witnesses include Oliver Stojković, Dušan Đunjić and Đuro Rodić.

¹⁰⁶ T. 23515 (10 July 2008).

¹⁰⁷ T. 25648 (11 Sept 2008).

Two witnesses gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of 18 witnesses pursuant to Rule 92 *bis*.

21. The case for **Nikolić** commenced on 15 September 2008¹⁰⁸ and concluded on 2 October 2008.¹⁰⁹ **Nikolić** adduced evidence from 27 witnesses in total.¹¹⁰ Fourteen witnesses testified *viva voce*, of whom four were expert witnesses, including three joint expert witnesses. One of the *viva voce* witnesses was granted protective measures. Eight witnesses gave evidence pursuant to 92 *ter*, of whom two testified by video-conference link.¹¹¹ The Trial Chamber admitted the evidence of four witnesses pursuant to Rule 92 *bis* and one pursuant to Rule 92 *quater*.

22. The case for **Borovčanin** commenced on 6 October 2008¹¹² and concluded on 13 November 2008.¹¹³ **Borovčanin** adduced evidence from 15 witnesses in total. Eleven witnesses testified *viva voce*, of whom four were expert witnesses, including one joint expert witness. One witness gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of three witnesses pursuant to Rule 92 *bis*.

23. The case for **Miletić** commenced on 12 November 2008¹¹⁴ and concluded on 22 January 2009.¹¹⁵ **Miletić** adduced evidence from 17 witnesses in total. Fourteen witnesses testified *viva voce*, of whom three were joint witnesses and one was an expert witness. Two witnesses gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of one witness pursuant to Rule 92 *bis*.

24. **Gvero** made an opening statement prior to the start of the Prosecution case.¹¹⁶ **Gvero** initially did not call any evidence in his case-in-chief and he made an opening statement only.¹¹⁷ **Gvero** later filed a request to reopen his case, which was granted.¹¹⁸ Subsequently, four witnesses testified *viva voce*. The Trial Chamber admitted evidence of one witness pursuant to Rule 92 *quater*.¹¹⁹

¹⁰⁸ T. 25653 (15 Sept 2008).

¹⁰⁹ T. 26633 (2 Oct 2008).

¹¹⁰ The number includes one reopening witness and one witness who previously testified for the Prosecution.

¹¹¹ The Trial Chamber orally granted **Nikolić**'s motion for the testimony of the two witnesses by video-conference link. T. 25751–25752 (16 Sept 2008).

¹¹² T. 26636 (6 Oct 2008).

¹¹³ T. 28124 (13 Nov 2008).

¹¹⁴ T. 28173 (13 Nov 2008).

¹¹⁵ T. 30590 (22 Jan 2008).

¹¹⁶ T. 610–617 (23 Aug 2006).

¹¹⁷ T. 30600–30611 (26 Jan 2009).

¹¹⁸ See *infra*, para. 35.

¹¹⁹ Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*, 3 Feb 2009.

25. The case for **Pandurević** commenced on 27 January 2009¹²⁰ and concluded on 12 March 2009.¹²¹ **Pandurević** adduced evidence from nine witnesses in total. Five witnesses, including **Pandurević**, testified *viva voce*, of whom three were joint witnesses and one was an expert witness. One witness gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of three witnesses pursuant to Rule 92 *bis*. The Trial Chamber granted **Pandurević**'s request for access to his counsel, subject to the limitation that any attorney-client communications during cross-examination or re-examination could not cover the substance of the testimony given in examination-in-chief.¹²²

26. A total of 2,474 Accused exhibits were admitted into evidence.

4. The Chamber Witness

27. On 10 March 2009, the Trial Chamber issued an order to summon Momir Nikolić¹²³ to testify as a Chamber witness pursuant to Rule 98, instructing that his testimony would proceed pursuant to Rule 92 *ter*.¹²⁴ Momir Nikolić gave evidence between 21 and 28 April 2009.¹²⁵ A total of three Chamber's exhibits were admitted with his own evidence.

5. Rebuttal and Reopening

28. On 7 April 2008, the Prosecution filed a motion seeking to reopen its case against **Popović** and to admit evidence from three witnesses along with 10 related documents.¹²⁶ On 9 May 2008, the Trial Chamber granted the motion.¹²⁷ On 27 May 2008, the Trial Chamber granted **Popović**'s request for certification to appeal the decision.¹²⁸ On 24 September 2008, the Appeals Chamber dismissed **Popović**'s appeal against the Trial Chamber decision on 9 May 2008.¹²⁹ Subsequently,

¹²⁰ T. 30644 (27 Jan 2009).

¹²¹ T. 32690 (12 Mar 2009).

¹²² T. 30638 (26 Jan 2009).

¹²³ Momir Nikolić originally appeared on the Prosecution's Rule 65 *ter* Witness List in the present case, but was withdrawn by the Prosecution on 2 November 2007. T. 17398 (2 Nov 2007).

¹²⁴ Order to Summon Momir Nikolić, 10 Mar 2009. The Trial Chamber also ordered Momir Nikolić to review his Statement of Facts which was attached to his plea agreement with the Prosecution and provide the Trial Chamber with a written statement confirming his Statement of Facts or indicating, with an explanation, any specific parts of his Statement of Facts he no longer agrees to ("Further Statement"); and ordered him to attest that his Statement of Facts and Further Statement accurately reflect what he would say if examined. *Ibid.*, pp. 2–3.

¹²⁵ T. 32895–T. 33364 (21–28 Apr 2009).

¹²⁶ Motion to Reopen the Prosecution Case, With Two Appendices, confidential, 7 Apr 2008. The Prosecution further requested the Trial Chamber to issue an order forbidding the release of the substance of the interviews, or names of the witnesses in question without approval of the Trial Chamber. The Trial Chamber granted this request. Order on the Motion to Reopen the Prosecution Case, 8 Apr 2008.

¹²⁷ Decision on Motion to reopen the Prosecution Case, 9 May 2008.

¹²⁸ Decision on Popović's Motion for Certification of Decision on the Motion to Reopen the Prosecution Case, 27 May 2008.

¹²⁹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.5, Decision on Vujadin Popović's Interlocutory Appeal against the Decision on the Prosecution's Motion to Reopen its Case-In-Chief, 24 Sept 2008.

these witnesses, one of whom was subpoenaed, testified on 10, 11 and 25 March 2009.¹³⁰ On 2 March 2009, the Prosecution sought leave to introduce rebuttal evidence from six witnesses and requested once more to reopen its case to lead *viva voce* evidence from two witnesses.¹³¹ The Prosecution also sought to introduce supporting documentary evidence in both rebuttal and in reopening.¹³² The Trial Chamber rendered a decision on 18 March 2009 and a further decision on 27 March 2009,¹³³ granting the motion in part and permitting the Prosecution to call two rebuttal witnesses¹³⁴ and two witnesses for the purpose of reopening its case.¹³⁵ The Trial Chamber further permitted admission of some documents supporting the evidence of one witness. **Nikolić's** request for certification to appeal the decision on 18 March 2008 was denied.¹³⁶ The four Prosecution witnesses gave evidence on 23 March, 1, 4–5, 29 April 2009.

29. On 23 April 2009, the Prosecution filed another motion to reopen its case and/or admit evidence in rebuttal, seeking leave to tender three videos and Mladić's notebook which the Prosecution obtained after the close of its case.¹³⁷ In its decision issued on 8 May 2009, the Trial Chamber granted the Prosecution motion in part, allowing the admission into evidence of the three videos but denying the request for admission of the notebook.¹³⁸ The Trial Chamber denied requests for certification to appeal the decision filed by **Gvero** and **Popović**, respectively.¹³⁹

30. On 16 December 2009, the Prosecution filed another motion seeking leave to reopen its case for the purpose of entering two documents into evidence in order to answer a query of the Trial Chamber.¹⁴⁰ On 26 January 2010, the Trial Chamber granted the motion in part.¹⁴¹

¹³⁰ Two of these witnesses were granted protective measures. T. 32562 (10 Mar 2009), T. 32777 (25 Mar 2009).

¹³¹ Prosecution's Motion to Admit Evidence in Rebuttal Under Rule 85(A) and to Reopen its Case with Appendices A-G, confidential, 2 Mar 2009.

¹³² Prosecution's Motion to Admit Evidence in Rebuttal Under Rule 85(A) and to Reopen its Case with Appendices A-G, confidential, 2 Mar 2009, paras. 9–11.

¹³³ Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen its Case, confidential, 18 Mar 2009; Further Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 27 Mar 2009.

¹³⁴ Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 18 Mar 2009.

¹³⁵ Further Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 27 Mar 2009.

¹³⁶ Decision on **Nikolić** Expedited Motion for Certification of the Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 20 Mar 2009.

¹³⁷ Prosecution's Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal Under Rule 85(A), confidential, 27 Mar 2009.

¹³⁸ Decision on Prosecution Second Motion to Reopen its Case And/Or Admit Evidence in Rebuttal, confidential, 8 May 2009.

¹³⁹ Decision on **Gvero** Motion Seeking Certification to Appeal the Decision on the Prosecution's Second Motion to Reopen its case, 3 June 2009; Decision on **Popović** Request for Certification to Appeal the Decision on the Prosecution Second Motion to Reopen its Case, confidential, 3 June 2009.

¹⁴⁰ Prosecution's Motion Seeking Leave to Reopen its Case, 16 Dec 2009.

¹⁴¹ Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010.

31. As a result of the Prosecution's first reopening, **Popović** sought leave to reopen his case in order to call four witnesses and to call two other witnesses to rebut evidence led by the Prosecution during its reopened case.¹⁴² On 14 May 2008, the Trial Chamber issued a decision permitting the *viva voce* testimony of one witness in order to rebut evidence given by Chamber's witness Momir Nikolić.¹⁴³ On 9 June 2008, the Trial Chamber issued a further decision, permitting four witnesses to be called pursuant to Rule 92 *ter* and admitting the evidence of one expert witness.¹⁴⁴ On 12 May 2009, a subpoena was issued for Svetozar Kosoric,¹⁴⁵ who testified on 30 June 2009. On 22 July 2009, the Trial Chamber denied a new **Popović** motion to reopen his case.¹⁴⁶

32. Following the Trial Chamber's decision which denied his motion requesting the Trial Chamber to exercise its discretionary powers to call a witness pursuant to Rule 98,¹⁴⁷ **Nikolić** filed a motion requesting the Trial Chamber to issue a subpoena for Sreten Milošević to give evidence before the Tribunal.¹⁴⁸ The Trial Chamber granted the motion.¹⁴⁹ As a reopening witness for **Nikolić**, Milošević gave *viva voce* evidence on 15 July 2009.¹⁵⁰

33. On 1 April 2009, **Miletić** sought leave to reopen his case to admit evidence he had obtained after the completion of his case.¹⁵¹ Additionally, **Miletić** sought another month to consider whether he wished to present further evidence following the Prosecution's introduction of new evidence during its reopening.¹⁵² The Trial Chamber granted the motion in part.¹⁵³ The Trial Chamber also permitted **Miletić** one week from the date of its decision to determine whether he wished to present further evidence, if any, to rebut evidence led by the Prosecution during its reopening.¹⁵⁴

¹⁴² Vujadin Popović's Motion to Call Witnesses, With Annexes, confidential, 27 Apr 2009; Vujadin Popović's Addendum to the Motion to Call Witnesses, confidential, 1 May 2009.

¹⁴³ Partial Decision on Popović's Motion to Call Witnesses, confidential, 14 May 2009.

¹⁴⁴ Further Decision on Popović Motion to Call Witnesses, confidential, 9 June 2009.

¹⁴⁵ Decision on Vujadin Popović's Request for a Subpoena *ad Testificandum*, 14 May 2009.

¹⁴⁶ Vujadin Popović's Motion to Reopen his Case, With Confidential Annexes, partly confidential, 10 July 2009.

¹⁴⁷ Decision on Nikolić Motion Requesting the Trial Chamber to Exercise its Discretion Pursuant to Rule 98, 15 June 2009.

¹⁴⁸ Expedited Motion on behalf of Drago Nikolić Requesting the Trial Chamber to Issue a *Subpoena Duces Tecum*", 18 June 2009.

¹⁴⁹ Decision on the Expedited Motion on Behalf of Drago Nikolić Requesting the Trial Chamber to Issue a *Subpoena Duces Tecum*, 24 June 2009.

¹⁵⁰ Sreten Milošević, T. 33953–34040 (15 July 2009).

¹⁵¹ General Miletić's Motion to Reopen the Defence Case, confidential, 1 Apr 2009 (French original), 7 Apr 2009 (English translation).

¹⁵² General Miletić's Motion to Reopen the Defence Case, confidential, 1 Apr 2009 (French original), 7 Apr 2009 (English translation).

¹⁵³ Decision on General Miletić's Motion to Reopen the Defence Case, confidential, 23 Apr 2009.

¹⁵⁴ Decision on General Miletić's Motion to Reopen the Defence Case, confidential, 23 Apr 2009. On the same day the Trial Chamber also granted another motion sought by Miletić, seeking protection of the documentary evidence it had sought to tender pursuant to 92 *bis*. Decision on General Miletić's Motion for the Application of Rule 70 and for Protective Measures, confidential, 23 Apr 2009.

34. On 28 April 2009, **Miletić** again sought to reopen his case to introduce video evidence.¹⁵⁵ The Trial Chamber granted the motion.¹⁵⁶ On 18 May 2009, **Miletić** also requested, pursuant to Rule 92 *bis*, the admission into evidence of statement made by a protected witness.¹⁵⁷ The statement was admitted.¹⁵⁸ On 22 July 2009, the Trial Chamber denied **Miletić**'s third motion to reopen his case.¹⁵⁹

35. On 12 June 2009, **Gvero** filed a motion seeking four Prosecution witnesses to be re-called and the reopening of his case to present additional witnesses to rebut evidence presented during the Prosecution's second reopening.¹⁶⁰ In its decision on 15 June 2009, the Trial Chamber denied the request to recall the Prosecution witnesses.¹⁶¹ In its further decision on 24 June 2009, the Trial Chamber permitted **Gvero** to reopen his case and to call five of the six witnesses requested.¹⁶² On 26 June 2009, the Trial Chamber denied a **Gvero** motion seeking reconsideration from the Trial Chamber of its decision on 15 June 2009.¹⁶³ **Gvero** called four of these witnesses on 2 and 3 July 2009.¹⁶⁴

6. Final Briefs and Closing Arguments

36. The Prosecution and all Accused filed their final briefs on 30 July 2009.¹⁶⁵ The Prosecution made its closing argument between 2 and 7 September 2009.¹⁶⁶ **Popović** made his closing argument

¹⁵⁵ General Miletić's Second Motion to Reopen the Defence Case, confidential, 28 Apr 2009 (French original), 7 May 2009 (English translation).

¹⁵⁶ Decision on General Miletić's Second Motion to Reopen the Defence Case, confidential, 15 May 2009.

¹⁵⁷ General Miletić's Motion to Admit a Written Statement Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, confidential, 18 May 2009 (French original), 28 May 2009 (English translation).

¹⁵⁸ Decision on General Miletić's Motion to Admit a Written Statement Pursuant to Rule 92 *bis*, confidential, 9 June 2009.

¹⁵⁹ Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, 22 July 2009.

¹⁶⁰ Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-Opening of Milan Gvero's Case, 12 June 2009.

¹⁶¹ Partial Decision on Gvero Motion Seeking the Recall of Certain Prosecution Witnesses and the Reopening of the Case, 15 June 2009.

¹⁶² Further Decision on Gvero Motion Seeking to Recall Prosecution Witnesses and to Reopen the Case, confidential, 24 June 2009, p. 2. The Trial Chamber denied **Gvero**'s request to call Zdravko Tolimir on the basis that this was opposed by the Prosecution because it would involve core factual issues that would bear directly on the criminal involvement of the Accused. *Ibid.*, pp. 2–3.

¹⁶³ Decision on Motion on behalf of Milan Gvero seeking Reconsideration and, in the Alternative, Certification, 26 June 2009.

¹⁶⁴ One witness was granted protective measures, T. 33831 (2 Jul 2009).

¹⁶⁵ Prosecution Filing of Final Trial Brief Pursuant to Rule 65ter (E), confidential, 30 July 2009; Vujadin Popović's Final Brief, confidential, 30 July 2009; Defendant, Ljubiša Beara's Final Trial Brief, confidential, 30 July 2009; Final Trial Brief On Behalf of Drago Nikolić, confidential, 30 July 2009; Ljubomir Borovčanin's Final Trial Brief, public with a confidential annex, 30 July 2009; Final Trial Brief of The Defence For General Miletić, confidential, 30 July 2009 (French original), 24 Aug 2009 (English translation); Final Brief on Behalf of Milan Gvero, confidential, 30 July 2009; Defence Final Trial Brief on Behalf of Vinko Pandurević, confidential, 30 July 2009; Filing of Pandurević Defence Final Trial Brief with Paragraph Numbers, confidential, 2 Sept 2009. The Prosecution filed a public redacted version of the sentencing section of its final brief. Prosecution's Motion to File a Public Redacted Version of Chapter XIV (Sentencing) of the Prosecution Final Trial Brief, public with confidential appendix, 4 Sept 2009. The Prosecution and a few Accused file corrigenda to their final briefs: Corrigendum to the Prosecution Final Brief, 2 Sept 2009; Second Corrigendum to the Prosecution Final Trial Brief,

on 7 September 2009,¹⁶⁷ followed by **Beara** on 8 September 2009,¹⁶⁸ **Nikolić** on 8 and 9 September 2009,¹⁶⁹ **Borovčanin** on 9 and 10 September 2009,¹⁷⁰ **Miletić** on 10 and 11 September 2009,¹⁷¹ **Gvero** on 11 September 2009¹⁷² and **Pandurević** on 14 September 2009.¹⁷³ **Nikolić** and **Gvero** made a respective statement at the closing arguments.¹⁷⁴

7. Agreed Facts, Stipulations, and Adjudicated Facts

37. On 5 May 2006, the Prosecution filed a motion requesting the Trial Chamber to take judicial notice pursuant to Rule 94(B) of 534 facts adjudicated in the *Krstić* Trial Judgement of November 2001, the *Krstić* Appeal Judgement of April 2004, and the *Blagojević and Jokić* Trial Judgement of January 2005.¹⁷⁵ The Trial Chamber granted the motion in part, taking judicial notice of 288 adjudicated facts.¹⁷⁶ Subsequently, **Popović** and **Nikolić** filed motions seeking certification to appeal the decision pursuant to Rule 73 (B).¹⁷⁷ The Trial Chamber denied the request.¹⁷⁸

38. On 1 May 2008, **Popović** filed a motion requesting the Trial Chamber to take judicial notice pursuant to Rule 94 (B) of 66 facts adjudicated in the *Krajišnik* Trial Judgement and the *Orić* Trial.¹⁷⁹ The Trial Chamber granted the motion in part, taking judicial notice of 50 adjudicated facts.¹⁸⁰

39. A number of “Stipulations” between the Parties were admitted into the record during the course of trial.¹⁸¹

1 Oct 2009; Vujadin Popović’s Corrigendum to his Final Brief, confidential, 7 Sept 2009; Corrigendum to Final Trial Brief on behalf of Drago Nikolić, 15 Sept 2009; Borovčanin Defence Corrigendum to its Final Trial Brief, confidential, 4 Sept 2009. **Borovčanin** filed a response to the Prosecution’s corrigendum. Borovčanin Response to ‘Second Corrigendum to the Prosecution Final Trial Brief’, 15 Oct 2009. On 23 April 2010, **Borovčanin** filed his public and corrected final brief. Ljubomir Borovčanin’s Public and Corrected Final Trial Brief, 23 Apr 2010.

¹⁶⁶ T. 34043–34322 (2–7 Sept 2009).

¹⁶⁷ T. 34322–34400 (7 Sept 2009).

¹⁶⁸ T. 34409–34466 (8 Sept 2009).

¹⁶⁹ T. 34466–34551 (8–9 Sept 2009).

¹⁷⁰ T. 34551–34605 (9–10 Sept 2009).

¹⁷¹ T. 34606–34675 (10–11 Sept 2009).

¹⁷² T. 34676–34743 (11 Sept 2009).

¹⁷³ T. 34745–34835 (14 Sept 2009).

¹⁷⁴ T. 34896–34911 (15 Sept 2009).

¹⁷⁵ Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 5 May 2006.

¹⁷⁶ Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 Sept 2006.

¹⁷⁷ Defence Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 2 Oct 2006; Motion on behalf of Drago Nikolić Joining the Popović Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 3 Oct 2006.

¹⁷⁸ Decision on Defence Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 20 Oct 2006.

¹⁷⁹ Vujadin Popović’s Motion for Judicial Notice of Adjudicated Facts, 1 May 2008.

¹⁸⁰ Decision on Popović’s Motion for Judicial Notice of Adjudicated Facts with annex, 2 June 2008.

¹⁸¹ Stipulations Between the Office of the Prosecution and the Accused Ljubisa Beara Regarding the Testimony of Dražen Erdemović, 7 May 2007; Stipulations Between the Office of the Prosecutor and the Accused Vujadin Popović Regarding the Testimony of Dražen Erdemovic, 14 May 2007; Stipulation Between Representatives of the

40. On 21 July 2006, the Prosecution filed a motion for judicial notice of facts of common knowledge pursuant to Rule 94(A), requesting the Trial Chamber to take judicial notice of a proposed fact.¹⁸² On 26 September 2006, the Trial Chamber denied the motion.¹⁸³

8. Contempt Proceedings

41. Dragan Jokić, who at the time was serving a nine-year prison sentence for his conviction entered by this Tribunal on 17 January 2005 in the *Blagojević* and *Jokić* case, was subpoenaed on 29 August 2007 to give oral testimony in this case.¹⁸⁴ On 31 October 2007, upon being asked to take the solemn declaration, Jokić claimed he was unable to testify.¹⁸⁵ The Trial Chamber instructed Jokić to provide a confidential and *ex parte* filing justifying his alleged inability to testify,¹⁸⁶ which he filed later that same day.¹⁸⁷ On 1 November 2007, the Trial Chamber decided that nothing in the filing justified Jokić's refusal to testify.¹⁸⁸ As a result of Jokić's continuing refusal to testify,¹⁸⁹ the Trial Chamber found sufficient grounds to initiate proceedings against him for contempt of the Tribunal.¹⁹⁰ Pursuant to Rule 77(D)(ii) it decided to prosecute the matter itself.¹⁹¹

Office of the Prosecutor and the Accused Drago Nikolić Regarding the Testimony of Dražen Erdemović, 15 May 2007; Ex. 3D00585 (confidential); Stipulation between the Office of the Prosecutor and the Accused Radivoje Miletić Concerning Convoy-related Documents with Appendix, 2 June 2009. During the proceedings on 7 February 2008, three stipulations were admitted: a stipulation on the admission of the so-called "Scorpions video"; a stipulation on the admission of still images during the Borovčanin interview; and a stipulation with regard to Ahmo Hasić's description of the school where he was held in Bratunac, T. 21188–21191 (7 Feb 2008); Ex. P03248, "Stipulation: Statement of Agreed Facts Concerning the Execution Video showing the Killing of Six Bosnian Muslim Men near Trnovo"; Ex. P03246, "Borovčanin Interview Book of Still Images with Stipulation". During the proceedings on 26 January 2009, the Prosecution and Gvero notified their stipulation concerning Thomas Dobb, T. 30599–30600 (26 Jan 2009); Ex. 6D00337, "Stipulation made by Gvero and the Prosecution regarding Thomas Dobb". Stipulations related to the Trivić diary were admitted on 26 January 2010 in the "Decision on Prosecution Motion to reopen its case", Ex. 7D01240, "Stipulations between the Prosecution and the Defence concerning the Diary of Mirko Trivić".

¹⁸² Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 21 July 2006. The proposed fact reads: "Starting in April 1992 and until 16 April 1993, Bosnian Serb political and military leaders implemented a plan to link Serb-populated areas in Bosnia and Herzegovina together, to gain control over these areas and to create a separate Bosnian Serb state from which most non-Serbs would be permanently removed. This plan involved the forced movement of many Bosnian Muslims from their homes via a pattern of conduct commonly referred to as 'ethnic cleansing'". *Ibid.*, p.1.

¹⁸³ Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 26 Sept 2006 (noting that the judicial and documentary record provided by the Prosecution was not sufficient to establish that the proposed fact was notorious and commonly accepted).

¹⁸⁴ Decision on Prosecution Motion for Subpoena of Dragan Jokić and Decision on Protective Measures, confidential, 29 Aug 2007; Order, confidential and *ex parte*, 29 Aug 2007; Order, confidential and *ex parte*, 26 Oct 2007.

¹⁸⁵ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17245–17247, 17254, 17268 (closed session) (31 Oct 2007).

¹⁸⁶ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17263–17264 (closed session) (31 Oct 2007).

¹⁸⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Submission by Dragan Jokić Presenting Grounds to Justify His Refusal to Respond to the Summons to Appear before the Court, confidential and *ex parte*, 31 Oct 2007 (French original), 2 Nov 2007 (English translation).

¹⁸⁸ T. 17274 (closed session) (1 Nov 2007).

¹⁸⁹ T. 17274–17275, 17279 (partly in closed session) (1 Nov 2007).

¹⁹⁰ Upon being called Jokić refused to give a solemn declaration to allow the Trial Chamber to assess his fitness, T. 17244–17247 (closed session) (31 Oct 2007). After session Jokić lodged a submission detailing why he was unable to give evidence. Submission by Dragan Jokić Presenting Grounds to Justify His Refusal to Respond to the Summons to Appear before The Court, confidential and *ex parte*, 31 Oct 2007 (French original), 2 Nov 2007

42. The contempt case against Jokić was held on 19 November 2007, 10 December 2007 and 15 December 2008.¹⁹² Jokić pleaded not guilty.¹⁹³ On 27 March 2009, the Trial Chamber issued its Judgement, in which it found that Jokić, by persistently refusing to testify without a reasonable excuse in this case while being a witness before the court, knowingly and wilfully interfered with the Tribunal's administration of justice.¹⁹⁴ Jokić was sentenced to four months imprisonment, to be served consecutively with the sentence he was already serving.¹⁹⁵

43. On 14 April 2009, Jokić filed an appeal against the Trial Chamber Judgement.¹⁹⁶ On 25 June 2009, the Appeals Chamber upheld the Trial Chamber's Judgment.¹⁹⁷

9. Evidentiary Matters

(a) Borovčanin Statement

44. On 6 July 2007, the Prosecution filed a confidential motion seeking to amend its Rule 65 *ter* Exhibit List to add documents pertaining to the Borovčanin Statement and admit them into evidence.¹⁹⁸ On 25 October 2007, the Trial Chamber admitted Borovčanin Statement as evidence against him.¹⁹⁹ With regard to the use of Borovčanin Statement against the co-Accused, the Trial Chamber concluded, by majority with Judge Prost partially dissenting, that unless **Borovčanin** was able to be cross-examined the interview could not be used as evidence of the acts and conduct of his co-accused.²⁰⁰ The Trial Chamber granted the parties certification to appeal the decision.²⁰¹

(English translation). On resumption of proceedings the following day the Trial Chamber rejected Jokić's submission as providing any basis for not giving evidence. T. 17275 (1 Nov 2007).

¹⁹¹ See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17279–17281 (1 Nov 2007).

¹⁹² Scheduling Order, 9 Nov 2007; *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, T. 1–7 (19 Nov 2007), T. 1–63 (partly in closed session) (10 Dec 2007), T. 1–70 (partially in closed session) (15 Dec 2008).

¹⁹³ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, T. 2 (19 Nov 2007).

¹⁹⁴ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 Mar 2009, para. 37.

¹⁹⁵ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 Mar 2009, para. 42.

¹⁹⁶ Notice of Appeal Filed by Dragan Jokić Against the Trial Judgement, confidential, 14 Apr 2009 (French original), 21 Apr 2009 (English translation).

¹⁹⁷ *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 25 June 2009.

¹⁹⁸ Prosecution's Motion for Leave to Amend 65 *ter* Exhibit List with 18 Exhibits Pertaining to Alistar Graham, confidential, 6 July 2007; Motion for Leave to Supplement Prosecution's 6 July 2007 65 *ter* Motion, 12 July 2007; Corrigendum to Prosecution's 6 July 2007 and 12 July 2007 Motions seeking leave to Amend 65 *ter* Exhibit List, 13 July 2007.

¹⁹⁹ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007.

²⁰⁰ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007, Partial Dissenting Opinion of Judge Kimberly Prost.

²⁰¹ Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007.

45. The Appeals Chamber reversed the Trial Chamber's decision on the admissibility of the Borovčanin Statement against the co-Accused.²⁰² On 18 January 2008, the Trial Chamber admitted the Borovčanin Statement for all purposes.²⁰³

(b) Documentary Evidence Admitted from the Bar Table

46. On 14 March 2008, the Trial Chamber granted a motion by the Prosecution for admission of documents from the Bar Table.²⁰⁴ On 12 May 2009, the Trial Chamber granted in part a motion by **Nikolić** seeking to admit documents from the Bar Table.²⁰⁵

47. Between June and July 2009, **Popović**, **Gvero** and the Prosecution filed motions seeking to admit further documentary evidence from the Bar Table.²⁰⁶ The Trial Chamber denied these Motions.²⁰⁷ **Popović** sought certification to appeal this decision,²⁰⁸ and **Gvero** requested the Trial Chamber to either reconsider its decision, or to allow certification to appeal.²⁰⁹ On 30 July 2009, the Trial Chamber reconsidered its decision, granted **Popović** and **Gvero**'s requests in part and admitted some of the proposed evidence.²¹⁰

(c) Expert Witnesses

48. In this case, the Trial Chamber received evidence of 12 expert witnesses called by the Prosecution and 17 expert witnesses called by the Accused. The Trial Chamber hereby notes a few specific issues that arose with regard to expert witnesses.

²⁰² *Prosecutor v. Popović et al.*, Case No IT-05-88-AR73.1, Decision on Appeals against Decision admitting Material Related to Borovčanin's Questioning, 14 Dec 2007. The Appeals Chamber dismissed the motions by the Accused and allowed the Prosecution's motion in the part relating to the admissibility of the evidence.

²⁰³ T. 19993 (18 Jan 2008).

²⁰⁴ Decision on Prosecution's Motion for Admission of Exhibits from the Bar Table, Motion to Amend the Bar Table Motion, and Oral Motion for Admission of Additional Exhibit, 14 Mar 2008.

²⁰⁵ Decision on Nikolić Bar Table Motion, confidential, 12 May 2009.

²⁰⁶ Vujadin Popović's Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, with confidential annexes, partially confidential, 23 June 2009; Vujadin Popović's Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, partially confidential, 25 June 2009; Vujadin Popović's Further Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, confidential, 29 June 2009; Motion on Behalf of Milan Gvero Seeking the Admission of Five Documents from the Bar Table, 9 July 2009; Prosecution's Motion for Admission of Exhibits from the Bar Table with confidential appendix, confidential, 10 July 2009.

²⁰⁷ Consolidated Decision on the Motions for the Admission of Evidence and Other Related Motions, 22 July 2009.

²⁰⁸ Vujadin Popović's Request for Clarification of the 'Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions' and for Certification to Appeal", 24 July 2009.

²⁰⁹ Motion on behalf of Milan Gvero seeking Reconsideration of the Trial Chamber's Refusal to Allow the Admission of Documents from the Bar Table and, in the Alternative, Certification of the Same, 24 July 2009.

²¹⁰ Decision on Gvero's and Popović's Motions Regarding Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, confidential, 30 July 2009.

49. On 9 June 2006, the Prosecution filed a notice of Richard Butler's military reports.²¹¹ **Popović, Nikolić, Pandurević** and **Beara** filed motions opposing the admission of this report and objecting to Butler's status as an expert military analyst witness.²¹² On 31 October 2006, the Prosecution confidentially disclosed five additional reports by Butler which were included in the Prosecution's disclosure of expert witness statements.²¹³ On 19 September 2007, the Trial Chamber permitted the Prosecution to call Butler as an expert witness, adding that the admissibility of Butler's reports would only be decided after his examination and cross-examination had concluded.²¹⁴

50. On 26 September a Joint defence motion for certification was filed,²¹⁵ which the Trial Chamber granted on 30 October 2007.²¹⁶ Subsequently, a joint defence appeal was filed on 6 November 2007.²¹⁷ On 30 January 2008, the Appeals Chamber dismissed the appeal.²¹⁸

51. On 6 February 2008 the Accused filed a joint motion seeking the exclusion of two narratives,²¹⁹ prepared by Butler and tendered by the Prosecution, on the basis that they lacked relevance and probative value.²²⁰ On 27 March 2008, the Trial Chamber denied the motion, and admitted the narratives.²²¹

52. In December 2006, **Gvero** and **Miletić** filed motions requesting the Prosecution to specify Rupert Smith's qualifications, and comply with the requirements set out in Rule 94 *bis* for calling

²¹¹ Prosecution's Notice of Filing Military Report of Richard Butler, 9 June 2006. This report contained the "VRS Main Staff Command Responsibility Report" as Annex A.

²¹² Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 2 Oct 2006; Motion on Behalf of Drago Nikolić Joining "Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler", 11 Oct 2006; Motion on Behalf of Vinko Pandurević and Ljubiša Beara Joining "Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler", 17 Oct 2006.

²¹³ Prosecution's Notice of Disclosure of Expert Witness Statements Under Rule 94 *bis*, confidential, 31 Oct 2006.

²¹⁴ Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 19 Sept 2007.

²¹⁵ Joint Defence Motion for Certification of the Trial Chamber's Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 26 Sept 2007; Motion on Behalf of Drago Nikolić Joining the Joint Defence Motion for Certification of the Trial Chamber's Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Richard Butler, 27 Sept 2007.

²¹⁶ Decisions on Motion for Certification of Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 30 Oct 2007.

²¹⁷ Joint Defence interlocutory appeal concerning the status of Richard Butler as an Expert Witness, partially confidential, 6 Nov 2007 (filed by **Popović, Beara, Nikolić** and **Pandurević**).

²¹⁸ *Prosecutor v. Popović et al.*, Case No IT-05-88 AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 Jan 2008.

²¹⁹ Srebrenica Military Narrative of 15 May 2000 and the Revised Srebrenica Military Narrative of 1 November 2002.

²²⁰ Joint Defence Motion Challenging the Admissibility of the Narratives Prepared by Witness Richard Butler, 6 Feb 2008.

²²¹ Decision on the admissibility of the Narratives of Expert Witness Richard Butler, 27 Mar 2008; Comparison of Richard Butler's Srebrenica Military Narratives, 31 Mar 2008.

expert witnesses.²²² **Gvero** filed a further motion on 8 January 2007, arguing that the Prosecution's failure to comply with the requirement set out in Rule 94 *bis* should preclude it from eliciting evidence from Smith at trial.²²³ **Gvero** further argued that Smith should be precluded from testifying as a witness because he was also appearing as a factual witness.²²⁴ On 30 March 2007, the Trial Chamber rendered a decision, in which it ordered **Miletić** and **Gvero** to file submissions detailing all the objections to Smith testifying as an expert.²²⁵ The Accused filed separate submissions on 20 April 2007 challenging the Prosecution's request to call General Smith as an expert in relation to the history, function and importance of a Main Staff in general; the function and operation of the VRS Main Staff; and the command doctrine of the VRS.²²⁶ On 11 October 2007, the Trial Chamber permitted Smith to testify as an expert with regard to the history, function, and importance of a Main Staff in general, but not with regard to the function and operation of the VRS Main Staff, or the command doctrine of the VRS.²²⁷

53. Following Smith's testimony, **Miletić** and **Gvero** filed motions seeking the exclusion of Smith's statement from the evidence or alternatively the redaction of some parts of the Statement.²²⁸ The Trial Chamber dismissed the motion on 11 March 2008, stating that it would not consider opinion evidence that went beyond Smith's previously established limits as an expert witness.²²⁹ **Miletić** subsequently requested certification to appeal the decision,²³⁰ which the Trial Chamber denied.²³¹

54. On 1 May 2008, **Popović**, **Beara**, **Nikolić**, **Borovčanin** and **Pandurević** filed a joint notice pursuant to Rule 94 *bis*, in which they disclosed Professor Schabas' expert report and requested the

²²² Motion and Notice Pursuant to Rule 94 *bis* Relating to the Evidence of General Sir Rupert Smith, confidential, 15 Dec 2006; General Miletić's Motion Regarding the Testimony of General Sir Rupert Smith, confidential, 27 Dec 2006 (French Original), 10 Jan 2007 (English translation); Prosecution's Notice of Disclosure of Expert Witness Statements Under Rule 94 *bis*, confidential, 31 Oct 2006.

²²³ General Gvero's Motion to Strike Prosecution Response as Untimely or For Leave to Reply: Motion Relating to Evidence of General Sir Rupert Smith, 8 Jan 2007, para. 10.

²²⁴ General Gvero's Motion to Strike Prosecution Response as Untimely or For Leave to Reply: Motion Relating to Evidence of General Sir Rupert Smith, 8 Jan 2007, para. 11.

²²⁵ Decision Regarding Evidence of General Rupert Smith and the Calculation of Time Limits Under Rule 126 *bis*, 30 Mar 2007, p. 4.

²²⁶ Submission on Behalf of General Milan Gvero Pursuant to Rule 94 *bis* Relating to the Proposed Expert Evidence of General Sir Rupert Smith, 20 Apr 2007; Submissions of General Miletić in Respect of the Testimony of General Sir Rupert Smith, 20 Apr 2007 (French original), 1 May 2007 (English translation).

²²⁷ Second Decision regarding the evidence of General Rupert Smith, 11 Oct 2007, p. 5.

²²⁸ General Miletić's Objection to the Admission into Evidence of General Smith's Expert Statement, 21 Nov 2007 (French original), 28 Nov 2007 (English translation); Passages of the Expert Statement of General Smith to Which Objection is Taken by Milan Gvero, 21 Nov 2007.

²²⁹ Decision on Defence Objections to Admission of the Expert Statement of General Rupert Smith, 11 Mar 2008, p. 2.

²³⁰ General Miletić's Request for Certification to Appeal the Decision on Defence Objections to the Admission of Expert Statement of General Smith, 18 Mar 2008 (French original), 26 Mar 2008 (English translation).

²³¹ Decision on Miletić's Request for Certification of the Decision on Defence Objections to the Admission of the Expert Statement of General Rupert Smith, 15 Apr 2008.

Trial Chamber to take notice of its disclosure to the Prosecution.²³² On 19 May 2008, the Prosecution filed a notice, in which it requested the Trial Chamber not to admit the report and proposed evidence of Professor Schabas, challenging the relevance of the contents of his report and his proposed testimony.²³³ On 1 July 2008, the Trial Chamber held that the five Accused would not be permitted to call Professor Schabas as an expert witness, nor tender the report as an expert report because the subject on which Professor Schabas' expertise was offered in this case was a matter which fell directly within the competence of the Trial Chamber.²³⁴ On 30 July 2008, the Trial Chamber dismissed a request by the five Accused for reconsideration of this decision.²³⁵

(d) Impeaching one's own Witness

55. During the proceedings held on 17 September 2007, the Trial Chamber by majority, Judge Agius dissenting, ruled that any party may challenge the credibility of its own witness.²³⁶ It granted a request by all the Accused for certification to appeal the decision.²³⁷ The Appeals Chamber partly granted the joint appeal by the Accused, holding that the Trial Chamber had erred in putting the decision to impeach a witness in the hands of the party calling him.²³⁸

(e) Intercept Evidence

56. On 12 September 2006, the Trial Chamber decided to defer the ruling on the admission of intercepted communications until the issue could be addressed in a comprehensive manner.²³⁹ Following an order issued by the Trial Chamber on 17 January 2007,²⁴⁰ five Accused filed submissions substantially describing the nature of their objections to the intercept evidence.²⁴¹

²³² Joint Notice of Disclosure of an Expert Witness Report Pursuant to Rule 94 *bis*—Historical Legal Expert, 1 May 2008.

²³³ Notice Pursuant to Rule 94 *bis* Concerning Defence Non-Military Expert Reports and Two Military Expert Reports and Objection to the Schabas Report and Testimony, confidential, 19 May 2008.

²³⁴ Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 1 July 2008.

²³⁵ Decision on the Request for Reconsideration of the Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 30 July 2008.

²³⁶ T. 15457–15458 (17 Sept 2007).

²³⁷ Decision on Certification and Clarification of the Trial Chamber's Oral Decision on Impeachment of a Party's own Witness, 21 Nov 2007.

²³⁸ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR73.3, Decision on Appeal against Decision on Impeachment of a Party's Own Witness, 1 Feb 2008. The Appeals Chamber further held that a party must seek permission of the Trial Chamber to impeach its own witness in relation to that witness's credibility or the substance of their testimony; and that the scope of that challenge must be subjected to the Trial Chamber's control. *Ibid.*, paras. 24–28.

²³⁹ Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*, 12 Sept 2006, para. 103; Prosecution's Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony pursuant Rule 92 *bis* and attached annexes A-D, confidential, 12 May 2006.

²⁴⁰ Order regarding intercepted Communications, 17 Jan 2007.

²⁴¹ Defence Submission on Behalf of Drago Nikolić Regarding its Objection to the Admissibility of Intercepted Communications, 2 Feb 2007; [Popović] Defence Submissions on the Exclusion of Intercept Evidence Pursuant to Rule 95, 2 Feb 2007; Accused Beara's Submissions Regarding the Lack of Admissibility of Intercept Evidence,

57. On 1 May 2007, the Prosecution filed a submission seeking admissibility of intercepted evidence.²⁴² In its decision of 7 December 2007, the Trial Chamber found that all of the intercepts tendered by the Prosecution were *prima facie* credible and therefore sufficiently relevant and probative to be admitted.²⁴³ During the trial, the Prosecution tendered 213 individual intercepts of VRS communications, several related documents and called 28 former intercept operators to testify in support of the admission of the intercepts.²⁴⁴

10. Provisional Release

58. On 25 April 2008, **Popović** filed a motion requesting provisional release “in the form of a custodial visit” on humanitarian grounds,²⁴⁵ which was denied due to flight risk.²⁴⁶ On a **Popović** appeal,²⁴⁷ this decision was upheld.²⁴⁸ On 9 July 2008, **Nikolić** filed a motion for provisional release under custodial conditions on compassionate grounds.²⁴⁹ The Trial Chamber granted **Nikolić** provisional release for a period of four days (including travel time).²⁵⁰

59. On 15 December 2006, the Trial Chamber denied a second motion for release by **Borovčanin**.²⁵¹ This decision was upheld on appeal.²⁵² On 24 July 2007, the Trial Chamber granted **Borovčanin** seven days of custodial release.²⁵³ On 9 April 2008, the Trial Chamber granted

2 Feb 2007; General Miletić’s Submission Objecting to the Admissibility of Intercepted Communications, 2 Feb 2007 (French original), 9 Feb 2007 (English translation); Borovčanin Defence Notification on Joining Other Srebrenica Defence Preliminary Submissions Regarding Admissibility of Intercept Material and Evidence, 5 Feb 2007.

²⁴² Prosecution’s Submission in Support of the Admissibility of Intercept Evidence, with Confidential Annexes, 1 May 2007.

²⁴³ Decision on Admissibility of Intercepted Communications, 7 Dec 2007.

²⁴⁴ Decision on Admissibility of Intercepted Communications, 7 Dec 2007.

²⁴⁵ The Accused Vujadin Popovic’s Motion for Provisional Release, in the Form of a Custodial Visit, Based on Humanitarian Grounds, confidential, 25 Apr 2008.

²⁴⁶ Decision on Popović’s Motion for Provisional Release, confidential, 28 May 2008, public redacted version, 28 May 2008.

²⁴⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Vujadin Popović’s Interlocutory Appeal Against the “Decision on Popović’s Motion for Provisional Release”, 4 June 2008.

²⁴⁸ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović’s Interlocutory Appeal Against the Decision on Popović’s Motion for Provisional Release, 1 July 2008.

²⁴⁹ Motion on behalf of Drago Nikolic Seeking Provisional Release under Custodial Conditions on Compassionate Grounds, confidential, 9 July 2008.

²⁵⁰ Decision on Nikolić’s Motion for Provisional Release, 21 July 2008. On 30 July 2008, the Trial Chamber granted Nikolić’s motion seeking variation of the terms of his release. Decision on Nikolić’s Motion Seeking a Variation of the Conditions of his Provisional Release, 30 July 2008.

²⁵¹ Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin, confidential and *ex parte*, 15 Dec 2006.

²⁵² *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber’s Decision Denying Ljubomir Borovčanin Provisional Release, 1 Mar 2007; See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Defence Interlocutory Appeal Against the Trial Chamber’s ‘Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin’ dated 15 Dec 2006, confidential and *ex parte*, 21 Dec 2006.

²⁵³ Decision on Borovčanin’s Motion for Leave to Withdraw Application for Provisional Release and to File Application for “Custodial Visit to his Father for a Short Fixed Period Based on Humanitarian Grounds”, confidential, 24 July 2007.

Borovčanin seven days of custodial release.²⁵⁴ The Prosecution filed an appeal against this decision.²⁵⁵ The Appeals Chamber remitted the decision to the Trial Chamber for *de novo* determination regarding the duration of release.²⁵⁶ The Trial Chamber subsequently granted **Borovčanin** four days of custodial release in May 2008.²⁵⁷ On 17 December 2008, the Trial Chamber denied **Borovčanin**'s request for provisional release under custodial conditions.²⁵⁸ On 3 June 2010, **Borovčanin** was granted permission to visit the Embassy of the Republic of Serbia in The Hague on strict custodial conditions.²⁵⁹

60. **Miletić** and **Gvero** were again provisionally released during the 2006 and 2007 winter recess²⁶⁰ and the 2007 summer recess.²⁶¹ Both Accused were also granted provisional release during the break before commencement of the Defence cases,²⁶² which the Prosecution appealed.²⁶³ On 15 May 2008, the Appeals Chamber remitted the decision concerning **Miletić** to the Trial Chamber for re-determination and reversed the decision concerning **Gvero**.²⁶⁴ On 22 May 2008, **Miletić** was granted provisional release for a period not exceeding four days (including travel time).²⁶⁵ On 21 July 2008, the Trial Chamber granted **Miletić**'s motion for provisional release for a period not exceeding seven days (excluding travel time).²⁶⁶ On 10 December 2008, the Trial Chamber again granted a **Miletić** motion for provisional release for a period not exceeding seven days (excluding travel time).²⁶⁷ On 15 October 2009, the Trial Chamber denied a **Miletić** motion for provisional release by majority, Judge Prost dissenting.²⁶⁸ On a **Miletić** appeal,²⁶⁹ this decision was overturned

²⁵⁴ Decision on Borovčanin's Motion for Custodial Visit, confidential, 9 Apr 2008, public redacted version, 9 Apr 2008.

²⁵⁵ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR 65.6, Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, confidential, 10 Apr 2008, public redacted version, 15 Apr 2008.

²⁵⁶ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.4, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, 15 May 2008.

²⁵⁷ Further Decision on Borovčanin's Motion for Custodial Visit, 22 May 2008.

²⁵⁸ Decision on Borovčanin's Motion for Custodial Visit, 17 Dec 2008.

²⁵⁹ Decision on Borovčanin's Motion for Custodial Visit, confidential, 3 June 2010.

²⁶⁰ Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 Dec 2006; Decision on Motions for Provisional Release during the Winter Judicial Recess, 7 Dec 2007.

²⁶¹ Decision on Motion for Provisional Release from 21 July 2007 until the Resumption of Trial, 13 July 2007.

²⁶² Decision on Miletić's Request for Provisional Release During the Break in the Proceedings, 9 Apr 2008; Decision on Gvero's Request for Provisional Release During the Break in the Proceedings, 9 Apr 2008.

²⁶³ *Prosecution v. Popović et al.* Case No. IT-05-88-AR 65.6, Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, confidential, 10 Apr 2008, public redacted version, 15 Apr 2008.

²⁶⁴ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.5 and Case No. IT-05-88-AR65.6, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, 15 May 2008.

²⁶⁵ Further Decision on Miletić's Motion for Provisional Release, 22 May 2008.

²⁶⁶ Decision on Miletić Motion for Provisional Release, 21 July 2008.

²⁶⁷ Decision on Miletić's Motion for Provisional Release, 10 Dec 2008.

²⁶⁸ Decision on Miletić's Motion for Provisional Release, confidential, with public dissenting opinion of Judge Prost, 15 Oct 2009.

on 19 November 2009.²⁷⁰ On 11 February 2010, the Trial Chamber denied another **Miletić** motion for provisional release by majority, Judge Prost dissenting.²⁷¹

61. On 21 July 2008, the Trial Chamber partially granted a motion by **Gvero** seeking provisional release, permitting a period not exceeding 7 days (excluding travel time) during the summer recess.²⁷² On 25 November 2008, **Gvero** sought provisional release during the winter judicial recess,²⁷³ which was granted.²⁷⁴ On 1 May 2009, **Gvero** sought provisional release during the period for preparation of closing arguments,²⁷⁵ which was granted by the Trial Chamber.²⁷⁶ On a Prosecution appeal,²⁷⁷ this decision was overturned.²⁷⁸ On 28 July 2009, in response to a motion to reconsider the provisional release²⁷⁹ the Trial Chamber granted **Gvero** provisional release.²⁸⁰ This decision was, again, appealed by the Prosecution and overturned by a duty Judge.²⁸¹ On 17 December 2009, the Trial Chamber, by majority, with Judge Agius dissenting, granted a **Gvero** motion for provisional release for a period not exceeding 25 days (excluding travel time).²⁸² Judge Prost appended a separate declaration.²⁸³ This decision was overturned by the Appeals Chamber on 25 January 2010.²⁸⁴

²⁶⁹ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.10, Appeal Against the Decision on General Miletić's Motion for Provisional Release, confidential, 19 Oct 2009 (French original), 27 Oct 2009 (English translation).

²⁷⁰ *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.10, Decision on Radivoje Miletić's Appeal Against Decision on Miletić's Motion for Provisional Release, confidential, 19 Nov 2009, public redacted version, 19 Nov 2009.

²⁷¹ Decision on Miletić's Motion for Provisional Release, confidential, 11 Feb 2010.

²⁷² Decision on Gvero's Motion for Provisional Release, 21 July 2008.

²⁷³ Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons during the December 2008 Recess, confidential, 25 Nov 2008.

²⁷⁴ Decision on Gvero's Motion for Provisional Release, 10 Dec 2008 (for a period not exceeding 7 days (excluding travel time)).

²⁷⁵ Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons during the Period Allowed for the Preparation of Final Briefs and Closing Arguments, confidential and partially *ex parte*, 1 May 2009.

²⁷⁶ Decision on Gvero's Motion for Provisional Release, confidential, 15 June 2009, public redacted version, 16 June 2009 (for a period not exceeding 21 days (excluding travel time)).

²⁷⁷ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.8, Prosecution's Appeal against Decision on Gvero's Motion For Provisional Release, confidential, 17 June 2009.

²⁷⁸ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.8, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 20 July 2009, public redacted version, 20 July 2009.

²⁷⁹ Request for Reconsideration of Milan Gvero's Motion for Provisional Release in light of the Appeals Chamber Decision of 20 July 2009, confidential & urgent, 22 July 2009.

²⁸⁰ Decision on Request for Urgent Reconsideration of Gvero's Motion for Provisional Release, confidential, 28 July 2009, public redacted version, 28 July 2009.

²⁸¹ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.9, Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 29 July 2009; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.9, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 6 Aug 2009.

²⁸² Decision on Gvero's Motion for Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration, 17 Dec 2009.

²⁸³ Decision on Gvero's Motion For Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration, 17 Dec 2009.

²⁸⁴ *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.11, Decision on Prosecution's Appeal against Decision on Gvero's Further Motion for Provisional Release, confidential, 25 Jan 2010.

62. On 11 December 2007, **Pandurević** was granted custodial release for 10 days during the winter recess.²⁸⁵ On 21 July 2008, **Pandurević** was further granted custodial release for four days during the summer recess.²⁸⁶

11. Reconstitution of Defence Teams

63. As of 2 November 2007, co-counsel for **Popović** Ms. Condon was replaced by Ms. Mira Tapušковиć.²⁸⁷ As of 5 June 2008, co-counsel for **Beara** Mr Meek was replaced by Mr. Predrag Nikolić.²⁸⁸ As of 25 March 2008, co-counsel for **Borovčanin** Mr. Stojanović was replaced by Mr. Christopher Gosnell.²⁸⁹ As of 21 January 2010, lead counsel for **Borovčanin** Mr. Lazarević was replaced by Mr. Gosnell; in turn Mr Gosnell's role as co-counsel was filled by Ms. Tatjana Čmerić.²⁹⁰ Mr. Petrušić was appointed co-counsel for **Miletić** on 20 February 2007.²⁹¹ Mr. David Josse was appointed co-counsel for **Gvero** on 12 September 2006.²⁹² As of 12 June 2009, co-counsel for **Pandurević** Mr. Sarapa was replaced by Mr. Simon Davis.²⁹³

12. Site Visit

64. An on-site visit was conducted from 2 to 7 October 2006 to view the relevant sites for the case, including the municipalities of Srebrenica, Bratunac, Zvornik and Vlasenica.²⁹⁴ During this period the Judges only viewed the geographical locations without receiving evidence or comments regarding events alleged to have occurred there.²⁹⁵

²⁸⁵ Decision on Pandurević's Request for Provisional Release on Compassionate Grounds, 11 Dec 2007.

²⁸⁶ Decision on Pandurević's Motion for Provisional Release, confidential, 21 July 2008, public redacted version, 21 July 2008.

²⁸⁷ Decision of the Deputy Registrar, 2 Nov 2007.

²⁸⁸ Decision by the Registrar re. assignment of counsel, 5 June 2008.

²⁸⁹ Decision (by the Registrar regarding the withdrawal and assignment of co-counsel), 25 Mar 2008.

²⁹⁰ Decision of the Deputy Registrar, 22 Jan 2010, pp. 2–3.

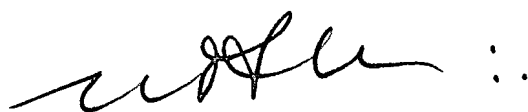
²⁹¹ Decision of the Registrar, 23 Feb 2007 (assigning Mr. Petrušić pursuant to the "Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić", 20 Feb 2007).

²⁹² Decision of the Deputy Registrar, 12 Sept 2006.

²⁹³ Decision of the Registrar, 15 June 2009.

²⁹⁴ T. 2426–2427 (16 Oct 2006).

²⁹⁵ T. 2426 (16 Oct 2006).

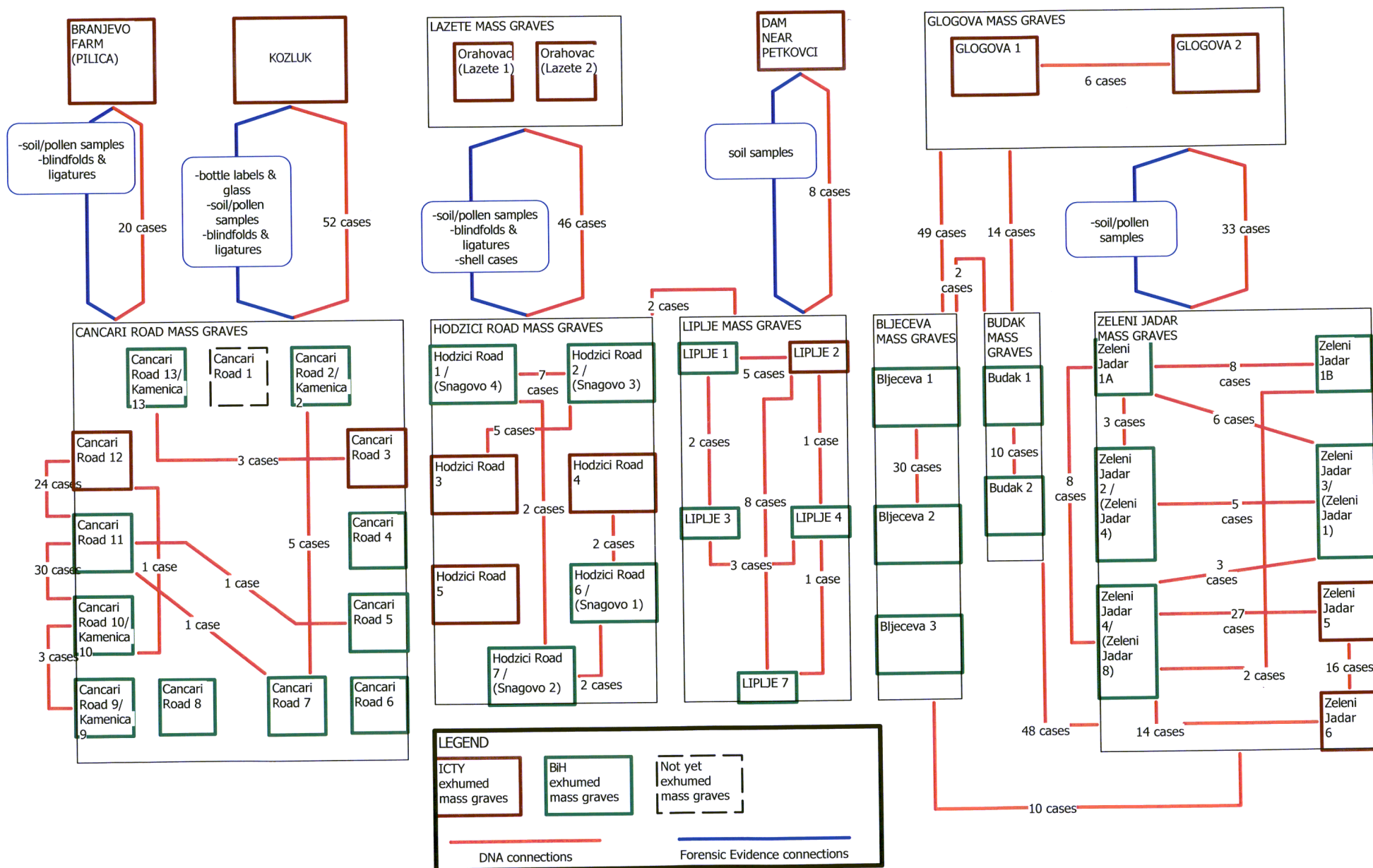


DNA connection chart: Disturbed Mass Graves **DNA and Forensic Evidence Connections: ICMP Data March 2009**

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