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THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Case No. IT-96-21-T

IN THE TRIAL CHAMBER

Before: Judge Karibi-Whyte, Presiding
Judge Odio-Benito
Judge Jan

Registrar: Mrs. de Sampayo Garrido-Nijgh

Filed: 25 August 1998

THE PROSECUTOR

v.

ZEJNIL DELALIĆ
ZDRAVKO MUCIĆ a/k/a "PAVO"
HAZIM DELIĆ
ESAD LANDŽO a/k/a "ZENGA"

CLOSING STATEMENT OF THE PROSECUTION

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1. Introduction

1.1 At the end of a lengthy trial such as this the task falling to the tribunal of fact is not an easy one, but it need not be impossibly complex.

1.2 In common law jury trials, judges traditionally encourage the jury members to appeal to their common sense when arriving at their decision. The approach should be no different just because the triers of fact are trained lawyers, rather than lay citizens of the community.

1.3 The question whether it has ultimately been proved that something did or did not occur should be determined by an assessment of the evidence based on one's ordinary life experiences. As lawyers we sometimes become embroiled in complex and artificial analyses of what particular items of evidence logically do or do not prove. Such arguments may appear plausible when first expounded. However, often their artificiality will be exposed when they are tested against what is in everyday life regarded as realistic.

1.4 The point can be illustrated by the following everyday example. Assume that the question that must be determined by observation alone is whether two particular people have ever met before. Suppose further that a witness has observed the two people approaching each other from opposite directions in a crowded street, saw them look at each other, throw open their arms and enthusiastically embrace. It might be sought to argue that as a matter of strict logic, this observation does not prove anything about the prior dealings they may or may not have had with eachother. However, that would be sophistry. Common sense and ordinary experience of life tell us that it would be totally out of character for two complete strangers to embrace enthusiastically in such a way.

1.5 To give another example, more directly relevant to this case. Suppose a person is observed to be very severely beaten by a group of others, then to be left lying unassisted on the ground in an injured state, and then to die shortly afterwards. It might be pointed out that in the absence of any autopsy examination, the precise injuries sustained and the medical cause of death cannot be established. But from common sense and ordinary experience of life, we know that the person was beaten to death by the group of others.

1.6 As it is physically not possible to conduct trials contemporaneously with the occurrence of an event, all evidence is in a sense second hand and dependent upon others' reconstructions of the past. Reconstructions of the past can never be perfect. Some variations in the accounts given by different witnesses to the same event are to be expected. Indeed, two accounts of the same event given by the same witness at different points of time may not always be identical. From our own experience of life, we know that such imperfections in memory, and such differences in the way that people perceive things, are perfectly normal.

1.7 In a trial such as this, where large numbers of witnesses have testified from memory about events which occurred several years ago, there will inevitably be inconsistencies in their descriptions of events. The exposure of such inconsistencies does not automatically mean that the witness is lying or mistaken. On the contrary, it would seem artificial and incredible if all of these witnesses were entirely consistent in every detail of their recollection.

1.8 When it comes to evaluating the evidence of a particular event, there is thus little merit in concentrating on fine details as a path to the truth. Rather, ordinary common sense should be used. Important questions are, for instance, whether the demeanour of a witness was consistent with someone who is telling the truth, or whether the global picture presented by the witness is consistent with what we already know of an event based on other independent evidence.

1.9 It must also be borne in mind that there are a number of very significant factors which directly inhibit the evidence-giving process in trials before this Tribunal.

1.10 First, there is the horrific nature of the crimes themselves. They are unlike anything that most human beings would ever have to endure, let alone have to testify to in a court of law. Recounting these events, especially in the presence of the perpetrator of the crime, stirs up unpleasant memories that witnesses often will have been trying to suppress. Deep emotion, mixed with a rigid necessity to describe events exactly as they occurred, does not always lead to a precise or orderly account being given.

1.11 Secondly, many witnesses are being required to testify in a place remote from their home, in unfamiliar surroundings. While in The Hague, witnesses may have to depend upon the Tribunal for their support, removed from their immediate family and friends upon whom they would ordinarily rely.

1.12 Thirdly most witnesses have to recount their evidence before a Tribunal which does not understand their language. When evidence is given via an interpreter, subtle nuances are frequently lost, and in some instances whole meanings may be changed without anybody ever noticing. This does not mean that the interpretation service is not doing a superlative job. Rather, it is inherent in the very nature of the interpretation process that some meaning is lost from the original language, and this is all the more so when the interpretation is simultaneous. It occurs often enough that people misunderstand each other when they are conversing in the same language. The problem becomes greatly exacerbated when they are communicating with eachother in different languages via an interpreter. The assessment of a witness's demeanour becomes especially difficult when one has to rely on interpretation, since often we rely heavily upon such things as voice inflection or word order to determine whether someone is telling us the truth or not.

1.13 Finally, to most of the witnesses the proceedings before the Tribunal are foreign and intimidating, which again mitigates against the easy flow of their evidence.

1.14 All this is not to say that it is impossible to arrive at the truth of a matter. What it means is that in proceedings before this Tribunal we are deprived of some of the mechanisms used by judges and juries in national jurisdictions in order to determine the truth. We need always to be conscious of these deficiencies, and to make allowance for them, when assessing the evidence that is presented in this Tribunal.

1.15 One way of compensating for these deficiencies is to place greater reliance on other mechanisms, which may not always be in the forefront of a court's reasoning in a national jurisdiction. One of the most effective approaches available to the Tribunal is to start by identifying those matters on which there is no, or no real, controversy, and then to work inwards to the more contentious issues which are much more dependant upon a common sense assessment or inference. In other words, we start with what is certain, and then assess the veracity of what is not so certain against the background of an established and solid foundation.

1.16 Before dealing in detail with the evidence for each count, it is therefore proposed at the outset to identify what has not seriously been contested this case. This is not to say that the Defence has conceded the point, and indeed, with respect to the essential elements of a crime, the burden rests on the Prosecution to satisfy the chamber beyond a reasonable doubt. However, in respect of many matters, the Prosecution has presented a large amount of evidence more than sufficient to prove the point, and the Defence in our submission has, albeit implicitly, been forced to accept that these issues are not seriously disputed.

1.17 As to paragraph 1 of the Indictment, there is no controversy about the fact that Konjic municipality was located in central Bosnia and Herzegovina, that it had a majority Muslim population, that it contained the village of Čelebići and that it had significant strategic importance.

1.18 As to paragraph 2 of the Indictment, there is no controversy about the fact that in May 1992, Bosnian Muslim and Croat forces attacked and took control of a number of Bosnian Serb villages in the municipality. Nor is it disputed that the Bosnian Serb residents of these villages were forcibly expelled from their homes and held at various collection centres including the former JNA facility at Čelebići. There is no serious controversy that some of the detainees who were held at the Čelebići camp were killed, tortured, sexually assaulted, beaten and otherwise subjected to cruel and inhumane treatment. There is no controversy that certain of the detainees were confined at the Čelebići camp for various periods from May to December 1992. There is no controversy that the camp included a tunnel, a hanger and an administration building.

1.19 As to paragraph 3 of the Indictment, there is no controversy that **Zejnil DELALIĆ**, born on 25 March 1948, co-ordinated activities of the Bosnian Muslim and Croat forces in the Konjic area from approximately April 1992, and that he was the Commander of the First Tactical Group. The Prosecution would also go further and state that there is no real controversy that at least at some point for some things, he exercised authority over Čelebići camp and its personnel.

1.20 As to paragraph 4 of the Indictment, there can be no serious controversy that **Zdravko MUCIĆ, also known as "Pavo"**, born 31 August 1955, was commander of the Čelebići camp in 1992.

1.21 As to paragraph 5 of the Indictment, there is no controversy that **Hazim DELIĆ,** born 13 May 1964, was deputy commander of the Čelebići camp during the time that MUCIĆ was commander and that he assumed command after MUCIĆ's departure until the camp closed in December 1992.

1.22 As to paragraph 6 of the Indictment, there is no controversy that **Esad LANDŽO, also known as "Zenga"**, born 7 March 1973, was a guard at the Čelebići camp.

1.23 As to paragraph 7 of the Indictment, there can be no real controversy that **Zdravko MUCIĆ** and **Hazim DELIĆ** had responsibility for the operation of Čelebići camp and were in positions of superior authority, that they knew in fact that their subordinates were mistreating detainees, and that they failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators. **Zejnil DELALIĆ** would presumably dispute such an allegation being made against him, in which case this is one of the matters of controversy to be determined by the Trial Chamber.

1.24 As to paragraph 8 of the Indictment, there can be no real controversy that **Hazim DELIĆ** directly participated in some of the acts specified in the indictment.

1.25 As to paragraphs 9 and 10 of the Indictment, dealing with the existence of a international armed conflict, whatever suggestions have been made from some Defence counsel, the witnesses, both for the Prosecution and the Defence, have agreed that at all material times a state of international armed conflict and partial

occupation existed in Bosnia and Herzegovina, and that it was so recognised by the Bosnian-Herzegovinan government at the time that the accused were involved in the acts charged in the Indictment acting on behalf of that government.

1.26 As to paragraph 11 of the Indictment, similarly, the witnesses, both for the Prosecution and the Defence, have agreed that at all material times in 1992, the parties were bound by the laws and customs of war, including the Geneva Conventions of 1949, and this was recognised in 1992 during the existence of the Čelebići camp.

1.27 As to paragraph 12 of the Indictment, it has not been suggested that any the acts charged as torture do not constitute the crime of torture.

1.28 As to paragraphs 13 and 14 of the Indictment, there is no dispute that the victims were at all relevant and material times detainees of the Čelebići camp, and that the acts committed upon them occurred in the Čelebići camp which was located in the Konjic municipality.

1.29 It can therefore be seen that there is very little in dispute between the parties when it comes to the "Background" and "General Allegations" part of the Indictment. Those matters that are in dispute in these parts of the Indictment are not seriously in dispute, and the Defence have offered little more than token opposition.

1.30 Thus, when the Trial Chamber comes to address each of the counts in the Indictment, it will do so against a backdrop of considerable certainty. Furthermore, many of the allegations in the individual counts in the Indictment are not in dispute either. Although the individual counts are dealt with in much greater detail in Part 3 below, it is illuminating to indicate briefly at this point just how much is not contested.

1.31 For instance, with respect to the murders, almost without exception there is no dispute that the person died in the camp, and with rare exception, there is no dispute that the person was murdered. In fact, although there are some murders where the accused's participation is disputed, there are a number of murders where even the accused's participation is not disputed.

1.32 As to Counts 1 and 2, there is no dispute that Šćepo GOTOVAC was a Bosnian Serb detainee in the camp at the relevant time, and that he was beaten to death by Esad LANDŽO. Hazim DELIĆ has conceded that Gotovac was murdered in the camp, though as with all crimes with which he was charged, he has denied that he was involved.

1.33 As to Counts 3 and 4, there is no dispute that Željko MILOŠEVIĆ was a Bosnian Serb detainee in the camp at the relevant time and that he was beaten to death in the camp by a group of guards. Hazim DELIĆ has conceded that Željko MILOŠEVIĆ was murdered in the camp.

1.34 As to Counts 5 and 6, is no dispute that Simo JOVANOVIĆ was a Bosnian Serb detainee in the camp at the relevant time and was beaten to death. There is no dispute that at a minimum Esad LANDŽO knew of and directly participated in this incident. Hazim DELIĆ has conceded that he was murdered in the camp.

1.35 As to Counts 7 and 8, there is no dispute that Boško SAMOUKOVIĆ was a Bosnian Serb detainee in the camp at the relevant time who was beaten to death by Esad LANDŽO.

1.36 As to Counts 11 and 12, there is no dispute that Slavko ŠUŠIĆ was a Bosnian Serb detainee in the camp at the relevant time who was beaten and otherwise mistreated in the camp and subsequently died of his injuries.

1.37 As to Counts 13 and 14, it has not been disputed by the Defence that Milorad KULJANIN, Željko ĆEĆEZ, Slobodan BABIĆ, Petko GLIGOREVIĆ, Gojko MILJANIĆ, Željko KLIMENTA, Miroslav VUJIČIĆ and Pero MRKAJIĆ were at all material times Bosnian Serb detainees of the camp who died in the camp and for most, it also has not been disputed that they were murdered in the camp during the period of their detention.

1.38 As to Counts 15, 16 and 17, there is no dispute that Momir KULJANIN was a Bosnian Serb detainee in the camp at the relevant time who was burned and otherwise subjected to torture and cruel treatment by Esad LANDŽO. Hazim DELIĆ has not denied the fact of the incident.

1.39 As to Counts 18 to 23, there is no dispute that Grozdana ĆEĆEZ and Witness A were female Bosnian Serb detainees in the camp

at the relevant time, and with the possible exception of one accused Hazim DELIĆ, it is not disputed that during the time they were in the camp the women were on a number of occasions subjected to torture and forcible sexual intercourse.

1.40 As to Counts 24, 25 and 26, there is no dispute that Spasoje MILJEVIĆ was a Bosnian Serb detainee in the camp at the relevant time who was burnt and otherwise tortured and subjected to cruel treatment by Esad LANDŽO. Hazim DELIĆ has not denied the fact of the incident.

1.41 As to Counts 27 to 32, the Defence have not denied that Mirko BABIĆ and Mirko ĐORĐIĆ were Bosnian Serb deteinees at the Čelebići camp at the relevant time. .

1.42 As to Counts 33 to 45, the Defence have not seriously disputed that Milovan KULJANIN, Nedeljko DRAGANIĆ, Mirko KULJANIN, Dragan KULJANIN, Vukašin MRKAJIĆ, Duško BENĐO and Novica ĐORĐIĆ were all Bosnian Serb detainees in the camp at the relevant time who were tortured, subjected to great suffering and/or otherwise made to suffer cruel and inhumane treatment.

1.43 As to Counts 46 to 49, there is no dispute that the detainees at the Čelebići camp were at the relevant time subjected to an atmosphere of terror and inhumane living conditions, that some of the detainees were civilians who were not afforded a trial or due process of law, and that others had their private property plundered upon their arrival at the camp.

1.44 If all of the above matters are not in dispute or not seriously in dispute between the Prosecution and Defence, then the task of deciding the extent of the individual criminal responsibility of each of the accused becomes a much more straightforward and reliable process. The more certain one is about the background to an event, the less doubt one has when assessing evidence relating to that event, and the more confident one can be in determining the issue. It is submitted that if there is no doubt about the matters referred to above, then the final step of determining the guilt of the accused to the requisite standard by the application of common sense becomes a far less onerous task for the tribunal of fact.

1.45 The background facts to this case are set out in Part 2 below. The evidence of each of the specific incidents charged in each paragraph of the Indictment is then dealt with in detail in Part 3.

1.46 In respect of certain of the crimes committed in Čelebići camp, Zejnil DELALIĆ, Zdravko MUCIĆ and Hazim DELIĆ are charged on the basis of their superior responsibility, under Article 7(3) of the Statute. The law and evidence establishing the basis of their superior responsibility is dealt with in Part 4.

1.47 The accused Esad LANDŽO has advanced a special defence of diminished mental capacity, and a defence of "lack of physical capacity". The Prosecution submits that neither of these defences has been established by the accused, for the reasons given in Part 5 below.

1.48 Each count in the Indictment charges violations of international humanitarian law punishable under either of Article 2 or Article 3 of the Statute. Part 6 of this Closing Statement sets out the law and evidence establishing that the general requirements for the applicability of Article 2 and Article 3 of the Statute are met in respect of the crimes charged in the Indictment. The elements of the specific crimes charged in the various counts in the Indictment are set out in Annex 1 to this Closing Statement, together with the Prosecutor's submissions on relevant aspects of the application of Article 7(1) of the Statute, which imposes criminal liability on a "person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5" of the Statute of the Tribunal.

1.49 To assist the Trial Chamber, a chart giving extracts of some of the most pertinent evidence in relation to each count is also provided, as Annex 2 to this Closing Statement. As an aide-mémoire to the Judges, a brief profile of the various Prosecution witnesses who gave evidence in relation to the facts is also included, as Annex 3.

1.50 The Prosecution's formal submissions are then set out in Part 7 below. The Prosecution submits that on the evidence presented, the guilt of the accused in respect of each of the counts in the Indictment in which they are charged has been established beyond reasonable doubt.

2. Background facts

(A) The conflict in Konjic municipality

2.1 Konjic municipality is located in central Bosnia and Herzegovina. The municipality comprises Konjic town and a number of surrounding villages, one of which is Čelebići. According to the 1991 census, the population of the municipality was 43,878. Approximately 54% were Bosniak, approximately 26% were Croat and approximately 15% were Serb. (P. Exh. 48, T. 10203.)

2.2 Konjic was of significance because it contained a large factory for arms and ammunition, and several military facilities, and because the main road and rail links from Sarajevo to Mostar, and on to the sea, passed through the territory of the municipality (T. 1413-1414, 8354-8355, 8569, 8593).

2.3 From the end of 1991 tensions between the different ethnic groups began to grow (T. 1368). Members of the different groups began arming themselves from various sources (T. 958, 1297-1298, 4623-4624, 4924-4925, 9256). From the spring of 1992 some of them formed armed units (T. 8430, 8510-8511), and some also wore uniforms (T. 1520-1521, 4892-4893, 5128-5129, 5741-5742). In addition to the TO there were various other groups operating, some of them official and recognised as such, and others not (T. 5182-5183, 8515; P. Exh. 129, pp. 4-6). Aligned Bosniak-Croat groups included the TO (Territorial Defence), the MUP (Ministry of the Interior), the HVO (Croatian Peoples' Defence), the HVO military police and HOS (Croatian Armed Forces), and others (T. 4615-4616, 5182-5183; P. Exh. 129, pp. 4-6). The TO was the reserve army which was mobilised in case of war, and in the particular case of Konjic was dominated by Bosniaks. The HVO was the main armed force organised by the Bosnian Croat authorities. HOS was a volunteer force of mixed Croat-Bosniak origin, first established by the extremist HSP (Croatian Party of Rights) in Croatia. The MUP was a civilian police force that according to a law of late May 1992 was incorporated into the armed forces early in the war. The MUP in Konjic participated directly in combat operations (T. 8327-8328,

8363, 11977). The TO and HVO both had military police units, with the HVO military police being established earlier (T. 6888-6889). Within Konjic there were tensions between the predominantly Bosniak and predominantly Croat entities. In the first months of the conflict there was joint command of the TO and HVO, but this cooperation broke down as early as summer 1992 (T. 689-702, 8981-8982, 9020). At the start of war, a war presidency was formed in Konjic and this assumed the functions of the normal governing assembly throughout 1992 (T. 837-838, 8052-8053, 9007).

2.4 As tensions escalated following the pattern of events in Bosnia and Herzegovina as a whole, beginning in the spring of 1992 many Serbs from Konjic town went to certain villages largely populated by Serbs, including Bradina and Donje Selo (T. 4857, 5950, 6026, 6157, 6181-6182). Many people there were armed with weapons which they owned from before, including pistols and hunting rifles, as well as weapons acquired in the period immediately preceding the conflict, including from persons or organisations outside Konjic (T. 1297-1298, 1367-1368, 4203-4204, 4247-4248, 4803, 4867-4868, 6033). Many people were neither armed nor members of organised groups, while others kept weapons for personal protection but were not involved in any group activity (T. 5951, 7576-7577).

2.5 A significant proportion of the men were members of organised groups which patrolled the villages, maintained checkpoints which monitored traffic passing through the villages, and performed other guard duties (T. 4244-4245, 4249-4250, 4858, 5951, 6029, 6127-6128).

2.6 There were negotiations between representatives of the Serb inhabitants of these villages and representatives of the Bosniak-Croat majority in the municipality, but these apparently failed to reduce the tension (T. 4864-4865, 5951-5952, 7576).

2.7 On 21-22 May 1992, Donje Selo, Cerići, Bjelovćina and other villages were attacked by combined Bosniak-Croat forces from Konjic and elsewhere. These forces included units of the TO, HVO, and HOS, as well as residents of neighbouring villages and from Tarčin TO. (T. 1406, 4484-4485, 4623, 7677; P. Exh. 130, 130a, pp. 3-4.) Several days later, on 25 May 1992, Bradina was attacked by Bosniak-Croat forces from Konjic and elsewhere. In the following days, these forces rounded up large numbers of Serbs from the village (T. 1423-1424, 4708-4709, 5952-5954). There was limited resistance on the Serb side, but most Serb combatants either surrendered or fled in the face of vastly superior

numbers on the other side. Casualties in the actual combat were low on both sides.

(B) Čelebići camp

2.8 In the village of Čelebići there was a military complex, which prior to the conflict had been a JNA storage facility. This facility was captured by a small group of Bosniak and Croat volunteers from Konjic, attached to the TO, HVO and MUP (Ministry of the Interior) (P. Exh. 124, 124a p. 4; P. Exh. 130, 130a, p.2). Thereafter, until December 1992, this facility ("Čelebići camp") was used by the Bosniak-Croat forces for the detention of Serbs from the region whom they had rounded up.

2.9 The first prisoners were brought to Čelebići camp in mid-May 1992 from Brđani (P. Exh. 103 - 6, p.8). Prisoners from Donje Selo, Cerići, Bjelovčina and Viniste were brought to the camp from about 22 May 1992 (T. 1374, 1873-1875, 5744-5747, 6249-6266). Prisoners from Bradina were brought from 26 May 1992 onwards (T. 1298-1299, 1374, 1426-1428). Subsequently, smaller groups of captives were brought to the camp, having been captured after fleeing from the above-mentioned villages (T. 1405, 2103-2105, 4826-4828, 5440-5442, 7692). Serb inhabitants of other villages where there had been no fighting, including Idbar and Čelebići, were brought to the camp individually or in small groups (T. 546-547, 1761-1770).

2.10 Within the Čelebići camp complex there were several locations used for the detention of prisoners. (The general layout is described in P. Exh. 001, 001a, 002, 002a, 003.)

2.11 The largest number of prisoners were held in one of the several "hangars" which previously had generally been used for storage purposes. This building was referred to as Hangar No. 6, which apparently was the official designation from the time of its use by the JNA. This was a large structure with sheet-metal walls and roof. In about June 1992 there as many as 300 prisoners in the hangar (T. 2490, 5756).

2.12 Building No. 22 was formerly used as storage for fire-fighting equipment. This building was located opposite the main administration building, close to the entrance to the camp. Initially it was used simply for the detention of prisoners, but from a fairly early stage was converted to use as a make-shift infirmary in the camp for some of the injured prisoners (T. 1880-1881, 5973-5974).

2.13 A smaller group of prisoners were detained until about late August 1992 in Tunnel No. 9, which was the entrance to an underground nuclear shelter. The number of prisoners in this location reached a maximum of almost 80 for a brief period, but stabilised at about 40 for longer term detention. (T. 4143-4146, 5446-5448, 7685, 7689, 7692.) A small number of female prisoners were detained in a room in the reception building next to the entrance (T. 490-491, 1771-1772). Next to the reception building, close to the entrance, was the administration building. This was where prisoners were interrogated, from where they were brought food, and also where Zdravko MUCIĆ and Hazim DELIĆ had offices (T. 1884-1885, 1925-1926, 4147-4148, 5042-5043, 5174-5175).

2.14 Conditions in the camp for the prisoners were horrific. (The evidence relating to the inhumane conditions is set out in set out in section (R) of Part 3 below.) The worst conditions were in Tunnel No. 9, where prisoners were expected to urinate within the tunnel itself and were confined in an extremely cramped space (T. 7444-7445, 7693-7695). The conditions in the camp improved after the visit of a delegation of the International Committee of the Red Cross (ICRC) in mid-August 1992, and although there were still occasions when prisoners were beaten, these incidents became less frequent. The prisoners from Tunnel No. 9 were moved to the infirmary (Building No. 22) and to Hangar No. 6, where the conditions were slightly better (T. 4189-4191, 4884-4882, 4799-4800, 5037, 6720, 7501-7504).

2.15 Prisoners were being transferred from Čelebići to other camps from as early as June 1992 (T. 1238, 1453). Prisoners were subsequently transferred in groups to the prison at the Musala sports hall in Konjic (T. 1474-1475, 4366). The last 32 prisoners in Čelebići were transferred to the Musala sports hall on 9 December 1992 (T. 4720).

(C) <u>The accused</u>

(i) Zejnil DELALIĆ

2.16 Zejnil DELALIĆ (hereafter "DELALIĆ") was born on 25 March 1948 in Ostrožac, Jablanica municipality. He emigrated to Germany in 1970 and worked there until 1983 when he went to Konjic. From 1987 until the start of the conflict he lived in Vienna, working as a manager of a joint Croatian-German company (P. Exh. 99 - 1, pp. 6-8). He came to Konjic in approximately March 1992 from Vienna, in order to attend his

brother's funeral (T. 9864-9865, 12384-12385). He was appointed co-ordinator of the Konjic defence forces on 18 May 1992 (P. Exh. 068, O68a). In July 1992, he was appointed Commander of Tactical Group. The first written appointment, dated 11 July 1992, appoints him commander of Tactical Group 1 (P. Exh. 71, 71a). Another appointment, dated 27 July 1992, appoints him commander of all forces of Bosnia and Herzegovina of the Drežnica-Jablanica-Prozor-Konjic-Pazarić-Hadžići-Igman area (P. Exh. 99 - 7/7). He remained in Bosnia and Herzegovina until 25 November 1992, when he left for Vienna with Zdravko MUCIĆ (P. Exh. 101 -1, p. 44).

2.17 DELALIĆ lived in Munich at the time of his arrest, working as the deputy director of the company Insond Zagreb, which dealt in building and engineering (P. Exh. 99 - 1, pp. 8-9). DELALIĆ was arrested by the German police on March 18, 1996 (T. 3409-3411). He was subsequently transferred to The Hague and made his first appearance on 9 May 1996.

(ii) Zdravko MUCIĆ

2.18 Zdravko MUCIĆ, also known as "Pavo" (hereafter "MUCIĆ"), was born on 31 August 1955, in Đžajići, Konjic municipality. He returned to Konjic from Vienna in mid-April 1992 (P. Exh. 101 - 1, p. 4). He had emigrated to Vienna in 1989, although he frequently returned to Konjic for visits. In April 1992 he returned to Konjic (P. Exh. 101 - 1, pp. 2-3). He began working for the TO in an unofficial capacity in about May 1992 (P. Exh. 101 - 1, pp. 5-7). According to witnesses he was commander of Čelebići prison from early June at the latest (4518-4521, 5174-5175, 15030-15034; P. Exh 102 - 1, pp. 12-14). He remained in Bosnia and Herzegovina until 25 November 1992, when he left for Vienna with DELALIĆ (P. Exh. 101 -1, p.44).

2.19 From 1993 until his arrest in 1996, MUCIĆ worked for a company called MAS in Vienna recruiting workers for the building trade (P. Exh. 101 - 1, pp. 2-3). MUCIĆ was arrested in Vienna on 18 March 1996 by the Austrian police (T. 3409-3411, 3434). He was transferred to the custody of the Tribunal on 9 April 1996.

(iii) Hazim DELIĆ

2.20 Hazim DELIĆ (hereafter "DELIĆ") was born on 25 January 1960. Prior to the conflict he worked as a locksmith in an enterprise called

Šumarstvo-Prenj in Konjic (P. Exh. 103 - 1, pp. 3-4). He was mobilised into the joint military police of the TO and HVO on the outbreak of war (P. Exh. 103 - 1, p. 7). By his own admission he was serving in the Čelebići barracks from early May 1992, before the first prisoners were brought to the camp (P. Exh. 103 - 1, p. 8).

2.21 According to his own account, from about 27 July 1992, DELIĆ served as administrator in the prison, meaning "*The administrative kind of work to sort out the papers and logistics. Setting up a contact with the main logistics in Konjic which supplied food, for guards.*"(P. Exh. 103 - 1, p. 24). According to witnesses, prior to 18 November 1992, DELIĆ served as deputy commander of Čelebići camp, although he had not occupied that position in his first days there (T. 5175, 6678, 6771).

2.22 By his own admission, DELIĆ served as commander or manager of the prison from 18 November 1992 until 28 or 30 November 1992 (P. Exh. 103 - 1, p. 53). On the latter date, DELIĆ was arrested by the Security Police of the 4th Corps for the murder of another Muslim. He was held for some 66 days, and released, but was apparently later rearrested. He was eventually tried and sentenced to 9 years imprisonment by the Supreme Court of Bosnia-Herzegovina. He was released on 15 January 1996. (P. Exh. 103 - 1, pp. 4-7.)

2.23 By a decision of the Supreme Court of Bosnia and Herzegovina dated 9 May 1996, DELIĆ was transferred to this Tribunal, having been arrested on the basis of a warrant issued by the Tribunal on 21 March 1996.

(iv) Esad LANDŽO

2.24 Esad LANDŽO, also known as "Zenga" (hereafter "LANDŽO"), was born on 7 March 1973 in Konjic municipality. Prior to commencing his military service LANDŽO worked in different capacities for an individual in Konjic (T. 15016-15019). Starting in June 1992 he served as a guard in Čelebići, which position he left in summer or autumn 1992 (T. 1401-1402, 1678-1679, 2217).

2.25 LANDŽO was in prison from 16 January 1994 until 16 January 1996 when he was released. He had been imprisoned for murder (P. Exh. 102 - 1, p. 5). By a Decision of the Supreme Court of Bosnia and Herzegovina dated 9 May 1996, LANDŽO was transferred to this Tribunal, having been arrested on the basis of a warrant issued by the Tribunal on 21 March 1996.

3. Evidence of facts averred in the Indictment

(A) Paragraph 16 of the Indictment (Killing of Šćepo GOTOVAC)

3.1 Paragraph 16 of the Indictment alleges:

> "Sometime around the latter part of June 1992, Hazim DELIĆ, Esad LANDŽO and others selected Šćepo GOTOVAC, aged between 60 and 70 years. Hazim DELIĆ, Esad LANDŽO and others then beat Šćepo GOTOVAC for an extended period of time and nailed an SDA badge to his forehead. Šćepo GOTOVAC died soon after from the resulting injuries".

3.2 The Prosecution relies principally on the testimony of the following twelve witnesses to establish the facts in relation to this incident (including the accused LANDŽO, who admits to murdering Mr. Gotovac):

(1)	Mirko Babić	(T. 284-285, 412-414)
(2)	Branko Gotovac	(T. 985-987, 1098-1103)
(3)	Witness F	(T. 1320-1321)
(4)	Witness N	(T. 1916, 2039-2044)
(5)	Dragan Kuljanin	(T. 2346, 2411)
(6)	Mirko Đorđić	(T. 4781-4784)
(7)	Witness B	(T. 5055-5058)
(8)	Branko Sudar	(T. 5767, 5945)
(9)	Risto Vukalo	(T. 6279-6281)
(10)	Rajko Draganić	(T. 6928-6934)
(11)	Witness R	(T. 7793, 7939)

(12) Esad LANDŽO (T. 15042-15048, 15347-15348)

Apart from LANDŽO, the witnesses were all detainees inside Hangar No. 6 at the time of the fatal beating.

3.3 Mr. Gotovac was an elderly gentleman of approximately 70 years of age, who was accused by DELIĆ of having murdered two Muslims during World War II (Witness F (T. 1321), Witness N (T. 1916), Mirko Đorđić (T. 4781), Witness B (T. 5055), Branko Sudar (T. 5765, 5767), Risto Vukalo (T. 6280-6281)).

3.4 A number of witnesses testified that the incident began with the arrival of DELIĆ, LANDŽO and others at the door of Hangar No. 6. Mirko Babić testified that at around 1.00 p.m.:

> "the door opened and Hazim Delic came to door to take Scepo Gotovac and Adem Cosic was there and next to Hazim was Esad Landzo and Hazim Delic tells Scepo Gotovac to get up, and he did, and he told him 'Scepo Gotovac, you killed on 29th March for the two Muslims, so we will kill you here'. Then Delic kicked him and then Scepo fell down on the concrete, and the three of them took him out, and I heard wailing, and I heard something like blows." (T. 284-285.)

3.5 The fact that DELIĆ was present, and that DELIĆ struck Mr. Gotovac several times inside Hangar No. 6 before he was taken out, is corroborated by the testimony of a number of other witnesses (Branko Gotovac (T. 987), Witness F (T. 1321), Witness N (T. 1916), Mirko Đorđić (T. 4781), Branko Sudar (T. 5766-5766), Rajko Draganić (T. 6279)).

3.6 Witnesses testified that after Mr. Gotovac was taken outside, the sound of beating could be heard. Mirko Đorđić said that:

> "Outside blunt blows could be heard and that went on for about half an hour, maybe even longer. He kept moaning. We kept hearing these blunt blows." (T. 4781-4782).

3.7 Witness B similarly testified that Mr. Gotovac was beaten "*for quite a long time. We could hear the cries, the moans*" (T. 5055). Risto Vukalo estimated that the screaming outside lasted for 30 or 45 minutes (T. 6280).

3.8 LANDŽO testified that he was called to the administration building where he was given the name of Mr. Gotovac on a piece of paper written by MUCIĆ, and then ordered by DELIĆ to see that the victim left the camp "*with his feet forward*" (T. 15044-15045). LANDŽO admits that later, he and others together beat the man so badly that he died the next morning (T. 15045). A police baton, and other weapons were used to beat him (T. 15347). At the time he testified, LANDŽO said that he could not remember who else was involved in beating Mr. Gotovac, nor whether Mr. Gotovac had been beaten on prior occasions in Čelebići (15347-15348). LANDŽO's testimony is corroborated by a number of other witnesses, many of whom remember additional details of this incident.

3.9 For instance, LANDŽO's admission that he himself participated in beating the victim to death is corroborated by the witnesses who testified that LANDŽO was present when Mr. Gotovac was taken out of Hangar No. 6 (Witness N (T. 1916), Branko Sudar (T. 5767)). Witnesses also testified that from inside the hangar, LANDŽO's voice could be heard during the beating. Branko Gotovac said:

> "I know Zenga by voice, and Gotovac said 'Oh, mother', and he told him 'What Mother? Do you have a Mother?'" (T. 1098.)

Branko Sudar similarly testified:

> "Delic took him out and then Zenga, Zenga's voice could be heard then, and also when he was being beaten, Zenga was shouting at him 'How many Muslims have you killed' ... he screamed and cried out for mercy, calling his mother's name and he was in terrible suffering." (T. 5766-5767).

3.10 A number of witnesses testified that having been brought back to Hangar No. 6 after this beating, Mr. Gotovac was called out a second time on the same day. Mirko Babić said that:

> "again Hazim Delic came to the door, and Hazim and Esad, and also told him the same thing as the first time, and Adem Cosic had a knife in his hand and they took him by hands and feet, and Hazim put a knife next to him and they took him out and then beat him again, and then he was again wailing" (T. 285.)

3.11 Mirko Đorđić, Witness B and Branko Sudar recalled that on this second occasion on which Mr. Gotovac was called out, two of the other detainees were ordered to help him outside (T. 4782, 5056). Both these witnesses, as well as Branko Sudar (T. 5767) and Risto Vukalo (T. 6281), confirmed that LANDŽO called him out or was present on this second occasion. Witness B also recalled seeing DELIĆ. These witnesses similarly testified that after Mr. Gotovac was taken out, the sound of beating or screaming could be heard once more. (See also Risto Vukalo (T. 6281).)

3.12 Witnesses said that afterwards, Mr. Gotovac was returned to the hangar, where he died during the night. Witness N said:

> "... he was thrown back in. We heard cries for help and screams coming from Scepo and after a little time he died in the hangar amongst us." (T. 1916).

(See also Branko Sudar (T. 5767), Risto Vukalo (T. 6280), Mirko Babić (T. 284-285), P. Exh. 103-1, pp. 30, 83 (interview of DELIĆ by the Office of the Prosecutor in which he admits Gotovac died in the camp, though he denies participating in that or any other crime.))

3.13 The evidence indicates that when Mr. Gotovac was brought back into the hangar, he had something fixed to his forehead, recognised by many as an SDS badge. LANDŽO indicated that no one was to disturb it (Mirko Babić (T. 285), Witness N (T. 1917), Witness N (T. 2043), Mirko Đorđić (T. 4782), Dragan Kuljanin (T. 2346)). Although LANDŽO testified that he did not himself place the badge on the victim's forehead, he concedes that the badge could well have been there (T. 15048). (See also P. Exh. 85 and 96 (diagrams drawn by two witnesses showing position of victim, consistent with each other and with testimony).)

3.14 All the elements necessary for the crime of murder and wilful killing have been established beyond a reasonable doubt for DELIĆ and LANDŽO. The victim is clearly dead, as a result of the beatings inflicted by DELIĆ and LANDŽO and directed by DELIĆ. Their intent to kill or inflict grievous bodily harm is necessarily inferred by the severity of the beatings, and is also established by direct statements made at the time to the victim and by LANDŽO's subsequent admissions.

(B) Paragraph 17 of the Indictment (Killing of Željko MILOŠEVIĆ)

3.15 Paragraph 17 of the Indictment alleges:

> "Sometime around the middle of July 1992 and continuing for several days, Željko MILOŠEVIĆ was repeatedly and severely beaten by guards. Sometime around 20 July 1992, Hazim DELIĆ selected Željko MILOŠEVIĆ and brought him outside where Hazim DELIĆ and others severely beat him. By the next morning Željko MILOŠEVIĆ had died from his injuries."

3.16 The Prosecution relies principally on the testimony of the following four witnesses to establish the facts in relation to this incident:

(1)	Miro Golubović	(T. 2121-2122)
(2)	Novica Đorđić	(T. 4171-4177, 4232)
(3)	Milenko Kuljanin	(T. 5480-5484)
(4)	Risto Vukalo	(T. 6286-6287)

The witnesses were all detainees inside Tunnel No. 9 at the relevant time.

3.17 Novica Đorđić testified that before he was killed, Mr. Milošević had been subjected to various serious beatings by DELIĆ, LANDŽO and others. He recalled:

> "... he [Mr. Milošević] was taken out frequently outside building Number 9, and he was asked various questions, like was he a sniper. That was the main

> question. ... [He] was taken out ... just in front of the door of Tunnel Number 9, so you can hear very well and see what's happening outside, if we were allowed to look. When there were no guards inside we could. He was asked to confess that he was a sniper, that he had killed Muslims, that he had fired at their positions. He rejected all this and, of course, as soon as he said that he hadn't done something, he would be beaten. In his case I remember a piece of cable was used, electrical cable, which was about 2 cms thick and it had a steel wire inside this cable, and every time he was taken out, he was beaten very severely, and later led back in. ... This was repeated maybe for seven or eight days." (T. 4172-4174.)

This witness added that on these occasions "*It was mostly and almost every time Hazim Delic and Esad Landzo were present*" (T. 4174), and that when Mr. Milošević was called out, "*Hazim Delic would be at the door*" (T. 4175). The witness also reported that he observed DELIĆ carrying the cable (T. 4176-4177).

3.18 When questioned further about his ability to witness these events, this witness indicated that the distance between him and the position where the beatings took place was about the same as the distance between him and the interpreters in court (T. 4176). He also said that the "*entrance door ... had no window panes, and you could hear everything through these doors*" (T. 4232). He said that on these occasions, he could recognise the voices of Mr. Miloševic, LANDŽO and DELIĆ (T. 4177).

3.19 Milenko Kuljanin said that on one occasion:

> "Milosevic had been shut down in a manhole filled with water with Rajko Djordjic, where he had spent the whole night. When he returned from the manhole, he was soaking wet. I had a wet suit, [track suit] and as his clothes were wet, I gave him my wet suite as a change of clothes so that he could put something dry on." (T. 5481.)

3.20 Miro Golubović confirmed that Mr. Milošević was "*frequently taken out and he would come back all wet*", and recalled that during the three or four days that both the witness and the victim were together in Hangar No. 9, the victim "*was taken three or four times*" (T. 2122).

3.21 Milenko Kuljanin testified that several days before his Mr. Milošević's death, a television crew had visited the camp. DELIĆ called Mr. Milošević and another detainee out of Tunnel No. 9 to be filmed by the journalists, and asked them to confess to the journalists that they had tortured and raped Muslim civilians. Mr. Milošević and the other detainee had refused to make such confessions. According to Mr. Kuljanin, after the journalists left, DELIĆ returned them to Tunnel No. 9 "*and said that they would remember him well*" (T. 5480-5481). (See also P. Exh. 167, p. 2 (newspaper article from journalist Assa'ad Harraz alias Taha indicating that journalist interviewed prisoner called "Midinić").)

3.22 Novica Đorđić testified that the day before Mr. Milošević died, DELIĆ told Mr. Milošević that he would be called out during the night (T. 4177). (See also Milenko Kuljanin (T. 5483).) Novica Đorđić then recounted:

> "and indeed, as Hazim had said, that night his voice could be heard outside building number 9 and he called out Zeljko Milosevic. Zeljko went out. The door was closed behind him ... We heard talk, but this time it was a bit further away from the entrance, so we couldn't understand as well as the previous days when it was just outside the door, but we heard the discussion, later beatings and finally a bullet. That night Zeljko Milosevic did not return to building number 9." (T. 4179.)

3.23 This account is corroborated by the testimony of Milenko Kuljanin, who said that:

> "... Delic came and called Milosevic ... It was night ... He took Zeljko out personally. He called to come out and took him out. After they had gone out, we heard Zeljko screaming and moaning and crying out ... we

heard him screaming for over an hour. I am not quite sure how long over an hour, but it was an hour at least and longer than that." (T. 5481, 5483.)

3.24 Novica Đorđić testified that the morning after the final beating, he saw Milošević's body next to the hole which was used as a toilet. He said that it was immobile, and his head was covered with a rag or t-shirt with a large blood stain (T. 4179-4180). Milenko Kuljanin also said that he saw the body the next day on his way to the toilet, and that "*some sort of a parka, was also draped over his head*". This witness said that he knew that it was the body of Mr. Milošević because he recognised that he was wearing the wet-suit that the witness had lent him, and also recognised his sneakers (T. 5482, 5484). (See also P. Exh. 185 (funeral certificate relating to Željko Milosević); P. Exh. 103-1, p. 30 (interview of DELIĆ by the Office of the Prosecutor, in which DELIĆ agrees that Mr. Milošević was killed in the camp, though denying that he participated in that or any other crime); Risto Vukalo (knew that Mr. Milošević was badly beaten, including by DELIĆ, and had died from the beatings, but could not provide details (T. 6286-6287).)

3.25 It is submitted that the evidence establishes beyond a reasonable doubt that DELIĆ directly participated in severe and repeated beatings of Željko Milošević over a number of days, which beatings resulted in his death.

(C) Paragraph 18 of the Indictment (Killing of Simo JOVANOVIĆ)

3.26 Paragraph 18 of the Indictment alleges:

> "Sometime in July 1992 in front of a detention facility, a group including, Hazim DELIĆ and Esad LANDŽO over an extended period of time severely beat Simo JOVANOVIĆ. Esad LANDŽO and another guard then brought Simo JOVANOVIĆ back into the detention facility. He was denied medical treatment and died from his injuries almost immediately thereafter."

3.27 The Prosecution relies principally on the oral testimony of twelve witnesses to establish the facts in relation to this incident, as well as admissions made by the accused Esad LANDŽO:

(1)	Mirko Đorđić	(T. 4785-4788)
(2)	Mirko Babić	(T. 286-287)
(3)	Milovan Kuljanin	(T. 7052-7053)
(4)	Witness R	(T. 7797-7800)
(5)	Witness F	(T. 1316, 1317, 1377-1378)
(6)	Stevan Gligorević	(T. 1446, 1468)
(7)	Nedeljko Draganić	(T. 1635-1638, 1673)
(8)	Witness N	(T. 1915, 2046-2047)
(9)	Witness B	(T. 5056-5060)
(10)	Rajko Draganić	(T. 6944, 6945-7010)
(11)	Branko Sudar	(T. 5756, 5768-5772)
(12)	Witness P	(T. 4564-4565)
(13)	Esad LANDŽO	(T. 15053-15055, 15353-15355).

3.28 Simo Jovanović, a man of approximately 60 years of age, was beaten by LANDŽO and others on several occasions before his death. As Mirko Đorđić and other witnesses testified:

> "Simo Jovanović had been taken out in the evening several times. Usually it was a neighbour of his ... For the most part Zenga was also with him ... You could hear terrible blows outside. He would be moaning and then after a while he would be brought back in. This happened several times over a period of about ten days" (T. 4785).

3.29 Milovan Kuljanin testified that:

> "he was beaten up several times when I was present ... he was beaten by his next door neighbours ... and the other guards ... I knew Osman Dedić and Esad Landzo. Esad Macić as well" (T. 7052-7053).

(See also Witness R (T. 7796-7797), Witness F (T. 1316), Stevan Gligorević (T. 1468).) It also appears that although the bulk of the beatings occurred outside the hangar, some of the detainees

observed the victim being beaten inside, before he was taken outside. See Witness N ("*he was also beaten inside, so I saw when he was beaten inside and I could hear when he was being beaten outside ... Esad LANDŽO even beat him inside in front of everybody*" (T. 2046-2047)), Milovan Kuljanin (who saw Simo Jovanović receiving blows inside the hangar (T. 7053)). Witness P reported that he observed that Mr. Jovanović's medical condition was poor, and he asked DELIĆ to allow Mr. Jovanović to be transferred to the make-shift infirmary, but DELIĆ refused (T. 4565-4566).

3.30 The final beating began as had the others, with LANDŽO calling Mr. Jovanović out of the hangar. Witness B reported that:

> "... one night he was called out. I saw Zenga then. I'm sorry -- Esad Landzo, that everyone called Zenga. He came in with another man, whom I didn't know ... As soon as he left, the beating started" (T. 5059).

(See also the testimony of Mirko Đorđić (T. 4785-4786), Nedeljko Draganić (T. 1637-1638), Rajko Draganić (T. 6945), Witness R (T. 7796). See also P. Exh. 85 and 174 (diagrams showing position of victim in hangar, with diagrams being consistent with each other and with testimony.)

3.31 During this final beating, which lasted between 20 and 40 minutes, the detainees could hear the numerous blows upon the victim, as well as voices, including the voice of the victim as he begged for his life. As stated by Nedeljko Draganić:

> "They beat him maybe 10 metres from the door so that we could hear the moans and we heard everything. We heard him saying: 'Please, don't do it, brothers' and we could hear the blows" (T. 1638).

(See also Mirko Đorđić ("*we could hear blunt blows, his moans*"), Witness B ("*We heard terrible cries and moans*" (T. 5059)); Branko Sudar ("*You can hear the sound of a stick landing on a body, and I really had to put my fingers on my ears not to hear that*" (T. 5769)), Rajko Draganić ("*We heard blows and screaming and crying of a*

man while he had strength and then when it stopped, when he stopped screaming, then they called for someone to carry him inside" (T. 6945)).

3.32 The detainees reported that it was easy to recognise LANDŽO's distinctive voice during the beating, though generally not of the others who were also participating. Nedeljko Draganić (during the time he heard the moans and the blows, said he "*could recognise the voice of LANDŽO*" (T. 1639)), Witness B (during the beating, "*It seemed to me that I could hear the voice of Esad LANDŽO*" (T. 5060)). See generally Witness F (describing detainees' ability to recognise LANDŽO's distinctive voice (T. 1317, 1377-1378)).

3.33 One witness, Branko Sudar, reported that he heard LANDŽO's voice and also DELIĆ's voice during the beating, with DELIĆ giving orders and ultimately ordering the beating to stop: "*I could hear Delic was giving the orders and I could hear his voice out there. Sometimes he would say 'enough, stop, enough. No more'*" (T. 5770). Although Mr. Sudar was the only witness to have remembered hearing DELIĆ's voice, this may be explained by the fact that Mr. Sudar sat near the door (T. 5756) and therefore may have heard more than some other witnesses.

3.34 When the victim was brought back into the hangar, he was in a critical state, and he was dead by the next morning. As reported by Witness R:

> "... in the morning, when it dawned, he was lying in his place, with a red sweater on him which was quite torn, so you could almost see the whole of his chest naked, which was also black and blue, and his trousers were torn and wet ... He was wearing a ... thick sweater, which was torn, and through the tears one could see the bruises, the black bruises. ... the face was the colour of earth, grey, the colour of death. He was lying on his back. One could see the whole corpse but especially the head because it was leaning back against the wall of the garage" (T. 7797, 7799,7800).

3.35 The detainees were later ordered to carry Mr. Jovanović's body out of the hangar (T. 1638; 5060). (See also T. 1468, 4786, 5771, 6946-6947, P. Exh. 186 (death certificate of Simo Jovanović reporting that he died on 18 June 1992 in Čelebići), P. Exh. 103-1, p. 84 (interview of DELIĆ by the Office of the Prosecutor in which he agrees that Jovanović died in Čelebići but gives a different account of how he died).)

3.36 In his testimony, the accused Esad LANDŽO admitted that Simo Jovanović was beaten to death by a group of guards in the camp, and that he was the guard who called out Mr. Jovanović and who later returned him to the hangar (T. 15050). He denies, however, that he beat Mr. Jovanović himself on this occasion (T. 15050, 15051).

3.37 The Prosecution notes first that LANDŽO's recollection of all the relevant events is either incomplete or not credible. For instance, although he reports that he does remember calling Mr. Jovanović out of the hangar for his final beating, he does not appear to remember the numerous other beatings of Mr. Jovanović in which he was involved. Further, although it may well be that LANDŽO's testimony that the other guards were the instigators of the murder of Mr. Jovanović is correct, his recollection that he at no time was present at or participated in the beating is in conflict with the testimony of the other witnesses as well as with common sense. As set forth above, a number of detainees recollect not just that LANDŽO called out Mr. Jovanović, but that they also heard his voice during the beating. Further, it is not credible that LANDŽO would have refused to participate in this beating (including even hitting Mr. Jovanović as he brought him out), that the other guards would have waited until he left to start the beating, and that LANDŽO would then have reappeared to return the victim to the hangar to die just at the time that they finished beating him.

3.38 In any event, however, even if LANDŽO's memory of events were exactly correct, the matters admitted by LANDŽO of themselves are sufficient to establish his criminal liability under Article 7(1) of the Statute in respect of the killing of Simo Jovanović. In particular, LANDŽO admits that at the relevant time he was a guard on duty, responsible for the prisoners in Hangar No. 6, including Mr. Jovanović (T. 15051). LANDŽO admits that he called Mr. Jovanović out of the hangar at the request of the other guards, and

that when he did so, he "assumed" that the guards were going to beat the victim (T. 15354-15355). LANDŽO says further that the other guards were not able themselves to call Mr. Jovanović out of the hangar, and that only he, LANDŽO, as the guard on duty was able to do this (T. 15353-15354). LANDŽO says additionally that he called Mr. Jovanović out at the request of the other guards, because the other guards claimed to have an order to "talk" to him. However, LANDŽO says he was unable to check whether or not the other guards did in fact have any such order (T. 15050). LANDŽO further says that during the beating he could hear the beating and shouts (T. 15050, 15355), but he did not intervene. LANDŽO also says that after the beating he helped bring the victim back to the hangar (T. 15353).

3.39 Thus, even if the Trial Chamber were to accept LANDŽO's version of events as correct, it would be evident that he contributed materially to the commission of the crime. He had the responsibility of guarding Mr. Jovanović, and the other guards were unable to call him out without LANDŽO's assistance. Yet LANDŽO did call him out, believing that he would be beaten. LANDŽO then failed to intervene when Mr. Jovanović was being beaten despite being within hearing distance, and afterwards simply took him back to the hangar without seeking any assistance for his injuries. That is sufficient to establish his criminal liability under Article 7(1) of the Statute (see discussion of Article 7(1) liability in the Annex to this Closing Statement).

3.40 Thus, all the elements necessary for the crime of murder and wilful killing have been established. The victim died from injuries received from beatings in which LANDŽO and DELIĆ participated. LANDŽO's participation included both his calling the victim out for the beating, as he himself admits, and his inflicting blows and encouraging others to do so as indicated by numerous eyewitnesses. LANDŽO's intent to kill or cause grievous injury may be inferred from the severity of the beatings inflicted upon the victim. With respect to DELIĆ, the Chamber may find participation because of his direction and presence. If so, his intent may be inferred both from his participation in the final beating and from his prior refusal to permit medical treatment.

(D) Paragraph 19 of the Indictment (Killing of Boško SAMOUKOVIĆ)

3.41 Paragraph 19 of the Indictment alleges:

> "Sometime in July 1992, Esad LANDŽO beat a number of detainees from Bradina with a wooden plank. During the beatings, Esad LANDŽO repeatedly struck Boško SAMOUKOVIĆ, aged approximately 60 years. After Boško SAMOUKOVIĆ lost consciousness from the blows, he was taken out of the detention facility and he died soon after from his injuries."

3.42 The Prosecution relies principally on the testimony of the following fifteen witnesses to establish the facts in relation to this incident, as well as the testimony of Esad LANDŽO who admits that Mr. Samouković died as a result of blows administered by him:

(1)	Mirko Babić	(T. 283, 412)
(2)	Witness F	(T. 1317-1318)
(3)	Stevan Gligorević	(T. 1446, 1542)
(4)	Nedeljko Draganić	(T. 1639-1640)
(5)	Witness N	(T. 1918, 2047-2048)
(6)	Dragan Kuljanin	(T. 2345-2346)
(7)	Mladen Kuljanin	(T. 2500-2501, 2584-2585)
(8)	Witness P	(T. 4529, 4538)
(9)	Mirko Đorđić	(T. 4788)
(10)	Witness M	(T. 4919-4920, 5014)
(11)	Witness B	(T. 5050-5051)
(12)	Petko Grubač	(T. 5978, 5986)
(13)	Risto Vukalo	(T. 6281,6282)
(14)	Rajko Draganić	(T. 6947-6949)
(15)	Witness R	(T. 7801-7804)
(16)	Esad LANDŽO	(T. 15059-15061, 15348-15351)

3.43 According to Witness R:

> "This was in the period when Bradina was burned down for the second time, to the ground, so that was after 12th July 1992, two or three days after that. Mr

> Delic ordered at that time that all prisoners from Bradina be beaten three times during that day, as punishment, and these beatings were administered by either the guards or Delic himself. I know that Zenga entered that day and issued an order, he said, "all people from Bradina get up". For some reason, Bosko Samoukovic did not get up, but remained seated. Zenga came up to him, because he knew he was from Bradina, and said, "why did you not get up?". Bosko got up, and Zenga ordered him to assume this position which was for beating, spread legs, the arms behind the head ..." (T. 7801-7802)

3.44 The fact that Mr. Samouković was singled out for not standing up when ordered to do so is confirmed by Mirko Đorđić, who testified:

> "The date, it was 17th July in the morning hours. After the incident between the -- among the Muslim army, we had these collective beatings and on that day Zenga came in and ordered all from Bradina to get up. We all got up. At one point one of the prisoners -- this was Nedjo Gligorević said: "There are those who did not get up." He said: "Who?" He pointed to Bosko Samoukovic. Zenga ordered us all to sit down and him to get up. He started towards him about 2 metres. Zenga started beating him." (T. 4788.)

3.45 Several additional witnesses, while not giving a reason, confirm that LANDŽO deliberately singled out Mr. Samouković for beating (Mirko Babić (T. 283), Witness F (T. 1316), Dragan Kuljanin (T. 2345-2346), Mladen Kuljanin (T. 2500), Witness M (4919), Witness B (T. 5050-5051), Rajko Draganić (T. 6947)).

3.46 A number of witnesses confirm that LANDŽO struck Mr. Samouković with a wooden plank. However, as noted by a number of witnesses, the beatings were not confined to blows from the plank, and the victim was struck numerous times. Mirko Đorđić testified:

> "He beat him with all kinds of things. At one point he came to the door. He went to the door and picked up

> the plank that was used to prop the door up. It was long, about 2 metres, and it was about 5, 6 cms wide. It was something like 5 by 10, about that. He beat him all over the body. At one point he hit him in the back of the head. He fell down. He apparently saw that he had lost consciousness and he ordered a prisoner who was a medical nurse to help him. He tried to -- I guess to pull out the tongue. He did not succeed. That's what he told us later. He did not succeed. Then he called in some prisoners to carry him to the infirmary." (T. 4788-4789.)

3.47 Witness F testified that:

> "He took a plank, which is maybe 5 or 6 cms wide, and beat him on the kidneys until he knocked him down, and when he knocked him down, he started beating him with a rifle butt. ... It happened in the hanger in front of all of us. We were all able to see that. He beat him with the rifle butt until he fainted. He was then taken out ..." (T. 1318.)

3.48 Witness M testified that:

> "When he [Landžo] came there ... he started hitting him savagely. I think he first hit him several times with his rifle butt. He fell down but he continued to kick him. He had soldier's boots on and he kicked him all over the body. I think in the end he picked up some stick or something, until he really finished him off ..." (T. 5051.)

3.49 The intensity of the beating is also indicated by the testimony of Stevan Gligorević ("*They beat him with planks, rifle butts. They punched him, they kicked him. They used all kinds of things ... Even a baseball bat*" (T. 1640)), Witness M ("... *He was beaten up on his back, kidneys, head. They didn't make any point about where they would hit him*" (T. 4920)), Risto Vukalo ("*Zenga hit him with his rifle butt. He kicked him and he hit him with a stick*" (T. 6282)), Rajko Draganić ("*...he was hitting him in the chest with his boot, with a rifle butt. Then there was a 7 by 10 plank and he hit him*

several times and the man fell" (T. 6948). The beating also lasted for a significant length of time and consisted of more than a few blows. (Draganić (beating lasted 10 to 15 minutes); Witness R (beating lasted several minutes)). Witness P estimated that he heard blows and screams continuing for 20 to 30 minutes (T. 4534)). After he was brought to the infirmary, he died within 20 to 30 minutes (T. 4534; 5986). Witness P noted that the victim's chest hurt, the victim had a broken rib and the victim's breathing was weak (T. 4534). See also Petko Grubač (victim had difficulty breathing and became blue in face (T. 5984)).

3.50 In his testimony, LANDŽO admits that he struck a number of detainees from Bradina. He admits that one of these detainees was Boško Samouković, whom he struck several times with a wooden plank. He also admits that Mr. Samouković died from the blows received. (T. 15056-15057, 15350-15351.) Indeed, LANDŽO states expressly that "*I was the cause of his death*" (T. 15350). However, LANDŽO denies that he had any intention to kill any of these people, though at other points of his testimony, he admits that he " *wanted really to kill them all*" (T. 15056), and he also agrees that he " *wanted to hurt someone, and ... wanted that person to be a Serb from Bradina, to take out ... [his] anger*" (T. 15349-15350). He claims that each of those he struck received only two or three blows (T. 15056), and suggests that Mr. Samouković died, unlike the others whom he similarly struck, because Mr. Samouković had cardiac problems (T. 15057). LANDŽO claims further that when Mr. Samouković collapsed after being struck by him, LANDŽO told other detainees to help Mr. Samouković to the infirmary, where he subsequently died. (See also P. Exh. 185 (Document from Standard Company reporting that body of Mr. Samouković was taken from Čelebići and buried on 21 July 1992).) LANDŽO claims that he visited the infirmary, and said that the doctors should try to help save him. LANDŽO further reports that he later heard that the victim had heart troubles (T. 15061).

3.51 As shown above, while the testimony of other witnesses corroborates LANDŽO's admission that Mr. Samouković died as a result of blows administered by LANDŽO, the testimony of these other witnesses contradicts other aspects of LANDŽO's testimony, including the length and nature of the beating.

3.52 One witness does corroborate LANDŽO's claim that he visited the infirmary, and told the doctors that they must see to it that Mr. Samouković recovered (Petko Grubač (T. 5984)). However, a further witness testified that LANDŽO in fact said " *that they should threat him and bring him to Number 6 in half an hour*" (Miro Golubović (T. 2238)). Another testified that LANDŽO insisted that Boško Samouković be " *ready*" by 6 p.m. (Witness P (T. 4535)). The latter witness interpreted this comment to mean that Mr. Samouković was to be collected for a further beating at that time (T. 4535). Further, although there is no evidence other than the testimony of LANDŽO to suggest that the victim had heart problems which contributed to his death, given that there can be no doubt under the circumstances that any heart attack was brought on by LANDŽO's beating, any questions concerning the victim's heart condition are irrelevant.

3.53 All the elements necessary for the crime of murder and wilful killing have been established beyond a reasonable doubt for LANDŽO. The victim died as a result of being beaten by LANDŽO, and the intent to kill or cause grievous injury may be inferred from the severity of the beating as attested to by the witnesses and by LANDŽO's own admissions.

(E) Paragraph 21 of the Indictment (Killing of Slavko ŠUŠIĆ)

3.54 Paragraph 21 of the Indictment alleges:

> " Sometime around the latter part of July, or in August 1992, a group including Hazim DELIĆ and Esad LANDŽO repeatedly selected Slavko ŠUŠIĆ for severe beatings. Hazim DELIĆ, Esad LANDŽO and others beat Slavko ŠUŠIĆ with objects, including a bat and a piece of cable. They also tortured him using objects including pliers, lit fuses and nails. After being subjected to this treatment for several days, Slavko ŠUŠIĆ died from his injuries."

3.55 The Prosecution relies principally on the testimony of the following seven witnesses to establish the facts in relation to this incident, as well as the testimony of Esad LANDŽO:

(1)	Grozdana Ćećez	(T. 542-550)
(2)	Milojka Antić	(T. 1803-1805)
(3)	Miro Golubović	(T. 2132-2134)
(4)	Novica Đorđić	(T. 4181-4187, 4274)
(5)	Witness P	(T. 4544-4554)
(6)	Milenko Kuljanin	(T. 5469-5479, 5564-5565)
(7)	Witness J	(T. 7485-7493)
(8)	Esad LANDŽO	(T. 15061-15063, 15256-15258, 1531-15358)

3.56 Milenko Kuljanin gave the following account of the mistreatment of Mr. Šušić:

> "Slavko Susic was brought to tunnel number nine maybe a month after us and he was brought to the tunnel by Delic, who followed him in, who beat him to the very entrance and inside as well. Delic beat him with a rubber pole somewhere halfway into the tunnel. Slavko was all covered in blood. He was swollen. His eyelids were swollen. Delic left him in tunnel number nine. He went out and he ordered Zarko Mrkajic to investigate Slavko Susic in connection with a radio transmitter that only he knew about, claiming that Slavko Susic had this radio transmitter, receiver. Zarko Mrkatic questioned him, talked to him nicely. He asked him whether he had this radio transmitter. He said that he had no idea about it, that he did not have one. However, Delic came back two or three hours later, I cannot say exactly after how much time, and he asked Zarko whether he had confessed to having this radio transmitter. As he did not have one he could not confess. Delic took Zarko out demanding that he confess about this radio transmitter. When this did not help Delic took Slavko out, beat him and who knows what else he did to him, but then he came into the tunnel and he said that he had admitted that he had a radio transmitter and that he was going with him to his home to bring back this radio transmitter. They went and returned without a radio transmitter because the man did not have one. Anyway Delic started

> hitting him again and said that he was lying, that he was cheating, that he did have a radio station but he refused to admit. This beating went on, or rather Delic beat him. Then he shoved him back into tunnel number nine. Then Landzo came, Zenga. He took him out in front of tunnel number nine. He pulled his tongue with pliers. He wrapped a fuse round his leg and his waist, setting light to it, forcing the man to admit something that he could not admit because he simply did not have such a radio transmitter. Zenga set light to the fuse. The man was burning. He tortured him in various ways. When Zenga stopped with this torture, Slavko Susic crawled on his -- on all fours into the tunnel because he simply could no longer walk. Slavko Susic stayed there, spent the night. I think the next day Delic continued torturing him and beating him and that same day about 4 or 5 the man succumbed to this torture and passed away. Slavko Susic lay there dead. ... He was left there for two nights and a day, after which Delic and Zenga and the guards came and accused us that we had killed Slavko Susic." (T. 5469-5471; see also the further details given by the witness at T. 5472-5479.)

3.57 The testimony of Novica Đorđić further corroborates that Mr. Šušić was beaten by guards as he was initially brought to the entrance to Tunnel No. 9, and that DELIĆ was one of those principally involved:

> "His very arrival to building Number 9 was a terrible scene in itself. I remember well that Hazim Delic was escorting him when he was thrown in. He was wearing a short-sleeved tee-shirt and it was already torn on his back from the beatings he had received upon his arrest and his bringing to the camp." (T. 4181-4182.)

3.58 Witness J testified that Mr. Šušić was beaten in the camp on numerous occasions (T. 7486, 7487-7488, 7489-7490, 7492). Novica Đorđić testified that it was "mostly" DELIĆ and LANDŽO who called Mr. Šušić out on the occasions when he was beaten (T. 4183). This witness further testified that he personally observed

DELIĆ and LANDŽO beat Mr. Šušić on more than one occasion (T. 4186-4187).

3.59 Additional witnesses testify to having seen specific beatings of Mr. Šušić, including the final beating. (It is possible that some of these witnesses are describing the same beating.) Miro Golubović testified that on one occasion he saw DELIĆ beat Mr. Slavko Šušić with a cable and a piece of wood, in the presence of LANDŽO, who subsequently "*dragged him by the arms*" (T. 2133). Witness P testified that on one occasion he saw Slavko Šušić being beaten by DELIĆ and LANDŽO, and that DELIĆ had a blunt object which could have been a baseball bat, plank, chair leg or similar object (T. 4545-4547). Some corroboration is provided by the testimony of Milojka Antić (T.1804), who on one occasion saw Mr. Šušić leaning against a wall, next to DELIĆ who was holding a piece of wood.

3.60 With respect to the final occasion when Mr. Šušić was beaten, Milenko Kuljanin (see para. 3.56 above) specifies that on this final occasion Mr. Šušić was first beaten inside of Tunnel No. 9 by DELIĆ, as well as in front of the tunnel by LANDŽO. (T. 5478, 5564). Novica Đorđić testifies that on the occasion of this final beating, Mr. Šušić was called out of Tunnel No. 9 by DELIĆ and LANDŽO, and this witness further testifies that she could recognise LANDŽO's voice during the beating (T. 4185-4186). Witness J testified that Slavko Šušić was called out of the hangar by DELIĆ on this final occasion, and that he could hear the sound of the beating from inside the hangar (T. 7493).

3.61 Witness testimony indicates that Mr. Šušić was critically injured as a result of the multiple beatings. Grozdana Ćećez said that the day after his arrival in the camp, Mr. Šušić's injuries were such that he was unable to move himself from Tunnel No. 9 to the toilet (T. 543, 547). Witness P testified that he saw Mr. Šušić in Tunnel No. 9 on one occasion after having seen him be beaten, and that he was in "*very bad shape*" (T. 4545, 4548). Significantly, witness J reported:

> "he was just mistreated a lot, and I can say that we were all surprised that he survived, that he could go on living, that he could breathe. Every time we thought he would not. His mouth was swollen, he was disfigured. The colour of his skin was this colour here of the desk

> ... Finally he was called out and then I did not see with my own eyes, but I heard the beating, the blows, and finally he came back. It was Delic who called him out and I heard those blunt blows that he was being beaten. He was a very brave man, so only rarely could you hear his moan very quietly. When he came back, he was totally wet, he went to the bottom of number 9, and in maybe about an hour an hour and a half the people who were closer to him said he had died" (T. 7492-7493.)

3.62 The witness Mirko Đorđić similarly stated:

> "After some time he could hardly come in. He was staggering. The doors closed behind him. I went after him to hold him up, so that he wouldn't fall. Towards the very end of the tunnel near the flat area, where number 9 ended, he was standing next to the wall. Zaro Mrkajic was next to him. He couldn't breathe. He asked for water and I went to get him some water, but somebody else had already brought a glass of water. But he slid down the wall and started to die. We laid him down on the floor, tried to give him artificial respiration but there was no way that we could help him. He was dead ... That corpse stayed there all night in building number 9 and some time next day, about 11 o'clock, he was taken out" (T. 4183-4184).

3.63 The testimony of other witnesses confirms the account that Mr. Šušić was accused of having radio transmitter, that he was taken from the camp to look for the transmitter, that he was beaten when no transmitter was found, and that he died as a result of his beatings (Grozdana Ćećez (T. 547-550), Novica Đorđić (T. 4182-4183), Milojka Antić (T. 1804)).

3.64 The accused Esad LANDŽO testified that he can recall seeing Slavko Šušić in Čelebići camp on only one occasion. On this occasion, LANDŽO claims that he had been ordered to take Mr. Šušić to Tunnel No. 9, but that he had been given no order to beat him. LANDŽO says that at the door of Tunnel No. 9, he struck Slavko Šušić twice, while a number of other guards at the door struck him more severely including with a police baton. Although

he agrees that he probably knew the identity of the other persons involved in this beating, at the time he testified LANDŽO reported that he could only remember the identity of one such person (who was known as Fokac). LANDŽO further claims that he heard that Slavko Šušić had been killed or died several days later. (T. 15061-15063, 15256-15258, 15351-15353.) As with much of his testimony, LANDŽO's recollection is either incomplete or not credible, because the overwhelming evidence indicates that his involvement was much greater. In any event, his participation in the beating of Mr. Šušić, which must under the circumstances be considered part of a continuing course of conduct, even if it were accepted that it was less than that of others, may be considered participation sufficient to establish liability under Article 7(1) of the Statute.

3.65 Finally, no weight should be given to the testimony of LANDŽO (T. 15061) and defence witness E. Džajic (T. 13476), and the statement of DELIĆ given to the Office of the Prosecutor (P. Exh. 103-1, p. 85), to the effect that they heard that Serb detainees had killed Mr. Šušić. There is no information about the person who provided such information, no information is given about the circumstances, it is on its face incredible, and most importantly, it is contradicted by numerous eyewitnesses.

3.66 Because of the multiple times that he was beaten, the multiple locations where he was beaten, and the different vantage points of the witnesses to the beatings (which included persons in different positions in Tunnel No. 9 as well as the women in the gatehouse), there is understandably some discrepancies and confusion in the accounts of the various beatings. These variations in the accounts, however, do not undermine the credibility of the evidence as a whole, in establishing the participation of both DELIĆ and LANDŽO in a series of severe beatings of Slavko Šušić which ultimately caused his death.

3.67 All the elements necessary for the crime of murder and wilful killing have been established. The victim clearly died, as a result of a continuing series of beatings by persons including DELIĆ and LANDŽO. The intent to kill or cause grievous injury may readily be inferred from the severity of the beatings, including even that the

victim was called out for additional beatings when he was visibly already in an injured condition.

(F) Paragraph 22 of the Indictment (Responsibility of superiors for murders)

3.68 Paragraph 22 of the Indictment alleges:

> "With respect to the murders committed in Čelebići camp, including: the murder in June 1992 of Milorad KULJANIN, who was shot by guards, one of whom said they wished a sacrifice for the Muslim festival of Bairaim; the murder of Željko ĆEĆEZ, who was beaten to death in June or July 1992; the murder of Slobodan BABIĆ, who was beaten to death in June 1992; the murder of Petko GLIGOREVIĆ, who was beaten to death in the latter part of May 1992; the murder of Gojko MILJANIĆ, who was beaten to death in the latter part of May 1992; the murder of Željko KLIMENTA, who was shot and killed during the latter part of July 1992; the murder of Miroslav VUJIČIĆ, who was shot on approximately 27 May 1992; the murder of PERO MRKAJIĆ who was beaten to death in July 1992; and including all the murders described above in paragraphs sixteen to twenty-one, Zejnil DELALIĆ, Zdravko MUCIĆ and Hazim DELIĆ knew or had reason to know that their subordinates were about to commit those acts or had done so, and failed either to take the necessary and reasonable steps to prevent those acts or to punish the perpetrators. With respect to those counts above where Hazim DELIĆ is charged as a direct participant, he is also charged here as a superior."

3.69 The evidence relied upon by the Prosecution to establish the superior responsibility of DELALIĆ, MUCIĆ and DELIĆ in respect of these murders is dealt with in Part 4 of this Closing Statement.

3.70 The evidence relied upon by the Prosecution to prove the fact of the murders described in paragraphs 16 to 21 of the Indictment is dealt with above, in sections (A) to (E) of this Part.

3.71 The evidence relied upon by the Prosecution to prove the facts of the other murders described in paragraph 22 of the Indictment is dealt with in this present section. The Prosecution notes, of course, that with respect to this count and all other counts in which criminal liability is based on superior responsibility (see sections (M), (O) and (Q), (R), (S) and (T) of this Part below), the specific incidents referred to in the Indictment are not exhaustive but rather illustrative. (Decision on Mucic's Motion for Particulars, 26 June 1996, pp. 7-8.) Thus, for purposes of superior responsibility, the Judges may consider other incidents not specifically described in the indictment but proved at trial. Similarly, not every example referred to in these paragraphs of the Indictment need be proved to establish liability on the basis of superior responsibility. Because the examples set out in the Indictment are sufficiently illustrative and because it would be impossible to cover in this Closing Statement every act of serious mistreatment proved at the camp, the Prosecution will here discuss only the events specifically described in the Indictment.

(i) Murder of Milorad KULJANIN

3.72 The Prosecution relies principally on the testimony of the following seven witnesses to establish the facts in relation to this incident:

(1)	Stevan Gligorević	(T. 1445)
(2)	Witness N	(T. 1916-1917)
(3)	Dragan Kuljanin	(T. 2345)
(4)	Mladen Kuljanin	(T. 2520-2521)
(5)	Mirko Đorđić	(T. 4775-4778)
(6)	Witness M	(T. 4921-4922)
(7)	Witness R	(T. 7783-7789)

The Prosecution also relies on Prosecution Exhibit 185.

3.73 A detailed account of the murder of Milorad Kuljanin was given by Witness R, who said he was "*maybe one step away*" from the point

where the killing occurred. He testified that about 9.00 or 10.00 in the morning, he was taken out of Hangar No. 6 with a group of five or six other detainees to urinate in a nearby canal. While they were outside, they observed the guard Esad Macic and two other unidentified guards go to the door of Hangar No. 6 and call out Mr. Kuljanin. The guard Macic then brought Mr. Kuljanin to a point immediately in front of the witness's group, and began to question Mr. Kuljanin about his involvement in the reserve forces of the JNA. When Mr. Kuljanin denied that anyone from Konjic had been in the reserve forces in Mostar, Macić ordered him to lie down face down in the urine in the canal, and then to turn over to lie on his back in the canal. When Mr. Kuljanin then denied once more that anyone from Konjic had been in the reserve forces in Mostar, Macić shot him three times in the face and neck from a distance of 20 to 30 centimetres. Witness R said that he personally had been reached by the brain and blood from the victim:

> "When these bullets were fired into Milorad Kuljanin's face, the skull sort of burst open, so to speak, and the brains and blood just splattered on all of us." (T. 7787.)

The witness said that his group was then ordered back into the hangar (T. 7783-7790).

3.74 Corroboration of this murder is provided by the testimony of various other witnesses (Stevan Gligorević (T. 1445), Witness N (T. 1916-1917), Dragan Kuljanin (T. 2345), Mladen Kuljanin (T. 2520-2521), Mirko Đorđić (T. 4775-4778)).

3.75 Witness R recalled that "Milorad Kuljanin's death occurred on the Muslim holiday of Bajram, "*because the guards kept saying several days before the Bajram, 'if we do not slaughter ten of you for Bajram, we are no good Muslims*'" (T. 7784). (See also Dragan Kuljanin (T. 2345), Mladen Kuljanin (T. 2520), Mirko Đorđić (T. 4775), Witness M (T. 4921-4922).)

3.76 The death of this victim has also been established by a funeral certificate (P. Exh. 185). (See also P. Exh. 103-1, p. 85 (interview of DELIĆ by the Office of the Prosecutor in which he agrees that victim died but gives a different account).)

3.77 All the elements of murder and wilful killing have been established beyond a reasonable doubt. The victim died as a result of being shot by a guard in the camp. The intent to kill may be inferred from the reports of the guards that they needed a sacrifice for the holidays and from the fact that the victim was shot in the head at close range.

(ii) Murder of Željko ĆEĆEZ

3.78 The Prosecution relies principally on the testimony of the following nine witnesses to establish the facts in relation to this incident:

(1)	Witness F	(T. 1314-1315)
(2)	Stevan Gligorević	(T. 1445, 1466-1467, 1539-1540)
(3)	Witness N	(T. 1917)
(4)	Dragan Kuljanin	(T. 2310, 2347)
(5)	Mladen Kuljanin	(T. 2517)
(6)	Mirko Đorđić	(T. 4776, 4778-4780)
(7)	Witness M	(T. 4920-4922).
(8)	Risto Vukalo	(T. 6284-6286)
(9)	Witness R	(T. 7787-7793)

The Prosecution also relies on Prosecution Exhibit 185.

3.79 Witness R recounted that on the evening of the same day that Milorad Kuljanin was killed (see section (i) immediately above), Željko Ćećez was taken out of Hangar No. 6 by LANDŽO. The witness could then hear the sound of a human body being beaten for 25 to 30 minutes, and Ćećez's cries and moans. Ćećez was then brought back into the hangar, and the witness recognised LANDŽO's voice telling the detainees nearest the door to "*throw Zeljko in*". The witness said also that "*The order was that if anyone tried to assist Zeljko that he would suffer the same fate as he*". (T. 7790-91) This witness then added:

> "Zeljko probably not knowing himself where he was, as he was probably falling into a coma, he was crying out, "for heavens' sake, is there anyone to help me?" He repeated this several times in the darkness. ... but

> soon afterwards, we heard no more cries or moans or anything at all. ...
>
> ... his body was found in the morning, he was probably trying to crawl or to move in those last moments of his life, before he died. ... he was not in his place, he is in between the two inner rows of people, of prisoners, and he was lying in the same position as he was thrown in, his clothes were all torn, his trousers were torn up to above the knees, and the colour of his body was ash grey, as if there was never a drop of blood in that body." (T. 7791-7792)

3.80 Corroboration is provided by other witnesses (see Witness N (T. 1917), Dragan Kuljanin (T. 2310, 2347), Mladen Kuljanin (T. 2517), Risto Vukalo (T. 6284-6286), Witness F (T. 1314-1315), Stevan Gligorević (T. 1445, 1466-1467, 1539-1540), Mirko Đorđić (T. 4776, 4778-4780).

3.81 The testimony of some of the witnesses suggests the Željko Ćećez may have been killed because he was a witness to the murder of Milorad Kuljanin (see Witness F (T. 1314), Witness R (T. 7788-7790), Witness M (T. 4920-4922)). In his interview with the Office of the Prosecutor, DELIĆ confirmed that Mr. Ćećez was killed because he had been a witness to Mr. Kuljanin's murder (P. Exh. 103-1, p. 86).

3.82 The death of the victim has been also established through a funeral certificate (P. Exh. 185).

3.83 All the elements of murder and wilful killing have been established beyond a reasonable doubt. The victim died as a result of being beaten by guards in the camp. The intent may be inferred from the severity of the beating and the evidence that the guards wanted to kill the victim because he had witnessed an earlier murder.

(iii) Murder of Slobodan BABIĆ

3.84 The Prosecution relies principally on the testimony of the following five witnesses to establish the facts in relation to this incident:

(1)	Mirko Babić	(T. 464-471)
(2)	Witness N	(T. 1878, 1880, 2094)
(3)	Witness P	(T. 4499-4502, 4638)
(4)	Petko Grubač	(T. 5963-5965)
(5)	Risto Vukalo	(T. 6263-6265, 6268-6269)

The Prosecution also relies on Prosecution Exhibit 185.

3.85 The testimony of various witnesses indicates that Slobodan Babić had already been beaten prior to his arrival at the Čelebići camp, and that on arrival he was already in a very bad physical condition. Mirko Babić testified that he did not see anyone come to give Slobodan Babić medical care for the injuries received prior to his arrival (T. 464).

3.86 The testimony of one witness also indicates that Slobodan Babić was subject to further beating while in the camp. Witness N recounted that after Mr. Babić was brought to Čelebići, he was brought to Building No. 22, where Witness N was also being detained. (Building No. 22 was later used as an infirmary, but was not being so used in the beginning when Mr. Babić was there (T. 1878).) Witness N testified:

> "I saw when uniformed people came in, though he was half dead, they continued hitting him. That is what I saw. Several times they hit him. ..." (T. 1880).

3.87 Mr. Babić was then transferred to the Third March Elementary School, where he died after a few days (T. 4499). Witness P testified that Slobodan Babić was severely injured and unconscious the entire time that he was in the Third March School (T. 4499-4502). This was corroborated by the testimony of Dr. Petko Grubač (T. 5963-5965).

3.88 The death of the victim has been also established through a funeral certificate (P. Exh. 185).

3.89 It is agreed that Mr. Babić was severely injured at the time he was brought to Čelebići, and that these injuries would have contributed to his death. Under the circumstances, which include both that the

victim was in the Čelebići camp for several days without receiving any kind of medical care and that the victim was beaten in the Čelebići camp even though he was clearly already in a severely injured condition, the Chamber may still conclude that a proximate cause of Mr. Babić's death was his treatment in the camp. One may not deny an injured person medical care and beat him, and then claim as a defence that he may have died at some later point from the prior injuries.

3.90 Thus, the Chamber may find that all the elements of murder and wilful killing have been established beyond a reasonable doubt. The victim died as a result of being beaten, with his final beating occurring in the Čelebići camp. The intent to kill or cause grievous harm may be reasonably inferred from the circumstances of the beating.

(iv) Murder of Petko GLIGOREVIĆ

3.91 The Prosecution relies principally on the testimony of the following four witnesses to establish the facts in relation to this incident:

(1)	Witness F	(T. 1301-1305, 1343-1344, 1409)
(2)	Stevan Gligorević	(T. 1428-1432)
(3)	Mladen Kuljanin	(T. 2479-2481)
(4)	Zoran Ninković	(T. 5133-5142)

3.92 The evidence establishes that Petko Gligorević was killed in a collective beating immediately upon his arrival at Čelebići camp.

3.93 Stevan Gligorević gave the following account of the incident:

> "After a drive we arrived at Celebici. When we entered through the gate we got out and they lined us up against a wall, which was near the gate. At that time the worst thing started. We had to stand leaning against a wall both with our chest and the stomach area, with our hands raised high. At first that was not a problem, but later for me it was more of a problem than the beatings that I received, because it is terrible,

> terrible pain to keep about seven hours to keep the hands up. You can't stand -- you can't do that any more, because your arms just keep sliding by themselves. There were three younger men in uniforms. I don't know them. They went around cursing. One of them was beating with a rifle butt. The other one with the front part, and the other one had a handle of a pickaxe, which was broken off. Then a fourth one -- I don't know if that was the same team or they took turns. One was pulling out the piece from the rifle and was beating us up with it. One of them had a large piece of stone or pebble from the river Neretva and was hitting us in the back with it. So that dragged on for hours. Some were falling and standing up again. Some people at that time were being taken out of the line-up and made to lie down and then blows were raining on them. We could not turn even for a moment to see. All this was accompanied by curses, by mocking, and I think that with all that physical torture it was also the verbal humiliation, because for a while some of the young men that were there were shouting loudly something like: "Praise the Lord!", "Merhaba, Selam Aleikam!" Then we had to repeat it in unison. Then they were saying -- they were asking which religion was the best in the world. We all had to say that it was the Muslim one. Then they were saying prayers from the Koran and we had to repeat them. ..." (T. 1428-1430.)

This witness confirmed that Petko Gligorević died in this beating (T. 1432).

3.94 Mladen Kuljanin also gave an account of this incident (T. 2479-2481), and confirmed that DELIĆ, whom he knew by sight, was present at the time (T. 2479). This witness also confirmed that Petko Gligorević died in the beating (T. 2479), saying that the victim was about 10 metres away from him at the time (T. 2480).

3.95 A further account of the incident is given by Zoran Ninković (T. 5133-5142), who similarly confirms that Petko Gligorević died in

the beating (T. 5137-5138, 5146) and that DELIĆ, whom he knew by sight, was present during the incident (T. 5139-5140).

3.96 The incident is also recounted by Witness F (T. 1301-1305), who once more confirms that Petko Gligorević died in this incident (T. 1343-1344, 1409).

3.97 General corroboration for the collective beating is also found in P. Exh. 130, a seized document bearing the signature of Z. Mucić and certified by the Consulate of the Republic of Bosnia Herzegovina in Vienna. Among other things, the document states "Among the less significant information that I wish to bring to your attention is the fact that all the shovel handles in Čelebići were broken in two days because the new prisoners were beaten irrespective of the degree of their guilt. We had a lot of problems with seriously injured prisoners, many of them died ..."

3.98 Thus, all the elements of murder and wilful killing have been established beyond a reasonable doubt. The victim died as a result of being beaten by persons who worked in the camp and/or who were permitted to be in the camp by those in authority at the camp. The intent is necessarily inferred from the severity of the beating.

(v) Murder of Gojko MILJANIĆ

3.99 The Prosecution relies principally on the testimony of the following five witnesses to establish the facts in relation to this incident:

(1)	Witness F	(T. 1301-1305, 1343-1344, 1400, 1409)
(2)	Stevan Gligorević	(T. 1428-1432)
(3)	Witness N	(T. 1917)
(4)	Mladen Kuljanin	(T. 2479-2481)
(5)	Zoran Ninković	(T. 5133-5142)

3.100 The evidence establishes that Gojko Mijanić was killed as a result of injuries sustained in a collective beating immediately upon his arrival at Čelebići camp. This was the same incident in which Petko Gligorević died, and at which DELIĆ was present (see paragraphs

3.91 to 3.98 above for details of the evidence relating to the incident generally).

3.101 Stevan Gligorević testified that at the end of this collective beating:

> "... Gojko Miljanic ... was in a coma. He was unconscious, so we transported him in some kind of a wheelbarrow. It's used in construction work. It's used to transport concrete when you're building things, and we lay him down on a long crate in Number 6 that was used for rifles, to store rifles. He never regained consciousness, and the next afternoon, 24 hours later, he moved about. He uttered some inarticulate sounds and he just died. He stayed with us for 24 hours and he was taken away the next day." (T. 1432.)

3.102 Mladen Kuljanin also testified that:

> "Gojko Miljenic was beaten up but arrived alive to Hangar Number 6 and the next morning he was dead. I personally was with Gojko when we arrived in the hangar, when we were locked up there. Blood was coming out of Gojko's ears and his chest was all broken. He could not talk. He just gurgled and blood was coming out of his mouth and his ears and the next day when the dawn came Gojko was dead from having been beaten." (T. 2481).

3.103 Witness F testified that "*Gojko Miljanic was beaten there and he was taken to Number 6 and died in the arms of his son, Savo*" (T. 1344—see also T. 1400, 1409). Witness N similarly testified that: "*Gojko Miljanic died in his son's arms in the hangar amongst us*" (T. 1917).

3.104 Thus, all the elements of murder and wilful killing have been established beyond a reasonable doubt. The victim died as a result of being beaten by persons who worked in the camp and/or who were permitted to be in the camp by those in authority at the camp. The intent is necessarily inferred from the severity of the beating.

(vi) Murder of Željko KLIMENTA

3.105 The Prosecution relies principally on the testimony of the following eight witnesses to establish the facts in relation to this incident:

(1)	Mirko Babić	(T. 285-286, 414-415)
(2)	Nedeljko Draganić	(T. 1641)
(3)	Witness N	(T. 1918)
(4)	Dragan Kuljanin	(T. 2340-2342)
(5)	Mladen Kuljanin	(T. 2517-2520)
(6)	Vaso Đorđić	(T. 4363-4365)
(7)	Mirko Đorđić	(T. 4789-4790)
(8)	Witness R	(T. 7805-7808)

The Prosecution also relies on Prosecution Exhibit 185.

3.106 An eyewitness account of this killing was given by Vaso Đorđić:

> "I was present when Keljo [the victim] was killed. That morning Keljo and I took out the bucket, the one where people were relieving themselves. Padalovic ordered us to take it out and to clean up. We took it out to the toilet behind the hangar and then we cleaned it out ... and then Padalovic called: "Keljo, Keljo, come over here." They lit up a cigarette and I stayed at the door. When they lit up cigarettes, Keljo started towards the hangar ... When Keljo started towards the hangar Padalovic aimed at him. I was looking, watching it all. He aimed his rifle. He put it against a step and he said: "Keljo, don't run. I'll kill you." Keljo just shrugged off and Keljo started running, and then Padalovic fired and he killed Keljo." (T. 4363-4365.)

3.107 This witness indicated that the victim ran towards the hangar because other detainees had told him that DELIĆ was coming, and that he wanted to be in the hangar before DELIĆ arrived. When the guard threatened to shoot him, the victim called back "Don't joke". (T. 4364-4365.)

3.108 Corroboration of this account is provided by the testimony of a number of witnesses who were inside the hangar at the relevant time.

These witnesses testify that Željko Klimenta was called out of the hangar, that a shot was heard several minutes later, and that one of the other detainees came back into the hangar announcing that Željko Klimenta had just been killed. (Mirko Babić (T. 285-286, 414-415), Nedeljko Draganić (T. 1641), Dragan Kuljanin (T. 2340-2342), Mladen Kuljanin (T. 2518-2520), Mirko Đorđić (T. 4790-4791) and Witness R (T. 7806-7808). See also P. Exh. 85 and 86 (diagrams from witnesses showing position where victim was shot, consistent with each other and with testimony.)

3.109 Corroboration is also provided by the witnesses who testified to having seen Željko Klimenta's body near the hangar afterwards (Witness N (T. 1918), Mladen Kuljanin (T. 2520)).

3.110 The death of the victim has been also established through a funeral certificate (P. Exh. 185). (See also P. Exh. 103-1, p. 89 (interview of DELIĆ by the Office of the Prosecutor confirming death of victim and stating that he read that victim was shot trying to escape, but that MUCIĆ believed victim killed because of prior financial dealings).)

3.111 Witness N testified that the day before the killing, DELIĆ was with the victim in the hangar together with a person named Emir Kovacic. This guard was a friend of the victim, and told DELIĆ that he had come to the hangar to give the victim cigarettes. DELIĆ then told the guard to "*to kiss him, that he would not see the day, to kiss him goodbye*" (T. 1918). Dragan Kuljanin's testimony corroborates this incident, the witness recalling that DELIĆ said to the guard that the victim "*is not going to be alive tomorrow*" (T. 2340). Testimony about this incident the day before the killing was also given by Mladen Kuljanin (T. 2518), Mirko Đorđić (T. 4790) and Witness R (T. 7805-7806). According to Witness R, Emir Kovačić was "*a man who worked in the health centre in Konjic*" who visited the camp (T. 7806).

3.112 The Defence has suggested that this shooting was an accident. However, the Defence has presented no credible evidence to support their suggestion. Further, the threat made by DELIĆ the day before suggests that Željko Klimenta was killed on DELIĆ's order, rather than by accident. In any event, even if it were accepted that the guard did not positively intend to kill Željko Klimenta, the mere fact

that the guard pointed the gun at the victim's head and fired is sufficient evidence of recklessness.

3.113 All the elements of murder and wilful killing have been established beyond a reasonable doubt. The victim died as a result of being shot by a guard at the camp. The intent to kill or cause grievous injury may be inferred from the prior threats and to the fact that the guard aimed his rifle at the victim and shot.

(vii) Murder of Miroslav VUJIČIĆ

3.114 The Prosecution relies principally on the testimony of the following five witnesses to establish the facts in relation to this incident:

(1)	Witness F	(T. 1301-1305, 1373-1374)
(2)	Stevan Gligorević	(T. 1428-1432)
(3)	Witness N	(T. 1917)
(4)	Mladen Kuljanin	(T. 2479-2481)
(5)	Zoran Ninković	(T. 5133-5142)

The Prosecution also relies on Prosecution Exhibit 185.

3.115 The evidence establishes that Miroslav Vujičić was shot dead by a guard at Čelebići camp during a collective beating to which he was subjected immediately upon his arrival at the camp. This was the same incident in which Petko Gligorević died, and at which DELIĆ was present (see paragraphs 3.91 to 3.98 above, for details of the evidence relating to the incident generally).

3.116 Stevan Gligorević testified:

> "Also the example of Miroslav Vujcic was pretty bad. He was taken out of the line-up and to lie down on the ground. He was beaten and he couldn't go through this torture any more. He refused to go through this humiliation. He jumped up and started running. That's at least what I think, because we couldn't turn around and look what was happening. They fired some shots and killed him. When we headed off towards the

> Number 6, I saw him lying there in the grass." (T. 1431.)

3.117 Witness F further testified that:

> "At that time they told Mirosalv Vujcic to step out and lie down on the asphalt. He knelt and then they hit him several times. When he saw what I had gone through and what he was about to get, he started running, and, maybe it was about 20 metres of me, somebody said: "Shoot", and then there was a burst of fire. It was heard and Miroslav was killed there. His brother Radoslav, who was standing next to me, said: "My God! They killed my brother, Miro." The person who did that was a certain Makaron. We stood there. They kept beating us. They ordered if somebody else attempted to escape that they should be shot, but you could not run away anywhere because everything was fenced off." (T. 1304-1305—see also at 1373-1374.)

3.118 These accounts are corroborated by the testimony of Mladen Kuljanin (T. 2481). Zoran Ninković also testified to having heard a shot fired during this incident (T. 5141).

3.119 The death of the victim has been also established through a funeral certificate (P. Exh. 185).

3.120 The Defence point out that there is some question about which guard actually killed the victim, but in the present case where only superior responsibility is charged, the identity of the guard who shot the victim is of no legal significance. The Defence further appears to suggest through the Defence witness Džajić that the witness was shot because he tried to escape (T. 13528-13529). (See also P. Exh. 103-1, p. 25 (interview of DELIĆ by the Office of the Prosecutor corroborating that victim was shot and reporting that victim had been trying to escape), T. 13517-13521). In the circumstances, however, it is clear that what the witness was trying to escape was the beatings. ("*He was beaten and he couldn't go through this torture anymore*" (T. 1431) "*When he saw what I had gone through and what he was about to get, he started running...you could not run away anywhere because everything was fenced off*" (T. 1304-1305).)

In this regard it may be noted that though he only went 20 yards before he was shot without warning, he was shot on the grass in the direction of Hangar Number 6 (T. 1431), indicating that he was not even running towards the exit of the camp but was just instead just running away from the beatings. It cannot be seriously argued that guards may attempt to torture and severely beat a person (and two detainees were beaten to death during this incident) and then when the person tries to avoid the beating, be shot for escaping.

3.121 All the elements necessary for the crime of murder and wilful killing have been established beyond a reasonable doubt. The victim is clearly dead as a result of being shot by a guard in Čelebići, and the intent may be inferred from the fact that the guard aimed at the victim and shot him.

(viii) Murder of Pero MRKAJIĆ

3.122 The Prosecution relies principally on the testimony of the following five witnesses to establish the facts in relation to this incident:

(1)	Witness F	(T. 1309-1310)
(2)	Dragan Kuljanin	(T. 2374)
(3)	Witness P	(T. 4529-4533)
(4)	Witness M	(T. 4919-4920)
(5)	Dr. Petko Grubač	(T. 5978-5983)

The Prosecution also relies on Prosecution Exhibit 185.

3.123 The witness Dragan Kuljanin testified that Pero Mrkajić, like the witness himself, was beaten up in front of Hangar No. 6 (T. 2374). The victim himself, before he died, told one of the detainee doctors that his injuries had been inflicted from when he had been beaten up in Hangar No. 6 (T. 5980-5981).

3.124 As a result of the beatings, the victim had significant and obvious injuries. As stated by Witness M:

> "When I was transferred to the hangar, I found Pero with visible wounds, injuries on his head, behind his ear, all over his body. He looked terrible. He was

bleeding from his mouth. He couldn't move. He couldn't walk. He couldn't eat. He didn't die in the hangar itself. I think he was transferred perhaps too late to the infirmary, and we later learned that he died." (T. 4920).

3.125 Dr. Petko Grubač testified that in the latter part of June 1992, Pero Mrkajić was brought into Hangar No. 22 by two detainees from Hangar No. 6, who said that it had been ordered that Pero Mrkajić be transferred to the former building from the latter (T. 5978-5979). According to Dr. Grubač, the detainees who accompanied Pero Mrkajić, and subsequently the victim himself, told Dr. Grubač that the victim had been beaten in Hangar No. 6 (T. 5979-5980). Dr Grubač testified that "*Pero Mrkajic had many injuries on his body which in fact were large blood haematomata all over his body*", and that he was unable to tell if he was suffering any internal injuries in addition (T. 5981). Dr. Grubač said that "*His condition kept slowly and steadily deteriorating so that in a couple of days he lost consciousness and was in a coma*", before dying about six or seven days later (T. 5982-5983).

3.126 Witness P confirmed that Pero Mrkajić died in the infirmary (T. 4529), and that he had haematomas on his back and legs (T. 4532).

3.127 The Defence appears, with their cross-examination, to suggest that Mr. Mrkajić may have died either from diabetes, or from injuries he received prior to coming to Čelebići. (See also P. Exh. 103-1, p. 77-78, 90 - interview of DELIĆ by the Office of the Prosecutor reporting that he tried to obtain insulin and was unsuccessful and believes that victim died from lack of insulin).)

3.128 However, whatever the suggestions from Defence counsel that the victim's beating in Čelebići was not a cause of death, the evidence from the eyewitnesses is to the contrary. Whatever the prior beatings, the beatings in Čelebići were a cause of death. That a person was also beaten before coming to Čelebići and thus may have been in a weakened or injured condition at the time he was thereafter beaten in Čelebići is not a defence.

3.129 Similarly, whatever the suggestion of Defence Counsel or the accused that the victim died from diabetes, the evidence is directly

to the contrary, including the evidence from the detainee doctors. In particular, the testimony from the doctors established that although Mr. Mrkajić was a diabetic, his diabetes was not severe and had never required insulin (T. 4531, 5980). In any event, the detainee doctors could not administer insulin without laboratory tests unavailable in the prison camp (T. 4532, 5981). One of the detainee doctors also specifically testified that Mr. Mrkajić's diabetes did not enter into its complications (T. 4532) and that Mr. Mrkajić's diabetes was not the cause of death (T. 6075). (It may be noted that when cross-examining Dr. Grubač, Defence Counsel incorrectly reported that, when asked for the cause of death, the other doctor had said diabetes. Dr. Grubač answered that he did not agree at all with such a conclusion (T. 6075). It should be noted that Defence Counsel's question contained incorrect information, in that Witness P never reported that diabetes was the cause of Mr. Mrkajić's death.)

3.130 The death of the victim has been also established through a funeral certificate (P. Exh. 185).

3.131 All the elements necessary for the crime of murder and wilful killing have been established beyond a reasonable doubt. The victim clearly died as a result of being beaten, including beatings received in the Čelebići camp. The intent may be inferred from the circumstances including the obvious injured condition of the victim and the continuing nature of the beatings.

(G) Paragraph 23 of the Indictment (Torture of Momir KULJANIN)

3.132 Paragraph 23 of the Indictment alleges:

> "Sometime beginning around 25 May 1992 and continuing until the beginning of September 1992, Hazim DELIĆ, Esad LANDŽO and others repeatedly and severely beat Momir KULJANIN. The beatings included being kicked to unconsciousness, having a cross burned on his hand, being hit with shovels, being suffocated, and having an unknown corrosive powder applied to his body."

3.133 The Prosecution relies principally on the testimony of the following nine witnesses to establish the facts in relation to this incident (including the accused LANDŽO, who admits to torturing the victim):

(1)	Stevan Gligorević	(T. 1450)
(2)	Dragan Kuljanin	(T. 2335)
(3)	Mladen Kuljanin	(T. 2499, 2500)
(4)	Witness P	(T. 4567)
(5)	Mirko Đorđić	(T. 4771-4772)
(6)	Witness M	(T. 4891, 4901, 4910, 4950, 4959-4960)
(7)	Milenko Kuljanin	(T. 5457)
(8)	Witness R	(T. 7779)
(9)	Esad LANDŽO	(T. 15065-15067)

Each of these witnesses were present in the Čelebići camp at the relevant time.

3.134 The victim testified that he was subjected to frequent beatings while in Čelebići camp:

> "... the next beating was -- in my case there was no next beating. In my case it was a daily beating." (T. 4903).

3.135 As his testimony indicated, the torture ranged from being kicked to unconsciousness (T. 4904) and being suffocated (T. 4908) to having his body burned by a corrosive powder (T. 4908, 4909) and having a cross burned into the palm of his hand by the heated blade of a knife (T. 4905).

3.136 The victim testified that DELIĆ would kick him in the chest almost every day (T. 4903). He testified further to a number of particularly brutal beatings in which DELIĆ and/or LANDŽO were directly involved.

3.137 The victim testified that on one occasion, after being personally selected by DELIĆ, LANDŽO ordered the victim to kneel with his hands behind the back of his head (T. 4903-4904). While ordering a civilian to hold the victim at gunpoint and to shoot him if he moved

(T. 4906), LANDŽO attacked the victim with a barrage of karate chops and kicks to the chest, which eventually rendered him unconscious (T. 4904, 4909). The victim testified that he was awakened by a splash of water to see LANDŽO heating a knife on a small fire (T. 4904-4905). As DELIĆ watched from approximately 10 meters away (T. 4904), LANDŽO burned a cross into the victim's hand (T. 4905). The victim said that afterwards, his hand hurt very much and became infected (T. 4905).

3.138 LANDŽO corroborated this testimony, including the fact that LANDŽO burned the victim's hand, and that DELIĆ had selected the victim and watched this torture (T. 15065-15067). LANDŽO also gave an additional detail as to why the victim was being tortured—he said specifically that a villager from Homolje had wanted him punished, and that DELIĆ had therefore ordered LANDŽO to "teach the Chetnik a lesson and to burn a bit his hands so that he wouldn't be touching in connection with some women" (T. 15065-15067).

3.139 A number of other witnesses further corroborated the testimony of the victim and of LANDŽO regarding this torture. (See in particular, Mladen Kuljanin (T. 2499-2500), Witness R (T. 7779-7780), Dragan Kuljanin (T. 2335), Mirko Đorđić (T. 4771-4772).) The brutality of this beating was noted not only by fellow prisoners but also by Muslim/Croat soldiers who had come in search of prisoners to beat:

> "Just a few days later, maybe two or three days later, I was taken out by two soldiers. ... I was taken out and in spite of the condition I was in, one of them said: 'Look, I can't beat him in this state. Take him back." (Witness M (T. 4907).)

3.140 The victim further testified that:

> "When he [DELIĆ] saw my hand, he said: 'If anyone asks, you know what happened. You were smoking, you fell asleep and that's how it happened.'" (T. 4906).

This statement suggests an acknowledgment by DELIĆ that the injury had been illicitly inflicted on the victim.

3.141 The victim further recalled that his next extremely severe beating came at night only a matter of days after having his hand was mutilated by LANDŽO (T. 4908). The victim was taken out of the hangar by DELIĆ (T. 4910), to find LANDŽO waiting for him with three other men (T. 4908, 4910). On that night, the abuse of the victim took on the form of a calculated, three-stage process of torture. First, the victim was weakened with suffocation to the point of unconsciousness by having a gas mask placed on his head. Next, he was covered in a corrosive powder that burned his exposed skin and then thrown under a manhole. After irritating the raw areas by soaking them with water, the burned flesh was systematically beaten. The victim recounted:

> "I had to lean up against the wall. Somebody put a mask on my head from behind, a gas mask. The mask was tightly screwed on. I couldn't breathe. I was ordered to lie down on the concrete. They took off my trousers as far as the knees. Then I felt that they put some powder over me. ... I was taken by hands and legs and placed under the manhole. Then I was showered with water. Then I felt terrible pain and terrible burns. After that came the beating, all over my back from my back to my legs. I felt the worst pain in the lower part of my back, the pelvic bone. At first the worst thing was the lack of air. I was choking. I tried to remove the mask and I couldn't. Maybe after some time -- I don't know how long it was -- but I know that I lost consciousness several times." (T. 4908-4909.)

3.142 Although LANDŽO testified that he did not remember this particular torture, or remember ever using gas mask, he agreed that gas masks were present in the camp, and indeed that they may have been used to mistreat detainees (T. 15373). When asked about a statement he gave following his arrest by Bosnian authorities, in which he admitted using a gas mask against detainees, LANDŽO said that he did not now remember it but did not deny having stated it (T. 15374). Given the admitted frequency and varied nature of his torture of detainees, that LANDŽO does not now remember all the particulars concerning how he tortured detainees is not surprising.

3.143 As a result of his frequent mistreatment, the victim was reduced to a state such that he was unable to move under his own power or even go to the toilet without the aid of another (T. 4910). When describing his physical condition resulting from the beating in which his legs were burned, the victim explained:

> "They forced me to go into the hangar. I tried to move as soon as possible fearing fresh blows. ... I tried to reach the hanger as quickly as I could, but I couldn't move. ... They just threw me inside the door. Then I asked one of the prisoners to help me reach my place. Nobody dared. After a few minutes my brother approached and he literally dragged me to my place, and Delic came in then and took my brother out. He received a couple of blows for helping me to reach my place. ... I had five ribs fractured. I had my pelvic bone fractured. I was immobile for 12 days. My father helped me. I couldn't even use the toilet. I couldn't go outside. I had to do it on the spot. My father moved my arm, my leg, my body. He would place me in a position that suited me better." (T. 4909-4910.)

3.144 In addition to these injuries, the injury to the victim's hand from the burning incident was significant. The victim described his palm as:

> "... like this (indicating), so big. It was like a large apple. There was pus underneath ..." (T. 4908.)

3.145 Witness P, who treated the victim's hands after the blisters had burst open and become infected verified the presence and the nature of the injuries (T. 4567). The injury to the victim's palm was described by several other witnesses in equally graphic detail, and even today the witness's hand still bears the scar. (See D. Exh. 84/4 (Dutch doctor report indicating scars on hand).)

3.146 All the elements necessary for the crime of torture have been established. LANDŽO and DELIĆ intentionally inflicted severe pain in order to punish and intimidate the victim, and did so in their official capacity as camp personnel.

(H) Paragraph 24 of the Indictment (Torture and rape of Grozdana ĆEĆEZ)

3.147 Paragraph 24 of the Indictment alleges:

> "Sometime beginning around 27 May 1992 and continuing until the beginning of August 1992, Hazim DELIĆ and others subjected Grozdana ĆEĆEZ to repeated incidents of forcible sexual intercourse. On one occasion she was raped in front of other persons, and on another occasion she was raped by three different persons in one night."

3.148 The Prosecution relies principally on the testimony of the following five witnesses to establish the facts in relation to this incident:

(1)	Grozdana Ćećez	(T. 491-504, 513-584)
(2)	Witness P	(T. 4568-4569)
(3)	Witness D	(T. 5209, 5219)
(4)	Dr. Grubač	(T. 5995, 5998-5999)
(5)	Witness T	(T. 6711-6712, 6812, 6813, 6784)

3.149 Grozdana Ćećez remained a prisoner in Čelebići from 27 May 1992 to 31 August 1992. She testified that she was kept in the Administration building B for the first two nights and then brought to the Gatehouse on the third night (T. 497).

3.150 Ms. Ćećez testified that immediately after her arrival in Čelebići, she was accompanied by the driver Džajic to a room where a man with a crutch was waiting. Another man subsequently entered the room, so that there were then three men present in addition to Ms. Ćećez. At that time, she did not know them, but she shortly afterwards learned that "the man with the crutch" was named Hazim DELIĆ (T. 513), and she subsequently saw him quite frequently (T. 513-516). Ms. Ćećez testified that:

> "He [the man with the crutch] asked me who I was and what I was, and I told him, and then he asked me where Lazar was, my husband, and I really didn't know that.

> Then he started slapping me: 'How do you know that?' He cursed my mother." (T. 491).

3.151 Ms. Ćećez was then required to go with the three men into a second room, where she was raped at least twice by DELIĆ:

> "... the four of us entered the room, and the one with the crutch told me to take my clothes off. I didn't understand what he wanted. I thought he was going to beat me since he had a stick with him. He had a uniform on him. Then he asked me to take off my clothes and then he started taking off clothes from me. It was the trousers, the skirt, the panties, and then he put me on my chest and he started raping me. ... Then he turned me on my back and then took off everything, everything that was on me, the pants and the boots and I kept the top clothes on me and he raped me ...
>
> ... he took off my clothes and he took his penis and he put it in my vagina. He had an erection. As I was lying down he told me to sort of move and he stayed about ten minutes there and Džajic was lying on a bed next to the window and the little one, Čosić -- I think it is Čosić; he is from Idbar -- and he told him to stand at the door, and he remained there until he was done." (T. 492-493.)

3.152 Other witnesses, including Defence witnesses, corroborate that DELIĆ was using a crutch at this time (Mirko Đorđić (T. 4718), Dr. Grubač (T. 5998, 5999), Witness T (T. 6771), Dr. Jusufbegović (T. 11963), Agan Ramić (T. 13444), Nurko Tabak (T. 13920)) and that he was the only person seen using a crutch (Emir Džajić (T. 13462)). (See also D. Exh. 106/3 (medical report showing hospital stay for DELIĆ between 21-25 May 1992 for injury to right leg).)

3.153 Although not present during the rapes themselves, other witnesses corroborate Ms. Ćećez's account. Witness D, one of the members of the Military Investigative Commission working in the camp, reported that a typist at the camp told him that the guards were boasting of having raped the women prisoners including Grozdana Ćećez (T. 5219). And indeed, a 1992 document signed by members

of the Commission that worked in the camp explicitly confirms Witness D's testimony: "*We learned from the female detainees that each of them had been taken out during the night, but they did not want to say what had actually happened to them. It could be heard from some members of security that they were sexually abused.*" (P. Exh. 162, para. 7.)

3.154 Other witnesses confirm specifically that DELIĆ boasted, both when he worked in Čelebići and afterwards, that he had raped women including Grozdana Ćećez and Milojka Antić. For example, Witness T testified that DELIĆ boasted to him of having raped 18 Serb women and of his intention to rape many more in the future (T. 6712). The accused LANDŽO testified that while he and DELIĆ were in Zenica prison together, DELIĆ had bragged to him about having raped Ms. Ćećez and Ms. Antić (T. 15359-15360). Dr. Grubač testified that he was informed by Mrs. Ćećez while at the camp that the women were being raped (T. 5995).

3.155 The evidence further indicates that Ms. Ćećez was raped to acquire information about her husband, and to inflict punishment upon her for her husband's activities. The rape occurred immediately after her initial interrogation; during the rape DELIĆ specifically told her that she was in the camp because of her husband:

> "I was crying. I said: 'My God, what have I come to live through?' He said: 'It is all because of Lazar. You wouldn't be here if he were around', but I was completely beside myself ... Then they left and I got up." (T. 494.)

3.156 After the rape, MUCIĆ specifically asked her: "*Where is Lazar? What was he thinking of?*" (T. 496). Witness D corroborated this by saying:

> "They said that Gordana Ćećez had to stay there because there was information from the field that her husband was armed and hiding in the vicinity of Konjic" (T. 5209).

3.157 The Defence has suggested that, for reasons not articulated, Ms. Ćećez has somehow chosen to pretend that she was raped in Čelebići

when she was not. In attacking her credibility, the Defence appears to rely on two arguments.

3.158 The first argument, somewhat convoluted, concerns the fact that Ms. Ćećez testified that she had birth control pills in the camp (T. 509). Ms. Ćećez testified that she had previously been prescribed birth control pills, that she did not have a prescription during the months before being brought to Čelebići, but that she nonetheless had obtained them (T. 509, 551, 571). The Defence appears to suggest that it is not possible that Mrs. Ćećez could have obtained birth control pills without a prescription, that she is therefore lying about her birth control methods, and that she is therefore not a credible witness.

3.159 The Prosecution submits that nothing about the birth control pills affects her credibility or is in any way relevant to her testimony about the rape. It is entirely possible that Ms. Ćećez, who ran a store and was well known in the community, had the opportunity to obtain such pills from any number of persons, with or without a prescription, particularly given the conditions existing prior to the outbreak of the war. In evaluating her response to the questions about the birth control pills, it must also be remembered that the entire line of questioning occurred after the Defence had asked her irrelevant, intimate, and to her distressing questions about her prior medical and sexual history. (The Chamber upheld the Prosecution objection to these questions (T. 572), but the witness was clearly upset and confused, as made evident by the fact that she thought she had to answer such questions and did so (T. 576).)

3.160 The second argument suggested by the Defence appears to be that other persons by whom Ms. Ćećez testified to having been raped or who were present during DELIĆ's rape of her, have subsequently stated that they did not rape her or were not present. The suggestion seems to be that Ms. Ćećez was lying about the other men, and that her claim that she was raped by DELIĆ should therefore not be believed.

3.161 However, the fact that other Defence witnesses deny raping Ms. Ćećez is not convincing evidence that they did not—DELIĆ himself has denied raping anyone, including Ms. Ćećez and Ms. Antić. Further, two of these Defence witnesses whom Ms. Ćećez identified

as having been present or raped her were Emir Džajić and Nurko Tabak. There is corroboration for her claim concerning these two men.

3.162 For example, with respect to Džajić , Witness T testified that the two persons who worked in Čelebići who raped the women were DELIĆ and Džajić (T. 6711, 6712, 6784—see also Prosecution Exhibit 101-1, at page 57, in which MUCIĆ reported that he saw Džajic mistreat prisoners). Additionally, Džajić was not able to offer any explanation why, even though the Military Investigative Commission was operating at this time, he was selected to interrogate Mrs. Ćećez, nor was he able to explain why she was interrogated in a room with a bed (T. 13540-13542, 13544, 12552-54).

3.163 With respect to Nurko Tabak, who testified that he never raped anyone (T. 13926) and that he was never in the administration building (T. 13931), Witness P testified that he had overheard a conversation in the administration building between DELIĆ and a person called "Nurko" about a woman whom Witness P deduced was Ms. Ćećez. DELIĆ asked Nurko, "*How did you like the lady?*" (T. 4568-4569.)

3.164 Additionally, both Mr. Džajic and Mr. Tabak displayed obvious discomfort while testifying. Although Defence counsel suggested that the discomfort was due to nervousness (see T. 13469), given all the circumstances the Chamber may well attribute this to other reasons. In evaluating their credibility, it is also significant that they were totally unwilling to say anything that could be construed as harmful to any of the accused, including even the accused's duties in the camp and the period they were in the camp. (See Džajić (T. 13462-13463), Tabak (T. 13919).)

3.165 However, even if one were to accept that some of the persons identified by name by Ms. Ćećez did not rape her, it may be that her identification was simply mistaken. She testified that at the time she was raped by these persons or these persons were present, she did not know Džajić, Tabak or Witness T, and learned their names only some time later. In such circumstances, it would be understandable that she could be mistaken about the identity of the rapists, as was suggested by Witness T himself (T. 6812, 6813). Thus, were these

persons charged with raping Mrs. Ćećez, it may be that the Chamber would find that Mrs. Ćećez's identification of these persons was insufficient to establish their guilt.

3.166 But none of these other alleged perpetrators has been charged with raping Ms. Ćećez, and thus the Chamber need not decide if they did. The Chamber need only determine whether the Prosecution has proven beyond a reasonable doubt that DELIĆ raped Ms. Ćećez. And the identification of DELIĆ is extremely strong, when one considers among other things that DELIĆ was the only person who raped her who had a crutch, given that he was the only person seen in the camp with a crutch (as admitted by even the Defence witnesses (see Džajić (T. 13494)), and given that she saw him and learned his identity soon after the rape. Finally, as indicated above, Mrs. Ćećez's identification of DELIĆ as a person who raped her is corroborated by a number of other independent sources.

3.167 All the elements necessary for the crime of torture have been established. DELIĆ intentionally inflicted severe pain in order to obtain information, and to punish and intimidate the victim and her husband, and that he did so in his official capacity.

(I) Paragraph 25 of the Indictment (Torture and rape of Witness A)

3.168 Paragraph 25 of the Indictment alleges:

> "Sometime beginning around 15 June 1992 and continuing until the beginning of August 1992, Hazim DELIĆ subjected a detainee, here identified as Witness A, to repeated incidents of forcible sexual intercourse, including both vaginal and anal intercourse. Hazim DELIĆ raped her during her first interrogation and during the next six weeks, she was raped every few days."

3.169 Witness A subsequently withdrew a request for protection, and thus may now be referred by her true name, Milojka Antić. The Prosecution relies principally on the oral testimony of the victim and other three witnesses to establish the facts in relation to this incident, namely:

(1)	Grozdana Ćećez	(511-553, 575-577)
(2)	Milojka Antić (Witness A)	(1765-1812, 1823-1841)
(3)	Witness P	(4567)
(4)	Dr. Petko Grubač	(5994-5995)

3.170 Milojka Antić testified that she was brought into Čelebići on 15 June 1992, where she was immediately interrogated, together with another woman, by DELIĆ, MUCIĆ and someone with the last name of Delalić:

> "There stood four men in camouflage uniforms ... Then they started interrogating us ... One person, the one person I knew best ... was a guard and his name as Sejo Mustafic. There was Delic, there was Mucic and there was Delalic there. First Pavo started to question me, Pavo Mucic. He asked me where I was from, who was my family. He asked me where my husband was, and upon that I answered that I was not married, that I had no husband. He said to Delic: 'This is just the right type for you'." (T. 1773-1774.)

3.171 The evidence establishes that she was raped three times by DELIĆ.

3.172 During the first night after her arrival in Čelebići she was called out of the reception building and brought to DELIĆ. She was then interrogated by DELIĆ, who began to threaten her. (T. 1776-1777.) Ms. Antić testified:

> "He told me that unless I did whatever he asked from me that he would send me to Grude, where a Croatian camp was, or else I will be shot. I started to cry. He ordered to take my clothes off. I was constantly imploring and crying and asking him not to touch me, as I was a sick woman. To no avail. He started to threaten me with his rifle, saying that he would kill me. So I had to do what he asked from me. I had to take my clothes off as he pointed the rifle on me, on the upper part of my body ... Then he threatened me. He

> ordered me to go into the bed and to lie down. Then he raped me. He ordered me to take my tracksuit off. I had on a jumper, which I also had to take off. Then I had to go on the bed ... Then he took his belt off. On his belt he had a pistol. So he took some of his clothes off and climbed into the bed and then he started to rape me" (T. 1777-1779.)

3.173 Ms. Antić specified that the light was on and DELIĆ was wearing a uniform (T. 1778). She explained that he penetrated her vagina and ejaculated on the lower part of her stomach. She could not remember how long the incident lasted, but said that it seemed very long to her. During the rape he continuously cursed and threatened her, saying that she would be killed. DELIĆ then got up, and Muharem Masić brought her back to the room in the reception building. Ms. Antić testified that the following day, DELIĆ came to her door, and that she began crying when she saw him. He said to her: "*Why are you crying? This will not be your last time*" (T. 1780). The witness said "*I felt so miserably, I was constantly crying. I was like crazy, as if I had gone crazy*" (T. 1780).

3.174 Corroboration of this incident is provided by the testimony of Grozdana Ćećez, who said that:

> "Hazim Delic raped Milojka that first night. The girl cried for 24 hours. She could not stop. She was born in 1948. She had never been married." (T. 511.)

3.175 Ms. Antić testified that she was subsequently raped a second time by DELIĆ, during the day. She recollected that DELIĆ went to the reception building and ordered Grozdana Ćećez and her to go to the command building to take a bath. Initially they did not go, but Muharem Masić came and told them he had been ordered to take them to the room where they could take a bath. Ms. Ćećez was ordered to wash herself, which she did. After she left the bathroom, Masić ordered Ms. Antić to go inside. She then testified:

> "I started to have my bath and then Muharem got into the bathroom where I was having my bath. I started crying. I was begging him to leave while I was in the bath. He told me that he had to go in to tell me that I

had to take a really good bath to wash myself very clearly, very much because some doctors would come to examine us. Then he left the bathroom. So I had my bath and I got dressed and when I left he was waiting for me at the door ...

"He led me down the same corridor towards that same room in which I had been raped already. He opened the door. I saw that it was the same room where I had been raped already. Delic was sitting there ... when I got in Masic returned. Delic then asked me if I had had a good wash. I immediately started crying. I was afraid that the same thing would happen as the first time: he then ordered me to take off my clothes. I kept saying that I was sick. I was telling him not to touch me. Since he again had a pistol and a rifle I was afraid that he would kill me, so I had to do it. I had to take off my clothes. So when I took off my clothes he told me to get on the bed. Under duress and his threats I got on the bed and he started to rape me in my anus. I started to cry. Actually I did not cry. I screamed because it hurt very much ...

He did not rape me in the anus. He then turned me on to my back and then he raped me ... he was always in a uniform and he was always armed ... It hurt me very much so he wasn't able to penetrate me fully. I started to bleed. My anus started bleeding, so he let me go, turned me on to my back and then raped me into my vagina" (T. 1783-1785.)

3.176 After the rape, Ms. Antić was then taken back to the reception room by Masić, where Grozdana Ćećez was waiting for her:

"I was all cried out. I did not tell Grozda anything. She saw that something had happened to me and I put cold compresses on the anus because I was already bleeding. I was very ill. I was crying all the time." (T. 1785-1786.)

3.177 Ms. Antić testified that Ms. Ćećez noticed that she was feeling very bad, and so the next day asked a guard to call for a doctor. Petko Grubač and Witness P, two doctors who were also detainees in the camp, were called by the guard. They gave Ms. Antić some tranquillisers and asked her what had happened, but she could not tell them. (T. 1786.) Ms. Antić testified that this second rape was so violent that her anus continued to bleed for a while and had to put on a cold compresses and some kind of ointment to recover (T. 1786).

3.178 Ms. Antić testified that she was subsequently raped a third time by DELIĆ:

> "One day, it was daylight ... he [Delic] came to the door of our room; the room where we were... as soon as he came through the door he ordered Grozda to go out into the corridor, which was in front of our room. Grozda went out. As he was also armed on that occasion, he also had hand grenades and a pistol and a rifle, but he also had hand grenades on his belt. He started threatening me and I repeated as usual not to touch me, that I was a sick woman. He did not answer anything to that. He only ordered me to take my clothes off. Under pressure and under threat I had to do that. After that he ordered me to go into the bed and lie down ... Then he took his clothes off, his trousers. He did not take his boots off, but the trousers were put down to his boots. He went on to the bed and he raped me for the third time." (T. 1799-1800.)

3.179 The testimony of a number of other witnesses corroborate the occurrence of these rapes. Witness P testified:

> "On one occasion I was in the office and a secretary was working there. ... That was when I learned about this. In the command building the secretary was Ismeta Pozder and she told me that Mr Delic was keeping Milojka Antić for himself and that Milojka Antić was a virgo intacta. That is a medical term. The traditional term is a virgin" (T. 4568).

3.180 Witness T testified that DELIĆ had boasted of raping Serb women (T. 6712), the accused LANDŽO testified that DELIĆ had specifically boasted of raping Ms. Ćećez and Ms. Antić (T. 15359, 15360). (See also Witness D, who testified that a typist told him that women were being raped (T. 5219), Dr. Grubać (who testified that while in Čelebići, he was told by Mrs. Ćećez that women were being brought out and raped (T. 5995), P. Exh. 162 (Report from Military Investigative Commission reporting that female detainees were being sexually abused).

3.181 The Defence sought to impeach Ms. Antić by suggesting that her testimony is inconsistent with a prior statement she gave to the Office of the Prosecutor (P. Exh. 209). In this statement, Ms. Antić is reported to have said that she was raped every few days (T. 1826). When Defence counsel asked her if this was a correct interpretation and transcription of what she said, Ms. Antić replied that she cannot remember exactly what she said to the investigator from the Office of the Prosecutor. She explained that this was the first time that she had told anyone everything about what happened to her, that as she told it for the first time she was re-experiencing it, and that she was thus in shock (T. 1825, 1837).

3.182 In this statement three specific rapes are described in some detail. However, the statement does also state that "*This happened like every two or three days, once a day.*" Ms. Antić clarified in her testimony that she was not raped every two or three days during her imprisonment (T. 1826).

3.183 Ms. Antić did however testify that after the three rapes occurred, DELIĆ continued to come by frequently:

> "Sometimes he would just come to the door, threaten us, saying that we would never be released, that we would be killed, and then he would turn around and go. Sometimes he would just come in, open the door, not say anything and straightaway turn his back." (T. 1801.)

3.184 In the circumstances, it may have been on an almost daily basis that Ms. Antić reasonably feared she might be about to be raped again. It is possible that this one sentence in her prior statement, suggesting

that she actually *was* raped every day, was due to an ambiguity in translation. It may be that the sentence itself is ambiguous, possibly referring to the fact that at the beginning of her time in Čelebići, she was raped every few days. It is also possible that this sentence was the result of Ms. Antić's distraught state at the time of giving the statement to the Tribunal investigator. In any event, considering the testimony of Ms. Antić as a whole, especially her detailed account of the incidents, and considering her demeanour in court, especially during the hours of cross-examination to which she was subjected (which the Trial Chamber ultimately stopped, finding that it was amounting to harassment (T. 1837)), it is submitted that Ms. Antić was a credible and courageous witness who was telling the truth about when she was raped and who raped her. As indicated above, the testimony of other witnesses is corroborative of her account.

3.185 It appears that the Defence also seek to impeach Ms. Antić's credibility, trying to base an argument on Ms. Antić's statement (T. 1787) that she accepted some of Mrs. Ćećez's birth control pills. The Defence argue that as Ms. Antić agreed that she had previously undergone a hysterectomy, she must be lying about having accepted the birth control pills, and appear to suggest that she is therefore lying about being raped by DELIĆ. In fact, the witness reported that she did accept some pills but did not take them. She indicated that she did not want to tell Mrs. Ćećez about her prior operation, because she did not want people to know about her prior tumour and subsequent hysterectomy. (T. 1803.) The witness explained that she did not need to take the pills by stating that she believed she could not have children, but that given her emotional state at the time, she was not sure of the degree of her incapacitation. (T. 1827-1830.) The Prosecution submits that it is entirely understandable that a woman, who had a fourth grade education, had never been married, and was in an extreme emotional state as a result of being imprisoned and repeatedly raped, may have, either out of an excess of caution or to keep her hysterectomy secret from the others or both, accepted some birth control pills during her imprisonment.

3.186 All the elements necessary for the crime of torture have been established. By raping her on three occasions as part of her interrogations and afterwards, DELIĆ intentionally inflicted severe pain in order to obtain information from Ms. Antic and to punish

and intimidate her. When he did this, he did so in his official capacity.

(J) Paragraph 26 of the Indictment (Torture of Spasoje MILJEVIĆ)

3.187 Paragraph 26 of the Indictment alleges:

> "Sometime beginning around 15 June 1992 and continuing until August 1992, Hazim Delic, Esad Landzo and others mistreated Spasoje Miljevic on multiple occasions by placing a mask over his face so he could not breath, by placing a heated knife against parts of his body, by carving a Fleur de Lis on his palm, by forcing him to eat grass, and by severely beating him using fists, feet, a metal chain, and a wooden implement."

3.188 The Prosecution relies principally on the testimony of the following ten witnesses to establish the facts in relation to this incident (including the accused LANDŽO):

(1)	Branko Gotovac	(T. 982-983), (1078-79)
(2)	Witness F	(T. 1335)
(3)	Witness N	(T. 1876-1877, 1883, 1896-1906, 1914, 2022, 2036-2038)
(4)	Dragan Kuljanin	(T. 2332)
(5)	Witness P	(T. 4567)
(6)	Branko Sudar	(T. 5775-77)
(7)	Risto Vukalo	(T. 6289)
(8)	Rajko Draganić	(T. 6953)
(9)	Witness R	(T. 7778-79)
(10)	Esad LANDŽO	(T. 15067-69)

Each of these witnesses was present in the Čelebići camp at the relevant time.

3.189 The evidence indicates that the instances of abuse inflicted on the victim were combinations of methods of torture and not singular beatings. Assaults with fists, feet, chains, wooden implements, and

burnings with heated knives (T. 1897) were systematically preceded by suffocation techniques to quiet the victim's screams as well as to weaken his ability to resist (T. 1898; see also Branko Gotovac (T. 1078-1079)). The beatings were also coupled with psychological techniques designed to compound the overall effect of torture. Other mistreatments included having a match stuck under his fingernail (Witness N (T. 1905), Dragan Kuljanin (T. 2332)).

3.190 The impact of such prolonged and concentrated abuse was powerfully displayed by the victim himself during cross-examination: after being asked by Defence counsel if he was smiling at LANDŽO during his direct testimony, Witness N replied:

> "Yes, but because after all I survived, after all the things he did to me. That's why I smiled." (T. 2021.)

The nature and extent of the suffering inflicted at the hands of LANDŽO and DELIĆ was thus such that mere survival became an occasion for celebration.

3.191 Witness N testified that his first beating in Čelebići occurred the day after his arrival in Building No. 22. This beating was so severe that he could not stand for several days and had to be carried to the toilet. (T. 1876-1877, 1883.) This was corroborated by the testimony of Branko Gotovac (T. 982-983).

3.192 The victim related the details of another instance of torture occurring on 15 June 1992 (T. 1896-1897). After being taken out of the hangar by LANDŽO, the ordeal began with a gasmask being sealed over the victim's face.

> "I think that the mask was used so that I could not scream, because the screw on the mask was turned so when I would try to scream, but when I would scream, I would start suffocating. ... I had a feeling at that time while I had the mask on my face and when he was burning me with the heated knife that my eyes were popping out and there was no help. I could not breathe air. I have simply started suffocating at that time." (T. 1898-1899.)

3.193 With the lack of oxygen working to subdue the victim, LANDŽO took the knife that he had heated on an open flame and seared the flesh of his victim in numerous places, including his hand and legs.

> "At one point I saw a knife, which he held in his hand, and this knife was heated. He first took my left hand and started burning me and he made three burns on the left hand. Then afterwards he preheated the knife again and moved to the right hand. After that he heated the knife again and he started burning me on my left leg, on the bare skin, and after which he burnt me with a heated knife on my thighs through the tracksuit which was synthetic, and while the synthetic burned, the burn widened." (T. 1896.)

3.194 The suffocation and burning was followed by beating. Witness N said:

> "After that in front of this hanger he kicked me. ... Then he took a piece of chain and he hit me on my neck with it." (T. 1897.)

3.195 This physical punishment was followed by a psychological assault in the form of public humiliation.

> "So those young girls walked by and he called me back to come towards those girls. Then he ordered me to kneel. He kicked me a few times and ordered me to graze the grass. After that he ordered me to go back towards the hangar, but he started following me and he took -- how shall I explain it -- he took a fistful of clover and put it in my mouth. I ate some of it. Some of it fell down." (T. 1897-1898.)

3.196 This evidence gives a picture of a multi-leveled process of torture, involving the systematic dehumanisation of the victim, both physically and psychologically.

3.197 This ordeal left large, open, festering wounds for which the victim received no medical attention for days.

> "... those burns already started to fester because in the hangar there was also dust, and all this festered and it was starting to smell, and I could not -- and after that several days I went to the infirmary. ... They tried to offer me some assistance, but they didn't have enough, so they were only able to bandage, and it still hurt terribly. Then the wounds would reopen. There was blood. They were haemorrhaging." (T. 1899-1900.)

3.198 Several witnesses corroborated the presence of the burns and blisters on the victim's hands and legs after he returned to the hangar (Rajko Draganić (T. 6288-6289), Witness R (T. 7778-7779), Witness F (T. 1335)). Dragan Kuljanin recalled the overall mistreatment of the victim (T. 2331). Witness P, a doctor working in the camp, who was permitted to provide limited medical attention who after the wounds began to fester, also confirmed the extent of the injuries to the hands and legs (T. 4566).

3.199 In his testimony, LANDŽO acknowledged that he had in fact burned Mr. Miljević (T. 15067-15069). LANDŽO did not describe the incident in detail, but did remember that he burned the victim through the victim's clothing (T. 15067). LANDŽO explained that he had been ordered to burn the victim by DELIĆ, who told him to treat Spasoje Miljević as he had Momir Kuljanin, and specifically to burn Mr. Miljević so badly that he would not be able to walk. LANDŽO also said that DELIĆ stated that he would check to make sure that the order had been carried out. LANDŽO also reported that DELIĆ came towards the end of the incident, while the fire was still burning (T. 15258-15259). This is also consistent with the testimony given by the victim, who testified that after the incident, DELIĆ approached him about his injuries, asking *"Did Zenga play with you"* (T. 1899).

3.200 The evidence suggests that in addition to ordering the torture, DELIĆ on occasion personally supervised it. Thus, on one occasion, LANDŽO again called Mr. Miljević out of the hangar, and placed a gas mask over his face (T. 1900). As this occurred, the victim noticed DELIĆ and four or five others standing nearby in a position to observe or participate in the events (T. 1900). After having the mask put on him, the victim was beaten by a number of persons (T.

1900-1901). *"Some were holding me and the others were beating me from my head to toe with wooden objects that looked like a baseball bat."* (T. 1900). Witness N further testified:

> "After that I was thrown through the door in to the hangar, and I couldn't go any further. I fell down and Danilo Gotovac approached me and took me to the place where I was lying. (T. 1900). I lay a few days. I couldn't move. I urinated uncontrollably and things like that." (T. 1902).

3.201 This testimony concerning this event is corroborated by LANDŽO, who in addition to his own mistreatment of the victim, recalled that the victim was "*beaten a number of times by a number of different people.*" (T. 15067).

3.202 DELIĆ's role in the victim's torture was not limited to just that of director but also included direct participation in the physical torture. For example, following a visit by the Red Cross, DELIĆ organised a mass beating that culminated in an a personal assault on Miljević. The victim related:

> "When the Red Cross visited, they came into the hangar and we told them everything, what was done to us and we showed it. I showed our wounds, our bodily wounds that we had. However, as soon as the Red Cross left the hangar, they were not out of the gate, Hazim Delic arrived with eight guards and he arranged them four for every two rows and all prisoners got several hits in the back and the kidney area, and then after that in Hangar Number 6 Hazim Delic personally beat me in front of everyone." (T. 1903).

3.203 The torture did not always come in the form of beatings. Some time after being burned and humiliated by LANDŽO, the psychological torment of the victim took on a new shape.

> "With my own eyes I saw Esad Landzo calling me personally out in front of the door of the hangar. All the prisoners saw this. He forced me no [*sic*] fall down on my knees and on that occasion he wanted to shoot

> me in the mouth but out of fear I couldn't open my mouth. Then with his gun he pressed it against my neck. I was terrified, but he took out the bullet and he -- where he leaned the gun against me, there was just the slight burn. I didn't feel much pain I was so terrified." (T. 1914).

3.204 As a result of this torture, the victim is left with scars from burns on his hands and legs, and broken teeth. P. Exh. 94 a-k. (photos of scars on leg and hand). In addition to the photographs in evidence, a Dutch doctor appointed by the Registrar found evidence of prior rib fractures on both sides, scars, a deformed fingernail, and a missing incisor which the doctor found could have been caused by a traumatic avulsion. D. Exh. 85/4.

3.205 The purpose of the regiment of torture imposed on Spasoje Miljević at the hands of DELIĆ and LANDŽO is indicated by the reasons that these accused gave for the beatings, which included punishment, intimidation, and coercion. For example, the mass beating that ended in the individual beating of Mr. Miljević in front of the other prisoners was punishment doled out for informing the Red Cross as to happenings inside the camp. On another occasion, as he burned Mr. Miljević's flesh, LANDŽO was overheard proclaiming that the victim was "Arkan" and "that he would pay for everything" (T. 953-954), thus demonstrating the intention to mistreatment be a form of punishment. Further, while questioning Branko Gotovac about his comments to the visiting television crew, the evidence indicates that LANDŽO used the pain he inflicted on Mr. Gotovac's two sons and Spasoje Miljević to try and force Mr. Gotovac to admit that he had informed the interviewers about the conditions of the camp (Branko Gotovac (T. 1079)).

3.206 All the elements necessary for the crime of torture have been established. LANDŽO and DELIĆ intentionally inflicted severe pain in order to obtain information and to punish him, and when they did so, they were acting in their official capacity.

(K) Paragraph 27 of the Indictment (Torture of Mirko BABIĆ)

3.207 Paragraph 27 of the Indictment alleges:

> "Sometime around the middle of July 1992, Hazim DELIĆ, Esad LANDŽO and others mistreated Mirko BABIĆ on several occasions. On one occasion, Hazim DELIĆ, Esad LANDŽO, and others placed a mask over the head of Mirko BABIĆ and then beat him with blunt objects until he lost consciousness. On another occasion, Esad LANDŽO burned the leg of Mirko BABIĆ."

3.208 The Prosecution relies principally on the testimony of the following seven witnesses to establish the facts in relation to this incident:

(1)	Mirko Babić	(T. 274-282, 292, 368-370, 375, 417, 419-424, 459)
(2)	Branko Gotovac	(T. 1002)
(3)	Witness N	(T. 1912)
(4)	Branko Sudar	(T. 5778)
(5)	Risto Vukalo	(T. 6265-6266)
(6)	Rajko Draganić	(T. 6950-52)
(7)	Witness R	(T. 7772-7774)

All of the witnesses were in the Čelebići camp at the relevant time.

3.209 The victim, Mirko Babić, entered Čelebići camp on 23 May 1992 and he remained until 1 September 1992. He was at the time just over 60 years of age, and had previously lived a solitary life in a one room dwelling (T. 375).

3.210 Mr. Babić testified that after arrival in Čelebići, he was placed in Building No. 22 for about 20 days, and then moved to Hangar No. 6. He testified that he was not harmed in the former building (T. 272). However, he was subjected to various beatings while in Hangar No. 6. In the first of these beatings, which occurred approximately three days after he was moved, he was called out of the hangar and hit with iron spades about five or six times by persons he could not identify. He recalled two specific occasions on which he was randomly kicked by DELIĆ (T. 274-275).

3.211 Mr. Babić then described a subsequent incident, as follows:

> "A third day, again, about 10.00, he [DELIĆ] kicked me a third time, and then he left. He walked past the rows, he went out. Then about an hour later, he called my name, "Come out". I went out. I saw Esad Landzo, and a third man, whom I did not know. They took me some fifteen metres from the door. Esad LANDZO put a mask over my eyes, and they started beating me. ... They beat me. I was virtually unconscious. Three of them were beating me. When they took the mask off, I saw DELIC, Esad LANDZO and this third man. I know Hazim DELIC, because he worked with me in my enterprise. He was a good man. His father was Ibro, I know him too, he was a good man too, and I know Hazim DELIC, because he worked with me in the same company. I begged Hazim, "Do not do this". I begged him two or three times. He cursed my mother, and he would not let the other two to beat me. But Esad LANDZO kept on beating me all the time, and then he told me "hurry up" to reach the door. There was a plank holding the gate, and, when I reached the gate, Esad LANDZO opened the door, took the plank and hit me with it, and I fell in front of the door and I knew nothing more. I was in a coma. Probably no one dared touch me. ...
>
> I could feel a fever coming, and something cold on my head. Somebody must have been pouring water over my head, and I regained consciousness. I was in a very bad condition. I did not know anything from then on." (T. 275-276.)

3.212 Mr. Babić described a further incident, occurring two days later:

> "... Esad LANDZO came up, kicked me with his foot, and told me to get up. He took me out, and to the same spot where I had been beaten, and he told me to lie down. ... I did. He told me to uncover my legs, to lift my trouser legs, so I was bare. He held a bottle in his

> hand and he asked me, "Do you know what this is?" And he had a knife in his hand. I said, "I do not know", and he opened this bottle, and poured some stuff on my right leg, and I could smell that it was petrol, and then he set fire to my leg. I saw the flame. It was very painful. I almost lost consciousness. This did not last very long. He covered that leg up, and he told me to get up. He kicked me a couple of times. He went back to the door. I removed the plank. I went in, and sat down. What happened later with my leg, some blisters and burns and there was a yellow liquid pouring from that leg. So I did not know where the pain was worse, in my chest, my head, my legs, my burns. I could not stand up any more, and Hazim Delic knows well. He would come in the afternoon, about 3.00, and he would take fifty men in front of building 6. There was a canal there. There was water, and he would select those fifty men to urinate and then the next 50 would go there. As I could not stand up alone, Dragan Tomic would help me, and he would lead me there, and back, and it happened like this on a daily basis. That is how I lived throughout that period. I was quite incapable of doing anything." (T. 276-278.)

3.213 These burns left the victim with visible scars that he demonstrated to the court (T. 278). The findings of the Dutch doctor appointed by the Registrar to examine Mr. Babić confirm that "*the anamnesis describes a second to third-degree burn which was cured spontaneously. The description of the scar fits this very well*". (D. Exh. 87/4).

3.214 Mr. Babić also recounted another occasion on which the prisoners in Hangar No. 6 were collectively beaten by DELIĆ and unidentified others, following a visit from the International Committee of the Red Cross (T. 292).

3.215 The testimony of fellow detainees provides corroboration of the account given by Mr. Babić. Witness R stated:

> "Regarding Mirko Babić, he was also taken out or called out by Zenga and he came back with trousers

> which were still smoking. They were burning and the edges were still smoking. I remember that when we asked later on during the night, we asked him what had happened to him, he said that Zenga had poured some petrol or some other inflammable liquid on his lower legs and that he had set fire to it, and that is how the burns had occurred. There were blisters with lymph inside and these burst and one could almost see the bone. ... The distance between my place and his was about five or six people in between, but sitting very close to one another, so those injuries could be seen when we would run out to go to the toilet or to urinate." (T. 7772-7773.)

3.216 Witness N also testified that he "*saw Mirko Babić, who came in with his leg burning*" (T. 1912). Other witnesses testified more generally that Mr. Babić was beaten on more than one occasion by LANDŽO and DELIĆ (Witness R (T. 774-775), Branko Sudar (T. 5778)), and that Mr. Babić "*was in a bad way, broken down*" (Branko Gotovac (T. 1002)).

3.217 In addition to this physical torture, Mr. Babić was also subjected to psychological mistreatment. Witness R recounted:

> "... Mirko Babić did ask Mr. DELIĆ to give him any kind of medical assistance, but DELIĆ's response was, "where is your son now to help you?", though DELIĆ knew well that Mirko Babić was not married and that he had no children. He would add, "you have to die anyway". That was a favourite phrase that Mr. DELIĆ used in his communication with the prisoners; "sit down, you have to die anyway, whether you are given medical assistance or not. ...
>
> Yes, he [Babić] was exposed to daily beatings, and a special type of mistreatment were these constant threats and questions, "where is your son?", because we all knew that he was born somewhere in the 30s, 33, 35, we knew that he was a forest warden and that he was never married, so this was done intentionally to

> hurt his feelings, because he was not married. ..." (T. 7774, 7775)

3.218 It is clear from the circumstances that Mr. Babić was being punished, though he was never told why he was being punished. Indeed, Mr. Babić's understanding of this fact is reflected in the fact that he kept insisting to his tormentor, "*I am not guilty of anything*" (T. 417). In cross-examination, the Defence of LANDŽO suggested that Mr. Babić was the local SDS leader in his village (T. 373), indicating a reason why he may have been singled out for punishment.

3.219 The Defence has suggested that Mr. Babić is an alcoholic, and that the burn on his leg was not caused by LANDŽO burning it but by an injury suffered many years prior to his incarceration. As evidence of this, the Defence relies on testimony of Arif Sultanić and Ramo Salihović, who remember seeing Mr. Babić at some time when he had a bandage on his leg, after they heard in the past about some accident.

3.220 The Prosecution submits that were this evidence to be believed, it suggests at most that Mr. Babić had, at some prior time, an injury to his leg. It does not suggest in any way that his leg was not burned in 1992 by LANDŽO nor that the burn on his leg is not the scar from that burn. Indeed, a Defence expert, Dr. Bellas, examined the picture of Mr. Babić's injury, and testified that:

> "... there is traces of scarring, that they may be consistent with healed burns. Probably superficial type of third degree burns. They don't look like those scarring that are associated with deep tissue destruction.
>
> I also notice that around this area and still below the area, and above the area, I saw areas of hyperaemia. Hyperaemia, I mean reddish discoloration. That seems to me not associated with that scarring. In other words, this scarring is -- has the gross appearance of something that this being -- healing process is over." (T. 14001.)

In other words, the victim had a large scar consistent with having been burned, and that he also appeared to have suffered a skin disease to his leg though the marks from the skin disease were distinguishable from and unrelated to the scar on his leg.

3.221 Further, the medical testimony and evidence submitted by the Defence establishes that Mr. Babić was never treated for any kind of significant burn prior to being at the camp. Dr. Buturović, when explaining Defence Exhibit 43/4, reported that a review of the medical records and his own memory indicated that Mr. Babić was treated for skin disease. There is no indication at any time that he was treated for any type of second or of third degree burn. Given that the burn suffered by Mr. Babić was a second or third degree burn, had he suffered such a burn prior to being in the camp, it is clearly to be expected that he would have received treatment for it.

3.222 The medical records also indicate that Mr. Babić was treated for alcohol related problems. When testifying, Mr. Babić denied that he was an alcoholic. The Prosecution submits that this evidence establishes at most that Mr. Babić had a drinking problem that he did not recognize. And indeed, many persons suffer from drinking problems that they do not recognize themselves. However, given that Mr. Babić had no alcohol when detained in Čelebići, there can be no suggestion that Mr. Babić was drinking in Čelebići such that his recollection is faulty. Thus, whether or not Mr. Babić had a drinking problem prior to being imprisoned in Čelebići is entirely irrelevant, and indeed, an offensive and improper invasion of the witness's privacy and dignity.

3.223 The Defence appears to be implying that Mr. Babić invented the fact that he was burned by LANDŽO in Čelebići, and that the other witnesses who saw his injuries are also lying. However, no reason is given why these witnesses would do so. In particular, Mr. Babić has nothing to gain personally from his testimony. Given that it is undisputed that Mr. Babić was in Čelebići, given that it is undisputed that LANDŽO did burn a number of persons detained in Čelebići, Mr. Babić's testimony is inherently credible. Furthermore, the suggestion that the witnesses have agreed together to tell the same untrue story is inherently incredible, given further that at least one of the witnesses corroborating Mr. Babić's testimony lives on

another continent to Mr. Babić and has no personal association with him (Witness R).

3.224 The fact that LANDŽO testified that he did not remember mistreating Mr. Babić is of no moment. At the time LANDŽO testified, he claimed not even to remember who Mr. Babić was. Yet, at the time he gave his first statement, which was before Mr. Babić testified, LANDŽO was emphatic that he knew who Mr. Babić was (Prosecution Exhibit 102-1, page 80). Thus, Mr. LANDŽO has apparently forgotten everything about Mr. Babić, including who he is and the occasions when he mistreated him in the camp.

3.225 All the elements necessary for the crime of murder and wilful killing have been established beyond a reasonable doubt. DELIĆ, by his own mistreatment and his direction to LANDŽO, and LANDŽO intentionally inflicted severe pain on the victim to punish and intimidate him, and they did so in their official capacity.

(L) Paragraph 28 of the Indictment (Torture of Mirko ĐORĐIĆ)

3.226 Paragraph 28 of the Indictment alleges:

> "Sometime around the beginning of June 1992 and continuing to the end of August 1992, Esad LANDŽO subjected Mirko ĐORĐIĆ to numerous incidents of mistreatment, which included beating him with a baseball bat, forcing him to do push-ups while being beaten, and placing hot metal pincers on his tongue and in his ear."

3.227 The Prosecution relies principally on the testimony of the following eleven witnesses to establish the facts in relation to this incident:

(1)	Witness F	(T. 1334-36)
(2)	Stevan Gligorević	(T. 1450)
(3)	Witness N	(T. 1912)
(4)	Mladen Kuljanin	(T. 2499)
(5)	Novica Đorđić	(T. 4162)
(6)	Vaso Đorđić	(T. 4363)
(7)	Witness P	(T. 4566)

(8)	Mirko Đorđić	(T. 4706, 4709, 4711-4712, 4717-4719, 4754-62, 4873-4875), 4879-4880, 4883)
(9)	Witness B	(T. 5061, 5063-5064)
(10)	Witness T	(T. 6698-99)
(11)	Witness R	(T. 7780)

All of these witnesses were present in Čelebići camp at the relevant times.

3.228 Mirko Đorđić testified that he received his first beating immediately upon arrival at Čelebići camp:

> "At that moment I saw that there was a light inside and the first person who was standing in front of the bus. I saw that here was a gauntlet, that two lines of soldiers were lined up, and when the door opened, Hazim Delic was standing at the entrance. He was carrying a crutch. ... He was there to decide which one should be beaten and which one should not. ... Well, the gauntlet -- I suffered tremendous blows, because during the arrest already I was beaten up, so that my eyes had all swollen up. I was all black and blue . I just remember seeing at the end of the gauntlet a soldier known as Labud, and I assume that he hit me with his rifle butt here on the forehead. For a moment I lost consciousness. I could just hear voices in the distance. ...
>
> Just as my turn came, he [DELIĆ] said: "This one", because at the time I had a beard, and for them anyone who had a beard was a Cetnik." (T. 4718-4719.)

3.229 The victim then gave testimony of numerous subsequent beatings.

3.230 Mr. Đordić recounted that on the first occasion he was taken out of Hangar No. 6 by LANDŽO and two other guards, and was subjected to kicking (T. 4754).

3.231 He recounted a subsequent occasion, in which DELIĆ and LANDŽO entered the hangar and selected him. LANDŽO was carrying a baseball bat. Mr. Đorđić testified:

> "He [LANDŽO] brought me outside and brought me to hangar letter F. He lent me against the wall. I was leaning against it, facing it (indicating) and leaning with my hands and then he put a piece of metal in my mouth so that I could not be heard, that I would not utter noises, and he started beating me on the legs and in the ribcage. He kept asking about a machine-gun. It went on for a long time. ... I fell down several times, losing consciousness. He would raise me again and continue to beat me. When he had had enough -- well, that took a long time -- I could barely get back to the hangar. The prisoner next to me, Jovan Kuljanin, he said he was counting the blows and I had received over 200 of them, up to 250. I was all black and blue so that after a period of time following that I was immobile. I could not get up. They had to help me. I had water and I would put some water on my pants, on my calves, so that the swelling would subside somewhat, so that these haematomas, these bruises, would go away." (T. 4755-4756.)

3.232 Mr. Đorđić further testified that:

> "I was constantly a victim of Zenga's. Every time he would walk into the hangar, when he would walk from prisoner to prisoner, he would come to me and he would order me to get up and do push-ups. He would count and as he was counting, he would kick me in my ribs. So I would have to do ten push-ups. I would have to do 50 of them in order to get ten correct ones according to him. He kept kicking me all the time." (T. 4756.)

3.233 Mr. Đorđić then recounted that:

> "My next -- how shall I put it -- duel with Landzo was some time in mid-July. He came to the spot where I

> was. He had me get up and said to other prisoners: "You'll see what's going to be left of him". I thought that he was going to kill me, but he brought me to the door. We did not go out. He just brought me to the corner there, and he ordered me to kneel down. I knelt down. He poured gasoline. I saw there was a bottle for the lighter. He had pincers and he started heating these pincers. He asked me: "Where's Mico?" I didn't know at that time what Mico he was referring to. Only later I understood who it was and I told him that I didn't know. When he heated these pincers enough, he started -- he ordered me to open my mouth, to stick out my tongue, and then he started squeezing it on my tongue (indicating). He started burning my tongue. It was like being grilled. Then on the nose, and then at one point he went into the ear. He stuck the pincers and I felt a great pain and I screamed. (T. 4757)

3.234 Mr. Đorđić further described a number of collective beatings to which he was subjected with other detainees. In the first of these, which occurred in early July 1992, DELIĆ struck Mr. Đorđić twice with a baseball bat (T. 4758-4759.) The second incident was on 13 July 1992, in which there were several collective beatings on the one day. Mr. Đorđić testified that these beatings were conducted mainly by DELIĆ, but also LANDŽO and other guards (T. 4759). He recounted that the next collective beating was on approximately 12 August 1992, following a visit from the International Red Cross. He said:

> "After their departure, and it was close to dusk, at one point Delic came in with a group of -- I'd say 12 soldiers. He split them into two groups and ordered the ones against the wall to face it, to sit down and put hands like this (indicating). Then kicking started, so to speak. All the guards went one by one and everybody kicked several times. I think I received about 20 blows to my kidney area at that time, and Delic was then commanding, and he had some favourites, and he would say: "Pass this one over." So these would be passed over. After it was done, he ordered: "Turn around. "We did and they left the room." (T. 4760.)

3.235 Mr. Đorđic described a further collective beating in September, in which he was beaten by DELIĆ and some other guards with shovel handles and other tools (T. 4760-4761), and recounts also being beaten by a guard named Zajko Camdžić with a wooden plank while DELIĆ was present (T. 4761-4762). He described a further beating after another visit by the Red Cross, probably in late October or early November 1992, at which DELIĆ was present, in which Mr. Đorđić and about ten other prisoners were beaten in the kidney area and in the crotch (T. 4762).

3.236 It is apparent that the victim's mistreatment was for two purposes; they wished to coerce him into giving information, including about weapons (T. 4754-4756), and to punish him for being the brother of an alleged leader of the Serbs from Bradina (T. 7780).

3.237 Other witnesses provided corroboration of Mr. Đorđić's testimony. Stevan Gligorević recalled:

> "He [LANDŽO] often beat him [Mirko Đorđić] and he didn't bother to take them out to the door but he would just beat them right there. He would say: Come and do push-ups." Then he started kicking him." (T. 1450.)

Witness B also testified that LANDŽO would force prisoners to do push-ups while hitting them in areas of the stomach, kidneys and back (T. 5063-64). See also D. Exh. 84/4 (medical report indicating that while burns to lips and tongue have a tendency to heal quickly, a scar in his nostril and loss of cartilage leads doctor to conclude injuries were likely to have been inflicted in manner claimed by the victim).

3.238 Several witnesses in particular gave testimony in respect of the incident in which Mr. Đorđić was burned by LANDŽO. Witness F stated:

> "Yes. I remember well Landzo, called Zenga, had a small bottle filled with gasoline, and he spread it around the concrete and lit up some paper and asked Djordjic to open up his mouth. He was heating the knife on it, and then he was putting also something into

> his ear. He was begging, but he put it in anyway... This was all happening within a day or so, all those instances of burnings, late June, early July. I don't know exactly." (T. 1334-1336.)

3.239 Stevan Gligorević stated:

> "I personally saw when to Mirko Djordjic, who was about two, three places away from me in the same row, when he [LANDŽO] burst his ear with a pincer. He couldn't hear. He often beat him and he didn't bother to take them out to the door but he would just beat them right there." (T. 1450).

3.240 Mladen Kuljanin testified:

> "He was called out by Esad Landzo, known as Zenga. Mirko got up. Esad Landzo was standing at the entrance. He had a knife in his hand. Then he heated the knife and ordered Mirko to stick out his tongue and he put this heated knife to his tongue." (T. 2499.)

3.241 Additional corroboration is provided by the testimony of Vaso Đorđić (who saw LANDŽO put pincers in ear and on tongue of Đorđić (T. 4363)) and Witness B (who saw LANDŽO put heated pincers to some part of fact of prisoners from Bradina (T. 5064)).

3.242 Some 20 days after this incident (Mirko Đorđić (T. 4758)), Mr. Đorđić was finally able to receive some rudimentary medical assistance from Witness P, who confirmed the witness's account of his injuries:

> "Then also Mirko Dordic came for burns. You could see his lips were burned, his tongue, and pincers had been placed in his ear, heated pincers and there was pus coming out of the ear." (T. 4567.)

3.243 In his testimony, LANDŽO said that he did not recall who Mirko Đorđić was nor remember beating him. However, he expressly acknowledge that he did not necessarily remember everything in which he was involved (T. 15372). The Defence for DELIĆ also

presented evidence from a Dr. Bellas concerning the likely effect of being hit very hard by a baseball bat in the same location on the ribs 250 times and if the victim is starving and deprived of almost all water. Not surprisingly, Dr. Bellas said what common sense would tell one, which is that under such circumstances, the effects would likely be devastating (T. 13967-70). The Prosecution does not dispute Dr. Bellas's opinion, but believes it is not helpful in evaluating this witness's testimony. Among other things, the Prosecution points out that the victim himself never said it was 200 to 250 blows, the victim reported that the blows were both to his back area and to his legs with his legs swelling up afterwards, the victim did not state anything about the force used by LANDŽO to yield the baseball bat nor did the victim even state what hand LANDŽO used. Under these circumstances, the expert evidence does not cast any doubt on the witness's credibility in any way. Further, as pointed out immediately above, the only expert who examined the victim, the Dutch doctor appointed by the Registrar, concluded that it was likely that he was injured as reported (D. Exh. 84/4).

3.244 All the elements necessary for the crime of torture have been established beyond a reasonable doubt for LANDŽO. He intentionally inflicted severe pain on the victim to coerce him into giving information and to punish him, and he did so in his official capacity.

(M) Paragraph 29 of the Indictment (Responsibility of superiors for acts of torture)

3.245 Paragraph 29 of the Indictment alleges:

> "With respect to the acts of torture committed in Čelebići camp, including placing Milovan KULJANIN in a manhole for several days without food or water, and including those acts of torture described in paragraphs twenty-three to twenty eight, Zenjil DELALIĆ, Zdravko MUCIĆ, and Hazim DELIĆ knew or had reason to know that subordinates were about to commit those acts or had done so, and failed either to take the necessary and reasonable steps to prevent

those acts or to punish the perpetrators. With respect to those counts above where Hazim DELIĆ is charged as a direct participant, he is also charged here as a superior."

3.246 The evidence relied upon by the Prosecution to establish the superior responsibility of DELALIĆ, MUCIĆ and DELIĆ is dealt with in Part 4 below.

3.247 The evidence relied upon by the Prosecution to prove the fact of the acts of torture described in paragraphs 23 to 28 of the Indictment is dealt with above, in sections (G) to (L) of this Part.

3.248 The evidence relied upon by the Prosecution to prove the fact of the other acts of torture specifically described in paragraph 29 of the Indictment, namely those relating to Milovan Kuljanin, is dealt with in this section.

3.249 The Prosecution relies principally on the testimony of the following witnesses to establish the facts in relation to the acts of torture against Milovan Kuljanin.

(1)	Milovan Kuljanin	(T. 7020-7031, 7116-7117)
(2)	Miro Golubović	(T. 2105-2111, 2145)
(3)	Witness P	(T. 4570)
(4)	Witness R	(T. 7806)
(5)	Witness T	(T. 6692, 6694)

3.250 Milovan Kuljanin gave direct testimony of his experience. He said that when he was first brought to Čelebići camp, he was taken from the van he arrived in by DELIĆ and several other persons, and brought to a manhole that was approximately 2.5 metres high and 2.5 metres wide, set vertically into the ground. Milovan Kuljanin recounted that he and another detainee, Miro Golubović, were required to descend into the manhole using a ladder, and that the lid was closed and locked. For a period, a third detainee was also brought into the manhole. He testified that the inside the manhole it was dark, lacking in air, and smelled of urine. He was kept there for a night and a day (T. 7020-7027). He said that when he was subsequently taken out of the manhole:

> "It was daylight, and the sun was very hot, that I remember because when they opened the lid of the manhole, I could hardly keep my eyes open. When I went outside I had a distorted vision of it, as if I was watching through a fog. I could not really see very well." (T. 7027.)

He said that both DELIĆ and MUCIĆ were present when he was finally ordered to leave the manhole. (T. 7027-7028.) While in the manhole, he was not provided with any food or water (T. 7029).

3.251 This part of Milovan Kuljanin's account is corroborated by the testimony of Miro Golubović (T. 2106-2111, 2145-2146), who adds that:

> "In the manhole we didn't have enough air. We were afraid. The guards would come and beat on the lid. They would insult us and utter provocations." (T. 2110.)

(See also P. Exh. 103-1, p. 77 (interview of DELIĆ by the Office of the Prosecutor, in which he states that Mr. Golubović and Mr. Kuljanin were closed into a manhole for 24 hours and also spent 24 hours without food or water), testimony of LANDŽO (indicating that prisoners from Tunnel No. 9 were placed in manhole and that he believes MUCIĆ was present and is sure DELIĆ was present (T. 15376).)

3.252 Milovan Kuljanin then testified that he was taken by DELIĆ and MUCIĆ to Building No. 22. There he was required to face a wall while a number of the camp guards, including LANDŽO, beat him for half an hour using objects such as electric wires and shovel handles. During this beating DELIĆ and MUCIĆ had gone inside Building No. 22. Following this beating, he was taken for a formal interview conducted by two others. In the course of this interview, DELIĆ entered the room with a baseball bat or similar object, and struck him once. Subsequently, Milovan Kuljanin was taken to Hangar No. 6. (T. 7028-7031, 7116-7117.)

3.253 All the elements necessary for the crime of torture have been established beyond a reasonable doubt. The camp personnel

inflicted severe pain on him as part of his interrogation to obtain information and to coerce and punish him. The personnel performed these actions in their official capacities.

(N) Paragraph 30 of the Indictment (Causing great suffering or serious injury to Nedeljko DRAGANIĆ)

3.254 Paragraph 30 of the Indictment alleges:

> "Sometime around the end of June 1992 and continuing until August 1992, Esad LANDŽO and others repeatedly mistreated Nedeljko DRAGANIĆ by tying him to a roof beam and beating him, by striking him with a baseball bat, and by pouring gasoline on his trousers, setting them on fire and burning his legs."

3.255 The Prosecution relies principally on the testimony of the following twelve witnesses to establish the facts in relation to this incident:

(1)	Branko Gotovac	(T. 999)
(2)	Witness F	(T. 1335, 1386)
(3)	Nedeljko Draganić	(T. 1600, 1602, 1609-11, 1648-1635, 1641-42, 1658-62, 1665-69, 1675-77, 1700-06)
(4)	Witness N	(T. 1913)
(5)	Mladen Kuljanin	(T. 2498)
(6)	Witness P	(T. 4567)
(7)	Mirko Đorđić	(T. 4770-71)
(8)	Witness B	(T. 5064-5066)
(9)	Branko Sudar	(T. 5779-5780)
(10)	Petko Grubač	(T. 5986-5987)
(11)	Milovan Kuljanin	(T. 7067-7068)
(12)	Witness R	(T. 7776-7778)

3.256 All of these witnesses were detainees in the Čelebići camp at the relevant time. The prosecution also relies on Prosecution exhibits 87, 88, and 89 as proof of the allegations in the Indictment.

3.257 Much of the relevant evidence was given in the testimony of the victim, Nedeljko Draganić. During trial, the Defence stipulated that Nedeljko Draganić was able to recognise both LANDŽO and DELIĆ in the camp, so that identity was not in issue (T. 1633-1635).

3.258 Nedeljko Draganić testified that he was beaten frequently by LANDŽO:

> "He [LANDŽO] was the person who abused me the most in the camp ... Ten times or more ... I don't remember exactly the order of the incidents but I do know that the first time when I was beaten ... but as for the order of the other events ... the only thing I can tell you is that I was beaten often." (T. 1621).
>
> "He would beat me almost every day, but the very severe beatings, that also happened on many occasions." (T. 1631).

3.259 This testimony is further corroborated by Mirko Đorđić who said that Landžo "*was constantly taunting and beating Nedjelko Draganic*" (T. 4770), and by Milovan Kuljanin, who testified that he saw Nedeljko Draganić being maltreated, beaten and abused inside Hangar No. 6 on several occasions, "mostly" by guards of the building, including LANDŽO (T. 7067).

3.260 Nedeljko Draganić testified that on the occasion of the first beating, he was called out of Hangar No. 6 by LANDŽO and two or three others. He said he was taken to Hangar No. 7, where:

> "they tied me to a beam so that I was standing up but my hands were tied up above my head. Then they started beating me using all kinds of things. They were kicking me and hitting me with planks and rifle butts and then they asked me where my rifle was. I did not have a rifle. I kept telling them that I didn't have a rifle. They kept beating him [*sic*] until I lost consciousness. When I fainted, they started telling me: "Get up." When I fainted, I was suspended hanging on my hands. After that the four of them -- I don't know for how long they beat me, maybe half an hour. Four

> of them brought me back to Hangar Number 6 ... On that occasion I was beaten by Landzo, nicknamed Zenga; Osman Dedic; Adis Alikadic; and Lisko -- I think that his name was Lisko -- the four of them." (T. 1618-1619).

3.261 In relation to subsequent beatings, Nedeljko Draganić further testified that:

> "He [LANDŽO] would usually beat me with a baseball bat ... He would usually beat me and the other detainees at the camp. He would beat me in front of Hangar 7 ... I can't remember how many times." (T. 1632).

> "On one occasion I was taken out at night by Zenga and Osman Dedic. They beat me right in front of Number 7 on the lawn here. They beat me here I don't know for how long. I think that I fainted two or three times and then I would come to again and faint again. Then I was brought back to hangar Number 6 ... I remember that Zenga grabbed me by the hair and dragged me on the asphalt, and I fell down, but he kept pulling me up by my hair, and he dragged me to the entrance door and threw me in." (T. 1622).

3.262 Nedeljko Draganić testified further that on another occasion he was beaten by two other guards at the order of, and in the presence of, DELIĆ, at a time when LANDŽO was not in the camp (T. 1641-1642).

3.263 Nedeljko Draganić testified to being subject to further mistreatment, in that he was required by LANDŽO to drink the urine of other prisoners (T. 1631-1632).

3.264 The victim further testified that in one incident, which occurred about the end of June or early July 1992 (T. 1629), LANDŽO forced him to sit down in front of Hangar No. 7, whereupon LANDŽO spilt petrol or alcohol over his legs and set them alight (T. 1624). He testified that:

> "... he [Landžo] did not allow me to put the fire out until it was put out by itself, and my trousers were completely burnt out and both my legs had burnt and even today I have a scar on my left leg and it can't really be seen on my right leg." (T. 1625).

3.265 Nedeljko Draganić recounted that as a result of this burning, a blister appeared on his leg, which subsequently became infected. (*"It was full of pus all the time and my leg was swollen and hurt"* (T. 1629).) He said that the first treatment he received for it was in the camp infirmary about a week later. He added that whenever he asked subsequently to go to the infirmary to clean the wound, *"very often Delic would not allow me to go. He often told me not to go and said: "You don't need that. You won't last very long"*. (T. 1630). He said that his leg remained infected in this way until he was released from the camp at the end of August 1992. (T. 1629-30.) The incident left him with permanent scarring on his leg. (Nedeljko Draganić displayed these scars to the court while testifying (T. 1627-1628). Prosecution exhibits 87, 88, and 89 are photographs of these scars.) Defence Exhibit 85/4 is a report from a Dutch doctor finding the leg scar to be "partially a deep two-degree and partially a third degree burn wound."

3.266 This account of the burning incident is corroborated by a number of other witnesses. Mirko Đorđić stated:

> "On one occasion he [LANDŽO] took him out, and when Nedjelko returned, we saw that -- I think it was his left trouser leg that had been burnt as far as the knee almost, and on the lower leg we saw a big wound, a big blister of this size. He was maybe 3 metres away from me, maybe even less. He told me that Zenga had poured him with gasoline." (T. 4770).

> ... a couple of days later was taken to the doctors. They cleaned it up, I suppose ... because the wound had become infected. ... Yes, he told us immediately, and we saw anyway that his leg had been burnt, that he had -- and he told us that it was Zenga who had done it." (T. 4771).

3.267 Witness F testified that he saw LANDŽO take the victim out of the hangar and heard his screams before he was brought back with burned legs. (T. 1335, 1386). Witness R gave similar testimony, noting that over time the original burn wound festered and spread (T. 7776-7777). This latter witness added that as LANDŽO was taking Nedeljko Draganić out of Hangar No. 6 immediately prior to the burning incident, DELIĆ had ordered LANDŽO "*to carve in the Chetnik sign on his* [Draganić's] *forehead*", an order that was not carried out (T. 7777). Branko Sudar also testified that after Nedeljko Draganić was taken out of Hangar No. 6 on one occasion, he was returned with his trousers burnt and two burns on his leg, such that it was possible to see the naked flesh on his legs (T. 5779-5780). Other witnesses further testified that they had seen the wounds from the burns on Nedeljko Draganić's legs (Milovan Kuljanin (T. 7067), Branko Gotovac (T. 999), Witness N (T. 1913), Witness P (T. 4567)). Other witnesses testified that the burning of prisoners' legs was a common form of mistreatment in the camp (Witness B (T. 5064), Petko Grubač (T. 5986-5987)).

3.268 All the elements necessary for the crime of causing great suffering and cruel treatment have been met. LANDŽO subjected the victim to severe pain and caused him great suffering or serious injury.

(O) Paragraph 31 of the Indictment (Responsibility of superiors for causing great suffering or serious injury)

3.269 Paragraph 31 of the Indictment alleges:

> "With respect to the acts causing great suffering committed in Čelebići camp, including the severe beatings of Mirko KULJANIN and Dragan KULJANIN, the placing of a burning fuse cord around the genital areas of Vukašin MRKAJIĆ and Duško BENĐO, and including those acts causing great suffering or serious injury described above in paragraph thirty, Zejnil DELALIĆ, Zdravko MUCIĆ, and Hazim DELIĆ knew or had reason to know that subordinates were about to commit those acts or had done so, and failed either to take the necessary and

reasonable steps to prevent those acts or to punish the perpetrators. With respect to those counts above where Hazim DELIĆ is charged as a direct participant, he is also charged here as a superior."

3.270 The evidence relied upon by the Prosecution to establish the command responsibility of DELALIĆ, MUCIĆ and DELIĆ is dealt with in Part 4 below.

3.271 The evidence relied upon by the Prosecution to prove the acts causing great suffering or serious injury described in paragraph 30 of the Indictment is dealt with above, in section (N) of this Part.

3.272 The evidence relied upon by the Prosecution to prove the fact of the other acts causing great suffering or serious injury specifically described in paragraph 31 of the Indictment is dealt with in this section.

(i) Beating of Mirko KULJANIN

3.273 The Prosecution relies principally on the testimony of the following witnesses to establish the facts in relation to this incident:

(1)	Mirko Kuljanin	(T. 1172-1179)
(2)	Witness F	(T. 1356)

3.274 Mirko Kuljanin said that he had already been severely beaten before his arrival at Čelebići:

> "The worst beating was from Bradina to the tunnel. This was the hardest time for me, because this was when I fell down from the blows and got up again. All the beatings were really incredible, the objects that they used, and it seemed to me as if they had prepared for that. They had all kinds of objects that they used to beat us and the worst beating that I took was when I was hit with a rifle barrel in my left side and I thought that I had been run through. I fell down and I somehow managed to get up again" (T. 1175).

As a result of this beating, he said that by the time he arrived a Čelebići camp he "*was already unable to stand*" (T. 1178). He recalled that the following day he was "*covered in blood*" from this incident (T. 1179).

3.275 Mirko Kuljanin then testified that he was hit several times in the course of a collective beating at the time of his arrival in the camp (T. 1172-1177). He was then taken to Tunnel No. 9. The following day he was told to go somewhere for his wounds, but the only treatment he received was to have plasters put on two cuts on his head (T. 1179).

3.276 Given his obvious condition at the time of his arrival at Čelebići, the acts of hitting him several times and placing him in Tunnel No. 9 without any immediate medical attention may be considered as a severe beating under the circumstances, even if not on the scale of many of the other acts of mistreatment which occurred in the camp.

3.277 All the elements necessary for the crime of causing great suffering and cruel treatment have been met. Guards in the camp subjected the victim to severe pain and caused him great suffering or serious injury.

(ii) Beating of Dragan KULJANIN

3.278 The Prosecution relies principally on the testimony of the following two witnesses to establish the facts in relation to this incident:

(1)	Dragan Kuljanin	(T. 2300-2325, 2356)
(2)	Witness R	(T. 7756)

3.279 Dragan Kuljanin recounted the circumstances of his arrival at Čelebići camp:

> "We stopped in Bradina for a while ... and continued on to the entrance gate at Celebici. There the bus stopped and we waited I think about half an hour, maybe 45 minutes. They were talking something, laughing. I recognised Delic at that time. He was limping. He was saying something" (T. 2300).

3.280 Mr. Kuljanin said that the bus then went to the entrance of Hangar No. 6, which he and the other detainees in the bus were required to enter. He said:

> "There was a gauntlet of people all the way to the entrance to the hangar ... Let me tell you I could not count, but maybe about fifteen, at least fifteen people, ten to fifteen, something like that. I couldn't see because we were not allowed to look. ... One by one in an order until the signal was given to bring on the next, and when it was my turn I stood there. I don't know who was behind me. On the ground there was another one. He would kick you as hard as he could and the one who was down would also meet with a kick, and you could not remain on your feet, and so you would fall, and they would kick and hit with sticks and chains. There were some handles of -- spade. There were all kinds of things. It looked to me like an eternity. Maybe it was fifteen minutes. ... there was Delic and the other one I could not recognise" (T. 2304-2306).

MUCIĆ himself corroborated this in one of the seized documents from Vienna, signed Z. Mucic and attested to by the Bosnia-Herzegovina Embassy; "*Among the less significant information that I wish to bring to your attention is the fact that all the shovel handles in Čelebići were broken in two days because the new prisoners were beaten irrespective of the degree of their guilty. We had a lot of problems with seriously injured prisoners ...*" (P. Exh. 130).

3.281 Dragan Kuljanin further testified he was beaten several times in Hangar No. 6. On one occasion, he was beaten by a guard, and then by LANDŽO, with rifle butts (T. 2318-2319). He recalled a subsequent occasion on which LANDŽO put a bomb in his mouth. (T. 2323). On two other occasions he was beaten by DELIĆ in Hangar No. 6 while being forced to do push-ups:

> "Delic would come and he would give us all slaps. He would slap us all. On one occasion Zenga forced me with a stick, a baseball stick like this, to make -- to use

> the -- to do ten push-ups. Then he would hit me. Another time he did not have the bat, but he kicked me, usually on the right-hand side, while I was doing -- while we were doing push-ups. Then he would say "up to ten", and then he would let us go, but usually he would start beating at 3, 4, 5. Then he would let us go until number 8 and then he would hit." (T. 2325).

3.282 The victim said that he is still suffering from these injuries today:

> "Sometimes I urinate blood. I don't hear well on my left ear. As you can see, my nose is like this. I have pains and it impedes my speech. Sometimes I have kidney pains. More recently it is less frequently, because I went to spas and so on. Then also you can see my teeth. It was a difficult surgery but I fixed that." (T. 2356).

See also Witness R (7756) reporting that Dragan Kuljanin was badly beaten such that he even had difficulty walking.

3.283 All the elements necessary for the crime of causing great suffering and cruel treatment have been met. Camp personnel subjected the victim to severe pain and caused him great suffering or serious injury.

(iii) Treatment of Vukašin MRKAJIĆ

3.284 The Prosecution relies principally on the testimony of the following ten witnesses to establish the facts in relation to this incident:

(1)	Stevan Gligorević	(T. 1454-1455)
(2)	Mirko Đorđić	(T. 4764)
(3)	Risto Vukalo	(T. 6292, 6298)
(4)	Witness F	(T. 1338, 1384)
(5)	Mirko Kuljanin	(T. 1180)
(6)	Dragan Kuljanin	(T. 2326)
(7)	Branko Sudar	(T. 5780-5781)
(8)	Mladen Kuljanin	(T. 2497)
(9)	Witness N	(T. 1913)

(10) Rajko Draganić (T. 6954, 6955)

3.285 The evidence establishes that Vukašin Mrkajić was beaten on frequent occasions by guards and others responsible for the camp, including DELIĆ.

3.286 Stevan Gligorević testified:

> "DELIĆ was one of those who also took a lot of people out and beat them also inside the hangar itself too. Sometimes he beat everybody one by one. Sometimes he would skip someone. Sometimes he had his own, as we called it, patients, and he beat them only, like Dusko Bendjo, Vukašin Mrkajić. Most often those were the blows: "Turn around, put your hands on your neck", and then he would hit them a few times, or even, because Mrkajić was in the middle row, he didn't have to get up. He would just sit and he would hit him. It came to the point where Mrkajić's ribs were fractured and blue, and when Delic would come in, he would start begging: "Please, don't Mr. Commander" ... Most often he would kick them and when there were mass beatings, most often he would use whatever he had, either a broomstick or a shovel, which would be somewhere around, something that was at hand. Sometimes he would have two -- sometimes he would break two handles against the bodies of prisoners" (T. 1454-1455).

3.287 Mirko Đorđić recalled that:

> "This Mrkajic Vukasin was one of the prisoners that was really tortured a lot. He was always suffering blows especially by Hazim Delic. He would always hit him, almost every time he would come to the hangar. He would at least get a kick or two in the kidney area." (T. 4764.)

(See also Risto Vukalo (T. 6298), Witness F (T. 1338), Mirko Kuljanin (T. 1180), Dragan Kuljanin (T. 2326), Branko Sudar (T. 5781).)

3.288 When asked about the identity of those inflicting this treatment on Vukašin Mrkajić, Branko Sudar said:

> "Zenga most of all. It was Zenga who did most of all and then Osman and Delic were there too, Kemo, all those other guards were there too" (T. 5780).

3.289 A number of witnesses testified about an incident in which LANDŽO placed a burning fuse around the victim's genital area. Mirko Đorđić described the incident as follows:

> "On one occasion Landzo tied -- what is it-- a slow-burning fuse around his waist, around the genitals and stuck a piece in his anus, and then he lit the other side, and ordered him to run around, and he did, and when he -- when it reached the end, he started dancing around, and later he let him go ..." (T. 4764.)

(See also Mladen Kuljanin (T. 2497), Witness N (T. 1913), Risto Vukalo (6292), Rajko Draganić (T. 6954-6955), Branko Sudar (T. 5781), Witness F (T. 1384).)

3.290 According to Risto Vukalo, Vukašin Mrkajić and other detainees who were subjected to this form of treatment:

> "... were almost jumping around half a metre high, making leaps into the air from the pain when the fuse started burning right next to the skin. They would roll over the concrete floor until somehow they would manage to put it out with their own body. They would extinguish it rolling around like that." (T. 6292).

3.291 All the elements necessary for the crime of causing great suffering and cruel treatment have been met. Camp personnel subjected the victim to severe pain and caused him great suffering or serious injury.

(iv) Treatment of Duško BENĐO

3.292 The Prosecution relies principally on the testimony of the following twelve witnesses to establish the facts in relation to this incident:

(1)	Witness R	(T. 7775, 7776, 7811)
(2)	Witness F	(T. 1338, 1339)
(3)	Mirko Đorđić	(T. 4768, 4769)
(4)	Dragan Kuljanin	(T. 2327)
(5)	Mladen Kuljanin	(T. 2497-2498)
(6)	Witness N	(T. 1913)
(7)	Vaso Đorđić	(T. 4362)
(8)	Dr. Petko Grubač	(T. 5987-5988)
(9)	Branko Gotovac	(T. 999)
(10)	Witness B	(T. 5064)
(11)	Branko Sudar	(T. 5783)
(12)	Rajko Draganić	(T. 6957, 6958)

3.293 Witness R stated generally that Dusko Benđo "*was also taken out many times and beaten*" (T. 7775). Witness F also identified Dusko Benđo as one of the detainees who was taken outside of Hangar No. 6 and beaten (T. 1338-1339). More specifically, Mirko Đorđić said that "*In the hangar Zenga would ... force him to do push-ups while he was hitting him in his ribs*" (T. 4768). This was corroborated by Dragan Kuljanin (T. 2327).

3.294 Witness R also recalled a particular occasion on which Dusko Benđo received burns to his legs:

> "He was also called out in front of number 6 by Mr. Zenga, and we heard his cries or moans, and then Bendzo returned, again accompanied by Zenga, to his place. Both his lower legs were terribly burnt. He had on him a red sweat suit which was burnt up to the knees. It was totally burnt as far as the knees, and on the bones of his lower legs, one could see very large blisters which were soon filled with lymph, so these were large blisters which burst shortly afterwards, so that on both legs, one could see the bone right through, the burnt meat and the bone. I must add that Dusko Bendzo was not in the first row next to me, but the next

> row, quite opposite me, so that I could see those injuries every day ... Dusko Bendjo was also on Delic's list of those who had to die, so that when he too asked for any medical assistance, he got the same answer, "sit down, you have to die anyway"" (T. 7775-7776).

3.295 Testimony about this incident was also given by Mirko Đorđić (T. 4768-4769), Mladen Kuljanin (T. 2497-2498) and Witness N (T. 1912).

3.296 Witness N also testified about an incident in which he "*personally saw when Esad Landzo wound this fuse around Mrkajic, lit it and forced him to run round the hangar*" (T. 1913).

3.297 Vaso Đorđić testified with respect to a further incident in which LANDŽO burned Dusko Benđo with a heated knife:

> "Also Landzo Zenga was setting fire on Bendjo. He had a tin with him. There was a flame coming out. I don't know what it was. He was heating the knife on it. Then he would put it against his skin and he would put it against his body, this heated knife ... It happened in hangar 6 in front of all the prisoners" (T. 4362).

3.298 Dr. Petko Grubač recalled treating Mr. Benđo and other burn victims. He said that the victims informed him that the burns were caused either by gasoline being poured on them or by flammable cords (T. 5987-5988).

3.299 Some additional corroboration is found for these incidents in the testimony of other witnesses. Branko Gotovac recalled seeing that "*Dusko Bendjo had burns on his legs*" (T. 999). Witness B testified that he could not remember all the forms of torture he personally observed, but that he did remember that "*a former taxi-driver from Konjic, I think his name was Bendzo, had his whole leg lighted*" (T. 5064). Branko Sudar also remembered seeing the burns on Dusko Bendjo's body (T. 5783), as did Rajko Draganić (T. 6957-6958), and Witness R also recalled seeing the scars (T. 7812).

3.300 The Prosecution concedes that there is some ambiguity concerning whether, in addition to being set alight, Mr. Benđo also had a

burning fuse put around him. However, given that there is no doubt that Mr. Benđo was burned, the exact manner in which Mr. Benđo was mistreated is not legally dispositive.

3.301 All the elements necessary for the crime of causing great suffering and cruel treatment have been met. Camp personnel subjected the victim to severe pain and caused him great suffering or serious injury.

(P) Paragraph 33 of the Indictment (Inhumane acts involving the use of an electrical device)

3.302 Paragraph 33 of the Indictment alleges:

> "Sometime beginning around 30 May 1992 and continuing until the latter part of September 1992, Hazim DELIĆ used a device emitting electrical current to inflict pain on many detainees, including Milenko KULJANIN and Novica ĐORĐIC.

3.303 The Prosecution relies principally on the oral testimony of six witnesses to establish the facts in relation to this incident, namely:

(1)	Stevan Gligorević	(T. 1455-1456)
(2)	Novica Đorđić	(T. 4197-4200)
(3)	Witness P	(T. 4554-4561)
(4)	Witness B	(T. 5047)
(5)	Milenko Kuljanin	(T. 5453-5455)
(6)	Witness R	(T. 7781-7782)

3.304 The evidence establishes that during the months of July and August 1992 DELIĆ frequently used against a great number of prisoners, including Milenko Kuljanin and Novica Đorđić, a painful device which emitted an electrical current. Witness P described the instrument as:

> "... about two packs of cigarettes big and there was a button somewhere, and ... when he would push this button, there would be some clonic spasms" (T. 4555).

3.305 Milenko Kuljanin described it as an:

> "electrical device with the form of a pack of cigarettes, but it was much larger. On top it had two wires. There was a button on the device approximately, a connecting button so that the wires would conduct electricity to the chest so that I would receive a shock." (T. 5453-5454).

3.306 Stevan Gligorević described it as a "*gadget which produced electric shocks*" (T. 1455); Novica Đorđić referred to it as a "*device for horses*" which "*produces strong electrical shocks*" (T. 4197); and Witness R called it "*the device that is used, like an electrical prod for cattle*" (T. 7782). Witness B referred to it simply as a "*device that causes electrical shocks*" (T. 5047).

3.307 The testimony indicates that the shocks caused by this device were so severe that the prisoners suffered convulsions and severe burns were left on their skin: Novica Đorđić testified that:

> "This was more of a toy for him, but when used on a prisoner it inflicts a small burn on the spot where it touches the body like the burn from a cigarette, but the electricity charge is very high. It is not lethal, it cannot kill, but it produces a strong shock, and people who don't know become very frightened. They feel that they will not be able to survive. It is about 10,000 volts, I think, the charge." (T. 4197-4198.)

Witness B said that after DELIĆ placed the instrument against the skin of the prisoners:

> "they would sort of go into spasm or something. I don't know what it's called. I know that it was very unpleasant." (T. 5047.)

3.308 Witness P, testified that DELIĆ used the device on one occasion on Risto Zuza, saying that "*there would be some clonic spasms, and Risto would sort of be thrown into the corner*" (T. 4555).

3.309 Novica Đorđić testified that DELIĆ used that instrument against him:

> "on one occasion when Hazim took us for a walk in front of the scales, the kind of island on the road, I was selected from the group and he put me on a stone block on this island ... I sat on the block and I begged him not to do that to me, and actually I'm a TV mechanic, so I know the electronics of this device. That is my trade. For the benefit of the other people I wasn't afraid so much, but I made a scene intentionally and begged him for mercy. He burned me on the chest ... I was naked up to the waist. This was the time of our walk and when I fell off this block, he caught me by the leg and the device was kept on it for a long time and the burn was quite big. It was later infected, and the scar is still visible." (T. 4198-4199.)

3.310 Milenko Kuljanin testified that DELIĆ used the device on him, twice on the same day in July inside Tunnel No. 9.

> "Delic entered tunnel number nine with this device ... then he put it to my chest twice and I do not know how it functioned but I received two electrical shots. It was horrible and unpleasant ... I had convulsion on account of the shock and I twitched ... Initially there was a trace and it remained there for three or four months. They were spots were the wires had contacted the skin. They were tiny scars on account of the contact with the electricity" (T. 5453-5454).

3.311 The testimony indicates that DELIĆ also used the device against other detainees, including Davor Kuljanin (Stevan Gligorević (T. 1455)), Witness R (T. 7782), Vukašin Mrkajić (Novica Đorđić (T. 4200)); Risto Zuza, a mental patient (Witness P (T. 4554)). Other witnesses testified that the device was used by DELIĆ against "*many*" prisoners (Witness B (T. 5047)), or "*most of the prisoners in building number 9*" (Novica Đorđić (T. 4200)—see also the testimony of Milenko Kuljanin naming other prisoners on whom the device was used (T. 5455)).

3.312 Witnesses indicated that DELIĆ found the use of this device "*very amusing*" (Witness B (T. 5047)) or "*funny*" (Milenko Kuljanin (T. 5454)). Milenko Kuljanin testified that in the case of some of the prisoners:

> "he [DELIĆ] talked during this and laughed at them as he was applying the device. Some of them begged him as they were in pain and unpleasant pain not to do that not to torture them, not to maltreat them, but he even hit some of them when they begged him to cease torturing them. He merely laughed." (T. 5455.)

3.313 All the elements necessary for the crime of inhuman treatment and cruel treatment have been met. With the use of this device, DELIĆ subjected numerous victims to severe pain, indignity or suffering, and in so doing he intended to subject to victim to such indignity, pain or suffering out or proportion to the treatment expected of a human being by another.

(Q) Paragraph 34 of the Indictment (Responsibility of superiors for inhumane acts)

3.314 Paragraph 34 of the Indictment alleges:

> "With respect to the incidents of inhumane acts committed in Čelebići camp, including forcing persons to commit fellatio with each other, forcing a father and son to slap each other repeatedly, and including those acts described above in paragraph thirty-three, Zejnil DELALIĆ, Zdravko MUCIĆ, and Hazim DELIĆ knew or had reason to know that subordinates were about to commit those acts or had done so, and failed either to take the necessary and reasonable steps to prevent those acts or to prevent or punish the perpetrators."

3.315 The evidence relied upon by the Prosecution to establish the command responsibility of DELALIĆ, MUCIĆ and DELIĆ is dealt with in Part 4 below.

3.316 The evidence relied upon by the Prosecution to prove the inhumane acts specifically described in paragraph 33 of the Indictment is dealt with above, in section (P) of this Part.

3.317 The evidence relied upon by the Prosecution to prove the fact of the other inhumane acts described in paragraph 34 of the Indictment is dealt with in this section.

(i) Forcing persons to commit fellatio with each other

3.318 The Prosecution relies on the testimony of the following eleven witnesses to provide the factual support to prove this allegation, and the admissions of the accused Esad LANDŽO.

(1)	Witness F	(T. 1332-1333)
(2)	Witness N	(T. 1911-1912)
(3)	Dragan Kuljanin	(T. 2329)
(4)	Mladen Kuljanin	(T. 2495, 2496)
(5)	Vaso Đorđić	(T. 4360, 4361)
(6)	Mirko Đorđić	(T. 4767)
(7)	Witness M	(T. 4924)
(8)	Witness B	(T. 5063)
(9)	Risto Vukalo	(T. 6299-6300).
(10)	Rajko Draganić	(T. 6955-6956)
(11)	Witness R	(T. 7781-7782)
(12)	Esad LANDŽO	(T. 15080-15082)

3.319 Vaso Đorđić testified that LANDŽO forced him and his brother to commit fellatio with eachother in Hangar No. 6, in full view of the other detainees. He said that while this was occurring, LANDŽO taunted them, saying: "*See what the Serbian brothers and Cetniks are doing. That's what they would do to me too.*" (T. 4361.)

3.320 This testimony is corroborated by that of various other witnesses (Witness N (T. 1912), Mladen Kuljanin (T. 2495-2496), Witness R (T. 7781-7782), Rajko Draganić (T. 6955-6956), Dragan Kuljanin (T. 2329), Mirko Đorđić (T.4767), Witness M (T.4924), Witness B (T.5063) and Risto Vukalo (T.6299, 6300)). Further, in his testimony, LANDŽO admitted that he did force the Đorđić brothers

to commit fellatio, and that he also put a burning fuse around their genitals (T. 15080). LANDŽO reported that DELIĆ was at the entrance to the hangar at the time, giving him instructions. (T. 15080).

3.321 Rajko Draganić also testified and remember that DELIĆ was present during the incident (T. 6955-6956).

3.322 All the elements necessary for the crime of inhuman treatment and cruel treatment have been met. The camp personnel subjected the brothers to severe pain, indignity or suffering, and in so doing intended to subject them to such indignity, pain or suffering out or proportion to the treatment expected of a human being by another.

(ii) Forcing a father and son to slap each other repeatedly

3.323 The Prosecution relies on the testimony of the following witness to provide the factual support to prove this allegation.

(1) Mirko Đorđić (T. 4774)

3.324 Mirko Đorđić testified:

> "... Zenga once reached a father and son, Danilo and Miso Kuljanin. He ordered them to get up and start hitting each other. At first they did it lightly. Then he ordered them to do it harder, and so they had to do as Zenga told them. So this went on for some ten minutes, this mutual beating. Then Zenga, Landzo, did the same with two brothers, Vaso and Veso. All this was happening inside the hangar. He also ordered them to get up and slap each other, which they did. Mutual slapping ordered by Zenga had to be done by two cousins, Momir Mrkajić and Goran Mrkajić. This same kind of slapping upon Zenga's orders was carried out by Kuljanin Branislav and somebody called Ristic, whose first name I cannot recall, and there were other such instances." (T. 4774.)

3.325 All the elements necessary for the crime of inhuman treatment and cruel treatment have been met. With the use of this device, camp personnel subjected the father and son to severe pain, indignity or suffering, and in so doing intended to subject to victim to such indignity, pain or suffering out or proportion to the treatment expected of a human being by another.

(R) Paragraph 35 of the Indictment (Inhumane conditions)

3.326 Paragraph 35 of the Indictment alleges:

> "Between May and October 1992, the detainees at Čelebići camp were subjected to an atmosphere of terror created by the killing and abuse of other detainees and to inhumane living conditions by being deprived of adequate food, water, medical care, as well as sleeping and toilet facilities. These conditions caused the detainees to suffer severe psychological and physical trauma. Zdravko MUCIĆ, Hazim DELIĆ, and Esad LANDŽO directly participated in creating these conditions. Zejnil DELALIĆ, Zdravko MUCIĆ and Hazim DELIĆ also knew or had reason to know that persons in positions of subordinate authority to them were about to commit those acts resulting in the inhumane conditions, or had already committed those acts, and failed either to take the necessary and reasonable steps to prevent those acts or to punish the perpetrators after the acts had been committed."

3.327 The concept of "inhumane treatment" has been explained as follows:

> "The expression 'to treat humanely' is taken from the Hague Regulations and from the two 1929 Geneva Conventions. The word 'treatment' must be understood here in its most general sense as applying to all aspects of a man's life. It seems useless and even dangerous to attempt to make a list of all the factors that make treatment 'humane'. The purpose of this Convention is simply to define the correct way to behave towards a

> human being, who himself wishes to receive humane treatment and who may, therefore, also give it to his fellow human beings ... [An example of treatment that is not humane is] any act of violence or intimidation inspired not by military requirements or a legitimate desire for security, but by a systematic scorn for human values (insults, exposing people to public curiosity, etc.) ...
>
> The sort of treatment covered by this Article [inhuman treatment], therefore, would be one which ceased to be humane. It could not mean, it seems, solely treatment constituting an attack on physical integrity or health; the aim of the Convention is certainly to grant civilians in enemy hands a protection which will preserve their human dignity and prevent them being brought down to the level of animals. That leads to the conclusion that by 'inhuman treatment' the Convention does not mean only physical injury or injury to health. Certain measures, for example, which might cut the civilian internees off completely from the outside world and in particular from their families, or which caused grave injury to their human dignity, could conceivably be considered as inhuman treatment." (ICRC, Commentary on Geneva Convention IV, pp. 204, 598.)

3.328 The Prosecution witnesses who gave testimony as to various aspects of the conditions prevailing in the camp are too numerous to be conveniently listed. References are given in the summary below.

3.329 Those witnesses in particular who were former detainees in the camp, and were constantly forced to endure these conditions, gave vivid and mutually corroborative accounts of the daily horror.

3.330 In this submission we examine those separate components of the conditions, that go to establish "inhumane conditions". The component parts referred to are not meant to be exhaustive, and no doubt there is other evidence of conditions at the camp, not dealt with in this submission, which could be said to be inhumane.

(i) Atmosphere of terror

3.331 A fundamental aspect of the inhumane conditions in the camp was the all-pervasive atmosphere of terror to which detainees were constantly subject. From the other sections of this Part, dealing with specific incidents alleged in the Indictment, it is clear that detainees, even when not themselves being mistreated, were continuously witnessing the mistreatment or killing of other detainees. Numerous accounts have been given by former detainees of being closely confined with other prisoners who were severely injured, and who were moaning, screaming or dying.

3.332 Others have described how the bodies of detainees who had died from their mistreatment were left amongst the other prisoners for a day or more before being removed. Describing one such incident, Mirko Đorđić said:

> "We were all shivering with fear. We didn't dare even look, because few of us had contact with dead people. We are afraid of corpses. He lay there in our midst for three or four hours, maybe even longer." (T. 4779-4780.)

3.333 Numerous other specific examples of beatings, killings and other abuse, which are not individually recounted in this Closing Statement, were described by witnesses in their testimony and can be found in the transcripts of proceedings. The selection of detainees for mistreatment or abuse seemed frequently random or arbitrary. In such circumstances, it is evident that the detainees would have lived in a situation of constant psychological terror, where they feared that they could be killed or mistreated at any time. Witness F said "*we were in such fear, and we thought whether we would be taken out or not*" (T. 1345), and speaking specifically of LANDŽO, said also that "*When he was speaking outside, we knew immediately that he was coming, and we already were in fear*" (T. 1378). Similarly, in speaking of DELIĆ, Mirko Babić said that "*when he would enter, everybody was in fear. Almost -- your heart would almost burst*" (T. 281).

3.334 Stevan Gligorević testified that you could hear beatings every night and that "*every night was a horror*" (T. 1445). Witness J said that:

> "All prisoners from number 9, from the tunnel, were badly mistreated in different ways. That almost went on non-stop ... Most of those who were mistreated were just brought in by their arms and legs, and you would not know if they were alive or dead, and so after a while they would start moving so we knew they were not dead. So the conditions were terrible in that respect. They would just be thrown in like animals -- even the animals are not treated that way." (T. 7480).

3.335 Milenko Kuljanin further recounted that:

> "As regards Vukašin Mrkajic, he came to tunnel number nine with his broken ribs on both sides of his chest. Those ribs were fractured by Delic. In the tunnel itself Delic would come every day, as he had swellings on both sides because of these broken ribs Delic would hit him against those ribs to hurt him ... DELIĆ beat me with a shovel with his boots; he kicked me, all kinds of things; he took me out; he beat me inside; in addition, when he beat all of us with the shovel, together with his guards ... This happened very frequently, almost every other day ... There were instances almost every day when Delic with his guards would hit us with shovels, with the handles of shovels." (T. 5468-5490.)

(See also Branko Sudar (T. 5758), Dr. Petko Grubač (T. 5988-5989), Witness T (T. 6692, 6694, 6697-6698), Milovan Kuljanin (T. 7037), Witness J (T. 7444, 7480, 7493), Witness R (T. 7684-7685, 7697, 7763), Branko Gotovac (T. 985-991), Mirko Kuljanin (T. 1174, 1175), Witness F (T. 1303-1305), Mirko Đorđić (T. 4760-4761).)

3.336 Grozdana Ćećez said:

> "... we were in constant mortal fear. We never knew who would appear, who they would take out, what they would do." (T. 511.)

3.337 The evidence suggests that guards and those running the camp frequently acted in a way intended to inflict psychological pressure and fear on the detainees. Such conduct included for instance making comments to detainees suggesting that they were to be killed or beaten (Witness T (T. 6700)), and taunting detainees who had been mistreated about the source of their injuries. Witnesses testified that when asked, they did not dare to tell other guards in the camp how they had actually received their injuries (Miro Golubović (T. 2123)).

3.338 Witness P, one of the detainees who worked as a doctor in the camp, testified that he also feared that he would be mistreated if he asserted the needs of his injured patients:

> "I was unable to do any X-rays. That was not allowed, because I too was a detainee, and if I asked for anything, I would get beaten more, so that I had to protect myself too." (T. 4536).

3.339 Dr Petko Grubač similarly said:

> "I felt a terrible fear, not only of Zejnil but of the whole situation, and I was afraid of everyone. It would be strange if I had not felt fear in view of all the things that happened to me ..." (T. 6088.)

3.340 The evidence indicates that detainees had to be afraid not only of the guards in the camp, but also of others who would come at night and take out to be beaten. (Stevan Gligorević (T. 1532).)

3.341 Grozdana Ćećez testified about the psychological toll that that this atmosphere had for her:

> "Milojka and I whispered most of the time, so I thought if I survived, I would never dare to speak aloud. Not one of the Serbs would. We felt such fear, and I think everybody else did, and that was how we were tormented. I did not change, as a woman, for a month and a half ... On one occasion we were planning on committing suicide. I had a pin, a metal pin, and I

> went to where the bathroom was, and I told Milojka: "I'll do it first. I'll go first and then you come after me." Then she took me by the shoulders and she pulled me out, because I thought of putting the hairpin into the socket, but -- so that we stayed there and there were many things that happened." (T. 524, 537).

3.342 Some witnesses testified about the physical effects that the conditions had on them while in the camp. (Grozdana Ćećez (T. 551), Miro Golubović (T. 2122), Witness B (T. 5037), Milenko Kuljanin (T. 5446), Witness R (T. 7692, 7776-7777).).

3.343 In testimony, the accused LANDŽO expressly admitted that he was one of the persons who participated in the existence of an atmosphere of terror, but claimed that he was not the only one (T. 15345).

(ii) Sleeping facilities

3.344 Witness R testified that in **Hangar No. 6**, the detainees were all given positions where to sit and from which they were not allowed to move. They were also ordered to sleep in that same positions "*crouching down*" with their knees up, "*without the right to utter a word*". The witness said: "*so what we would do, we would just sort of stretch out on the concrete, on the same position at which we sat*" (T. 7751).

3.345 Detainees sat and slept on this concrete floor, with no beds or mattresses provided. Branko Gotovac said that for "blankets", detainees used:

> "Whatever people had to take off, like coats, and sometimes a blanket was torn into four pieces. The conditions were very, very bad. That was concrete down there, so there was almost nothing." (T. 986)

(See also Mirko Kuljanin (T. 1216-1217), Witness F (T. 1312), Nedeljko Draganić (T. 1614-1615), Witness N (T. 1894), Mirko Đorđić (T. 4726), Branko Sudar (T. 5756). Mladen Kuljanin said

that some benches were provided towards the end of his stay in the hangar (T. 2487-2547).)

3.346 Nedeljko Draganić added that when it rained, some of the prisoners were all in water and were unable to sleep at all as everything was wet (T. 1615).

3.347 Witness R recounted one occasion on which DELIĆ even gave special orders that no one was to sleep, or even to lie down, for three days (T. 7751).

3.348 Conditions appear to have been even more difficult in **Tunnel No. 9**:

> "We would lie cross ways on the slope so we were not lying down in the direction of the slope, but cross ways, and at night if we did sleep, we had to lie on the side, all of us on one side, so as to have enough room for all of us. When somebody couldn't bear it any longer, then we would all have to weak up and turn round to the other side. Therefore the sleeping conditions were terrible ... people would put a shoe under their heads. We didn't have any blankets at first or anything else" (Novica Đordić (T. 4146-4147)).

> "Sleep? I don't know. We just sat there and then there was no sleep. If you got a bit quiet, if you get some rest, you close your eyes a bit, but there was no sleeping. I don't know how to answer that question. We were in the same position day and night there" (Mirko Kuljanin (T. 1190).)

3.349 It is to be expected that these conditions were much worse for the detainees with injuries:

> "The sleeping conditions, it was 77 people in such a small space. First of all, what were the sleeping conditions there? There were none. There were many who had much more serious injuries than I did, they had broken pelvises, spinal injuries, injured lungs, so they moaned, they were trying to find positions that

would bring them less pain, but there was no space" (Witness R (T. 7694)).

(iii) Food

3.350 Many witnesses testified about the inadequacy of the food provided to detainees.

3.351 Witness F described the food in Hangar No. 6 as "*virtually non-existent*". He explained that:

> "our meals consisted of one slice of bread and these meals were not regular. Each loaf of bread was cut into 12 or 15 slices. Later on we got some soup and we were only allowed two spoonfuls." (T. 1312).

3.352 Grozdana Ćećez said that:

> "The food was terrible. That was what we lacked most. For 42 days we got a piece of bread. We women had some water. The men couldn't get any, so that Milojka, the one who was with me, she could hardly stand on her feet and on the fourth day she said: "I'll kneel before Delic just to give me a crust of bread." She could hardly speak. I was stronger and I could still stand. Later they gave us some food, but what they did give us was just thin soup, some beans, not even boiled properly, still hard. The food was very bad ... I felt very, very sick" (T. 523).

3.353 Other witnesses gave similar accounts.

> "the food consisted mostly of stale bread, made of steal flour and mouldy flour, and it had a very unpleasant taste. The quantity was such that a loaf was divided up among 14 or 15 or even more parts, so these were very thin slices of bread, with which most frequently we got nothing. Occasionally, we would get some cold soup, which would be several days old." (Witness R (T. 7749).)

> "[In Tunnel No. 9] "We only received every third day a slice of bread. We would receive a loaf of bread for 13 or 17 of us depending from practically day to day." (Milenko Kuljanin (T. 5448).)

(See further Mirko Đorđić (T. 4725 (testifying that the food was very bad and one loaf had to be divided into 14 or 18 pieces), Branko Gotovac (T. 986, 1056), Mirko Kuljanin (T. 1216), Mladen Kuljanin (T. 2485), Risto Vukalo (T. 6304:12-24), Stevan Gligorević (T. 1440), Witness J (T. 7445).)

3.354 Witnesses also indicated here were some protracted periods in which no food was provided at all. (Mirko Babić (T. 274, recalling that on one occasion there was no food for 56 hours), Milojka Antić (T. 1798) and Stevan Gligorević (T. 1440), recalling an occasion on which there was no food for three days), Vaso Đorđić (T. 4352, stating there were some periods of time where prisoners would not get food for two days), Dr. Grubač (T. 5995, stating that "*On one occasion this went on for three or four days ... it would happen several times that we would go without food for two or three days*"), Mirko Đorđić (T. 4725), Witness J (T. 7445 (describing one period of no food for 72 hours), Nedeljko Draganić (T. 1616-1617, 1702), Miro Golubović (T. 2128, testifying that in Building No. 22, conditions were "*much better than in number 9*", but that it still happened that the prisoners stayed without food for a couple of days).)

3.355 Facilities for eating were also almost non-existent. Mirko Babić testified that:

> "There were five spoons for 250 of us. Five would go and eat. Sometimes there was something cooked, and this meal took about two hours. Somebody would take a little more. Then the next person had nothing. There was very little bread. We were all hungry." (T. 274.)

3.356 Witness R confirmed:

> "Occasionally, we would get some cold soup, which would be several days old, but the problem was how to

> eat the soup in hangar number 6 in which there were between 250 and 270 prisoners; there were only five spoons." (T. 7749.)

3.357 As Stevan Gligorević described it:

> "The food was very bad. We would get a piece of bread and at the beginning there was some vegetables too. At first we left -- we went out and there was a crate right next to the door, a rifle crate, and there was an army can of some sort; I don't know what it's called. There were five spoons, and so we would go out in groups of five, and the amount of this too was we could eat about one, two or three spoonfuls ... Later on we ate inside. In the time when we were eating outside many people were beaten, so some people did not dare to go out at all ... later on this was also -- we did not receive that. We only received thin slices of bread, 14-16 slices per loaf. Then approximately in mid-July, I think, even the bread grew scarce ... Then after that we began receiving some more food again" (T. 1439-1440).

3.358 Nedeljko Draganić also confirmed:

> "... We usually received a slice of bread. A loaf of bread, which was the normal size, would be sliced into 16, 18 or 19 slices. That's how they sliced it up. Then sometimes they would bring some kind of vegetables stew. Then after that you could get about two or three spoonfuls of vegetable stew. We all ate from one bowl and we used the same spoons. I think there were five spoons and so five of us would go out and we would eat three or four spoonfuls and that was it. That was the food that we received ... There were days where we wouldn't receive any food." (T. 1615-1616.)

3.359 Describing the conditions in Hangar No. 9, Mirko Kuljanin stated that:

> "It was difficult there. You couldn't go out. If we received anything it had to be passed on, and it was a

> narrow space. So it was difficult. Somebody would receive some small piece of bread. You couldn't pass, you couldn't -- I don't know, but there was not much of that. Later maybe food was given but nothing cooked at that time." (T. 1189, 1190).

3.360 A number of witnesses testified about their weight loss and the weakened physical state in which they found themselves due to lack of nutrition. while in detention. Stevan Gligorević said:

> "People turned into skeletons. You could hardly recognise them. Many could not even stand up. They had to lean against something, and if they stood up, they would fall down." (T. 1439-1440.)

3.361 Milojka Antić said that on one occasion after receiving no food for three days:

> "... I was completely weakened, and I was unable to stand up on my feet. Grozda had to take me to the toilet." (T. 1798).

3.362 Witness J added that "*the conditions were very poor, so that we almost starved. We could not even move in the end*" (T. 7445). See also Miro Golubović (T. 2122).

3.363 Witness B testified that his weight was 90 kilograms before the war started, and 50 when he was released from Čelebići (T. 5037). Witness J testified that he lost 37 kilograms (T. 7445). Grozdana Ćećez testified that she lost 34 kilograms (T. 523). Branko Sudar said he lost about 30 kilograms during his detention (T. 5760).

3.364 Witness T, a driver who worked in the camp, reported that most of the detainees lost weight when they were there:

> "they were given food once, twice, sometimes three times, it depended on the situation. The food was poor. Mostly they were not exactly starving, it was not really starvation, but they were not fed either....I think that 90% of them lost weight" (T. 6865).

3.365 The testimony of witnesses indicated that in July or August 1992, families members outside the camp were permitted to bring food for the detainees (e.g., Nedeljko Draganić (T. 1702)). However, such food as was brought did not always reach the intended recipients. Witness F testified:

> "... people started bringing food at the gate, and then the guards distributed them. The food was in the bags and there were names put on the bags, and then the food was distributed but when I myself left, I asked my wife why she didn't send me anything and she said that she did, but I received the food very seldom." (T. 1358-1359.)

3.366 Witness P said that in the middle of July 1992:

> "it started little by little, that it was permitted that the food could be brought in, but this food for one part would end up in containers, and what we would end up with would be dry bread. When I would smell it, you could see that there was a piece of roast meat there, but we would only get some bread, maybe an onion." (T. 4586.)

3.367 Grozdana Ćećez said:

> "My sister would bring some food in Brdani ... and as soon as she said it was for Grozda, he [DELIĆ] would say: "She doesn't need it. She will be executed anyway." So he would throw it away ... -- sometimes she managed to have the food passed on to me." (T. 523-524.)

3.368 The testimony of witnesses indicates that the guards in the camp were receiving different and better food than that provided to the detainees. (See Witness P (T. 4560), Witness T (T. 6689), Miro Golubović (T. 2128-2129), (Branko Gotovac (T. 1116).)

3.369 Witness T also testified that in the region "*there was food in sufficient quantities and that the population was not short of food like in some other places in Bosnia-Herzegovina*" (T. 6811). See

also Golubović, who, when asked by Defence Counsel if MUCIĆ brought him food after he was released, reported "*We were not in such need of food at the time, so he didn't have to bring it*" (T. 2192-2193)); N. Draganić, who, when asked if there was a shortage of food between his release in August and November, responded "*We had enough food*" (T. 1700)).

(iv) Water

3.370 According to Mirko Kuljanin, in Hangar No. 6 "*water was the biggest problem*" (T. 1215). However, he went on to explain the problem was not a shortage of water, but rather the fact that the prisoners were not allowed to use it:

> "As far as I was able to notice, there was plenty of water from the wells, and we really had trouble getting water. We would have given anything for a drink of water, but we didn't have access to it, neither to drink any, nor to wash. Of course, drinking was the most important thing" (T. 1260).

3.371 As Dragan Kuljanin put it:

> "We would get water occasionally. There was too much water actually, because when it was cold, Zenga would pour water on us, and we had to lie down on the concrete, and when it was hot --" (T. 2315)

3.372 Witness R testified that:

> "At first, people would pour that water into plastic coca-cola bottles, and we were allowed to keep those bottles overnight, but in time this was prohibited, we were not allowed to keep any water inside number 6, and when the beatings and reprisals occurred after the second attack on Bradina, and those measures were intensified; under threat of heavy beatings and even death, not a drop of water could be brought in without the knowledge and permission of deputy commander Hazim Delic" (T. 7706-7707—see also Nedeljko

Draganić (T. 1649), testifying that he never saw any bucket of water prisoners could drink.)

3.373 Witness N similarly testified that:

> "In number 6 there was a shortage of water. In front of the hangar there was a tube, but we couldn't drink water when we wanted. For a time water was brought into the hangar and distributed to us -- how can I explain that --in very small quantities. It was the summer. It was hot. The walls were steel, so we lacked water. We didn't have enough" (T. 1893).

3.374 Mirko Đorđić stated that the water was distributed 2 or 3 times a day and one bottle had to be shared by about 7 or 8 people. He added that there were periods in which those from Bradina were given neither food nor water (T. 4725). Branko Sudar said the detainees received a "*spoonful of water, a ladleful*" (T. 5757). (See also Mirko Kuljanin (T. 1215), Stevan Gligorević (T. 1537), Mladen Kuljanin (2486), Vaso Đorđić (T. 4352, 4353).) Witness R stated that on one occasion the prisoners were left without food or water for two entire days (T. 7750-7751).

3.375 Some witnesses testified that water detainees drank was non-potable "industrial water", which was obtained from a "fire hydrant" or "canal" (Witness B (T. 5037), Witness R (T. 7706)). Witness B claimed that drinking this water contributed to intestinal problems.

(v) Toilet facilities

3.376 Mirko Babić testified that in the beginning there had been temporary toilet facilities behind **Hangar No. 6**, but that these were not available later and a septic tank was used instead (T. 410). Stevan Gligorević described this as follows:

> "Just behind the hangar on a hill they dug out a septic tank and there were two planks thrown over it and that's where we defecated. As for the urination, we did that into a ditch, a concrete ditch behind the hangar next to a road, and there was water inside that ditch.

> That was at the beginning. Then later on, when Mr Delic became the Commander, he forbade that and then we were allowed to go out twice a day in his presence, in the morning when he came and then in the evening. As for what it looked like, let me give you an idea. He would say -- he would determine a group of 30-40 people, and they had to line up, and then they had to run out of the hangar, stand next to the ditch and those who were able to urinate, they did that, because it was a very short time, and the next order was: turn around and go back. ...
>
> In the meantime, whose who felt the need to relieve themselves, if the guard was one of the good ones, and if the Commander was not there in the camp, then they would allow people to go out during the day. If not, then they wouldn't be allowed to leave." (T. 1438-1439.)

(See also Mirko Babić (T. 410), Nedeljko Draganić (T. 1616), Witness N (T. 1894).)

3.377 At some stage at least, one or two buckets were put inside the hangar for use as toilet facilities during the night, which were emptied during the day (Stevan Gligorević (T. 1536), Witness N (T. 1894)). According to Milovan Kuljanin, "*We had a 20 litre bucket during the night where 250 of us had to relieve ourselves*" (T. 7034). According to Mirko Babić, the bucket was not always washed out (T. 408).

3.378 As for Tunnel No. 9, the testimony of Miro Golubović indicates that there was a bucket at the bottom of the tunnel used by prisoners to relieve themselves. The witness said that this bucket "*had a stink and there were even some worms*" (T. 2116). This bucket may have subsequently been removed, since Witness M testifies that "*I was very close to that place where the people relieved themselves and there was no container of any kind there*" (T. 4954). Mirko Kuljanin stated that:

> "after two or three days people had to relieve themselves and some of them had to defecate and they

> were not able to be taken anywhere. Then everybody went to urinate down at the bottom, and after a while it started smelling ... As far as I recall I had to go to urinate about twice, and there already there was a puddle that was created from people who were going there to relieve themselves, so that there was a terrible stench there. I had to go there a couple of times. We often asked to be taken out, but they would not allow that." (T. 1183-1188.)

3.379 Witness R similarly testified that "*people relieved themselves at the bottom of this tunnel, and as time went on, this excrement accumulated, and also that liquid started rising, because we were not allowed to go out to relieve ourselves*" (T. 7695). Witness J stated that the prisoners near the bottom of the tunnel, where everybody relieved themselves, were sitting in their excrement (T. 7593).

3.380 Risto Vukalo testified that in Building No. 22, detainees going to the toilet were beaten along the way (T. 6302, 6303).

(vi) General hygiene

3.381 Apart from the lack of toilet facilities, witnesses testified to the absence of hygiene standards generally.

> "There was lack of hygiene. We could not change our cloths. We couldn't wash. We all ate with the same spoon, 20 of us. We took turns using the same spoons and so on." (Mirko Kuljanin (T. 1260).)

> "... we couldn't look after our hygiene. We washed very rarely" (Mirko Đorđić (T. 4726).)

> "Horror is a mild word for this. In the camp there was dirt. Filth, infectious skin diseases. We didn't wash for a month. In the camp we had lice" (Witness B (T. 5037).)

> "It was awful. It was dirty. There was dust. Later some people fell ill, somebody called Jovak, then there were lice" (Branko Sudar (T. 5757).)
>
> "There was a terrible stench inside. One could hardly breath and at one end they relieved themselves. They were filthy, in a miserable state" (Dr. Grubač (T. 5990-5991).)

3.382 Even in Building No. 22, which was used as an infirmary, hygiene standards were low. Dr. Grubač testified that:

> "we used the toilet in the other building, in the command building, and during my stay over a period of two months we only had a chance to take one shower, only on one occasion and that, of course, only referred to the patients who were mobile and the two of us doctors" (T. 6119).

3.383 Witness J also testified about the terrible conditions of hygiene in tunnel 9:

> "A. Yes, there were some such cases, the people who were near the bottom, sitting near the part that was used as a toilet, so at the bottom of the tunnel, people -- it is true that people were sitting in their excrement, because it was not cleaned, and as people relieved themselves, there was more and more of it and it climbed up.
> Q. You also testified, or told the people in Belgrade at least, that things like it was so filthy that if a spoon fell on that floor with all the excrement on it, you had to pick up that spoon and eat with it; do you remember telling them that?
> A. Yes, I do and that was how it was, because it was so filthy everywhere." (T.7593)

3.384 Witness R made the same statement:

> "Yes, I do not know what the exact precise statement you are referring to, the tunnel was sloping downwards

> and this last part was flat, so that as it filled up with urine and faeces, the level rose and flooded part of the tunnel where we were lying, so it was occupying more space so that there was less left for us to sit and lie on." (T. 7913-7914)

3.385 Novica Đorđić testified that in Tunnel 9, the stench was so bad that when a Red Cross delegate first came and entered the tunnel, she fainted and had to be taken out (T. 4189). Thereafter the Red Cross did its work in front of the tunnel "*because it was too foul and there was too much of a stench inside for them to be able to work in there.*" (T. 4189).

(vii) Medical care

3.386 The testimony from the detainees indicated that there was little medical care, and they were not often not permitted to avail themselves of even the limited care. Nedeljko Draganić said there were two detainees who were doctors:

> "They were both physicians from Konjic and they were in that infirmary -- I mean what the people from the camp called the infirmary. They had some drugs there, so they cleaned the wound slightly, and whenever I would ask to go there so that they could clean the wound, very often Delic would not allow me to go. He often told me not to go and said: "You don't need that. You won't last very long". (T.1630)

3.387 Witness N testified similarly:

> "I was taken to Number 22, where there were doctors Relja and Petko, and there they changed the bandage that I had on my arm. They did not have any other supplies to do anything further." (T.2000).

3.388 Dragan Kuljanin reported:

> "There were some Serb prisoners, but they could not decide about anything, nor did they have any

> medicines. About ten times I looked for help and the doctor would come and see me and he would just shrug his shoulders and say: "There's nothing I can do." He would say this very quietly. He would whisper this to me. "It's not up to me", he would say." (T. 2317)

3.389 Witness P who was one of the prisoners-doctors of the camp testified at length about their limited supplies: *"There we had a drum with gauze. We had one pincers. We had one scissors, and I think that was all as far as the equipment was concerned, and some medicine*" (T. 4524). The Doctor went on to say that he could request medicine, though they usually only received a very small portion of what they requested (T. 4524-4525). He further stated that they had no diagnostic equipment, and that he was never permitted to send anyone to a real hospital for diagnosis, X-ray, or for surgery (T. 4524-4526).

3.390 Dr. Grubač, the other doctor, confirmed the limited supplies and inadequacies in the ability to provide medical care to the detainees:

> "We had a pressure gauge, a stethoscope. At the beginning, we had a few bottles of penicillin. At the beginning, we had a metal drum with sterile bandages. We had a pair of tweezers which were not sterile. We had some bandages, and later on they gave us old sheets to use as bandages for the patients. This drum with the sterile compresses and gauze could be sterile only until it was opened, after which it was no longer sterile, but we still used it. Later on they did not provide any more sterile material. We had a few plastic syringes and needles. We did not decide who would be brought into the building or who would be taken away; nor could we have any influence regarding the provision of medicines and other materials. We did not have an oxygen apparatus or any other medical equipment. ...
>
> At the beginning we had some antibiotics, but only penicillin in small bottles. I think these bottles were 6 million of penicillin. We had a small quantity of this.

> We had no broad spectrum antibiotics, nor any other kinds of antibiotics. We had some analgesics at the beginning, that is pain killers. We had some pills to treat diarrhoea, as many prisoners had diarrhoea and occasionally we had this liquid for destroying lice. We had no other supplies, no gauze, no bandages, no burn treatment, ointment, because there were lots of people with burns, nor any other sterile material to treat people." (T. 972-976.)

3.391 Dr. Grubač further testified that:

> "We had no power to decide as to the way the injured would be treated, nor when they were brought in or taken away or taken to any other institution, and while we were there not a single of the patients was taken for diagnostic or any other reasons to a medical institution, though the need for this did exist." (T. 5972-5976.)

3.392 Further Dr. Grubač made it clear that his role as a doctor was very limited:

> "Let me say once again, our influence was non-existent. We could not decide who we would treat, nor how we would treat them. Dr Relja and I were prisoners like everyone else, the exception being that we were able to go to these buildings sometimes and occasionally to distribute some of the medicines we had to the injured." (T. 5991-5992.)

3.393 Dr. Grubač also made it clear that there was very little interest from the direction of the camp in the fortune of the prisoners injured. He stated in particular that MUCIĆ "never enquired" about prisoner's injuries "*and we never informed him, he was not interested in the health condition of the patients.. (...) No one came to building number 22 to enquire about the health of the patients.*" (T. 6113-6114.)

3.394 If some prisoners received sometime a pill or a bandage, a lot of them were completely denied any medical care: "*No, Vukasin Mrkajic was never given any kind of medical care or treatment and*

when he addressed Mr Delic, if he had the occasion to do that, the answer he was given would be, "you have to die anyway so sit down"." (T. 7771.)

3.395 Many others were denied any medical treatment like Witness N (T.7778), Momir Kuljanin (T. 7779), Mirko Đorđić (T.7780).

(viii) Response to Defence claims

3.396 The Defence suggests that the camp authorities did all that they could in the circumstances to improve conditions in the camp. Such an argument cannot provide any kind of defence to the charges of inhumane conditions.

3.397 Even if the it were true that camp authorities did all that they could to improve conditions (and the evidence establishes that this is certainly not true), it is not a defence to argue that the conditions that prevailed at the time were the best that could be achieved in the circumstances. The Geneva Conventions prohibit keeping detainees under "inhumane conditions". If in a hypothetical sense, and unlike the circumstances of this case, the general population, or the military forces of one side of the conflict, were enduring conditions that could be described as inhumane, then it is no defence to argue that their captors were suffering no worse conditions. It may be a factor to consider when it comes to sentencing, but it has no bearing on the guilt or innocence of the accused. It is not against the Geneva Conventions for the army, or member of the General population to suffer "inhumane conditions" which conditions are brought about by the circumstances of the time. If parties to a conflict want to detain persons captured from the other side of the conflict, then the Geneva Conventions prohibit those persons being kept under inhumane conditions. The way to avoid criminal culpability is not to detain them under these conditions, not to argue that these were the general conditions prevailing at the time.

3.398 In any event this was not the case with respect to Čelebići, the persons in responsible for the Čelebići camp DELALIĆ, the Commander of the Camp MUCIĆ, the deputy Commander DELIĆ and the guards such as LANDŽO were not forced to sit in

overcrowded conditions on concrete floor for hours on end thus preventing them from having proper rest, the accused were not systematically beaten until they were killed, they were not prevented from using adequate toilet facilities, they were not deprived of sufficient and clean water, they were not forced to eat from the same spoon, they were not prevented from bathing, they were not locked up in tunnels, or in large hangars and prevented from leaving, they were not prevented from seeing members of their family, and they were not deprived of medical treatment.

3.399 Much could easily have been done to suppress or limit the inhumane conditions that prevailed. For example:

(a) Water was not a problem in itself but prisoners were prevented access to it. Mirko Kuljanin testified that the problem was not a shortage of water, but only the fact that the prisoners were not allowed to use it:

> "As far as I was able to notice, there was plenty of water the wells, and we really had trouble getting water. We would have given anything for a drink of water, but we didn't have access to it, neither to drink any, nor to wash. Of course, drinking was the most important thing" (T. 1259).

Two Defence Witnesses testified regarding the water supply in Čelebići which they reported was plentiful, but it was evident that they had no information concerning how much, if any, of the water went to the prisoners. For example, Tabak does not know how the prisoners got water or if they ever received water (T. 13932). See also Bajram Demić (T. 13696,13771) (did not observe the prisoner's detention facilities). The claim by the third Defence witness, Džajić that all 300 prisoners could get water whenever they wanted merely by knocking on the door (T. 13519) is incredible, and contradicted by numerous detainees.

(b) Likewise, hygiene could have been much better. For example, with respect to the toilets in Tunnel No. 9, Mirko Kuljanin stated:

> "after two or three days people had to relieve themselves and some of them had to defecate and they were not able to be taken anywhere. Then everybody went to urinate down at the bottom, and after a while it started smelling ... As far as I recall I had to go to urinate about twice, and there already there was a puddle that was created from people who were going there to relieve themselves, so that there was a terrible stench there. I had to go there a couple of times. We often asked to be taken out, but they would not allow that." (T. 1182-1187).

Džajić's testimony for the Defence that prisoners could use proper bathroom facilities whenever they wanted merely by knocking on the door (T. 13517) is, like his claim that prisoners could knock and receive water, incredible, and contradicted by numerous detainees. Dzajić even admits that he never saw prisoners using the facilities in Čelebići (T. 13517). Dr. Bellas supports the evidence that the conditions in Čelebići were unhygienic and he testified that he would have expected it to lead to the outbreak of infectious diseases such as diarrhoea (T. 14003-04, 14024). And indeed, although it did not make the same impression on the witnesses as the murders and other mistreatment, numerous detainees talked about the prevalence of such infectious diseases such as diarrhoea and lice. See Witness R (T. 7914-15) ("*All I know, I repeat, was terrible cases of diarrhoea*"); Witness B (T. 5037) ("*there was dirt, filth, infectious skin diseases ... we had lice ... frequently people had intestinal troubles*"); Witness R (T. 7836-7) ("*we would get diarrhoea*"); Dr. Grubač (T. 5974) ("*many prisoners had diarrhoea*").

(c) As for the food, it was certainly humanely possible, if not easy, to find more than five spoons for the hundreds of prisoners in Hangar No. 6: "*There was lack of hygiene. We could not change our cloths. We couldn't wash. We all ate with the same spoon, 20 of us. We took turns using the same spoons and so on.*" (T. 1259). (See also P. Exh. 99-1, p. 27 (interview of DELALIĆ by the Office of the Prosecutor in which he reports

that he remembers the Red Cross complaining about the lack of spoons).

Further, the food brought in from family members did not have to be thrown away as it was on occasion.

Defence witness Tabak claimed that prisoners ate in groups of 10 to 15 and had their own plates (T. 13898-13899). Detainees testified, however, that they ate in groups of 5. The video taken during the summer of 1992, in fact, shows only 5 detainees outside Hangar No. 6 and shows that they are eating out of a common container. (See also T. 43923 and P. Exh. 110, 00:23:10-00:23:25.)

The claim of Defence witnesses that the detainees always were fed three times a day, including receiving coffee, eggs, honey, etc., is not credible and contradicted by the overwhelming weight of the evidence. As an example, the Defence witness Ustalić reported that on those occasions when detainees received canned meat or pate, the detainees got between 100 and 200 grams each (T. 14055). By contrast, the detainees testified about a few memorable occasions when they received liver paste, though they testified even then it had to be shared among a large group of persons (Dragan Kuljanin (T. 2314), Novica Đorđić (T. 4159), Witness N (T. 1881)). Witness P specifically remembered on one occasion after the incident where the police were killed in Repovci, when the prisoners were denied food for several days and then finally got the extraordinary amount of 100 gram of liver paste per person (T. 4574). And indeed, Defence Exhibit 25/3, a food receipt for 17 July 1992, confirms that on that day, the camp received 280 cans of liver paste of 100 grams each (total 28 000 grams). The only physical evidence that the detainees received liver paste were two other receipts for 15 and 16 June 1992, D. Exh. 23/3 and D. Exh. 24/3, which indicate that 11 000 and 12 000 grams were delivered, and that this quantity was to serve both "lunch and dinner". This evidence corroborates the detainees' testimony, and suggests that any claim that the food receipts given were examples and that the prisoners received at least 100 grams per person is just incredible. These exhibits also showed that the witness Ustalic's claim that he was sure that he

delivered food for the detainees three separate times every day (T. 14084) was incorrect.

Further, as testified to by Witness T (T. 6865), there were a few favoured detainees, including those responsible for distributing the food, who did not lose significant amounts of body weight and who were interviewed (T. 6865), but they did not represent the state of all the other detainees, who lost a significant amount of weight. See also P. Exh. 111a, p. 6 (MUCIĆ complaining on video that it had been difficult "*to find somebody who looked good enough to appear on TV*").

(d) The Defence witnesses also testified that family members could bring food and visit the prisoners. As stated by the detainees and described above, after a significant period of time, those persons lucky enough to still have family members in the area were allowed to sometimes receive food from the family, but even those detainees did not always receive the food. Further, the family members were not allowed to visit the detainees, other than as an exception, as was shown on the video P. Exh. 110 a, pp. 11-12 (MUCIĆ allows four persons to see family members but states to the guard commander Mustafić that it is an exception and should not be allowed again). LANDŽO (T. 15262; reports he broke the rule that family members were not allowed to see detainees by once permitting a detainee to see his mother on the other side of the fence).

In fact, although defence witnesses Tabak and Ustalić stated that relatives of prisoners came to Čelebići with food and other items, they admitted they never saw the prisoners receive these gifts from their families, or visit with the family members (T. 13902, 14059-14060).

3.400 If the conditions were inhumane as it has been established by the Prosecution, the camp authorities should have released all or some of the prisoners in order to create and allow humane conditions to be settled for all the prisoners detained the camp.

3.401 On the contrary, ample evidence demonstrates that an atmosphere of terror was purposely maintained from the beginning in May 1992 when the prisoners from Bradina and other places in the area were

lead to the Čelebići camp and welcome with a collective beating that lasted several hours. Then the conditions have been of the same vein and ensued the initial beatings. Indeed, the atmosphere of terror would, even had it not been accompanied by the inadequacies in other conditions, be enough by itself to constitute inhumane conditions.

3.402 Lack of water including the refusal to permit the prisoners to avail themselves of the water that was available; food, including the deliberate refusal to provide food as a means of punishment, and the provision of inadequate amounts; the throwing away of food brought in by family members, hygiene including the refusal to permit the prisoners to bathe, toilet facilities including the refusal to permit prisoners to use the field facilities or to use them for a limited time and beating them when they did; medical care including the refusal to permit detainees to avail themselves of the limited care provided by the detainee doctors; constant contacts with beatings and physical traumas - all were part of a conscious plan to neutralise, intimidate, and terrify the prisoners.

3.403 The fact that the Defence accept that the conditions were inadequate, including the lack of food and the facilities, but claim these were all that could be provided under the circumstances, they appear to acknowledge that the conditions were inhumane. Even accepting the plainly false argument that the conditions in the camp were the same as that which prevailed in the general community, they give absolutely no legal support for the proposition that this makes it acceptable. As discussed above, the law is the contrary and a detaining authority is simply not allowed to starve or otherwise keep prisoners in such clearly inhumane and life-threatening conditions. In any event, the assertion that the conditions at Čelebići were the best that could be provided in the circumstances is incomprehensible, as is the assertion that the conditions were not sufficiently bad to fall within the Tribunal's jurisdiction.

(ix) Conclusion

3.404 All the elements necessary for the crime of wilfully causing great suffering and cruel treatment have been established beyond a reasonable doubt. The conditions that prevailed at the Čelebići

camp at the time alleged in the Indictment were inhumane. The accused MUCIĆ, DELIĆ and LANDŽO directly participated in the creation of the conditions, and intended to, and did, inflict great suffering upon the detainees. Like the accused DELALIĆ, MUCIĆ and DELIĆ clearly knew that these conditions were inhumane but failed to take any measures to alleviate or prevent person being detained under such inhumane conditions.

(S) Paragraph 36 of the Indictment (Unlawful confinement of civilians)

3.405 Paragraph 36 of the Indictment alleges:

> "Between May and October 1992, Zejnil DELALIĆ, Zdravko MUCIĆ, and Hazim DELIĆ participated in the unlawful confinement of numerous civilians at Čelebići camp. Zejnil DELALIĆ, Zdravko MUCIĆ, and Hazim DELIĆ also knew or had reason to know that persons in positions of subordinate authority to them were about to commit those acts resulting in the unlawful confinement of civilians, or had already committed those acts, and failed either to take the necessary and reasonable steps to prevent those acts or to punish the perpetrators after the acts had been committed."

3.406 The prosecution relies, primarily, on the testimony of thirteen witnesses to establish the facts in relation to these allegations, namely:

(1)	Grozdana Ćećez	(T. 482, 494, 532-533)
(2)	Branko Gotovac	(T. 980, 1009, 1023)
(3)	Witness P	(T. 4482-4483)
(4)	Nedeljko Draganić	(T. 1617, 1642)
(5)	Dragan Kuljanin	(T. 2294-2295, 2355, 2357, 2421-2422)
(6)	Novica Đorđić	(T. 4138-43)
(7)	Vaso Đorđić	(T. 4343, 4346, 4366)
(8)	Zoran Ninković	(T. 5129)

(9)	Witness D	(T. 5183-5187, 5209-5210, 5224-5226, 5771)
(10)	Milenko Kuljanin	(T. 5496-99)
(11)	Branko Sudar	(T. 5748-51)
(12)	Petko Grubač	(T. 5951)
(13)	Gordana Grubač	(T. 6192-6194)

In addition, the Prosecution relies on the following exhibits:

(1) Prosecution Exhibit 99-1, p.22
(2) Prosecution Exhibit 101, p. 20
(3) Prosecution Exhibit 130, pp. 7,9
(4) Prosecution Exhibit 131, p. 2
(5) Prosecution Exhibit 162, paragraph 8

It may be noted that in count 48, which relates to the facts alleged in this paragraph, DELALIĆ, MUCIĆ and DELIĆ are charged both in respect of their direct participation in the unlawful confinement of civilians, and in respect of their superior authority for the acts of others.

3.407 The population of detainees in the Čelebići camp was not limited to individuals who had been armed or participated in military activities. Many of those detained could not reasonably be suspected of participating in any activities that could have justified their confinement in accordance with the provisions of Geneva Convention IV. In addition to their unjustifiable incarceration, most of the detainees were never informed as to why they had been arrested, and their confinement was never properly and regularly reviewed in accordance with the provisions of Geneva Convention IV.

3.408 In a statement given to the Office of the Prosecutor (Prosecution Exhibit 99-1. 18-19 March 96, p.22), DELALIĆ said that the practice was to incarcerate all males from combat areas, as well as others who were not in combat areas, but were Serbs of military age. This practice is confirmed by Witness D, who had been appointed by DELALIĆ to work in the Čelebići camp as a member of the Military Investigative Commission. (Witness D (T. 5771)). This witness describes how he looked at lists of prisoners in order to select those to be interviewed. He said:

> "... looking at those lists -- ... they were not only military conscripts. There were civilians there too. I saw some women on the list. So I understood that this must be a prison where persons were being brought in who had been captured in the area of combat operations or in connection with those combat operations." (T. 5183-5184)
>
> "The practice was to bring in virtually all males from the area of combat operations, and not only men but women as well, but there were men who were brought in who were outside the area of combat operations." (T. 5184.)

3.409 Witness D gives two specific examples, an elderly man called Vladimir Stanojevic and a young professor from the village of Idbar (T. 5223-5226). In relation to the former, Witness D said:

> "I went to the commission and told them there was no reason to detain this person in this camp, and the people shrugged their shoulders and said: "We don't know". Though this was not my duty, I went to Mr Mucic and I asked him: "Do you have any official record of report as to why this man was brought in?" Mr. Mucic must remember this. He said there was nothing. "Well, how are we going to keep him? He should be released. Why is he here?" He didn't say anything. Of course, I went out. ... (5224).
>
> The next day they said that I had to take a statement from him, that everyone has to make a statement ... Then again I went to speak to Mr Mucic on my own initiative and I asked him, and then he replied with a certain amount of arrogance, and I said that: "Why do we have to detain me (sic)?" He said: "He was a Serb and he was a personnel man in the firm of Igman". I didn't know that but I did know he was a Serb. Still I didn't see any reason why and I don't know when he was released." (T. 5224-5225.)

In relation to the professor from Idbar, Witness D said:

> "He was brought in. We didn't see any reasons in writing, nor were any oral reasons conveyed to us. I know the man said that he had left his parents in the village of Idbaar, that he had not been a member of any military formations." (T. 5225.)

3.410 Various witnesses who had been detained in the camp also testified that they had not participated in any military activity and posed no genuine threat to the Croat/Muslim forces that occupied the area.

3.411 Grozdana Ćećez, a 42-year old mother of two children, said that she was neither armed nor a member of any armed group at the time of the attack on her village (T. 481-482). She testified that she was never informed why she was detained in the camp, but assumed that she "*was there as a kind of a hostage*" because she was interrogated about her husband (T. 532-533).

3.412 Branko Gotovac, a retired locksmith who was then 61 years old, denied that he had ever been politically active in his life, and said that the only reason he ever heard for being detained in the camp was that he was a Serb (T. 980, 1009, 1023).

3.413 Witness P, a physician, denied that he was involved in the defence of his village or that he had any weapon. (T. 4482-4483)

3.414 Nedeljko Draganić, then a 19 year old student living with his family (T. 1600), testified that he took no part in the defence of his city and that he was not armed (T. 1600-1602).

3.415 Dragan Kuljanin was a 39 year old who worked as a commercial representative (T. 2292). He said that he had no weapon when his village was attacked, and that neither he nor any of the other members of the group he was with at the time of his arrest had a weapon (T. 2294, 2421-2422).

3.416 Vaso Đorđić, a fireman in the railyards in Rilovats (T. 4343), testified that he had no weapon at the time of his arrest, was not a member of any party, did not in any way take part in the defence of his village, and was not told why he was arrested (T. 4346).

3.417 Zoran Ninković, then an auto mechanic, testified that he was not told anything about why he was being arrested, and guessed that it was because he was a Serb (T. 5129).

3.418 Petko Grubač, a physician, denied that he was involved in the defence of his village or that he had any weapon, and stated further that he did not know how to use any armaments (T. 5951).

3.419 Branko Gotovac said that the only reason he ever heard for being detained in the camp was that he was a Serb (T. 1009). Nedeljko Draganić testified that "*Delic walked into the Hangar Number 6 on one occasion and he told us that we are detained because we were Serbs*" (T. 1617). Thus, the confinement of civilians in Čelebići appears to have been a collective measure aimed at a specific group of persons based only on their ethnic background and not a legitimate security measure.

3.420 With respect to all these persons, there has been no evidence offered to suggest that these witnesses were not civilians. Given that these witnesses constituted almost one-third of the detainees who testified, it is fair to infer that among the detainees who did not testify, there was also a very significant number of detainees who were similarly civilians.

3.421 In this regard, it may be noted that the Defence Witness Begtašević reported that at the end of 1992, a new military investigative committee investigated approximately over 100 cases of detained suspects who he believed had earlier been detained in Celebici. (T. 10675. See also D. Exh. 144-A4-9/1 (which appears to be an excerpt of statements done in December of 1992 of persons previously detained in Čelebići or Musula who had been interrogated, and containing 136 names.) Even if one assumes that all these persons were reasonably not believed to be civilians and even if one assumes that all these persons were from Čelebići rather than Musula and even if one assumes that interrogation interviews taken in the circumstances could be considered reliable, the number of 100 or 136 represents significantly less than half of the persons who were detained in Čelebići. In other words, for well over half of the persons detained in Čelebići, there has been no evidence that they were anything but civilians. Further, when Čelebići was finally

closed down as a prison, only 32 prisoners remained (D. Exh. 105-47/3), suggesting that almost 300 others had ultimately been found not to be civilians but who had been detained for months. See also P. Exh. 130 (document signed by MUCIĆ seized in Vienna indicating that by the end of Čelebići's existence, 300 Serbs had been released, 270 by the State Commission and 30 by him personally.)

3.422 The Prosecution also notes that there were additional witnesses who testified, such as Milojka Antić, who are not considered here but who also were civilians according to their testimony. The Defence evidence suggesting the contrary is incredible. (See for example Džajić (T. 13531-13534) stating that Antić showed him a rifle, and that his prior report explicitly stating that it was her brother who showed him the rifle was a result of his inexperience in writing reports.) However, as there is no need to ascertain the exact number of civilians or individual victims, and as the Defence has offered evidence, however incredible, concerning an allegation that she illegally had a weapon, the Prosecution has not even considered such witnesses in this section.

3.423 The evidence demonstrates that DELALIĆ, MUCIĆ and DELIĆ had sufficient knowledge that civilians were confined in Čelebići and participated in their confinement.

3.424 DELALIĆ, who has reported that he set up the prison (P. Exh. 131, p. 2), instructed the Military Investigative Commission to divide the prisoners, based on their interrogations, into categories. Witness D related:

> "I can't remember quite clearly the contents of all the categories, but I think that the first category were men who had participated in the combat operations under arms and if there are documents to prove that they were armed in those operations and that they had killed somebody in those operations, that was the worst category. The second category would be somewhat milder cases, again armed men, captured in the area of combat operations but for whom it had not been established that they had killed anyone ... A third category was again something like that but the

> difference I think was that they had given themselves up ... Then came the other categories. They were milder and, to tell you the truth, it was difficult to differentiate because you didn't know how to classify them into the sixth, fifth, seventh, and I didn't really agree with those categories, but that was how it was. ...
>
> We understood this classification as meaning that somebody who was deciding on the release of those prisoners, and it was not up to us in the Commission to decide on that, ... so that in my view, and probably in the view of the others too -- at least that is what they said -- after the third or fourth category, if the persons were already in the camp and after they had been interrogated, they should have been released. ...
>
> I don't know what happened when we left, but while we were there and when we said that the prisoners had been categorised, I know that Mr Mucic, when he came for the lists, would say that the decision on who would be released would be taken by commander Zejnil." (T. 5184-5187.)

3.425 The Report from the Military Investigative Commission confirmed that large numbers of civilians had been arrested and were not being released even though their civilian status had been confirmed. "*Persons who were arrested under such circumstances stayed in detention even after it had been established that they had been detained for no reason and received the same treatment as persons captured in the combat zone*" (P. Exh. 162, paragraph 8).

3.426 Even after the Commission had stopped its work, DELALIĆ was put on notice that a certain number of civilians remained incarcerated. Gordana Grubač testified that she contacted DELALIĆ and asked him directly why her husband, Petko Grubač, and another doctor remained in Čelebići (T. 6192-6194). DELALIĆ could not have believed that the doctors were the only civilians imprisoned in the camp.

3.427 MUCIĆ himself stated that the women in the prison were being held there as hostages. (Prosecution ex. 101-1, p.20). Witness D stated

that it was with MUCIĆ that he discussed which detainees were to be interviewed in the course of the day (T. 5183), so that MUCIĆ must have had knowledge of the background of these detainees. Witness D further testifies that he reported to MUCIĆ that certain prisoners were unjustifiably held civilians and that no action was taken (T. 5224-25). See also P. Exh. 130, p. 7 (Document signed by MUCIĆ reporting "The further 200 prisoners-mainly civilian Serbs-were brought in by others (the Konjic MUP; Konjic HVO; even Hadžići MUP). This category was chiefly brought in because of private disputes, even old ones from before the war.").

3.428 DELIĆ also had knowledge of the background of detainees in the camp. Witness D stated that when MUCIĆ was not there, it was with DELIĆ that he discussed which detainees were to be interviewed in the course of the day (T. 5183). The evidence also indicates that DELIĆ made statements indicating his awareness of the civilian status of the detainees. As stated above, Nedeljko Draganić testified that "*Delic walked into the Hangar Number 6 on one occasion and he told us that we are detained because we were Serbs*" (T. 1617). Grozdana Ćećez testified that immediately after raping her, DELIĆ said to her "*It is all because of Lazar. You wouldn't be here if he were around*" (T. 494).

3.429 Even during the existence of the Military Investigative Commission, prisoners who appeared before it were intimidated before the interrogation and during the interrogation (Novic Đorđić (T. 4138-4141), Milenko Kuljanin (T. 5496-99)), were forced to sign statements (Novica Đorđić (T. 4139-4142), Milenko Kuljanin (T. 5496-99), Dragan Kuljanin (T. 2354), Stevan Gligorević (T. 1443-44)), and were even beaten immediately before the interviews with the Military Investigative Commission (Novica Đorđić (T. 4138-4139), Branko Sudar (T. 5748-51)).

3.430 It must be noted that even though the Commission stopped its work in June, the prisoners were not released, but were, instead, detained for months after. Thus, for example, Grozdana Ćećez was released at the end of August (T. 554), Dragan Kuljanin at the end of September (2357), and Vaso Đorđić at the end of November (T. 4366). Therefore, it cannot be argued that the Military Investigative Commission satisfied the procedural guarantees required by Geneva Convention IV.

3.431 The prohibition against the confinement of civilians is not absolute—there are instances in which their confinement is permissible. However, these instances are exceptional. As stated in Article 42 of Geneva Convention IV:

> "The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining powers makes it absolutely necessary."

3.432 The ICRC Commentary states:

> "The Convention stresses the exceptional character of measures of internment and assigned residence by making their application subject to strict conditions; its object in doing thus is to put an end to an abuse which occurred during the Second World War. All too often the mere fact of being an enemy subject was regarded as justifying internment. *Henceforward only absolute necessity, based on the requirements of state security, can justify recourse to these two measures, and only then if security cannot be safeguarded by other, less severe means. All considerations not on this basis are strictly excluded.*" (ICRC Commentary to Geneva Convention IV, p. 258 (emphasis added)—see also pp. 55-58, 207, 257.)

3.433 Further, even where civilians are lawfully confined, the detaining power is obliged to thereafter implement a number of procedural guarantees. In particular, Article 43 state:

> "Any protected person who has been interned ... shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment ... is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit."

Under the circumstances prevailing at the Čelebići camp, where persons were detained on the basis of their ethnic background even in the absence of any evidence that they were a clear security threat, it is evident that civilians were detained unlawfully. It is also clear that even if their initial confinement could have been considered lawful, the procedural guarantees required to make their continued confinement lawful, were not implemented.

3.434 All the elements necessary to prove that DELALIĆ, MUCIĆ and DELIĆ participated in, and whose subordinates participated in, the unlawful confinement of civilians have been established. The victims were detained in circumstances not permitted by Geneva Convention IV, the accused intended to confine the victim, and the accused were aware of or recklessly blind to the factual circumstances rendering the confinement unlawful.

(T) Paragraph 37 of the Indictment (Plunder of private property)

3.435 Paragraph 37 of the Indictment alleges:

> "Between May and September 1992, Zdravko MUCIĆ, and Hazim DELIĆ participated in the plunder of money, watches and other valuable property belonging to persons detained at Čelebići camp. Zdravko MUCIĆ and Hazim DELIĆ also knew or had reason to know that persons in positions of subordinate authority to them were about to commit those acts resulting in the plunder of private property, or had already committed those acts, and failed either to take the necessary and reasonable steps to prevent those acts or to punish the perpetrators after the acts had been committed."

3.436 The prosecution relies, primarily, on the testimony of thirteen witnesses to establish the facts in relation to these allegations, namely:

(1)	Mirko Babić	(T. 438)
(2)	Mirko Kuljanin	(T. 1190)
(3)	Witness N	(T. 1928, 1990)

(4)	Mladen Kuljanin	(T. 2528)
(5)	Witness P	(T. 4488-4490)
(6)	Witness M	(T. 4897)
(7)	Witness B	(T. 5031-5032, 5089-5090)
(8)	Milenko Kuljanin	(T. 5500-5501, 5509-5516)
(9)	Petko Grubač	(T. 5954-5956, 6117)
(10)	Risto Vukalo	(T. 6284)
(11)	Witness T	(T. 6775-6777)
(12)	Witness J	(T. 7440-7442)
(13)	Witness R	(T. 7695-7696).

3.437 Various witnesses testified that on first arrival at the Čelebići camp, they were required to hand over their valuable property.

3.438 Witness J testified that on his arrival at the camp:

> "everybody had to turn over whatever they had, and they said, "if you did not do it, you will die, if we find anything on you". And then everybody was just throwing on the ground whatever they had on them." (T. 7442; see also at 7440-7441.)

3.439 Witness M testified:

> "When we were unloaded off the truck in which we arrived at Celebici, we were met by the welcoming committee, as it was called by them, a few strong guys, who took everything we had, and here I mean all the gold, the watches, wallets, keys." (T. 4897.)

3.440 Witness B testified to having been treated in a similar way, in the presence of DELIĆ:

> "When we arrived at the camp we were ordered to line up against a wall about 20 metres long, something like that, a concrete wall, I don't know exactly. It was at the very entrance into the camp. Normally everything was done with a lot of curses, threats and other humiliation. We were ordered to empty our pockets, to give whatever we had, belts, laces, watches, money. Everything we owned we had to put next to us ... All of

> us that had watches had to take off our watches. We had to give them whatever we had actually in our pockets. Money, we had to hand over money ... Delic was there and the other guards." (T. 5031, 5090).

Witness J also testified that MUCIĆ was present on one occasion when this occurred (T. 7442).

3.441 These incidents can in no way be considered as a normal and necessary routine before checking prisoners into a custody facility, as was suggested by Defence counsel (T. 1647). This is particularly evident from the curses, threats and intimidation to which those required to give up property were subjected. Witness P testified that during the incident that he experienced, the detainees were in fact beaten (T. 4488).

3.442 The fact that MUCIĆ and DELIĆ participated directly in such necessarily indicates that they were aware that such they were occurring. Their willing participation in such systematic and organised incidents also indicates that they were taking no steps to prevent them, or to punish those responsible.

3.443 Some witnesses also testified to incidents in which they were required to give up valuables to guards while in the camp.

3.444 Risto Vukalo described how LANDŽO forced him to remove a ring from the body of one of the detainees who had been killed and to give it to LANDŽO (T. 6284).

3.445 Several other witnesses recollected an incident in which a number of guards came to Tunnel No. 11 one night, and ordered all prisoners to put any valuables into the helmet of one of the guards (Mirko Kuljanin (T. 1190), Witness N (T. 1929), Mirko Babić (T. 438), Witness R (7695-7696), Witness T (T. 6775-6777)).

3.446 The testimony of Witness T indicates that the necessary and reasonable steps to punish the guards involved were not taken. MUCIĆ merely ordered that the goods which were taken from the prisoners be returned and, although some goods were returned, no further action was taken against the guards. Witness T testified about an incident where he himself, together with Mr Alibasic, Mr Masic

and himself passed a helmet through the Tunnel No. 22 and a little warehouse behind the administration building to collect valuables from the prisoners. When, three days later, they had to admit that they had done it, MUCIĆ ordered them to give all the property back to the prisoners. Most of it was returned, but some had already been sold to buy cigarettes, "*or something like that*". No measure was taken by MUCIĆ or anyone else against the guards. (T. 6776.)

3.447 Many witnesses testified the property was never given back (Witness N, Mladen Kuljanin, Witness P, Witness M, Witness B, Milenko Kuljanin, Petko Grubač).

3.448 It is submitted that the evidence establishes beyond reasonable doubt that MUCIĆ and DELIĆ took or obtained private property with the intent to deprive the owners thereof of the use or benefit of the property, and/or instigated, ordered or otherwise aided and abetted in the taking of such property.

4. Superior responsibility of DELALIĆ, MUCIĆ and DELIĆ

(A) Introduction

4.1 For DELALIĆ, MUCIĆ, and DELIĆ to be found criminally liable under Article 7(3) of the Statute for the crimes committed in Čelebići camp, the following elements must be proved beyond a reasonable doubt:

(i) that the crimes under Articles 2 to 5 of the Statute were committed in Čelebici camp;

(ii) that the accused were the "superiors" of the perpetrators of the offences, or of their "superiors";

(iii) that the accused knew or had reason to know that the offences were about to be committed or had been committed, and;

(iv) that the accused failed to take the necessary and reasonable measures in the circumstances to prevent such acts or punish the perpetrators thereof.

4.2 These elements are derived from the literal terms of Article 7(3); from the provisions of Articles 86 and 87 of Additional Protocol I which are an expression of the doctrine of superior responsibility that is part of international customary law; and from various judicial decisions from after the Second World War. The same elements have now been included in Article 25 of the Statute for the International Criminal Court, which was adopted in Rome in July this year (A/Conf.183/C.1/L.76, 16 July 1998).

4.3 The Prosecutor submits these elements have been proved beyond a reasonable doubt in relation to the command responsibility of DELALIĆ, MUCIĆ and DELIĆ for the crimes referred to in

paragraphs 22, 29, 31, 34, 35 and 36 of the Indictment, and in relation to the command responsibility of MUCIĆ and DELIĆ for the crimes referred to in paragraph 37 of the Indictment.

4.4 The evidence of the first element, that the underlying crimes were committed, is dealt with in Part 3 of this Closing Statement. The evidence for each of the remaining three elements is described below in relation to each of these accused.

(B) Individual criminal responsibility of DELALIĆ under Article 7(3) of the Statute

4.5 The Prosecution's case against DELALIĆ established that he was a superior of the perpetrators of the offences in the Čelebići camp on the basis of the authority, control, and influence he exercised over the camp and its commander, MUCIĆ, and the Konjic area in which the camp was located. A wide range of evidence, including evidence that he was the only person to give orders to the camp commander, confirms that as both Coordinator and Commander of TG1, DELALIĆ exercised wide authority and power over Čelebići. Consequently, he could have taken various reasonable and necessary measures to intervene and to prevent or punish the perpetrators of the offences, but failed to do so.

4.6 As shown below, the Prosecution contends that DELALIĆ had formal and factual authority over the Čelebići camp and its personnel including the commander, and such authority is shown by a variety of facts including his giving direct orders to the commander. Even, however, if it were found that DELALIĆ did not have sufficient authority and influence over the camp commander such that he may be considered his direct superior, under well established principles of international humanitarian law, DELALIĆ had sufficient superior authority arising out of his involvement in the operation of the camp, including in the classification and release of detainees, to be under a duty to take steps at his disposal to seek to prevent the commission of the offences set out in the Indictment. DELALIĆ failed to undertake any of these measures, and can be held criminally responsible on this basis alone.

(i) The accused exercised superior authority

(a). The applicable law

4.7 To be criminally liable under Article 7(3), it is sufficient to show that DELALIĆ had formal *de jure* responsibility for the Čelebici camp and the camp commander, or that he had actual *de facto* authority, or that he had a combination. It is well-established that superior authority can be assigned and exercised in a variety of formal and/or *de facto* ways.

4.8 Both Article 7(3) of the Statute and Article 86 of Additional Protocol I refer to "superiors" in general. That expression is intended to apply to persons exercising *actual control* over the perpetrator of the crime.

(a) The ICRC Commentary to Protocol I indicates that the word "superior" in Article 87 of Additional Protocol I not only applies to superiors "under whose direct orders the subordinate is placed" but instead "should be seen in terms of *a hierarchy encompassing the concept of control*" (ICRC Commentary to Protocol I, p. 1013 (emphasis added)). Indeed, a person who is *formally* a superior in the line of command may be excluded from criminal liability if that superior does *not* exercise actual control. The expression "superior" in Article 87 is intended to cover "only ... the superior who has a personal responsibility with regard to the perpetrator of the acts concerned because the latter ... is *under his control*" (*ibid.* (emphasis added)).

(b) Article 87 of Additional Protocol I specifies that the duties of military commanders extend not only to "the armed forces under their command" but also to "other persons *under their control*" (emphasis added). The ICRC Commentary notes, for example, that:

> "If the civilian population in its own territory is hostile to prisoners of war and threatens them with ill-treatment, the military commander who is responsible for these prisoners has an obligation to intervene and to take the necessary measures, even though this population *is not officially under his authority*"

(ICRC Commentary to Protocol I, p. 1020, fn 9 (emphasis added)). Further, the Commentary emphasises that the "full practical meaning" must be given to the phrase "the armed forces under their command". The example is provided of a commander who is supplied with troops that are not normally under his command and the Commentary states that "he must ensure that [they] comply with [international humanitarian law]" (ICRC Commentary to Protocol I, p. 1019).

(c) The Geneva Conventions and the Additional Protocols recognise that irregular armed forces in certain circumstances qualify as "armed forces" for the purposes of the Conventions and Protocols (Article 4 of Geneva Convention III, Article 43 of Additional Protocol I). The ICRC Commentaries recognise that command functions in these armed forces do not always resemble the formal hierarchies and ranks of regular forces (ICRC Commentary to Geneva Convention III, pp. 58-59; ICRC Commentary to Protocol I, pp. 512-514). Superiors in irregular forces, who often exercise command in the absence of regular and official authority are nonetheless bound by the provisions of Articles 86 and 87 of Additional Protocol I (see, ICRC Commentary to Protocol I, p. 514). Indeed, irregular forces are bound to comply with the laws and customs of war (Article 4 of Geneva Convention III, Article 43 of Additional Protocol I).

(d) In the *Toyoda* case, the tribunal found that a commander's responsibility could not be artificially delineated into different kinds of formal authority, such as operational authority and administrative authority. The tribunal held that the "the practicalities of the situation, the obligations and duties of the immediate command, must be viewed with realism", and found that in that case the "naval personnel were both *legally and in fact* commanded by the Japanese Army at the times ... under consideration" (*United States v. Soemu Toyoda*, Official transcript of Record of trial, pp. 5011, 5012).

4.9 To be criminally liable under Article 7(3), a superior need not have direct command and control over a perpetrator. The concept of a "superior" includes those exericising indirect forms of

control over a perpetrator or situation, and even those with the ability to exert *substantial influence* over a situation.

(a) In the *Hostages Trial* it was held that a commander with executive authority over occupied territory could be criminally liable for crimes committed in that territory, even in the absence of direct subordination of the perpetrators:

> "The matter of subordination of units as a basis of fixing criminal responsibility becomes important in the case of a military commander having solely a tactical command. But as to the commanding general of occupied territory who is charged with maintaining peace and order, punishing crime and protecting lives and property, subordinations are relatively unimportant. His responsibility is general and not limited to a control of units directly under his command"

(*The Trial of Wilhelm List and Others*, United States Military Tribunal (1948), (*Hostages Trial*), Law Reports of the Trials of War Criminals, Volume VIII, p. 71. See also ICRC Commentary to Protocol I, p. 1020.)

(b) The principle that the criminal liability of a "superior" is not confined to acts of perpetrators who are directly subordinate in a chain of command is also established by the cases referred to in paragraphs 4.10-4.12, 4.114-4.11 below.

4.10 The responsibility of superiors under Article 7(3) is not confined to military superiors, but extends also to civilian superiors. The principle of "superior authority" is of general application, and is not restricted to situations arising under military command.

(a) Article 7(3) refers to "superiors" generally, not "military superiors". Clearly, Article 7(3) makes no mention of the "military", and nor would it as the offences under the Statute contemplate a much broader application than just breaches of the military code. Article 7(2) of the Statute expressly refers to the criminal responsibility of certain civilian officials, namely the "Head of State or Government or ... responsible Government official". (See also Report of the Secretary-General pursuant to paragraph 2 of Security

Council Resolution 808 (1993), UN Doc. No. 5/25704, at para. 55.)

(b) Additional Protocol I in Article 86(2) specifies the duties incumbent upon all "*superiors*", in addition to the duties of "*military commanders*" contained in Article 87 (see also, ICRC Commentary to Protocol I, p. 1013, para. 3544).

(c) The Tokyo Tribunal found civilian superiors to be guilty of having "deliberately and recklessly disregarded their legal duty to take steps to secure the observance and prevent breaches" of the laws of war (The International Military Tribunal for the Far East, Japanese War Crimes Trials, (29 April 1946-12 November 1948) (University Press Amsterdam, 1977), Judgement annex A-6; in particular see, case of Mamoru Shigemitsu at *Ibid.* p. 458: "he, as a member of the government, bore overhead responsibility for the welfare of the prisoners. He should have pressed the matter, if necessary to the point of resigning, in order to quit himself of a responsibility which he suspected was not being charged"; case of Kuniaki Koiso at *Ibid.* pp. 452-453; and, case of Koki Hiroti, which held that it was his duty to insist before the Japanese Cabinet that "immediate action be taken to put an end to the atrocities" or to take "any other action open to him to bring about the same result", *Ibid.* pp. 446-448).

(d) In other trials after the Second World War, civilians were found responsible for crimes committed by their subordinates. (See, e.g., *The Government Commissioner of the General Tribunal for the French Zone of Occupation in Germany v. Directors of the Roechling Enterprises*, XIV Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council No. 10, p. 1116.)

(e) If Article 7(3) was only intended to apply to military personal, then it could have the extraordinary consequence of allowing non military or civil leaders to escape liability for such serious crimes as crimes against humanity and genocide. In most cases genocide is a decision made at a political level. If the military do happen to be involved (and they certainly do not have to be involved for genocide to occur), then they are generally subordinate to and carrying out the orders of the political leaders. In many cases and on

a practical level, political leaders often find it very hard to get trained military personal to carry out acts of genocide. In those cases the political leader often have to resort to specially trained police or para military forces to perform these acts. Acts of genocide or crimes against humanity often conform more closely to the political philosophy of the particular police group or para military force, whereas professional armies more often than not tend to be non political. If Article 7(3) was restricted only to the military, then many of these para military and police would be shielded from prosecution, because in many instances, the only liability that can be attached to them is liability under Article 7(3).

4.11 To be criminally liable, a superior need not be the only superior with control and authority over the perpetrators. Many superiors may exercise control at different levels and in varying ways over the perpetrators or the situation, and each may be held criminally responsible for the same underlying crimes. (See ICRC Commentary to Additional Protocol I, pp. 1019, 1022.)

4.12 To be criminally liable, a superior need not have had the ability to take all necessary steps to prevent or punish the crimes and to have failed to resort to every one of them. It is only necessary that there were some measures which the superior could have taken. It is immaterial that other superiors may have had the means to take other more substantial measures.

(a) Both Articles 86 and 87 of Additional Protocol I recognise that superiors and commanders do not have to possess all forms of command and control in order to be held criminally responsible. Superiors are required to "take all feasible measures within their power" and "commensurate with their level of responsibility", failing which they will be in breach of their duties as superiors. Judicial decisions have also spoken of a commander's duty to take such appropriate measures as are "within his *power*" (*Medical Trial*, The Trials of War Criminals before the Nuernberg Military Tribunals, Volume II, p. 212; *Trial of Wilhelm von Leeb and Thirteen Others*, United States Military Tribunal (1948), (*The German High Command Trial*), Law Reports of Trials of War Criminals, Volume XII, pp. 74-75; *In re Yamashita*, 327 U.S. 1, 15 (1945)).

(b) In the *German High Command Trial*, Field Marshal von Kuechler was held responsible for the illegal execution of Red Army soldiers which occurred before and after he took up command, on the basis that reports of these executions were made to his headquarters after he took up command and he took no punitive action (see, *The German High Command Trial*, United States Military Tribunal (1948), The Trials of War Criminals before the Nuernberg Military Tribunals, Volume XI, p. 568). A superior's responsibility is thus not confined to crimes committed while the superior exercised control, but to other crimes which the superior has the power to prevent or punish.

4.13 The requisite command and control of a superior can thus arise in many different ways. It may arise from the formal assignment of responsibility to a commander. However, it may arise also from other circumstances by virtue of which the superior has the ability to control or influence a situation, or to punish the perpetrators of crimes.

4.14 The Defence is urging the Tribunal to adopt a most restrictive and narrow definition of the legal requirements of superior responsibility, under which only a superior with direct and formal authority over a perpetrator can be held to have superior responsibility. Although the Prosecution contends that the evidence here would meet even this standard, the Defence standard is inconsistent with the existing authorities including the Second World War cases, and should not be accepted by this Chamber. To accept this position would be to substantially erode the doctrine of superior responsibility, and of international humanitarian law more generally.

4.15 In particular, to recognise a defence of "lack of direct and formal authority" would be to create an incentive for powerful figures deliberately to avoid formal command structures, and to use informal methods of control in order to escape prosecution for serious violations of international humanitarian law. To recognize such a defence would also render much of international humanitarian law inapplicable to many modern day conflicts which are not conducted by long established armies with well defined, formal chains of command.

(b). The evidence in this case: DELALIĆ's control and influence over Čelebići camp

4.16 The Prosecution submits that the evidence, as set forth below, clearly establishes that DELALIĆ had direct control over, and responsibility for, Čelebići camp and the camp commander. In any event, the Prosecution submits that at the very least DELALIĆ was in a position to exercise considerable authority, control and influence over the camp itself, the commander of the camp, and the region in which the camp was located.

4.17 DELALIĆ was appointed "Co-ordinator" of the Konjic defence forces on 18 May 1992. On 11 July 1992, he was formally appointed commander of Tactical Group 1 (TG1). Pursuant to written order dated 11 July 1992, DELALIĆ was appointed as commander of all forces of Bosnia and Herzegovina of the Drežnica-Jablanica-Prozor-Konjic-Pazarić-Hadžići-Igman area). Pursuant to written order dated 27 July 1992, DELALIĆ was expressly named Commander of all forces of Bosnia and Herzegovina of the Drežnica-Jablanica-Prozor-Konjic-Pazarić-Hadžići-Igman area.

4.18 As discussed below, DELALIĆ agrees that he was commander as of 27 July but claims that the earlier order was not implemented (P. Exh. 99-5, p. 38). In any event, DELALIĆ was an authority over Čelebići camp both as Coordinator and as Commander, and thus whether he performed those actions which took place in the second half of July as part of his functions as Coordinator or as Commander is immaterial and need not be resolved by the Chamber.

4.19 The nature and extent of the control and influence exercised by DELALIĆ generally in these positions is dealt with in detail in (c). below. However, even without regard to the extent of his wide overall authority in these positions, there is sufficient evidence of the control and influence that DELALIĆ had specifically in respect of Čelebići camp, and over the camp commander. Although the evidence is of such a wide and varied nature, that it cannot be described fully here, some of the more important examples of his control and influence are set forth below.

(I) DELALIĆ as "Co-ordinator"

4.20 During the time that he was "Co-ordinator" of the Konjic defence forces (18 May to 11 July 1992), the evidence shows that DELALIĆ had the power to determine who would, and who would not, be detained in the camp.

4.21 Witness D testified about DELALIĆ's role in the Military Investigative Commission, which was set up to classify detainees and determine whether they would be released or not. Witness D then recounts that DELALIĆ told him that he would work in the Military Investigative Commission in Čelebići camp, and that he would participate in the analysis of information and documents that the Commission already had in its possession, together with other information that the Commission would obtain through interrogation of the prisoners. Witness D started working in the camp the next day (T. 5168-5171). He understood that "Mr. DELALIĆ was either in some kind of headquarters or was some kind of commander" (T. 5172).

4.22 A few days later, roughly in the first days of June 1992, the witness said that the Commission held a meeting in the camp administration building at which DELALIĆ and MUCIĆ were present (T. 5174-5178). At the meeting, DELALIĆ acted as the leading person, and he discussed the work of the Commission and how they were going to proceed. DELALIĆ personally explained the different categories that they were going to use to classify the prisoners so that decisions could be made concerning their status and concomitant measures. (T. 5177-5181, 5286). Witness D recalled that DELALIĆ had designed these categories according to available documents (T. 5176-5178).

4.23 Witness D's understanding that DELALIĆ had authority over both the Commission and the subsequent decisions concerning which detainees should be released was confirmed by MUCIĆ during this period. Witness D reported that during the time the Commission worked in Čelebići camp (between the end of May and June 1992 (T. 5407), MUCIĆ told Witness D that the decisions on which prisoners would be released would be made by "Commander DELALIĆ" (T. 5187, 5371).

4.24 In the second half of June, the members of the Military Investigative Commission determined that conditions were so bad in the camp that they could not complete their work or even be

associated with the camp. (T. 5230-5231, P. Exh. 162). They thus wrote a report detailing conditions, including the murder and torture of prisoners, the sexual abuse of detainees, the confinement of civilians. (P. Exh. 162.)

4.25 The members determined that the report should be directed to the HVO commander, the TO commander, and the Co-ordinator of Combat Units (P. Exh. 162 and T. 5231.) Both Witness D and DELALIĆ agree that the term Coordinator of Combat Units referred to DELALIĆ. (T. 5231, P. Exh. 99-5, pp. 22-23.)

4.26 That MUCIĆ as commander of the camp considered DELALIĆ his superior and the person in charge of making decisions about detainees was confirmed by the witness Nedeljko Draganić. Nedeljko Draganić, a former detainee testified that on one occasion on which MUCIĆ visited his family and discussed the possible release of some persons who were still detained, MUCIĆ said that he would have to ask DELALIĆ about releases. (T. 1644.)

4.27 The evidence shows that DELALIĆ had the power to issue other orders in relation to the camp. Witness P testified that in the night between 26 and 27 May 1992, he was taken to DELALIĆ's house in Konjic pursuant to DELALIĆ's decision. Witness P was one of the two Serbian doctors arrested in Bradina. In the presence of Witness P, DELALIĆ telephoned Dr. Ahmed Jusufbegović, director of the Konjic Health Center, getting him out of his bed. Besides giving Dr. Jusufbegović some orders relating to the attack on Bradina and also some orders regarding weapons, DELALIĆ ordered him to treat witness P's wounds, so that he could work. After that, Witness P was treated at the Health Center for a couple of days, before being brought to the infirmary at the 3rd March school where, as a detainee, he worked for a number of days as a physician taking care of the wounded prisoners. (T. 4491-4497.)

4.28 This episode demonstrates that DELALIĆ's awareness of the use of Čelebići as a camp for the Bradina prisoners, his power of decision on possible movements of prisoners, as well as his significant role in the Bradina military operation. The Defence suggests that "DELALIĆ did not have the authority to issue orders [since] Dr. Jusufbegović did not act upon DELALIĆ's suggestion that witness P be put to work at the Health Center". However, DELALIĆ did not suggest to Dr. Jusufbegović that

Witness P be put to work at the Health Center, only that his wounds be treated so that he could work.

4.29 The evidence shows that DELALIĆ made a number of visits to the camp, and was treated as a person in authority there. Several prisoners testified to having seen DELALIĆ in Čelebići camp at the beginning, or mid-part of June, including Mirko Đorđić (T. 4799), Novica Đorđić (T. 4170-4171), Branko Sudar (T. 5783-5784) and Witness N. (T. 2100.) Branko Sudar specifically reported that when DELALIĆ was about to enter Hangar No. 6, the guards said: "*Sit still. The commander is coming.*" (T. 5783-84). Although the Defence has suggested that the witnesses might have mixed up Zejnil DELALIĆ with one of his relatives, this suggestion is refuted by Witness N, who recognized both DELALIĆ and his nephew, and testified that both were present. (T. 2100).

(II) DELALIĆ as Commander of TG1

4.30 As stated previously, the head of the Armed Forces of Bosnia-Herzegovina, Sefer Halilović, on 11 July 1992 appointed DELALIĆ commander of Tactical Group 1, and on 27 July appointed him commander of all forces of Bosnia and Herzegovina of the Drežnica-Jablanica-Prozor-Konjic-Pazarić-Hadžići-Igman area.

(a) The evidence shows that DELALIĆ continued to have the power to determine who would, and who would not, be detained in the camp.

Gordana Grubač testified that she visited DELALIĆ in July to seek the release from the camp of her husband, Dr. Petko Grubač (T. 6191). DELALIĆ informed her that he would speak with Dr. Grubač. The following day, DELALIĆ's secretary told Ms. Grubač that DELALIĆ had just left to visit Dr. Grubač in the camp, and had ordered her to prepare release papers for him and Witness P. (T. 6191-6195.) Dr. Grubač himself testified that:

> "[DELALIĆ] ... then told me that he had inspected my file, he had a folder in front of him and he said to me, "in this file, there is nothing special, so I will release you from the camp". He

> also told me, "tonight they will come to take you out of the camp" ... He also told me that he would also release Witness P" (T. 6005.)

The same evening, 22 July 1992, both Dr. Grubač and witness P were released and brought to the house of DELALIĆ, who included on the release forms the territory restrictions applicable to them, and added, in relation to Petko Grubač, "he is to continue to take care of the injured prisoners" (T. 4580, 6010). In fact, after two weeks, both Witness P and Petko Grubač started going to Čelebići on a daily basis to take care of the injured detainees.

The release forms for these prisoners, and for a third detainee Miro Golubović, were tendered in evidence. (Exh. 95, 154 and 169). They were signed by DELALIĆ on 17 and 22 July 1992. The importance of these documents, and the fact that they bear DELALIĆ's signature is considerable, particularly because they are the only three release forms in evidence for the entire period of June and July 1992.

The Defence asserts that DELALIĆ signed these release forms "for" the Investigative Body of the War Presidency. However, the evidence is that the only investigating committee that ever operated in the camp had already ceased its work at this time (T. 5235-5236, 5411). A reading of the testimony of the two witnesses on which the Defence relies for this contention Cerovac (T. 11616-11618, 11710-11714) and Jusufbegović (T. 11951-11958, 11990-11992) indicates that their explainations are not credible.

In addition to the fact that the complicated details of their story defy common sense, it may be noted that the explanation contradicts itself. For although Cerovac, then acting as head of the TO, testified unequivocally that he never had authority over Čelebići or authority to release prisoners, he nonetheless authorized DELALIĆ to sign on his behalf. (T. 11711-11712, 11715). When asked about this anamoly, Cerovac replied, "It was urgent." (T. 11712).

Thus, even if one were to accept Cerovac's explanation, it in any event demonstrates that because there was no clear or recognized authority over Čelebići, authority over the camp was just taken and exercised based on the needs of the time.

It is also significant that the release orders signed by DELALIĆ were immediately implemented by the camp personnel, apparently without question (T. 11958, 11992).

(b) DELALIĆ'S Authority to issue direct orders to the commander of Čelebići camp.

During the entire period from June to November, there are only two written orders concerning the Čelebići camp, and one of those is a direct order to the Commander of the Čelebići camp. Both are orders signed by DELALIĆ. These orders provide direct and incontrovertible evidence that DELALIĆ was a superior authority regarding the Čelebići camp.

On 24 August 1992 DELALIĆ, as commander of TG1, issued an order directed to the OŠOS (Armed Forces Municipal Command) of Konjic (which was copied to Čelebići prison administrator), containing among other things an order concerning the functioning of Čelebići camp (Exh. 99-7-10). DELALIĆ stated in the order that the "commander of the Konjic OŠOS BiH is responsible to me for prompt and effective implementation of this order." (P. Exh. 99-7-10).

On 28 August 1992 DELALIĆ issued a new order, this time addressed directly to the Čelebići prison administrator (copy to Konjic OŠOS BH) (Exh. 99-7-11). This order, noting that the 24 August 1992 order had not yet been complied with, required the Military Investigation Body of the Konjic OŠOS to undertake interrogations of prisoners at Čelebići. The latter order required MUCIĆ to establish a commission composed of three members to undertake interrogations of prisoners.

In his statement to the Office of the Prosecutor, DELALIĆ claims that these were "exceptional orders", issued by him on the request of the Supreme Command (P. Exh. 99-5, 23 August 1996, pp. 44-48). (See also Vejzagić (T. 10595-10596).) No substantial evidence was given in support of this claim, which is not consistent with the wording of the orders themselves.

The fact that the Supreme Command may have issued orders to DELALIĆ about Čelebići which he then passed on to the TO headquarters and the camp commander does not indicate that DELALIĆ was not the superior of Čelebići. To the contrary, it is a normal function of commanders to pass on orders to their superiors. Defence witness Vejsabic agreed "that it is a normal part of command authority to trasnmit orders from a superior command to subordinates." (T. 10936). (See also D. Exh. 144Vd/15-1 (order from Konjic TO commander to his soldiers with preamble noting that it is "on the basis of Order of the Republic Headquarters").

Indeed, it would be contrary to normal military hierarchy for anyone not in the chain of command to issue orders to persons who are not subordinates. Nor does the Defence offer any explanation conerning why, if DELALIĆ was not considered part of the military chain of command, the Supreme Command would have chosen to communicate through DELALIĆ rather than directly with the TO.

In any event, even if one accepts the contention that these were exceptional orders, at most this would represent, first, a recognition from the Supreme Command that DELALIĆ was, in practice and now formally, the person responsible for the camp. In this respect, it may be noted that the 24 August order from DELALIĆ specifically states that the "Commander is responsible to me for prompt and effective implementation of this order."

The Defence attempts to minimize the importance on the above orders by referring to certain Defence exhibits (D/131/1; D/132/1), and suggesting that they demonstrate that the Čelebići camp was under the exclusive authority of the Municipal Headquarters of Konjic. However, the evidence shows that the Municipal Headquarters of Konjic had to request the Supreme Command to move the prisoners in Čelebići elsewhere in order to use the barracks for the accommodation of its units (Exh. D/131/1 and D/132/1). This can only mean that the Municipal Headquarters did not, in fact, have authority over the camp.

(c) The evidence shows that DELALIĆ made a number of visits to the camp, and was treated as a person in authority there.

In August 1992, Delalić twice accompanied representatives of the ICRC when they visited the camp (Exh. 99-1, p. 26).

The ICRC also sent its reports to DELALIĆ (with a copy to the commander MUCIĆ). (P. Exh. 192). As has been noted by the Chamber, the ICRC would be expected to send its reports to the person in charge of the camp. (T. 8478 et seq.)

Sometime around mid-August 1992, a Bosnian television crew made a television report in the camp (P. Exh. 116, 01:37:28-01:40:47, and the transcript of the video, document 116a, pp. 18-19). DELALIĆ arranged for the doctors to be interviewed as part of the report (T. 6011-6015). DELALIĆ himself appeared in the report, providing information about the camp and the conditions there.

The Defence suggestion that the journalists wanted to interview DELALIĆ merely because they happened to be passing by his house is incredible, and is contradicted by the testimony of both Dr. Grubac and Witness P (who indicate that DELALIĆ came to them to ask them to appear on television) and by DELALIĆ himself, who in his interview admitted that he approached the doctors in advance about the proposed interviews. (T. 6011-6015, P. Exh. 99-1, p. 51).

The Defence is able to offer no credible explanation concerning why, if DELALIĆ had no responsibility for the camp, he would have accepted to be interviewed about conditions in the camp.

Finally, General Divjak, at the time a member of the Supreme Command, testified that when he was in Konjic, he went with DELALIĆ to Čelebići, and that he understood that Čelebići was under the control of DELALIĆ. (T. 8453).

(d) The documentary evidence, including documents seized in Vienna at Inda-Bau, DELALIĆ's business premises, on 18 march 1996, most of which is evidently authored by DELALIĆ himself, confirms that DELALIĆ, in his capacity first as coordinator and then commander of TG1, had authority and responsibility for Čelebići camp.

4.31 For example, DELALIĆ points out that he was involved in transforming the Čelebići barracks into a prison for Serbs which even he acknowledged. According to a note contained at the end of a handwritten document seized in Vienna, and apparently authored by DELALIĆ, he writes: "Paradox: In the barracks which I personally liberated and turned into a camp for Serbs—there ... my brother and my associates are being imprisoned" (P. Exh.131). (DELALIĆ's brother was one 13 people arrested in December 1992 on the initiative of Arif Pašalić.)(P. Exh. 137).

4.32 Further documentary evidence signed by MUCIĆ confirms that DELALIĆ was responsible for the transformation of Čelebići barracks into a detention facility. In an undated letter signed by MUCIĆ and addressed to the IVth Corps Staff (P. Exh. 130), MUCIĆ states:

> "Zejnil had nothing at all to do with any prisoners; he only liberated the barracks, established the prison and was the first in BH to classify the prisoners in 9 categories. On the contrary, apart from achieving all that he also filled the prison with 500 Serbs and Chetniks. The further 200 prisoners - mainly civilian Serbs - were brought in by others"....

4.33 Exhibit 131 (another document seized in Vienna at Inda–Bau, DELALIĆ's business premises, is a document purportedly written by the Deputy Commander of TG1, Edib Šarić. The document states in relevant part:

> "I was the Deputy to the Commander of TG1, Z.D., on the day he left for a business trip and a short vacation abroad. He left around 8 p.m. on 25 November 1992 ... The departure was planned in a completely regular way, because with the establishment of the IV Corps, TG1 had practically ceased to exist ...
>
> Within the framework of the transfer of duties carried out by TG1, all key responsibilities, the warehouses, *prison*, etc., were transferred in an orderly fashion. In this context, I want to point out that *the Čelebići prison was handed over to the Konjic OŠOS* [Municipal Staff of the Armed Forces] as early as 15 November 1992, at

> which point the prison commander Pavo, who had been in the post till then, was replaced and relieved of his duties." (Exh. 131, pp. 1-2, emphasis added.)

This document thus indicates that TG1 had formal responsibility for Čelebići camp, and confirms that at the material time DELALIĆ was commander of TG1.

4.34 The contents of this document, and indeed many of the propositions in this submission, have been confirmed by other accused in their interviews with the Prosecution. Because the Chamber has ruled that such statements from a co-accused may never be used against another accused, the Prosecution will not here discuss or rely on such evidence. The Prosecution continues to maintain that, as with all hearsay statements, the statements of co-accused may be considered if the Trial Chamber were to find the relevant portion reliable.

4.35 Another of the Inda-Bau documents (Exh. 146) is a handwritten note headed "Hazim" and appearing to be a draft statement authored by DELALIĆ for "Hazim" concerning the Čelebići camp and, in particular, the murder there of a Bosnian soldier called Hodza: "*I never received any orders or instructions from Commander Delalić. There were at least two intermediate levels in the chain of command: Prison Commander, Commander of the Municipal Headquarters and then TG1 Commander*". Additional confirmation of DELALIĆ's authority and control over Čelebići is provided by the further statement in the document that "*The story that Delalić ordered Hodža's murder was started by Mitke whom Delalić forbade to hang around the prison in Čelebići*".

4.36 The Defence suggest that the documents seized in Vienna are unreliable evidence. However, their content has been substantially confirmed and corroborated by other evidence. Furthermore, one of the Inda-Bau documents (P. Exh. 127, an order signed by DELALIĆ) was relied upon by the Defence and authenticated by Sultanić (T. 11022-11023) and relied upon by the Defence expert witness Vejzagić (T. 10549-10550).

4.37 Other incidents can be pointed to as further confirmation of DELALIĆ's link to Čelebići camp. DELALIĆ was involved in the appointment of MUCIĆ as camp commander. The evidence indicates that he proposed MUCIĆ to be the commander, and

shortly thereafter MUCIĆ took up this position (see DELALIĆ's OTP interview on 22-23 August 1996, P. Exh 99-5 at p. 44, and paragraphs 4.135-4.156 below concerning MUCIĆ).

4.38 In considering the evidence of DELALIĆ's authority and control at the camp, it must be also be noted that there was no other person who could be identified as having "formal" responsibility for supervising the camp commander of Čelebići, nor was there any other person who had "informal" authority. Thus, almost without exception, when the Defence witnesses who testified that DELALIĆ was not any kind of authority regarding Čelebići camp were asked who did have authority over the prisoner, the witnesses reported that they did not know.

4.39 The evidence shows that in 1992 in the area of Konjic and Bosnia-Herzegovina generally, there were no laws or regulations setting forth who had control over military prisons in general and Čelebići camp in particular. Vejzagić wrote in his report (Exh. D143-1/1, p. 45) that "*due to the lack of regulations as well as the factual relations that existed between the components constituting the defence of Konjic, the jurisidiction over the prison and the prisoners were not precisely determined and distinguished*".

4.40 The lack of regulation on who had formal control over Čelebići is highlighted by the fact that both Defence expert witnesses Hadžibegović (T. 10223-24, 10229) and Vejzagić (T. 10605-06, 10827, 10981) testified that they did not find any document concerning detention camps or prisons. They could not find out how many people were detained in Čelebići, nor how and when it was formed as a prison, nor if it was a civilian or military prison, nor anything about the appointment of the warden, or the hierarchy within the prison, or about who was responsible for it.

4.41 Begtašević, although himself a member of the Investigating Commission of January 1993, could not say who had control and command over Čelebići (T. 10667-68). The same was true of Redžepović (T. 12121-22) and Kevrić (T. 11272). Tahirović (T. 11469-79) indicated that at the very beginning the camp was controlled by the MUP (see also Cerovac at T. 11681-11682). However, Tahirović says that responsibility for the camp was subsequently transferred, and that "*[o]nly people who are specialists in military things*" could identify who exercised responsibility in practice. This witness agreed that it was

possible that "*in May to December of 1992, the matter of who ran the prisons was resolved as a matter of practice rather than as a matter of law or regulations*" (T. 11479).

4.42 As explained in more detail below, the circumstances were thus well-suited for (in addition to formal forms of authority) control and authority to be acquired, assumed and exerted over the camp by persons such as DELALIĆ.

4.43 In particular, when the camp first began operation, given the involvement of the HVO, MUP, TO and War Presidency in various aspects of the camp and given that his official role was Coordinator, DELALIĆ's involvement in the operation of the camp was only logical.

4.44 Whether DELALIĆ's role as the authority over the operation and personnel in the camp, arose out of an express delegation to him by these various bodies, or by an implicit delegation, or even by an abdication of responsibility by these bodies, is immaterial. Although such factors might be relevant matters to be considered at sentencing, they may not excuse his responsibility.

4.45 In sum, the evidence establishes that DELALIĆ exercised superior authority over the Čelebići camp, as recognized by the detainees, by those working in the camp including by the Commander himself, by journalists, by the Fourth Corps, by the Supreme Command, by international organizations, and by DELALIĆ himself.

4.46 Although the Prosecution submits that the evidence directly showing DELALIĆ's authority over the camp is more than sufficient to establish that he was a superior authority, the Chamber may also wish to consider the general situation pertaining in the region at the time and the position and functions exercised by DELALIĆ at the time. These matters are dealt with in (c). below, and indicate that DELALIĆ's involvement in Čelebići are entirely consistent with his overall position and functions.

(c). The evidence in this case: DELALIĆ's control and influence in the Konjic region generally

4.47 The evidence of the general control and authority exercised by DELALIĆ in Konjic municipality and surrounding areas reinforces the evidence set out above relating to his particular control and authority in relation to Čelebići camp.

4.48 The evidence establishes that DELALIĆ returned to Konjic from Austria at the end of March or beginning of April 1992 (Exh. 99-5, 22 August 1996, p. 5). On his arrival, he immediately made an impression of being someone with the ability to contribute substantially to the defence of Konjic. He was well-to-do, had management experience and business connections, was committed to the "Bosnian cause", and was willing to put his services and even his own property at the disposal of that cause. (Divjak (T. 8646), Ruvić (T. 12502-12503), Kevrić (T. 11127), Hadžihusejnović (T. 11794), Džambasović (T. 12725-26)). This led to his gradual acquisition of authority and influence in the area.

4.49 The military role which DELALIĆ fulfilled immediately after his return to Konjic is evidenced by the Inda-Bau documents. The reliability of these documents has been challenged by the Defence. However, the information they contain is corroborated by a substantial body of other evidence, as indicated in other parts of this section.

4.50 One of these documents is a report signed by DELALIĆ, describing his early involvement in the war:

> "I have been in the war 24 hours a day since last March, having previously abandoned all my business abroad. Except for five days on a mission in Zagreb in May 1992, I have not moved from the area along the Igman-Pazarić-Konjic-Jablanica-Prozor-Gornji Vakuf line." (P. Exh. 124, pp. 1-2.)

4.51 Another of these documents is a War Veterans Association form, which appears to have been filled in by the accused himself (P. Exh. 147/a). Under the heading "Participation in preparing for the resistance", the form is filled in as follows: "Date of joining:

March 1992; Political organization: *War Presidency, Konjic Municipality*; Military organization: *OŠTO Konjic*".

4.52 Other evidence also points to the fact that DELALIĆ was part of the War Presidency of the Konjic municipality, as well as a member of the Armed Forces of Bosnia and Herzegovina, in particular the Territorial Defence Municipal Headquarters of Konjic (P. Exh. 124, pp.1-2). At this time the War Presidency was the governing body of the municipality with important functions including the duty to lead the "people's resistance" (T. 682). In Konjic, as in most municipalities, there was a close relationship between the War Presidency and the military authorities, and in fact, the military commanders were part of the War Presidency (T. 701, Exh. 99-1, p. 44).

4.53 Hadžibegović said in testimony that DELALIĆ "could only have been invited to attend a meeting of the presidency, but he certainly was not a member of that presidency" (T. 10233). It may well be true that DELALIĆ officially should not have been a member of the War Presidency. The evidence, however, from the head of the War Presidency and the document from October 1992 officially setting up the War Presidency, indicate that the regulations concerning the proper make up of the War Presidency were not implemented until well into the fall of 1992. (D. Exh. 144-Va6-1; T. 11898-11900).

4.54 In any event, whatever the law might have been, DELALIĆ considered himself a member of the War Presidency, as indicated both by the War Veteran's Association form quoted above, and his own statements made at the time of his interview with the Office of the Prosecutor. (P. Exh. 99-1, p. 43).

4.55 The seizure of the JNA military facility in Čelebići on 19 April 1992 was the first significant military operation that DELALIĆ was involved in. His involvement is indicated by one of the Inda-Bau documents, a report seized in Vienna bearing his signature (P. Exh. 144, p. 4).). It is also confirmed by a statement given by him to the Office of the Prosecutor, in which he describes himself as "the leader" of the group of 20-25 volunteers who carried out the operation (P. Exh. 99-5, 22 August 1996, pp. 13-17). (In his statement he also says that he was present at the War Presidency meeting which decided on the take-over of the Čelebići barracks under his supervision (Exh. 99-5, 22 August 1996, p. 15), and that the weapons which were seized during the operation were

transported to his house (rectius his sister's house in Ovčari) for their final distribution (*ibid.*, p. 17). (See also Vejzagić, T. 10866).) Some Defence witnesses testified that DELALIĆ had only a minor role in this operation (Kevrić (T. 11128-29, 11242-11243), Cerovac (T. 11535-11537, 11631-11632)), but this is contradicted by DELALIĆ's own admission that he was the leader.

4.56 DELALIĆ thereafter also participated in the military operations of Donje Selo and Bradina. (See P. Exh. 116, a video showing DELALIĆ during attack on Donje Selo directing others to fire). In his statement to the Office of the Prosecutor (Exh. 99-1, p. 20), DELALIĆ stated that his main task *"was to co-ordinate all these forces, these three different forces, with the War Presidency of the municipality"*.

4.57 The significance of DELALIĆ's role in the region even prior to his appointment as "Co-ordinator" is evidenced by the "special authorisation", dated 2 May 1992, signed jointly by Rusmir Hadžihusejnović, as President of the Konjic War Presidency, and Esad Ramić, as commander of the Konjic TO Headquarters. This document authorised DELALIĆ to negotiate and conclude contracts and agreements of great importance, *inter alia*, involving Croatian authorities and "all kinds of agreements on possible joint actions of troops from other areas and theatres of operation in our area and theatre of operation, and vice versa" (P. Exh. 99-7-4).

4.58 One of the signatories of this document, Rusmir Hadžihuseinović, testified that this last clause of the special authorisation had to be interpreted in the light of the preamble to the document, which contained the words "On the basis of the decision of the War Presidency of BiH on equipping, obtaining and distributing war equipment". He said that the document did not confer any kind of military powers or functions on DELALIĆ, and that the document as a whole was limited to the procurement and distribution of material and equipment. (T. 11809, 11877-11878.)

4.59 The Prosecution contends that this explanation seems hardly credible, in view of the plain language of the document, which refers clearly to "agreements on possible joint actions of troops". The witness Polutak interpreted these words as conferring on DELALIĆ a mandate "to narrow the gap and bridge

the differences between the HVO and the TO". DELALIĆ himself, in his statement given to the Office of the Prosecutor, admitted when explaining this clause that "in case that we were provided some military help, some reinforcement by the Croatian forces, ... I was supposed to find an agreement with them or negotiate with them the modalities" (P. Exh. 99-5, 23 August 1996, p. 16).

4.60 DELALIĆ's importance at the time before he was appointed "Co-ordinator" is further indicated by a mission he undertook to Zagreb between 5 and 10 May 1992. The mission, which concerned *inter alia* weapons supplies, is evidenced by three handwritten documents (dated 7, 8 and 9 May), which were among the Inda-Bau documents seized in Vienna (P. Exh. 119, 121, 123). The signature on P. Exh. 119, which was signed as "commander", was recognized by witness Kevrić as that of DELALIĆ (T. 11268-69).

4.61 During his stay in Zagreb, DELALIĆ gave an extensive interview to the Croatian television talk-show, "Slikom na sliku". During this interview, he was presented as the commander of the TO of Konjic, and he behaved and was treated as an important military commander, making comments which went far beyond the limited capacity of a "logistician". (P. Exh. 116, footage 00.15.55-00.26.05, and the transcript of the video, document 116a, pp. 4-8) The Defence contends that presenting DELALIĆ as commander of the Konjic TO was a mistake by the television journalist, and insists that DELALIĆ was simply a civilian with some logistical tasks. However, the fact that he was presented as commander of the Konjic TO, the fact that he himself did not correct the journalist, and the nature of the matters about which he spoke on the programme, suggest that whether or not he was formally the commander of the TO of Konjic, he was at the very least a person of recognised authority and power already at that time.

4.62 In fact, whether or not he was formally the commander of the TO of Konjic, his authority and power were in reality more entrenched than that of most TO commanders of Konjic, whose control was weakened because they were frenquently replaced in that period (Hadžihusejnović (T. 11791)). During this time, Konjic also had a great deal of autonomy, because the district staff in Mostar, which was supposed to be their superior staff, was unable to exist in 1992, so the only supervision was that

exercised by the Supreme Command of Sarajevo. (Vejzagić (T. 10985)).

4.63 It is not surprising that in such a fluid situation, in which well-developed structures were lacking, a strong and influential personality like DELALIĆ could have acquired such a significant degree of authority to make him a leading commander in Konjic.

4.64 DELALIĆ was in fact officially appointed "coordinator of the Konjic municipality defence forces" on 18 May 1992. The instrument of appointment, bearing the signature of Rusmir Hadžihuseinović, the President of the War Presidency in Konjic, empowered DELALIĆ to "directly co-ordinate the work of the defence forces of the Konjic Municipality and the War Presidency." (P. Exh. 99-7-5; P. Exh. 99-1, p. 13 and P. Exh. 99-5, 23 August 1996, pp. 11-15).

4.65 The term "co-ordinator" is not a usual military function, and was created to deal with the special circumstances present in the Konjic municipality at that time. It was then that the military operations in the area were in the process of becoming organised, with tensions and differences existing between various bodies, including the HVO and the TO. Further adding to the lack of clear organisation in the area was the frequent changing of the TO commanders. (P. Exh. 99-5, 22 August 1996, pp. 42-43.)

4.66 Polutak testified that DELALIĆ had the task to "attempt to narrow the gap and bridge the differences between the HVO and the TO" even before being appointed as the Co-ordinator (T. 12878). Tahirović, although trying to minimize his previous statement on this topic, substantially confirmed that the need to settle the "misunderstandings" between TO and HVO (and MUP) was the reason for DELALIĆ's appointment as Co-ordinator, especially due to the "inferior position" of the Konjic TO (T. 11433-11436).

4.67 Hadžihusejnović confirmed this construction, although he sought to characterise this "coordination" as being at the trivial level of avoiding some "waste of time" in the contacts between civilian and military authorities (T. 11789). Nevertheless, he acknowledged that the position of Co-ordinator was created in order to resolve a problem stemming from the fact that the HVO, TO and MUP had their own separate command structures. He thereby admitted that the Joint Command was not in a position to

find the proper solution, and that only DELALIĆ could settle it, providing "greater efficiency" to the defence organization.

4.68 Both defence witnesses Hadžibegović and Vejzagić acknowledged that the position of the "Co-ordinator" was an exceptional and unregulated position. ("*There are no provisions for a coordinator, but there is nothing that prevents it*" (T. 10220-10221); "*it was a specific position in this case for the Konjic region, ... I do not know of any other case*" (T. 10894). Džumhur (T. 12265) and Hadžihusejnović (T. 11787-88) added that DELALIĆ was appointed to the position because of his personal qualities.

4.69 Defence expert witness Hadžibegović confirmed that *"the position of coordinator that Mr DELALIĆ was appointed to is something that was created out of a desperate situation that the town found itself in"*, adding that such a peculiar coordination becomes necessary *"in conditions when the regular institutions have broken down"* (T. 10220-10221).

4.70 Because of the exceptional nature of the situation and of the creation of this position, it is to be expected that there were no clearly defined formal powers and responsibilities of the "Co-ordinator". Rather, DELALIĆ's powers and authority were those he exercised in practice, including those which he assumed for himself under title of his position.

4.71 Dr. James Gow expressed the view in his testimony that the "Co-ordinator" in practice exercised functions akin to those of a commander:

> "... coordinator is not -- it is not a normal position and it is not a command function in a normal sense, but to be a coordinator would require some of the qualities that would be present in an officer commanding, that is to say full knowledge of what is going on, and to have the authority to get things done, but not in the terms of a formal regularised command structure which has, for example, the back-up of military law behind it to penalise those who disobey. I think it is a degree of personal authority. My impression is that when Mr Delalic is made commander in the area, it is precisely because, de facto, he has already been providing that role

> whilst designated coordinator but the term, 'coordinator', is in part because of the ad hoc nature of the situation, that it has been improvised and in part because of the relationship with the HVO, it simply would not have been acceptable to appoint him and name him as commander because of the relationship between the Croats and the Muslims in the area as they were trying to coordinate joint defence operations. That is the impression that I have." (T. 9815-9816.)

4.72 For instance, the evidence establishes that in the position of "Co-ordinator", DELALIĆ had the authority to sign orders. A few days after the take-over of Bradina, DELALIĆ (signing as "Co-ordinator") and the TO and HVO Commanders jointly signed an order for the re-opening of the Konjic railway (P. Exh. 127). This Exhibit, one of the documents seized in Vienna at the business premises of DELALIĆ, has been authenticated by Sultanić (T. 11022-11023) and by Vejzagić (T. 10549-10550).

4.73 Defence witnesses Hadžihusejnović (T. 11795), Vejzagić (T. 10549-52), Sultanić (T. 11020-23) and Cerovac (T. 11574) tried to minimize the meaning of DELALIĆ's signature on this order. Vejzagic stated that he signed only "as a witness", but he had to acknowledge that the signature of DELALIĆ on this order was the one needed in order "to have it effected quicker" (T. 10552).

4.74 Vejzagić was shown two more orders signed by DELALIĆ as Co-ordinator (P. Exh. 210 and 211), which are also signed by the commanders of TO and HVO. This witness testified that *"the coordinator is again a witness there .... he has to report to the municipal authorities that the commanders have reached this agreement"* (T. 10891). However, on the face of the document there is nothing to distinuish the status of DELALIĆ from that of the other signatories, and Vejzagić himself spoke of the "necessity" for such a signature in order to give effectiveness to any joint TO-HVO order (T. 10895). The evidence shows that the orders signed by DELALIĆ were not limited to orders concerning logistic or civilian matters but also included orders of a purely military nature such as the transfer and change of duties of a military officer. (T. 10889).

4.75 It is also apparent that DELALIĆ carried on his task of "Co-ordinator" with little or no direction or supervision. Even Hadžihusejnović himself, who signed the appointment, could not indicate who exactly, if anyone, was the superior of the Co-ordinator, and to whom exactly he was supposed to report (T. 11880-11883).

4.76 The evidence further indicates that as "Co-ordinator", DELALIĆ had both military and civilian functions. In this regard, it may be noted that military and civilian duties were inextricably linked in this war time situation. For example, while the War Presidency did not direct operational matters such as combat operations, the War Presidency played an important role in military matters and could select military commanders (though the selection should then be confirmed by the military authorities in Sarjajevo) and the War Presidency issued orders to military bodies concerning certain matters. (D. Exh. 144, V-a/12, 15, 16). Conversely, civilian bodies such as the civilian police were in times of war considered part of the armed forces and were sometimes subordinated to the local TO. (Calic, T. 687).

4.77 Confirming both the link between military and civilian tasks generally and with respect to DELALIĆ's duties in particular, General Arif Pašalić testified that:

> "In the war it is difficult to separate the military from the civilian activities ... As far as I know, Zejnil DELALIĆ coordinated both civilian and military structures that existed in Konjic at the time." (T. 8071)

At another point, Pašalić reiterated "at the time the situation was such that there was no clear-cut division between military and civilian structures." (T. 8123).

4.78 In this regard, it may also be noted that the videotapes in evidence from this period show DELALIĆ wearing a uniform, clearly suggesting a military function, and his uniform contains both the insignia of both the TO and the HVO. (See, for example, P. Exh. 116 and 116a, p. 4-8)

4.79 The general confusion between civilian and military matters in the area at that time is indicated also by other witnesses (Sultanić, Hadžihusejnović, Cerovac), who stated that "there was not a clear

definition as to who was a soldier and who was not" (T. 11068) (T. 11067-11068, 11933-11934, 11633).

4.80 The Defence have attempted to show through various witnesses that DELALIĆ, at the time he was Co-ordinator, had nothing to do with combat activites or units. However, by his own admission DELALIĆ's title was Co-ordinator of Combat Activities. In his interview with the Office of the Prosecutor (P. Exh. 99-5, 23 August 1996, p. 32), when discussing the report of the Military Investigation Commission (P. Exh. 162) which is addressed to the Co-ordinator of Combat Activities, DELALIĆ admitted that this report was addressed to him. Even Defence witnesses concede that during the Oganj operation at the end of June until late in July, DELALIĆ was both a coordinator and a member of the TO. (Tahirović T. 11587-11588, 11660).

4.81 Immediately after his appointment as Co-ordinator, DELALIĆ was involved in the take-over of Bradina on 25 and 26 May 1992. In the statement he gave to the Office of the Prosecutor (Exh. 99-1, p. 20), DELALIĆ stated that his main task "*was to co-ordinate all these forces, these three different forces, with the War Presidency of the municipality*". Moreover, about his presence in the field during the attack he added: "*At that time I was in Konjic, and during these two days I went to different mountains or hills, from which I could see and observe the actions*" (*ibid*, p. 22).

4.82 Some Defence witnesses tried to separate DELALIĆ from the Bradina operation, but most of them simply said they did not know about his involvement (for example, Kevrić, T. 11244). Those who positively denied his involvement are Tahirović and Hadžihusejnović, but their credibility on this issue is undermined by their claim that DELALIĆ was not even in Konjic at the time of the operation (T. 11366-11367, and 11775-11776). This claim is contradicted not only by the statement of the accused himself, but also by Witness P (T. 4491-4497), and by Cerovac and Jusufbegović (T. 11618, 11714, 11948, 11979), who testified that DELALIĆ was in his house in Konjic during the night between 26 and 27 May, where he received Witness P immediately after his arrest in Bradina.

4.83 DELALIĆ's presence and speech at the send-off ceremony of the Gajret unit on or about 15 June 1992 also indicates his important military role. Video footage of the occasion (P. Exh. 116,

00:58:07-01:01:14, and the transcript of the video, document 116a, pp. 14-15) shows how a soldier, Padalović, "reported" to DELALIĆ in a manner consistent with him being a commander, then DELALIĆ addressing a brief speech to the soldiers, then DELALIĆ saying "Captain, take over the command" to the TO Commander Esad Ramić, and Ramić answering "Yes, Sir" (T. 10898-10900). All this indicates that DELALIĆ acted on this occasion as the real military commander of the area, even having authority over the TO Commander Ramić himself. The claim of some Defence witnesses suggesting that everyone, including DELALIĆ, was in effect pretending he was a commander (T. 10901, 11157, 11552, 11812, 12592) is simply not credible.

4.84 DELALIĆ also gave an interview to the journalist Assa'ad Harraz, who subsequently wrote two articles which appeared in the newspaper "Asharq Al-Awsat" on 24 and 25 July 1992 (P. Exh. 167 and 168). Assa'ad Harraz testified that his visit in Konjic, both to Čelebići and the front line, took place around July 1992 (T. 5810). Due to the difference of alphabet between Bosnian and Arabic, he did not remember nor pronounce exactly the name of DELALIĆ during his testimony. The witness called him "Zejnil Din", but recognized the accused as the person appearing in the photograph of DELALIĆ which was published with one of the articles (P. Exh. 168). He testified that "The way he [DELALIĆ] was introduced to me, he was the commander of the area, he was the general military commander of the area" (T. 5816; see also T. 5836: "*He was introduced to us that way by the people who accompanied us and who was responsible in general for the area. We were told he was the commander of the area.*").

4.85 Duracić, who was with DELALIĆ at Vranjske Stijene (T. 12596), suggested that DELALIĆ was interviewed on that occasion in the capacity of a mere "foot soldier" (T. 12599-600, 12619-24). However, when asked, this witness could give no explanation why international journalists would wish to speak with a mere "foot soldier". The suggestion does not seem credible, and is inconsistent with a specific order issued on 21 May 1992 by the President of War Presidency Hadžihusejnović (the same persom who addressed the journalists to DELALIĆ), which established a very rigid discipline for any contact with the media (Exh. D144-A5a-8/1).

4.86 Witness D also testified that when he tried to call DELALIĆ on the telephone during this period, he would be told that "the commander" was out (T. 5218).

4.87 DELALIĆ participated-with the code-name "Oganj"-in operation Borci, which took place between the end of June and the beginning of August 1992: DELALIĆ is represented during this military operation, at the front line of Vranjske Stijene, in the videotape Prosecution Exhibit 116.

4.88 Again, the testimony of Defence witnesses seeking to minimize to the role of DELALIĆ in operation Borci, by stating that he was only a simple, ordinary soldier with some logistic tasks, is simply inconsistent with the overall body of evidence (Vejzagić (T. 10902-10903) Kevrić (T. 11163-11164), Tahirović (T. 11441, and 11487), Cerovac (T. 11587-11589), Duracic (T. 12597)).

4.89 On 11 July 1992, Sefer Halilović, chief of the Armed Forces Main Staff, appointed DELALIĆ as commander of Tactical Group 1 (TG1) "for the area of Hadžići, Pazarić, Konjic and Jablanica" on 11 July 1992 (P. Exh. 99-7-9 and P. Exh. 118). By another order, issued by Halilović on 27 July 1992, DELALIĆ's authority was extended to include the areas of Drežnica, Prozor and Igman. The troops over which he had command were explicitly designated as "all formations of the Armed Forces of the Republic of Bosnia and Herzegovina in the area" (Exh. 99-7-7). This would have included those operating in the Čelebići camp and their superiors.

The DELALIĆ defence contends that the first order never became effective, that the second order was meant not to expand his powers but merely to re-affrim his appointment as Tactical Group 1 commander and that the express delegation of authority over all troops in the geographic area is not correct. This argument is contrary to the clear and plain language of the orders, logic and common sense. In this regard it should be noted that that the second order does not even make reference to Tactical Group 1, and therefore to argue that this order was his official appointment is extraordinary.

As for the argument that it would be impossible for DELALIĆ to become commander of all troops since the troops in the area consisted of soldiers not under the command of the Supreme Command such as the HVO soldiers, the Prosecution points out

that a common sense reading of the term would of course indicate that the order refers to all troops under the authority of the Supreme Command. Further it should be pointed out that because the intermediate command level which Konjic should have been subordinate to (the Mostar District Command) was not functioning, because of the obvious demands on the Supreme Command, because of communication difficulties, and because the lifting of the seige of Sarajevo (the goal of Tactical Group 1) was the Army's highest priority, it would have been logical and even necessary for the Supreme Command to have an intermediate authority over such municipal TO s as Konjic. In this regard, it can further be noted that as the Fourth Corps was established as an intermediate authority, Tactical Group 1 was disbanded. See Pasalic (T. 8061-8064, 8104-8105).

That DELALIĆ did have the authority over various Municipal bodies throughout his geographical area of responsibility is clearly shown by the orders he issued. A number of these have been cited above (including see para 4.30).

Another is Prosecution Exhibit 224 dated 14th November 1992 in which DELALIĆ as Tactical Group 1 Commander gives an order to Konjic Municipal Defence Headquarters relating to strengthening the intelligence service. The Defence has again tried to minimize the import of the document by arguments including that it is yet another exceptional transmission order (despite the fact that there is no preamble saying that it is being done pursuant to any order of the Supreme Command), but again the explanations are not consistent with common sense or the plain language of the document, as was noted by the Chamber at the time." (T.10947).

Another document, Defence Exhibit 169/1, also appears to counter the Defence suggestion that DELALIĆ did not have authority over the Konjic TO and that DELALIĆ's 11 July appointment was never effective. In this document dated 3 August 1992, TO Commander Ramic formally appoints Kevric as assistant commander for logistics, and he states he is doing so "On basis of the appointments made by the Main Staff of the Army of Bosnia and Herzegovina No. 02/349-343 dated 11th July 1992 and Orders of the Bosnia and Herzegovina Armed Forces ("Official Gazette of RBH" No.4/92). " This reference number, which are supposed to be unique, (No. 02/349-343) is that of

DELALIC's 11 July appointment, and would suggest that Ramić was relying on that order in making the formal appointment of Kevrić.

4.90 A number of Defence witnesses testified about the lack of regulations and the totally unclear situation as to which troops were at the disposal of TG1 when DELALIĆ was commander: Ruvić (T. 12503-04), Vejzagić (T. 10580-81, 10966) Divjak (T. 8460), Salihamidžić (T. 12180-81). The witnesses are thus unable to give a definative description of the authority of DELALIĆ during the time he was a tactical group commander.

4.91 This vagueness and lack of regulation is consistent with the position of the commander of TG1 being a formal title which was to be vested with the authority and control which DELALIĆ had already exerted.

4.92 This is further confirmed by the fact that, even without any soldiers at his disposal, at a given moment DELALIĆ, in his formal position of commander of TG1, "*was given additional assignments within the temporary command of Group Jug [South]*" (Pašalić, T. 8295). See also Dzambasovic (T. 12693-12694 (military officer including DELALIĆ can always be given given tasks in addition to their regular duties and officer is obligated to perform them"); Polutak (T. 12780)(Supreme Command can "task Tactical group wtih other tasks than its primary combat tasks.")

Thus, one could accept the contention that DELALIĆ did not automatically have authority over Čelebići simply by virture of his position as Tactical Group Commander, and still find that DELALIĆ was an authority over Čelebići. DELALIĆ may well have had such authority by virture of delegation from the Supreme Command. In this regard, it may be noted that the Defence witnesses admitted that they were not in a position to know the assignments given Delalic by the Supreme Command, and indeed, they did not know about the August orders from DELALIĆ regarding Čelebići, or his contacts with the Red Cross, or his interview with journalists about Čelebići. Sultanić (T.11108-11109); Kevrić (T. 11287); Pilica (T. 13017-13018).

4.93 At the very least, the testimony about the unclear and vague organization of TG1, shows that the extent of DELALIĆ's authority was not clearly and formally defined, and that this was a

matter of practice rather than of theory. In this respect, the position was the same when he was commander of TG1 to what it was when he was "Co-ordinator". Under title of his position, and by virtue of his considerable personal influence and authority, DELALIĆ was capable of exerting considerable control and influence in the region, including in relation to Čelebići camp.

(d). Conclusion

4.94 Taken as a whole, the evidence establishes beyond a reasonable doubt that at all material times DELALIĆ was a "superior" of the perpetrators of the crimes in Čelebići camp. (See further paragraphs 4.95-4.134 below.)

(ii) The accused knew or had reason to know of the crimes

4.95 Article 7(3) requires that the superior "knew" or "had reason to know" of the commission of the crimes.

4.96 The term "knew" means either:

(a) that the superior had actual knowledge that a subordinate was about to commit or had committed the crimes in question, or

(b) that the totality of the circumstances establishes that the superior must have known that the subordinate was about to commit or had committed those crimes.

For example, the public notoriety, or the widespread, systematic or continuing nature of the violations would give rise to a presumption that the superior must have known of the violations. (See, ICRC Commentary on Protocol I, pp. 1015-1016, para. 3548; and, *Yamashita v. U.S.*, LRTWC, Vol. IV, pp. 85, 88, 94.)

4.97 The term "had reason to know" imposes an objective standard of knowledge. It means the superior has sufficient relevant information to enable him to conclude under the circumstances at the time that his subordinates are committing or are about to commit a crime. (See, *United States v. Pohl*, V Trials of War

Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10, p. 1053.)

4.98 The term "had reason to know" also imposes liability for wanton disregard of "objective facts" within a superior's "actual possession", and for wanton disregard of facts that are not in the superior's actual possession by reason of the superior's dereliction of the duty to supervise subordinates properly. In particular, superiors have a duty to require subordinates to report on their actions, and to apprise the superior of occurrences within the superior's area of authority or operations. The superior's duty includes a duty to establish an effective reporting system. (See, *The Trial of Wilhelm List and Others*, ("*Hostages Trial*"), LRTWC, Vol. VIII, pp. 70-71; *The Government Commissioner of the General Tribunal for the French Zone of Occupation in Germany v. Directors of the Roechling Enterprises*, XIV Trials of War Criminals Before the Nuremberg Military Tribunals, p. 1088; *Yamashita v. U.S.*, LRTWC, Vol. IV, p. 35; The Tokyo Judgment, International Military Tribunal for the Far East (29 April 1946-12 November 1948), Vol. 1, pp. 448-50, 457-58, 461-63.)

4.99 Thus, the requisite knowledge of the superior may be established by:

(a) actual knowledge established through direct evidence; or,

(b) actual knowledge established through circumstantial evidence, with a presumption of knowledge where the crimes of subordinates are a matter of public notoriety, are numerous, occur over a prolonged period, or in a wide geographical area; or,

(c) wanton disregard of, or failure to obtain, information of a general nature within the reasonable access of a commander indicating the likelihood of actual or prospective criminal conduct on the part of his subordinates.

4.100 In the present case, the accused DELALIĆ admitted that he was made aware of problems in Čelebići by early June 1992, when he talked with a group of people including MUCIĆ in a hotel and suggested the name of MUCIĆ as prison commander (P. Exh. 99-5, 23 August 1996, p. 26).

4.101 The Military Investigative Commission at Čelebići camp completed its report in the second half of June 1992. The report was addressed, *inter alia*, to DELALIĆ as the "Co-ordinator of combat activities". (Exh. 162 and T. 5231). The report stated, *inter alia*:

> "Problems have become increasingly obvious since the establishment of the headquarters command and the appointment of individuals responsible for guarding the facilities and prisoners in the Čelebići barracks ...
>
> Detainees were maltreated and physically abused by certain guards from the moment they were brought in until the time their statement was taken i.e., until their interview was conducted ...
>
> We do not know whether this was the reason why certain guards and other people who were allowed into the barracks compound conducted private investigations while Commission members were absent. We do know that detainees were subjected to extremely inhumane forms of abuse during these investigations. They were physically maltreated and beaten black and blue and later had to be transferred to the prison hospital ...
>
> The prisoners were brought to the interviews with their hands tied behind their backs. During the interviews, prisoners could not concentrate on the questions they were asked, because the pain caused their hands being tied too tight was stronger and more distracting than the questions asked by members of the Military Investigating Commission. Commission members tried to prevent such undesirable situations by reaching agreement with the guard commander. He had to explain why this was being done and stop the prisoners being tied up like this when they were brought in. However, his reaction was sarcastic and contemptuous, and he said that he was the one who decided how the slaves should be treated. Detainees in this category were lined up against a concrete wall and tied with a rope. When they went to be interviewed, a burst from an

> automatic rifle was always fired above their heads ... Some detainees could be seen through this glass from the group waiting to be interviewed. On those occasions, security personnel would approach and beat them in front of the detainees who were being interviewed, other people who were in the compound at that moment and residents from outside the barracks. This procedure was repeated during the interviews with a group of female detainees ...
>
> However, in the last ten days, almost every dawn brought another dead detainee. Were the deaths natural or violent? We leave the comniission for burial and identification of the dead to verify this and issue an official report ...
>
> We learned from the female detainees that each of them had been taken out during the night, but they did not want to say what had actually happened to them. It could be heard from some members of security that they were sexually abused ...
>
> Commission members also interviewed persons arrested outside the combat zone; ... Persons who were arrested under such circumstances stayed in detention even after it had been established that they had been detained for no reason and received the same treatment as persons captured in the combat zone ...
>
> Because self-appointed judges have appeared, any further investigation is pointless until the problems have been solved "

4.102 In his interview with the Office of the Prosecutor, DELALIĆ denied having received this report, but acknowledged that it appears to be addressed to him (Exh. 99-5, 23 Aug., pg. 32-33). On the evidence, there can be no reasonable doubt that DELALIĆ must have either received this report, or have been aware of its existence, given that DELALIĆ was the person actively involved in the establishment of the Commission, that he was involved on an ongoing basis with the work of the Commission by deciding upon its recommendations concerning the release of prisoners

(see paragraphs 4.20-4.30 above), and given that the report of the Commission was accompanied by the resignation of all of the Commission's members (see, Witness D, T. 5229-5230).

4.103 When Ms. Grubač came to request that DELALIĆ release her husband from the prison (21 July 1992), she also told him that he would die if he remained (T. 6192-6193).

4.104 Similarly, the note handwritten by DELALIĆ on the release forms of the two doctors clearly shows that DELALIĆ was quite aware of the presence of "injured prisoners" in Čelebići, which required the presence there of the two doctors on a daily basis. The report on the horrific conditions at Čelebići was also addressed to DELALIĆ. (P. Ex. 162).

4.105 When DELALIĆ was interviewed by Bosnian television on or about the beginning of August 1992 (T. 13695) about the prison, he was specifically asked about the widespread reports in the press that conditions were terrible (P. Ex. 116).

4.106 Subsequently, in August 1992, DELALIĆ twice accompanied ICRC representatives when they visited the camp (Exh. 99-1, p. 26), and he received a report from the ICRC in which DELIĆ was mentioned for mistreating prisoners (*ibid.*, pp. 28-29). DELALIĆ stated to the Office of the Prosecutor that he did not intervene, because he did not consider the matter very important (*ibid.*, p. 29).

4.107 Witness T testified that on one occasion MUCIĆ told him that he had spoken to Zejnil DELALIĆ about the conditions of the prisoners, and that MUCIĆ told DELALIĆ that there were a number of old men, children and innocent people amongst them (T. 6719-6720).

4.108 Witness T also testified that there were many stories going around the residents of Konjic that prisoners in the camp were being mistreated, and these stories were also broadcast over the Serb radio and were of general knowledge; and that even witness T's father told him to leave the camp because of the stories that he had heard (T. 6715-6716).

4.109 At one point, MUCIĆ asked Witness P to prepare a list of prisoners with serious health problems. Witness P drafted the

list, and was present with MUCIĆ when MUCIĆ took the list to DELALIĆ's house (T. 4584-85).

4.110 DELALIĆ admitted that he saw 7-8 prisoners when he visited the infirmary at Čelebići. Some of them were ill and some of them had broken limbs. He claims to have accepted the explanation that these injuries happened during the capture, apparently without even a cursory investigation (Exh. 99-1, pp. 50-51).

4.111 On one occasion, Witness D saw Jasna Džumhur and objected to her taking control of dead bodies without authority. Ms. Džumhur assured Witness D that she had informed DELALIĆ "of everything" (T. 5222).

4.112 Witness D testified to having spoken on one occasion to the typist in the camp office, who complained that prisoners were being mistreated at night and that women were being raped. Witness D told Pozder that she should inform DELALIĆ and Pozder replied that she knew DELALIĆ and that she would convey the information to him (T. 5219, 5314).

4.113 This body of evidence established beyond reasonable doubt that DELALIĆ knew or must have known, or at the very least, DELALIĆ had information from which he could conclude under the circumstances that crimes were about to be or had been committed in Čelebići camp by guards or those responsible for the administration of the camp, or that DELALIĆ would have had such information if he had supervised the camp properly, including by establishing an effective system of reporting.

(iii) The accused failed to take necessary or reasonable measures to prevent or punish

4.114 Article 7(3) of the Statute requires superiors to take "necessary and reasonable steps to prevent or punish" the perpetrators of crimes. Additional Protocol I lists the following measures:

— "prevent or repress" and, "where necessary, suppress and report to the competent authorities breaches of [international humanitarian law] (Articles 86 and 87);

— "ensure that members of the armed forces ... are aware of their obligations under [international humanitarian law]" (Article 87);

— "to be constantly informed of the way in which their subordinates carry out the tasks entrusted them, and to take the necessary measures for this purpose" (ICRC Commentary to Protocol I, p. 1022);

— "impose discipline to a sufficient degree ... to enforce compliance with [international humanitarian law]" (ICRC Commentary to Protocol I, p. 1018);

— "initiate such steps as are necessary to prevent ... violations of [international humanitarian law], and, where appropriate, ... initiate disciplinary or penal action against violators thereof" (Article 87);

— "at any level, informing superior officers of what is taking place ..., drawing up a report in the case of a breach, or intervening with a view to preventing a breach from being committed, proposing a sanction to a superior who has disciplinary power, or – in the case of someone who holds such power himself – exercising it, within the limits of his competence, and finally, remitting the case to the judicial authority where necessary with such factual evidence as it was possible to find ... [bearing in mind that] it is not a matter of transferring to military commanders the competence and responsibilities which are those of the judicial authorities (ICRC Commentary to Protocol I, p. 1023); and,

— "responsible for restoring and ensuring public order and safety as far as possible, and shall take all measures in his power to achieve this" (ICRC Commentary to Protocol I, p. 1020).

4.115 Judicial decisions affirm that a superior must take measures at his or her disposal and that are within his or her power and authority to prevent or punish.

— *In re Yamashita*, 327 U.S. 1, 15 (1945) (finding that a commander has a "duty to take such appropriate measures as

are within his power to control the troops under his command").

— *Medical Trial*, The Trials of War Criminals before the Nuernberg Military Tribunals, Volume II, p. 212 ("the law of war imposes on a military officer in a position of command an affirmative duty to take such steps as are within his power").

4.116 Similar views are found in the leading literature.

— William H. Parks, "Command Responsibility for War Crimes", 62 *Military Law Review*, pp. 84, 102 (a commander "will be expected to take such measures as are within his physical power under the circumstances to prevent or stop war crimes ... It is the commander's responsibility to take all measures possible to prevent the commission of war crimes by subordinates, lack of administrative control ... does not foreclose or preclude use of other measures"; "In order to find a commander responsible, the acts charged must have been committed by troops under his command. Normally this refers to troops of his unit or of another unit over which he has both operational and administrative control; but absent either he may still be responsible if he otherwise had a duty and the means to control those troops and failed to do so").

4.117 In the *German High Command Trial*, it was held that a commander may become liable for acts performed within his or her sphere of command, even where these were performed pursuant to criminal orders passed down independently of that commander. In these circumstances, the commander must still take all steps within his or her power to prevent the violations from occurring:

> "The choices which he has for opposition in this case are few: (1) he can issue an order countermanding the order; (2) he can resign; (3) he can sabotage the enforcement of the order within a somewhat limited sphere. ... Under basic principles of command authority and responsibility, an officer who merely stands by while his subordinates execute a criminal order of his superiors which he knows is criminal, violates a moral obligation under

> International Law. By doing nothing he cannot wash his hands of international responsibility."

(*Trial of Wilhelm von Leeb and Thirteen Others*, United States Military Tribunal (1948), (*The German High Command Trial*), Law Reports of Trials of War Criminals, Volume XII, pp. 74-75).

4.118 In view of the authority, control and influence that DELALIĆ exercised in the Konjic region at the time, as well as his direct authority with respect to the camp and the camp commander, there would have been a wide range of measures that DELALIĆ would have been in a position to undertake. The evidence above indicates that he would have been in a position to intervene directly in the operation of the camp, and use his authority and influence to take at least the following steps:

(a) initiating appropriate forms of immediate preventative action and constraining measures;

(b) conducting *bone fide* investigations and prosecutions, or transferring matters to the relevant national authorities;

(c) discharging, removing, or demoting the perpetrators (including MUCIĆ);

(d) devising and implementing internal policies to ensure that violations of international humanitarian law were prevented, and providing clear orders, instructions and training in this regard;

(e) establishing proper reporting systems;

(f) registering any complaints or reports of the unlawful activities to higher military or other authorities;

(g) addressing these matters internally, making interventions, or offering recommendations for their prevention and punishment;

(h) using his influential position to direct appropriate policy and practise, or taking persuasive action;

(i) publicly recording condemnation of the illegal activities;

(j) fully co-operating with relevant external bodies and organisations; and,

(k) resigning from his positions.

4.119 Even if DELALIĆ's authority and control over the camp as a whole and the camp commander is not accepted, and even if the Defence's evidence and arguments are supported on this point, he certainly had sufficient authority in respect of the camp, including the authority to classify and release the detainees, as is specifically demonstrated by the evidence referred to in paragraphs 4.20-4.30 above. As a result, *at the very least* it is abundantly clear that DELALIĆ could have:

(a) issued orders and instructions to the camp commander and guards to properly and expeditiously determine the detainees' status and ensure that they were treated humanely in the interim in accordance with the provisions of international humanitarian law, especially in situations when they were being mistreated;

(b) issued orders and instructions to the camp commander and guards to release detainees that were unlawfully confined;

(c) used his position to make recommendations to improve, and to influence, policy with respect to the camp;

(d) registered complaints or reports to other or higher military or other authorities;

(e) demanded further information about the situation in the camp;

(f) publicly recorded condemnation of the illegal activities;

(g) resigned from his positions.

The Prosecutor submits that as DELALIĆ was able to take at least these steps, he must have been able to initiate further measures. In particular, it would be unreasonable to suggest that he could not have intervened to prevent violations being committed against deatinees when he was able to classify and release them. In any event, the evidence listed above shows that

he formally possessed more extensive powers, and assumed and exerted authority, in respect of the camp and over MUCIĆ.

4.120 It is not necessary to prove that DELALIĆ could have done all of these things. For him to criminally liable, it is sufficient that he could have done any one or more of them, and failed to do so. (See paragraphs 4.114-4.118 above.)

4.121 In fact, DELALIĆ failed to do *any* of these things mentioned paras 4.96 and 4.97.

4.122 In particular, he failed to take the following measures.

(a) DELALIĆ was centrally involved in transforming the Čelebići barracks into a "prison for Serbs" and in the military operations in which persons were captured and sent to the Čelebići camp (see paragraphs 4.31, 4.55-4.56 above). Having established the camp as a prison, and been involved in sending persons there, DELALIĆ had the responsibility to ensure that the conditions at the camp did not violate international humanitarian law, or would be detected and punished if they did.

(b) DELALIĆ was instrumental in the appointment of MUCIĆ as camp Commander. (see, for example, DELALIĆ's interview with the Office of the Prosecutor on 22 August 1996, P. Exh. 99-5, pp. 44-45). One witness testified that MUCIĆ had admitted to him that he felt indebted to DELALIĆ for previous assistance that DELALIĆ had given him (Dr. Grubac, T. 6017-6018). However, there is no evidence that DELALIĆ ever used his control and influence over MUCIĆ to intervene with respect to the crimes being committed in the camp.

(c) DELALIĆ was the leading actor in the establishment and functioning of the Miliary Investigative Commission in the camp, and determined how the Commission was to categorise the prisoners in the camp (see paragraphs 4.20-4.30 above). However, there is no evidence to show that he discharged the concomitant responsibility to ensure that the Commission's work was properly carried out and that the provisions of international humanitarian law were upheld in respect of the detainees. Furthermore, there is no evidence that DELALIĆ ever acted on the Commission's report,

which complained of prisoner abuses in the camp. DELALIĆ claims not to have received the report. Even if this claim could be believed, his failure to enquire as to the results of the Commission's work would constitute a dereliction of his duty. Similarly, DELALIĆ failed to ensure that his August order to MUCIĆ concerning classification was carried out fully and appropriately.)

(d) Similarly, after receiving a report from the ICRC complaining of abuses in the camp, DELALIĆ failed to take any action, stating that he did "not consider it very important" (see paragraph 4.106 above).

(e) DELALIĆ was able to issue orders in the Konjic region and in respect of the camp as indicated above in paragraph 4.30, but he never ordered that the offences be prevented or punished, or at the very least, that the detainees be treated humanely while they were being classified.

(f) The evidence also indicates that DELALIĆ could secure the releases of persons (see for example paragraph 4.30 above), but be never sought to use this authority to obtain the releases of those detainees who were unlawfully confined, or being treated inhumanely.

(g) The evidence shows that DELALIĆ could report to higher authorities (see for exaxmple paragraphs 4.30 above), but he never used these channels to complain about the conditions in the camp and to make recommendations. He also never publicly complained in any of his interviews about the abuses occurring in the camp.

(h) Finally, in the face of the violations that were occurring in the camp, he never resigned from any of his positions.

(iv) Conclusion

4.123 The evidence establishes beyond a reasonable doubt that DELALIĆ is responsible as a "superior" under Article 7(3) of the Statute for the crimes that were committed in Čelebići camp.

4.124 The evidence indicates that DELALIĆ had direct authority over the camp and the camp commander as a result of formal and *de*

facto forms of command and control. It is immaterial that no official instrument can be identified specifically conferring on DELALIĆ formal responsibility for them. During this period, persons often carried out functions, including command functions, without formal appointment orders. See for example Kevric (T. 11226-11227). From the evidence it is also apparent that the situation in the region at the time was fluid. No-one can be identified as having been entrusted with specific formal authority over the camp commander and the camp. Nor can the formal limits of DELALIĆ's authority as "Co-ordinator" and commander of TG1 be identified with any great precision. In the circumstances as they existed in that place at that time, the authority of DELALIĆ was that which he exercised, or could have exercised, formally and in practice. The evidence shows that DELALIĆ formally and in practice did use his authority to control affairs in the camp and the camp commander in a number of ways, and undoubtedly could also have intervened in other ways. In particular, he was able to issue a direct order to the camp commander, and he received reports from the camp commander on prisoners proposed for release, on which he then took a decision. That he may been been delegated this authority, from the TO, War Presidency, the Supreme Command or a combination, is immaterial, as is the fact that persons in these entitities may have shared responsibility. Ultimately, for the purposes of Article 7(3), DELALIĆ must be identified as a "superior" of the camp commander.

4.125 DELALIĆ is thus criminally responsible for his inaction in much the same way as those who were convicted in trials such as *The Trial of Wilhelm List and Others* on the following grounds: "The reports made to defendant List ... charge him with notice of the unlawful killings ... Not once did he condemn such unlawful acts. Nor did he call to account those responsible for these inhumane and barbarous acts. His failure to terminate these unlawful killings and to take adequate steps to prevent their reoccurence, constitutes a serious breach of duty and imposes criminal responsibility" (*The Trial of Wilhelm List and Others*, United States Military Tribunal (1948), (*Hostages Trial*), Law Reports of the Trials of War Criminals, Volume VIII, p. 71).

4.126 However, even if he is not characterised as a "superior" of the camp commander, and in a position to control him and the other perpetrators, DELALIĆ would still have superior responsibility

for the crimes committed in the camp, by virtue of the authority he exercised in relation to the camp, and in the Konjic region.

4.127 A "superior" for the purposes of Article 7(3) need not be part of the formal command structure to which the perpetrator belongs. In the *Pohl* case, for instance, the accused was the manager of DEST, an industrial organisation that employed concentration camp labour. Although he exercised no formal command over the concentration camp guards, he was convicted in respect of crimes committed by those guards. The court said:

> "It has been Mummenthey's plan to picture himself as a private business man in no way associated with the sternness and rigor of SS discipline, and entirely detached from the concentration camp routine. The picture fails to convince. Mummenthey was a *definite integral and important figure in the whole concentration camp set-up*, and, as an SS officer, wielded military power of command ... From time to time he attended meetings of the concentration camp commanders where all items pertaining to concentration camp routine such as labor assignment, rations, clothing, quarters, treatment of prisoners, punishment, etc, were discussed ... Mummenthey could not have failed to know the plight of inmate workers ... [H]e admitted that he personally dealt with labor allocation. In fact his monthly report ... referred to the shortage of 1500 inmates ... but declared that 'this calamity' would be overcome when a new shipment of inmates arrived ... Mummenthey has argued that DEST had nothing to do with food, clothing and billeting for the workers ... Still he has testified that he was certain that inmates were sufficiently nourished because his plant managers so informed him ... he was able to supplement the fare of workers with extra rations"

(The *Pohl* case, *Karl Mummenthey*, The Trials of War Criminals before the Nuernberg Military Tribunal, Vol. V, p. 1051, at pp. 1052-1054 (emphasis added).)

4.128 The court found Mummenthey guilty for the mistreatment of inmates on the grounds that he was in a position to "do something" (*ibid.*, p. 1052), but "he did little or nothing" (p.

1054). The court said that "His criminality lies in *culpable indifference to humanity*, the sacredness of which demands respect in all parts of the world" (*ibid.*, p. 1054, emphasis added).

4.129 Similarly, in the *Roechling* case, the defendant was a major industrialist who employed prisoners. (*The Roechling case*, Trials of War Criminals before the Nuernberg Military Tribunals, Vol. XIV, p. 1061). He was found guilty as the President of the Reich Association of Iron and the Reich Commissioner "not ... of having ordered that abominable treatment [of prisoners] but of having tolerated it and of not having done anything in order to have it modified" (*ibid.*, 1088). The Tribunal held that "it was his duty as the head to inquire into the treatment ... he cannot escape responsibility by stating that the question had no interest for him ... his ... position ... would have given him the necessary authority to bring about changes in the inhumane treatment of these workers" (*ibid.*, 1088). The Tribunal further held that he had displayed "inexcusable indifference" and that "his responsibility in respect appears so much greater since his own social position was of the very highest" (*ibid.*, 1089). In the judgment on appeal the court noted that "the fact that he did no longer concern himself about their fate, could only increase his responsibility ... he had sufficient authority to intervene and to render the abuses less severe, even if he could not stop them" (*ibid.*, 1136).

4.130 The Tokyo Tribunal found General Akira Muto criminally responsible on the basis that he failed to utilise his power to *influence policy* to prevent the commission of crimes. The Tribunal said:

> "In October 1944 Muto became Chief-of-Staff to Yamashita in the Philippines. He held that post until the Surrender. His position was now very different from that which he held during the so-called 'Rape of Nanking'. *He was now in a position to influence policy.* During his tenure of office ... a campaign of massacre, torture and other atrocities was waged by the Japanese troops on the civilian population, and prisoners of war and civilian internees were starved, tortured and murdered. Muto shares responsibility for these gross breaches of the Laws of War.

(*Akira Muto, Tokyo War Crimes Trial*, The International Military Tribunal for the Far East, Judgment, p. 49820, at pp. 49820-49821 (emphasis added).)

4.131 A leading publicist has also observed that:

> "While not a commander, an adviser to an allied unit may be said to have a duty to prevent the commission of war crimes by the unit to which he is assigned because of his unique position within that unit. If, for example, an advisor should come upon a situation in which members of his advisee unit were about to commit a war crime, *while lacking the authority to control the conduct of those forces, his means of otherwise preventing the commission of the offence are not entirely foreclosed* ... After protesting to the unit commander (assuming without success), he has the means to notify his next higher command by a separate radio net – again in hopes of reaching a common senior head-quarters that can prevent the offence. If the offence occurs, he has the limited means of preventing its occurrence by (a) reporting its occurrence and (b) seeking relief from his role as adviser to that unit, should the circumstances warrant. The latter suggestion ... would appear to be the practical solution where the rapport between the adviser and the advisee unit commander has been seriously jeopardised by their clash. The circumstances for relief as well as any question of acquiescence on the part of any adviser who remains with the unit would depend entirely on the circumstances and severity of the incident, however.

(W. Parks, "Command Responsibility for War Crimes", 62 *Military Law Review*, p. 86 (emphasis added).)

4.132 In the present case, whether or not DELALIĆ was the superior of the camp commander, it is abundantly clear that he was one of the leading figures of authority in the region at that time, and that his power and influence extended to matters pertaining to the Čelebići camp, at the very least to the classification and release of detainees. He was certainly a "definite integral and important figure in the whole concentration camp set-up" and "in a position

to influence policy". Whatever he might claim about the limits of his authority, it is manifest that his means of intervening to prevent the commission of crimes in the camp or to ensure the punishment of perpetrators were not "entirely foreclosed". It is similarly evident that his inaction displayed a culpable "indifference to humanity".

4.133 In the *Yamashita* case, it was further held that a superior may be criminally liable for failing to control subordinates, even if the superior was away from his area of responsibility or concerned with the exigencies of military operations. It was also held that a commander can be responsible for offences committed by subordinates, even if the commander's powers to intervene are limited by the prevailing circumstances (*Trial of General Tomoyuki Yamashita*, United States Military Commission (1946), Law Reports of Trials of War Criminals, Volume IV; and *In re Yamashita*, 327 U.S. 1, 15 (1945).) Applying this principle to the present case, it would be no defence for DELALIĆ to rely on the fact that he was normally not present in the camp, or to argue that he was frequently in the field preoccupied with other matters.

4.134 The Prosecution theory of the accused's liability under Article 7(3) is consistent with the existing authorities. An interpretation of the word "superior" in Article 7(3) to exclude a person in the position of DELALIĆ would, in the Prosecutor's submission, substantially narrow the scope of protection afforded by international humanitarian law.

(C) Individual criminal responsibility of MUCIĆ under Article 7(3) of the Statute

(i) The accused exercised superior authority

(a). Evidence that MUCIĆ was commander of the camp

4.135 The evidence establishes that, regardless of if or when he received any formal written appointment, MUCIĆ was the Commander of Čelebići camp from late May or early June 1992.

4.136 Witness P testified that in the first part of June 1992, MUCIĆ specifically told him that "*he was being forced actually to take*

over command of the Čelebići camp, and that he should become commander shortly" (T. 4519, 4521). Witness P further testified that he could observe that MUCIĆ had in fact taken over command when he was transferred from his detention facility in a school to Čelebići a couple of days later (T. 4519-4520).

4.137 Witness P's testimony is corroborated by the other doctor, Dr. Grubač, who similarly reported that MUCIĆ transferred him from the school to Čelebići camp in early June (T. 5965-5968). The evidence shows that during May the authorities were searching for someone to take command of the camp. Defence witness Tahirovic stated that during May 1992 he was offered the post of Commander on several occasions but he refused when he found out there were Serb prisoners there (T. 11344).

4.138 Practically all the detainees testified that MUCIĆ was the camp commander. The detainees knew this because the guards and DELIĆ called him commander, and/or because MUCIĆ introduced himself as commander and/or because his behaviour towards the guards and the detainees was that of a commander. The citations to the evidence would be too numerous to list. The following representative samples are instructive.

4.139 Witness N, after stating that he knew MUCIĆ was commander, was asked how he knew. He responded:

> "I heard that first from the guards and later from Hazim DELIĆ, the deputy, because on several occasions when PAVO was to come to the hangar, Hazim DELIĆ would tell us that the Commander was arriving, and then later I also saw when he released some people from the prison." (T.1924.)

4.140 Stevan Gligorević testified similarly. When describing MUCIĆ's role and presence in the camp, he stated:

> "he was in charge of the camp, the Camp Commander. You could infer that from the guards who referred to him when he would arrive on a motorcycle, and he arrived on motorcycles: 'Here comes the Commander', and everybody had to be in their places. Even if there was beating going on, that would stop, and the prisoner would be put back into the hangar." (T.1453.)

4.141 Indeed, when explaining his role to detainees and to outsiders, MUCIĆ introduced himself as the commander. Vaso Đordić, when describing what occurred when he, his brother and his father were brought to the camp and first met MUCIĆ, testified that "*He said that he was the camp commander and said that his name was PAVO MUCIĆ*" (T. 4348-4350).

4.142 In addition to sometimes specifically being told that MUCIĆ was commander, the detainees could observe that MUCIĆ was commander through his actions. For example, when Witness J, a successful butcher, entered the camp at the end of May or early June, he met MUCIĆ whom he knew from before, and MUCIĆ said that "*we can get a lot of money out of you*" (T. 7443). After someone then indicated that the witness was to go to Hanger No. 6, MUCIĆ countermanded the order: "*Somebody gave the order to take us to number 6, and I heard MUCIĆ's voice, he said "no, not to number 6, to number 9*"" (T. 7443).

4.143 This is consistent with the evidence of a number of other witnesses. Mirko Đordić reported that MUCIĆ was commander of the camp and that he first saw him when MUCIĆ was arranging for the transfer of prisoners in June (T. 4795). Grozdana Ćećez said that she was interrogated by MUCIĆ in late May or early June (T. 496). Branko Sudar recalled how, in late May, guards stopped beating two prisoners when they learned MUCIĆ was coming (T. 5751). Other witnesses who gave evidence explaining MUCIĆ's position as the camp commander were Novica Đordić (T. 4157), Witness P (T. 4571), Risto Vukalo (T. 6276), and Witness R (T. 7808).

4.144 Further, others who worked in Čelebići camp confirm that MUCIĆ was the commander when they worked there. Witness T stated that he was first assigned to Čelebići in May 1992 (T. 6814) and that after a very short time he was assigned duties as a driver (T. 6858). When asked who was the commander of the camp during the period he worked as a driver, he answered, "*Mr Zdravko MUCIĆ was*" (T. 6673).

4.145 LANDŽO also said that when he and a number of other soldiers were assigned to Čelebići in the first half of June, MUCIĆ informed them that he was commander, and he then selected certain persons to become guards (T.15029-15030).

4.146 Similarly, Witness D, a member of the Military Investigative Commission in the camp, testified that MUCIĆ was commander, that he had an office in the camp, and that when the Commission met in early June to discuss how they would go about their work, MUCIĆ was present (T. 5174-5175, 5188).

4.147 Visitors to the camp had ample opportunity to observe MUCIĆ's position as commander. For example, about a week or 10 days before Dr. Grubač was released on 22 July 1992, on the strength of an order signed by DELALIĆ, Dr. Grubač's wife, Gordana Grubać, visited the camp (T. 5996). She testified that on arrival she met a guard called Hondo and that the guard then called for the commander MUCIĆ:

> "So he [Hondo] called me and told me that the commander, PAVO, was calling me. He said that I could go and see my husband and I went with him and entered a sort of shed. He took me into an office which was to the right-hand side, and in that office there was a girl whom I only know by surname, it is Pozder, and PAVO was also there. The two of them were there in the office when I got there ... PAVO sent Hondo to get my husband, and in the meantime I ask him to let my sister-in-law also inside the prison to see my brother, which is to say her husband and he did, also he let my sister-in-law and brought my brother." (T. 6187-6188.)

4.148 Further, MUCIĆ was presented to journalists as the commander. For example, in the middle of July a team of journalists came to the camp, and were introduced to and interviewed the commander whose picture they took. Witness Assaad Harraz stated *"It was obvious that he was in command, he was the leader, he was giving the instructions to others who were with him"* (T. 5819-5820). The witness's testimony is corroborated by P. Exh. 167, an article published on 24 July 1992, showing a picture of MUCIĆ, and noting that he was the commander.

4.149 The Defence witness Demić, a Bosnian journalist, testified that when he and others went to Čelebići camp in August 1992, they received permission from "Pavo" to film the camp and interview certain prisoners, and it was clear that *"he was one of the people who was kind of in charge"* (T. 13685).

4.150 MUCIĆ was also known to be the commander by international organisations who visited the camp, such as the International Committee of the Red Cross (P. Exh. 192 (Letter from Red Cross to DELALIĆ, with a copy addressed to "Commander PAVO Mucić—Commander of Čelebići Prison")).

4.151 There are also numerous documents from the Fourth Corps of the Bosnia-Herzegovina Army from December 1992, indicating that MUCIĆ was considered to have been commander from at least June 1992. (P. Exh. 141 (criminal charges dated 22 December 1992 brought by the Command of the 4th Army of RHB against Z. MUCIĆ for crimes including the murder of a Bosnian soldier in Čelebići in June 1992 and describing MUCIĆ's position as "*commander of the prison of Čelebići.*").) In his testimony, Pašalić, the prior Fourth Corps Commander and General, confirmed that the document correctly represented his understanding of the position at that time (T. 8172). (See also P. Exh. 137 (a report of the Command of the 4th Corps dated 7 December 1992, containing an arrest warrant for MUCIĆ, whose position was described as commander of Čelebići prison), P. Exh. 143 (a press release dated 7 December 1992 from Arif Pašalić regarding the arrest of 22 BH Army members, and stating that "*The Commander of Čelebići prison, Zdravko Mucić, called PAVO, managed to escape with him [DELALIĆ]*").

4.152 MUCIĆ's role is also confirmed by another document seized in Vienna (P. Exh. 131), which is entitled "The Adventurer", and which contains the following statement:

> "In this context, I want to point out that the Čelebići prison was handed over to the Konjic OpŠOS [Municipal Staff of the Armed Forces] as early as 15 November 1992, at which point the prison commander PAVO, who had been in the post till then, was replaced and relieved of his duties ... I point out that he, who is of Croatian nationality, served from the first to the last day as a member of the BH Army and did not want to be in the HVO."

4.153 Further evidence of the fact that MUCIĆ was commander of the camp is contained in the videotapes taken in Čelebići in 1992, in which MUCIĆ refers to himself as Commander, and in another video, is shown being addressed as Commander. (P. Exh. 110a, p. 39 (during a party at the camp, MUCIĆ hands a guard an ashtray

and remarks, "*you can't say your commander isn't taking good care of you*"), P. Exh. 112a pp. 2-3 (guard addresses MUCIĆ as commander).)

4.154 In addition, on a number of different occasions since he left Čelebići, MUCIĆ has confirmed that he was commander of the camp. For instance, in a letter signed by MUCIĆ, addressed to the 4th Corps Staff and certified by the Embassy of Bosnia-Herzegovina in Vienna (P. Exh. 130, p. 7), MUCIĆ writes:

> "Prisoners and Camps in Konjic
> Let me emphasise at the very beginning that any miscarriages and irregularities in that respect, alleged by local slander and the bombastic stories in the Croatian press, could be ascribed only to me, as the prison commander and to my deputy and other co-workers in the prison ..."

4.155 Finally, in his interview with the Office of the Prosecutor, MUCIĆ himself admitted that he had authority over the camp (though he used the term "administrator") at least from the time he says he received a formal written appointment from DELALIĆ on 27 July 1992. (P. Exh 101-1, p.7.) Furthermore, in the same interview MUCIĆ admitted that he went to the camp daily from 20 May 1992 onwards. Claiming that he went there to help the prisoners, he admitted that he had authority within the camp because *"... they all knew me. It was a small place, and I had enough authority to scare the local MUP, which was responsible for the prison."* (*ibid.*, p. 12).

It must also be noted that during this period, many people were performing functions and had authority, without any formal appointment orders. Kevrić (T. 11226-11227)(noting that he was head of logistics for a significant period for time prior to receiving his formal appointment at the beginning of August).

(b). Evidence of the extent of MUCIĆ's control, authority and influence

4.156 In his position as commander or warden of Čelebići camp, as a matter of common sense and ordinary human experience of organisational hierarchy, it must be axiomatic that he had superior authority over the camp and over the personnel in it.

Indeed, the overwhelming evidence is that MUCIĆ did in fact have the normal authority inherent in such a position, including authority over the detainees, authority over the functioning of the camp, and authority over the personnel in the camp including the deputy commander and the guards.

4.157 A number of detainees testified to MUCIĆ's authority generally.

4.158 Witness F gave evidence that MUCIĆ determined who would leave or be transferred from the camp, and that he first observed this in late June or early July 1992:

> "... he [MUCIĆ] came then. We got up, and he separated out the sick ones and the elderly and took them somewhere, and later we heard from Nenad and from Bendjo that the guards told them that they would be transferred to Musala. The second time there was a second group that also left. He also came. We got up. He read the names out, and he took them away. The third group, that was the group where I was in, that was mid-October, that was on 8th October, yes." (T. 1331.)

4.159 Similarly, Milojka Antić testified that it was MUCIĆ who released a group of women kept in the camp for a short period in July 1992:

> "They spent the night with us, just one night, and in the morning PAVO MUCIĆ came to the door and told these women that they could go home, and they were released on that day." (T. 1846.)

4.160 Witnesses also testified that when MUCIĆ appeared at the camp he would question the prisoners, "review" them, and select prisoners for transfer. Dragan Kuljanin when asked about MUCIĆ's activities in the camp, stated:

> "PAVO MUCIĆ would come to the camp three or four times. On one occasion he was going from one man to the other asking for names and what weapons the people had. A second time he would call out some names and he drove them away somewhere." (T. 2351.)

4.161 Mirko Đordić gave evidence of the obvious authority displayed by MUCIĆ at the camp, including his review of the prisoners and his determining who would be released (T. 4795-4796). Witness M also gave evidence of MUCIĆ "reviewing" and questioning the prisoners, recounting that:

> "I only saw PAVO inside in the hangar. When he would enter the hangar he was accompanied by Mr DELIĆ and another one or two guards. He would sort of review the prisoners. ... So that I'm sure that PAVO was somebody who was in charge." (T. 4915-4916.)

4.162 Witness B also gave evidence of MUCIĆ's behaviour in this respect:

> "For the most part it was in the hangar. PAVO MUCIĆ would come escorted by some guards, and would always order them to stay at the door to watch us. He would go from one prisoner to the next and in this way he would actually review all the prisoners. He would ask some questions of someone and some he would just pass by. Usually the questions were: "What did you have? What kind of weapons did you have?" At least that's what he asked of me." (T. 5042.)

4.163 Witness R corroborated this evidence of MUCIĆ's position of authority and his review of prisoners, stating:

> "We had to sit in the position I have already described with our legs up against our bodies. Then MUCIĆ would tap somebody on the leg, telling him to get up. He would say, "you", or something to that effect. Then the man would have to get up and to say, "yes, Mr Commander" and to answer any questions that were put to him." (T. 7811.)

4.164 Witnesses also gave evidence that MUCIĆ determined where prisoners would be detained within the camp. Witness J stated when he first arrived in the camp in late May or early June, he saw and talked to MUCIĆ whom he knew from before.

> "After that, somebody gave the order to take us to number 6, and I heard MUCIĆ's voice, he said "no, not to number 6, to number 9." (T. 7443.)

Milenko Kuljanin similarly testified that MUCIĆ singled out prisoners to be moved from Tunnel No. 9 to Hangar No. 6 (T. 5485).

4.165 There is further evidence of MUCIĆ's control over the fate of the prisoners, in that he could, when he wished, ensure that a particular prisoner was not beaten by the guards or by persons outside the camp. Witness B, who was a friend of a driver in the camp named Buric, stated:

> "Of course, it's natural when you get into some kind of trouble to try and find a way out in some possible way, so I asked Buric whether he could help me somehow, because I saw that people were getting killed, beaten up, and he told me -- he promised that he would talk to PAVO to try and protect me, so that nothing terrible should happen to me, and on one occasion he even told me that PAVO had told him to tell me not to worry, that nothing terrible would happen to me. Of course, everything was terrible, but when I say something terrible, I'm thinking of not getting killed in the camp." (T. 5040-5041.)

4.166 The evidence that MUCIĆ had control and authority over the prison is again strengthened by the testimony of Witness D, a member of the Military Investigative Commission. Witness D stated that MUCIĆ was the camp commander and that he had an office at the camp (T. 5175, 5188). Witness D's testimony concerning what he observed of MUCIĆ's actions confirms that MUCIĆ was commander and in charge of the prison. For example, when Witness D began working with the Commission in June, MUCIĆ supplied the Commission with the initial lists of the prisoners (T. 5183). The written documentation from the field which the Commission required in order to go about its work was also kept by MUCIĆ:

> "I entered his office without knowing that it was his at the very beginning of my work there. I asked for the written documentation that had been brought in

> from the field and which the Commission needed to study and investigate further. Then they told me -- I think somebody was with me then -- that this was to be found in MUCIĆ's office, and that was the room where we were working -- in relation to the room in which we were working, the third room from us. I think so, in a series -- in a row of rooms. So then I found some papers in a sack and Mr MUCIĆ was there too, and he told me: "Here you are. This is it". I would take the papers from there and we would examine the papers, see what we needed for our further work." (T.5188-5189.)

4.167 Furthermore, as the Commission carried out its work of classifying prisoners, the results were passed to MUCIĆ (T. 5187), who reported that he would pass them on to "commander Zejnil" to determine who would be released (T. 5187).

4.168 MUCIĆ's role in the release of prisoners also confirms his ongoing position of authority and control. A number of release documents signed by MUCIĆ were tendered in evidence.

(a) Prosecution Exhibit 75 is a Decision revoking the protective measures of detention for Branko Gotovać, dated 30 August 1992, signed by MUCIĆ. In relation to this document, Branko Gotovać stated that he was interviewed by MUCIĆ, who told him he was in category 8, and who the next day gave him a release document (T. 1008-1011). The release document bears the signature "MUCIĆ".

(b) Other such release documents are P. Exh. 84 (release document signed by MUCIĆ for Mirko Kuljanin), P. Exh. 91 (release document for Milojka Antić bearing signature MUCIĆ, which Milojka Antić testified was signed by MUCIĆ in her presence (T. 1814)), P. Exh. 158 (release document for Witness B signed by MUCIĆ, which Witness B testified was signed by MUCIĆ in his presence (T. 5065), P. Exh. 159 (release document for Zoran Ninković, signed by MUCIĆ, which Zoran Ninkovic testified was given to him by MUCIĆ, who filled out restrictions on it) (T. 5156).

4.169 In addition to observing that MUCIĆ had authority over them and the camp, the detainees could also see that MUCIĆ had authority over the guards.

4.170 Dragan Kuljanin stated that he knew MUCIĆ was commander by:

> "... observing the behaviour of guards and his deputy DELIĆ when they were together. I also was able to gather this from many men and women who went to PAVO and to DELIĆ." (T. 2350-2351.)

4.171 Witness B, in relating a conversation he had with the driver in the camp named Burić, even remarked to Burić that he received orders from MUCIĆ when he was there, but when MUCIĆ was not there, he had to take orders from DELIĆ:

> "I once joked him and said: "What are you guarding here? As soon as PAVO is gone, DELIĆ assigns you to guard." (T. 5044.)

4.172 Milojka Antić described MUCIĆ's authority by stating that "*In the camp he was in charge. He was asked about everything*" (T. 1815).

4.173 Witness P, who because of his position as a doctor working in the camp was able to observe more in the camp, gave categorical evidence of MUCIĆ's command authority:

> "Q. While you were staying in the camp, who did the guards obey?
> A. Mr MUCIĆ." (T. 4696.)

4.174 Witness P also gave testimony concerning a telephone conversation he overheard between MUCIĆ and a member of the TO staff, Major Kevrić, which gives persuasive evidence of MUCIĆ's responsibilities as Commander. Witness P reported that he heard MUCIĆ on the telephone speaking about food:

> "I remember well. This was in the morning, somewhere around 10.00, 10.30. There was a red telephone outside the window and Mr MUCIĆ was speaking loudly. I was sitting opposite that, and I heard him calling Major Kevric -- Sefik Kevric, asking him to deliver food. However, I know I heard him say: "I don't care what the command is saying. I want food to be brought to the people. It would be honest either to kill these people or to feed

> them."... He said: "I'll not be held responsible for this."" (T. 4574.)

4.175 Evidence of MUCIĆ's authority can further be clearly seen in the videotape admitted as Prosecution Exhibit 110. On pages 11-12 of the transcript (P. Exh. 110a), MUCIĆ first informs a woman asking to visit her son that she cannot visit.

> "Nobody can visit anybody. Don't you know that this is a prison? ... If I make one exception, everybody will want the same."

MUCIĆ then relents, and orders Mustafic, commander of the guards, to "*Let these four see the prisoners, but this is the last time.*"

4.176 The persons who worked in the camp who came to testify confirmed unequivocally that MUCIĆ was the commander of the camp, and that although DELIĆ was the intermediate authority, the ultimate authority over the guards and personnel in the camp was MUCIĆ. Thus, Witness T, a driver at the camp who sometimes also filled in as a guard, stated that MUCIĆ gave orders through DELIĆ and sometimes by himself directly. He said that MUCIĆ *"usually communicated with Hazim DELIC"* so that DELIC normally gave the instructions, but he agreed that he also sometimes would *"receive instructions from Mr. Mucic"* (T. 6685-6686).

4.177 The accused LANDŽO also confirmed that MUCIĆ was the commander (T.15338), that MUCIĆ selected the guards (T.15030), and that LANDŽO could observe MUCIĆ giving instructions, including to DELIĆ (T.15045).

4.178 LANDŽO also specifically confirmed that MUCIĆ had authority to determine who could enter the prison (T. 15367-15368). This was corroborated by other witnesses, including Defence witness DC 4. (T. 14823-24).

4.179 LANDŽO also corroborated Milojka Antić's testimony that MUCIĆ decided to release the women captured in mid-July 1992 (T. 15078).

4.180 As with Witness T, although LANDŽO usually received his orders from DELIĆ, he did on occasion receive orders directly

from MUCIĆ. For example, he received his order to interrogate the Đorđic brothers directly from MUCIĆ (T. 15362-15363). LANDŽO also confirmed that as a guard, he had to execute all such orders he received (T. 15262). (See also T. 15338 (MUCIĆ ordered that the rifles of the guards be kept cocked), T. 15339 (a guard could take a prisoner out of the hanger if ordered to do so by the commander or deputy commander).)

4.181 It is axiomatic that a commander has the authority to discipline camp guards and to take other appropriate measures. This obvious fact was confirmed by General Diviak, who stated that a camp commander is responsible for what occurs in the camp (T. 8683). And indeed, MUCIĆ himself admits that he had authority to discipline guards in any number of ways. For example, he could order them confined to their barracks, and for serious offences and he could write reports to his superiors at military headquarters (P. Exh. 101-1, pp. 15, 54-55). MUCIĆ also concedes that he could remove guards (Ex. 101-1, p. 55). In fact, MUCIĆ reported that he did ultimately remove LANDŽO from the camp, though he did not do so until October 1992. (P. Exh 101-1, p. 55). MUCIĆ also confirmed that he could prevent persons from entering the premises (Ex. 101-1, pp. 29-30). That he could discipline guards was confirmed by LANDŽO, who testified that on one occasion when "Sok" had left the camp without permission, MUCIĆ ordered him confined to his barracks (T. 15379-15380).

4.182 Thus, it can be seen that the fact that no guard was punished for mistreating prisoners is not evidence that MUCIĆ did not have superior authority, but rather that he did not exercise his authority.

(ii) The accused knew or had reason to know of the crimes

4.183 There can be no doubt that the accused knew and had reason to know of the crimes being committed by his subordinates. Indeed, in his interview with the Office of the Prosecutor, MUCIĆ himself admits that he was aware of the crimes that were committed in Čelebići in June and July 1992 and furthermore, that he personally witnessed people being abused during this period (P. Exh. 101-1, p. 44). He was also made aware of the

rapes in the camp in July of 1992 (P. Exh. 101-1, pp. 43, 60). After that period, MUCIĆ admits that although prisoners were not mistreated while he was actually present, he was aware of some mistreatment from various sources including from DELALIĆ and his driver (P. Exh. 101-1, pp. 44, 53). The evidence contained in Prosecution Exhibit 130 is of particular relevance. This is an undated letter signed by MUCIĆ, addressed to the Fourth Corps Staff in which MUCIĆ writes, *inter alia*:

> "Prisoners and Camps in Konjic
> Let me emphasise at the very beginning that any miscarriages and irregularities in that respect, alleged by local slander and the bombastic stories in the Croatian press, could be ascribed only to me, as the prison commander and to my deputy and other co-workers in the prison ... Among the less significant information that I wish to bring to your attention is the fact that all the shovel handles in Celebići were broken in two days because the new prisoners were beaten irrespective of their guilt. We had a lot of problems with seriously injured prisoners, many of them died and we caused ourselves additional trouble as we had to provide medical care etc ...
>
> Allegedly, three persons were supposed to have been killed in the prison. That is not true because over 30 prisoners had died there because of various reasons. One single shell exploding in the Sports Centre killed 14 Serbs and wounded several guards. The rest succumbed to beating, injuries, were killed while attempting to escape, or /hand-written/ died of natural causes etc. A general chaos prevailed in the beginning. Various civilians and members of the MUP would come in and beat the prisoners up. At the same time, other Muslim and Croat civilians would bring food and cigarettes to Serbs, their former neighbours and acquaintances. It all went on until I brought some order and strengthened the guard and security system ..." (P. Exh. 130, p. 7.)

4.184 MUCIĆ's admissions that he knew mistreatment occurred even after the period he concedes he was commander are corroborated through the testimony of Witness T, who reported that he told

MUCIĆ that the prisoners were being mistreated when he was not present.

> "Q. Do you know whether -- did you yourself ever speak to Mr Mucic about the beatings that occurred when he was not present?.....
> A. Yes.....
> Q. Do you also remember talking to Mr Mucic about the fact that persons who worked in the camp beat prisoners?
> A. I think I did.
> Q. Can you please tell us what you remember; for instance, who did you tell him was mistreating prisoners when he was not there?
> A. I said how Hazim was mistreating the prisoners, and some other guards, like Zenga and the soldiers coming from other parts of Bosnia, from other towns in Bosnia-Herzegovina. When I said that he would say, "well I am doing the best I can". When he was there he would say nobody would touch them." (T. 6712-6714.)

4.185 Further, there is evidence from a number of detainees that MUCIĆ was present and took a leading role in abuses of the detainees himself.

4.186 Vaso Đorđić described how he was interrogated and assaulted by DELIĆ in the presence of MUCIĆ (T. 5354-4356).

4.187 Witnesses also testified that MUCIĆ was present when they were taken and placed into the manhole: Milenko Kuljanin (T. 5457 et seq), Witness J (T. 7464 et seq.), and Milovan Kuljanin (T. 7027) all testified that MUCIĆ was present during these instances of abuse. Furthermore Novica Đorđić stated that when they were removed from the manhole they were lined up against a wall and told they would be executed. The witness added that "*It was mostly by Pavo saying that we were to be executed. We were standing against a wall.*" (T. 4161.)

4.188 Even the accused LANDŽO testified that on one occasion, MUCIĆ even directed that the prisoner Šćepo Gotovac be killed.

> "Then he went into the office. I don't know what they talked about in the office, some ten fifteen

> minutes later, DELIĆ asked me to go come to the window. I arrived there and I saw MUCIĆ, DELIĆ and Borić and this old man. They were sitting, they were drinking and I think that MUCIĆ wrote down the name of this new detainee on a piece of paper. He gave it to DELIĆ and DELIĆ gave it to me. And DELIĆ then told me, tomorrow I want to see this individual with his feet forward at the gate to the camp and I don't care how you're going to do it. That was during the day. That was the order to me." (T.15044-15045.)

4.189 Furthermore, although LANDŽO did not specifically remember whether MUCIĆ ordered him to mistreat the Đorđic brothers, given LANDŽO's reputation and given that he had no experience interrogating prisoners, the Prosecution submits that one must infer that in asking LANDŽO to interrogate the Đorđic brothers, MUCIĆ both knew and desired that LANDŽO would mistreat them.

4.190 Evidence of MUCIĆ's actual knowledge, attitude to the prisoners, and relationship with the guards can also be clearly seen in the videotapes introduced into evidence. (See P. Exh. 110a, p. 26 (when someone named Narcis does not want to be filmed, MUCIĆ jokes that every computer in the West has your data), P. Exh. 111a, p. 6 (when talking about the camp, MUCIĆ remarks "*I had to find somebody who looked good enough to appear on TV. When I saw them, I said /inaudible/ what have you done?*"); p. 112a, p. 1 (speaking to guards at a party in the camp, "*When he comes, I'll disappear. All of you will get beaten. When Hazim comes, I'll disappear.*"); P. Exh. 110a p.11-23, 28-34 (showing MUCIĆ humiliating a retarded detainee, whose head has been shaved with the Bosnian coat of arms, for an extended time period by making him dress up as a woman, talk about his sex life, make chants, etc.).)

4.191 The evidence is also overwhelming that regardless of his actual knowledge, conditions were such that MUCIĆ should have known of the crimes. Numerous witnesses testified that prisoners' injuries were evident. See Dr Petko Grubač (T.5981 5988), Witness M (T. 4907, 4920), Nedeljko Draganić (T.1629), Milovan Kuljanin (T.7134), Witness B (T.5065), and Milenko Kuljanin (T.5478). MUCIĆ, however, made almost no inquiries concerning their medical condition. Petko Grubač stated that

although MUCIĆ would enter the infirmary, he did not inquire as to the causes of the prisoners' injuries (T. 6004).

4.192 Finally, MUCIĆ made no effort to have any kind of system or monitoring such that he would be advised of the conditions (P. Exh. 101-1, p. 53). This is despite the fact that he knew that his own deputy commander, DELIĆ, personally mistreated detainees (P. Exh. 101-1, p. 57).

(iii) The accused failed to take necessary or reasonable measures to prevent or punish

4.193 The record establishes that appropriate action to prevent crimes or to punish the perpetrators was not taken. In particular, there is no evidence from any source to suggest that MUCIĆ ever took appropriate action to punish anyone in Čelebići for mistreating prisoners. A number of detainees testified that guards were never disciplined. For example, Milovan Kuljanin testified in cross-examination that he never witnessed a guard being disciplined (T. 7164). Similarly, Witness T who worked at the Čelebići camp from June to November testified that to his knowledge, there were no investigations into the deaths of any of the thirteen prisoners who died while he worked in Čelebići camp (T. 6711), nor to the beatings (T. 6711), and that he was unaware of any guards who were disciplined for maltreatment of prisoners in Čelebići (T. 6715). LANDŽO's testimony similarly indicated that no guard, including himself, was disciplined mistreatment of prisoners. (T. 15351).

4.194 As a specific example, MUCIĆ also admitted that even though he was aware that a prisoner had been shot during the time he was commander, allegedly for escaping, and even though he did not believe the report that the prisoner was trying to escape, there was no investigation into the incident, much less any measures taken to prevent or punish (P. Exh. 101-1, p. 49).

4.195 Just as MUCIĆ did not take appropriate action to punish guards for mistreating prisoners, he did not take appropriate action to prevent such mistreatment. Witness T stated "*There were no particular instructions for guards as to how to treat the prisoners. There were no meetings regarding that.*" (T. 6685.)

4.196 Similarly, MUCIĆ did not institute any kind of reliable reporting mechanism in the camp (P. Exh. 101-1 p. 53).

4.197 Again, when discussing what action was taken after a prisoner had been shot he admitted that nothing was done to prevent similar occurrences (P. Exh. 101-1, p. 49):

> "INVESTIGATOR (interpreted): What was done to prevent this type of incident?
>
> MUCIĆ: I have no answer to that question. Nothing was done."

4.198 He did not seek to ensure that the guards and the deputy commander known to mistreat prisoners did not have access to the prisoners (P. Exh 101-1, p.58).

4.199 Although MUCIĆ claims at various points in his statement to the Office of the Prosecutor that he visited the camp frequently in order to prevent maltreatment of the prisoners, he also admits that he was criticised by DELALIĆ for spending too much time away from the camp (P. Exh. 101-1, p. 49).

4.200 Indeed, even though he knew about the mistreatment that occurred in his absence and even though he knew that DELIĆ himself mistreated prisoners, he made no effort to spend significant amounts of time in the camp. Instead, he continued to be present on an irregular and sporadic basis. Furthermore, Witness T stated, in respect to the amount of time MUCIĆ spent in the camp, that "*He was away rather than there.*" *(T. 6875.)*

4.201 The video tapes admitted into evidence showing MUCIĆ in the summer and autumn of 1992 on vacation, at various cafes, at various rivers or seaside (P. Exh. 110, 111, 112), and even the evidence offered by MUCIĆ's family members during the Defence case, further indicate that MUCIĆ spent unreasonably long periods of time not attending to the camp.

4.202 The evidence shows that even if MUCIĆ did issue orders concerning the treatment of prisoners, he did not ensure that these orders were obeyed. Witness N stated that he heard that MUCIĆ had issued orders that no one should be beaten:

> "I heard of that, but I personally was beaten up after those orders. I heard one of the guards say that orders had come after the International Red Cross visit that nobody should beat us, but I was beaten by Kemal Mrdzic, a guard, and Samir Honda." (T. 1994.)

4.203 The transcript is replete with numerous other examples of prisoners being severely mistreated even after the Red Cross visit exist. See, for example, Mirko Đorđic (T. 4760-4762) (describing severe beatings in August, September, and October or late November).

4.204 In evaluating MUCIĆ's efforts to prevent or punish, the attitude he expressed in front of the guards towards the detainees is also illuminating. Although it is true that he did not physically beat detainees, his own actions and words as reflected in the videotapes does not indicate that he encouraged the guards to treat them humanely. For example, when seeing that some guards had shaved a retarded prisoner's head with the Bosnian coat of arms, MUCIĆ merely laughed and proceeded to humiliate the prisoner himself. (P. Exh. 110a, pp. 11-23). MUCIĆ and the guards joked about stealing from the prisoners (which he said could only be done with his permission), about the fact that the prisoners were "*freezing*" because they did not have adequate clothing, and about the fact that the prisoners "*might be missing*" some beatings (P. Exh. 112a, p. 1-2.)

4.205 The evidence also shows that MUCIĆ could have prevented abuses when he wished to do so. Grozdana Ćećez gave evidence concerning a conversation she had with MUCIĆ about a young girl who was kept in the camp for a short period in July. MUCIĆ told her:

> "In essence he said that Hazim Delic wanted to rape this young girl and he was told about it. He was at home. He told the guards to prevent that until he came, that he would not allow the rape. He said: "When I didn't kill him at that time, I'll never do it". Apparently he put the barrel of a pistol into his mouth at that time. That is what people were saying that he did." (T. 559-560.)

4.206 In sum, there is no evidence that MUCIĆ made any serious effort either to punish or to prevent the crimes that occurred in Čelebići during the entire time he was in the prison.

(iv) Arguments of the Defence

4.207 It appears that the Defence is suggesting a variety of defences, some of which are mutually conflicting. These include the suggestion that MUCIĆ was never camp commander or otherwise involved in the administration of Čelebići (a contention which is not even supported by MUCIĆ himself in his interview) and that he became camp commander or warden only at the end of July 1992. As is apparent from the above, these suggestions are simply inconsistent with the evidence.

4.208 There also appears to be a suggestion that MUCIĆ knew what was going on, but was afraid of what would happen to him if he tried to intervene. As a matter of fact, the Prosecution submits that there is no evidence to support this claim and indeed, the evidence shows otherwise. As just one example, the videotapes showing MUCIĆ in Čelebići in 1992 show that he was not afraid (P. Exh. 110, 112).

4.209 The Defence has also suggested that MUCIĆ attempted to do all possible in the circumstances to assist the detainees, and that if it were not for him a different commander in his position would have made the situation much worse for them. Although MUCIĆ did intervene on occasion to help certain detainees, there is no evidence to support the claim that he did everything reasonably possible or that another commander would have been worse. Thus, as a matter of fact, there is simply no evidence to support such a speculative claim. It may be that there could have been worse commanders, but the fact that a person was not as bad as could possibly be imagined does not mean that the person did all he or she could. Further, the Prosecution notes that the behaviour of the guards could be influenced. This is obvious from the fact that after the Red Cross visit, conditions did improve, and although frequent and serious mistreatment continued, it was on a lesser scale.

4.210 In short, MUCIĆ was in charge of the camp and he acted as the camp commander with the authority of a commander. He knew of mistreatment, and he possessed the means to prevent and

punish the guards and others who were his subordinates in the camp, but disregarded these duties.

4.211 Even if there were any factual support for the defences suggested by MUCIĆ, as explained in the Prosecution's Response to Defendants' Motion for Judgement of Acquittal or in the alternative Motion to Dismiss the Indictment at the Close of the Prosecutor's Case, all of these potential defences are without legal merit.

4.212 For example, to the extent that MUCIĆ might be arguing that he had no choice but to remain in command of the camp, and that he did all in his power in the circumstances to avoid endangering the detainees, it is submitted that there is no legal basis for such a defence. None of the violations alleged in the Indictment, or the failure to prevent or punish them, can be justified on the grounds that they prevented some even greater harm occurring, which has not been specified by the Defence, and is at best highly speculative. Any actions by the accused to alleviate the suffering of the victims, to the extent that these actions could be shown to have occurred, could be taken into account as mitigating circumstances during sentencing, but are not a defence.

4.213 To the extent that MUCIĆ might be arguing that he did not become commander until the end of July 1992, even if such a contention was accepted would not excuse MUCIĆ for failing to punish those crimes that occurred before he became commander and of which had knowledge. Such a contention would also not excuse MUCIĆ for the multiple and serious crimes that occurred after July.

4.214 To the extent MUCIĆ is arguing that he knew what was going on but was afraid to intervene, it is clear that the legal requirements for any kind of duress defence have not been met.

4.215 As stated in the Prosecution's pre-trial brief, a commander cannot tolerate the commission of war crimes. A commander is obligated to do all in his or her power to prevent, repress and punish all violations of international humanitarian law, to the point of resigning. For example, the Tribunal in the *High Command* case held that, even though the criminal orders were passed down independently of the accused's command, it did not absolve the accused in that "[a]ny participation in implementing such orders, tacit or otherwise, any silent acquiescence in their

enforcement by his subordinates, constitutes a criminal act on his part" (LRTWC, Vol. XI, p. 512). The Tribunal mentioned that one of the options available to the accused was to resign his position. The Tribunal found the situation analogous to any other plea of superior orders, which while no defence, was a mitigating circumstance (*ibid.*). Almost every person in a command position would otherwise disclaim responsibility by asserting that the alternative would have resulted in a worse situation.

4.216 Some of the defendants who were convicted by the Nuremberg Tribunal unsuccessfully argued that they should be acquitted on the basis that they had attempted to alleviate suffering and destruction, although their efforts were regarded as mitigating circumstances. For example, Speer was found guilty for his participation in the slave labour program of crimes against humanity and war crimes, but the Tribunal noted:

> "In mitigation it must be recognised that Speer's establishment of blocked industries did keep many labourers in their homes and that in the closing stages of the war he was one of the few men who had the courage to tell Hitler that the war was lost and to take steps to prevent the senseless destruction of production facilities ... He carried out his opposition to Hitler's scorched earth program in some Western countries and in Germany by deliberately sabotaging it at considerable personal risk." (*Trial of the Major War Criminals before the International Military Tribunal-Nuremberg*, Volume 1, p. 333.)

4.217 Von Neurath was also found guilty of the crimes against humanity and war crimes committed under his authority as the Reich's Protector for Bohemia and Moravia, despite his efforts to improve conditions in these regions, including, by arranging the release of detainees:

> "In mitigation it must be remembered that Von Neurath did intervene with the Security Police and SD for the release of many of the Czechoslovaks who were arrested on 1 September 1939, and for the release of the students arrested later in the fall. On 23 September 1941 he was summoned before Hitler and told that he was not being harsh enough and that

> Heydrich was being sent to the Protectorate to combat the Czechoslovakian resistance groups. Von Neurath attempted to dissuade Hitler from sending Heydrich, but in vain, and when he was not successful, offered to resign. When his resignation was not accepted he went on leave, on 27 September 1941, and refused to act as Protector after that date. His resignation was formally accepted in August 1943." (*Trial of the Major War Criminals before the International Military Tribunal-Nuremberg*, Volume 1, p. 336.)

4.218 Finally, as the court in the *Mummenthey* case observed:

> "It is not an unusual phenomenon in life to find an isolated good deed emerging from an evil man. Because of convenience, caprice, or even a sudden ephemeral gleam of benevolence forcing its way through a calloused heart, even a murderer can help a child to safety. A grim humor can cause a slayer to save his intended victim." (The *Pohl* case, *Karl Mummenthey*, The Trials of War Criminals before the Nuremberg Military Tribunal, Vol. V, p. 1054.)

(D) Individual criminal responsibility of DELIĆ under Article 7(3) of the Statute

(i) The accused exercised superior authority

4.219 The evidence indicates that at all material times prior to his appointment as commander of Čelebići camp, DELIĆ was the deputy commander (T. 1330, 6678, 5958-5959). By his own admission, DELIĆ served as commander or manager of the prison from 18 November 1992 until 28 or 30 November 1992 (P. Exh. 103 - 1 p.53).

4.220 There is nothing in Article 7(3) which limits command authority to the most senior commander, thereby absolving the deputy commander from liability. That provision does not use the terms "commander" or "deputy commander" but the more generic term "superior". The issue is whether the accused was the "superior" of the individuals committing crimes at Čelebići camp, in whatever capacity.

4.221 The deputy commander is liable to the extent of his or her responsibility, and in some instances he may be liable as commander. Here, MUCIĆ was often absent from the camp, sometimes at night, and when he was not in the camp, the evidence shows that DELIĆ was in charge, and exercised full authority. An important factor for command responsibility is the element of actual control (see paragraphs 4.7-4.15 above). Evidence that an individual perpetrator regarded the accused as a superior, and obeyed that person, is therefore a very powerful and authoritative. On this issue, the accused LANDŽO, when asked who was in charge of the camp when MUCIĆ was not present, answered that it was DELIĆ (T. 15338). Similarly, Witness "T" who also worked at the camp, testified that he usually received his instructions from DELIĆ. (T. 6686).

4.222 The Prosecution has brought a great deal of additional evidence of DELIĆ'S superior position over the guards at the camp. A number of witnesses testified about DELIĆ's authority over the guards, including his authority to give the guards orders. Witness "M" reported that DELIĆ's role "*was one of command, of somebody that the prisoners feared, somebody who gives orders*" (T. 4913). Branko Sudar testified that "*when Pavo was absent, he* [DELIĆ] *was the one in charge, the one who gave the orders*" (T. 5760). Witness "F" testified that when DELIĆ was coming, the guards would say, "*Here comes the Boss*" (T. 1329). Milojka Antić testified that one guard refused to accept clothes which she had brought for her brother, who was a prisoner in the camp, without the authority of DELIĆ (T. 1763).

4.223 A most significant description of his authority was provided by Witness "R". This witness reported that when he asked other detainees about who DELIĆ was, was told "*He is number two, he is God, and your life depends on him*" (T. -7702).

4.224 DELIĆ's command authority over the guards, and his ability to give them orders, is evidenced by the frequency with which he gave orders to the guards to mistreat the prisoners. For example, both Witness "F" and Witness "R" described how DELIĆ ordered the guards, including the accused LANDŽO, to beat the detainees three times in one day ("*breakfast, lunch and dinner for the people of Bradina*") after the killings of Muslims near Repovci in July 1992 (T. 1330, 7801-7802). It was reported that after the visit of the International Committee of the Red Cross, DELIĆ ordered the guards to beat the prisoners (Witness "F" (T. 1337)).

Branko Sudar recalled that DELIĆ occasionally "*criticised severely the guards and shouted at them just as he shouted at us*" (T. 5761). On the rare occasion when a guard did not obey DELIĆ's order to mistreat a prisoner, such as when Masić was ordered by DELIĆ to rape Grozdana Cecez, the guard, apparently fearing DELIĆ, pretended to DELIĆ that he had done so (T. 561). As LANDŽO described it, when given an order by DELIĆ, "*I thought that was my duty. I was given an order, I had to execute*" (T. 15262).

4.225 DELIĆ's co-accused LANDŽO gave further testimony concerning the superior authority of DELIĆ:

> "... some ten fifteen minutes later, DELIĆ asked me to go come to the window. I arrived there and I saw MUCIĆ, DELIĆ and Borić and this old man. They were sitting, they were drinking and I think that MUCIĆ wrote down the name of this new detainee on a piece of paper. He gave it to DELIĆ and DELIĆ gave it to me. And DELIĆ then told me, tomorrow I want to see this individual with his feet forward at the gate to the camp and I don't care how you're going to do it. That was during the day. That was the order 8 to me." (T. 15044-15045)

4.226 Not only did DELIĆ have considerable authority as deputy commander and acting commander in MUCIĆ'S absence, but he exercised considerable authority in practice over various matters and events that took place in Čelibići camp.

4.227 In particular, in addition to being in a "superior " position over the guards, he had considerable authority over the fate of the detainees at the camp:

> "So he [DELIĆ] would come to this room, he was raising hell, he would swear and because I [LANDŽO] had brought them in. He asked me, "Who had asked you to bring them in?", and he said, "Take them back to the hangar," and he would follow me to the hangar to check whether I did it." (Esad Landžo (T. 15079).)

4.228 DELIĆ could also determine what visitors to the camp could and could not do:

> " ... Memic didn't take the statements. He started writing them down, but when DELIĆ came into the room everything stopped." (Esad LANDŽO (T. 15080)).

4.229 In the absence of MUCIĆ, the Investigation Commission dealt with DELIĆ regarding which prisoners were to be interviewed on a given day. Of the prison administration only MUCIĆ and DELIĆ had access to the Commission files (Witness "D" (T. 5183, 5187, 5189)).

4.230 The scope of his authority extended to such other matters as:

(a) determining the layout of the Čelibići camp itself:

> "My idea was to dig the fox hole. ... I thought that a shelter would be made, and Mr. DELIĆ approved that, said that I could take and engage two or three people from hangar 6 and that we dig that out." (Esad Landžo (T. 15301).)

(b) disposing of property taken from prisoners at the camp:

> "... The knife was found behind the belt, I think, of the person that allegedly had killed Muslims in the second World War, it was found on him. I asked DELIĆ whether I could have the knife. He said yes, and I kept it as a souvenir. It was a knife going back to the second World War. And when a TV crew ... Mr. DELIĆ took this knife from me and gave it to them. It was a very small knife." (Esad LANDŽO (T. 15340).)

(ii) The accused knew or had reason to know of the crimes

4.231 It is not disputed that DELIĆ knew about the crimes in the camp, and that he did nothing to stop the killing and suffering in Čelebići. DELIĆ admitted that he never tried to stop other persons from mistreating detainees, nor, when he became commander of the camp near the end of its existence, did he ever

discipline any of the guards. (P. Exh. 103-1, pp. 39-40, 88). Nor did DELIĆ feel compelled even to report incidents of mistreatment to his superiors: "*There was no rule. It wasn't important to anyone whether anyone would be beaten or killed.*" (P. Exh. 103-1, p. 22.)

(iii) The accused failed to take necessary or reasonable measures to prevent or punish

4.232 Although he had the authority and duty to do so, DELIĆ did nothing to stop the killing and suffering in Čelebići camp. Instead, he actively participated in the commission of crimes, and condoned the abuses perpetrated by others over whom he exercised authority.

4.233 On one occasion when LANDŽO murdered a prisoner with being ordered to do so (Boško Samouković), he testified that the only consequence was that DELIĆ yelled at him publicly, and then later privately apologized for yelling, saying "you should have killed him". (T. 1535)

4.234 As is evident from the evidence referred to below, there can be no question that DELIĆ could have prevented the beating, torture, and killing of the detainees, or could have taken steps to ensure the punishment of the perpetrators of these crimes, had he been minded to do so. The reason for his failure to do so was that he was himself an active participant in these crimes. By his example, he condoned the commission of similar crimes by others, and actually ordered the commission of some of the crimes by those under his control.

> "I carried out all the orders out of fear and also because I believed I had to carry, execute them. So, these are the two factors. I considered orders as orders which had to be executed. I was really afraid if he would come and that I would say I didn't do something. I couldn't return and come back and say that I didn't execute an order he has given me. In the Bubalo case when he [DELIĆ] said, if I [LANDŽO] don't carry out that order, which I had to carry out, that I would be executed together with Bubalo." (Esad Landžo (T.15088).)

4.235 There is no evidence that DELIĆ sought to intervene when detainees were being mistreated, or reported these incidents to MUCIĆ. There is no evidence that he ordered the camp guards and any other persons involved to ensure that the detainees were treated humanely in accordance with the provisions of international humanitarian law, or that he enforced any discipline in this respect.

(iv) Arguments of the Defence

4.236 DELIĆ has essentially advanced a single legal argument in answer to the charges of superior authority, namely that Article 7(3) only applies to "commanders" and not to "deputy commanders" or "staff officers", who lack the authority to prevent or punish subordinates.

4.237 The Defence for DELIĆ incorrectly expressed what it perceived to be the Prosecutor's position in its Pre-trial Brief as follows:

> "The legal issue between the Prosecutor and Delić is squarely drawn. The Prosecutor asserts ... that the principle of command responsibility for war crimes of others applies to non-commanders. Delić asserts ... command responsibility in a military context applies only to commanders".

4.238 This is a mischaracterisation of the issue. The concept of a "superior" in Article 7(3) is clearly not limited to persons described as "commanders". Within a single chain of command, a person described as "commander" may be the superior of a person described as "deputy commander", but it is also evident that the person described as "deputy commander" may be the superior of the person next in the chain of command, and so on. The Prosecutor's position is that within an organisational unit, superior responsibility is not confined to the person who is the head of the unit as a whole, but can apply to anyone in the unit who is a "superior" of anyone else in the unit.

4.239 The Defence is merely playing with words in arguing that the accused must be assigned the title of "commander" to be responsible under the doctrine of command responsibility. In fact, Article 7(3) does not refer to a "commander", but to a "superior". Even if DELIĆ was not described as the

"commander" of the camp prior to 18 November 1992, he was certainly a "superior" of guards who committed crimes there (see paragraphs 4.7-4.15, 4.114-4.118 above).

4.240 In any event, the word "commander", when used to describe the concept of "command responsibility", is not intended to be confined to those with the title of "commander". Article 87 of Additional Protocol I concerns the duty of commanders to prevent or punish the violations committed by their subordinates. A leading commentary on that Article states:

> "The sponsors of the provision explained that they had the intention, when using the term 'commanders', to cover 'all those persons who had command responsibility from commanders at the highest level to leaders with only a few men' i.e. squad leaders. In some interventions, however, it was argued that it could be concluded from the functions attributed that only commanders of a certain level, at least company commanders, were covered. This may be true as regards the responsibility for setting up programmes of military instruction in order to ensure that subordinates are aware of their obligations (para. 2). In this case, however, it is expressly added that this task has to be attributed to commanders 'commensurate with their level of responsibility'. In the cases of paras. 1 and 3 even a corporal as squad leader can and should be obliged to prevent, and where necessary to suppress violations and to report to competent authorities. If he has not the power formally to 'initiate' disciplinary actions against violators he would have to report to the competent superior. It does not emerge from the functions mentioned that generally only commanders of a certain level are covered by these provisions." (M. Bothe, K. Partsch, W. Solf, *New Rules for Victims of Armed Conflicts* (1982), p. 528.)

4.241 Furthermore, the ICRC Commentary to Additional Protocol I highlights that the intention of the States drafting these provisions was that responsibility attaches at all levels of the military hierarchy, in accordance with the authority that is vested in each position:

"According to the sponsors of the proposal which was behind the rule under consideration here: 'in its reference to "commanders", the amendment was intended to refer to all those persons who had command responsibility, from commanders at the highest level to leaders with only a few men under their command'. This is quite clear. There is no member of the armed forces exercising command who is not obliged to ensure the proper application of the Conventions and the Protocol. As there is no part of the army which is not subordinated to a military commander at whatever level, this responsibility applies from the highest to the lowest level of the hierarchy, from the Commander-in-Chief down to the common soldier who takes over as head of the platoon to which he belongs at the moment his commanding officer has fallen and is no longer capable of fulfilling his task.

This responsibility primarily applies with respect to 'members of the armed forces under their command'. This term should be understood very specifically, if full practical meaning is to be given to the provision. A commander may, for a particular operation and for a limited period of time, be supplied with reinforcements consisting of troops who are not normally under his command. He must ensure that these members of the armed forces comply with the Conventions and the Protocol as long as they remain under his command. In addition, it is self-evident that the obligation applies in the context of the responsibilities as they have devolved over different levels of the hierarchy, and that the duties of a non-commissioned officer are not identical to those of a battalion commander, and the duties of the latter are not identical to those of a divisional commander. Within the confines of these areas of competence, the responsibility of each of these applies with respect to all the members of the armed forces under his command. (ICRC Commentary to Additional Protocol I, p. 1019)

4.242 Similarly, the concept of "command" is not the only operative term since "the text [of Article 87] does not limit the obligation of commanders to apply only with respect to members of the armed forces under their command; it is further extended to apply with respect to 'other persons under their control'" (ICRC Commentary to Additional Protocol I, p. 1020).

4.243 The examples cited in the ICRC Commentary of those who have a duty to prevent violations indicate that Article 87 was intended to apply to a wide spectrum of people:

> "Every commander at every level has a duty to react by initiating 'such steps as are necessary to prevent such violations'. By way of example, a non-commissioned officer must intervene to restrain a soldier who is about to kill a wounded adversary or a civilian, a lieutenant must mark a protected place which he discovers in the course of his advance, a company commander is to have prisoners of war sheltered from gunfire, a battalion commander must ensure that an attack is interrupted when he finds that the objective under attack is no longer a military objective, and a regimental commander must select objectives in such a way as to avoid indiscriminate attacks." (ICRC Commentary to Additional Protocol I, p. 1022.)

4.244 Accordingly, various superiors at different levels can simultaneously be legally responsible to prevent or punish the unlawful acts of the same subordinates, and should they fail to do so, can all simultaneously be held criminally liable for the same crimes under the doctrine of superior responsibility. The failure of one superior to discharge his or her responsibilities in this regard cannot excuse another superior's failure to undertake all necessary and reasonable measures at the latter's disposal.

4.245 Contrary to DELIĆ's submissions, the application of the doctrine of superior responsibility to deputy commanders within their sphere of competence does not violate the principle of *nullum crimen sine lege*. The Prosecutor is not attempting to legislate new law. Additional Protocol I codifies well-established rules with respect to persons in positions of superior authority, which are part of customary international law. In addition, as stated in

the Prosecutor's pre-trial brief, there are many other authorities that support the obligation of superiors to take all measures at their disposal in the circumstances to prevent or punish violations committed by their subordinates, even if they lack control over the subordinates in certain areas. The Prosecutor is not advocating a position of strict liability, in the sense that any person of a rank higher than the perpetrator is automatically responsible for the perpetrator's crimes. A person held criminally liable under Article 7(3) must be in a position to exercise direct or indirect control over the perpetrator or the situation in which the crimes are committed (see paragraphs 4.7-4.15, 4.114-4.118 above).

4.246 DELIĆ attempts to equate his position of deputy commander with a staff officer. The evidence is to the contrary. DELIĆ was part of a chain of command, situated below the camp commander, and above the camp guards who perpetrated the crimes. The Defence for DELIĆ recognises in its Pre-trial Brief that some authority can be delegated to deputy commanders. The evidence establishes that DELIĆ clearly had authority over the camp guards.

4.247 In any event, even staff officers can be held responsible for unlawful acts committed by others. In the *High Command case*, staff officers were convicted. The court in that case held that:

> "If the basic idea is criminal under international law, the staff officer who puts that idea into the form of a military order, either himself or through subordinates under him, or takes personal action to see that it is properly distributed to those units where it becomes effective commits a criminal act under international law." (LRTWC, Vol. XII, p. 81.)

4.248 The position of staff officers is summed up by the then Commandant (Dean) of the Judge Advocate General's School, U.S. Army:

> "[H]e may be held criminally liable [for] ... his personal and direct acts done knowingly in aid or assistance to a specific violation of international law. If his authority ... is complete, and the issuance of an order is in fact an evidence of his policy uninhibited by his superiors, all responsibility for

> the orders published is his. Passing along the continuum, the law will extend criminal responsibility to an adviser who performs substantial planning of policy and is instrumental in drafting and promulgating internationally recognised orders." (Colonel J. Douglass, "High Command Case: A Study in Staff and Command Responsibility", 6 International Lawyer, pp. 713-714.)

(v) Conclusion

4.249 Clearly DELIĆ was in a position of superior authority over guards in the camp. He knew that offences were being committed against detainees in the camp, he himself directly participated in the commission of some of these crimes, and he himself ordered the commission of some of these crimes. He did nothing to prevent their commission or to punish the perpetrators thereof. Accordingly the evidence unequivocally proves that as a superior he is guilty as charged in the indictment.

5. LANDŽO's special defences

(A) Introduction

5.1 Prior to the commencement of trial, LANDŽO gave notice of his intent to offer a defence of diminished or lack of mental responsibility, and a defence of "limited physical capabilities". (Notice of the Defence to the Prosecutor Pursuant to Rule 67(A)(ii)(B) of the Rules of Procedure and Evidence, 15 November 1996).

5.2 In the Prosecution Response to Esad Landžo's Notice Pursuant to Rule 67(A)(ii)(b), 10 December 1996, p. 2, the Prosecution submitted that the Defence should be asked to clarify whether the Defence claims that the accused cannot be found guilty because of lack of or diminished mental responsibility, or whether the Defence believes that this is a matter that would be relevant only at sentencing. The Defence subsequently clarified that it would allege that lack of mental responsibility required a finding of not guilty (Pre-trial Brief of Esad Landzo and Response to Prosecutor's Pre-trial Brief, 3 March 1997, pp. 9-10). In its pre-trial brief, the Defence also indicated that it was continuing to pursue the defence of "lack of physical capacity" (*ibid.*, p. 9).

5.3 Prior to the presentation by the Defence of evidence on the issue of mental responsibility, the Defence filed a request that the Trial Chamber resolve certain legal issues relating to this defence. This request also addressed the substance of these legal issues. (Esad Landzo's Submissions Regarding Diminished or Lack of Mental Capacity, 5 June 1998 (hereafter referred to as "Defence Submission")). In this request, the Defence also clarified further that it would not rely on a defence of "*lack* of mental capacity", but rather that the defence would be limited to "*diminished* mental capacity" (*ibid*, pp. 3-4).

5.4 On 18 June 1998, the Trial Chamber ruled that the burden of proving this defence lies with the Defence, and that the standard of proof is the balance of probabilities. The Trial Chamber further reserved its decision on the definition of diminished or lack of mental capacity to final judgement. (Order on Esad Landzo's Submission Regarding Diminished or Lack of Mental Capacity, 18 June 1998.)

5.5 The Prosecution's response to the Defence's submissions on these legal issues have already been set out in the Prosecution Response to Defendant Landžo's Submissions Regarding Diminished Mental Capacity, 6 July 1998. For convenience, the substance of these submissions is set out again below, in section (B) of this Part. The application of the relevant legal principles to the evidence in this case is then dealt with in section (C) of this Part. Section (D) of this part then deals with LANDŽO's defence of "lack of physical capacity". The Prosecution submission is that neither of these defences has been established by the accused.

(B) The defence of diminished mental responsibility: the applicable law

5.6 There is no decision of the Tribunal on the legal test of diminished responsibility to be applied in cases tried before it. The Defence has argued that "Diminished capacity is best known as having been derived from the Homicide Act of 1957" and that "The most widely accepted legal standards relating to a special defence of diminished capacity or diminished responsibility are those codified by England in the Homicide Act 1957" (Defence Submission, pp. 4, 13). The Defence continued to rely on the legal test under the English Homicide Act 1957 during its presentation of evidence on this issue.

5.7 Section 2(1) of this Act provides that:

> "Where a person kills or is a party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for

> his acts and omission in doing or being a party to the killing."

5.8 Relying on English case-law applying this statute, the Defence argued that "abnormality of mind" is to be defined as meaning "a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal" (Defence Submission, p. 5, quoting *Regina v. Byrne* [1960] 2 QB 396, 44 Cr.App.R. 246).

5.9 The Defence claims that if this test is satisfied in the case of LANDŽO, he should be acquitted of the crimes with which he is charged (see paragraph 5.2 above).

5.10 The Prosecution submits that it is not appropriate for the Tribunal to adopt the concept of "abnormality of mind" applied in English law as a defence to murder. In any event, even if such a test were applied by the Tribunal, it would not mean that the accused should be acquitted.

5.11 It is not disputed by the Prosecution that reliance by the Tribunal upon legal concepts in national legal systems is justified in certain circumstances. It is perhaps most clearly appropriate when international rules make explicit reference to national laws or where such reference is necessarily implied by the very content and nature of the concept (*Prosecutor v. Erdemović, Judgment, Joint Separate Opinion of Judge McDonald and Judge Vohrah,* Case No. IT-96-22-A, App. Ch., 7 Oct. 1997, paras. 5-6). However, as Judge Cassese has said:

> "legal constructs and terms of art upheld in national law should not be automatically applied at the international level. They cannot be mechanically imported into international criminal proceedings. The International Tribunal, being an international body based on the law of nations, must first of all look to the object and purpose of the relevant provisions of its Statute and Rules." (*Prosecutor v. Erdemović, Judgment, Separate and Dissenting Opinion of Judge Cassese,* Case No. IT-96-22-A, App. Ch., 7 Oct. 1997, para. 2.)

5.12 In other circumstances, it may be that national law analogies can still be of subsidiary relevance in resolving issues arising before

the Tribunal. However, as Judge Cassese put it, a national law concept cannot be applied "automatically" or "mechanically" by the Tribunal. For any consideration of a national law concept to be useful, it must first be shown that the circumstances in which the concept is applied in national law are analogous to the circumstances in the legal system of the Tribunal.

5.13 In the present case, resort to this English law concept is not required expressly or by necessary implication. Rule 66(A)(ii)(B) of the Rules refers to a defence of "diminished or lack of mental responsibility". That provision of the Rules makes no reference to an "abnormality of mind", the concept used in the English legislation. There is no reason for assuming that Rule 66(A)(ii)(B) is a reference to a specific concept in English law, or in any of the other national systems referred to by the Defence.

5.14 Furthermore, section 2(2) of the Homicide Act 1957 provides expressly that where a defence of "abnormality of mind" is established, the defendant shall be liable to be convicted of manslaughter, rather than murder. This means that if the test applied in English law is satisfied, the defendant is not necessarily absolved of all criminal responsibility. In contrast, the Statute of the Tribunal does not provide for "lesser-included charges" to murder, such as manslaughter. There is therefore no valid analogy between the situation in English law in which this test is applied, and the situation in proceedings before the Tribunal. Clearly, there is no reason why the test applied by a national court to decide whether to convict a person of a lesser charge should be the test to be applied by the Tribunal to decide whether to acquit.

5.15 The starting point in dealing with any issue of interpretation of the Statute and the Rules must be the general international law principles of interpretation, as now codified in Article 31 of the Vienna Convention on the Law of Treaties (see, e.g., *Prosecutor v. Erdemović, Judgment, Joint Separate Opinion of Judge McDonald and Judge Vohrah,* Case No. IT-96-22-A, App. Ch., 7 Oct. 1997, paras. 3-5; *Decision on the Admissibility of the Prosecutor's Appeal from the Decision of a Confirming Judge Dismissing an Indictment against Théoneste Bagasora and 28 Others,* Case No. ICTR 98-37-A, App. Ch., 8 June 1998, paras. 28-29; *Prosecutor v. Tadić, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses,* Case No. IT-94-1-T, T. Ch., 10 Aug. 1995, para. 18). National law

concepts can provide little assistance where they are inconsistent with the plain language of the Statute and Rules, their object and purpose, and general principles of law.

5.16 Many provisions of the Statute, and indeed the very name of this Tribunal, contain references to the prosecution of persons "responsible" for serious violations of international humanitarian law. The plain language of the Statute indicates an intention that accused should be dealt with by the Tribunal according to the degree of their responsibility. Provided that a person still has at least some mental responsibility for such crimes, there is no obvious reason why they should be excluded from the definition of "persons responsible for serious violations of international humanitarian law". The degree of responsibility would, of course, be reflected in any sentence imposed by the Tribunal. As well being consistent with the plain language of the Statute, such an approach accords with common sense, given especially that the Tribunal is a jurisdiction in which narrow, rigid and inflexible rules are avoided.

> "It is one thing to reduce the sentence to be imposed; it is quite another to negate the existence of any crime ... In deciding whether to recognise defences to war crimes and crimes against humanity, it is important that the International Tribunal carefully weigh the consequences of any erosion in the fundamental principles of individual criminal responsibility, which are perhaps the greatest legacy of the Nuremberg Judgement and the greatest protection against the commission of such atrocities in the future" (V. Morris and M. Scharf, *An Insider's Guide to the International Criminal Tribunal for the former Yugoslavia*, 1995, p.111.)
>
> See also Judge Karibi-Whyte (T. 13146): "It does not go to acquit ... Diminished responsibility doesn't go to that."

5.17 Such an approach is in fact supported by reference to national legal systems generally. The concept of diminished responsibility exists in various forms, explicitly or implicitly, in many legal systems. An examination of national systems reveals that in various systems, establishing that an accused has diminished responsibility serves to reduce the sentence of an

accused, and will not result in an accused being excused from criminal liability. It does not provide a complete defence.

See, for example:

- **France:** **New Criminal Code, Article 122-1 ("The person who at the time of the facts suffers a mental illness which has modified his knowledge or affected the control of his acts remains punishable; however, this fact will be taken into account by the Court when establishing the sentence").**

- **Germany:** **Criminal Code, § 21 ("If, at the time the act is committed, the capacity of the perpetrator to understand the wrongness of the act or to act in accordance with this understanding is considerably reduced for one of the reasons indicated in Section 20, the punishment can be mitigated pursuant to Section 49, paragraph 1.")**

- **Italy:** **Code Penal, Article 89 ("The person who, at the time of committing the fact was, due to a mental illness, under such state of mind that his capability of understanding and wanting were partially affected, remains punishable though the sentence might be reduced according to the circumstances").**

- **South Africa:** **Criminal Procedure Act, section 78(7) ("If the court finds that the accused at the time of the commission of the act in question was criminally responsible for the act but that his capacity to appreciate the wrongfulness of the act or to act in accordance with an appreciation of the wrongfulness of the act was diminished by reason of mental illness or mental defect, the court may take the fact of such diminished responsibly into account when sentencing the accused").**

5.18 As noted above, in England and certain other systems, a finding of "abnormality of mind" will result not in an acquittal but in the

accused being found guilty of a lesser included form of culpable homicide.

5.19 In other systems, such as in the United States of America, a distinct legal concept of diminished responsibility is not explicitly recognised, but evidence of the accused's mental state is always a relevant matter for sentencing and in a limited number of cases may also be relevant to a defence concerning the specific intent necessary for an element of a particular category of crime.

5.20 This Tribunal has broadly defined crimes and no mandatory sentences; the various gradations and categories within the broad description of the crime are to be addressed by the Judges as a matter of sentencing, and this would encompass findings of diminished responsibility.

5.21 Article 24(2) of the Statute of the Tribunal instructs the Trial Chamber to take into account when sentencing an accused such factors as "... the individual circumstances of the convicted person." This clause has then been judicially interpreted as including factors such as "age, physical and *mental condition*, *degree of intent*, purposes, motives, *state of mind* ...", and it has been said that in applying this clause, "... the conclusions of a psychological and psychoanalytical evaluation ... may prove particularly relevant here." (*Prosecutor v. Erdemović, Sentencing Judgment*, Case No. IT-96-22-T, T. Ch. I, 29 Nov. 1996.).

5.22 Article 24(3) of the Statute provides that "In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia". With respect to diminished responsibility, the law from the former Yugoslavia is consistent with the approach contended for by the Prosecution. Article 12 of the Penal Code of the SFRY, enacted in 1976, states:

> "(1). A person who committed a criminal act is not considered responsible if at the time of the commission of a criminal act he was incapable of understanding the significance of his act or control his conduct due to a lasting or temporary mental disease, temporary mental disturbance, or mental retardation (no responsibility).

(2). If due to one of the states referred to in paragraph 1 of this article, the capacity of the offender to understand the significance of his conduct was substantially reduced, the court may impose a reduced punishment on him. (materially reduced responsibility)."

This provision in the law of the former Yugoslavia may be particularly pertinent, given that it can be seen to be "... a reflection of the general principles of law internationally recognised by the community of nations ..." (*Prosecutor v. Erdemović, Sentencing Judgment*, Case No. IT-96-22-T, T. Ch. I, 29 Nov. 1996; see also *Prosecutor v. Tadić, Sentencing Judgment*, Case No. IT-94-1-T, T. Ch. II, 14 July 1997).

5.23 Given that the Defence is not relying on a claim of lack of mental responsibility (see paragraph 5.3 above), the Prosecution submits that the evidence presented by the Defence concerning LANDŽO's mental capacity is entirely irrelevant at this stage of the proceedings. The evidence that the Defence has adduced in seeking to establish diminished mental capacity may be relevant at the sentencing stage of these proceedings. At this stage, where the only issue is guilt or innocence, it has no bearing on the issues. However, for the reasons given below in section (C), the Prosecution submits that on the evidence, diminished mental capacity has not been established in any event.

(C) <u>The defence of diminished mental responsibility: the evidence in this case</u>

5.24 Three psychiatrists were presented by the Defence to give expert testimony on LANDŽO's mental capacity, namely Dr. Edward Gripon, Dr. A.M.H. van Leeuwen, and Dr. Marco Laggazi, as well as one psychologist, Dr. Alfredo Verde. A further psychiatrist, Dr. Landy Sparr, was presented by the Prosecution in rebuttal.

5.25 The Prosecution submits that the evidence of Dr. Sparr is of particular value, for two reasons. First, of all the mental health experts who testified, Dr. Sparr was the only one who had specialised knowledge in the areas of personality disorders and post-traumatic stress disorder (PTSD) vis-à-vis violent acts (P. Exh. 264, T. 15403-15404). Secondly, Dr. Sparr was the only

one whose opinion was based on a study of LANDŽO's actual alleged conduct in 1992 (Dr. Sparr's Report, P. Exh. 265, T. 15404.)

5.26 In the light of his detailed knowledge of the facts of this case, Dr. Sparr came to the clear opinion that LANDŽO did not have PTSD (T. 15407-15408, 15444), or any personality disorder in 1992 (T. 15414-15415).

5.27 Dr. Sparr found that LANDŽO did exhibit personality traits that do fit certain criteria of different personality disorders, but said that these were not so far to extreme on any scale to warrant a diagnosis of any personality disorder:

> "... He refuses to take responsibility. He blames others. These are all part of this cluster. These are his traits. I won't go so far, though, as to say that he meets criteria for any disorder. He's along the continuum, but in any of the actual personality disorders in this cluster, I don't think he meets the criteria." (T. 15415.)

> "... he doesn't meet the criteria for the end of the spectrum kind of personality disorder. You know, I don't know where he is on the spectrum, but he isn't all the way at the far end, which is what is required to make these diagnoses of personality disorder. ... For instance, he's dependent, but he's not extraordinarily dependent, which is what you have to be to meet the standard. He's rather obsessive and avoidant, but not at the end -- once again, not at the end of the spectrum. So he has these kind of traits that stop short of being a full disorder." (T.15473.)

5.28 In particular, Dr. Sparr was firmly of the view that LANDŽO demonstrated free will.

> "... I'm not offering this in mitigation because he did have free will ..." (T. 15414.)

5.29 When asked if he had an opinion whether or not the accused had diminished responsibility in 1992, Dr. Sparr said:

> "No, I don't think he did. I mean, whatever, whatever you invoke, if you invoke PTSD, if you invoke personality disorder, whatever you try to invoke, he still had free will, he still had a choice." (T.15417.)

5.30 Dr. Sparr indicated that an abnormal personality could account for a single, isolated act of violence, when the criminal act was unpremeditated, and the choice of victim fortuitous. However, Dr. Sparr insisted that a *series* of violent acts over a period of time cannot be explained by a personality disorder:

> "... when it's been applicable, it's been an isolated incident where the choice of the victim was accidental, it was unpremeditated, his behaviour was systematic over time." (T.15418.)
>
> By the way, what you have to ask yourself about this is, in each case where this has been applied, there's been one incident, one incident, but this was ongoing, systematic, incident after incident, and , to me, that throws the whole thing out." (T. 15463.)

5.31 Dr. Sparr also pointed to other factors which indicated that LANDŽO was not suffering from diminished responsibility:

> "He's not randomly -- you know, he's got specific people in mind ... his choice of a victim is not fortuitous or accidental." (T. 15437.)
>
> "Also, the way he describes it, everything he did at Celebici, and also to a certain extent beyond, was because of Delic. I mean, Delic told him to do all this stuff. ... But on the other hand, he is supposed to be anti-social, which is this cunning and clever person. It just doesn't make sense." (T. 15412-15413.)
>
> "... He was actually anxious to get to the frontlines. I mean, that's what he wanted to do. That's what he told me. That's what he told others. He was trying to get to the frontlines. He was proud to get a rifle

> and a uniform. If somebody had PTSD, this isn't what they would want to try to do. They would try to avoid. ... I don't think he had PTSD." (T.15408.)

5.32 The opinions of the other experts were given without the benefit of any knowledge of the conduct in question. For instance, Dr. Verde said that he had heard that LANDŽO had been accused of murder, but that he did not know the details (T. 14423). Dr. Gripon said the only information he had about the facts of the case was the Indictment (T. 15208), as did Dr. van Leeuwen (T. 14283).

5.33 While not in any way casting doubt on their professionalism or expertise, it is evident that in the circumstances the Defence witnesses' theories on LANDŽO's possible mental condition in 1992 could not be tested on, or take account of, the material facts. They were expressing opinions on LANDŽO's mental responsibility for certain acts, without even knowing what those acts were.

5.34 Dr. van Leeuwen freely indicated this in report dated 13 January 1997 (Def. Exh. 46/4), in which he concluded that: "*...it is not possible to assess the subject's level of responsibility in relation to the offences in question, at least until these facts are deemed to have been proven.*" (p. 17). On the basis of the information that was available to him, Dr. van Leeuwen concluded that LANDŽO certainly knew the difference between right and wrong, and was aware of the wrongfulness of his acts, but that he "*may*" have been unable to exercise his free will because of his mental state. On page 15 of that report he states: "*... it nevertheless remains unclear whether or not the subject meets the criteria of a personality disorder.*" (See also T. 14266-14268.) This expert opinion was therefore acknowledged by Dr. Van Leeuwen to be only tentative. He in fact said quite clearly that it was "*possible*" that any of LANDŽO's acts could have been the product of complete free will (T. 14289).

5.35 Dr. Laggazi also acknowledged that he only knew what LANDŽO had indicated to him concerning specific events, and that his opinion was "a *general assessment, which would need to be further verified*", and "*would have to be checked against individual events*" (T. 14623-14624). He subsequently added:

> "I can't take this further. To say that he was a helpless puppet might be perfectly true in light of some facts. It could be totally wrong, false, if related to other facts. So the problem I have is that I would have to discuss about these facts with him. So it wouldn't be appropriate on my part to come up with an assessment and an evaluation which go beyond the methodology followed in my expertise, it would be speculation at that stage." (T. 14634-14635.)
>
> "Q. So that if in some point in time you were to learn the specific events or learned how the crimes were committed, you could -- you may, change your opinion; is that correct, as to whether there was any diminished responsibility?
> A. Yes, of course, I could. ... We'll have to consider the individual events." (T.14625-14626).

5.36 Dr. Gripon also seemed to concede that while he could form a professional opinion on how LANDŽO's personality might impact upon his conduct, ultimately "*the person listening to that testimony, if it's a trial, will make the ultimate decision as to whether that is a factor, isn't a factor, they do with it what they want.*" (T. 15211-15212).

5.37 Dr. Gripon was asked his opinion on a hypothetical situation in which a person is beating a prisoner, and then stops because he is told that his commanding officer is approaching, by whom he does not wish to be seen beating a prisoner. Dr. Gripon responded that:

> "... In any specified setting a person can look at behaviour and probable get some kind of gauge or estimate as to the degree to which a person controls that. Obviously if a person stops something they are doing, they demonstrated some ability, at least at that moment, to change direction or take another path." (T. 15210-15211).

5.38 In fact, in this case the victim Vaso Dordic testified that LANDŽO on one occasion was mistreating him, and then stopped and ran out of the hangar when he heard someone was coming (T.4357-4360). The need to base any assessment of mental

capacity on the specific facts of the case was thereby made all the more evident.

5.39 A further significant factual element is that LANDŽO in his own testimony admitted that he sometimes mistreated prisoners on his own initiative without orders to do so (beating prisoners from Bradina (T. 15056-15057), killing Boško Samouković, and hitting Slavko Šušić (T. 15350-15352)). He further reported that sometimes he disobeyed orders, such as when he once permitted a prisoner to go to the entrance gate of the hanger to exchange a few words with his mother standing outside the camp (T. 15076-15077). These admissions conflict with the psychological profile proffered by the experts presented by the Defence, that he acted only under superior orders because of his dependent personality.

5.40 Dr. Gripon also said that LANDŽO had told him that he "*would inflict pain and suffering on prisoners for two reasons: One, that he was ordered to do so; and, two, he stated he was bored and frustrated and that he never had any difficulty doing this, and that he enjoyed it, and that he cannot say why he found it to be not at all unpleasant*" (T. 15230). This also logically contradicts the Defence theory that LANDŽO acted only under superior orders because of his dependent personality.

5.41 The Defence seeks to portray LANDŽO as a young "boy" (T. 14170, 14655), helpless in life, at the mercy of stronger personalities, essentially as a "victim" (T. 14171, 14177, 14654-14655). This is an insult to the true victims of Čelebići. On the facts of this case, to allow the accused to succeed in his argument that he was compelled to obey DELIĆ's orders (T. 15045, 15067, 15069-15070, 15080-15081, 15087-15088, 15338), would be to admit a defence that was firmly rejected by the Nuremberg Tribunal, and which is excluded by Article 7(4) of the Statute of this Tribunal.

5.42 The Prosecution therefore submits that the Defence has not discharged the onus of proving diminished mental responsibility on the balance of probabilities.

(D) The defence of "limited physical capabilities"

5.43 Before the commencement of trial, the Defence also gave notice to the Prosecution of its intent to offer a defence of "limited

physical capabilities". This notice foreshadowed that the Defence would claim that LANDŽO has been suffering from chronic bronchitis since birth, and has had a serious wound on his right hand since 1991, and that because of this limited physical capacity he could not have participated in the relevant acts in the manner and to the extent charged in the Indictment (Notice of the Defence to the Prosecutor Pursuant to Rule 67(A)(ii)(B) of the Rules of Procedure and Evidence, 15 November 1996).

5.44 In the Pre-trial Brief of Esad Landzo and Response to Prosecutor's Pre-trial Brief, 3 March 1997, p. 9, it was stated by the Defence that "the severe beatings described by witnesses for the Prosecution would be a physical impossibility for this defendant to have performed".

5.45 At trial, LANDŽO called two doctors to give testimony about his physical condition. Dr. Lammers testified as to LANDŽO's asthmatic condition, and Dr. Haeseker testified as to the condition of his right hand, specifically his fourth and fifth fingers.

5.46 Dr. Haeseker's opinion was based on an examination of LANDŽO's hand which he had done while LANDŽO was in the custody of the Tribunal. The witness said that he had no knowledge of the facts of the case or of what LANDŽO was alleged to have done in 1992. He said that he had never seen LANDŽO hold a baseball bat or rifle (T. 14470). He testified in any event that a person with LANDŽO's injuries could still hold a baseball bat in the right hand and hit somebody with it, but would feel pain, and it would not be very stable. He added that "He will still be handier with the other hand, of course" (T. 14467).

5.47 Thus, even if the evidence of injury to his right hand is accepted, it would not mean that LANDŽO was physically incapable of administering the beatings with which he is charged. In fact, in his own testimony, LANDŽO said that he "generally" kicked with his feet (T. 15373).

5.48 Dr. Lammers, the expert who spoke about the asthma, also said that he had no knowledge of the facts of the case or of what LANDŽO was alleged to have done in 1992. He agreed that if LANDŽO hit someone with a bat several times, he (Dr. Lammers) could not say anything about whether LANDŽO may

or may not have developed an asthma attack on that occasion (T. 14495).

5.49 More fundamentally, any defence of "limited physical capabilities" is contradicted by the overwhelming evidence of LANDŽO's participation in these crimes, as set out in Part 3 of this Closing Statement. The evidence of the two doctors called by the Defence is not such as to raise any reasonable doubt as to the veracity of this body of evidence. Indeed, in his own testimony LANDŽO freely admitted beating, torturing, and even killing prisoners, not just once but on multiple occasions, with apparently no physical hindrance.

5.50 The Prosecution submits that in view of the evidence as a whole, the Defence has not established any defence of "limited physical capabilities".

6. General requirements of Articles 2 and 3 of the Statute

(A). Applicability and general requirements of Article 2 of the Statute

(i) Introduction

6.1 It is not disputed that Article 2 of the Statute is applicable to the present case if it can be shown that the violations occurred during an international armed conflict and against persons who were protected by the Geneva Conventions. The Prosecutor submits that more than sufficient evidence has been presented to support a finding beyond a reasonable doubt on both of these requirements.

6.2 To determine the applicability of Article 2 it is necessary to first determine whether the violations occurred during an international armed conflict and which parties were involved in the conflict. Thereafter, it must be decided whether the victims were protected by the Geneva Conventions (See the Decision of Trial Chamber II of 13 September 1996 in the Review of the Indictment pursuant to Rule 61, *Prosecutor v. Ivica Rajić* (Rajić Rule 61 Decision), p. 7, paras. 7-8, and p. 18, para. 33 which states: "Based on the provisions of this Convention [Geneva Convention IV], the Trial Chamber first considers whether the Prosecutor has shown sufficiently that the alleged attack ... took place during an international armed conflict and then addresses the issue whether the attack involved persons ... protected under Geneva Convention IV").

6.3 In sum, in the present case, five steps must be established to satisfy these elements:

(1) The SFRY/FRY/JNA/VJ intervened militarily in the BH, which establishes the existence of an international armed conflict between the BH and the FRY.

(2) The RS/SDS/VRS and Bosnian Serb militia were sufficiently linked to the SFRY/FRY/JNA/VJ to be regarded as part of this side to the international armed conflict with the BH. It is not required that they be "effectively controlled" by the FRY/VJ as the decision in the *Tadić* case was incorrectly decided on this point, and this standard is also inappropriate for determining the nature of the conflict and the status of the victims in this case. In any event, the *Tadić* decision is not binding on this Trial Chamber, and is currently under appeal. Even if the "effective control" standard were adopted, however, it has been proved by the evidence in this case.

(3) The armed hostilities that occurred in the Konjic municipality were part of this international armed conflict as they involved the BH armed forces and the JNA/VRS/SDS and Bosnian Serb militia. The Celebici camp was established and operated in the context of this conflict.

(4) The perpetrators were linked to the BH side of the international armed conflict.

(5) The victims were linked to the other side of the international armed conflict either because they were, or were considered, part of the Bosnian Serb armed forces that were connected with the FRY/JNA/VJ, or they were civilians who had fallen into the hands of the BH armed forces, who were their adversary in this conflict, and treated them in this fashion. The former would qualify as prisoners of war, even if there was some doubt as to their status until it was determined by a competent tribunal. The latter would qualify as protected civilians, even if they had been arrested for acts hostile to the BH State, including the possession of arms, and they did not qualify for prisoner of war status.

(ii) The existence of an international armed conflict

6.4 The Prosecutor has presented more than sufficient evidence of the existence of an international armed conflict during at least 1992 between the two sovereign States, namely the Republic of Bosnia-Herzegovina (BH) and its armed forces, on the one hand, and the Socialist Federal Republic of Yugoslavia (SFRY) and from 27 April 1992, the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY), and their armed forces, the Yugoslav Peoples Army (JNA) and from May 1992, the Yugoslav Army (VJ), on the other hand.

6.5 Furthermore, on the evidence, the self-proclaimed "Bosnian Serb Republic" (Republika Srpska) (RS), and the Bosnian Serb Army (VRS) and other Bosnian Serb militia, were sufficiently linked to the FRY/JNA/VJ to be regarded as part of the FRY/JNA/VJ side to the international armed conflict with the BH for the purposes of rendering the grave breach provisions of the Geneva Conventions applicable to adjudicate individual criminal responsibility for the commission of such breaches.

6.6 The conflict occurred on the territory of the BH and the BH was partially occupied by the SFRY/FRY/JNA/VRS. The evidence clearly demonstrates that no separate and distinct internal armed conflict or rebellion existed between the Bosnian Serb Army and Bosnian Serb militia, and the BH Army. The hostilities which occurred between these forces, including those in the Konjic municipality, must be regarded as being part of the international armed conflict that occurred between the BH and the FRY for the purposes of applying the grave breach provisions in the present case.

(a). The JNA/VJ was involved in armed hostilities in the BH against the BH Army

6.7 Common Article 2 of the Geneva Conventions provides that the Conventions apply to "any ... armed conflict which may arise between two or more High Contracting Parties [that is, States]". An international armed conflict therefore exists whenever "any difference arising between two States lead[s] to the intervention of members of the armed forces" (ICRC Commentary to Geneva Convention IV, p. 20).

6.8 The evidence clearly demonstrates that the JNA and the VJ intervened in the BH and were involved in armed hostilities with the BH Army during at least 1992, including in the Konjic municipality (for example, see Dr. Calic T. 659-660, 695-696, 839-840, 895, 904-905; P. Exh. 38 (Report of the Secretary-General of 3 December 1992); P. Exh. 60 (Command of the 2nd Military District Headquarters, 20 March 1992); Dr. Gow T. 9267, 9270-9271, 9898-9900; Divjak T. 8421-8430; Sudar T. 5794-5; Draganić T. 7000; and Dzajić T. 8030). This and other evidence also demonstrates that the BH Government always regarded the conflict as international, for example, see P. Exh. 30 (BH Decision on the Proclamation of a State of War, 20 June 1992).

6.9 The Defence witnesses essentially confirm this evidence (for example, see Hadzibegovic T. 10178, 10314-10319; and Vejzagic T. 10469-10471, 10496-10497, 10845, 10993).

6.10 It is not disputed that the BH became an internationally recognised State from at least the beginning of April 1992, and that the FRY was established in April 1992, comprising of the remaining republics of the SFRY, Serbia and Montenegro (see Calic T. 652-653).

6.11 As a result it can be concluded that an international armed conflict existed between the BH and the SFRY/FRY from at least April 1992 on the territory of the BH. This conclusion accords with the Appeals Chamber's decision: "The conflict in the former Yugoslavia had been rendered international by the involvement ... of the JNA in hostilities in ... Bosnia-Herzegovina at least until its formal withdrawal on 19 May 1992. To the extent that the conflicts had been limited to clashes between the Bosnian Government forces and the Bosnian Serb rebel forces in Bosnia-Herzegovina ... they had been internal (*unless direct involvement of the Federal Republic of Yugoslavia (Serbia-Montenegro) could be proven)*" [emphasis added] (*Prosecutor v. Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, Case No. IT-94-1-A, App. Ch., 2 October 1995 ("*Tadić Jurisdiction Decision*"), p. 39, para. 72).

6.12 For the purposes of applying the grave breach provisions, this international armed conflict is regarded as occurring on the entire territory of the BH, including the municipality of Konjic,

irrespective of whether the JNA/VJ were present in the Konjic municipality at all material times, or whether actual hostilities occurred between the BH Army and the JNA/VJ in this area throughout 1992. As the Appeals Chamber's Decision states: "[T]he provisions of the Conventions apply to the entire territory of the Parties to the conflict, not just the vicinity of actual hostilities ... With respect to prisoners of war, the Convention applies to combatants in the power of the enemy; it makes no difference whether they are kept in the vicinity of hostilities. In the same vein, Geneva Convention IV protects civilians anywhere in the territory of the Parties. This construction is implicit in Article 6, paragraph 2, of the Convention" (*Tadić Jurisdiction Decision*, p. 36, para. 68).

6.13 It remains to establish a sufficient nexus between the offences that occurred at the Čelebići camp and the international armed conflict which gives rise to the applicability of the grave breach provisions. In this regard the Appeals Chamber in the *Tadić Jurisdiction Decision* held: "The nexus required is only a relationship between the conflict and the deprivation of liberty, not that the deprivation occurred in the midst of battle" (*Tadić Jurisdiction Decision*, p. 37, para. 69), and "It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict" (*ibid*, p. 38, para. 70).

6.14 The evidence in the present case distinctly shows the nexus between the international armed conflict and the offences that occurred. For example, the evidence referred to above demonstrates that the victims in the Čelebići camp were in the hands of a Party to an international armed conflict, the BH. They were clearly detained in the camp, in which the violations occurred, in the course of, and as a result of, the armed hostilities that were occurring between the BH Army and the JNA, VRS and other Bosnian Serb militia in many parts of the BH, and the Konjic municipality in particular. As outlined below, the Bosnian Serb armed forces were involved in armed hostilities on the side of the FRY/JNA/VJ and, therefore, formed part of the international armed conflict with the BH. No separate and distinct internal armed conflict or rebellion existed. The accused were part of the BH armed forces and were involved in these hostilities, and the victims were regarded as part of the

FRY/VJ/VRS side in an international armed conflict, as is clear from the evidence outlined below.

6.15 It is also significant that the *Tadić Opinion and Judgment* held that the VJ were present and involved in armed hostilities in the BH after May 1992:

> "[I]t is clear from the evidence before the Trial Chamber that, from the beginning of 1992 until 19 May 1992, a state of international armed conflict existed in at least part of the territory of Bosnia and Herzegovina. This was an armed conflict between the forces of the Republic of Bosnia and Herzegovina on the one hand and those of the Federal Republic of Yugoslavia (Serbia and Montenegro), being the JNA (later the VJ), working with sundry paramilitary and Bosnian Serb forces, on the other ... [T]he forces of the VJ continued to be involved in the armed conflict after that date ... [T]he level of intensity of the conflict, including the involvement of the JNA or the VJ in the conflict, was sufficient to meet the requirements for the existence of an international armed conflict for the purposes of the Statute" (*Prosecutor v. Tadić, Opinion and Judgment*, Case No. IT-94-I-T, T. Ch. II, 7 May 1997 ("*Tadić Judgment*"), p. 206, para. 569; also pp. 43-44, paras. 118-119).

6.16 The Tadić Judgment did hold that the civilian victims in that case were not protected persons on the basis that the actions of the VRS, in whose hands the victims were, could not be imputed to the FRY, of the which the victims were not nationals, as the VRS was not "effectively controlled" by the FRY (see *Tadić Judgment*, p. 214, para. 584; p. 217, para. 588; and p. 220, para. 595).

6.17 The Prosecutor submits that the "effective control" standard was incorrectly adopted by the Trial Chamber in this case, and it would also be inappropriate to rely upon this test in the circumstances of the present case. The *Tadić* decision is in any event not binding on this Trial Chamber (see, *Prosecutor v. Kovačević, Decision on Defence Motion to Strike Counts 4, 5, 8,*

9, 10, 11, 13 and 15, Case No. IT-97-24-PT, T. Ch II, 6 July 1998).

6.18 The *Tadić* decision on this point is currently being appealed by the Prosecutor under Rule 108 primarily on the ground that the Geneva Conventions do not require the VRS to be "effectively controlled" by the FRY to render the grave breach provisions applicable (see Brief of Argument of the Prosecution ("Tadić Appeal Argument"), *Prosecutor v. Duško Tadić*, Appeals Chamber, 12 January 1998).

6.19 As set out below, the Prosecutor submits that the Geneva Conventions require a showing of the VRS being demonstrably linked to, or on the side of, a Party to an international armed conflict, to regard the VRS, and related armed forces, as part of one side to such a conflict. In any event, sufficient evidence has been presented to demonstrate that the FRY/VJ effectively controlled the RS/VRS (see paras 6.29-6.41 below).

6.20 Contrary to the Defence's assertions, the Appeals Chamber in its previous judgments has not decided whether an international armed conflict in fact existed in the BH in 1992 between the BH and the SFRY/FRY/VRS: "we conclude that the conflicts in the former Yugoslavia have both internal and international aspects, that the members of the Security Council clearly had both aspects of the conflicts in mind when they adopted the Statute ... and that they intended to empower the International Tribunal to adjudicate serious violations of humanitarian law that occurred in either context" (*Tadić Jurisdiction Decision*, p. 43, para. 77) and that "the Appeals Chamber must conclude that ... Article 2 ... only applies to offences committed within the context of international armed conflicts" (*ibid.* p. 48, para. 84). Accordingly, the Appeals Chamber has reserved the question of determining the exact nature of the conflict, and the applicability of Article 2, in each case for the Trial Chamber considering the case.

6.21 In light of the aforegoing, it is clearly wrong to suggest that in future cases "the Prosecutor should not be permitted to continue to seek to prove such allegations [of international armed conflict]", and that in the present case "the matter [of international armed conflict] is *res judicata* and the Prosecutor should not be able to continue to assert and attempt to prove otherwise" (see *Defence No Case to Answer Motion*, p. 39). The

matter has clearly not been decided by the Appeals Chamber, and the *Tadić Judgment* in respect of the protected person status of the civilian victims in that case is being appealed in accordance with the Rules.

6.22 In any event, nothing prevents the Prosecutor from presenting further evidence of the existence of an international armed conflict in the circumstances of the present case and future cases, which may or may not involve the same parties, territories and temporal scope. Even if the *Tadić Judgment* in respect of protected persons is confirmed by the Appeals Chamber, it merely establishes the legal standard which has to be attained in future and the nature of the evidence that the Prosecutor will have to adduce to satisfy this standard.

6.23 It should also be pointed out that the principle of *res judicata* in no way bars the Prosecutor from presenting evidence concerning the nature of the conflict in subsequent cases, as the principle only applies to decisions taken within a case, and not in respect of decisions in subsequent cases.

6.24 Contrary to the Defence's view (see *Defence No Case to Answer Motion*, p. 38), additional and significant testimony and evidence to Dr. Calic's testimony and that which was adduced in the *Tadić* case, was submitted in the testimony of Dr. Gow in the present case. Indeed, Dr. Calic stated during her testimony that she was not a military expert and that further witnesses on military and related matters would have to be heard (for example, see T. 699, 788, 884).

6.25 Furthermore, Dr. Gow's testimony addressed, amongst others, questions that arose from the *Tadić Judgment* of 7 May 1997, which was decided after Dr. Calic's testimony. His testimony was, therefore, at least additional and new to the Čelebići case.

6.26 Dr. Gow also gave testimony that was new to the *Tadić* case. This testimony is significant for showing the very close relationship between the FRY/VJ and the RS/SDS/VRS, and the protected person status of the victims. Some examples from Dr. Gow's testimony that cover these issues are as follows:

— He testified about the importance of the date of a particular entry in Jović's diary for the purposes of demonstrating that the formal division of the JNA into the VJ and the VRS,

which occurred in May 1992, was deliberately planned in December 1991 "with a view to carrying out the project of annexing parts of Bosnia-Herzegovina ... as a means of providing a way to camouflage the activity" (T. 9259; also see T. 9258-9266, and Prosecution Exhibit 207 (Extract from Borislav Jović's diary)).

— He also testified, *inter alia*, about the aims, objectives and programs of the SDS and the RS, and their implementation in the Konjic municipality (see T. 9251-9252, 9253-9257, and Prosecution Exhibit 206 (SDS document entitled "For the organisation and activity of organs of the Serbian people in Bosnia-Herzegovina in extraordinary circumstances"));

— The high level of control exercised by Belgrade over the RS and the VRS (see T. 9295-9297), in particular, the command structure between the VJ and the VRS (see T. 9271-9272).

— The nature of the armed conflict that occurred in Nicaragua, and the differences between this conflict and the conflicts in the former Yugoslavia (see T. 9297-9299).

6.27 This and other testimony was not led in the *Tadić* case, and it is incorrect to state that the record in the present case "is remarkable similar to that considered by the Trial Chamber in *Tadić*" (see *Defence No Case to Answer Motion*, p. 38). Further, the evidence presented by a number of Defence witnesses, which was not led in the *Tadić* case, confirms the Prosecution evidence of the level of control exerted by the FRY/JNA/VJ over the RS/SDS/VRS (see para. 6.9 above, and paras 6.43, 6.46, and 6.50 below).

6.28 In addition, as explained immediately below, the Defence have erroneously asserted that, as a matter of law, to prove the existence of an international armed conflict it is necessary for the RS/VRS to have been effectively controlled by the FRY/VJ. There is, in any event, sufficient evidence before the Trial Chamber to meet the "effective control" test on the basis of similar and additional evidence to the evidence presented in the *Tadić* case (see paras 6.51-6.52 below).

(b). The Bosnian Serb organisations can be regarded as part of the FRY/JNA/VJ side to the international armed conflict

6.29 The provisions of the Geneva Conventions and relevant judicial and other authorities require that armed forces only have to be demonstrably linked to, or on the same side as, a Party to an international armed conflict to be part of the armed forces involved in such a conflict for the purposes of rendering the grave breach provisions applicable. Some of the pertinent authorities in support of this proposition are discussed in the paragraphs below.

6.30 The definition in the Geneva Conventions of who can constitute "members of armed forces" supports the view that those demonstrably linked to a Party to an armed conflict can be regarded as part of its armed forces. Article 4A(2) of Geneva Convention III provides that the members of all armed forces, militias, volunteer corps, and resistance movements "forming part of" or "belonging to" to the armed forces of a Party to conflict can qualify as prisoners of war. On the relationship required between the Party and the militia, or other armed forces, the ICRC Commentary to Article 4 states that:

> "[T]here should be a *de facto* relationship between the resistance organisation [or militia or volunteer corps] and the party ... which is in a state of war, but the existence of this relationship is sufficient. It may find expression merely by tacit agreement, *if the operations are such as to indicate clearly which side the resistance organisation [or militia or volunteer corps] is fighting*" [emphasis added] (ICRC Commentary on Geneva Convention III, p. 57).

6.31 A leading publicist, G.I.A.D. Draper, has noted that it "seems reasonably certain that the triple-stranded subordination of operational command, discipline and logistic dependence, is not necessary" (G.I.A.D. Draper, "The Status of Combatants and the Question of Guerrilla Warfare", *B.Y.I.L.*, 1971, p. 200). Other leading publicists have stated:

> "Since 'belonging' is applicable to militia, volunteer corps, and organised resistance movements which

> are not part of the regular armed forces, such relationships that may be involved are not the same as those which exist between a State party to the conflict and its regular armed forces. While a government statement of authorisation or recognition of an irregular group is satisfactory, it has been clear since the Brussels Declaration [of 1874] that this is not indispensable. Among the pre-eminent World War II examples influencing the drafting of Article 4A(2) were Marshal Tito's partisan forces. *These irregular forces were by the tacit agreement of the Allied forces, as well as by an understanding based on common sense, fighting on the Allied side.* The Yugoslavian partisans did not act pursuant to the authority or under the control of any government [emphasis added] (W. Mallison & S. Mallison, "The Juridical Status of Irregular Combatants under the International Humanitarian Law of Armed Conflicts", 9 *Case Western Journal of International Law*, 1977, p. 52).

6.32 Further, Article 4A(2) should be interpreted in light of the other relevant and related parts of the Conventions including Article 4A(3) which provides that "members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power" can qualify as prisoners of war. As the ICRC Commentary notes:

> "This provision must be interpreted ... in light of the actual case which motivated its drafting - that the forces of General De Gaulle which were under the authority of the French National Liberation Committee ... The distinguishing feature of such armed forces is the simple fact that in the view of their adversary, they are not operating or are no longer operating under the direct authority of a Party to the conflict in accordance with Article 2 of the Convention. One solution in order to bring these armed forces *legally* within the scope of the Convention *was to associate them with a belligerent fighting against the Power concerned.* During World War II the German authorities accepted this solution and stated that they would consider the

> Free French Forces to be 'fighting for England'" [emphasis added] (ICRC Commentary on Geneva Convention III, pp. 62-63).

6.33 Mallison & S. Mallison have commented as follows on this provision:

> "Even if General De Gaulle's forces did not 'profess allegiance' to a government ... the 'Free French' ... constituted an unrecognised public authority ... to which they professed allegiance. An analogous situation today would entitle such combatants to the same privileged treatment" (W. Mallison & S. Mallison, "The Juridical Status of Irregular Combatants under the International Humanitarian Law of Armed Conflicts", 9 *Case Western Journal of International Law*, 1997, p. 53).

6.34 Certain of the post-World War II trials support the position that it is not even necessary that the perpetrator be part of the armed forces, or be entitled to combatant status in terms of the Geneva Conventions, to be capable of committing war crimes during an international armed conflict. In these trials it was held that civilians could be responsible for the commission of war crimes on the basis of their connection to a Party to the conflict. The general linkage of the accused to a Party to the conflict was, therefore, decisive in finding that the perpetrator was responsible for war crimes committed against the enemy of such Party. For example, see *The Hadamar Trial*, Law Reports of the Trials of War Criminals (LRTWC), Vol. I, p. 46, esp. pp. 53-54; *The Essen Lynching Case*, LRTWC, Vol. I, p. 88; *The Zyklon B Case*, LRTWC, Vol. I, p. 93; and *Trial of Jean-Pierre Lex*, LRTWC, Vol. VII, p. 74.

6.35 The *Rajić Rule 61 Decision* unanimously held in relation to whether the Bosnian Croats were sufficiently controlled by Croatia to regard the conflict as international that:

> "Specific operational control is ... not critical to the inquiry. Rather, the Trial Chamber focuses on the general political and military control exercised by Croatia over the Bosnian Croats ... It appears that Croatia in addition to assisting the Bosnian Croats ...

> inserted its own armed forces into the conflict on the territory of Bosnia and exercised a high degree of control over both the military and political institutions of the Bosnian Croats" (*Rajić Rule 61 Decision*, p. 15, para. 25).

6.36 The Trial Chamber in the *Rajić Rule 61 Decision* had already held at p. 13, para. 21 that: "[A]s a result of the significant and continuous military intervention of the Croatian Army in support of the Bosnian Croats, the domestic conflict between the Bosnian Croats and their Government in central Bosnia became an international armed conflict".

6.37 Leading publicists have also stated that foreign support for internal armed forces can internationalise the character of the conflict. Prof. C. Greenwood, for example, notes that the offering of direct support by a party to one of the parties in a conflict is sufficient to make it a party to the conflict as well:

> "A state not ... party to an armed conflict will only commit an act of war [measures of force which one party implements against another party in an international armed conflict] and thus risk making itself a party to the conflict, by giving direct support to the military operations of one of the belligerents. Financial, political, and intelligence support will not have such an effect" (C. Greenwood in D. Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, p. 50, para. 214).

6.38 Accordingly, it is submitted, with respect, that the "effective control" standard enunciated in the Tadić Judgment is erroneous. It is evident that it is not necessary to prove that the perpetrator/armed forces were effectively controlled by a Party to an international armed conflict for those forces to be regarded as part of the armed forces of such a Party for the purposes of applying the Geneva Conventions. It must be proven that the perpetrator/armed forces were demonstrably linked to the Party, which could involve a showing of being identifiable or associated with the Party, or being allied with it, or in fact fighting on the same side, or by agreement or a common understanding fighting on the same side, or being connected to the Party, or a showing of general political and military control exercised by the Party over

the internal armed forces. Further, the direct involvement of the armed forces of the Party in the armed hostilities, and lending direct combat assistance to the internal forces, is a very important factor to take into account, as it demonstrates the direct link between the Party and the internal armed forces, and can, at the very least, serve to internationalise an internal armed conflict. The mere supplying of finances and logistics by a foreign State to an internal armed force would not be sufficient.

6.39 The *Nicaragua* case is not at all relevant to determining the applicability of the grave breach provisions of the Geneva Conventions for the purposes of adjudicating individual criminal responsibility for violations of these provisions. This ICJ case was concerned solely with assigning State responsibility to one State for violations of another States' rights under international law. The Court did not consider the individual criminal responsibility of persons for violations of international humanitarian law. In particular, Article 29 of Geneva Convention IV confirms the sharp distinction between State responsibility for violations of the Conventions and individual criminal responsibility for violations of the grave breach provisions of the Conventions, and that different rules are applicable to determining each (see ICRC Commentary to Geneva Convention IV, p. 209-212).

6.40 The rules and standards applicable to determining State responsibility for violations of the Conventions, including the "effective control" standard relied upon in the *Nicaragua* case, are not applicable to adjudicating individual responsibility for the commission of grave breaches. The provisions of the Geneva Conventions and other relevant authorities, cited above, which are applicable to determining individual liability under the Conventions, require a demonstrable link between the perpetrator and the internal armed forces, and a Party to an international armed conflict, and not an "effective control" or "agency" showing.

6.41 The Prosecutor is appealing these findings in the *Tadić* case (see *Tadić* Appeal Argument, pp. 11-29).

6.42 The evidence before the Trial Chamber clearly demonstrates that the VRS and Bosnian Serb militia were demonstrably linked to the FRY/VJ and part of the same side to the international armed conflict with the BH on at least the following grounds:

— The division of the JNA into the VJ and the VRS in May 1992 amounted only to a re-designation of armed forces and re-naming of such forces. The command structure, and the military objectives and strategies of the JNA were not significantly altered. In particular, the VRS was created by the FRY/JNA in order to permit Belgrade to continue to execute its political and military project to control, and annex or unify with, certain territories in the BH (see, for example, Gow, T. 9250-9253, and 9258-9266; Prosecution Exhibit 207 (Extract from Borislav Jović's diary); Calic, T. 657-661; Prosecution Exhibit 37 (General Kadijević's book, "My view of the Break-up: an Army without a State"); and Divjak, T. 8421-8430).

— The VJ was present in the BH after May 1992 and fought alongside and with the VRS against the BH armed forces. The VJ also provided critical combat support to the VRS (see, for example, Gow, T. 9267, and 9270-9271; and Calic, T. 660-661).

— The VJ exercised substantial military control over the VRS, through, *inter alia,* command and control from Belgrade; the direction and supervision of the VRS's military activities; and the provision of extensive financial, logistical, and other assistance and support to the VRS (see, for example, Gow, T. 9271-9272, and 9295-9297; Calic, T. 657-661; and Prosecution Exhibit 43 (UN Secretary-General's Report of 24 November 1992)).

— The SFRY/FRY exercised substantial political control over the establishment, program and activities of the RS and the SDS, particularly in light of the political aims of Belgrade to control and annex or unify certain territories in the BH. Indeed, the SDS and the RS stated that the RS was part of the FRY (see, for example, Gow, T. 9268-9269, and 9295-9297; Calic, T. 648-655; and Prosecution Exhibits 13-21, which are various declarations, decisions and constitutions adopted by the RS and related entities).

— The statements and actions of the BH Government clearly demonstrate that the BH Government's position was that it was engaged in an international armed conflict against the JNA, VJ, and Bosnian Serb armed forces, and that the latter

forces were on the side of the FRY/JNA/VJ (see, for example, Gow, T. 9272-9273; and Prosecution Exhibit 30 (BH Decision on the Proclamation of a State of War, 20 June 1992, which states: "aggression has been committed against the Republic of Bosnia and Herzegovina by the Republic of Serbia, the Republic of Montenegro, the Yugoslav Army and the terrorists of the Serbian Democratic Party [SDS]")). All of the accused were part of the BH armed forces, which considered the conflict to be of an international character, and it is inconsistent for them to now claim that the conflict was not international and did not include the Bosnian Serb armed forces.

6.43 The Defence witnesses also confirm the clear link between the FRY/VJ and the RS/SDS/VRS (for example, see, Hadzibegovic T. 10171-2, 10178-80, and 10314-19; Vejzagic T. 10466-10481, 10620-22, 10857, and 10993; D. Exh. D 143-A2-5/1).

6.44 Accordingly, the RS/SDS/VRS and Bosnian Serb militias' activities against the BH armed forces throughout the BH, including the municipality of Konjic, can be regarded as being part of the international armed conflict between the BH and the FRY/VJ. The evidence clearly demonstrates that no separate and distinct internal armed conflict or rebellion existed between the Bosnian Serb Army and Bosnian Serb militia, and the BH Army.

6.45 The armed hostilities that occurred in the municipality of Konjic between the BH armed forces, and the JNA and the Bosnian Serb armed forces formed part of this international armed conflict, and they cannot be artificially severed from it. The evidence of the presence and activities of the BH armed forces, the JNA, the SDS, and Bosnian Serb armed forces and militia in Konjic municipality shows that the armed hostilities that occurred in this municipality were part of the international armed conflict that was occurring throughout BH, and were not an independent, private war (see, for example, Gow, T. 9251-9252, and 9253-9257; and Prosecution Exhibit 206 (SDS document entitled "For the organisation and activity of organs of the Serbian people in Bosnia-Herzegovina in extraordinary circumstances")).

6.46 The Defence witnesses also confirm the inclusion of the armed hostilities in the Konjic municipality in the international armed conflict (for example, see Hadzibegović T. 10314-19; Vejzagić T.

10481-91, 10497-98, 10623-24, 10925-26, and 10992-93; and D. Exh. D144-A4-7/1).

6.47 In accordance with the Appeals Chamber's Decision, for the purposes of applying the grave breach provisions, it is not even required that these forces be present in the Konjic municipality at all material times, or involved in actual hostilities in this area throughout 1992 (see *Tadić Jurisdiction Decision*, p. 36, para. 68).

6.48 As submitted above, a sufficient nexus must, however, be established between the offences that occurred at the Celebici camp and the international armed conflict which gives rise to the applicability of the grave breach provisions (see *Tadić Jurisdiction Decision*, p. 37, para. 69; and p. 38, para. 70).

6.49 In this regard, the evidence clearly establishes that the victims in the present case were detained by, and in the hands of, the BH armed forces, who were a Party to the international armed conflict with the FRY/JNA/VJ/VRS. They were detained in the Čelebići camp, in which the violations occurred, in the course of, and as a result of, the armed hostilities that were occurring between the BH Army and the JNA, VRS and other Bosnian Serb militia in many parts of the BH, including the Konjic municipality (see, for example, Mirko Kuljanin, T. 1163; Dragan Kuljanin, T. 2422-2423; Mirko Dordić, T. 4709-4711; and witness M, T. 5009-5010). The accused were part of the BH armed forces and were involved in these hostilities, and the victims were regarded as part of the FRY/JNA/VJ/VRS side in this international armed conflict (see, for example, Branko Gotovac, T. 980, 1009, and 1023; Nedeljko Draganić, T. 1617; witness D, T. 5224-25 and 5771; and General Pasalić, T. 8162). The victims were not, therefore, detained in an internal armed conflict during which the grave breach provisions are inapplicable.

6.50 The Defence witnesses confirm this conclusion (for example, see, Hadzibegović T. 10345; witness Vejzagić T. 10485-89, 10598-600, 10624-25, 10843-44, 10925-27, and 10994; Tahirović T. 11367; Dzumhur T. 12259-61, and 12297-99; and Cosić T. 13372-73). Moreover, DELALIĆ himself confirmed that the practise was to detain Serbs of military age in combat and non-combat areas (see P. Exh. 99-1, 18-19 March 1996, p. 22).

6.51 Even if an "effective control" test is required to show that the RS/SDS/VRS were part of the FRY/VJ side, the Prosecutor submits that sufficient evidence has been presented in the this case to satisfy such a standard. The evidence listed above establishes that the FRY/VJ effectively controlled the RS/SDS/VRS. The Prosecutor has adduced additional evidence in this case to the *Tadić* case in respect of the level of control exercised by Belgrade over the RS/SDS/VRS. In particular, Dr Gow's testimony demonstrates the effective control exercised by the FRY/VJ over the RS/VRS in the following respects:

— The date of a particular entry in Jović's diary, 5 December 1991, for the purposes of demonstrating that the formal division of the JNA into the VJ and the VRS, which occurred in May 1992, was deliberately planned in December 1991 "with a view to carrying out the project of annexing parts of Bosnia-Herzegovina ... as a means of providing a way to camouflage the activity". This demonstrates that an overall plan existed from at least December 1991 on the part of Serbia and the JNA to annex parts of the BH, and that the creation of the VRS was instrumental to such a campaign (T. 9259; also see T. 9258-9266, and Prosecution Exhibit 207 (Extract from Borislav Jović's diary)).

— The level of control exercised by Belgrade over the RS and the VRS (see T. 9296-9297: "You see the final confirmation ... of the way in which Belgrade could exercise control in the fact that in June 1995 the head of the Serbian security service, Jovica Stanisic is sent from Belgrade to deal with a problem which is causing a big international difficulty, the taking of UN military personnel as hostages ... and Stanisic is the man who is able to intervene, simply to turn up with the Bosnian Serbs and everything is sorted out. Again, he plays a similar role in the latter stages of the year, leading up to the process of going to Dayton for the peace talks").

— The command structure between the VJ and the VRS (see T. 9271-9272: "The Bosnian Serb military command ... was given broad operational authority, knowing what the objectives were, to prosecute the armed campaign, and as far as possible, to do so bearing in mind not to bring Belgrade's role into question, going back to the decision by Jović and Milosević on 5 December 1991 to try to ensure that

Belgrade would not be seen to be responsible for the events in Bosnia-Herzegovina").

— The Report by Ambassador Perdue, the American Special Representative for arms control agreements over the Dayton Peace Accords noted that one of the problems currently faced is that the army of the RS is still effectively one army with Belgrade (see T. 9271).

— The nature of the armed conflict that occurred in Nicaragua, and the differences between this conflict and the conflicts in the former Yugoslavia, in that in the Nicaragua conflict the United States was not intent on annexing parts of Nicaragua in the same way as the FRY/VJ/VRS's program was aimed at gaining control over parts of the BH (see T. 9297-9299).

6.52 The *Tadić Judgment* is also being appealed on the basis, *inter alia*, that the Trial Chamber erred in finding that on the evidence presented in that case the "effective control" test had not been satisfied (see *Tadić Appeal Argument*, pp. 33-40). Some of the most relevant arguments raised by the Prosecutor in this appeal which must be taken into account in the present proceedings on account of the same and additional evidence being led are:

— The re-designation of a part of the JNA as the VRS was deliberately planned by the authorities in Belgrade, to create the semblance of the withdrawal of FRY forces from the territory of BH. Dr. It did not come as an immediate response to Security Council's resolution 752 (1992). The evidence does not point to an independent initiative on the part of the Bosnian Serbs to form a break-away irregular armed force. The creation of the VRS by the FRY, therefore, does not indicate an intention by Belgrade to relinquish control of part of the JNA. Rather, the establishment of the VRS was undertaken in pursuit of the FRY's own objectives.

— From the outset these objectives were implemented by political and military operations that were controlled by Belgrade and the JNA. There is no evidence to suggest that these objectives changed on 19 May 1992. Given that the FRY's pursuit of its political and military objectives continued beyond 19 May 1992 in much the same manner as before, no reasonable basis exists for inferring a factual loss

of control over the VRS. It would have been illogical for Belgrade to relinquish its control of its entire military operation in BH in May 1992, when after extensive preparations the operation had only begun to be implemented.

— The high level of planning and preparation in 1991 and early 1992, did, however, permit less explicit forms of command over military operations to be practised, which were adopted especially in response to increased international scrutiny. The re-naming of the JNA forces in BH was one of the FRY's main strategies for responding to international demands, while at the same time taking advantage of the extensive preparations that had already been undertaken. From a purely practical point of view, JNA military operations under the command of Belgrade that had already commenced by 19 May 1992 would not have been able to cease overnight in any event.

— There is sufficient evidence of a chain of military command between Belgrade and Pale. General Mladić, formerly of the JNA, was appointed by Belgrade as the commander of the VRS. The evidence shows that he and the VRS Main Staff continued to implement the JNA's military objectives and operations in BH and were provided with broad operational control to achieve this end, under the overall command of Belgrade. The VRS Main Staff had links and regular communications with Belgrade.

— The evidence may not disclose the exact details of how the VRS related to the main command in Belgrade, or that General Mladić and the VRS command openly received regular orders from Belgrade. As the testimony of Gow demonstrates, a clear intention existed to mask the commanding role of the FRY. The *intention* of Belgrade was to make it seem as if their links with Pale were as partners acting only in cooperation with one another.

— From a number of additional factors, further inferences can be drawn of effective military control over the VRS by Belgrade: the FRY/VJ created the VRS, and the structures and ranks of the VRS and the JNA/VJ were identical; the FRY/VJ directed and supervised the activities and operations of the VRS; as a result, the VRS reflected the

strategies and tactics devised by the FRY/JNA/VJ; the FRY/VJ directly intervened in the conflict in BH after 19 May 1992, and was fighting with the VRS and providing critical combat support to the VRS; and, the FRY/VJ provided extensive financial, logistical, and other assistance and support to the VRS.

— The evidence shows that in May 1992, the SDS and the *Republika Srpska* did not seek to be separated from the FRY. Its relationship with the FRY at that time cannot be characterised as one of merely co-ordinating political activities.

— In light of the above, and in the event that the *Nicaragua* case is applicable, the facts of the present case are significantly distinguishable from the facts of the *Nicaragua* case. The main differences between the two factual circumstances, which are reflected in the evidence in the present case are, firstly, the USA did not intend to annex parts of Nicaragua in the way that the FRY's political and military operations aimed to incorporate parts of the BH and Croatia into the FRY. Secondly, the Nicaraguan people did not seek to be incorporated into the USA, whereas the RS/VRS had regarded themselves as part of the FRY, and were under the direct political control of the FRY. Thirdly, unlike the USA, the FRY had directly intervened militarily into the BH. The FRY was a Party to the conflict in BH. Fourthly, the VRS had been entirely created by the FRY and the JNA, which was not the case in respect of the *contras*. The VRS was a part of the JNA that had been re-designated and re-named in May 1992, and remained under the command of Belgrade. Fifthly, as a result, its structures, staff, ranks, strategies and tactics reflected those of the JNA and VJ. The military operations it undertook were part of the JNA's program that had been initiated years before May 1992, and continued to be implemented thereafter to achieve the political and territorial objectives of a Greater Serbia.

(iii) The victims were protected persons under the Geneva Conventions

6.53 Having established that an international armed conflict existed between the BH and the FRY/VJ, including the RS/SDS/VRS, it is submitted that all of the victims in the present case are protected by either Geneva Convention III as prisoners of war or by Geneva Convention IV as civilians.

6.54 The grave breaches that have been charged in the present case, with the exception of the unlawful confinement of civilians, are proscribed in both Geneva Convention III and IV. For all the other counts it is not, therefore, necessary to prove whether each victim was either a civilian or a prisoner of war.

6.55 Even if certain of the victims fall between these categories, and although they may be involved in activities that may be "hostile to the security of the State", and consequently may not qualify as prisoners of war, they are still regarded as protected persons in terms of Article 5 of Geneva Convention IV and have to be "treated with humanity". The same grave breach provisions that have been charged in this case would apply to them, with the exception of unlawful confinement.

6.56 In addition, Article 5 of Geneva Convention III provides that should any doubt arise as to whether persons belong to any of the recognised categories for prisoners of war, such persons should enjoy the protections of the Convention until such time as their status has been determined by a competent tribunal.

6.57 It is, thus, only necessary to establish that those victims who were civilians (irrespective of which persons in particular were civilians) were in terms of Article 4 of Geneva Convention IV in the hands of a Party to an international armed conflict of which they were not nationals. Those victims who were not civilians (irrespective of which persons in particular were not civilians) were either protected in terms of Article 4 of Geneva Convention III as prisoners of war, or Article 5 Geneva Convention IV, as outlined above.

6.58 It is not necessary to categorise each detainee as being covered by one of these Articles. The protections that apply to each of them are identical for the purposes of the grave breach charges

contained in the Indictment, except unlawful confinement. If the victims were not civilians, they must have been covered by either Articles 4 or 5 of Geneva Convention III as prisoners of war, or Article 5 of Geneva Convention IV as persons who were not prisoners of war, but still protected. In the context of an international armed conflict there is no other possible category that the victims could have been part of.

6.59 In any event, the evidence does indicate that some of the victims were civilians, while others should have enjoyed prisoner of war status. To the extent that the evidence may not clarify the status of some of the victims, it is not a relevant concern, except in respect of the unlawful confinement count. Even in respect of this count, it is not necessary to show that all of the victims were civilians, only some are required to be civilians. As described in the unlawful confinement of civilians count in Part 3 above, the evidence shows that certain of the victims were unquestionably civilians.

6.60 The only situation in which it is necessary to identify that victims were prisoners of war is if the Trial Chamber at the conclusion of the trial decides that the civilian victims on account of their nationality are not protected persons. The victims who qualify as prisoners of war (including all the doubtful cases) will, nevertheless, be protected by Geneva Convention III irrespective of their nationality, and the Article 2 charges in respect of them can be upheld. For this reason, the Prosecutor has referred below to examples of evidence that show that certain victims were prisoners of war, and at least, there were numerous doubtful cases.

(a). The civilian victims were in the hands of a Party, of which they should not be considered nationals

6.61 There are two main arguments in support of finding that the civilian victims were protected persons in terms of Geneva Convention IV:

(1) The provisions of Geneva Convention IV and relevant judicial and other authorities only require the Bosnian Serb victims to be in the hands of their adversary in an

international armed conflict, namely the BH. If they were in the hands of their adversary it does not matter whether or not they were nationals of the BH at the time, or believed they might have been BH nationals.

(2) In addition, and in any event, there are many additional reasons to justify a finding that the victims should not be regarded as nationals of the BH for the purposes of applying the grave breach provisions, irrespective of whether they were nationals of the BH.

6.62 It is significant that in each of these arguments, it is not necessary for the Trial Chamber to determine the actual nationality of the victims. In respect of the first argument, it is only relevant to determine that the civilian victims are in the hands of their adversary in an international armed conflict, and in terms of the second argument, the civilian victims are to be regarded as non-nationals of the BH purely for the purpose of receiving the protections of the Geneva Conventions.

(I) The victims were in the hands of their adversary

6.63 Geneva Convention IV does not specifically define the meaning of nationality. The ICRC Commentary in discussing the definition of protected persons contained in Article 4 states that the principle underlying this provision is to "not interfere in a State's relations with its own nationals". Accordingly, it is submitted that providing this concern is respected in the circumstances of each case in determining whether the victims are protected, there is no requirement in the Conventions to, in the context of an international armed conflict, base the application of the grave breach provisions solely on a literal and technical definition of nationality. Indeed, no legalistic definition of nationality is provided for in the Conventions, or was emphasised during the Diplomatic Conference of States that drafted and adopted the Conventions.

6.64 Article 4 should also be interpreted in light of other provisions of the Geneva Conventions, including the provisions of Geneva Convention III that stipulate which persons can enjoy prisoners of war status. No nationality requirement is included in this

Convention. Nationals of the Detaining Power can be protected as prisoners of war if they were captured while serving in the armed forces opposed to their country of nationality. A leading publicist has stated:

> "[A]ny individual who falls into the power of a belligerent while serving in the enemy armed forces should be entitled to prisoner of war status no matter what his nationality may be, if he would be so entitled apart from any question of nationality; subject to the right of the Detaining Power to charge him with treason, or a similar offence, under its municipal law and to try him in accordance with the guarantees contained in the relevant provisions of the Convention" (H. Levie, *U.S. Naval War College International Law Studies*, Vol. 59, 1977, p. 74).

6.65 Civilians of the same nationality as the State that has detained them during an international armed conflict should at least enjoy the same protections as their fellow nationals who have taken up arms and are treated as prisoners of war.

6.66 The judicial decisions of various cases that occurred after World War II did not apply the nationality requirement rigidly in determining the commission of war crimes. Such crimes could only be committed during an international armed conflict by Allied nationals against nationals of the Axis Powers, but in some cases Allied nationals were held responsible for war crimes committed against their own nationals.

6.67 In the *Belsen Trial*, for example, a number of Allied nationals were convicted of war crimes committed against inmates of Allied nationality who were being held captive in a German concentration camp. The Court held that:

> "In meeting the argument that no war crime could be committed by Poles against other Allied nationals, the Prosecutor said that by identifying themselves with the authorities the Polish accused had made themselves as much responsible as the S.S. themselves. Perhaps it could be claimed that by the same process they could be regarded as having approximated to membership in the armed forces of

> Germany" (*The Belsen Trial*, Law Reports of the Trials of War Criminals (LRTWC), Vol. II, p. 152).

6.68 In this regard, the United Nations War Crimes Commission noted that:

> "[T]he principle [of applying the concept of war crimes irrespective of the nationality of the victim] was ... observed in many instances by the Committee on Facts and Evidence ... As a result, offences ... committed by Allied nationals themselves in conjunction with the activities of the enemy, were treated as war crimes proper (*History of the United Nations War Crimes Commission and the Development of the Laws of War*, H.M. Stationery, London 1948, p. 173).

6.69 It is also significant that the war crimes legislation of Yugoslavia after World War II provided that persons of Yugoslav nationality could be punished for war crimes committed against their own nationals (see, The *Yugoslav Law* No. 619 concerning Criminal Acts against the People and the State, 25 August 1945).

6.70 A leading publicist on the application of the Geneva Conventions, Prof. Theodor Meron, has stated that the nationality requirement should be interpreted in the following manner:

> "The grave breaches provisions describe certain acts as criminal ... when committed against protected persons ... who find themselves in the hands of a party to the conflict of which they are not nationals. Enforcing this provision literally in the Yugoslav context, and in some other conflicts involving the disintegration of a state or political entity and the resulting struggle between peoples and ethnic groups would be *the height of legalism*. Imagine, for example, that Israelis and Arabs in the area west of the Jordan River still had a Palestinian (Mandate) nationality during the 1947-1948 war. Denying those captured by an adversary in that conflict the status of protected persons under the Geneva Conventions (had they been in force) because of their shared nationality would be absurd. In many

> contemporary conflicts, the disintegration of states and the establishment of new ones make nationality too messy a concept on which to base the application of international humanitarian law.
>
> *In light of the protective goals of the Geneva Conventions, I support an interpretation suggesting that in situations like the one in the former Yugoslavia, where the fighting was pervasive and its history as a single state resulted in one nationality, the requirement of a different nationality should simply be construed as referring to persons in the hands of an adversary.* Indeed, the International Red Cross's Commentary to Article 4 of the Fourth Geneva Convention states that the reason for excluding a country's own nationals from the definition of protected persons was to avoid interfering in a state's relations with its nationals, a concern obviously not relevant to ... circumstances ... in which each ethnic group considered members of the other ethnic groups as foreigners. In interpreting the law, our goal should be to avoid paralyzing the legal process as much as possible and, in the case of humanitarian conventions, to enable them to serve their protective goals" [emphasis added] (T. Meron, "Classification of Armed Conflict in the former Yugoslavia: Nicaragua's Fallout", 92 *The American Journal of International Law*, p. 239)

6.71 It does not matter that any particular victim might not have personally taken a side in the conflict. During any international armed conflict a line must be drawn between the two sides involved, and all civilians associated with each side must be equally protected. Once they have fallen into the hands of a Party during the conflict and on the basis of their association with the other side, they should be afforded the applicable protections.

6.72 There is ample evidence before the Trial Chamber to prove that in the context of the international armed conflict between the BH and the FRY/VJ/VRS and other Bosnian Serb militia, the BH is the adversary in respect of the victims in the present case. As shown above, the victims were captured during, and as a result of, this international armed conflict by the BH armed forces, and

they were in the hands of the BH. The accused were part of the BH armed forces. In particular, there is ample evidence that the JNA, the SDS, and Bosnian Serb armed forces and militia, were present and active in the Konjic municipality.

6.73 Moreover, the victims were regarded by their captors from the BH Army as being on the side of the FRY/VJ/SDS/RS/VRS, and were detained for this reason, in some instances purely on the basis of their Serb identity and because they were living in Serb dominated villages (see, for example, witness D, T. 5184, 5224-25, and 5771; Nedeljko Draganić, T. 1617; Branko Gotovac, T. 980, 1009, and 1023; General Pasalić, T. 8162; Miro Golubović, T. 2104-2105 and 2153-2155; Zoran Ninković, T. 5129; and Branko Sudar, T. 5744-5745). It is also significant that in a statement signed by MUCIĆ, which was seized at DELALIĆ's premises in Vienna, certain of the detainees are described as "mainly civilian Serbs" and "Serbian nationals" (P. Exh. 130). Delić also referred to certain detainees as "Serb nationals" (P. Exh. 103/1, p. 20).

6.74 The Defence witnesses and the accused themselves confirm the view that the persons were captured and detained by the BH armed forces as a result of their associations with the other side, and the detainees are even referred to as Serb nationals in certain instances (for example, see, Hadzibegović T. 10314-19 and 10337-41; Vejzagić T. 10485-89, 10598-600, 10622-25, 10843-45, 10856-57, 10925-27, and 10992-94; Tahirović T. 11367-68; Dzumhur T. 12259-61, and 12297-99; Cosić T. 13372-73, 13379-80, and 13387-88; Salihović T. 14867-68; Cerovać T. 11610; P. Exh. 130; P. Exh 103/1, p. 20; and D. Exh. D 50/1).

6.75 In view of this evidence and the evidence of the relationship between the RS/SDS/VRS and the FRY/JNA/VJ, outlined above, there are clear reasons for regarding the Bosnian Serb population in general in the Konjic municipality as related to and associated with the FRY/JNA/VJ/SDS/VRS side of the conflict against the BH.

(II) The victims were not "nationals" of the BH for the purposes of the Geneva Conventions

6.76 In addition to the aforementioned argument, and in any event, there are various other arguments in favour of the victims not being regarded as nationals of the BH for the purposes of applying the Geneva Conventions. It is not necessary to resolve whether each of the victims were actually nationals of the BH or not. On the basis of the arguments described below it can be concluded that the victims should not be regarded as nationals of the BH purely in order to benefit from the protections of the Geneva Conventions. These arguments are valid even if the Trial Chamber does not accept the previous argument.

6.77 The legal definition of nationality under international law in general does not preclude finding that the victims should be protected. The *Nottebohm* case defined nationality as "a legal bond having as its basis a social fact of attachment, a genuine connection of existence and sentiments [to a State] ... which assumes the defence [by such State] of its citizens by means of protection against other States" (*Nottebohm* case, ICJ Rep 1955 pp. 22-23) (Prof. Economides, T. 8716-8717, and 8736-8738). The expressed will of the persons concerning must specifically be taken into consideration when determining their nationality (see Economides, T. 8717-8719, and 8724-8725). A publicist in this field Ruth Donner has commented that "this link may be evidenced by objective criteria including voluntary adhesion" (Ruth Donner, *The Regulation of Nationality in International Law*, 1994, p. 311).

6.78 There is ample evidence that the vast majority of Bosnian Serbs did not wish to be part of the BH, including those in the Konjic municipality, and regarded themselves as connected to the RS/SDS and the FRY, and often violently opposed the State of BH (see, for example, Calic, T. 648-655, 858-859, and 923-925; and Prosecution Exhibits 13-21). This position was confirmed by numerous Defence witnesses (see, for example, paras 6.43, 6.46 and 6.50 above, and D. Exh. D144-A4-7/1). It is highly questionable whether a "genuine link" existed between the vast majority of Bosnian Serbs and the BH. Further, in reality the BH Government did not defend or protect them from other States. Accordingly, their effective nationality could have been that of the SFRY/FRY (Economides, T. 8736-8738).

6.79 In this context the Bosnian Serb minority in the BH may have been entitled as result of the succession of BH to be offered a

right of option to choose the nationality of a State other than the BH. Such rights of option are well-recognised in respect of ethnic and national minorities in the international law applicable to State succession, and have been widely applied in many successions (Economides, T. 8724-8733).

6.80 Furthermore, the BH law on nationality and citizenship, which was only passed in October 1992 did not grant citizenship of the BH to all persons resident in the BH. Before this date the citizenship law of the SFRY and the republic of Bosnia and Herzegovina was still in force (Economides, T. 8735-8736). Habitual residents of the BH did not, therefore, automatically become nationals of the BH in 1992 under the laws of the BH. These circumstances at the very least reveal the ambiguity and uncertainty of the formal position of citizenship and nationality of the BH in 1992 in the context of the disintegration of the SFRY and the accompanying complex questions of State succession. Some of the victims were not born in the BH, or may not technically have been nationals of the BH, and indeed some of them testified that they did not consider themselves BH nationals (Mirko Kuljanin, T. 1283; Witness F, T. 1366; Stevan Gligorević, T. 1518-1520; Dr. Grubac, T. 5949; and Witness N, T. 2086-2087).

6.81 Even if States are obliged to grant their nationality to all persons resident on their territory, and the victims can be presumed to be nationals of the BH under international rules on State succession, such a presumption is primarily based on the need to avoid statelessness, and is rebuttable, *inter alia*, in situations when a right of option should be granted to particular groupings (Economides, T. 8722-8727).

6.82 In relation to these issues, a leading publicist, Professor Christopher Greenwood, has argued that the Bosnian Serbs did not necessarily acquire the nationality of the BH:

> "It should not be presumed, especially for a purpose such as the application of humanitarian law, that when a State breaks up into a number of new States as a result of the secession of parts of its territory and that secession is opposed by force of arms so that an armed conflict results between the old State and a seceding entity or between the various successor States to the old State, all residents of one

> of the seceding territories automatically take the nationality of the State created by that secession, irrespective of their wishes (perhaps violently expressed) to remain part of the old State or to become part of one of the other successors. Did persons of West Pakistan ethnic origin living in the old East Pakistan automatically acquire Bangladesh nationality in 1972, so that they could not be regarded as protected persons vis-à-vis the Bangladesh forces while the conflict there lasted? In the case of Bosnia-Herzegovina, before it became an independent State all members of the Bosnian population were citizens of Yugoslavia. It is far from clear that on independence members of the Serb community who opposed that independence should be regarded as having become nationals of Bosnia-Herzegovina, rather than retaining some form of Yugoslav (or perhaps Serbian) citizenship." (C. Greenwood, "International Humanitarian Law and the *Tadić* case", 7 *European Journal of International Law*, pp. 272-273.)

6.83 Even though the submissions above concerning the international and national law of nationality during succession would apply to the vast majority of Bosnian Serbs, it is not necessary or practical to attempt to apply them to all Bosnian Serbs just because they are Bosnian Serbs, or to technically determine the nationality of each victim separately, if that would be at all possible. As stated at the outset, the determinative test is whether the Bosnian Serb victims in question are considered to be in the hands of an adversary when captured by the BH during an international armed conflict, involving the armed forces that the victims are considered being on the side of, namely the JNA/VJ/VRS and other Bosnian Serb militia. On the evidence, the vast majority of Bosnian Serbs, including the inmates of the Čelebići camp qualify as protected persons under such a standard.

6.84 In permitting the grave breaches to apply to the Bosnian Serb population, the Tribunal would not be acting contrary to the positions of the parties to the armed conflict on this question. The BH Government implicitly agreed in various ICRC agreements to apply the grave breach provisions to all persons involved in the conflicts in the BH. In particular, on 22 May 1992 the representatives of the President of the BH, Mr. Alija Izetbegović;

the President of the Serbian Democratic Party, Mr. Radovan Karadžić; the President of the Party of Democratic Action, also, Mr. Alija Izetbegović; and the President of the Croatian Democratic Community, Mr. Miljemko Brkić, concluded an agreement under the auspices of the ICRC whereby they agreed to apply various articles of Geneva Convention IV to the armed conflict, afford captured combatants the protections provided by Geneva Convention III, and punish those responsible for violations of these agreements. The acceptance of the obligation to punish these violations is tantamount to accepting the applicability of the grave breach provisions to the armed conflict.

6.85 In a subsequent agreement concerning the release and transfer of prisoners concluded on 1 October 1992 by representatives of the same parties to, and on the basis of, the agreement of 22 May 1992, it is stated in Article 3(1) that: "All prisoners not accused of, or sentenced for, grave breaches of International Humanitarian Law as defined in Art. 50 of the First, Art. 51 of the Second, Art. 130 of the Third and Art. 147 of the Fourth Geneva Convention, as well as in Art. 85 of Additional Protocol I, will be unilaterally and unconditionally released". This provision also demonstrates that the parties intended the grave breach provisions to be applicable.

6.86 The Appeals Chamber held in the Decision on Jurisdiction that the Prosecutor could only rely on these agreements when they were charged under Article 3 of the Statute, and not in relation to Article 2. In the current case, the Prosecutor has not charged any of the accused on the basis of these agreements. The Prosecutor is not seeking to argue that the ICTY may exercise jurisdiction over the grave breaches of the Geneva Conventions on the basis of these agreements. The Prosecutor mentions these agreements only to evidence the intentions of the parties to the conflict, which were to ensure that all inhabitants of the BH enjoyed the status of protected persons under the Geneva Conventions.

6.87 Another consideration is that in the present case nationality is being considered in relation to the application of international humanitarian law, and accordingly, the object and purpose of this body of law should be paramount in clarifying unresolved questions of law. The underlying object and purpose of the Geneva Conventions is to promote the humane treatment of those who have fallen into enemy hands during armed conflicts. As the ICRC Commentary to Geneva Convention IV states:

> "Humane treatment - we find expressed here the fundamental principle underlying the four Geneva Conventions ... [this] principle ... led to the foundation of the Red Cross movement and to the conclusion of the original Geneva Convention." (ICRC Commentary to Geneva Convention IV, p. 38)

6.88 The ICRC has emphasised that the Conventions should be interpreted in favour of maximising this objective. The scope of the implementation of the nationality requirement should, therefore, be understood in light of extending the protection of the Geneva Conventions to humanity as broadly as possible. As a leading publicist in the field of international humanitarian law, Professor Georges Abi-Saab, has noted:

> "The predominance of the object and purposes of humanitarian law (which are at the basis of the continuous quest for perfecting the instruments and the exacting and absolute character of the rules) greatly stretches the expectations and largely explains the constant strains and frustrations at the level of implementation." (G. Abi-Saab, "The specificities of humanitarian law", in C. Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles*, 1984, p. 280)

6.89 The Appeals Chamber was not required in the *Tadić Jurisdiction Decision* to make a depositive finding on the issue of nationality. As *obiter dicta* the Appeals Chamber remarked:

> "That the Security Council purposely refrained from classifying the armed conflicts in the former Yugoslavia as either international or internal and, in particular, did not intend to bind the International Tribunal by a classification of the conflicts, as international, is borne out by a *reductio ad absurdum* argument. If the Security Council had categorised the conflict as exclusively international and, in addition, had decided to bind the International Tribunal thereby, it would follow that

> the International Tribunal would have to consider the conflict between Bosnian Serbs and the central authorities of Bosnia-Herzegovina as international. Since it cannot be contended that the Bosnian Serbs constitute a State, arguably the classification just referred to would be based on the implicit assumption that the Bosnian Serbs are acting not as a rebellious entity but as organs or agents of another State, the Federal Republic of Yugoslavia (Serbia-Montenegro). As a consequence, serious infringements of international humanitarian law committed by the government army of Bosnia-Herzegovina against Bosnian Serbian civilians in their power would not be regarded as "grave breaches", because such civilians, having the nationality of Bosnia-Herzegovina, would not be regarded as "protected persons" under Article 4, paragraph 1 of Geneva Convention IV. By contrast, atrocities committed by Bosnian Serbs against Bosnian civilians in their hands would be regarded as "grave breaches", because such civilians would be "protected persons" under the Convention, in that the Bosnian Serbs would be acting as organs or agents of another State, the Federal Republic of Yugoslavia (Serbia-Montenegro) of which the Bosnians would not possess the nationality. This would be, of course, an absurd outcome, in that it would place the Bosnian Serbs at a substantial legal disadvantage *vis-à-vis* the central authorities of Bosnia-Herzegovina. This absurdity bears out the fallacy of the argument advanced by the Prosecutor before the Appeals Chamber. (*Tadić Jurisdiction Decision*, pp. 42-43, para. 76)

6.90 The Appeals Chamber's view appears to be specifically based upon the assumption that the Bosnian Serbs were strictly speaking nationals of the BH during 1992. The Appeals Chamber's opinions do not present an obstacle to the application of Article 2 of the Statute in the present case in that they were based on an assumption which may be incorrect, and which may not be relevant in light of the arguments advanced above. The actual nationality of the victims need not be determined in view of these arguments. Furthermore, the Appeals Chamber's only basis for considering the nationality question at all was to refute

an argument that the Security Council had determined the nature of the conflict. The definition of the nationality requirement was not argued before the Appeals Chamber, and it was not required to decide this question.

6.91 In this regard, Professor Christopher Greenwood has stated that:

> "Even if one accepts the Appeals Chamber's premise regarding the nationality of Bosnian Serbs, the "absurdity" of the situation envisaged by the Appeals Chamber is no greater than that which follows from holding that the conflict between the Bosnian Government and the Bosnian Serbs was an internal conflict, whereas that between the Bosnian Government forces and the JNA was international in character. In that case, an atrocity perpetrated by Bosnian Serbs against Bosnian civilians would be committed against protected persons (and would therefore constitute a grave breach of the Fourth Convention) if the perpetrators could be shown to have been operating under JNA command at the relevant time but would otherwise fall within the law applicable to internal armed conflicts, whereas atrocities perpetrated by Bosnian Government forces against Bosnian Serb civilians would only ever fall to be judged by reference to the law of internal armed conflicts.
>
> ...
>
> Since the Appeals Chamber has recognised that some aspects of the fighting in Bosnia-Herzegovina were an international armed conflict, it is ... unfortunate that it has suggested that Bosnian Serb civilians caught up in part of the hostilities which are international in character cannot be protected persons under the Fourth Convention, the more so since this suggestion was not necessary for the decision in the *Tadić* case and the matter appears not to have been fully argued before the Appeals Chamber." (C. Greenwood, "International Humanitarian Law and the *Tadić* case", 7 *European Journal of International Law*, pp. 273-274)

6.92 In summary, in view of both of the main arguments set out above, taken together, and especially in light of the nature of the conflict in the BH, the victims should be regarded as protected persons. This position would ensure not only that the protections of the Geneva Conventions were fully implemented, but that they are applied equally and fairly to all victims on all sides of the conflict. In particular, the Bosnian Serb victims should enjoy the same protections of the Conventions as the Bosnian Muslim victims.

6.93 After all, the *Tadić Judgment* held, as a matter of law, that Bosnian Muslim victims, linked to the BH side of the international armed conflict, could be protected persons if it could be shown that the perpetrators, Tadić, a Bosnian Serb, and the VRS, were effectively controlled by the FRY/VJ. The victims would then be deemed to be in the hands of the FRY. In the same international armed conflict, involving the same parties, the civilians linked to the FRY/RS/VRS side, including the victims in the present case, should also be protected persons.

(b). The victims who qualify as prisoners of war are protected persons

6.94 The requirements for qualification for prisoner of war status are provided for in Article 4A of Geneva Convention III:

> Prisoners of war, in the sense of the present 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 organised 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 organised 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 recognisable at a distance;

(*c*) that of carrying arms openly;

(*d*) that of conducting their operations in accordance with the laws and customs of war.

...

(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.

6.95 Accordingly, those victims who meet the criteria of any of these categories are protected by Geneva Convention III as prisoners of war. As stated above, the nationality of the victim is not relevant. Providing that they are in the hands of a Party to an international armed conflict, namely the BH, they will be regarded as prisoners of war when they are part of one of the following four categories:

(I) Members of the armed forces of a party, or members of other militia or volunteer corps belonging to a party

6.96 Firstly, the detainees are prisoners of war if they were part of the regular armed forces of the Party, namely the JNA/VJ/VRS. Secondly, they are in the same position if they were part of militias or volunteer corps belonging to such a Party. On the relationship required between the party and the militia or volunteer corps, the ICRC Commentary to Article 4 states that "there should be a *de facto* relationship between the resistance organisation [or militia or volunteer corps] and the party ... which is in a state of war, but the existence of this relationship is sufficient. It may find expression merely by tacit agreement, if the operations are such as to indicate clearly which side the

resistance organisation [or militia or volunteer corps] is fighting" (ICRC Commentary to Geneva Convention III, p. 57).

6.97 The conditions set out in sub-paragraphs (a)-(d) of Article 4(2) for prisoner of war status must be taken into account, although the provisions of Additional Protocol I can be invoked to interpret and clarify the provisions of Geneva Convention III. Thus, distinctive signs are not necessarily required, as Additional Protocol I provides that the armed forces in question need only be distinguished from the civilian population. The requirements relating to the carrying of arms openly have also been modified by Additional Protocol I.

6.98 In particular, Article 44(3) of Additional Protocol I states:

> "In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognising, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
>
> (*a*) during each military engagement, and
>
> (*b*) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate."

6.99 Furthermore, Article 44(4) provides protection even if these requirements are not fulfilled:

> "A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the

> Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed."

6.100 As a leading publicist on this issue, Frits Kalshoven, has commented:

> "[I]n recent years a tendency has became apparent to interpret in particular conditions (b) and (c) [of Article 4A(2) of Geneva Convention III] in a fairly liberal sense; this in conformity with the current practice of the regular armed forces, whose members no longer march into battle dressed in beautiful or at least conspicuous uniforms, any more than they brandish their rifles or hand-grenades without need." (F. Kalshoven, *Constraints on the Waging of War*, 1991, pp. 41-42)

(II) Levee en masse

6.101 Thirdly, the detainees could have been part of a *levee en masse*. To qualify as a *levee en masse* the group of inhabitants of non-occupied territory must bear arms openly and visibly, but need not be commanded by a person responsible for subordinates, or have a distinctive sign, provided that they have not had time to organise themselves. "[I]t is not necessary for the inhabitants who take up arms to have been surprised by invasion; sub-paragraph (6) is also applicable to inhabitants who have been warned, provided they did not have sufficient time to organise themselves in accordance with sub-paragraphs (1) and (2) [of Article 4]" (ICRC Commentary to Geneva Convention IV, p. 67).

(III) Doubtful cases

6.102 The fourth category are those persons covered by Article 5 of Geneva Convention III, which provides:

> "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen

> into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal."

6.103 With reference to this provision, it has been said that:

> "It is clear that in doubtful cases, pending judicial determination, provisional privileged status must be granted" (W. Mallison and S. Mallison, "The Juridical Status of Irregular Combatants under the International Humanitarian Law of Armed Conflicts", 9 *Case W. Res. J. Int'l L.*, 1977, p. 70).

6.104 Accordingly, in case of doubt about whether the victims form part of one of the other categories, they must be protected as prisoners of war until a determination regarding their status has been made by a competent tribunal. The ICRC Commentary to Article 5 explains the rationale of this provision: "was based on the view that decisions which might have the gravest consequences should not be left to a single person, who might be of subordinate rank. The matter should be taken to a court, as persons taking part in the fight without the right to do so are liable to be prosecuted for murder ... and might even be sentenced to capital punishment" (ICRC Commentary to Geneva Convention III, p. 77).

6.105 The Convention does not specify the characteristics of a "competent tribunal". However, as leading publicists on prisoners of war have stated:

> "At the minimum standard which has been established in customary law as essential for fair adjudication, such a court should be composed of an impartial judges or judges and make provision for representation of the person whose status is in doubt by competent counsel in order to provide the basic elements of a fair trial ... The common Article 3 concerning internal conflicts requires that judgments concerning combatants must be pronounced by "a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised persons" ... There is no basis to believe that

> the shorter wording in Article 5(2) concerning courts which determine the status of combatants in international armed conflicts imposes a lower standard." (W. Mallison and S. Mallison, "The Juridical Status of Irregular Combatants under the International Humanitarian Law of Armed Conflicts", 9 *Case W. Res. J. Int'l L.*, 1977, pp. 70-71).

6.106 In addition, the provisions of Article 45(1) and (2) of Additional Protocol I, which can be relied upon to interpret and clarify the provisions of Geneva Convention III, state:

> "(1) A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.
>
> (2) If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offence arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offence."

6.107 Finally, in the event that the victims clearly did not form part of one of the aforementioned categories, they are still protected by Article 5 of Geneva Convention IV, as explained above. They must, at least, be treated humanely. Article 45 (3) of Additional Protocol I also provides that:

> "Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol [as discussed above]."

6.108 Based on these elements there is sufficient evidence to demonstrate that certain of the victims were prisoners of war, including, at least, Witness M (T. 4891-4895, 4949 and 5009); Novica Đordić (T. 4205-4209, 4128-4130, 4245, and 4248); and, Mirko Đordić (T. 4710-4714, 4789, and 4803).

6.109 The Defence have also led extensive evidence that many of the persons detained in the camp were engaged in military operations hostile to the BH government and army, or were at least armed, when they were captured. Some of the Defence witnesses even described certain of the detainees as "prisoners of war". (See, for example, Hadzibegović T. 10226, and 10336-37; Vejzagić T. 10492-96, 10598-600, 10843-44, and 10994; Dzumhur T. 12297-99; Cosić T. 13375; Demić T. 13783; and Defence Exhibits D 144-A4-9/1 and D 50/1). Moreover, DELALIĆ himself confirmed that the practise was to detain Serbs of military age in combat and non-combat areas (see P. Exh. 99-1, 18-19 March 1996, p. 22). Furthermore, the Commander of the Konjic municipality Defence Staff noted in December 1992 that an official order had been received from the 4th Corps Command to set up a commission to classify the detainees, and that during this procedure the provisions of the Third Geneva Convention on the treatment of prisoners of war should be respected (see P. Exh. 238; and Tahirović, T. 11507-12).

6.110 In each of these cases and others, the relevant victims qualified as prisoners of war in that they were carrying arms openly as part of Serb military formations in military operations against the BH armed forces. Further, in light of the submissions above that demonstrate that the VRS and Bosnian Serb armed forces and militia are to be regarded as part of the armed forces of the FRY/JNA/VJ involved in an international armed conflict with the BH, all Serb military formations participating in this conflict against the BH armed forces, including those in the Konjic municipality, must be considered as being part of the FRY/JNA/VJ side. They could, at least, be regarded as being part

of a *levee en masse* in that they spontaneously organised themselves to defend their towns and villages from the advancing BH armed forces.

6.111 In any of these circumstances, at the very least, some doubt existed as to whether these and other persons qualified as prisoners of war, which entitled them to the protections of Geneva Convention III. The evidence of the establishment and existence of a "Military Investigation Commission" in June 1992 to classify the inmates of the Čelebići camp and determine their status, although not a competent tribunal within the meaning of Article 5 of Geneva Convention III, shows that the Detaining Power considered that the status of many of the detainees was doubtful (see, for example, witness "D", T. 5177-8, and 5286; and the Defence witnesses, for example, Cerovać T. 11609-10; Dzumbur T. 12267-12271; Cosić T. 13387-13388; Ramić T. 13413-14; and Salihović T. 14867-68). The uncertain status of many of the detainees is also confirmed by DELALIĆ's orders in August 1992 to MUCIĆ to classify the prisoners, and rectify any errors in existing classifications (P. Exh 99-7-10 and 99-7-11). A further investigative commission had to be established at the end of 1992 as uncertainties were still prevalent (see Begtasević T. 10675-78 and 10701-03; P. Exh. 238; and Tahirović, T. 11507-12).

6.112 All of these persons are protected by Geneva Convention III irrespective of their nationality. In the event that the Trial Chamber at the conclusion of the trial decides that the civilian victims on account of their nationality are not protected persons, the victims who qualify as prisoners of war (including doubtful cases) will, nevertheless, be protected by Geneva Convention III and the Article 2 charges in respect of them can be upheld.

6.113 As noted above, however, it is not necessary to become embroiled in determining the requirements of prisoner of war status and whether each victim might fall into one of the prisoner of war categories. If the victims who were civilians, regardless of which persons exactly, can be regarded as protected persons, all persons who are not civilians, can only either be prisoners of war or protected by Article 5 of Geneva Convention IV. The grave breaches charged in the present Indictment are identical for all these categories, with the exception of the unlawful confinement of civilians.

6.114 The Defence arguments in respect of protected persons are incorrect. Firstly, the evidence lead by the Defence on the actual citizenship of the detainees is irrelevant as it is not required to show that the victims were in reality non-nationals of the BH (see, for example, the testimony of Amira Klarić, Registrar of Konjic municipality and custodian of citizenship records; Defence Exhibits D28/3-D101-1/3; and witness Hadzibegović T. 10225-26). As explained above, the test is whether they were in the hands of their adversary in an international armed conflict. The evidence satisfies this requirement (see paras 6.71-6.75 above). In any event, as mentioned above, some of the victims were not, or did not, regard themselves as BH nationals (see paras 6.80 above).

6.115 Furthermore, the Defence evidence that attempts to show that many of the detainees were armed and justifiably detained, in fact demonstrates that in the context of an international armed conflict they should have received the benefits of prisoner of war status, even if their status was doubtful and to be determined, or at least the protections of Article 5 of Geneva Convention IV, if they were considered as hostile to the BH but did not qualify as POWs (for example, see, Hadzibegović T. 10226, and 10336-37; Vejzagić T. 10492-96, 10598-600, 10843-44, and 10994; Dzumhur T. 12297-99; Cosić T. 13375; Demić T. 13783; and Defence Exhibits D 144-A4-9/1).

6.116 Having established the general requirements of Article 2, namely, international armed conflict and protected persons status, it is necessary to prove that the enumerated acts listed in Article 2 have been proved. The enumerated acts that have been charged in the present case are "murder", "torture", "cruel treatment". The legal elements of each are described in the annex hereto. The evidence that proves each of these acts is described in Part 3.

(B). <u>Applicability and general requirements of Article 3 of the Statute</u>

(i) Introduction

6.117 In the present case, the accused are charged under Article 3 of the Statute with violations of common Article 3 of the Geneva Conventions, and "the plunder of public or private property",

which is listed in Article 3(e) of the Statute. Each will be discussed in turn.

(ii) Common Article 3 of the Geneva Conventions

6.118 The Trial Chamber is beyond question vested with subject matter jurisdiction in respect of the violations of common Article 3 brought under Article 3 of the Statute. The Appeals Chamber has held that violations of common Article 3 may be prosecuted under Article 3 of the Statute (see, *The Prosecutor v. Duško Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction ("*Tadic Jurisdiction Decision*"), 2 October 1995, p. 51, para. 89).

6.119 In so doing, the Appeals Chamber has held that the conditions it established for an offence to be subject to prosecution under Article 3 have been fulfilled in respect of violations of common Article 3. These requirements are as follows: "(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 required conditions must be met; (iii) the violation must be 'serious' ... ; (iv) the violation of the rule must entail, under customary or conventional law, the individual criminal responsibility of the person breaching the rule" (*Tadic Jurisdiction Decision*, p. 52, para. 94). The Judgment of the Trial Chamber in that case also confirmed that the conditions had been met for prosecuting violations of common Article 3 under Article 3 (see, *The Prosecutor v. Duško Tadić*, Opinion and Judgment ("*Tadic Judgment*"), 7 May 1997, pp. 228-230, paras. 610-613).

6.120 Furthermore, the Appeals Chamber has held that the prohibitions contained in common Article 3 are applicable under customary international law to all conflicts, whether international or internal. In the *Tadic Jurisdiction Decision* the Appeals Chamber stated: "with respect to the minimum rules in common Article 3, the character of the conflict is irrelevant" (p. 57, para. 102). Accordingly, violations of these rules may be charged under Article 3 of the Statute for any armed conflict, irrespective of its character (see, *Tadic Judgment*", pp. 201-202, para. 559; and p. 228, para. 609).

6.121 The Prosecutor is, therefore, only required to prove that an armed conflict existed and that the alleged violations were related to such a conflict. It is not, therefore, necessary for the Prosecutor to specifically prove that the conflict was either international or internal. The *Tadic Judgment* did not require the Prosecutor to prove the existence of an international or internal armed conflict in respect of the violations of the rules of common Article 3 that were charged under Article 3 in that case, only that "an armed conflict existed at all relevant times in relation to the alleged offences" (*Tadic Judgment*, pp. 202-205, paras. 561-568; and p. 231, para. 617).

6.122 Article 2 of the Statute without any doubt only applies to international armed conflicts. Article 3, however, does not only apply to internal armed conflicts as a consequence of Article 2 applying only to international conflicts, or for any other reason. As the Appeals Chamber has held, Article 3 incorporates all serious violations of international humanitarian law other than the grave breaches of the Geneva Conventions, crimes against humanity, and genocide:

6.123 Article 3 is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 and 5, more specifically: (i) violations of the Hague law on international conflicts; (ii) infringements of provisions of the Geneva Conventions other than those classified as "grave breaches" by those Conventions; (iii) violations of Common Article 3 and other customary rules on internal conflicts; (vi) violations of agreements binding upon the parties to the conflict, considered *qua* treaty law, i.e., agreements which have not turned into customary international law. (*Tadić Jurisdiction Decision*, p. 51, para. 89)

6.124 Accordingly, under Article 3, violations of international humanitarian law applicable in international, or internal, or in all or both kinds of conflict, irrespective of their nature, are punishable.

6.125 The Appeals Chamber's "residual" description of Article 3 in no way precludes charging violations of common Article 3 under Article 3 of the Statute. Clearly, the same underlying conduct can constitute, and be charged as, a grave breach under Article 2 and as a violation of the laws and customs of war that are recognised by Article 3. The violations of common Article 3 that have been

charged in the present case are separate substantive offences with separate elements to the grave breaches offences and crimes and humanity.

6.126 This position has been confirmed by the Trial Chambers of the Tribunal in their decisions on motions on the form of the indictment. The Prosecutor may charge offences under Articles 2 and 3 cumulatively on the basis that they are "designed to protect different values and when each Article requires proof of a legal element not required by the others" (*The Prosecutor v. Kupreškić et al.*, Decision on Defence Challenges to Form of the Indictment, 15 May 1998). The *Tadic Judgment* also considered the Article 2, 3, and 5 charges in that case as separate substantive offences in adjudicating the underlying facts of each of these charges (see, for example, *Tadic Judgment*, pp. 286-300).

6.127 The Defence have contended that "Common Article 3 is not included in Article 3 of the Statute of the Tribunal" (*Defence No Case to Answer Motion*, p. 12). It has been asserted that the Tribunal cannot have jurisdiction beyond that which the United Nations intended for it to possess, and the intent of the United Nations Security Council was not to incorporate Common Article 3 into Article 3 of the ICTY Statute. (*Defence No Case to Answer Motion*, p. 19)

6.128 The Prosecution submits that the record of proceedings before the Security Council clearly shows that the Security Council *did* intend to include Common Article 3 within Article 3 of the Tribunal's Statute (see, the uncontradicted interpretative statements by the Permanent Representatives of France, the United States, the United Kingdom and the Representative of Hungary, *Provisional Verbatim Record of the 3217th Meeting*, at 11, 15, 19 & 20, UN Doc S/PV.3217, 25 May 1993).

6.129 This view has been confirmed by the Appeals Chamber of the Tribunal which held that Common Article 3 was included within Article 3 of the Statute and that it was part of international customary law. (See *Tadić Jurisdiction Decision*, para 91, and para 98, citing the I.C.J. Decision in *Nicaragua,* also see para 134).

6.130 In any event, the Tribunal is not restricted to only apply customary law. It is also entitled to apply conventional

international law binding upon the conflicting Parties. The rationale for this was made clear by the Appeals Chamber:

> "It should be emphasised again that the only reason behind the stated purpose of the drafters that the International Tribunal should apply customary international law was to avoid violating the principle of *nullum crimen sine lege* in the event that a party to the conflict did not adhere to a specific treaty." (Report of the Secretary-General, at para 34.)

6.131 It follows that the International Tribunal is authorised to apply, in addition to customary international law, any treaty which: (i) was unquestionably binding on the parties at the time of the alleged offence; and (ii) was not in conflict with or derogated from peremptory norms of international law, as are most customary rules of international humanitarian law. This analysis of the jurisdiction of the International Tribunal is borne out by the statements made in the Security Council at the time the Statute was adopted.(*Tadic Jurisdictional Decision,* p 74, para 143, RP 6415).

6.132 Turning to the specific provisions of common Article 3 of the Geneva Conventions, they prohibit particular acts, including "violence to life and person, in particular murder of all kinds, ... cruel treatment and torture", when committed "at any time and in any place whatsoever" against "persons taking no active part in hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause [who] shall in all circumstances be treated humanely".

6.133 The relevant definition of an armed conflict, and the required nexus to the commission of the prohibited acts, the accused and the victim was elaborated by the Appeals Chamber in the following terms:

> "The geographical and temporal frame of reference ... is broad. This conception is reflected in the fact that beneficiaries of common Article 3 of the Geneva Conventions are those taking no active part (or no longer taking active part) in the hostilities.

> This indicates that the rules contained in [common] article 3 ... apply outside the narrow geographical context of the actual theatre of combat operations ... The nexus required is only a relationship between the conflict and the [acts], not that the [acts] occurred in the midst of battle ...
>
> [W]e find that an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or in the case of internal conflicts, peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there." (*Tadić Jurisdiction Decision*, p. 37, paras. 69-70)

6.134 Accordingly, common Article 3 is applicable when the following general requirements are fulfilled:

(a) The unlawful acts were committed in the context of an armed conflict;

(b) The perpetrator was connected to one side involved in the armed conflict;

(c) The victims were persons taking no active part in hostilities, which includes civilians, members of the armed forces who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause; and,

(d) One of the enumerated acts listed in common Article 3 of the Geneva Conventions were committed.

6.135 The evidence of the existence of an armed conflict is the same as described above at paras 6.8 and 6.42-6.52, even if the Trial

Chamber finds that it cannot be characterised as an international armed conflict. The Defence have never contested the existence of an armed conflict in the BH, including the Konjic municipality, at all material times.

6.136 As the evidence set out above confirms, the perpetrators were connected to the BH side of the conflict (see paras 6.14 and 6.45-6.50 above). The evidence that demonstrates that the victims were either civilians or prisoners of war or persons entitled to be protected, even if Article 2 is not applicable, also proves that the victims were taking no active part in hostilities any longer (see paras 6.108-116, and the evidence of the unlawful confinement of civilians count in Part 3 above). The *Tadić Judgement* held that all these persons qualify for the protections of common Article 3 (*Tadić Decision*, p. 230-31, para. 615). Even if the Defence view that the detainees were armed "local rebels" hostile to the BH government is accepted, and even if they had no connection to the international armed conflict between the FRY and the BH, the victims are thus still entitled to the protections of common Article 3 of the Geneva Conventions and other laws applicable to internal armed conflicts.

6.137 The enumerated acts listed in common Article 3 that have been charged in the present case are "murder", "torture", "cruel treatment". The legal elements of each are described in the annex hereto. The evidence that proves each of these acts is described in Part 3.

(iii) Pillage and plunder under Article 3(e) of the Statute

6.138 The prohibition of plunder or pillage is a well-established principle in international humanitarian law, which is provided for in the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto, in Article 28 ("The pillage of a town or place, even taken by assault, is prohibited") and Article 47 ("Pillage is formally forbidden"). It is widely accepted that the Hague Regulations have become part of international customary law for international armed conflicts.

6.139 Article 33 of Geneva Convention IV, applicable to international armed conflicts, also prohibits pillage. The ICRC Commentary to

Geneva Convention IV at p. 226 states that this prohibition was designed to "spare people the suffering resulting from the destruction of their real and personal property (houses, deeds, bonds, etc., furniture, clothing, provisions, tools, etc.)". It states further that this offence concerns individual acts of pillage and organised pillage, and the prohibition is applicable to the territory of a party to the conflict and occupied territories.

6.140 Article 4(2)(h) of Additional Protocol II, which applies to internal armed conflicts, also prohibits pillage. The unlawful act of "pillage and plunder" is thus prohibited in both international and internal armed conflicts.

6.141 Accordingly, the elements of the offence of plunder or pillage are as follows:

(a) The existence of an armed conflict, whether international or internal;

(b) The accused must be linked to one side of the conflict;

(c) The accused unlawfully destroyed, took, or obtained any public or private property belonging to institutions or persons linked to the other side of the armed conflict; and,

(d) The destruction, taking, or obtaining by the accused of such property was committed with the intent to deprive the owner or any other person of the use or benefit of the property, or to appropriate the property for the use of any person other than the owner.

6.142 The evidence that proves the existence of an armed conflict and that the accused was linked to one side of this conflict is the same as outlined above for common Article 3. The evidence of the pillage and plunder of property is described in Part 3.

7. Submissions

The accused are charged with the following counts in the indictment:

The accused Zejnil DELALIĆ

Count 13
Count 14
Count 33
Counts 34, alternatively 35
Count 38
Count 39
Count 44
Count 45
Count 46
Count 47
Count 48

The accused Zdravko MUCIĆ

Count 13
Count 14
Count 33
Counts 34, alternatively Count 35
Count 38
Count 39
Count 44
Count 45
Count 46
Count 47
Count 48
Count 49

The accused Hazim DELIĆ

Count 1
Count 2
Count 3
Count 4
Count 5
Count 6
Count 11
Count 12
Count 13
Count 14
Count 15
Counts 16, alternatively Count 17
Count 18
Counts 19, alternatively Count 20
Count 21
Counts 22, alternatively Count 23
Count 24
Counts 25, alternatively Count 26
Count 27
Counts 28, alternatively Count 29
Count 33
Counts 34, alternatively Count 35
Count 38
Count 39
Count 42
Count 43
Count 44
Count 45
Count 46
Count 47
Count 48
Count 49

The accused Esad LANDŽO

Count 1
Count 2
Count 5
Count 6
Count 7
Count 8
Count 11
Count 12
Count 15
Counts 16, alternatively Count 17
Count 24
Counts 25, alternatively Count 26
Count 27
Counts 28, alternatively Count 29
Count 30
Counts 31, alternatively Count 32
Count 36
Count 37
Count 46
Count 47

Conclusion

On the basis of the totality of the evidence before the Trial Chamber, and the applicable substantive law, the Prosecutor respectfully submits that the Trial Chamber should find the accused guilty of all counts as set out above.

Grant Niemann
Senior Trial Attorney

Teresa McHenry
Trial Attorney

Dated this 25th day of August 1998
at The Hague
The Netherlands

Annex 1

Elements of offences and application of Article 7(1) of the Statute

(A). Article 2: Grave Breaches of the Geneva Conventions

The accused have been charged with the grave breaches of wilful killing, torture, inhuman treatment, wilfully causing great suffering or wilfully causing serious injury, and the unlawful confinement of civilians. The basic elements of each of these offences are defined below. The general requirements for the applicability of Article 2 have been described in the Closing Statement.

(i) Wilful killing

Elements:

(1) The accused possessed the intent to kill or inflict grievous bodily harm. The term "wilful" encompasses reckless acts.

(2) The death of the victim resulted from the act or omission in which the accused participated.

Discussion:

The relevant authorities clearly provide that wilful killing and murder encompass recklessness. For example, the ICRC Commentary to Additional Protocol I defines "wilfully" as follows:

> "Wilfully: the accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences, and willing the result ("criminal intent" or "malice of forethought"); this encompasses the concepts of "wrongful intent" or "recklessness" viz., the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., when a man acts having his mind on the act or its consequences (or although failing to take the necessary precautions, particularly failing to seek precise information, constitutes culpable negligence punishable at least by disciplinary sanctions" (ICRC Commentary to Protocol I, p. 995).

Similarly, a leading scholar in the field of international criminal law, Cherif M. Bassiouni states:

> "The customary practice of states, evidenced by international and national military prosecutions, reveals that murder is not intended to mean only those specific intentional killings without lawful justification ... [but rather includes] the creation of life endangering conditions likely to result in death according to reasonable human experience. This standard was used in war related cases involving mistreatment of prisoners of war and civilians" (*Crimes Against Humanity in International Law,* 1992, p. 290-291).

The Prosecution notes that national law is not binding on the Tribunal in this respect. In any event, many national systems include as murder or wilful killing "the creation of life endangering conditions likely to result in death" (*Ibid.*).

For example, in *R. v. Sheppard*, (a case cited by the Defence in their *No case to Answer Motion*) the House of Lords held that "a man "wilfully" fails to provide adequate medical attention for a child if he *either* (a) deliberately does so, knowing that there is some risk that the child's health may suffer unless he receives

such attention; *or* (b) does so because he does not care whether the child maybe in need in medical treatment or not" ([1981] A.C. 394).

Thus, as the editors of *Archbold Criminal Pleading, Evidence & Practice* state: "the majority, accordingly, equated "wilfully" with common law recklessness. In the absence of a specific decision on a specific statutory provision to the contrary, it is submitted that any provision containing the word "wilfully" in the definition of a crime should be construed in accordance with the approach in *Sheppard"* (Archbold, 1998, Section 17-48).

This case directly contradicts the Defence's position, set out in the *Defence No Case to Answer Motion*, that the term "wilful" does not include "recklessness", even though the Defence attempts to rely upon it in support of its contention.

On the basis of both established law and common sense, the Prosecution need not establish exactly who struck the fatal blow when more than one person is involved in a beating or incident. As the Tribunal's Statute provides in Article 7(1): "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime ... shall be individually responsible for the crime".

The *Tadić Judgment* is also relevant in this regard:

> "aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present... Moreover, when an accused is present and participates in the beating of one person and remains with the group when it moves on to beat another person, his presence would have an encouraging effect, even if he does not physically take part in this second beating, and he should be viewed as participating in this second beating as well.

The idea that the accused, who called out prisoners for purposes of beating and participated in the beating, are not guilty because it

cannot be determined which was the final blow that inflicted death is absurd" (pp. 269, 289-290).

(ii) Torture

Elements:

Torture is defined under customary international law, as codified in the *Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment*, 1984, as follows:

(1) The accused must intentionally inflict severe physical or mental pain or suffering upon the victim for one or a combination of any of the following purposes:

(i) to obtain information or a confession from that person or a third person,

(ii) to punish the victim or a third person for an act committed or suspected of having been committed by either of them,

(iii) for the purpose of intimidating or coercing the victim or a third person,

(iv) or for any reason based on discrimination of any kind.

(2) The accused was himself an official, or acted at the instigation of, or with the consent or acquiescence of, an official or person acting in an official capacity.

Discussion:

The Prosecution relies upon the customary international law definition of torture, as expressed in international instruments, including Additional Protocol I and the 1984 Torture Convention.

This definition is broader than the definition referred to in the ICRC Commentary to Geneva Convention IV. The ICRC Commentary to the Geneva Conventions states that torture is "more than a mere assault", that it is infliction of suffering to

obtain information from that person or from another person, and that in determining whether an act constitutes torture, it is "not so much the pain itself as the purpose of its infliction" (see ICRC Commentary to Geneva Convention IV, p. 598).

It is well-settled, however, that international customary law and Additional Protocol I may be invoked in order to interpret the Geneva Conventions (see, ICRC Commentary to Additional Protocols, p. 39, which notes that the Additional Protocols were intended to supplement by "reaffirming and developing the pre-existing law"; and the *Tadic Judgment*, p. 287, para. 725).

Further, Cherif Bassiouni notes that the ICRC Commentary to Geneva Convention IV suggests that torture is distinguished from inhuman treatment on the basis of the purpose of the former's infliction, noting that "torture requires a secondary purpose behind the acts of injury in order to distinguish it from inhuman treatment, which does not require a purpose" (*Commentaries on the Law of the International Criminal Tribunal for the Former Yugoslavia (1995),* p. 564). He continues: "It is unclear whether this secondary purpose must be to obtain a confession or information, or if it could be any other purpose." (*Ibid,* p. 564). Most importantly, in note 174, he observes that "What constitutes this secondary purpose has changed over time", noting by way of example the definition of torture from the 1975 Torture Declaration (*Ibid.* p. 564) and 1977 Additional Protocol I, Article 75 (*Ibid.* p. 565), which incorporates the Declaration's definition.

In discussing rape as a form of torture, Bassiouni notes that mass rapes were employed in former Yugoslavia to punish the victims or to intimidate them and their communities, thus supporting the Prosecutor's contention that torture can be employed for a variety of purposes beyond the intent to elicit information. (*Ibid.*, pp. 564-565, 565 n.174). Finally, Bassiouni opines that the definition of torture in the 1984 Torture Convention "constitutes evidence of customary international law." (*Ibid.*, p. 565 n.174).

(iii) Inhuman Treatment

Elements:

(1) Inhuman treatment is any act or omission that causes the physical, intellectual, or moral integrity of the victim to be impaired, or causes the victim to suffer indignity, pain or suffering.

(2) The accused must have intended to unlawfully impair the physical, intellectual or moral integrity of the victim, otherwise subject the victim to indignities, pain, or suffering out of proportion to the treatment expected of one human being by another. Recklessness would constitute a sufficient form of intention.

Discussion:

It is unnecessary to prove that the act in question had grave consequences for the victim, or that the act should be anything other than "inhuman". There is no legal support for adding such elements to the offence.

The *Tadić Judgment* did not adopt such an element. In this case, the Trial Chamber held that the prohibition against cruel treatment, provided for in Common Article 3(1) of the Geneva Conventions, is a means to an end, "the end being that of ensuring that persons taking no active part in the hostilities shall in all circumstances be treated humanely" (pp. 286-7, para. 723). The Trial Chamber also pointed to Article 4 of Additional Protocol II for guidance, wherein the prohibition refers to "violence to the life, health, and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment". These provisions were cited by the Trial Chamber to demonstrate that no narrow or special meaning can be given to the phrase "cruel treatment" (p. 287, para. 725).

(iv) Wilfully causing great suffering

Elements:

(1) The accused intended to inflict great suffering without the underlying intention and purposes of torture, as defined

above. Recklessness would constitute a sufficient form of intention.

(2) Great suffering was inflicted upon the victim. Great suffering need not have been limited to physical suffering, but can include mental or moral suffering.

(v) Wilfully causing serious injury to body or health

Elements:

(1) The accused intended to cause injury to body or health, including mental health. Recklessness would constitute a sufficient form of intention.

(2) Serious injury to body or health was inflicted upon the victim.

Discussion:

The elements of these offences are clearly set out in the wording of the crime itself, namely, to "cause great suffering or serious injury to body or health". The ICRC Commentary to Geneva Convention IV states: "This refers to suffering inflicted without the ends in view for which torture is inflicted ... It would therefore be inflicted as a punishment, in revenge or for some other motive, perhaps out of pure sadism" (p. 599). The Commentary also noted that the offence of "wilfully causing great suffering" does not "imply injury to body or health" (p. 599). The offence of "wilfully causing injury to body or health" does require the infliction of such injury, but it need not be a permanent injury. (Also see, the *Tadić* judgment, p. 287, para. 725).

(vi) Unlawful confinement of civilians

(1) The victim was held, detained, confined, or otherwise restrained in circumstances not permitted by Geneva Convention IV. This Convention only permits the

confinement or internment of protected persons in the territory of a party to the conflict if the security of the detaining power makes it absolutely necessary, and in occupied territory for imperative reasons of security.

Confinement should always be considered as an exceptional measure, and can only be lawful in the event of a real threat to security. Such determinations have to be made on an individual basis. The mere fact that a civilian is a subject of an enemy power cannot justify confinement. Moreover, certain procedural protections must exist, including the right to appeal against the confinement and have it periodically reviewed. In the absence of these procedural guarantees, an otherwise lawful internment will be rendered unlawful.

(2) The accused intended to unlawfully confine the victim, and in so doing was aware of, or recklessly blind to, the factual circumstances that would render the confinement unlawful.

Discussion:

As stated in Article 42 of Geneva Convention IV: "The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining powers makes it absolutely necessary". Such internment is thus only justified on exceptional grounds. Indeed, Article 79 of Geneva Convention IV reads: "The Parties to the conflict shall not intern protected persons, *except* in accordance with the provisions of Article 41, 42, 43".

The ICRC Commentary defines the offence as follows:

> "Subversive activity carried on inside the territory of a Party to the conflict or actions which are of direct assistance to an enemy Power both threaten the security of the country; a belligerent may intern people ... if it has serious and legitimate reason to think that they are members of organisations whose object is to cause disturbances, or that they may seriously prejudice its security by other means ..."

> On the other hand, the mere fact that a person is a subject of an enemy Power cannot be considered as threatening the security of the country where he is living; it is not therefore a valid reason for interning him ... To justify recourse to such measures the State must have good reason to think that the person concerned, by his activities, knowledge or qualifications, represents a real threat to its present or future security [fn.1: The fact that a man is of military age should not necessarily be considered as justifying the application of these measures, unless there is a danger of him being able to join the enemy armed forces.]
>
> The Convention stresses the exceptional character of measures of internment and assigned residence by making their application subject to strict conditions; its object in doing thus is to put an end to an abuse which occurred during the Second World War. All too often the mere fact of being an enemy subject was regarded as justifying internment. *Henceforward only absolute necessity, based on the requirements of state security, can justify recourse to these two measures, and only then if security cannot be safeguarded by other, less sever means. All considerations not on this basis are strictly excluded.*" [emphasis added] (ICRC Commentary to Geneva Convention IV, p.258; *see* also pp. 55-58, 207, 257)

Further, even were civilians are lawfully confined, the detaining power is obliged to thereafter implement a number of procedural guarantees, failing which the lawful confinement may be rendered unlawful. In this regard, Articles 43 provides:

> "Any protected person who has been interned ... shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment ... is maintained, the court or administrative board shall periodically, and at least twice yearly, give

consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit"

(B). Article 3: Violations of common Article 3 of the Geneva Conventions

As described in the Closing Statement, Common Article 3 may be charged under Article 3 of the Statute, and is applicable when the following general requirements are fulfilled:

(1) The unlawful acts were committed in the context of an armed conflict;

(2) The perpetrator was connected to one side involved in the armed conflict;

(3) The victims were persons taking no active part in hostilities, which includes civilians, members of the armed forces who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause; and,

(4) One of the enumerated acts listed in common Article 3 of the Geneva Conventions were committed.

The enumerated acts listed in common Article 3 that have been charged in the present case are the following:

(i) Murder

The specific elements for murder are the same as for the grave breach of wilful killing.

(ii) Torture

The specific elements for torture are the same as for the grave breach of torture.

(iii) Cruel treatment

This offence encompasses situations where the accused mistreats the victim and subjects the victim to mental or physical pain or suffering, without thereby pursuing any of the purposes underlying the offence of torture. The specific elements for cruel treatment are the same as for the grave breach of inhuman treatment.

(C). Article 3(e): Plunder or pillage of public or private property

As described in the Closing Statement, the elements of the offence of plunder or pillage are as follows:

(1) The existence of an armed conflict;

(2) The accused must be linked to one side of the conflict;

(3) The accused unlawfully destroyed, took, or obtained any public or private property belonging to institutions or persons linked to the other side of the armed conflict; and,

(4) The destruction, taking, or obtaining by the accused of such property was committed with the intent to deprive the owner or any other person of the use or benefit of the property, or to appropriate the property for the use of any person other than the owner.

(D). Individual criminal liability under Article 7(1) of the Statute

(i) General

For liability under Article 7(1), it is necessary to establish:

— intent, in the form of awareness of the act of participation and a conscious decision to participate in the commission of a crime; and,

— participation, in the form of conduct which does contribute to the commission of the illegal act.

- *Prosecutor v. Duško Tadić, Opinion and Judgment*, 7 May 1998, Case No. IT-94-1-T (hereafter referred to as the "*Tadić Judgment*"), p. 261, para. 674.

As to the requirement of intent, there is no need for this to have been indicated expressly by the perpetrator. The existence of the requisite intent may be inferred. Further, the relevant circumstances from which that inference can be drawn are not limited to those directly surrounding a particular act, but can include other related circumstances and events.

- *Tadić Judgment*, pp. 261-262, para. 675-676, referring to:

- *Trial of Werner Rohde and Eight Others*, Vol. XV *Law Reports* 51 (taking part in conduct knowing that another participant intends to kill provides an inference of intent to participate in the killing);

- *Trial of Joseph Alstötter and Others (Justice* case*)*, Vol. VI *Law Reports* 88 (where the act of the accused objectively contributes to a plan of racial persecution, and in all the circumstances the accused "must have known" of the plan, intent to participate in the persecution can be inferred);

- *United States of America v. Wilhelm List, et al.*, 1948 (intent can be inferred from "a causative, overt act or omission");

- *Mauthausen* case, Vol. XI Law Reports 15 (mere employment or even presence at a concentration camp where exterminations were occurring, coupled with participation in activities there, may evince the requisite intent, if any person employed or present there "must have known" what was occurring).

- *Tadić Judgment*, p. 262, para. 677. ("Although intent founded on inherent knowledge, proved or inferred, is required ... the Trial Chamber need not find that there was a pre-arranged plan, to which the accused was a party, to engage in any specific conduct ... The tribunal [in the *Justice* case] saw as essential proof that ... [the defendant Joel] had knowledge of others' acts that were done in furtherance of the *Nacht und Nebel* plan, as well as evidence of deliberate action.")

Nor is it necessary to prove that the accused ever entered into any prior agreement or pre-arranged plan with other participants to engage in particular conduct.

- *Tadić Judgment*, p. 262, para. 677.

As to the requirement of participation or direct contribution, in the *Tadić Judgment* the Trial Chamber found that an accused's participation must be deliberate and must directly and substantially affect the commission of the crime. In reviewing the cited authorities, the Trial Chamber found that neither physical presence or acts are required to render an accused culpable. The Trial Chamber further found that an accused need not have intended or known of all of the consequences of his or her acts, but instead will be responsible for all that naturally results from the commission of the act in question.

- *Tadić Judgment*, pp. 263-268, paras. 678-687.

- *Tadić Judgment*, p. 264, para. 679 ("... that direct contribution does not necessarily require the participation in the physical commission of the illegal act.")

- *Tadić Judgment*, pp. 267-268, para. 687 ("Thus not only does one not have to be present but the connection between the act and the contributing to the commission and the act of commission

itself can be geographically and temporarily distanced.")

- *Tadić Judgment*, pp. 268-269, para. 688 ("While there is no definition of 'substantially', it ... calls for a contribution that in fact has an effect on the commission of the crime. [That is] the criminal act most probably would not have occurred in the same way had not someone acted in the role that the accused in fact assumed.")

- *Tadić Judgment*, p. 269, para. 690 ("Moreover, when an accused is present and participates in the beating of one person and remains with the group when it moves on to beat another person, his presence would have an encouraging effect, even if he does not take part in the second beating ...")

- *Tadić Judgment*, p. 270 para. 692 ("He will also be responsible for all that naturally results from the commission of the act in question.")

(ii) The "common purpose" doctrine

There is authority in war crimes jurisprudence for the proposition that:

> "[i]f people were all present together at the same time, taking part in a common enterprise which was unlawful, each one in their own way assisting the common purpose of all, they were all equally guilty in law."

- *Tadić Judgment*, p. 267, para. 685, quoting *Trial of Otto Sandrock and Three Others* ("*Almelo* case"), Vol. I *Law Reports* 35, 43 (1947).

This doctrine, commonly referred to as the "common purpose" doctrine, is a consistent thread in the rationale of the Nürnberg

decisions cited by the Trial Chamber. It is a cognate of classic conspiracy and complicity doctrines and is a principle widely found in common law today, as well as some other systems.

See, for example:

- Canada: Canadian Criminal Code, sections 21 and 22.
- New Zealand: Crimes Act 1961, section 66.
- United Kingdom: England and Wales: see e.g. *Barr et. al.* (1989) 88 Cr. App. R. 362.

  Scotland: see the discussion in Gerald H. Gordon, *The Criminal Law of Scotland* (1967), 135-148.
- USA: Maine: Me. Rev. Stat. Ann. tit. 17-A, § 57 (West 1995).

  Minnesota: Minn. Stat. § 609.05 (1996).

  Iowa: Iowa Code Ann. § 703.2 (West 1995).

  Kansas: Kan. Stat. Ann. § 21-3205 (1995).

  Wisconsin: Wis. Stat. Ann. § 939.05 (West 1995).

This doctrine provides a separate avenue of criminal liability for parties that is independent of the other aiding and abetting and procuring provisions. It often applies in situations such as: (1) when an accessory assists a principal to commit a certain criminal act (the primary crime), and the principal performs another

criminal act above and beyond those acts originally contemplated by the accessory (the secondary crime); or (2) when several individuals assault a victim, but it is impossible to determine which one of them delivered the fatal blow. The gist of the doctrine is that if a person knowingly participates in a criminal venture with others, he or she will be liable for all illegal acts that are natural and probable consequences of their common purpose.

See, for example:

- *Regina v. Hyde*, [1991] 1 Q.B. 134, 139D (In this case, the court concluded that all the defendants who participated in the attack could be convicted of murder even though it was impossible to determine who actually killed the victim or that fatal injury was contemplated when the attack was launched. The basis was that "If B [the accomplice] realizes (without agreeing to such conduct being used) that A [the principal] may kill or intentionally inflict serious injury, but nevertheless continues to participate with A in the venture, that will amount to a sufficient mental element for B to be guilty of murder if A, with the requisite intent, kills in the course of the venture.")

- *Gallacher and Ors.*, Glasgow High Court, Oct. 1950 (unreported), *cited in* Gerald H. Gordon, *The Criminal Law of Scotland* (1967), 145-146 ("If the accused were in a kicking crowd animated by a common purpose, joining in the attack, assisting and encouraging, each and all of them are responsible for the consequences.")

The "common purpose" doctrine was applied by the Trial Chamber in the *Tadić Judgment* in relation to some of the counts in the Indictment in that case. For instance, in relation to Count 10, the Trial Chamber found that:

> "the accused was in some instances himself the perpetrator and in others intentionally assisted

> directly and substantially in the common purpose of inflicting physical suffering upon them and thereby aided and abetted in the commission of the crimes and is therefore individually responsible for each of them as provided by Article 7, paragraph 1, of the Statute".

A similar finding was made in relation to Count 11.

- *Tadić Judgment*, p. 288, para. 726; p. 289, para. 730.

In particular, in the *Tadić Judgment* the Trial Chamber expressly found the Appellant "guilty as charged in Count 10 of the Indictment in respect of each of those six victims".

- *Tadić Judgment*, p. 288, para. 726.

One of the six victims was Fikret Harambašić. On the evidence, the Trial Chamber was not satisfied that the Appellant took any active part in the assault or sexual mutilation of this victim.

- *Tadić Judgment*, p. 287, para. 726; p. 289, para. 730.

The finding that the Appellant was criminally responsible under Article 7(1) for that assault and sexual mutilation was based on the finding that at the relevant time, the Appellant was engaged in a common purpose with other perpetrators, that his presence at the scene of the criminal acts directly and substantially assisted the common purpose of the group, and that the acts committed by other perpetrators fell within the natural and probable consequences of that common purpose.

Similarly, on Count 13 of the Indictment in that case, the Appellant was found guilty under Article 7(1) of the Statute for aiding and abetting in the beating of the victim Šefik Sivac, even though there was no direct evidence that the Appellant was present when the beating occurred. The Trial Chamber found that after the beating, the Appellant threw Šefik Sivac into a room and said certain words to him. The Trial Chamber found that "by these acts, the accused intentionally assisted directly and substantially in

the common purpose of the group to inflict severe physical suffering upon Šefik Sivac". It reached a similar conclusion on Count 14 of the Indictment in that case.

- *Tadić Judgment*, p. 290, para. 735; p. 291, para. 738.

In relation to Counts 29, 30 and 31 of the Indictment in the *Tadić* case, the accused was found not guilty. The acquittal on these counts is the subject of a pending appeal by the Prosecution, which contends that the proper application of the common purpose doctrine to the circumstances of the facts as found by the Trial Chamber must lead to findings of guilt on those counts.

- *Prosecutor v. Duško Tadić,* Case No. IT-94-1-A, Brief of Argument of the Prosecution (Cross-Appellant), filed 12 January 1998, paras. 3.1-3.33.

(iii) Causation

As is clear from the aforementioned authorities, it is not necessary for the accused's act/s to have physically caused the death of the victim. The accused need not have delivered the fatal blow. His act/s of participation need not have even been committed in the same place and at the same time as the act that caused the death. It is not required that the accused be present when the acts are committed that caused the death of the victim. It must be shown, directly or by inference, that in the circumstances the accused through his act/s either aided and abetted in the commission of the unlawful act, or participated in a common enterprise or transaction which resulted in the death of the victim (see, *Tadić Judgment*, pp. 263-268, paras. 678-687).

Accordingly, an accused (X) can be found responsible for the death of the victim if the accused beat the victim on certain occasions while another accused (Y) beat the victim on other occasions, and the victim died later as a result of the beatings, or after the beating inflicted by one of the accused (Y), when the other accused (X) was not present. In these latter circumstances it is necessary to show that the accused (X) aided and abetted the

other accused (Y) whose acts physically caused the death, or that they were involved in a common enterprise or transaction that resulted in the death. Each accused need not have been present when the fatal blow was delivered or when the accused died.

Various factors on the evidence presented and the inferences to be drawn must be taken into account when determining the guilt of the accused in such circumstances. One significant factor is the "encouraging effect" that the acts of one accused undertaking a beating of the victim might have on another accused (see, *Tadić Judgment*, p. 269, para. 690). Furthermore, an inference of a common enterprise can be drawn from the actions of the accused even after the death of the victim (see, *Tadić Judgment*, p. 290, para. 735; p. 291, para. 738).

In the event that a pre-existing physical condition causes the victim's death, it need only be established that the accused's conduct contributed to the cause of death. It is a well-established legal principle that the accused takes the victim as he or she finds him or her.

See, for example:

- Italy:

  The Italian Penal Code (1978), Article 41, "Concurrent Causes" ("The presence of pre-existing, simultaneous or supervening causes, even though independent of the act or omission of the offender, shall not exclude a causal relationship between his act or omission and the event").

- United Kingdom:

  Archbold, Richardson, ed. (1998), pp.1453 ("If a man is suffering form a disease, which in all likelihood would terminate his life in a short time, and another gives him a wound or hurt which hastens his death, this is such a killing as constitutes murder, or at the very least manslaughter").

R. v. Martin (1832) 5 C. & P. 128; R. v. Murton (1862) 3 F. & F. 492; R. v. Dyson (1908) 2 K.B. 454.

- Canada:

  Criminal Code (1998), R.S.C. 1985, c. C-46, s. 21 Section 226 ("Where a person causes a bodily injury to a human being that results in death, he causes the death of the human being notwithstanding that the effect of the bodily injury is only to accelerate his death from a disease or disorder arising from some other cause").

- United States:

  LaFave & Scott, *Criminal Law* (2d ed., 1986) p. 590 ("Sometimes A attacks B with intent to kill, but succeeds only in inflicting what would be a non-fatal wound in a person of ordinary health. But B is in a weakened condition from disease or prior wounds or exposure or intoxication, and so he dies. (Sometimes, in addition, he would have died sooner or later anyway from this disease or other condition, but A's murderous attack carries B off sooner than otherwise.) It is held that A is guilty of murdering B, his act being a direct cause of B's death").

  People v. Brown, 62 Cal. App. 96 (1923).

  Kadish & Schulhofer, *Criminal Law and its Processes* (1995) p. 471 ("So long as life is shortened as a result of the felonious act it does not matter that the victim might have died soon anyway. In this respect, the robber takes his victim as he finds him").

  People v. Stamp, 2 Cal. App. 3d 203 (1969).

The accused can, therefore, still be criminally responsible for the death of the victim if he beat the victim, and the victim then died, after the victim had been exposed to extensive beatings by another or others which had severely weakened the victim and brought the victim close to death. It is not a defence to claim that the victim had been severely beaten prior to the beating by the accused, provided that the acts of the accused contributed to the victim's death.

Furthermore, if the victim had a pre-existing medical condition, the accused has to take the victim as he finds him, and accordingly can be held responsible for the victim's death if his acts contributed to or hastened the death.

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Annex 2

Chart of evidence

This chart has been used by the Prosecution as a helpful reference tool. The Prosecution cautions that the chart is not complete or exhaustive, and includes only Prosecution witnesses. Additionally, because the transcript references were summaries usually done using the Livenote system, minor errors in the text or in the citations may appear.

Count 1 &2 Wilful Killing of Scepo GOTOVAC

DELIC - LANDZO

Article 7(1) Liability: Aided, Abetted, Committed

WITNESS	EXTRACT OF EVIDENCE
Mirko BABIC Retired forrester, 64 years old, lived in Bielovcina Detention in Celebici: 23 May to 1 September Unactive member of SDS. Surrendered his weapon as soon as requested.	"Some time after 15th June, **DELIC, LANDZO** and COSIC put him behind the door. They got outside, and that was around 12.00. That was daytime, and Scepo sat there maybe one hour, I do not know how long, and the door opened, and Hazim DELIC came to the door to take Scepo Gotovac and Adem Cosic was there and next to Hazim was Esad Landzo and Hazim Delic tells Scepo Gotovac to get up, and he did, and he told him:"Scepo Gotovac, you killed on 29th March for the two muslims, so we will kill you here". Scepo said:"I never killed anyone", and he cursed his mother and kicked him and then Scepo fell down on the concrete and the three of them took him out and I heard wailing and I heard something like blows... then they threw him back in... Scepo was still alive and he sat on the concrete behind the door maybe an hour or two later, again Hazim Delic came to the door, and Hazim and Esad, and also told him the same thing as the firsst time, and Adem Cosic had a knife in his hand and they took him by hands and feet, and Hazim put a knife next to him and they took him out and then beatr him again, and then he was wailing again. Then they threw him back in. He had something on his forehead. I do not know what it was. I thought it was like a badge or something.. and Scepo Gotovac was dead."(284) Did not see the beating, that occured outside the building, but heard wailing and then like blows''. The doors of the hangar were closed.(412)
Branko GOTOVAC 65 years of age. Retired locksmith. Lived in Viniste near Homolje	Scepo was taken out and brought back in and shortly thereafter he died. Taken out witt Simo Jovanovic several times and beaten. *"He came back and in 15 minutes he died"* **Delic** questioned victim re alleged murders of Muslims in 1942. After denial of involvement was slapped and kicked. Taken outside and screams and cries heard. Heard also victim mentioning his mother and **Landzo** telling him: "What mother? Did you ever have a mother? Confirms that the door was closed and that it was dark but heard and knew Landzo's voice while beaten (1098)

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WITNESS F 43 years old. Serb, member of SDS. Bradina In Celebici from May 27.	(Date not clarified) Delic walked in to the hanger. He shouted for "Gotovac, Scepo". allegation regarding involvement in killing 2 Muslims in 1942. Scepo was hit several times about the head and once in the stomach. He fell down. Then taken out by Delic. Was called out again in the evening. He said that he couldn't get up. Was carried out. Moans were heard. He was brought back in. In the morning *"they said that Scepo was dead"*. Victim was born in 1920-1921. (1321)
Stevan GLIGOREVIC 47 years old, teacher. Was in Bradina.	Thinks it was "in the second half of July". (1456). Victim "was taken out and came back beaten, and then the second night when he was taken out, they beat him to death out there and his body was not carried inside the hangar at all". Thinks Zenga was the one who called him out both times.(1469)
WITNESS N Machinist Lived in Viniste In Celebici : 23 May to 31 August (13 days in hanger 22, then in hanger 6)	Saw DELIC beating him ("an old man of 70") in front of "us"several times. Saw LANDZO taking him out and then thrown back in with a badge of SDS or SDA on his forehead. Heard from others that Landzo nailed the badge on victim's forehead. Victim cried for help and scream and then after a little time died "amongst us".(1916) "Heard the moans, cries for help ..." of the victim when Landzo was beating him outside. Victim cried for help and scream and then after a little time died "amongst us".(2040)
Dragan KULJANIN 39 years of age. travelling commercial agent In Bradina.	Some guard called Gotovac out several times. One day he was brought back with a badge on his forehead. **Zenga** said: "Who takes this off I will kill him". "The man was lying down and he died afterwards". Thinks "you could hear the moan now and then throughout the night and then he fell silent, so I do not know when he passed away". Heard victim being beaten: "The man was crying and moaning and begging for mercy saying: "Brothers, don't do this to me". (2346) "One of the guard said: "Who takes this out can expect the same to happen to him"." (2410)

Mirko Dordic 40 years of age. Serb. Waiter. Bradina	Scepo Gotovac was around 70 years old. In the end of June, Hazim **Delic** came in and read a piece of paper saying that victim killed two in November 1942 or 1943. Victim denied but Delic beat him and took him out: heard blunt blows for about half an hour and heard the moaning. he laid there practically immobile and moaning. During the evening,recognized the voice of **Landzo** who came to the door and called Scepo out; Scepo said:"I cannot. Kill me here." So Landzo ordered some prisoners to carry him out. Could again hear terrible blows and moan and victim was thrown in. Zenga said that something in his forehead should not be removed. In the morning saw (was 1 meter away) Scepo laying there motionless "as a dead man"during 2-3 hours"; he was "all yellowish, black and blue and had a badge on", "either a SDS badge or something". His body was removed somewhere around 8am because Delic ordered so. Never saw the victim again. (4781)
Witness B 36 years of age. Serb. Economist. Lived in Konjic but was in Brdjani in May and June 1992	**Delic** accused him for killings during WW2 two Muslims and burying them on the location of the camp adding that "he should not hope to leave alive". In the evening Scepo was beaten up twice. . "We could hear the cries, the moans". First he was taken out and beaten. Later on **Zenga** called victim out and **Delic** was probably near the door outside. They heard the beating right outside the door for a long time. "...by the number ofblows, the movements and everything we could hear, there must have been a large group of people. This went forever". At one point **Zenga** said:"Let me have him." Then they heard blows inflicted by only one person, heavy blows, with some kind of a stick on the body. This time there were no moans, no cries, no resistance. They trew him in and **Zenga** told them that "if anyone removes this badge from his forehead, I will kill him myself". Scepo was lying next to B for two or three days.(5055) Scepo Gotovac - proof of death: He did not move for two days and he did not breath.(5058)
Risto Vukalo 33 years old; mechanic Bielovcina	Scepo came from his village. He was an elderly man "perhaps born in 1929". He was brought to hangar 6 at that time Delic slapped his face and said that he would take his revenge upon him. This happened by the door, inside hangar 6. Risto could see this. After that Zenga called him out and the prisoners heard him screaming for 30 to 45 minutes. Several hours later Zenga called him out again. Zenga was holding something in his hand which he sort of stuck into Scepo's neck and pushed him out. Then the prisoners heard screams again and after about 30 to 40 minutes Zenga came in and order two detainees to bring Scepo inside. Novica and his brother Toso Brdzani brought Scepo half dead inside. The next morning the witness saw Scepo was dead. He was not far from him. Scepo was a Serb who was born around 1929.(6259)

Branko Sudar 47 years old; Serb; truck driver. Cerici (Konjic)	BS knew "this elderly man from Bjelasnica", "born somewhere in 1919 or 1920". Delic came with a note and asked "who is Scepo Gotovac?" The man answered "I am." Delic beat him and Delic and Zenga took him out. "I could hear Zenga's voice" Zenga was shouting: "How many Muslims have you killed." Delic told Gotovac that as a Chetnik he had killed two Muslims before the war. "They asked him again: how many did you kill?"(5765) When they returned him to the hangar, Gotovac was in terrible suffering. "He just lay there crumpled on the floor, crumpled and screaming, crying and moaning." In the morning he succumbed "and you could hear no more cries, no more screams. He was silent and somebody said "Scepo is dead." There were no signs or sounds coming from Gotovac.(5767)
Rajko Draganic	(6929/12-20) On 16 June Šćepo Gotovac was brought to the hanger. Draganić thinks that it was Delić who asked (as he was carrying a piece of paper), if Gotovac knew two people who's names that he mentioned. Gotovac replied that he did not. He was then accused of killing the two people in 1942. Gotovac replied that he knew neither the year nor the people.Following this, he was beaten. (6929/23-25) He thought that it was Delić, Zenga and two others (whom he did not know), who beat Gotovac. (6930/06-10) This beating took place inside the hanger after which he was taken outdoors and beaten again (the blows, shouting and moaning could be heard from inside the hanger). This continued for about 10/15 minutes (6931/08-10). As he was unable to walk Delic or Zenga ordered two people to carry him inside. (6930/11)Once inside, Zenga placed (pinned) an SDS badge on Gotovac's forehead. (6930/14)That evening Zenga removed the badge (6930/13)Gotovac was then taken outside and beaten again. Screaming could be heard. (6935/11-12) After this, he was carried inside, where he died. (6942/22) He did not live for more than five minutes after being placed in the hanger. (6942/25) He was placed across from Draganić. (6943/25)Draganić saw the body became still (he could observe this, as it was not dark yet) (6943/18-21) The following morning the body was taken outside. Draganić observed that Gotavac's head was bruised. He also assumed that the rest of his body was bruised (he could not see these bruises as Gotavac was wearing a suit). (6944/13)The body was removed by prisoners in the presence of both Zenga and Delić

Witness R	Witness recalled when Gotovac was brought into hangar 6, wearing blue worker's overalls and a cap with shield. Pp.7794-7795 Delic shoved Gotovac into the hangar and asked him "Why did you kill" Jusuf in 1941 or 1942. Gotovac denied the accusation. Delic replied: "If you had ten lives, you will not survive." P.7795/1-8. Subsequently, "according to the established scenario," Zenga came in the evening and called "Gotovac." Zenga took Gotovac out and the prisoners could hear blows and cries and some unusual sounds of knocking, and after 20 or 25 minutes. Gotovac was brought back to the door of the hangar. The prisoners close to the door helped Gotovac move to his place. P.7795/10-17. The next morning, at dawn, Witness could see that there was something nailed onto Gotovac's forehead. It may have been the insignia of the Serbian Democratic Party, but witness could not be sure because he sat far away from Gotovac. P.7795/18-24 Witness could observe Gotovac for one - two hours. Gotovac never moved; "he lay there in a position that a dead man takes up." P.7796/4-20.

Count 3&4 Grave Breach Wilful Killing of Željko MILOŠEVIĆ

DELIĆ

Article 7(1) Liability: Aided, Abetted, Committed

See exh 185 (death certificate)

WITNESS	EXTRACT OF EVIDENCE
Miro Golubović	38 years old Taxi driver in Konjic. Mother negotiated his surrender to HVO/ Brought Celebici 6/6/92 Says that Željko Milošević taken from tunnel number 9 and *"probably he was killed"*. States he never saw him again after he was taken out.*"I never saw him come back, and he was not among the living ones."* (2122) When asked about his own knowledge of the treatment meted out to Željko all he says is that *"he was frequently taken out and he would come back wet."* (2122) Doesn't know who ordered Željko's removal from No 9. Says DELIć told him to get ready.(2136)
Novica Đorđić	From village of Zukici. Worked on railroad. Brought Celebici 30 or 31/5/92 Milošević was taken out of the tunnel, that is just outside so that the prisoners could see and hear what was going on, frequently and was accused of being a sniper. He was beaten frequently. Witness could see this. He remembers that Milošević was beaten with an electrical cable. Milošević told the prisoners that he had hit a Muslim before the war. This went on for 7-8 days.(4173) **Delić** would stand at the door and call out Milošević.(4175) The door was mostly open, except for the night when Milošević did not return to the tunnel.(4176) **Delić** carried a cable and **Landžo** a baseball bat. He recognised three voices: Milošević, **Landžo** and **Delić**.(4177) One night **Delić** called out Milošević and the door was closed behind him. The witness could not make out the discussion but heard the beatings and later a shot was fired. *"We heard talk, but this time it was a bit further away from the entrance, so we couldn't understand as well as the previous days when it was just outside the door, but we heard the discussion, later beatings and finally a bullet. That night Željko Milošević did not return to building Number 9."*(4179) *Proof of death:* The next morning he saw Milošević's body close to the toilet hole, when he was taken out to the toilet. His head was covered with some kind of rag, with a large blood stain on his forehead.

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	"He was lying there immobile, with a large blood stain."(4179) "*You see, he didn't return that night. If he had returned, we would have known that he was alive. But he was lying there. We were going out in groups of five or six and there were 30 or so of us inside. All the people that went out, they saw the same scene. He was lying there immobile, with a large blood stain, which means that he was dead.*"
Witness "P"	Physician; Ear, Nose & Throat Specialist From the window of number 22 he saw Delić and Landžo kick Željko. This was behind Number 9. (4562) Two or three days after he saw Željko being kicked, Dragan Mrkajic, a detainee from number 9, told him Željko was dead. (4562)
Milenko Kuljanin	Late June or early July, Željko was selected with Rajko Dordic to talk to some journalists. They were filmed in front of tunnel 9 but he refused to state that he had tortured and raped muslim women and chidren as ordered by Delić. After the journalists left, Delić threatened him. Then a few days later at night Delić called him out; screamings and moanings could be heard from tunnel 9 during an hour. The next morning going to the toilets, he saw Željko lying dead behind the door. Some time before Željko and Rajko Dordic were shut down in a manhole filled with water. When back, Milenko lent him a suit that he recognised when he saw the dead body. he also recognised him to his sneakers and his haircut. (5480)
Risto Vukalo	"As far as I know Milošević was beaten very badly, both inside (this is a strange remark, because Milošević was detained in tunnel 9. Risto was not in that tunnel.) and out. "He was beaten by Delić also, and he died from the beatings, but I cannot describe that in any detail." (6266)
Witness J	DELIć and the guards would come in (tunnel 9) and beat him. Was shown to Arab journalists together with Rajko Dordic as "sniper" and filmed.(7496) When we were taken there to urinate, we all saw him there lying next to this hole, lying dead..." (7497)

Count No 5 and 6 Murder of Simo JOVANOVIC

DELIC - LANDZO - DIRECT PARTICIPATION

Exhib 186 (death certificate)

WITNESS	EXTRACT OF EVIDENCE
Mirko BABIC	Only mention that victim disappeared. (286)
Branko GOTOVAC	Branko sees Scepo Gotovac and Simo Jovanovic taken from hangar 6 and beaten. (From the transcript, it is unclear who he says dies. It could be either of them or both?) (986) The door was closed but " we could hear the screams and the way they were hit ".(1103)
WITNESS F	An elderly prisoner called Jovanovic was taken out by Landzo in June. Could recognise Landzo's voice. Heard his moans because of the sheet metals was the only thing that stood between. Recognised LANDZO by his distinctive and characteristic voice. He was brought back and was dead in the morning. (1316) This occured in June. (1317) Recognized LANDZO because of his particular voice. LANDZO was sometimes acting on his own, at least even when DELIC was not around. No personnal knowledge of the beating.(1377)
Stevan GLIGOREVIC	Knew the victim very well. was called out twice by LANDZO. Saw and heard him beaten very severely and black and blue when he got in. Same thing happened several nights later; victim "moaned for a while, and then they gave him some water, and he got quiet, and in the morning he was dead.(1468) All the killings happened between mid-June and early-August.(1456) Heard his moanings and screamings while beaten.(1545)
Nedeljko Draganic	At night ("maybe 10pm, maybe even 12pm") he heard **Landžo** calling out Simo Jovanovic and heard that he was beaten during at least some 40 minutes by several people, of which he recognized the voice of **Landžo**. (1636). Victim was saying:" Please don't do it, brothers". Could also hear the blows. He knew Simo was dead because he had to take out the body the next morning, together with Cedo Cecez and somebody else.(1638)

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WITNESS N	Taken out the same way Scepo Gotovac, brought back in and died amongst "us". Heard from other detainees that Landzo was the one who took him out with a group of some people from the village of Idbar. (1917) Victim was first beaten by Landzo inside the hangar in front of these people from Idbar standing at the door and then outside.(2046). It happened "in the early evening,but it was still daylight".
WITNESS "P"	The witness saw Simo, he was in poor condition. He had been beaten up. He had some broken ribs. This was when the witness was still detained in the camp.(4565) . He treated Simo with some painkillers and requested Delic to have Simo transferred to number 22. This did not happen and after a few days Mr. Jovanovic was dead.(4566)
Dragan Kuljanin	The man simply disappeared one day" (2349)
Mirko Dordic	Victim had been taken out in the evening several times over a period of about ten days. Sometime at the end of June or early July Adem Cosic walked in and asked Simo to come outside while Landzo stood at the door. Then they heard the blunt blows, and his moans. Simo came back in the darklight ("at around 9pm, maybe even earlier"(4786); "we could hear those painful glunt and moans and he asked for help". After a while everything became quit and in the morning we saw Simo lying motionless. We realized that he was dead". His body was "mostly yellowish and black and blue". After 2-3 hours, **Delic** ordered to remove the body.(4785)
Witness B	He was already in a poor condition when B arrived. One night "dusk or night) he was called out by **Zenga** and another man. Right after that a group of people started beating him and they could hear terrible moans and cries. Some prisoners carried him in and in the morning he was dead and the body was lying on thew floor for two days. The body was motionless and he did not breath. B carried out his body and put it behind the hangar.(5058)
Petko Grubac	The witness saw Simo Jovanovic once in hangar 6. He could not move, he was beaten up. He was complaining of not having enough air and that he had pains all over his body. His condition required intensive care in a proper medical establishment, but he was not transported there.(5989) When the doctor was brought to a cell in the Konjic police station on 28 May, he saw Simo in this cell. He saw no visible injuries on Simo. (Cross). (6045)
Branko Sudar	BS knew Jovanovic because Jovanovic had a fish pond at Njeba. Jovanovic lay across from where BS was lying in the hangar.(5768) The guards took Jovanovic out many times and beat him and told him "would you like some fish?" BS heard Landzo's

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	voice outside the hangar as Jovanovic was beaten BS could hear the sound of a stick landing on Jovanovic's body.(5769) BS could hear Delic's voice and Landzo's voice as Jovanovic was beaten. BS heard Delic say "enough, stop, enough, no more."(5770) There were no sounds or moans coming from Jovanovic's direction. Since there were no screams or signs of life, BS believed that Jovanovic was dead.(5772)
Petko Grubac	Saw Simo in a poor condition in a cell of the MUP building before being tranferred to Celebici camp. Was told there by other detainees that they had been in this cell for three weeks. "They looked pitiful, miserable..., emaciated" (5955) While in hangar 6, "I could not treat him. His condition required intensive care in a proper medical establishment, but he did not have the good fortune to be transported to such an institution (5989)
Rajko Draganic	Draganić thinks that it was July 1992, when Simo Jovanović was killed. Zenga called Jovanović. They went outside. They spent about 15/20 minutes outside. "people beating him were locals, neighbours. There were two or three of them. Amongst them there were Landzo. Blows and screams could be heard, coming from outside. When the screaming stopped someone was called to carry Jovanović inside. (6945) In the morning they saw that he was dead and covered by an army coat. Draganić and others observed the body in the morning. (6946) He noted that Jovanović's body was bruised, his head was black. According to Draganić, Jovanović was badly beaten and obviously had broken bones, which could be observed from a distance. The body lay in the hanger until 9:00 or 10:00 (i.e. for about 5/6 hours), when it was carried away He did not remember if was Delić or Zenga, who gave the orders for the body to be removed. They just came, carried the body outside and then drove away. This was the last time that Draganić saw the body of Jovanovic.(6947)
Witness R	Witness R recalled that Jovanovic was taken out several times and beaten before the last time, "when he passed away." Jovanovic was repeatedly accused of having weapons, a machine-gun, etc. "He was asked where they were, who he had given them to. Etc." P.7798/2-5 Before the first beating, "Mr. Zenga" called Jovanovic out. "It was only Zenga's voice who called out these men, and the voice who ordered the prisoners near the door either to move the body of the beaten person to his place, or giving the order not to touch or help, otherwise they would suffer the same fate." P.7798/12-16. The next morning, Jovanovic had hematomas all over his body. P.7797/1-7. Several days later, Zenga called Jovanovic out again, and when he returned his pants were wet. His sweater was torn, and through the tears, one could see black bruises. "His face was the color of earth, grey, the colour of death. He was lying on his back. One could see the whole corpse but especially the head because it was leaning back against the wall of the garage." Pp.7799-7800 Witness R was able to observe the body for an hour or two after dawn on the following day. Jovanovic did not move nor show any signs of life. PP.7800-7801.

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Count No 7 and 8 Murder of Bosko SAMOUKOVIC

LANDZO - DIRECT PARTICIPATION

See exhib 185 (death certificate)

WITNESS	EXTRACT OF EVIDENCE
Mirko BABIC	By mid-July or mabe earlyJune... saw victim beaten in the back (his hand behind his head) with a piece of wood by LANDZO; he fell down and then was taken out . Heard later that victim died in the infirmary somewhere.(283) Confirmed during cross-exam that has got no personnal knowledge of the death.(412)
Branko GOTOVAC	Didn't know what happened to Bosko Samoukovic but heard Delic call a doctor and ask whether he would "croak". Heard him pronounced dead.(1104/10) Dr Mrkajic said:"He croaked". Then"he died shortly thereafter and they put the blanket over him, so he died". (1118)
Witness F	Bosko Samoukovic was taken out by Landzo.(1317/23) Landzo asked him his name and answer heard. Was beaten in the kidneys with a plank of wood. When he fell, he was assaulted with a rifle butt. This happened in the hanger in front of many witnesses. He was beaten until he "fainted".(1318) He swallowed his tongue in the assault. Was helped by a male nurse prisoner. He was transferred to No 22 the next day.(1318/12) Bosko's son, Nedjo asked Delic the next day what happened to his father. Was told that he had died.(1319/4)
Stevan Gligorevic	"Landzo beat him a number of times. He was moaning and then finally he fell down and started to mumble, gurgle nad then he was taken out so that he could come to a little bit. However he continued to gurgle. Then they took him to this number 22 and shortky there after he died.(1448) It occured "somewhere towards the end in the second half of July".(1456)
Nedelko Draganic	A man from about 60 from Bradina, who had two sons there and a brother, was beaten, in front of the prisoners, by a group, including Zenga. They used planks, rifle butts and a baseball bat. This happened around 12 July 1992.(1639/40)

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Witness N	Saw him beaten by LANDZO with a plank in the hangar After that victim was taken out. Dr Mrkajic told that he was transferred to building 22.(1918)
Miro Golubovic	"The day I was released from the camp (around July 17), it was the morning. They brought to the infirmary Bosko Samoukovic, who had been beaten up. He was brought in by some prisoners and they were accompanied by Mr Esad Landzo. The man was moaning and Esad Landzo said that he had to recover in half an hour. He told the doctors to get him well in half an hour. However he died five minutes later" (2137). "Bosko died and we put him on a mattress ... We had covered Bosko with a sheet" (2138)
Dragan Kuljanin	After **Landžo** forced him to state his name out loud, he beat Samoukovic (who was about 60) with a plank of about 1 metre, 1.20 metre, then he called others to take him out. He never returned.(2345/21)
Mladen Kuljanin	LANDZO hit him and then with a plank about 1 metre long near the door. Bosko fell and did not get up again. Several prisoners took him away. Heard later on from victim's sons that he died.(2500) Says that he only saw two blows which he received from LANDZO inside the hanger. (2585)
Witness "P"	Bosko was carried into the infirmary by some inmates followed by Mr. Landzo. Bosko said he was beaten by Mr. Landzo. On examination it showed that his pulse was low, he breathed very weakly and his chest was painful, a rib had been fractured. After 15 to 20 minutes he died.(4534) Bosko died in the second half of July. The witness saw bosko a few days before his death in Hangar 6. His appearance was quite decent, he did not complain of anything. (4737) Witness was not in a position to write a death certificate because "that would mean writing out my own death warrant" (4538)
Mirko Dordic	17th July, **Zenga** came in, asked everyone from Bradina to get up, Bosko did not get up and Zenga started beating him with all kind of things. At one time he hit him in the back of the head with a wooden plank, and he fell down. A nurse tried to pull his tongue out without success and Bosko was taken out to the infirmary. Later on Zenga came in and said to Bosko's sons that Bosko is dead.(4788)
Witness M	Bosko Samoukovic: He was beaten up by **Zenga** at the entrance of the door with a wooden plank. Probably he was carried out half dead, in unconscious condition.(4919)

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Witness B	**Landzo** asked him to get up, beat him with a riffle butt and when he fell down he kicked him. Then he hit him with a stick or something. This happened 2 or 3 metres from me. Bosko either died then or next day.(5050) The next day DELIC asked one of victim's sons: "Do you know what is with your father?" and he kept silent. "He died. It must have been the cold. Do you thonk that he caught cold?" (5051)
Petko Grubac	Bosko arrived in number 22 in July, possibly mid July. He could not walk by himself. (5983) "After that, Landzo Zio Zenga came and looked at the injured person and said to the doctors, "you have to cure him." "Esad Zia Zenga. Esad Landzo Zenga, I do not know why I always have confusion with this name instead of Esad Landzo Zenga." Bosko was conscious when he was brought in. He could say a word or two, but he was in such a serious condition that he was acutally struggling for life. He had a hard time breathing. He was blue and red in the face. (5984) On pressing Bosko's chest the Dr. found it was not as elastic as it was to be expected and heard some sort of a crackling noise, which lead him to the conclusion that his ribs were broken. There was no real treatment possible for Bosko.(5985) Bosko died after perhaps 20 to 30 minutes upon arrival to building number 22. The body did not stay overnight in the infirmary. He was not asked to fill out a death certificate.(5986)
Risto Vukalo	In hangar 6 Bosko was seated in the direction of the door, next to the wall. Bosko was beaten both inside and outside the hangar. Zenga hit him with his rifle butt. Zenga also kicked him and hit him with a stick. What happened inside was seen by the witness unlike what happened outside the hangar. After a while he was brought to number 22. The witness did not see him after this and Bosko's sons were informed that their father had died. Bosko was a Serb from Bradina, who was between 50 to 60 years of age. This all happened before the Red Cross came. It must have been somewhere in June or the beginning of July.(6261)
Branko Sudar	BS knew Samoukovic by sight because victim was from Bradina. Samoukovic was fourth in the row from the door next to the wall. Landzo entered the hangar brandishing a pole or a stick. He hit people in the row, including Samoukovic and Samoukovic fell from the blows. Landzo ordered the prisoners to take Samoukovic to the infirmary (Number 22) where he died.(5773-5775) Landzo stopped beating Samoukovic when he fell down and "it was obvious he was about to die." Beating took place less than 10 meters from BS' position.(5774)

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Rajko Draganic	Zenga was beating prisoners from Bradina. He then called for Bosko. (6947/22) & 6948/1-8) and beat him up. He forced Bosko to do push-ups. while he was doing these push ups Zenga hit him - he hit him in the chest with his boot and with a rifle butt. He then hit him several times with a 7 by 10 plank. Bosko fell to the ground. Zenga then ordered Bosko to be taken out to fresh air. He was carried out. One of Bosko's sons went to the infirmary (number 22). Upon his return he pronounced that his father had died. Bosko's beating lasted about 10/15 minutes. Everyone observed the beating as it took place inside the hanger. (6948) According to Draganić these events also transpired in July at about 12:00.(6949)
Witness R	After Bradina was burned down for the second time, after 12 July 1992, Delic ordered that all prisoners from Bradina be beaten three times in one day, as punishment. Zenga entered the hanger that day and ordered: "All people from Bradina get up." Samoukovic, who was from Bradina, did not get up. Zenga asked Samoukovic "Why did you not get up?" Samoukovic then stood up and Zenga ordered him to assume the standard position for a beating, legs spread, with the arms behind the head. Zenga was carrying a plank that was tapered at one end so that he could hold it in his hand. Zenga struck Samoukovic in the kidney and liver area with the sharp edge of the plank. Pp.7801-7802 The beating lasted only several minutes. "But the blows were so hard, and they were delivered with swings, and so -- it was also a man who was already elderly." Samoukovic fell down and at that time, Delic entered the hangar and ordered that Samoukovic be taken to the infirmary. One of the prisoners, Brane Gligorevic, who was a medical technician, accompanied Samoukovic to the infirmary. About 15 minutes later, Gligorevic returned to the hangar and made a sign to the prisoners that Samoukovic had died. Samoukovic's son sat next to Witness R on his right, and he began to cry. PP.7802/16-25

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Count No 11 and 12 Murder of Slavko SUSIC

LANDZO - DELIC DIRECT PARTICIPATION

See exh 185 (death certificate)

WITNESS	EXTRACT OF EVIDENCE
Grozdana Cecez	Was living in Celebici. Was told by a guard that victim captured because he had a radio station. Severely beaten and in a very bad shape (half dead). Taken on a van by DELIC, guard told witness that DELIC would kill him if they do not find the radio station. Saw him beaten by DELIC against the wall near building 9 with a stick (piece of the stick broke during beating), When victim fell, kicked again. 15-20 minutes later, was gone. Saw mortuary vehicle the day after. Told by guards that victim had died. It was at the beginning of July.(546-549)
Milojka Antic	Saw him leaning against the wall, recognised DELIC next to him holding a piece of wood.(1804) Was told a day or two later that victim had died in Number 9. (1805)
Miro Golubovic	Describes seeing a prisoner called SUSIC being beaten by DELIC in front of tunnel 9 with either water or electricity cable. Sees cable discarded and a broken piece of wood used for the beating. Describes Landzo as being present and as dragging SUSIC along the ground by the arms. Sees him "doing something" to Susic with his arms. *"it was quite far away, so I couldn't see exactly what he was doing."* (2133)
Novica Dordic	The witness saw **Delić** and **Landžo** take Susic out mostly. "They were saying he was taken out and he was asked to confess that he had this radio transmitter. (4183) The prisoner was taken in front of number 9 he had to raise his arms and face the concrete wall and the two of them would beat him with either a baseball bat, a fist or a foot.(4187) The day he died he was taken out and the door was closed immediately after him. They beat him for a very long time. (4185) He could hear the voices of the people that took Susic out: **Delić** and **Landžo**.(4186) When Susic came back in he couldn't breathe. Some prisoners tried to give him artificial respiration but that did not 4184/13). The corpse stayed in the tunnel for an entire night and was taken out the next morning.(4184)

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D 7728 - D 7728

D 7729

Witness "P"	He saw Delic and Landzo beat Slavko Susic when he glanced outside the window of number 22. Delic was waving a blunt object. (4546) The witness saw Slavko in tunnel 9 after he saw him being beaten by Delic and Landzo. He had an aspect of exhaustion and was in a very bad condition. He could see no marks, abrasions or contusions on Slavko's body.(4549) He heard from Zarko Mrkajic that Slavko Susic was dead. he heard the guards say: "Macic finished him off because of the goats."(4552)
Milenko Kuljanin	Was brought in tunnel 9 by Delic "maybe a month after us". Delic beat him to the very entrance and inside (half way into the tunnel) with a rubber pole. Slavko was covered with blood. Then Delic ordered a guard to investigate in connection with a radio transmitter and came back 2-3 hours later. Since Delic could not find the transmitter, he hit him gain and said that he was lying. *Delic also beat the guard (Zara) because he had not obtain confessions from Slavko.* Then Landzo took him out in front of the tunnel and tortured him with a slow burning fuse: "the man was burning" (see p. 5476). The next day Delic hit him again with a rubber stick inside the tunnel and he passed away after a few hours. Delic then told the other detainees that Slavko's grandfather killed several people in the village during WW2. His body remained two nights in the tunnel.(See p.5479 proof of death). Delic and Landzo *(not clear)* then said to the detainees that they had killed Slavko adding: "See what you have done to one of your own, imagine what you would do to muslims". (5469-5480) Beating of Slavko occured outside the tunnel 9 but right in front of the door which was open (5563)
Witness J	"I know Slavko Susic very well, he was a very quit man, he was a teacher...he was accused that he had a radio transmitter. (7488) While coming back to the hangar saw Focak and ZENGA beating him outside the hangar. (7489) DELIC would also beat him inside the hangar (7490) "Was beaten so much and so often that "I can say we were all surprised that he survived, that he could go on living, that he could breathe... Finally he was called out.. but I heard the beatings, the blows...It was DELIC who called him out. When he came back he was totally wet... and in maybe an hour or half the people who were closer to him said he had died." (7493) The next day went with Macic to put a sheet on the dead body of the victim: "I saw that there were all flies on him, he was on his back and I covered him with this sheet. (7494)

COUNT 13&14 A/ Murder of Milorad Kuljanin

See exhib 185 (death certificate)

Witness	Extract of Evidence
Witness F	Sometime in June, whilst defecating saw some guards who made him defecate on a 5 point star. Guards went to the hanger. Doesn't know who was called out of hanger. Heard blunt blows. "All of a sudden there was a burst of fire". Jumped up and ran to hanger. Saw Miso Kuljanin, (nicknamed "Coba") lying on the floor surrounded by the three guards. He tried to get up 2-3 times "and then he was dead." (1315)
Stevan Gligorevic	"One morning... -- I think it was mid-June -- they took out Milorad Kuljanin. He was a young man from Bradina. They took him behind the hangar and beat him and then we heard a shot -- two shots I think it was, and they killed him." (1445) I knew him (the victim) very well. He was a pupil of mine. He was killed from a firearm in the morning right behind the hangar. (1466) "He was moaning. He was given some water and then he quietened down. In the morning we saw that he was dead".(1466) "All these crimes , the killings, happenned between mid-June until early-August. In the second half of July, I believe Milorad Kuljanin and ... were killed". (1456)
Witness N	"That day was a muslim religious holiday. On that occasion ten of us prisoners were going to the toilet behind the hangar, and when we passed by Milorad Kuljanin, the four or five of them, they were forced to hit Milorad Kuljanin. Three or four went by and Esad Macic, Makaron, pointed a gun at his forehead and fired two shots into his head directly. I was perhaps a metre or metre and half away from the killed person, and I personnaly saw him firing the two bullets." (1916)

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D 7727 - D 7726

D 7727

Dragan Kuljanin	He was called out. "Behind the hangar a shot was heard. I heard the comments made loudly. They said: "Today is Bairam...We have to kill two more men"(2345)
Mladen Kuljanin	It was Bairam Muslim Holiday. Macic (called Makaron) walked in and said that he would kill a number of us. He took victim out and one shot was heard. After that, saw victim lying dead at the same place where Zeljko Klimenta had been lying.(2520)
Mirko Dordic	Miso Kuljanin: Muslim holiday, Kurban Bajram. **Zenga** came in and asked a volunteer and Miso went out. They heard a shot a few minutes later. He never saw Miso again. Momir Mrkajic, Janko Glogovac and Zjeiko Cecez were outside and showed with their fingers that someone had been shot outside. Momir told that Miso was killed by Eso a/k/a Makaron. (4775)
Witness M	Mico Kuljanin: He was taken out and a shot was heard. M went out after this and saw his motionless body.(4922)
Risto Vukalo	During the Bairam holiday, victim was called out by LANDZO."Then a rifle shot could be heard and later we heard that he was killed, executed."(6279)
Witness R	Witness R testified that Milorad Kuljanin was killed on Bairam. At 9:00 - 10:00 in the morning, Witness R and a group of 4 - 5 men were outside urinating into a canal. At that time, two guards appeared at the door of hangar 6 and called Kuljanin outside. One of the guards was Esad Macic, whose nickname was "Makaron." Makaron brought Kuljanin in front of Witness R and the other group of prisoners and asked Kuljanin if he was in the JNA Reserve Forces in Mostar. Kuljanin replied "No," and Makaron asked him who else from Konjic was with Kuljanin in the reserves?" When Kuljanin said no one, "Makaron" ordered Kuljanin to lie in the urine-filled canal. When Kuljanin lay in the urine on his stomach, "Makaron" told him to lie on his back. Then again, "Makaron" asked Kuljanin: "Who from Konjic was with you in the reserves?" and Kuljanin repeated that no one was there. Then, Macic fired a shot from 20-30 centimetres into Kuljanin's face. Pp.7784-7787. Macic fired three shots in total into Kuljanin's face and neck. Kuljanin's skull burst open and his brains and blood splattered onto Witness R. P.7787/13-24. Witness R saw that Kuljanin lay motionless, and he never saw Kuljanin's body again. 7788/12-14; 7789/9-11. Subsequently, the Macic's older brother entered the hangar several times to note down the names of the prisoners who witnessed them and to take these prisoners out and warn them to say thta Kuljanin was shot while trying to escape. PP. 7788-7790.

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COUNT 13&14 B/ Murder of Zeljko Cecez

See exh 185 (death certificate)

Witness	Extract of Evidence
Branko Gotovac	Whilst in hanger No 6 Zeljko was taken out and beaten. He was brought back in and begged for water. None was given. He died within 20 minutes.(986/23)
Witness F	The guards asked **Zeljko Cecez** if he had seen the killing. He said yes.The same night, he was taken out by guards. His moans heard for a while. After a while he was thrown into the hanger. He was asking for water. In the morning he was dead. (1315)
Stevan Gligorevic	Second victim in Celebici. Taken out at night and beaten. Unable to get in there on his own. Carried back in by two detainees while moaning. In the morning, we saw that he was dead. (1466) "In the second half of July I believe..." (1456)
Witness N	"On that occasion (killing of Milorad Kuljanin) the man closest to the killed person was Zeljko Cecez and he was taken out that same evening and beaten for a whole hourin front of the hanger. He was thrown back in and a short while later that same evening he passed away in the hanger." (1917)
Dragan Kuljanin	Cecez was taken out by guards often. One night he was threwn back. About ten minutes later the man begged for helpand he said:"Men I am going stiff. I am dying." And half an hour later he died in the hanger.(2347)
Mladen Kuljanin	Called out at 1 am and taken out in front of the hangar. heard his moans. Then 4 people were called out to carry him back in. In the morning, he was lying dead two metres away (from witness) and remained in that position for two days.(2517)
Mirko Dordic	**Zenga** came later outside the hangar, called Zeljko (Cecez) because he had seen the murder and they heard very hard blunts blows and his moans for about an hour. In the morning Zeljko was lying in front of Mirko and he had yellow colour of death. He was dead. They were all shivering with fear. Hazim Delic came the next morning and ordered Nenad Cecez and some others to carry him out.(4779)

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D7225-D7224
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Witness M	"He died in the hangar. He was taken out. One could have heard his cries, his moans, his pleas that they stop. It was terrible to listen. He begged us to help him. Nobody dared. He died in terrible pain. Many people saw this, all the people who were there. They could have seen the terrible pain he died in. He died in the hanger and he was taken out as dead." (4920) Says that he is not a doctor but he knows what a dead body is; no signs of life, no sounds coming from him, nothing. (4920)
Branko Sudar	"When I came from the hall from Celebici on the religious holiday on that evening, he (Z.Cecez) was also killed then." (5799)
Risto Vukalo	The witness knew Zeljko from before the war. Zeljko was a Serb from Donje Selo of about 28 years. In hangar 6 Zeljko sat in the row behind Risto.(6264) Sometime during the Bairam holiday Zeljko was called out by Zenga. Moans could be heard from outside. After a while the doors of the hangar opened and Zeljko fell inside like a sack. Zenga was still hitting him. He was kicking him and was hitting him, probably with a plank. Zeljko was crawling on all fours and finally fell down. After Zenga closed the door of the hangar two prisoners got up and took him to his place. The next morning he was dead.(6265) In the morning the prisoners right left and right of him gave the other detainees a sign that it was all over for the victim. One could see by his face that, even though it was beaten up, it was yellow.(6266)
Witness R	Zeljko Cecez was the first person on the list compiled by Macic's brother. Cecez' nickname was "Spanac" (the "Spaniard"). On the same evening, Zenga came to the hangar and called Cecez out at around 10:00 or 11:00. The prisoners could hear the sound of blows striking Cecez' body for 25 to 30 minutes. When Cecez was brought back to the hangar, the prisoners heard Zenga's voice say to throw Cecez inside, and Zenga warned the prisoners that anyone who attempted to assist Cecez would suffer the same fate. P.7790/12 - 7791/11 Cecez lay in the darkness and cried: "for heavens' sake, is there anyone to help me?" Some of the prisoners managed to give Cecez some water, but soon they heard no more cries or moans. P.7791/14-21. In the morning, Witness R saw Cecez' body lying between the two inner rows of prisoners. His clothes were torn and the color of his skin was "ash grey, as if there was never a drop of blood in that body." P.7792/7-12 Witness R could observe Cecez' body from a distance of "three step," and there were hematomas all over Cecez' body. 7791/15-22. Witness R could observe the body for more than one hour and it never moved. 7793/8-14.

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COUNT 13&14 C/ Murder of Slobodan Babic

See exhib 185 (death certificate)

Witness	Extract of Evidence
Mirko Babic	"Slobodan Babic is my relative...we lived as neighbours" (263) While in Number 22 "he was in a very bad condition, all broken up."(270) He remained here about eight days.(272) Do not know whether victim was beaten in Radava or in Celebici but says that he had already been tortured (389 to 391. See also 440-441) At the time victim was brought in Celebici, he was terribly injured, he had been tortured, he couldn't see and couldn't hear.(444-445). Did not see that victim received any medical care whilst in Number 22. (464)
Branko Gotovac	Whilst in Number 22 "we could only hear him. He was moaning..."(1032) Victim had been beaten "before when he was being detained". Heard from Mirko Babic that victim had been beaten at Radava and not in Celebici. (1033) Before his arrival to Celebici... he was in a very bad condition" He couldn't see, he coulldn't speak. He just screamed. Probably his heart failed. He left and Petko Grubac told me that he had died in the school called Trec Mart." (1117)
Witness N	In building 22 there was Slobodan Babic "who was sort of beside himself. He could not even speak. He could not get up." (1877) "I saw when uniformed people came in, though he was half dead, they continued hitting him. That is what I saw. Several times they hit him." (1880)
Witness P	Treated the victim in the 3March School. "He was unconscious... I was told by the prisoners that he had been beaten up." (4499) "When we got there we did not have any medicine." There were haemorrhages throughout the body. I put a Foley's catheter there and I saw that the urine had blood in it."(4500) "He died within two days." (4501) Witness P established the death of the victim who came from the village of Bijelovcina. (4638)
Petko Grubac	Slobodan Babic died in the 3March School. "He could not speak and it was not possible to communicate with him orally." (5963) "He was in a coma... We gave him strong doses of penicillin while it lasted and that was all." (5964) Victim died on 5th June. (5965)

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D7723

Risto Vukalo	Whilst in Radava saw the guards hitting victim and Novica Ivkovic "a lot."...I saw well with my own eyes when Duda (a guard) cut with his knife. ...he cut off a piece of fleshwith a knife to Novca Ivkovic. Then he trampled on Slobodan Babic's chest. He broke his arm because he trampled on his arm too. Others hit him as well, and they took turns coming in and out. ... Then Duda, with a rifle pushed the barrel into Slobodan Babic's mouth anbd perforated his palate. He was covered in blood and he could no longer speak. ... I saw thwt Slobodan could not stand at all." Then they dragged him down the stairs and "his head was hitting the steps." (6263-6264)

COUNT 13&14 D/ Murder of Petko Gligorevic

Witness	Extract of Evidence
Witness F	Re the beating of the people from Bradina that took place in the camp near the gate, "Petko also died there and it is unbelievable that one man could do that to another." (1344) "After the beating he remained by the wall and stay there" (1409)
Stevan Gligorevic	During the beating at the arrival of the people from Bradina while they were lined up against the wall, victim died from the treatment: "I saw Petko Gligorevic; I saw two streams of blood down his nose." (1430) Says that Petko was killed during beating at arrival at camp. (1409)
Dragan Kuljanin	No personal knowledge. Heard from victim's son that he was killed in the Celebici camp. (2338)
Mladen Kuljanin	During the beating "he was about ten metres away from me. At one point he fell down from beating and some soldier came over and ordered two prisoners to pull him up. Then he got up. When the next group came over to beat us, Petko fell down again and never got up again. He remained there dead. (2480)
Witness P	Heard from the inmates and from victim's sister that victim died on May 27 in the morning in prison. "She told me that she had attended his funeral." (4543)
Zoran Ninkovic	After the first beating, he saw a man lying on the concrete. (5137 - 5138) When he entered the hangar, he learned that it was Petko Gligorević. When they were brought to the hangar, he did not see the body. (5146)

COUNT 13&14 E / Murder of Miroslav Vujicic

See exhib 185 (death certificate)

Witness	Extract of Evidence
Witness F	During the mass beating of people from Bradina on 27th May, Miroslav Vujcic was next to witness F against the wall. He was told to "step out and lie down on the asphalt. He knelt and then they hit him several times. When he saw what I had gone through and what he was about to get, he started running, and maybe it was about 20 metres of me, somebody said: "Shoot", and then there was a burst of fire. It was heard and Miroslav was killed there. His brother Radoslav, who was standing next to me, said:"My god! They killed my brother, Miro." The person who did that was a certain Makaron.(1303)
Stevan Gligorevic	"He was taken out of the line-up and to lie down on the ground. He was beaten and he could not go through this torture anymore. He refused to go through this humiliation. He jumped up and started running... They fired some shots and killed him." Whe we headed off toward Number 6, I saw him lying there in the grass."(1431) He jumped up and the only thing we heard were the cries of the guards: "He is running away!..."(1533)
Zoran Ninkovic	During the first beating, at one point a voice could be heard saying:"I can't stand this any more. Don't beat me any more", and then a couple of seconds after these words a shot was heard. I was so afraid that at that moment I didn't know what had happened. (5141) That same evening ater we had entered the hangerI saw Radoslav Vujicic ... who kept repeating:"What have they done? They killed my brother." ... "he was crying. He was absolutely distraught, and he kept repeating this same sentence." (5143) Everyone concluded that that was how Miroslav Vujicić had been killed.(5144)

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D 7720 - D 7719
D 7720

Count No13 & 14 F/ Murder of Gojko Miljanic

DELIC-MUCIC-DELALIC

WITNESS	EXTRACT OF EVIDENCE
Stevan Gligorevic	(1334) I also saw on the ground Gojko Miljanic, who lay there motionless as well. (1338) "We carried Gojko with us into number 6". (1336) In coma. (1531) Died from the beatings before arriving in Celebici
Witness F	That was the most -- the hardest thing that I could imagine could happen to me. I asked three times to kill me, and now that you are reminding me, I forgot to say that Gojko Miljanic was beaten there and he was taken to Number 6 and died in the arms of his son, Savo. (1344)
Witness N	(1918) Died in his son's arms in the hangar amongst us.
Mladen Kuljanin	Gojko Miljenic was beaten up but arrived alive to Hangar Number 6 and the next morning he was dead. I personally was with Gojko when we arrived in the hangar, when we were locked up there. Blood was coming, out of Gojko's ears and his chest was all broken. He could not talk. He just gurgled and blood was coming out of his mouth and his ears and the next day when the dawn came Gojko was dead from having been beaten. (2480)
Zoran Ninkovic	The man, when he was brought in, he was taken out of a wheelbarrow and placed on the floor, and he never moved. If I had seen him get up and sit down or something ... I didn't. He was lying down all the time, motionless. On the Thursday one could hear him. That was on the 28th, the morning. He was brought in in the night between 27th and 28th. On the 28th you could hear his moans. After that I couldn't hear him any more. (5144)

COUNT 13&14 G/ Murder of Zeljko Klimenta

See exhib 185 (death certificate)

Witness	Extract of Evidence
Mirko Babic	Called out by a guard and then ten minutes later heard a gunshot and a detainee (Dragoslav Kujundzic) ran inside saying Zeljko is dead.(285 + 414)
Branko Gotovac	Heard by other prisoners "that he had died" but did not see it. (1106)
Witness F	In Early august, he was told by a guard to go for coffee but refused. Later was called out again and did so "in a grumpy mood". After a time a shot was heard. Kujundzic and Zoran Tomovic walked in and said that "keljo was killed".(1323)
Stevan Gligorevic	"He was there from the very beginning (in the camp). He was beaten very seriouslyand he just lay down for days, and his ribs had been broken. That's what I heard. (1462) At 5am a guard called victim out together with to have a cigarette. "Then a shot was heard and Garo and Mladen ran in and they were holding thei hair and they said Keljo was killed...As far as I know the bullet went through his head. I didn't see that. Then the bullet penetrated the side wall." (1462) "He was maybe from time to time privileged in being able to go out and have a cigarette with some of the guards, not with all of them. According to what he said, they asked money from him because they thought he had money, as before the war he had his own cafe in Konjic." (1540)
Nedelko Draganic	Early morning like 6am victim was taken out with a group of detainees. They talked for a while. A shot was heard and a man walking back in said: "Keljo is dead." (1640) Victim was usually "friendly with the guards." (1673)
Witness M	Taken out one morning and "killed in front". Half an hour later, saw his corpse behind the hangar. The day before, DELIC told victim's visitor to "kiss him goodbye".(1919)
Dragan Kuljanin	He "was called out and after he came back he lay there for two days and nights. He was beaten up." (2335) "The day before his death" while a guard (Kovacic) was giving cigarettes to the victim "Delic said: "Why are you giving him cigarettes? Fuck him. He is not going to be alive tomorrow." (2340) Then in the morning of 26-27 July, he was called out ... (same as above) (2341)
Mladen Kuljanin	While Emir Kovacic was giving him cigarettes, DELIC intervened saying: "Why are you giving it to him? Fuck him! He is not going to need it". The next day, taken out together with "Garo". A shot was heard and Garo told us when back in that he was killed. After that saw the victim lying near the hangar, dead.(2518) When I went to the toilet Zeljko Klimenta was lying near the hangar dead. (2520)

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D. 7718-D. 7716

D. 7718

Vaso Dordic	Whilst cleaning the bucket behind the hangar, saw victim and Padalovic smoking a cigarette. Then "he aimed his rifle. He put it against a step and said:"Keljo, don't run, Iwill kill you... Keljo started running and then Padalovic fired and he killed Keljo." Victim started running because "other prisoners said: "Here is Hazim. Hazim" ... so he would enter the hangar before Hazim DELIC arrived." (4363 to 4365)
Mirko Dordic	**Delic** and Emir Kovacic came in, asked for Zeljko. Delic told Emir not to give him cigarettes because Zeljko will be dead next morning anyway. Next morning a guard came in and asked Zeljko to come out for a cigarette and he went with two other prisoners. Right after that they heard a shot, two other prisoners ran in and they said that Padalovic just killed Zeljko. Mirko never saw the body.(4790-4791) Garo on one occasion said that he was playing with a rifle. "He put it against his temple, didn'nt know that it had not been locked and then he just pulled the trigger."(4791)
Witness M	He was the one who communicated with the guards. He went out for a smoke. He was outside with Garo (a man distributing food). When Garo came in he just said:"They've killed Zeljko". The body of Zeljko they saw maybe two or three hours later when they went out to the toilet.(4922) Thinks Pavo "himself" was the one to bring cigarettes to the victim. Then "When Pavo came in he just said: "they have killed Zeljko." (4922)
Witness B	Zeljko was called out in the evening by "one of the prisoner" and B heard **Delic** saying that Zeljko isn't going to live to see tomorrow." In the morning Zeljko was called out again and all of a sudden a shot was heard from outside. Immediately after this a prisoner called Crni ran in and said that Keljo was killed. He was shot from behind in the head. B didn't see the body himself. (5052-5053)
Zoran Ninkovic	At the beginning of June, saw victim in a very poor condition. (5151)
Witness D	Saw victim sometime in June in a severely injured condition. (5217) He wasn't sitting. He was in such a strange position. I couldn't see all that was broken, but his face already showed very terrible injuries.(5303)
Risto Vukalo	Keljo was brought to hangar 6 after the witness. (6262) Heard Hazim Delic say to a friend of Keljo, who brought him cigarettes: "why are you giving him that? He will not see the day tomorrow." In the early morning he was called out by one of the guards. Then he was shot. "Some of the detainees were outside at the time, they were cleaning up. Keljo was killed by Padalovic, as we were informed in the hangar later." (no direct evidence on the killing) (6263) A while later Risto was called out by Landzo and took him behind the hangar. Landzo was holding a grenade in his hand. Landzo told Risto to remove the ring from Keljo's hand. Landzo said that if he would not do it he would be killed by the grenade. In fear Risto tried to take it of but had a hard time doing it. Landzo told him if he did not succeed Risto had to cut of Keljo's finger. In the end he succeeded to get the ring of and gave it to Landzo, who threatened to kill him if he told anyone.(6263) Asked whether the body looked dead or alive the witness answered: dead. (6246)

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7717

Witness T	"One morning when the prisoners went outside to go to the toilet...one of the guards was making jokes with him that he was going to kill him and he had a bullet in the barrel. I do not know if he had known about it, he fired the bullet and he hit him... at least that was what he said. Whether that was true or not I do not know." (6707-6708)
Rajko Draganic	It was in the morning, I think it was 26th July1992 Padalovic called outside..." Victim "asked whether he could go out as well." Then Kujundzic ran into the hangar and said Keljowas killed. (6949) "I just saw them washing away the blood in the place where he was killed... in front of the hangar." (6950) Padalovic then "was not happy. He was not laughing. He was depressed."
Milovan Kuljanin	Knew victim from about ten years. "At their request they asked the guard to go to the toilet... As he started walking toward the ditch where we used to relieve ourselves, Padalovic fired 7.62 semi-automatic rifle. He was about 20 metres from him. He hit Mr Klimenta in the back of his head, so he was killed on the spot" "I do not think it was an accident... because he hit him precisely in the middle of the head." (7058-7059)
Witness R	Witness R saw when Klimenta was transferred from Tunnel 9 to hangar 6 in early June. Klimenta was in bad condition at the time due to injuries from beatings. P.7804/8-20 On one occasion, Delic sarcastically asked Klimenta "so who beat you up?" and Klimenta responded: "You did." P.7805/7-9 After Klimenta had partially recovered from his injuries, a Konjic resident named Emir Kovacic visited the camp one morning and entered hangar 6 escorted by Delic. Mr. Kovacic asked to see Klimenta and give him two packs of cigarettes. Delic replied: "Why does he need cigarettes when I am going to kill him tonight?" P.7806/13-24 Then, at 4:00 or 5:00 the next morning, some guards came and called Klimenta out. A prisoner named Kuzundzic left the hangar with Klimenta. Very shortly after they left the hangar, the prisoners heard a shot. A couple of seconds later, Kuzundzic ran into the hangar, holding his head in his hands and said: "they killed Zeljko." Kuzundzic told the other prisoners that "it was the guard Padalovic." Witness R never saw Klimenta again. PP.7807-7808

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COUNT 13&14 H/ Murder of Pero Mrkajic

See exhib 185 (death certificate)

Witness	Extract of Evidence
Mirko Kuljanin	Witness saw Pero Mrkajic having difficulty moving. This Pero Mrkajic was an elderly man who owned a restaurant in Bradina, opposed to the young Pero Mrkajic he later met in Musala.(1218)
Witness F	Describes Pero's condition after first night in Celebici coming with a group from Igman. He was thrown next to witness 'F' . He could not move. He could hardly breathe and couldn't speak. A wooden crate was brought in by the guards and he lay on that. He couldn't go out. Stevo Gligorevic helped him. He couldn't eat the bread that was provided. He was in hanger 6 "for a while" (not defined) and moved to number 22. Heard he died in No 22. (1309) After Pero was thrown back inside after his beating. A guard apparently said "Where is Pero Mrkajic? Curse his mother". Another said "He's had enough". After the beating, he was barely able to say his name. F could barely recognise him despite knowing him for many years. He was "in no shape at all". He could not eat. Admits to lack of knowledge as to the circumstances and specifics of the beating(1376)
Stevan Gligorevic	"He was very severely beaten. He was lying next to me. He died of his injuries."
Dragan Kuljanin	"He is a neighbour ... he was in the group with me when we set off across Mt Bjelasnica me... He was over 60,62... They beat him like they beat me... They questionned him about his sons...I think the man was half alive. He did not really know what he was doing or what he was saying anymore...Nobody gave him any treatment. Then one day he was taken away and never returned." (2349) He was beaten in front of the hangar like myself and he was brought in in a serious condition and the consequences of his illness, but mostly of the beatings, resulted in that , when you take it all over." (2374) In the hotel Famos "we all together were beaten for three hours." (2396)
Witness P	"In July" victim "died the next day after he had been brought to the infirmary." "He had fairly large haematomas on the back and on both upper and lower legs... The diabetes did not enter into its complications."(4532) Identification (See 1640)
Witness M	When I was transferred to hangar 6, I found the victim "with visible wounds, injuries on his head, behind his ears , all over his body. He looked terrible." (4920)
Witness D	"His name did figure on the list ... Logically the Commission should have with the assistance of a doctor and other experts, established the cause of death." (5220)

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Petko Grubac	"He arrived in 22 in the second half of June....I know that he told me that they had beaten him up and that his injuries had been inflicted in structure number 6." (5979) He did not die from diabetes.(6075) Description of injuries (See p.5979 to 5982)
Risto Vukalo	"..When I came to Number 6 from number 22... I saw Pero Mrkajic in a pitiful state, all beaten up, lying on some boxes." (6277)

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Count 15 Article 2(b) Torture of Momir Kuljanin

LANDZO - DELIC

Article 7(1) Liability: Aided, Abetted, Committed

WITNESS	EXTRACT OF EVIDENCE
Stevan Gligorevic 47 years old Elementary School Teacher Lived in Bradina in 1992 Detained Celebici 27 May - 4 Oct.	(1354) Referring to Landzo: "To Momir Kuljanin he was burning palms." He had big blisters on his palms for days"
Mladen Kuljanin 26 years old Baker Born in Konjic, lived in Bradina in 1992 Detained Celebici 27 May - 17 Nov.	(2499) Landzo burnt Momir Kuljanin's palms. "He had big blisters on his palms for days."
Dragan Kuljanin 39 years old In Bradina April and May of 1992 Detained in Celebici 93 days.	(2335) One night **Landžo** called Momir Kuljanin out and when he returned his hand was swollen and had a big blister. "Delic did it as well as Zenga."

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Witness M Age 39; Serb Worked for Yugoslav Railway Treasurer of Bradina SDS Committee Detained Celebic more than 3 months beginning 27 May 1992	(4898)	After beating he was thrown to the tunnel where he was for seven days. During that time he was taken out by an unknown soldier, beaten with some objects and kicked. No reason mentioned.
	((4902)	"I was mistreated and threatened with death, that I would be sentenced to death. I was insulted. 'Where are your children and wife?', all these things that really kills you inside, that morally ruins you."
	(4903)	When Arab TV crew came, Delic beat him. He got several blows inside the hangar and outside the beating was filmed. He received a lot of blows and he was almost losing his consciousness.
	(4903)	"In my case it was a daily beating."
	(4903)	Mr Delic came daily in to the hangar and to him, and kicked him in the chest.
	(4903)	**Delic and Zenga** came into hangar and asked the guys who had worked for railroads to stand up. Then **Delic** took one of them out, returned him after several minutes and pointed his finger at witness M and told him to come out. Someone said "That's the one." Outside the hanger, **Delic** sat in his car about 10 meters away and **Zenga** ordered M to kneel down and started kicking him with karate kicks in the chest. M lost consciousness.
	(4904/22-23)	Then **Zenga** made a fire with some newspaper. Zenga heated his knife on this flame
	(4905/1-3)	Zenga heated a knife on this flame and forced Witness M to take the knife in his bare palms.
	(4505/3-6)	Witness M tried to take the knife gingerly, but Landzo: "took my palms and took them in his own hands so that I could feel my own burnt flesh. He carved a cross into my skin. ... Two strokes.... The cross was burnt in." **Zenga** told the civilian who was standing next to them to shoot Witness M if he moves.
	(4907)	Subsequently, M was taken out by two soldiers, and he was told greetings from a neighbour in Repovci and they would hand it to him in person. Because of his bad condition they however could not beat him

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		and threw him back.
	(4908)	Subsequently, he was taken out at night and **Zenga and Delic** with three other men were waiting for him: "I had to lean up against the wall. Somebody put a mask on my head from behind, a gas mask. The mask was tightly screwed on. I couldn't breathe. I was ordered to lie down on the concrete. They took off my trousers as far as the knees. Then I felt that they put some powder over me. I couldn't feel pain. I could just feel something dropping on me. I was taken by hands and legs and placed under the manhole. Then I was showered with water. Then I felt terrible pain and terrible burns. After that came the beating, all over myback from my back to my legs. I felt the worst pain in the lower part of my back, the pelvic bone. At first the worst thing was the lack of air. I was choking. I tried to remove the mask and I couldn't. Maybe after some time -- I don't know how long it was -- but I know that I lost consciousness several times. The last time I came to I felt air that I could breathe. The mask had been removed. Only then did I feel the terrible pain in my back and in the area of the pelvic bone. ..... "Then they threw me into the hangar, two of them. They just threw me inside the door."
	(4910/3-16)	After leaving the camp, Witness M eventually learned that he had 5 fractured ribs and a fractured pelvic bone.
	(4926)	After the ICRC had left, they got beatings. They said that "You'll never live to see another Red Cross again". **Delic** was then present standing at the door.
Witness "P" Age 42; Serb Ear, Nose & Throat Specialist Lived in Konjic in early 1992; went to Bradina just before war started.	(4567/10)	Momir had burns on the palms of his hands. He had a bleeding ulcer in his stomach.

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Mirko Dordic	**Zenga** took him out, and when he returned he had a big blister in his hand and he said, that Zenga had heated a knife and forced him to hold the knife with his hand.(4772)
Witness R detained 26 May - 31 August Forty years old. Serb, Teacher in Bradina and Konjic, Married with two children	(7779/7780) Kuljanin was called out by Zenga. When Kuljanin returned to the hangar, he had bad burns which filled with fluid and burst, exposing his flesh. Kuljanin reported that Zenga had heated a knife in a fire and then placed the knife on the palms of Kuljanin's hands. Kuljanin received no medical treatment for his burns.

Element 2: The pain or suffering was inflicted on the victim for any one or a combination of any of the following reasons: information/confession; punish; intimidate or coerce; any discriminatory reason

Witness	**Extract of Evidence**
Witness M	(4901) "... during one of the beatings, Mr. Zenga asked me whether I went to church and whether I crossed myself. That was before he started beating me, and I didn't know what to respond. He said: "No," because I didn't have time. I was very busy. Then he started beating me. " "I was insulted on an ethnic basis."
Milenko Kuljanin	(5457/410) Witness testified that Delic always had a reason for beating the prisoners. " He would always have a reason. He would refer to the Chetniks, how the Chetniks were killing Muslims -- this and that. Those were his main pretext and his main excuses and reasons."

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Element 3:
The accused acted at the instigation of or with the consent or acquiescence of an official or a person acting in an official capacity.

WITNESS	EXTRACT OF EVIDENCE
Witness M	(4903) Inside the hangar, Delic pointed out Witness M. When Witness M was taken out, Delic sat in his car about 10 meters away. (4904- 4905) After Zenga kicked Witness M, Zenga burned his palms (4906/17-19) Subsequently, back inside the hangar, Delic told Witness M to tell the other prisoners that he was smoking, fell asleep and burned his palms: "When he saw my hand, he said: "if anyone asks, you know what happened. You were smoking, you fell asleep and that's how it happened."

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Count 18 Article 2(b) Torture and Rape of Grozdana CECEZ

DELIC

ARTICLE 7(1) LIABILITY: Committed, aided, abetted

See Exhibit 4: Map of the Konjic area
See Exhibit 5: Plan of the command building
See Exhibit 65: Record of interview witness Grozdana Cecez before Nevesinje Lower Court in Nevesinje

WITNESS	EXTRACT OF EVIDENCE
Grozdana Cecez 48 years old; Serb Detained 27 May - 31 Aug. Born in town of Manigoda Married in Konjic in 1972 to Lazar Cecez, a traffic policeman. Lived just 2 km from Konjic in village of Donje Selo; had a store in her house.	(491/12-20) Brought to Celebici on May 27th and soon after arrival, interrogated and slapped by a man with a crutch (DELIC), "He cursed my mother." (492/22-23) Then witness led to a second room where there were five beds. Besides DELIC, two other men were present, and " the man with the crutch" told witness to take her clothes off: (492/23- 493/1-4) "I didn't understand what he wanted. ..... Then he asked me to take off my clothes and then he started taking off clothes from me. It was the trousers, the skirt, the panties, and then he put me on my chest and he started raping me." ..... (493/12-14) "Then he turned me on my back .... and he raped me." (493/18-19) "he took off my clothes and he took his penis and he put it in my vagina. He had an erection." (494/6-8) "Unfortunately, he trampled on my pride and I will never be able to be the woman that I was." (494/13) Man who raped witness was Hazim DELIC, son of Ibro. (494/23) During the rape by DELIC, witness was crying.

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	(496/16-17) "Sok and DELIC both told me not to tell anybody." (496/5-7) Pavo Mucic and other man subsequently entered the room. (496-497) These two men noticed that witness was missing the ring from her finger. (496/23-24) "There was a big trace of sperm left on the bed." (510/9-24) DELIC stormed into the room where witness and several other female prisoners slept. DELICc grabbed Malina Djordic, pushed another woman out of the way, and took Malina Djordic out of the room. Witness could hear Ms. Djordic crying. When Ms. Djordic returned to the room, she told witness that DELIC "had not succeeded" in raping her. (529/13-21) While Milojka Antic was washing, DELIC raped her. Milojka returned crying and told the witness what DELIC had done, that she had been a virgin before and now she would never get married. (511/14-20) After 18 days in the camp, a female prisoner named Milojka Antic was brought it. "Hazim DELIC raped Milojka that first night. The girl cried for 24 hours. She could not stop." (525/4-20) One night in end of July, witness had her period. A guard came for witness at night and said that the military police and Hazim DELIC were calling her. Witness responded that she could not go out because she did not feel well. Later, DELIC stormed in, cursed the witness' mother and said "What are you waiting for?" Delic grabbed her and took her out and handed the witness over to Sok, and Albanian. DELIC was shouting "Take her away." And the witness was crying. (526-527) Sok took the witness by a barracks where four soldiers were standing. A civilian approached, took the witness past a hangar to an area where there were many boards, and raped her. (535/22-536/3) "I simply saw when Hazim DELIC would come {at] 12 O'Clock day time. He would make me go to the front room and he raped her in broad daylight, as they say, and after the Red Cross visit, he came again and raped her, so that the second time when they came, we told them and they couldn't believe it, and then he

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	would come again and take her out and take her to some room somewhere." (537/2-4) "We could never sleep in peace. We were always afraid of what may happen." (537/5-12) On one occasion, witness planned on committing suicide by sticking her metal hairpin in an electrical socket, but Milojka Antic restrained her. (551/713) "Earlier on when I was totally exhausted, they gave me some tranquilisers. Ivica Boric would give me a tranquiliser because I was really at the end of my tether. I had lost a lot of weight. I had suffered terribly. For 32 days I didn't go to the toilet. Psychologically and physically I was completely worn out. They kill you psychologically." (561/10-20) Witness describes how DELIC ordered a guard named Masic to rape her when she was a prisoner, but Masic would go off and smoke a cigarette instead, and then return to DELIC and pretend that he raped her. (584/11-13) DELIC bragged that "60 DELIC girls and boys will be born because that is how many women he raped." (494/23-25) As DELIC raped her , DELIC told her: "It is all because of Lazar (her husband, a Serb leader) You wouldn't be here if he were around." (496/11-14) When witness saw MUCIC in the camp, MUCIC asked her "Where is Lazar? What was he thinking of?" ***** For the Superior Responsibility Counts, see Witness' testimony regarding subsequent rapes on pp. 501-503.
Milojka Antic 47 years old, Lived with elderly mother in Idbar. Detained in Celebici: 5 June - 31 August	Only heard Ms Cecez saying that she had been raped. (1777-1779) First night in camp, raped by DELIC who wore his uniform (1780) DELIC told witness "this will not be the last time." (1784-5) Subsequently, witness was anally raped by Delic (799-1800) Third rape in room where witness was confined with Grozdana Cecez. (1773-1774) Witness interrogated by MUCIC and DELIC on her first day in the camp. When witness said that she was not married, MUCIC told DELIC: "This is just the right type for you."

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Witness D Croatian; Grew up in Konjic. Retired Police officer Became member of Military Investigative Commission.	(5219) (5209)	One morning he met the typist, Ismeta Posder, and she complained that they were mistreating prisoners at night, that women were being raped. She said that the guards had boasted of having raped Grozdana Cecez and some others and she was horrified. The typist referred most often to DELIC. Witness D said that they should tell this to Mr DELALIC and she answered that she knew DELALIC and that she would convey this to him Were approximately 5 women prisoners in the camp and as a member of the Investigative Commission, Witness D interested in their status. But he never received an answer.
Witness "P"	(4569/4)	He overheard Mr. DELIC ask a guard, Mr. Nurko: "how did you like the lady?" He could infer from the circumstances that they were talking about Grozdana Cecez.

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Count No 21 Article 2(b); Torture and Rape of Witness A

DELIC

ARTICLE 7(1) LIABILITY: Committed, aided, abetted

See exhibits 90 (photoboard for identification of Delic) and 91 (Release document)

WITNESS	EXTRACT OF EVIDENCE
Grozdana Cecez	(491/12-20) Witness brought to Celebici on May 27 and soon after arrival, interrogated and slapped by a man with a crutch (DELIC). Subsequently, DELIC took Witness to another room where two other men were present. DELIC then proceded to rape Witness. (511/14-20) 18 days after Witness in the camp, Milojka Antic was brought in. According to the Witness: "Hazim DELIC raped Milojka that first night. The girl cried for 24 hours. She could not stop." (529/9-24) While Milojka Antic was washing, DELIC raped her. The victim returned crying and told the Witness what DELIC had done, that she had been a virgin before and now she would never get married. (535/22-536/3) According to Witness, DELIC "would make me go to the front room and he raped her (Milojka Antic) in broad daylight...and after the ICRC visit, he came again and raped her, so that the second time when they came, we told them and they could not believe it, and then he would come again and take her out and take her to some room somewhere". (510/9-24) On one occasion, DELIC stormed into the room where Witness and several other female prisoners slept. DELIC grabbed Malina Djordic, pushed another woman out of the way, and took Malina Djordic out of the room. Witness could hear Ms. Djordic crying. When Ms. Djordic returned to the room, she told Witness that DELIC "had not succeeded" in raping her. (584/11-13) DELIC bragged that "60 DELIC girls and boys will be born because that is how many women he raped."

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Milojka Antic Serb 44 years old in 1992 lived with her elderly mother in village of Idbar. detained in Celebici 15 June - 31 Aug.	(1771/19-1774/3-4) Brought to Celebici on afternoon of 15 June 1992, and interrogated by DELIC, MUCIC and DELALIC. (1774/4-9) MUCIC asked victim where her husband was. When victim responded that she was not married, MUCIC told DELIC: "This is just the right type for you." **First Rape**: (1776/5-21) That evening, a guard called Victim out of a room in the reception building and told her that "the Commander" needed to question her. (1776-1777) Guard brought victim to a room in another building where DELIC was sitting, wearing a uniform. DELIC began to interrogate victim and began to curse her, saying that the Chetniks were responsible for everything that was going on. DELIC cursed victim's "Chetnik mother." (1777/21 - 1779) DELIC threatened victim that unless she did whatever he asked, he would send her to a Croatian camp in Grude, or she would be shot. Victim began to cry and DELIC ordered her to remove her clothes. Victim continued to cry and implored DELIC not to touch her because she was a sick woman. DELIC pointed his rifle at victim and threatened to kill her. Victim was afraid that DELIC would kill her, so she took off her clother, and DELIC raped her on a bed in the room and cursed the victim and threatened her. DELIC penetrated Victim's vagina and ejaculated on her lower stomach. (1780/3-8) When Victim returned to her room that night, she was crying and only said: "Oh Fuck You God, in case you exist. Why did you not protect me from this?" (1780/11-15) The following day, DELIC came to the door of Victim's room in the reception building. When the Victim saw DELIC, she began to cry, and DELIC said: "Why are you crying? This will not be your last time." (1780/19-20) Victim was constantly crying and felt like she had gone crazy. **Second Rape** (1782 - 1786) Some days later, DELIC arrived at victim's room and said that she and Grozdana Cecez had to go to the command building to take a bath. A guard took them there and Grozdana Cecez took a bath and left. The guard ordered Victim to bathe, which she did. The guard then brought victim to the room where DELIC had raped her on Victim's first evening in the camp.. DELIC was sitting in the room, wearing a uniform and armed with a pistol and a rifle. DELIC asked Victim is she had had a good wash, and when the Victim began to cry, DELIC ordered her to undress and get on the bed. DELIC attempted to anally rape the Victim but was not successful, causing great pain to the Victim and causing her anus to bleed. DELIC then turned the victim on her back and raped her vaginally, again ejaculating on her stomach. Subsequently, the guard brought the Victim back to her room.

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	(1785/22-25) "I was all cried out. .... I was already bleeding. I was very ill. I was crying all the time." (1786/1-10) The following day, Grozdana Cecez, concerned about the victims' health, asked a guard whether the victim could receive assistance because she was ill. A guard arrived with two prisoner/doctorsL Relja Mrkajic and Petko Grubac. They measured Victims's blood pressure and gave her some tranquilizers. **Third Rape** (1799/19 - 1800) DELIC came to the Victim's room (which she shared with Grozdana Cecez) and ordered Ms. Cecez to leave. DELIC was armed with a rifle, pistol and hand grendades. DELIC began to threaten the Victim, who pleaded that she was a sick woman. DELIC ordered the Victim to undress and lie down on the bed, which she did. DELIC then raped Victim, penetrating her vagina and ejaculating on her stomach. (1813/5-16) During visit of the ICRC, Victim reported that she had been raped, and that the man who did it was still in the camp and was some kind of a commander.
Witness D Croatian; Grew up in Konjic. Retired Police Officer. Became member of Military Investigative Commission.	(5219) One morning he met the typist, Ismet Posder, and she complained that they were mistreating prisoners at night, that women were being raped. She said that the guards had boasted of having raped Grozdana Cecez and some others and she was horrified. The typist referred most often to DELIC. Witness D said that they should tell this to Mr. DELALIC and she answered that she knew DELALIC and that she would convey this to him. (5209) Were approximately 5 women prisoners in the camp and as a member of the Investigative Commission, Witness D interested in their status. But he never received an answer.
Mirko Dordic	(4567/7-14) On one occasion, witness in the Celebici office during the period of his house arrest when a secretary was working there. The secretary's name was Ismeta Posder. "And she told me that Mr. Delic was keeping Milojka Antci for himself and that Miljoka Antic was a virgo intacta. That is a medical term. The traditional term is a virgin." (4568/6-11) Witness present when DELIC asked a man called Nurko: "How did you like the lady?"

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Witness T	(6712/2-5) "I heard from Hazim Delic, I heard him say that he had already reached number 18, that he had raped 18 Serb women, and he said that he was going to stop one he reached number 100."
Dr. Petko Grubac	(5994/20-5995/3) Witness described how he went to visit the female prisoners being held in the camp. On the first occasion, Grozdana Cecez told witness that all of the women were in a very difficult condition. Witness observed that women were cryiny, and that although he knew all of them, they did not want to communicate with the witness: "I had the feeling that they were ashamed, and when I asked Grozda what was wrong with them she told me they were being taken out every night and raped."

Element 2: The pain or suffering was inflicted on the victim for any one or a combination of any of the following reasons: information/confession; punish; intimidate or coerce; any discriminatory reason.

Witness **Extract of Evidence**

Milojka Antic	(1773/14 - 24.) Shortly after being brought to Celebici, Victim and several other women prisoners taken to a room where four men were present, wearing camoflage uniforms. Some of them were armed. The men began interrogating Victim and other women, asking them their names and where they were from. (1774/1-12) ".... There was DELIC , there was MUCIC and there was DELALIC there. First PAVO started to question me, PAVO MUCIC. He asked me where I was from, who was my family. He asked me where my husband was, and upon that I answered that I was not married, that I had no husband. He said to DELIC: "This is just the type for you." DELALIC asked me about Srecko Antic. We had the same surname and he asked me: "Where is Srecko?" (1777/15 - 24) Subsequently, that same evening, Victim was taken to a room where DELIC was seated, still wearing a uniform: "DELIC started to interrogate me. He questioned me again about my first name, my last name, where I was from, why I was brought there. I did not know what to answer. He started to curse. He said that the Chetniks were guilty for everything that was going on. He started to curse my Chetnik mother. He told me that unless I did whatever he asked from me that that he would send me to Grude, where a Croatian camp was, or else I would be shot. I started to cry. He ordered me to take my clothes off ....." (1779/2-11) DELIC then proceded to rape the Victim.

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Milenko Kuljanin	(5457/4-11) Witness testified that Delic always had a reason for beating the prisoners: "He would always have a reason. He would refer to the Chetniks, how the Chetniks were killing people. What they were doing to the Muslims -- this and that. Those were his main pretext and his main excuses and reasons."

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Count No 24 Article 2(b) Torture of Spasoje MILJEVIC.

LANDZO - DELIC DIRECT PARTICIPATION

See exhibit 92: Floorplan of hangar 6.

Element 1: The victim was intentionally and unlawfully subjected to the infliction of severe physical or mental pain or suffering by the accused.

WITNESS	EXTRACT OF EVIDENCE
Branko Gotovac Serb From village of Viniste	(982/21) cruel treatment beatings *prior* to 15 June 1992. (990/18) LANDZO took out Witness, his two sons, and **Spasoje Miljevic**. Men with cameras came and they asked Witness whether Serbs killed Muslims. Witness said: "I don't know." And "They didn't." LANDZO was standing by the door and he threatened Witness with his finger. Then LANDZO put gasmask over head of Witness' son and over head of **Spasoje Miljevic.** Then the men asked Witness again what he said to the people with the camera. Witness replied that he had a sore throat, that he couldn't speak. Eventually LANDZO removed the gasmasks from heads of Witness' son and from **Spasoje Miljevic.** LANDZO began to cut Witness' younger son with a knife. (994/3-19) LANDZO extinguished his cigarette by pressing it into Witness's palm, thereby burning the tendons of Witness' right palm. (1079/3) (x-xam) **Spasoje's** mask taken off and forced back into the hanger (999/17) Witness saw burns on Victim's legs (1000/14) Witness saw Victim's burns when Victim came to be bandaged in No 22.
Witness N Serb lived in village of Viniste, 5 kilometers	(1896-1897) On 15 June 1997, Victim taken out of hangar 6 by LANDZO. LANDZO put gasmask on Victim's face and had Victim sit down behind an adjoining hangar. LANDZO took a heated knife and took hold of Victim's left hand, and made three burns on Victim's left hand. Then LANDZO heated the knife again

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from Konjic. Machinist, also worked in restaurant industry. Detained 23 May - 31 August Celebici, then transferred to Musala Sports Hall.	and moved to the Victim's right hand. LANDZO heated the knife again and burned Victim on his left leg, on the bare skin. Then LANDZO burned Victim with heated knife on Victim's thighs through the synthetic tracksuit Victim was wearing. While the synthetic material burned, Victim's burns widened. Then LANDZO kicked Victim and beat him on the neck with a chain. (1898/14-25) During this incident, LANDZO put a gasmask on Victim's head so that victim could not scream. The screw on the mask was adjusted so that the Victim could not breathe: (1898/25-1899/4) "I had a feeling at that time while I had the mask on my face and when he was burning me with the heated knife that my eyes were popping out and there was no help. I could not breathe air. I have simply started suffocating at that time." (1900/16-20) DELIC asked Victim what had happened to him: "He asked me what happened to me, but I didn't dare tell him, because I was afraid, because then he forced me to tell him what happened to me. In fact, before that he said: "Did Zenga play with you?" (1899/18-20) After several days, Victim's burns began to fester. (1906/2-7) Victim testified that he still has visible scars from these burns on both his hands and on both of his legs. (1900-1902) Another evening, Victim beaten by LANDZO and 4-5 others with wooden objects that looked like baseball bat. LANDZO placed gasmask on Victim's head and covered it with a white cloth. When Victim brought out of the hangar, he saw DELIC next to a tin wall, and believed that DELIC was watching the beating. Victim received a beating "from head to toe" and most of the other detainees were beaten a similar way. (1036/12-16) "Esad LANDZO personally took me out of the hangar. He put the mask on my head and Esad LANDZO hit me several times with his leg in the stomach and the ribs until I fell, and Esad LANDZO held me down until this unknown -- while this unknown person was beating me." (1902/19-20) After the beating, LANDZO threw Victim back into the hangar.

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	(1903/9-10)	After this beating, Victim could not move for several days and was incontinent. (1903/13-22) "When the Red Cross visited, they came into the hangar and we told them everything, what was done to us, and we showed it. I showed our wounds, our bodily wounds that we had. However, as soon as the Red Cross left the hangar, they were not out of the gate, Hazim DELIC arrived with 8 guards and he arranged them four for every two rows and all prisoners got several hits in the back and the kidney area, and then after than in Hangar Number 6 Hazim DELIC personally beat me in front of everyone." (1905/1-8) LANDZO stuck a match under Victim's thumb nail. Subsequently, the wound festered, causing terrible pain, and the nail dropped off. (1914/10-18) **False Execution:** "With my own eyes I saw Esad LANDZO calling me personally out in front of the door of the hangar. All the prisoners saw this. He forced me to fall down on my knees and on that occasion he wanted to shoot me in the mouth but out of fear I couldn't open my mouth. Then with his gun he pressed it against my neck. I was terrified, but he took out the bullet and he -- where he leaned the gun against me, there was just the slight burn. I didn't feel much pain I was so terrified."
Dragan Kuljanin	(2331-2)	Victim "was tortured quite often." On one occasion Miljević came back and he had been burned and they had put something under his fingernails.
Witness "P"	(4567/6)	Spasoje had burns on his lower legs, partly above the knee too. Witness recalled that Victim wore a track suit, which Victim rolled up above his knees.
Risto Vukalo Born in 1964 Trained as a machinist.	(6268/6-16)	Witness saw Victim called out. Then Witness saw Victim brought back inside hangar and Victim "had a terrible expression on his face." "One could see that he was in terrible pain, and he showed us his hands, and one could see the markings of

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	a knife. The skin was all burnt. " Victim told Witness that ZENGA had heated a knife until it was red hot and then Victim had to hold the knife in his hands, burning the skin on his palms.
Branko Sudar	(5775/17-21): Witness knew that Miljevic was from a village called Homolje and knew his father, a man named Esto. (5776/1- 5777): Both inside and outside the hangar, LANDZO would heat a knife with a burning yellow powder, then he would burn Miljevic with the knife on Miljevic's palms and tongue. They were 15 meters from witness' position. LANDZO would curse and insult Miljevic as he tortured him. Miljevic never received medical attention for his burns until the Red Cross came.
Rajko Draganic Serb, born in Brdjani, Konjic in 1952. Did woodworking and construction.	(6953/12-25) Draganić personally observed the torture of Spasoje Miljević by ZENGA. ZENGA heated up the knife by spilling liquid on the concrete floor and then setting fire to it. Thereafter, he forced Spasoje Miljević to hold this knife, the effect of which was the formation of blisters on Miljević's hands. Miljević showed Draganić the blisters. According to Draganić, these events also occurred in July. He did not know if Miljević received any medical care after the incident. He could not remember exactly what ZENGA had said but remembered that he had said that Miljević was "Arkan" and "that he would pay for everything." (6953 - 6954):
Witness R Detained 26 May - 31 August Serb, 40 years old, Teacher in Bradina and Konjic, married with 2 children	(7778-7779) Miljevic was taken out several times during the night and beaten. On one occasion, Zenga called Miljevic out from the door. When Miljevic returned inside the hangar, he had very large burns on both palms of his hands, which eventually swelled up into large blisters. Miljevic told Witness R that Zenga had put a heated knife or bayonet onto his palms. (7779/6) Miljevic never received any medical treatment for his burns.
Witness F	(1335/16-22) In late June or early July, LANDZO took Spasoje Miljevic out of the hanger and burned him. "... later I saw blisters on Spasoje Miljevic's hands."

Element 2: The pain of suffering wasinflicted on the victim for any one or a combination of any of the following reasons: information/confession; punish; intimidate or coerce; any discriminatory reason.

Witness	**Extract of Evidence**
Rajko Draganic	(6953/12-25) Draganić personally observed the torture of Spasoje Miljević by ZENGA. He could not remember exactly what ZENGA had said but remembered that he had said that Miljević was "Arkan" and "that he would pay for everything." (6953 - 6954):
Witness N	(1903/13-22) **Punishment** "When the Red Cross visited, they came into the hangar and we told them everything, what was done to us, and we showed it. I showed our wounds, our bodily wounds that we had. However, as soon as the Red Cross left the hangar, they were not out of the gate, Hazim DELIC arrived with 8 guards and he arranged them four for every two rows and all prisoners got several hits in the back and the kidney area, and then after that in Hangar Number 6 Hazim DELIC personally beat me in front of everyone."
Branko Gotovac	(990/18) LANDZO took out Witness, his two sons, and Spasoje Miljevic. Men with cameras came and they asked Witness whether Serbs killed Muslims. Witness said: "I don't know." And "They didn't." LANDZO was standing by the door and he threatened Witness with his finger. Then LANDZO put gasmask over head of Witness' son and over head of Spasoje Miljevic. Then the men asked Witness again what he said to the people with the camera. Witness replied that he had a sore throat, that he couldn't speak. Then LANDZO began to ask the Witness questions and hit him. The Witness' older son could not stand the gas mask anymore and began to mumble. So LANDZO removed the gasmask from head of Witness' son and began to beat the older son about the face. Eventually LANDZ0 also removed the gasmasks from the head of Spasoje Miljevic. Then LANDZO began to cut Witness' younger son with a knife.

Milenko Kuljanin	(5457/4-11) Witness testified that Delic always had a reason for beating the prisoners: "He would always have a reason. He would refer to the Chetniks, how the Chetniks were killing people. What they were doing to the Muslims -- this and that. Those were his main pretext and his main excuses and reasons. "

Element 3: The accused at the instigation of or with the consent or acquiescence of an official or a person acting in an official capacity.

Witness	**Extract of Evidence**
Witness N	(1900-1902) Another evening, Victim beaten by LANDZO and 4-5 others with wooden objects that looked like baseball bat. LANDZO placed gasmask on Victim's head and covered it with a white cloth. When Victim brought out of the hangar, he saw DELIC next to a tin wall, and believed that DELIC was watching the beating. Victim received a beating "from head to toe" and most of the other detainees were beaten a similar way (1903/13-22) **Punishment** "When the Red Cross visited, they came into the hangar and we told them everything, what was done to us, and we showed it. I showed our wounds, our bodily wounds that we had. However, as soon as the Red Cross left the hangar, they were not out of the gate, Hazim DELIC arrived with 8 guards and he arranged them four for every two rows and all prisoners got several hits in the back and the kidney area, and then after than in Hangar Number 6 Hazim DELIC personally beat me in front of everyone."

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Count 27: Article 2(b): Torture of Mirko BABIC

LANDZO - DELIC DIRECT PARTICIPATION

Element 1: The victim was intentionally and unlawfully subjected to the infliction of severe physical or mental pain or suffering by the accused.

WITNESS	EXTRACT OF EVIDENCE
Mirko Babic Serb, born in village of Bijelovicina, 15 KM from Konjic in 1933. Forester Detained in Celebici 23 May - 1 September	(275-278) 3 days after moved to hangar 6 (June 18th), called out and hit with iron spades. (274-277) July 20th morning, Victim kicked by DELIC with boots. Another day, same thing. A third day, Victim called out by DELIC. When Victim got outside, he saw LANDZO and a third man. They took Victim 15 metres from hangar 6's door. LANDZO put a mask over Victim's eyes and they started to beat him. When they finally took the mask off, Victim saw DELIC, LANDZO and the third man. Victim begged DELIC not to beat hin. DELIC cursed Victim's mother, but told the other two men to stop beating the Victim. But LANDZO continued to beat Victim and then told Victim to "hurry up" to reach the hangar door. (416/10-11) "When they took off the mask, then I saw them. I was lying down and I saw them." (277- 278) Two days later, LANDZO called Victim out of the hangar, took the Victim to the same spot where he was beaten previously and told Victim to lie down: (277/4-13) "He told me to uncover my legs, to lift my trouser legs, so I was bare. He held a bottle in his hand and he asked me, "Do you know what this is?" And he had a knife in his hand. I said: "I do not know," and he opened this bottle, and poured some stuff on my right leg, and I could smell that it was petrol, and then he set fire to my leg. I saw the flames. It was very painful. I almost lost consciousness. This did not last very long." (417-418) **On Cross-exam:** "I said [to LANDZO] "Young man, I am not guilty of anything." Then he poured it on my right leg and I do not know if he was going to light it with a lighter or with a match, and then he lit it and then I

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	started jerking it and it was a short time. Then he had something there that he poured mover me and then he said to "get up." I got up and he hit me about twice. ..... Then later I had a bad burn and I had yellow blisters. It was hurting a lot." (421/17-22) **On Cross-exam:** "I was ready to ask him .... to kill me so we would stop suffering." (277/14-16) LANDZO then told Victim to get up and kicked him a couple of times before Victim returned to the hangar. (277/17-20) Subsequently, Victim's burns began to blister and "yellow liquid" was pouring from his leg. (278/16-18) Victim still has scar on his leg from the burns. (292/7-16) When the Red Cross visited the camp in August 1992, some prisoners spoke to the representatives and showed them their wounds, but Victim did not dare go. About half an hour after the Red Cross' departure, DELIC entered that hangar, accompanied by other men, and DELIC carried a wooden bat. DELIC cursed the prisoners and asked: "What were you talking?" and all of the prisoners were beaten. (375/10-11) "I lived alone as a bachelor in one room, so I didn't have very much."
Witness N	(1913) Saw victim coming in with his leg burning
Branko Sudar	**5779/**19-24 Landzo and Delic beat Mirko Babic inside and outside the hangar.
Witness R	(7774-7775) Mirko Babic was given daily beatings and humiliated by questions like "Where is your son?" because he was an older man and everyone knew that he had never married. (7775/7-11) Delic and Zenga personally beat Babic. (7773/2-11) One time in August, Babic was called out by Zenga and he returned to the hangar with his trousers burning. Babic said that Zenga had poured petrol or flammable liquid on his lower legs and then set fire to them. When the blisters burst, once could see Babic's bones. (7773/17-20) Witness R sat only 5-6 places away from Babic, so Witness R could clearly see Babic's injuries when they would run to the toilet or urinate. (7774/12-20) Babic never received any medical care for his injuries. Instead Delic would taunt him: "Where is your son now to help you? You have to die anyway."

Rajko Draganic	(6950-6951) Witness testified that he was present and when Zenga set fire to Mirko Babić's trousers. According to the Witness, this occured inside the hangar. (6951/22-25) Witness described how Zenga took a match and set fire to the lower part of one of the legs of Mirko Babić's trousers. (6952/8-11) Witness described the burn wound on Mirko Babić's leg as follows: "it looked like pine bark, it was black, the wound was black and covered in blood" (6952/22) Witness approximated that these events took place early in July 1992. (6953/1-3)Mirko Babić was not given immediate medical attention. Delić brought ointments later, which were put on the wounds.
Branko Gotovac	(1000/3-4 Babic was abused and beaten in Celebici (1002/17 "... he was in a bad way, broken down. He was very weak, ..."
Witness T	(6703-6704) Witness testified that one day he was filming with a video camera as LANDZO and another guard were beating two prisoners. LANDZO set fire to the socks of one of the prisoners, who was a taxi driver before the war, and they burned for a minute and a half.

Element 2: The pain or suffering was inflicted on the victim for any one or a combination of any of the following reasons: information/confession; punish; intimidate or coerce; any discriminarory reason.

Witness	**Extract of Evidence**
Mirko Babic	(254-265) Following his arrest but prior to his arrival at Celebici, Babic was beaten, threatened, forced to drink urine, and cursed as a "Chetnik." (292/7-16) When the Red Cross visited the camp in August 1992, some prisoners spoke to the representatives and showed them their wounds, but Victim did not dare go. About half an hour after the Red Cross' departure, DELIC entered that hangar, accompanied by other men, and DELIC carried a wooden bat. DELIC cursed the prisoners and asked: "What were you talking?" and all of the prisoners were beaten (375/10-11) "I lived alone as a bachelor in one room, so I didn't have very much."
Witness R	(7774-7775) Mirko Babic was given daily beatings and humiliated by questions like "Where is your son?" because he was an older man and everyone knew that he had never married. (7774/12-20) Babic never received any medical care for his injuries. Instead Delic would taunt him: "Where is your son now to help you? You have to die anyway."
Milenko Kuljanin	(5457/4-11) Witness testified that Delic always had a reason for beating the prisoners: "He would always have a reason. He would refer to the Chetniks, how the Chetniks were killing people. What they were doing to the Muslims -- this and that. Those were his main pretext and his main excuses and reasons."

Count 30 Article 2(b) Torture of Mirko DORDIC

LANDZO

See exh 157 (Map of hangar 6 by Mirko Dordic)

Article 7(1) Liability: Aided, Abetted, Committed

Element 1: The victim was intentionally and unlawfully subjected to the infliction of severe physical or mental pain or suffering by the accused.

WITNESS	EXTRACT OF EVIDENCE
Witness F	(1334-1335) Witness saw Landzo with a bottle of gasoline. Witness watched as Landzo spread some gasoline on the concrete and lit some paper. Then Landzo "asked Djordic to open his mouth." Landzo heated a knife in the fire , and then Landzo "was putting also something into his ear."
Stevan Gligorevic Elementary School Teacher	(1354/8-15) Witness was only two - three places away from Mirko Djordjic, in the same row, and saw Landzo burst Mirko Djordjic's ear with a pincer. "He couldn't hear. He often beat him and he didn't bother to take them out to the door but he would just beat them right there. He would say: "come and do push-ups." Then he started kicking him."
Mladen Kuljanin	(2499/9-17) Called out by LANDZO, who was standing at the entrance. Landzo had a knife in his hand and he heated the knife and ordered victim to stick out his tongue and Landzo put this heated knife on victim's tongue. It was in June or July.
Witness N	(1913/9-10) "I saw Mirko Djordjic, whose tongue Landzo had burnt with pincers....."
Vaso Dordic	(4363/7) Zenga burned Mirko Dordic was burned with heated pincers.
Mirko Dordic	**(4754) Landzo**, Mrdzic Kemal and a man called Salko took Mirko to the Hangar - letter F, put him against the wall,

	asked him about some grenade, some pistols and he had no answer for that. They kept kicking him for a short period and returned him to the hangar. On another occation Delic came in, followed by Landzo. **Zenga** took him out and put him to lean against the wall of hangar F, put a piece of metal in his mouth and beat him with a baseball bat on the legs and in the ribcage. He kept asking about a machine-gun for a long time. Mirko fell down several times, losing his consciousness. Victim received up to 250 blows. This happened in the end of June. 4756/14-21) Every time **Zenga** came in, he forced Mirko to do push-ups and at the same time he kicked him in the ribs. "I was constantly a victim of Zenga's. Every time he would walk into the hangar, when he would walk from prisoner to prisoner, he would come to me and he would order me to get up an do push-ups. He would count and as he was counting, he would kick me in my ribs. So I would have to do ten push ups. I would have to do 50 of them in order to get 10 correct ones according to him. He kept kicking me all the time." (4757-4758) Sometime in mid-July, Landzo came to Victim's spot inside the hangar. Landzo told the victim to stand up and Landzo told the other prisoners: "You'll see what's going to be left of him." Landzo brought victim to a corner of the hangar and ordered him to kneel down. Landzo poured gasoline or another flammable fluid and started heating some pincers. Landzo asked the victim: "Where's Mico?" Victim reported that he didn't know. Landzo ordered victim to open his mouth and stick out his tongue, and **Landzo** squeezed Victim's tongue with the hot pincers. "It was like being grilled." Then Landzo burned the Victim on the nose, and eventually stuck the hot pincers into the Victim's ear. The Victim suffered great pain and when he screamed, one of the guards said:"Here comes Pavo" and ordered Victim to return to his place. . About 20 days later Victim was allowed to go to the infirmary and Dr. Mrkajic told him that his eardrum was ruptured. (4758-4763) Delic ordered a number of "collective beatings" of prisoners, particularly after the killings of Muslim policemen near Repovci in July and the visit of the Red Cross in August.
Witness B	(5064/17-21) **Zenga** heated pincers and tortured a prisoner from Bradina by putting these pincers in his ear, nose, tongue, mouth..
Witness R	(7780/8-21) Zenga called Mirko Dordić "Vojvoda's Brother" because Mirko Dordic was brother of Rajko Dordić. So Zenga would say: "Come on, Vojvoda's Brother, come out." When Victim returned, he had burns on his face and tongue and victim told the other prisoners that Zenga put a heated knife against his tongue under the threat tbat if he did not stick his tongue out, he would cut it off. Mirko Dordić had visible burns on his face.

Witness P	(4567/15-18) A doctor who treated a number of the prisoners for burns. Mirko Dordić's lips and tongue were burned. Heated pincers had been placed in his ear and pus was coming out of the ear.

Element 2: The Pain or Suffering was Inflicted on the Victim for Any One or a Combination of Any of the Following Reasons: Information/confession; punish; intimidate or coerce; any discriminatory reason.

Witness	**OF EVIDENCE**
Mirkoo Dordić	(4754/13-21) Victim was first beaten when he was taken out of hangar 6 by Landzo and two other guards named Kemal and Salko. The guards brought Victim to hangar F and put him up against a wall. **They questioned the Victim about some grenades and pistols and he did not respond.** The guards kicked the Victim, and then returned him to the hangar. (4754-4755) Subsequently, Delic and Landzo entered the hangar, looked the prisoners over and ordered the Victim to go outside. Zenga was carrying a baseball bat. Zenga brought Victim back to Hangar F and had the victim lean against the wall. Zenga put a piece of metal in Victim's mouth so victim could not make noise and started beating victim in the legs and rib-cage. (4755/15-22) "**He kept asking me about a machine-gun, I think M-53.** .... So he kept insisting to me to tell him where it was. He kept beating me. I fell down several times, losing consciousness. He would raise me again and continue to beat me." (4883/16-23) Due to Victim's position and his relationship with his brother (Rajko Dordić, a leading Serb from Konjić), "some of the guards would come and torture me psychologically, so that there were moments when I didn't know what to do with myself."
Witness R	Zenga called Mirko Dordić "*Vojvoda's Brother*" because Mirko Dordic was brother of Rajko Dordić. So Zenga would say: "*Come on, Vojvoda's Brother, come out.*" When Victim returned, he had burns on his face and tongue and victim told the other prisoners that Zenga put a heated knife against his tongue under the threat tbat if he did not stick his tongue out, he would cut it off. Mirko Dordić had visible burns on his face.

Count No 33 to 35 / Respons. of Superiors for Acts of Torture (Milovan Kuljanin)

DELIC - MUCIC - DELALIC

See exh 172- 174 (Rajko Draganic / manhole)
See exh 176-179 (Milovan Kuljanin)

WITNESS	EXTRACT OF EVIDENCE	
Miro Golubovic	2106/05	Upon arrival was placed in a manhole along with **MILOVAN KULJANIN**.2107/02. Delic was present.
	2110/04	Miro Golubovic kept in the manhole for 2–3 hours.
	2110/12	insufficient air in the manhole. When inside, the lid was closed and locked. Guards would come and beat on the lid.
	2110/21	Thinks it was DELIC who called him out of the manhole. MUCIC was also present, sitting on a wooden bed.
	2145/24	Milovan Kuljanin remained in the man hole after Miro's removal.
	2146/01	Next time he sees Milovan is in the infirmary.
Witness P	4569(LNote)	Not sure about his first name, but mentions "Mici". Says he had to give medical care because victim had been beaten up, having urinated and defecated in his fully-dressed.
Witness M	(4926)	After the ICRC had left, they got beatings. They said that "You'll never live to see another Red Cross again". **Delic** was then present standing at the door. (4906) When **Delic** saw his hand after burning he said:"If anyone asks, you know what happened. You were smoking, you fell asleep, and that's how it happened." This was said inside the hangar.

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Risto Vukalo	(6252/14) (6266/23)	The witness was interrogated by Hazim Delic. Delic asked him about a sniper. Risto was beaten by Delic and Zenga. Delic beat him on the ribs with a baseball bat, which he almost always carried with him. Some detainees made some cardboard cards to pass the time. When Delic found out he came to the hangar and beat up the prisoners who were playing and those who had made the cards. Risto was one of the prisoners who played cards. This beating went on for about an hour. There were other guards but it was mostly Delic who hit the prisoners. On that occasion Delic hit the prisoners with a spade. The prisoners were beaten from their knees upward, on their thighs.
Milovan Kuljanin	(7022 - 7030)	Was taken together with Miro Golubovic by DELIC and Darko Verkic in a manhole which was then locked without light nor enough air; it smelled urine because "many people had alredy been there." Stayed there 72 hours. MUCIC was present when taken out by DELIC. Then was taken by both of them in front of building 22 where he was severely beaten by several guards. At the same moment DELIC and MUCIC were in the reception building from where they could see him being beaten.

Count No 36 and 37 / Causing great suffering to Nedelko Draganic

LANDZO - DIRECT PARTICIPATION
See exhibits 86 to 89:
Floorplan
Photos of his legs

WITNESS	EXTRACT OF EVIDENCE
Branko Gotovac	Saw burns to victim (1000)
Witness F	Witnesses him being taken out by Landzo. It was June or early July.When Draganic returns, sees burns on his legs.(1335)
Nedelko Draganic	"They (Zenga, Dedic, Adis Alikadic and Lisko?) tied me to a beam so that I was standing up but my hands were tied up aboeve my head. Then they started beating me using all kinds of things. They were kicking me and hitting me with planks and rifle butts and then they asked me where my rifle was. I did not have a rifle. I kept telling them that I didn't have a rifle. The kept be4ating until I lost consciousness. When I fainted, I was suspended hanging on my hands. I don't know for how long they beat me, maybe half an hour. Four of them brought me back to hangar Number 6." (1618) **Landžo** mistreated him maybe ten times or more.(1621) **Landžo** usually used a baseball bat to beat him.(1632) "On one occasion I was taken out at night by **Zenga** and Osman Dedic. They beat me right in front of Number 7 on the lawn here. They beat me here I don't know for how long. I think that I fainted tow or three times and then I would come to again and faint again." (1621) On the same incident **Zenga** grabbed him by the hair and dragged him on the asphalt and when he fell down **Zenga** kept pulling him up by his hair. (1622) "I had to sit down against the wall with my legs close together, ... Then he (Zenga) spilt petrol or something like that over me, or maybe it was alcohol ... at the end he used a match, and he burnt both my legs, and he did not allow me to put the fire out until it was put out by itself, and my trousers were completely burnt out and both my legs had burnt and even today I have a scar on my left leg." (1625) This happened somewhere towards the end of June or early July.(1629) He did not receive medical care immediately after the incident, but a week later the wound was cleaned.(1631) **Delić** would deny him access to the infirmary. He said **Landžo** ordered him to drink the urine of other prisoners.(1632)

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Mladen Kuljanin	In June or July LANDZO poured a liquid on his legs and set light to it. After that "he had enormous burns and blisters and his last for a long time." Was given no treatment and the wound festered and it could not heal.Witness could see well because sat opposite to him. (2498)
Mirko Dordic	Nedjelko Draganic: **Zenga** took him out and when he was returned to the hangar, his left trouser leg had been burned as far as the knee almost and on the lower leg we saw a big wound, a big blister. Nedjelko told that Zenga made it to him. (4770)
Witness P	Nedeljko Draganic, a boy of about 19 years old, had burns on his lower legs and partly his upper legs. (4567)
Witness B	Man called Bendzo had his leg lighted and Nedo Draganic was poured with petrol and his whole leg was burnt from the lower leg to the knee, and he had terrible wounds without any medical treatment.(5064)
Branko Sudar	Witness knew Draganic and knew his father. Draganic is the son of witness' uncle. Draganic was taken out by Landzo, Kemo, Osman and Delic. Landzo forced him to eat grass where people had urinated. On one occasion Draganic was taken out and later returned with burns on his legs. (5779) "Zenga did this most." You could hear Draganic's moans. Draganic never received medical attention for his burns. (5780)
Petko Grubac	Dr Grubac together with Witness P (Dr Mrkajic) had to treat burn injuries to numerous detainees. "...they told us that these burns were inflicted because they had been -- gasoline had been poured on them and then lit, or some flammable bands or tapes or cords..." (5988-89)
Milovan Kuljanin	"Inside the hangar 6 I was able to observe when he was beaten on various parts of his body with various instruments and he was also kicked and punched. He was also burnt. I think that gasoline was used... It was mostly done by guards of the building, Esad Landzo, Osman Dedic, Esad Macic also on one occasion, and many others whom I cannot remember." Did not see the victim being burnt but "only saw the wounds on his legs." (7067)
Witness R	Draganic was taken out several times and beaten during the night. P.7776/22-23. On one occasion, Zenga called Draganic out of the hangar. Later, Zenga escorted Draganic back inside. Draganic sat in the row directly opposite Witness R, facing him, so Witness R could observe Draganic's burn on his right leg from a distance of one or two meters. Draganic's trousers were also burned through. P.7776-7777 In time, due to the dirty conditions, the wound festered and became infected. P.7777/11-15. Prior to the burning, Delic had told Zenga to take Draganic away and carve a Chetnik sign on his forehead, but Zenga apparently forgot to do so. P.7777/18-25. Draganic was eventually taken to the infirmary and his leg was bandaged. P.7778/5-11.

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Count No 38 and 39 / Respons. of Superiors for Causing Great Suffering or Serious Injury

DELIC-MUCIC-DELALIC

See exhibits 65 to 71:
Decision of the Konjic municipality dated 30-8-1992
Photo of witness Gotovac's hands
Photo of witness Gotovac' stomach
Photo of witness Gotovac' shoulder
Video on the physical state of witness Gotovac
Medical report by a paediatrician
Document from War Hospital in Boracko Jezero for referral of witness Gotovac to a specialist dated 26-5-95

38a / Beating of Mirko Kuljanin

See exhibits 82, 83 and 84:
Floorplan
Statement
Release document

WITNESS	EXTRACT OF EVIDENCE
Mirko Kuljanin	(1178/1) Mirko Kuljanin was beaten maybe three times upon his arrival in Celebici. (1178/4) "I was not beaten really severely there. My most severe beating was en route from Bradina to the tunnel and when we were getting on the vehicle"

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38b / Beating of Dragan Kuljanin

See exh 96: Drawing of the hangar 6.

WITNESS	EXTRACT OF EVIDENCE
Dragan Kuljanin	On one occasion he was beaten by guard Salko, who kicked and beat him with a rifle butt for 10-15 minutes. Then **Landžo** appeared and beat him 5-6 times with a rifle butt. (2318/24) On two occasions, Landzo beat him while he was doing push-ups. (2325)
Mladen Kuljanin	"The same happened to Nedjo Draganic *(as to Dusko Bendjo).* Esad Landzo walked in with the small bottle. He poured the liquid on his legs and set light to it. Nedjo Draganic was sitting opposite from me. When he set light to this, he didn't dare extinguish it and then there were enormous burns. There was no medical treatment. (2498)
Witness R	"I know that he was beaten up very badly, he had a leg injury and he limped when went for the interrogation. I know he had great problems with the joint of his leg." (7756)

38c / Beating of Vukasin Mrkajic

WITNESS	EXTRACT OF EVIDENCE
Branko Gotovac	"He told me personally that it was Hazim DELIC who forced him to do that ." (act like a car). "He would go around saying: "Beep, Beep."and then somebody would say:"Left blinker, right blinker." Sometimes he would have to sing (999)
Witness F	"I remember Vukasin Mrkajic, who was all black and blue. I could hardly recognise him." (1308 +1317 + 1318) Approx 15 days after the ICRC visit, Delic armed with a shovel led out Vukasin Mrkajic and started beating him with the shovel. He was ordered to take off his pants and walk round in front of the other prisoners so they could see what had happened.(1338)
Stevan Gligorevic	DELIC was regularly beating Dusko Bendjo and Vukasin Mrkajic. "He would just sit and he would hit him". He would use a broomstick or a shovel for mass beatings. (Please refer to p1454 for more details)
Witness N	Saw LANDZO putting fuse wound round his whole body and lit and forced him to run around.(1912 + 2039)

Mladen Kuljanin	In june or July LANDZO ordered him to take his clothes off, put a fuse to him, set light to it and ordered him to run around. "He ran screaming. He did not dare to stop the burning fuse".(2497)
Dragan Kuljanin	Everyday Landžo (and Delic? not clear) made him do push ups and beat him over the back and legs with a rifle butt. (2324 to 2326)
Novica Dordic	Victim was in charge of keeping the order in hangar 6. One day DELIC came in and asked "who is making some cards?". Victim did not want to point the detainees who did this and was ordered by DELIC to take his pants off. "He did so. Hazim took a shovel and started beating him on his bare buttocks until blood started coming. Then he kept repeating: "OK. Say who was it, who was it!" Vukasin said he will say because he couldn't stand it any longer." (4196) Electrical devices were used on Vukasin. (4200)
Mirko Dordic	Vukasin Mrkajic: **Delic** and Landzo always hit him. In mid-July or late July **Landzo** tied a fuse around his waist and genitals and stuck a piece in his anus, and then lit the other side, nad ordered him to run around.(4764)
Branko Sudar	BS knew Draganic and knew his father. Draganic is the son of BS' uncle. Draganic was taken out by Landzo, Kemo, Osman and Delic. Landzo forced him to eat grass where people had urinated. On one occasion Draganic was taken out and later returned with burns on his legs. (5779) "Zenga did this most."You could hear Draganic's moans. Draganic never received medical attention for his burns.(5780)
Gordana Grubac	DELIC would order victim to strip naked to the waist, to drink a bottle of cognac and then victim had to imitate the driving of a car.(6298)
Risto Vukalo	Vukasin told witness that he had been beaten during the interrogation and on his way back. (6376)
Milenko Kuljanin	Delic would hit Vukasin Mrkajic every day especially on his broken ribs. Torture of Rajko Dordic.(5468)
Rajko Draganic	"... ZENGA put a slow burning fuse and set it on fire and forced hoim to run around the hangar. He put it in his underwear and he was running and the fuse was burning. He was screaming..." ZENGA was threatening him "because he was the chairman of the SDS in Bradina".(6954)
Witness R	Vukasin Mrkajic beaten almost daily by the guards or by Delic. One day Zenga came to the door and called Mrkajic out. Mrkajic went out and a few minutes later he returned and there was a fuse wrapped around his waist. On end was inside his trousers. Zenga was following Mrkajic and the fuse was burning and Mrkajic was jumping up and down. Zenga followed Mrkajic and ordered him to sit down in his predetermined place. The burns caused blisters all over his body which later burst, turning into open wounds. Mrkajic never received any medical treatment for his burns. Delic would tell him: "You have to die anyway so sit down." Pp.7770-7771. Zenga did the same thing to Hristo Vukalo. Pp.7771-7772. Hristo Vukalo never received any medical care after that incident.

38d / Beating of Dusko Bendjo

WITNESS	EXTRACT OF EVIDENCE
Branko Gotovac	Saw burns on his legs. (998)
Witness F	Others including Dusko Bendjo were then led out. Could hear but not see them being beaten. (1338)
Stevan Gligorevic	Saw Dusko Bendjo burnt by LANDZO inside the hangar. (1449)
Witness N	Saw him poured with gas and lit by LANDZO. His tracksuit was still burning when came in the hangar and forced to run round the hangar. (1913)
Dragan Kuljanin	Describes the beatings inside the hangar. (2326) Could hear from inside the hangar Zenga who was beating him and asking him money. (2327)
Mladen Kuljanin	In June or July LANDZO poured a liquid on his legs and set light to it. After that "he had enormous burns and blisters and his last for a long time." Was given no treatment and the wound festered and it could not heal. Witness could see well because sat close to him.(2498)
Vaso Dordic	"Also Landzo Zenga was setting fire on Bendjo.He had a tin with him.There was a flame coming out... He was heating the knife on it. Then he would put it against his skinand he would put it against his body, this heated knife." (4362) Zenga put the pincers, heated ones, into the ear of Dusko Bendjo and he also put it . (4363)
Mirko Dordic	Inside the hangar Zenga would humiliate him and force him to do push-ups while he was hitting him in his ribcage. Once Zenga called him out, took him outside and when Dusko returned his trousers and the other leg were on fire. Zenga was standing at the door and said that no-one may extinguish it. Mirko saw his burned leg. (4768)
Witness B	Man called Bendzo had his leg lighted and Nedo Draganic was poured with petrol and his whole leg was burnt from the lower leg to the knee, and he had terrible wounds without any medical treatment. (5064)

Petko Grubac	Although there was nothing to treat them with, people would come in quite often with burn injuries. Prisoners had burns on their hands, on their upper and lower legs and some had burns on their faces and ears. There was a victim whose surname was *Bendzo*. They were mainly burns of first and partly second degree covering the skin and some subcutaneous tissue in these burns. They told the doctors that the burns were inflicted because gasoline had been poured on them and then lit, or some flammable bands or tapes or cords, which are used in fireworks or in blowing mines in civil engineering works had been put on them.(5986) Saw, from building 22, Delic taking part in several beatings in front of tunnel 9. Most frequently he would do this with a baseball bat. (6001)
Branko Sudar	BS knew Dusko Bendo Landzo would take Dusko Bendo out of the hangar. Bendo would scream and wail and return with burns on his legs. Bendo did not receive any medical attention for his burns until the Red Cross came to the camp. (5783)
Witness R	Dusko Bendo was also taken out and beaten many times. On time Bendo was called out by Zenga and the prisoners inside the hangar could hear his cries and moans. Then Bendo returned inside the hangar, accompanied by Zenga, to his regular place. Both of Bendo's legs were terribly burnt. The burns blistered, and when the blisters burst, one could see Bendo's bones on both of his legs. P.7775/18-7776/5 Bendo sat in the row opposite Witness R, so Witness R could see Bendo's injuries. P.7776/6-9. Bendo never received any medical attention for his injuries. When he asked for medical assitance Delic would respond: "Sit down, you have to die anyway." p.7776/16-19.

Beatings of Mladen Kuljanin and others

Witness	Extract of evidence
Mladen Kuljanin	(2479) Right after arrival in Celebici, had to line up against a wall during approx. 5 hours with other detainees. Beaten by DELIC and others with chains, sticks and electrical cables saying: "Auschwitz. This is Islam... Allah is the greatest". Mostly hit in the kidney and in the back. Could not urinate after beating. (2491) On August 12, after ICRC visit, all detainees of hangar 6 were beaten during an hour by a group of ten armed guards led by DELIC. Were informed before the beating by the guards that it was because detainees told ICRC that they were civilians and not soldiers. (2492) In June, severely kicked by DELIC because had sat down without DELIC's autorization. Daily slapped and spit on by the guards like most of prisoners. (2493) Once kicked by LANDZO with his boots (with no reason). In september, asked by MUCIC and DELIC whether he ever made love with Muslim or Croat woman
Dragan Kuljanin	(2325/25) Everyday **Landžo** made him do push ups and beat him over the back and legs with a rifle butt.
Risto Vukalo	(6269/4) When the Red Cross had registered the prisoners and had not even left the camp, Delic walked in with about 12 to 13 guards. He ordered the detainees to put their hands behind their heads and then the guards went round kicking the prisoners in the ribs. Sometimes they would be hit with a rifle butt. (6269/15) When a group of Muslim soldiers fell into an ambush near Repovci and were killed, Delic and some other guards beat the prisoners, especially those from Bradina. He beat them with fists and his boots and would sometimes give a karate

	blow. (6270/13) One day, he does not remember exactly when, the witness was called out and Zenga tied a fuse between his legs, on his naked skin. He had to take off his pants and his sweat suit, up to his knees. So he was naked from his waist to his knees. After the fuse was fixed he had to pull up his pants and one piece of the fuse remained outside, free. His hands were then tied behind his back. After that Zenga would set the fuse on fire. The witness has also seen this happen to Vukasin Mrkajic and one of the Djordic brothers and some others. People were in great pain when the fuse started burning right next to the skin. They would roll over on the concrete floor until somehow they would manage to put it out with their body. (6271/25) Zenga was mostly accompanied by Osman Dedic when this happened. Zenga would laugh when this would happen. (6272/14) Risto was able to roll over fast enough to extinguish the fire before it reached his skin. Zenga did not like this and beat him with a rifle butt.
Witness O	**Dragan Kuljanin** (3158/9) "Admitted after being released from Ustasha detention camp in Celebici in Konjic. Patient complains of severe headaches accompanied by dizziness, insomnia and poor concentration. Many scars on head. The nose shows deviation to the left side." **Slobodan Zelenovic** (3159/17) "Patient admitted after being released from the Ustasha detention camp at Celebici in Konjic. Still complains of sharp pain in lumbar area in chest. Patient suffers from frequent headaches with insomnia and dizziness. Sleep is also disturbed." **Radoslav Kuljanin** (3160/9) "Patient admitted after being released from the Ustasha detention camp at Celebici in Konjic. Patient complains of frequent headaches accompanied by insomnia and poor cencentration. Breathes heavily with the help of respiratory musculature. There is a scar about 3-4 cms in length in his zygomatic area (the cheekbones)." **Novica Kuljanin** (3161/8) "Patient admitted after being released from the Ustasha detention camp at Celebici in Konjic. He complains of pains all over his body and his left arm in particular." **Sreten Zelenovic** (3161/25) "Patient admitted after being released from the Ustasha detention camp at Celebici in Konjic. Complains of weakness, dizziness and passing water mixed with blood. Clinically front upper and lower jaw teeth are missing due to fracture."

Count No 42 and 43 / Inhumane acts involving the use of electrical device

DELIC DIRECT PARTICIPATION

WITNESS	EXTRACT OF EVIDENCE
Stevan Gligorevic	DELIC used "a gadget which produced electrical shocks. That was used on Davor Kuljanin. (1455)
Novica Dordic	**Delić** used a device for horses which produces strong electrical shocks. It inflicts a small burn on the spot where it touches the body.(4197) **Delic** burned Novica with this device on the chest. He also kept it for a long time to the witness' ankle causing a big burn, the scar of which is still visible today.(4198) The device was used on most of the prisoners of number 9 including Vukasin Mrkajic.(4200)
Vaso Dordic	Every day Zenga forced him to do push-ups and kicked him with his boots.(4357) Zenga took this peace of slow burning fuse roughly this long and then he wound it round my anus. He put one end inside and the other round my penis. - Then he lit it. I have a scar here from this fuse. Guards outside were saying "Hazim, Hazim" and Zenga ran out. (4358) Describes how he and his brother were forced by Zenga to take each others genital organs into their mouth in front of other prisoners. Zenga said:"See what the Serbian brothers and Chetniks are doing. That's what they would do to me too." (4360) Zenga took him into his dug-out, put a gas mask on him and beat him.(4361-62) Zenga took them out of the hangar and beat them (kicked with his boots and hit with riffle butt), hit his brother with a knife and split his eyebrows. (4350-51)
Witness B	Use of electrical devise: **Delic** used to use some kind of a devise to cause electrical shocks. He used it for many prisoners. He did it to him also.(5047)
Witness P	Mr. Delic had an electrical device which was the size of about two packs of cigarettes and had a button somewhere. He saw it being used on Risto Zuza twice. It caused some spasms and Risto was sort of thrown into a corner.(4555) This happened approximately on 3 August.(4561)

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Milenko Kuljanin	In July, Delic came in tunnel 9 and used electrical device on his chest. He did it twice on the same day and was laughing: "He found it funny". He did it to 4 other prisoners.(5454) Beaten several times by Delic with a baseball bat in the tunnel and then in front of the tunnel. Delic was mentioning "serbian" and "chetniks". Saw Delic using his baseball bat virtually every day on all prisoners of tunnel 9.(5455)
Witness R	In August, Delic would bring an electric cattle prod to the hangar and shock prisoners. Delic did this most frequently to a prisoner who was a policeman before the war in Konjic. The prisoner's nickname was "Sis," and the witness thought that his correct name was "Davor Kuljanin." p.7782/10-21.

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Count No 44 and 45 / Responsibility of Superiors for Inhumane Acts.

DELIC - MUCIC - DELALIC

WITNESS	EXTRACT OF EVIDENCE
Witness F	Witnessed guards force two brothers to commit the alleged act. It took place in hanger 6 in front of all the prisoners (about 200 at that time). Esad Landzo aka Zenga was involved. (1333/3) This happened during day time hours. Doesn't know the exact date, but thinks that it was late June, early July. (1333/18)
Stevan Gligorevic	Saw two young brothers from Bradina that he knew very well beaten by LANDZO. Then they had to slap each other's face and to do a fellatio. (1354)
Witness N	Two brothers D. were forced by LANDZO to do oral sex in the hangar near the door , in front of all prisoners. Besides, LANDZO would beat them in the hangar. (1911-1912)
Mladen Kuljanin	In July LANDZO forced N.and V. D. to do fellatio in front of all prisoners in hangar 6 (near entrance).(2495)
Dragan Kuljanin	After 12 July 1992, **Landžo** came in hangar 6, once, and told one person to take his clothes of and told his brother, after beating them, to perform fellatio.(2329/17)
Mirko Dordic	Fellatio: **Landzo** forced Veso and Vaso Dordic to take each others genital organ into each others mouth one after the other. (4767) Danilo and Miso Kuljanin: Landzo forced them to hit each other. Vaso and Veso Dordic: They had to do the same. Momir and Goran Mrkajic: Mutual slapping orderd by **Zenga**. Branislav Kuljanin and a man called Ristic: Mutual slapping ordered by Zenga. (4774)
Witness M	Vaso Dordic: He had to do push-ups and at the same time he was kicked. He had to be in oral intercourse with his brother but M does not remember which one of the guards ordered this. (4924)

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Witness B	Fellatio: **Zenga** forced them to have sexual intercourse. Dordic brother: **Zenga** forced them to hit each other. (5063)
Risto Vukalo	Sometime in August Zenga called the witness outside the hangar. He walked up to a distance of about 5 metres from Zenga who told him to kneel. Zenga showed him a bullet and a gun. Then he saw Zenga put the bullet in the rifle and cock. Zenga then told Risto to open his mouth. He then put the gun in Risto's mouth and shot. It took him a minute to come to himself and realise that he was not dead. He had the feeling his mouth was burning. He found out later that Landzo somehow emptied the powder, the charge from the bullet, so that the bullet could not be activated when it was being shot. Landzo did the same routine also to Vukasin Mrkajic, Bosko Samoukovic, Spaso Miljevic, as well as some others. They have told this to the witness. (6273/7) In the morning the witness was taken out to urinate in a group of 20 prisoners. This would happen at the left hand side of the door of hangar 6 in some kind of ditch/canal. Zenga called him out of the group one morning and hit him two or three times. At a point some two metres from the last man on the right side in the line of men who were urinating, Zenga ordered the witness to drink urine from the canal into which the others were urinating at the same time. Zenga hit him very strongly with a rifle butt on the back and pushed Risto's head down into the canal so that the urine was in his mouth and he drank it. Zenga pressed a rifle butt in his neck so that he would stay down. His head was immersed in urine.(6275/1) One day Zenga called the witness out. There were some other guards with him. They started to hit him and order him to eat grass, to pluck the grass. The witness grazed and swallowed. A guard from Idbar subjected him to this treatment several times. Landzo did not do this to him after the one time. (6277/3) On one occasion Delic ordered some prisoners out and made them sit in rows on the concrete outside hangar 6. They had to strip naked to the waist. Delic called out Vukasin Mrkajic and ordered him to drink a bottle of cognac in a very short time, to gulp it down. Then Vukasin had to imitate the driving of a car. The guards and Delic laughed about this. (6277/17) The witness saw that the brothers Djordic, who were brought in later, were hit frequently and hard. On one occasion Zenga forced on of the two to perform oral sex. One of the brothers had to put the other brother's member in his mouth, because Zenga threatened to kill them both unless he did it. The witness could see this from where he was. (6278/24) One day Zenga called out Damir Gotovac and after ten minutes Risto was called out by another guard. He saw Zenga hitting Damir who fainted and fell to the ground. Damir was wearing a gas mask at that time. Then Zenga told Risto to kill Damir, that is to beat him to death. When he refused Zenga and another guard started him. Then they ordered Damir to kill Risto. After he refused the guards beat both of them. (6285/12)

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Milenko Kuljanin	In July was put with 16-17 other detainees of tunnel 9 in a manhole by (5458) Delic - who was giving the orders - and **Mucic**. Spend 8 hours in it while the guards outside were saying that they would throw a bomb on us. "Were all one on the top of the others". Could hardly breathe and people started "shouting and thumping on the lid". Two of them were half unconscious. Mucic asked him a question about someone he knew when he exited the manhole. Were beaten when they were returned to the tunnel 9 and crossed a second group of detainees lead to the manhole. Rajko Dordic went also with the second group and said it was even worse than the first time and that people were losing consciousness. (5465) Was mistreated every single day by Landzo, Delic or other guards. Never received any medical care. No one in tunnel 9 received any while some (5465???) While in hangar 6 Delic would beat him almost everyday with all sorts of tools. (5490)
Witness R	Witness R testified that Vaso and Veseljkol Djordjic were brought into hangar 6 from the village of Zukici. Veseljko, the younger of the brothers, had a broken arm, with a splint on the forearm, and wore a red sweat suit. Zenga beat Veseljko and asked him whether he had a rifle. When Veseljko replied "no," Zenga continued to beat him until Veseljko responded: "Yes, I did have a rifle." Zenga continued asking questions: "Were you meeting with Chetniks in Bradina?" "Did you take food to the Chetniks?" Zenga would beat Veseljko until he answered "Yes" to these questions, just to avoid further torture. "Did you have an aeroplane?" Zenga eventually began to laugh after asking Veseljko all of these questions. Then Zenga ordered Veseljko to unbutton his trousers and to put his genitals into his brother Vasos' mouth. Pp.7781-7782. One day Zenga called out Jovo Kuljanin, placed a gas mask on Kuljanin's face, and brought him back inside the hangar. Zenga escorted Kuljanin "step by step," and the air filter on the mask was plugged. Kuljanin's hands were tied behind his back. Zenga brought Kuljanin back to his place and stood by him until he fainted. Then Zenga took the gas mask off Kuljanin's face. The victim's face was ashen coloured. p.7783/12-23.

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Count No 46 and 47 / Inhumane Conditions.

LANDZO - DELIC - MUCIC: Direct participation
DELIC - MUCIC - DELALIC: Superior responsibility

(Not all testimonies contained)

WITNESS	EXTRACT OF EVIDENCE	
Mirko Babic (To be completed with atmos. of terror)	(271/16) (272/16) (274/1) (408/15) (410/5)	Description of building 22: A lot of people, not room to sit down. Terrible conditions: very little water and food, hygiene very poor, toilet outside. Remained about 20 days in building 22, no one hurt him. Moved in hangar 6 around 15th June. About 250 prisonners. Description of hangar 6:Concrete floor, dirty terrible hygiene, one bucket for toilet for 250 people. 5 spoonsfor all detainees, were all hungry. In July, nothing to eat during 56 hours. Taken out to urinate once a day (around 3 pm) Toilet facilities: septic tank. Sometimes some soldiers would fire at us while we relieved ourselves
Grozdana Cecez	(495/23-496) (501-503) (504/7) (526/3) (553/21-554) (508-512) (510/14) (512/4)	Soon after the first rape, sexually harassed by a guard named SOK. The third night, right after transfer to building A, raped by Ivica Buric, then by Dzevad "Brise", then by a third man (Ismed Bajavit, see 528) who said: "Do you see how a turkish cock can fuck?", then by a fourth one with no light. Told everything to Rale Musinovic. The last time was raped was by Norco Tabak (see 528) Raped once by Delic, and mostly "once by each" of the other persons Rapes of the other 4 women of Bradina and atmosphere of terror. One night, DELIC grabbed one of the Bradina women, hitting another one on the head who tried to interfere, and took her out for about 10 minutes. When back, she claimed that he had not succeed in raping her, although Cecez doubts it could have been so. The 4 Bradina women stayed for 19 days

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	(518-523)	Description of camp conditions using her diagram and the model
	(521/11)	Used the same plastic jug for all toilets and laundry needs.
	(523/10)	One piece of bread for 42 days, then later thin soups; lost 34 kilos. Sister would bring food for her, but DELIC would throw it away saying: "She does not need it, she will be executed anyway". A named Masic would sometimes bring some extra food.
	(524/12)	They would not allow anyone to talk to me, I only whispered most of the time - never dared to speak out loud. "We felt such fear, and I think everybody esle did, and that is how they tormented us."
	(530/1)	Very filthy in the building A.
	(530/8)	MUCIC shot machine-gun fire once in her direction to intimidate her, while she was sweeping near the gate.
	(537/2)	We could never sleep in peace. We were always afraid of what may happen. On one occaision we were planning on committing suicide by putting a hairpin into the electricity socket
	(539-540)	Zukici's women: about 5 men and 5 women were brought on 12 July into Celebici camp, all badly beaten; among them, one 65 old woman and 13 old girl. The latter was brought in the room later on by DELIC saying " Not one hair should be missing from this beauty".
	(541/7)	A few guards took the 13 year old girl out and threatened her in order to frighten her mother and the other women.
	(543/3-544)	Treatment of the men: forced for hours to stand with their hands up against the wall with heads down, sometimes under heavy rain. Some of them would faint. Again they would be forced to line up ganist the wall and be drenched in the rain, and forced back inside without any possibility to change.
	(544/19)	Men were forced by DELIC to imitate cars, running around until they would fall. Also forced to sing.
	(550/10)	Saw mortuary vehicle at least 10 times during her stay in the camp. Also saw Slavko being beaten.
	(550-552)	Medical care: only the two doctor-detainees who had nothing to treat them with, and who dared not visit her when DELIC was around. Were housed in building 22.
	(551/10)	Lost a lot of weight and suuffered terribly. Did not go to toilet for 32 days. "Pychologically and physically I was completely worn out. They kill you pychologically".
Branko Gotovac	*Atmosphere of terror:-*	
	(982/21)	21 May 1992 Mr Spasoje Miljevic beaten.
	(983/7)	(Later says it was 24th May)
	(983/15)	Saw Spasojoe beaten only once in No 22, but several times in No 6.
	(986/15)	Himself suffered mistreatment in hanger 6.
	(986/15)	Saw Scepo Gotovac (no relation) taken out several

		times with Simo Jovanovic and beaten. Saw Scepo Gotovac die shortly after one beating.
	(1099/1)	Scepo taken out and beaten. Not certain who beat him, but LANDZO's voice was heard, and LANDZO brought him back in and kicked him a couple of times. Short time later Scepo Gotovac died.
	(986/21)	Saw Cedo Avranovic in hanger 6 "half undressed and half dead... nobody knew what happened to him." Saw Zeljko Cecez taken out and beaten up. Request for water refused. He died approx 20 minutes later.
	(987/21)	LANDZO took witness out and beat and kicked him. Teeth knocked out. "There were several mistreatments following that."
	(988/20)	LANDZO took witness behind hanger, filled mouth with grass, broke hoe and used it to beat him until he fell, then kicked him. Put knife into mouth. LANDZO ordered Lepara (a guard) to shoot him, then said, "No we'll continue another time"
	(989/22)	DELIĆ ordered hair cuts and also beat and kicked him.
	(1112/18)	clarifies in x-xamination that DELIĆ did not actually beat him, but only ordered the hair cuts. Conceeds that DELIĆ never actually hit him.
	(990/4)	"This torture was the most painful and the worst, because he (LANDZO) asked me whether I preferred for both my sons to be killed or myself...I said "kill me"..."
	(990/17)	LANDZO showed him a crate and pulled Branko's two sons and Spasoje Miljevic out of it. LANDZO put gasmasks on the older son and Spasoje, and beat them. LANDZO took off younger son's shirt and started to cut him with a knfe.
	(991/8)	LANDZO made Branko sit down, legs spread, hands behind head, was hit in scrotum causing bleeding, swallowed tongue and fell unconscious.
	(991/25)	DELIĆ was close by.
	(992/10)	Taken to doctor, who predicted he would die.
	(994/5)	LANDZO put cigarette to his palm and extinguished it by burning into the tendons - now can't bend two of his fingers.
	(995/20)	LANDZO told him to pull on the pin of a hand grenade and then ran away.
	inhumane living conditions:-	
	(982/1)	Building 22 was "packed like sardines" full of people
	(982/16)	Stayed in building No 22 for approx 12-15 days
	(982/11)	"hygenic conditions were nothing"
	(982/13)	Space was so toght that they slept by just leaning on one another

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	(985/3)	Later moved to hanger No 6.
	(986/2)	Blankets and coats torn into 4; "conditions were very, very bad"
	(986/7)	"Sometimes they gave us something cooked. Maybe five spoonfulls and a slice of bread." Allowed out only to urinate.
	x-xamination:	
	(1018/6)	Conditions (medicine and food) improved somewhat after visit of the Red Cross
	(1116/3)	A red van brought food from Konjic. The food for prisoners was separate from that of the guards.
	(1118/21)	DELIĆ didn't interfere in the treatment of detainees.
	psychological and physical trauma:-	
	(993/15)	Left shoulder "deformed", backache and rib ache.
	(996/1)	Protusion in stomach due to the beatings he received.
	(999/17)	Saw injuries to Spasoje Miljevic (burns to legs), and Dusko Bendjo (burns to leg).
	(1000/2)	Nedeljko Draganic (injured knees)
	(1000/17)	Vukasin Mrkjajic made to act like a car. Mrkjajic said it was DELIĆ who forced him to do that.
	(1001/23)	Mirko Babic told him he had injuries to three ribs
	(1004/2)	"We had to look straight ahead. We were not allowed to even whisper to each other".
Mirko Kuljanin	*Atmosphere of terror:*	
	(1172/22)	Upon arrival in Celebici heard screams and moans by people being beaten.
	(1176/8)	Later the people from his van were also beaten along a wall.
	(1208/13)	On 27 May people from Upper Bradina were brought in and beaten along the wall for 5 to 6 hours. (The witness heard the wailing and moaning from tunnel 9.)
	(1220/14)	In hangar 6 he did not see a dead person belonging to the group of Upper Bradina.
	(1220/17)	One evening Radoslav Kuljanin was called out and one could hear the beating and the screams and the moaning.
	Inhumane living conditions:	
	(1182/21)	In tunnel 9 there were no toilet facilities, so if people wanted to urinate or defecate they went down to the bottom of the tunnel. They rarely opened the doors - only if they needed to
	(1187)	The tunnel was narrow, maybe 1.5 m wide, made of concrete and completely dark
	(1188/2)	They did not allow us to be taken outside to releive ourselves

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	(1190/14)	In tunnel 9 one had to be in the same position all the time, so there was no sleeping.
	(1215/15)	He could not always get all the water he wanted.
	(1216/1)	One could only get a few spoons of food and a little bread.
	(1216/22)	Mr. Kuljanin had no blankets or matresses, but in hangar 6 there was little sleep because people were able to stretch. Some people neede to go out more often to relieve themselves, but they didn't dare insist very much because of the beatings
	(1217/4)	In hangar 6, people had to ask to be able to relieve themselves outside, where there was a ditch.
	(1219/19)	People from Upper Bradina in hangar 6 complained of injuries, he does not have direct knowledge if they received medical treatment for these.
	(1260/16)	In cross he asserts that there was plenty of water from the wells but the prisoners would not get it either to wash or to drink it.
	(1268/17)	Testifies in cross that he saw Delić divide blankets between prisoners.
	(1272/19)	Asserts in cross that there was no bucket in hangar 6 during nighttime for prisoners to use.
Witness F	*Atmosphere of terror:-*	
	1303/14	At arrival at Celebici, "terrible beatings", crowbars, sticks, rifle butts, kicks etc. "There were a lot of them. They took turns."
	1303/19	"I heard my father 66yrs old wailing... that hurt me more than anything I had suffered until that moment."
	1312/24	Food placed on a crate near the entrance. people dare not go there at first as they were afraid that they would be beaten.
	1319/11	Nedeljko Samoukovic was regularly beaten by Delic.
	1321/4	Radoslav Kuljanin was regularly beaten by Delic.
	1334/22	Landzo put hot knife into the ear of prisoner DJORDJIC.
	inhumane living conditions:-	
	1312/14	"conditions were really extremely bad". Meals consisted of 1 slice of bread and these were not regular. Later two spoonfuls of soup. When Drago Djordjic took more than two he was beaten. Therer were 5 spoons between all of us
	x-xamination:	
	1350/10	states that the only medication he requested was for diarrhea and he was given it.
	1358/22	states that relatives of prisoners did bring food to the prisoners and that the guard put the food in bags with

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		the prisoners name on and distributed it. Goes on to say that his wife professes to have sent him packages but that *he* received the food very seldom. (Does not mention receiving any food from outside sources in examination in chief) *Psychological and physical trauma:-* 1304/9 was beaten on arrival and suffered a partial fracture 1335/5 sees burns on legs of Nedjo Draganic 1335/21 sees blisters on hands of Spasoje Miljevic
Stevan Gligorevic	(1332-1334)	Day of arrival in Celebici and first day, physical torture and verbal humiliation. had to stand up against a wall during 7 hours (2-9pm)
	(1340-1343)	Toilets facilities, no real use(!) because of inadequate food and of mental schock.
	(1343-4)	Not enough food and water; did not receive food during 3 days."People turned into skeletons".
	(1348)	Beatings every night. When you heard that plank hit the asphalt, ..., then you knew what would happen." "Every night was a horror". People were called out "virtually every evening".
	1437	There was virtually no food at all. There were people who did not have a bowl movement for 40 days.
	1438-9	When DELIĆ became commander, were only allowed out to urinate twise a day, and then for very short time: made to run out and then ordered to turn back, with someties no time to urinate.
	1440	In mid-July even the bread grew very scarce and at one time did not receive any food for 3 days. "People turned into skeletons. You could hardly recognise them. Many could not even stand up".
	1532	Saw Stravko Gligorevic and Milosc beaten in front of him.
Nedelko Draganic	*Inhumane living conditions*	
	(1610/1)	In the shed where he was kept first and in hangar 6 people had to sleep on the concrete.
	(1615/12)	He describes that they received some food, not every day, sometimes not for thre or for days. When it came it would be some bread and sometimes a vegetable stew which both had to be shared among to many people and eaten with the same spoon.
	(1616/12)	There was a kind of a hole outside hangar 6 which functioned as a toilet, but you had to ask the guards for permission to use it.
Milojka Antic	(1765-1766)	Detainees not allowed to receive visit or food, but only clothes(15 June)
	(1796)	Zurici'women severely beaten when arrived (12 July). Did not receive medical cares.
	(1798)	No food during 3 days

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	(1801)	Delic would come and say they would never be released.
	(1832)	Toilet access free but did not dare to go at nighttime.
Witness N	(1882)	Small quantities of water and food.
	(1883)	No toilet facilities in building 22; taken out 2-3 times a day.
	(1893)	In hangar 6, shortage of water; "we lacked water
	(1894)	Two holes behind the hangar and one bucket for the night; only when allowed and by groups.
	(1895)	Slept on concrete; some detainees managed to have a blanket. About 280 detainees in the hangar.
	(1911-1912)	Two brothers D. were forced by LANDZO to do oral sex in the hangar near the door , in front of all prisoners. Besides, LANDZO would beat them in the hangar.
Miro Golubovic	*Atmosphere of terror:-*	
	2115/22	was burnt in the neck and lip with red hot scissors by one interrogator called Narcis.
	2116/4	was beaten repeatedly about the ribs. DELIC on one side a boy on the other.
	2118/24	describes beating. ordered to kneel. pistol fired next to head. assaulted with pistol on forehead. knife used to cut him below the eye.
	Inhumane living conditions:-	
	2111/21	whilst in the man hole, DELIC brought him a bottle of water.
	2116/18	taken to a tunnel. Stank of urine. insufficient room to lie down. Bucket for toilet. Liquid near the floor. Unsure if it was water or urine. worms around bucket.
	2117/2	in tunnel for 10 days.
	2117/5	The water was okay. the food was insufficient but clean. Piece of bread a day. sometimes 3 spoons of cooked food.
	2129/11	describes occasion when DELIC gave him some bacon.
	2129/12	describes occasion when MUCIC shared his food with him and gave him some skewered roast meat.
	2165/02	after one beating, describes DELIC and MUCIC giving him some drops for an injured ear.
	2166/23	describes Delic bringing him some Brandy. Because Miro didn't drink, Delic offered it for his wounds.
	2179/07	describes being given some cakes by MUCIC.
	2179/24	describes being given tins of fish by MUCIC
	2130/2	describes being given 2 packs of cigarettes by MUCIC.
	2180/11	when he gave the cigarettes, MUCIC said he wished it could have been bread instead.

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	2183/23 2228/18 2239/20	MUCIC seen to bring cakes and ironed shirts for prisoner PETKO GRUBAC. testifies that LANDZO did not mistreat him at the camp. states that he knew a female called MISS ISMETA POSDER who he saw at the canteen of the camp. She gave Miro sugar and cigarettes.
Mladen Kuljanin	(2486) (2489)	Not enough water. Did not receive water every day. Food was terrible and insufficient (one bread of 6-700 grams divided for 15 people. No food during 3 days. Toilets was had been dug outside by the prisoners. Were not always permitted to go outside fot toilet facilities. Slept on concrete without blanket during 3 monthes. For a period could not even sleep because had to sit up day and night. Up to 300 people in hangar 6 in early June.
Dragan Kuljanin	(2314/17) (2315/17) (2316/24)	"There was not enough food." "We would get water occasionally." Toilet facilities were poor.
Novica Dordic	*Atmosphere of terror* (4189/9) (4195/17) *Inhumane living conditions* (4146/12) (4147/12) (4147/12)	After the Red Cross left from tunnel 9 to number 6 Delić came in and started beating everybody. The prisoners were then ordered by Delić to sit outside in a canal. Delić summoned the guards to kick the prisoners. It went on for some time. This was when the Red Cross was in hangar 6. One day Delić came in and started beating people with a shovel, because somebody fabricated playing cards. Delić ordered Vukasin Mrkajic to take his pants of and started hitting him on the buttocks with the shovel until it started bleeding. Then Novica was beaten with a shovel until the metal part fell of, when Delić continued beating him with the wooden stick. In tunnel 9 people had to sleep on the concrete floor, there was not enough space. In the beginning there were no blankets. There was a can which could contain 15 liters in the tunnel, this functioned as a toilet. Unless the guards would take the prisoners out. The food was mostly three loaves of bread for 45 prisoners (until 15 June 1992, the witness distributed the bread from the administration building to the tunnel).

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Vaso Dordic	(4352)	The conditions in Number 6 were terrible. We received food once in a day, We had a WC outside and at night there was a bucket right next to the door, which was used during the night for urination. Some were allowed to go outside during the day; some were not. There were periods when we had no food for two days in a row. We didn't have drinking water regularly. We had small quantities, very small quantities.
	(4350-51)	Zenga took them out of the hangar and beat them (kicked with his boots and hit with riffle butt), hit his brother with a knife and split his eyebrows.
Mirko Dordic	(4720)	Treatment after beatings: Only some water, if somebody managed to get hold of some, because it was not allowed to help each other when somebody was beaten up, and after beatings there is dehydration and everybody needs water, but rarely could anyone get hold of the water, because they didn't dare, because they would be beaten.
	(4723)	We all had to sit there folded with our knees up, our armes on our knees, and to look down for a time, and then later when he walked in, we all had to get up.
	(4725)	The food was very bad. We got something twice a day and it consisted of each time a slice of bread. One loaf was shared into 14 to 18 peaces. Two or three spoonfuls of some kind of vegetable. Then there were periods when we received nothing and this was from 13th - 17th July, when we got no food at all, and we prisoners from Bradina were not even given water. The water was also distributed two or three times a day. One bottle was shared by about seven or eight people, depending on how many people there were between the pillars that supported the structure. We were lucky if the bottle happened to be one of a litre and half rather than a litre. We slept on the concrete floor. If anyone had a jacket or something to put beheath him. Our shoes served as a pillow. We couldn't look after our hygiene at all. We washed very rarely. For toilet needs the time was fixed. We were taken out twice a day for urination. If you wanted to go to the toilet for some other reason, you had to ask the guards, but that also depended on who was in duty. I know that Hazim Delic would force us to go to urinate in a group of 30-40 people. We had to run there. Upon his command he would say:"Take it out. Stop." This was very short, the time we had. We just ran out and had to run back, so that there were people who just didn't have enough time to finish. There was a bucket inside.
	(4758)	Delic came in and beated them with a baseball bat in early July. Delic hit him twice.
	(4759)	Delic blaimed on them of the killing of some policemen in Bradina and mostly Delic beat them therefore.
	(4760)	Right after the visit of ICRC, Delic with a dozen guards came in and beat them all by kicking them.

	(4761)	Delic with some other guards beat them with shovel handles and other tools as a punishment because they had made playing cards and played cards.
	(4762)	After another ICRC visit in late October or early November, Delic brought him out and beat him together with about ten prisoners. They were kicking in the kidney area and in hte crotch.
	(4772)	Delic shot inside the hangar into the roof, the bullet splintered and hit Davor Kuljanin on the forehead, Branko Mladic on the finger and Momcilo Mrkajic in the neck. They were taken to infirmary right after that.
Witness M	(4908)	He did not get any treatment to his hand before the blister bursted and started to fester.
	(4918)	I saw people die from this beating. A number of them died from this beatings.
	(4954)	During his stay in tunnel 9, there was no container of any kind and people releaved themselves right there on the floor, on the concrete.
Witness B	(5032-33)	They were ordered to enter the manholes which were 2-3 metres deep. Some of them were half full of water. In some were five men, in others there were ten. When they were placed in the manholes, Muslim guards were present. In charge of this team of guards when they were brought to Celebici, was the Commander Hazim Delic.
	(5033)	His father was placed in the other manhole at the same time, but first he didn't know that. Then he heard his cries for help and recognised the voice of his father who was in his mid sixties and quite sick. When they opened the manhole, he saw his father sitting next to the orher manhole and seemed lost. He was hardly conscious.
	(5034-35)	He saw Delic and Pavo Mucic outside the manhole when he was taken out.
	(5037)	Living conditions: "Horror". There was dirt, filth, infectious skin diseases. We didn't wash for a month. In the camp we had lice. As for food, we got one thin peace of bread a day, but there were periods that didn't get even that. We drink industrial water which was taken from hydrants, from these devices, so that frequently people had intestinal troubles and other problems probably due to the water and to the general conditions. There was a terrible hunger. We didn't get anything to eat and we were not allowed to recceive food from people outside. He lost weight about 40 kilos. People fainted when they tried to get up. (5039) The temperature in the hangar was unbearable. It was extremely high in the summer.
	(5046-)	Immediately after the visit of the ICRC in the first half of August he was really beaten up. Hazim Delic with about eight guards came in and each prisoner was beaten by four guards. Delic were standing at the door and wanted some prisoners to be beaten more severely than others.
	(5050)	Esad Landzo or Delic would come in and tell that "whole Bradina must stand up" and then they beat them.

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	(5063-64) (5064)	Zenga wrapped a slow-burning fuse around some prisoners' chest and lit it. Additionally, he forced prisoners to do push-ups and simultaneously he kicked them with full force. Man called Bendzo had his leg lighted and Nedo Draganic was poured with petrol and his whole leg was burnt from the lower leg to the knee, and he had terrible wounds without any medical treatment.
Zoran Ninkovic	(5147) (5151)	After Radoslav Vujicić was beaten, another six or seven prisoners were thrown in after beating. Zeljko Klimenta: Zoran saw him in the same morning than Radoslav Vujicić and in a poor condition. Zeljko relieved himself in his pants. He couldn't get up.
Witness D	(5190) (5212)	All the members of the Commission could see through the window, when Delic lined up prisoners against the concrete supporting wall. Delic carried a riffle with him on the ready. They would fire above the heads of those people bursts of fire. When Zara Mrkajic was brought into interrogation by Delic, they asked why his hands were tied. Delic answered that it is none of their business. One could see that his blood circulation had been interrupted by this rope. Afterwards his hands shook and they moved them. During the interrogation Delic saying things to him and after a while a shot was heard, D turned around and saw Delic with a riffle but cannot say for sure whether it was Delic who shot. This was clearly meant to intimidate the prisoner.
Witness P	(4499/7) (4525/10) (4526/4)	During the time the witness treated people in the Third March School, he treated about 20 to 30 people who were injured in Celebici. The witness would only get a small portion of the medicins he would request from Mr. Delic. Nobody could be sent to a regular hospital when the witness was in Celebici.
Petko Grubac	(5957/15) (5958/1) (5975/10) (5988/22)	Upon his arrival in Celebici the prisoners were lined up against a wall for half an hour to an hour. There were around 250 people in hangar 6 when he arrived. The doctors had no power to decide as to the way the injured would be treated, nor when they were brought in or taken away to any other institution. When they were there none of the patients was taken to a medical institution, though the need for this did exist. The witness visited number 6 quite a number of times and saw many prisoners with visible injuries there.

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Branko Sudar	(5756/24-25) Conditions in hangar 6 were terrible; Slept on concrete floor (5757/whole pg) Some days no food; other days a slice of bread in the morning and a slice at night, and a ladleful of water. Bucket used as toilet at night. Dirt and Lice. (5761/4) Branko Sudar lost about 30 kilograms. (5765/13-16) Delic would take BS out and hit him. (5765/17-21) Landzo would not let BS use the latrine; after he finally let BS go, Landzo hit BS with a baseball bat upon his return to the hangar. Cross-exam: (5943/1-7) The door was closed when they wanted it to be closed, when they wanted us not to have enough air. We would lie down on the concrete to get more air. We had no water, no food, or very little, and when they came in , they would open the door, Zenga opened the door when he came in. Sometimes it was open, but sometimes when he wanted to torture us, then the door was closed.
Milenko Kuljanin	(5446 - 5448) Conditions in Tunnel 9 were abominable: no light, not enough water and food, one bucket as a toilet. Delic would beat us with baseball bat before going out to relieve ourselves. (5519) In tunnel 9 were receiving half a cup of water everyday and a slice of bread every third day.
Witness R	(7694-7695) Witness stayed in Tunnel 9 for 7 days. Initially there were 77 men in the tunnel, but that number varied. No sleeping accomodations. No food first two days. Water often contaminated with faeces or industrial waste. Prisoners had to relieve themselves at one end of the tunnel, which began to accumulate. (7697-7698) On second day, they could hear moans and cries of more prisoners being beaten outside the tunnel. Witness heard voice of Miroslav Vujicic say that he would not allow them to kill him like a dog. Then immediately there was a burst of fire and Witness heard the words: "He got away, god damn him." Subsequently, Witness learned that this was Hazim Delic's voice. Witness never heard the voice of Mirosalv Vujicic again. (7918/19-20) Vujicic's brother, Radoslav, told the prisoners that "Delic killed Miroslav." (7695-7696) On second night, guards forced prisoners to turn over all of their valuables. (7706-7708) In hangar 6, could only use industrial water for drinking, when it was available. After second attack on

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		Bradina, prisoners not given water for three days. After that, prisoners allowed one litre of water per day. In July and August, temperture inside "would climb to unbearable heights." Prisoners would begin to perspire at 9:00 and would continue until after midnight.
	(7749-7751)	Food was mostly stale, moldy bread. One loaf would be divided up between 14 and 15 prisoners. Occasionally there would be some cold soup that would be a few days old. All the prisoners had to share five spoons, which were never washed. Prisoners were given no food or water on Serbian holidays such as 28 June and 12 July.
	(7751/7-22)	Prisoners had to sleep on concrete in "crouching" positions. On 12 July, DELIC ordered that prisoners should not sleep for three days and prisoners were forced to remain sitting with their knees up for that entire time.
	(7751-7753)	Prisoners were taken to a pit outside behind hangar 6 to use as a toilet. Later, DELIC forced groups of prisoners to run outside, urinate, and run back inside in less than a minute. During the night, prisoners forced to defecate in plastic bucket by the door.
	(7753-7754)	Before an interogation, Witness forced to stand in the hot sun with his hands raised above his head for four hours. Beaten twice by Zenga, then once by Delic after visit of Red Cross.
Witness J	(7445) Conditions in tunnel 9.	

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Count No 48 / Unlawful Confinement of Civilians

DELIC - MUCIC - DELALIC Direct participation + Superior responsibility

WITNESS	EXTRACT OF EVIDENCE	
Mirko Babic	(260/1-2)	Mirko Babic testified that he did not take part in the defence of the village of Bijelovcina as he was 60 years old and not interested in defending.
	(377/11-14)	In cross-examination he stated that he was not armed and that he did not know of the Serbs that were armed in his village. He reiterated that he had a pistol with a license.
Grozdana Cecez	(482/5-9)	She stated that she was not involved in the fighting or any defence to the attack. She also stated that she was not a member of any armed group.
	(533/1-7)	She stated that for the most part, she was not informed as to why she was being imprisoned. On one occasion, she was told by a guard that she would be there until they found Lazar. Once (during her first three weeks in the camp), they interrogated about her husband and son.
	(534/2-10)	Shortly after ICRC visit, she had a conversation with Rusmir Hadzihuseinovic, however, the reasons of her detention not answered. On this occasion he told her that Lazar was not guilty of anything and that they could not find him on any of the books.
Branko Gotovac	(980/24-25 & 981/1-3)	He stated that at the time when he was arrested he was 61 years old and that he was not asked any questions nor was he interested in anything. He also stated that he did not participate in the defence of his village.
	(1008/25 & 1009/1-2)	On the reasons for imprisonment, he stated as follows: *"I heard nothing except that it was because I was as Serb"*
	(1024/12-22)	He stated that because of his age no one ever forced him to be a member of the SDS and that he was not involved in anything during his entire life. He stated that he was not politically active during 1992.

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Mirko Kuljanin	(1158/22) Witness 61 years old at time of detention. (1164/16-19) He stated that he was not informed of the reason for his arrest and that he never found out why he was arrested. (1164/22-25) He stated that he did not directly partake in the defence of the village even though he had a rifle. (1254/22-25) When he was arrested, the women and children were separated and taken to an elementary school in Bradina.
Witness F	(1299/4-6) He stated that when the shooting started, he was armed, with a rifle that he had obtained in 1991. (1299/23-25) He stated that during the attack that he had not participated in the defence as, it did not even exist according to him. (1300/3-16) He stated that (on 27 May) a foreign national verified that the weapon had not been fired. (1341/24-25 & 1342/1-2) During his detention at Celebici, F was never charged with any offence.
Stevan Gligorevic	(1425/1-4 *not able to find orginal - page numbering reflects livenote)* He stated that he had done nothing to defend himself and that he did not posses a weapon. (1425/5-6 *not able to find orginal - page numbering reflects livenote*) He stated that he had never been a soldier. (1444/8-11 *not able to find orginal - page numbering reflects livenote*) He stated that he was never informed of the reasons for his arrest nor was he charged with any crime. (1527/15-20) He stated that he was unaware of any promise made to the people by the Serbian forces that they would liberate them.
Nedeljko Draganic	(1601/20-24) He stated that he was never part of any armed defence of his village and that he was unarmed prior to the armed conflict. (1602/23-25 1603/1-4) Of the group of 15 to 18 men he was arrested and taken to Celebici with, maybe two had some hunting weapons fro which theyhad permits. (1617/12-18) He stated that he was never informed personally as to why he was being detained in Celebici. However, on one occasion, Delić walked into number 6 and told them that they were being detained because they were Serbs. (1659/1-2) In cross-examination, he stated that as far as he knew, there was no attack nor any defence.

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Milojka Antic	(1769/16-20) She stated that she did not have any weapon at the time of her arrest. Furthermore she stated that she did not know if anyone else in her family had a weapon. (1769/1-3) She stated that she did not take part in the defence of the Serbian houses in her village.
Witness N	(1873/15) He stated that he was unarmed and at home when he was arrested. (1874/11-17) He stated that he was not a member of any armed group at the time of his arrest nor did he participate in the defence of Viniste. Furthermore, he stated that there was no defence at all (2010/22-25) In cross-examination he stated that he was not aware of the fact that Jordan Gotovac was in possession of an automatic weapon when he was arrested. (2090/21-25 & 2091/1-4) In cross-examination he reiterated the fact that when they were arrested they had no weapons. He stated that if anyone claimed that he had a weapon, it would not be true.
Miro Golubovic	(2103/19-21) He stated that he was armed several says before the military action. He also said that he did not take part in the military action. (2104/3-15) However, prior to the actual military action, he was involved in watches. He stated that he had a weapon - a machine gun 762. When the military action started he along with other people form the village, took refuge in the creeks and caves. A surrender was negotiated and people started turning over their weapons. At that time, he said, he did not have enough courage to turn himself over. (2153/7-13) In cross-examination he stated that this "patrol group was rather informal. He furthermore stated that he did not know that anyone was in charge of this group. (2153/23-24) He stated that the group did not wear any uniforms - perhaps, however, a few people wore old JNA uniforms.
Dragan Kuljanin	(2295/6-8 He stated that he did not take part in the defence of his city (2295/20-21) He also stated that neither him, nor his father had a weapon when the village was attacked (2422/19-23) He stated that when he was arrested, he did not have any weapon with him - no rifles, no guns of any kind. He furthermore reiterated that none of the 12 people with whom he was arrested had any weapons in their possession.

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Mladen Kuljanin	(2532/5-14)	In cross examination, he testified that he was not a member of any kind of military unit. He also stated that he had told the ICRC that he was a civilian.
Vaso Dordic	(4346/7-16)	He stated that he was not informed of the reasons for his arrest. He furthermore stated that at the time of his arrest, he did not own any weapon and was not a member of any party. He also stated that he was at home all the time - he stated that he was working in the fields with his neighbours, trying to survive.
Mirko Dordic	(4711/6-9) (4712/16-19) (4714/1-10)	He stated that he was not told why he was being arrested. However, from the moment they were arrested, they were called Chetniks. He stated that in the defence of Bradina, he did not fire a single bullet (this fact was verified by the three soldiers). He stated that he had an automatic rifle but that at the time of his arrest, he did not have a gun with him, as he had left it in his home. He also stated that between 200 and 250 people were armed at the outbreak of the conflict and took part in the defence.
Zoran Ninkovic	(5129/20-23)	At the time of his arrest, he was not told the reason for his arrest, however, he supposed it was because he was a Serb.
Witness D	(5183/19-25 & 5184/1-5) (5184/14-19) (5209/10-25& 5210/1-7)	List of prisoners: There were probably several lists brought to them by Mucic and the members of the Commission talked to Mucic, or if Mucic wasn't there, then it was Delic, which people needed to be interviewed. There were civilians there too. D saw some women on the list. The practice was to bring in virtually all males from the area of combat operations, and not only men but women as well, but there were men who were brought in who were outside the area of combat operations. He stated that there were maybe five women on the list. D stated that he was interested within the Commission of their status in the camp, but he never got an answer. They said that Grozdana Cecez had to stay there because there was information from the field that her husband was armed and hiding in the vicinity of Konjic. There was also a wife of Rajko Dordic, who was the commander in Bradina. After a period of time, D suggested that these women be released. He stated that he probably even put in information into two reports suggesting the release of these women. He stated that he didn't know when these two women were released. However, he thought that they were probably released. Regarding the others, he did not know how many remained and whether or not Grozdana remained.

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	(5223/21-25 & 5224/1-25 & 5225/1-12) He stated that he had spoken to an elderly man in the camp regarding the reasons for his detention - he asked him why he had been brought in. According to D, there was no reason for this man's detention. He then went to the Commission to inquire why the man had been detained. The people there merely shrugged their shoulders. Thereafter, he stated, he approached Mucic. He asked Mucic: "Do you have any official record or report as to why this man was brought in?" Mucic replied that there was nothing. He then asked Mucic how they were going to him. Mucic said nothing. After taking a statement form this man, he spoke to Mucic again asking why this man was being detained to which Mucic replied by saying that he was a Serb and a personnel man in the firm of Igman and therefore they must keep him detained. He stated that he did not know this - he only knew that he was a Serb. (5225/15-25) Another man was a teacher of philosophy or something and there were no reasons in writing or orally for him being there. He stated that this man had said that he had left his parents in the village of Idbar and that he had not been part of any military formations.
Milenko Kuljanin	(5422/3-8 *not able to find orginal - page numbering reflects livenote)* He stated that he did not have any weapon at the time of his arrest. Furthermore, he stated that he did not take part in the defence of the village of Bradina
Branko Sudar	(5745/20-23) Upon being arrested, they were ordered to bring their weapons along - these were then confiscated. (5801/18-19) He stated that the weapon which he had on him, he handed over. (5911/10-14) He stated that there was not any kind of organised partisan group or organised resistance in his village - people came from Donje Selo, Bjelasnica - refugees.
Petko Grubac	(5951/5-15) He stated that there was some kind of a guard duty where people held checkpoints around the village in order to prevent people coming into the village. He stated that he was not involved in anyway in these checkpoints, that he did not have any weapons himself and that furthermore, he did not even know how to use any armaments.
Risto Vukalo	(6227/5-8) He stated that he was not engaged in any military activities early in 1992. (6313/18-25 *not able to find orginal - page numbering reflects livenote)* He stated that regarding the arming of the population, he knew very little as he was living in a hamlet which was a kilometre away form the nearest hamlet. (6318/24-25 *not able to find orginal - page numbering reflects livenote)* In cross-examination he reiterated that he was not aware of any organising actions for defence.

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Witness T	(6884/10-25) He stated that in some places there was not much resistance (like Donje Selo), however in some places there was resistance. This resistance was organised and comprised the Serb inhabitants. These people were armed. He stated that he was not sure if they had commanders. However, he stated that there may have been some locals in charge.
Witness J	(7576/3-12) He stated that in Bradina they practically did not have an army - there was some talk about what would happen if there was an attack - some people went to some meetings - however, he stated that he was not part of this group. (7576/23-24) He stated that some people had weapons - some rifles. (7577/12-22) He stated that he himself had a rifle and a pistol. This pistol was stolen a few months previously.
Witness R	(7678/15-25 & 7679/1-4) He stated that when the shelling started, he was working in his garden - he then headed off with others, for the railway station, where they spent the night. He stated that there was no actual exchange of fire and the following day they were arrested. (7679/5-9) He stated that when he was arrested, he had a weapon, a M48 with him. (7814/4-7) Witness R testified that when he was released, he never received any release document, nor did he ever receive any documentation describing charges made against him. He only received a paper containing the number with which he was registered with the Red Cross.

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Count No 49 / Plunder of Private Property

DELIC - MUCIC **Superior responsibility**

WITNESS	EXTRACT OF EVIDENCE	
Mirko Babic	(438/20-25)	In the evenings, some people came in building 22 and ordered those who had watches or gold to turn them in - they threatened them that if they did not get it, they would come and control; some people got up and turned these items over to them.
Grozdana Cecez	(570/24-25& 571/1-4)	Before being arrested, Ibrahim Duro took all her money saying to her that they would take it away anyway. She stated that she took off her wedding ring and left it in her brother-in -law's house and she kept her ID and some medicines with her.
Mirko Kuljanin	(1190/22-25& 1191/1-17)	One evening on about the 4th day, a soldiers helmet was passed around in number 9 and people were told to put their valuables and private property in it (they had to put all their remaining property in the helmet, as much of this property had already been removed before coming to Celebici). Mirko Kuljanin handed over the watch which he had in his pocket. He stated that he could hear the items being dropped into this helmet.
Steven Gligorovic	(1330/9-12)	He stated that when he was detained, all items were removed from him and that this was the case with others who were detained with him. They were forced to line up, give their personal data and turn in all valuables.
	(1473/2-4)	In cross-examination , he stated that when he was taken to Celebici, he only had the clothes that he had on him.
Witness N	(1929/8-14)	He stated that on one evening during in his stay in building 22 (the date of which he did not recall), all prisoners had to give their money and valuables to two people in uniforms - a helmet was passed around. He stated that he handed over the money which he had. and that each prisoner had to turn in everything they possessed.
	(1990/13-15)	He stated that he never got his property back.

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D 7651

Mladen Kuljanin	(2528/6-13)	On his arrival in Celebici on 27 May, he stated that they had to hand over their valuables -those who had gold, money, documents etc., had to hand these over. He also stated that he never received this property back.
Witness P	(4489/3-7) (4490/13-15)	In Celebici people took his wallet, bank card, a signed cheque and money. His drivers licence, the signed check and his money were not returned to him.
Mirko Dordic	(4710/20-25)	Upon being captured, he stated that they were searched and that everything they had on them was taken - the watches and jewellery and money. He also stated that these objects were never returned.
Witness M	(4897/10-22)	When they arrived in Celebici, a few strong guys took everything they had, all the gold, the watches, wallets, keys. Witness M stated that they took a chain, a ring, his wallet and keys from him. These items were never returned.
Witness B	(5031/10-25 & 5032/1-8) (5090/11-17)	When they arrived at Celebici, they were ordered to empty their pockets, to give whatever they had, belts, laces, watches, money. Witness B stated that from him they took his watch, and about a month later a ring. Nothing was ever returned. In cross-examination he stated that Delic was present when these items were being removed. He stated that he did not see Mucic
Zoran Ninkovic	(5130/16-23) (5131/8-13)	After being arrested in Barakusa, he was brought in front of Mico Kuljanin's restaurant. Here, they took everything from them. They made them take all the valuables out of their pockets. They said if they found anything with anyone they would kill them. From Zoran Ninkovic, they took some money, a wrist watch and jacket. Nothing was returned.
Milenko Kuljanin	(5501/1-3) (5509/17-19)	He stated that his ring and bracelet were taken from him, when he was arrested and never returned to him. In cross-examination he stated that his property was seized in tunnel 9.
Branko Sudar	(5911/23-25& 5912/1-10)	His valuables (this included everything, driving permit, ID cards, shoelaces belts and even his coat) were removed by the people who arrested him. Subsequent to his arrest and the removal of all valuables, he was made to walk about 3 kilometres to the camp.

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Petko Grubac	(5954/19) (5956/15) (6117/19-22)	In the police building in Konjic his personal things and documents were taken from him. He never got his belongings back. Admits in cross-examination that nobody from the camp in Celebici was involved in the taking of his property.
Risto Vukalo	(6263/17-25 & 6264/1-4)	Risto Vukalo stated that he was called out by Landzo and was taken behind the hangar. Landzo was holding a grenade in his hand. Landzo told him to remove the ring from Keljo's hand. Landzo said that if he would not do it he would be killed by the grenade. In fear Risto tried to take it off, but had a hard time doing it. Landzo told him if he did not succeed Risto had to cut of Keljo's finger. In the end he succeeded in removing the ring and gave it to Landzo, who threatened to kill him if he told anyone what had transpired.
Witness T	(6776/1-12) (6777/4-9) (6778/2-4)	In cross-examination Witness T admitted to have been involved, along with Alisbasic and Masic, in the passing around of the helmet to prisoners which they had to fill up with valuables. A few days after this event, the guards were ordered to line up and to admit who had done it. He stated that they were ordered to give back all the property that they had taken. Furtheremore, he stated that most of the property had been returned, except for a small amount of stuff such as cigarettes. He later stated that the goods which were not returned were insignificant - old watches, a few golden rings. He also stated that the property which was not returned was sold to buy cigarettes.
Rajko Draganic	(6916/16-19) (6918/19-21)	Upon arrival in the camp they were ordered to empty their pockets - some had drivers licences, ID's, some had money. They were also ordered to remove their shoelaces and belts. Draganić never got his valuables back - he is not sure whether the others received their valuables back or not.
Witness J	(7440/9-23) (7441/6-7) (7442/1-17)	He stated that they were ordered to empty their pocket the first day when they arrived. He stated that they were ordered to put up their hands and to empty their pockets - Mucic was present on this occasion. Macic (a scribe) took his property away from him. Mucic came up to him and said "he has a lot of money" and they kicked him. He stated that valuables were taken from people in the camp (in number 9). He also reiterated the fact that the prisoners were ordered to turn over whatever they had and that if they did not, and subsequently anything was found in their possession, that they would die. Thereafter, everyone threw what they had on them on the ground.

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Witness R	(7695/22-25& 6696/1-8) On his second night in Celebici, the camp guards came around with flashlights, which they shone on them. A helmet was then handed to the first person at the door and the guards said "you have to fill it up with gold or whatever else you have". Witness R stated that this included watches, rings, bracelets, chains crosses and also old Yugoslav money. (7696/20-23) He stated that he personally put his wedding ring and watch in the helmet and that he never received these back.

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Annex 3

Factual Prosecution Witnesses

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D. 7646

Annex 3-1

Profiles of
Factual Prosecution Witnesses

Case No. IT-96-21-T
25 August 1998

Name	**Milojka ANTIĆ**
Dates of testimony	14 April 1997
Ethnic background	Serb
Age	49
Occupation	Ordinary Worker
Home Town	Idbar
Period of Detention in Čelebići	15 June - 31 August 1992

Name	**Witness B**
Dates of testimony	15 - 16 July 1997
Ethnic background	Serb
Age	36
Occupation	
Home Town	Konjic and Brđani
Period of Detention in Čelebići	Second half of June - second half of August 1992

Name	**Mirko BABIĆ**
Dates of Testimony	12 - 17 March 1997
Ethnic Background	Serb
Age	63
Occupation	Retired Forester
Home Town	Bjelovčina (15 kms from Konjic)
Period of Detention in Čelebići	23 May - 1 September 1992

Name	**Grozdana ĆEĆEZ**
Dates of testimony	17 - 18 March 1997
Ethnic background	Serb
Age	47
Occupation	Shopkeeper
Home Town	Donje Selo
Period of Detention in Čelebići	27 May - 31 August 1992

Name	**Witness D**
Dates of testimony	16 - 17 - 18 July 1997
Ethnic background	Croat
Home Town	Konjic
Occupation	Member of Čelebići Investigation Commission

Name	**Jovan DIVJAK**
Dates of testimony	27-28-29-30 October 1997
Ethnic background	Serb
Age	60
Occupation	Retired General of the B-H Army

Name	**Mirko ĐORĐIĆ**
Dates of testimony	9 - 14 July 1997
Ethnic background	Serb
Age	40
Occupation	Waiter
Home Town	Bradina
Period of Detention in Čelebići	30 May - 9 December 1992

Name	**Novica ĐORĐIĆ**
Dates of testimony	12 and 16 June 1997
Ethnic background	Serb
Age	28
Occupation	Worked in the Railway Transportation Service
Home Town	Zukići near Konjic
Period of Detention in Čelebići	30/31 May - November 1992

Name	**Vaso ĐORĐIĆ**
Dates of testimony	7 July 1997
Ethnic background	Serb
Age	30
Occupation	Firefighter in the Railroad Company
Home Town	Zukići
Period of Detention in Čelebići	12/13 July - mid-October 1992

Name	**Nedeljko DRAGANIĆ**
Dates of testimony	2 - 3 April 1997
Ethnic background	Serb
Age	23
Occupation	Student
Home Town	Cerići
Period of Detention in Čelebići	23 May - 30 August 1992

Name	**Rajko DRAGANIĆ**
Dates of testimony	9 September 1997
Ethnic background	Serb
Age	44
Occupation	Woodworker / Worker on Construction Site
Home Town	Brđani
Period of Detention in Čelebići	15 June - 30 August 1992

Name	**Kemal DŽAJIĆ**
Dates of testimony	21-22 October 1997
Ethnic background	Muslim
Occupation	Director of the Standard public utilities company in Konjic from 1994

Name	**Witness F**
Dates of testimony	26 - 27 March 1997
Ethnic background	Serb
Age	43
Home Town	Bradina
Period of Detention in Čelebići	27 May - 8 October 1992

Name	**Stevan GLIGOREVIĆ**
Dates of testimony	27 March - 2 April 1997
Ethnic background	Serb
Age	47
Occupation	Teacher at Elementary School
Home Town	Hadžići / Bradina
Period of Detention in Čelebići	27 May - 4 October 1992

Name	**Miro GOLUBOVIĆ**
Dates of testimony	23 April - 5 May 1997
Ethnic background	Serb
Age	38
Occupation	Car Mechanic
Home Town	Konjic
Period of Detention in Čelebići	6 June - 17 July 1992

Name	**Branko GOTOVAC**
Dates of testimony	24 - 25 March 1997
Ethnic background	Serb
Age	65
Occupation	Retired Locksmith
Home Town	Vinište near Homolje
Period of Detention in Čelebići	23 May 1992 - 30 August 1992

Name	**Dr. Petko GRUBAČ**
Dates of testimony	12-13 August 1997
Ethnic background	Serb
Age	57
Occupation	Neurologist and Psychiatrist
Home Town	Konjic / Bradina
Period of Detention in Čelebići	28 May - 22 July 1992, including a stay in the 3rd March school

Name	**Gordana GRUBAČ**
Dates of testimony	13-14 August 1997
Ethnic background	Serb
Age	42
Occupation	Bank Employee
Home Town	Konjic / Bradina

Name	**Assa'ad HARRAZ alias TAHA**
Dates of testimony	11 August 1997
Age	42
Occupation	Journalist

Name	**Witness J**
Dates of testimony	13-14 September 1997
Ethnic background	Serb
Age	46
Occupation	Butcher
Home Town	Bradina
Period of Detention in Čelebići	Four months from the end of May 1992

Name	**Dragan KULJANIN**
Dates of testimony	5 - 6 May 1997
Ethnic background	Serb
Age	38
Occupation	Commercial Representative
Home Town	Bradina
Period of Detention in Čelebići	29 May (approx.) - 1 September 1992 (approx.)

Name	**Milenko KULJANIN**
Dates of testimony	4-5 August 1997
Ethnic background	Serb
Age	29
Occupation	Waiter
Home Town	Bradina
Period of Detention in Čelebići	29/30 May - November 1992

Name	**Milovan KULJANIN**
Dates of testimony	9-10 September 1997
Ethnic background	Serb
Age	27
Occupation	Waiter / Member of the JNA Reserver Forces
Home Town	Konjic / Donje Selo
Period of Detention in Čelebići	6-7-8 or 9 June - 9 December 1992

Name	**Mirko KULJANIN**
Dates of testimony	25 - 26 March 1997
Ethnic background	Serb
Age	65
Occupation	Retired Railroad Conductor
Home Town	Bradina (12 kms from Konjic)
Period of Detention in Čelebići	26 May - (approx.) 3 or 4 June 1992

Name	**Mladen KULJANIN**
Dates of testimony	6 - 8 May 1997
Ethnic background	Serb
Age	25
Occupation	Baker
Home Town	Bradina
Period of Detention in Čelebići	27 May - 17 November 1992

Name	**Witness M**
Dates of testimony	14 - 15 July 1997
Ethnic background	Serb
Age	39
Occupation	Worked in the Marketing of Yugoslav Railways
Home Town	Bradina
Period of Detention in Čelebići	about three months from 25 May 1992 on

Name	**Witness N**
Dates of testimony	14 - 22 - 23 April 1997
Ethnic background	Serb
Age	29
Occupation	Machinist / Employee in Restaurants
Home Town	Vinište
Period of Detention in Čelebići	23 May - 31 August 1992

Name	**Zoran NINKOVIĆ**
Dates of testimony	16 July 1997
Ethnic background	Serb
Age	37
Occupation	Car Mechanic
Home Town	Donje Selo / Bradina
Period of Detention in Čelebići	27 May - 6 June 1992

Name	**Witness P**
Dates of testimony	8 - 10 July 1997
Ethnic background	Serb
Age	42
Occupation	Ear Nose Throat Specialist
Home Town	Konjic / Bradina
Period of Detention in Čelebići	26 May - 22 July 1992

Name	**Arif PAŠALIĆ**
Dates of testimony	22-23-27 October 1997
Ethnic background	Muslim
Age	54
Occupation	Brigadier General in the B-H Army

Name	**Witness R**
Dates of testimony	14 -15-16 October 1997
Ethnic background	Serb
Age	40
Occupation	Teacher
Home Town	Bradina
Period of Detention in Čelebići	26 May - 31 August 1992

Name	**Branko SUDAR**
Dates of testimony	7-12 August 1997
Ethnic background	Serb
Age	47
Occupation	Truck Driver
Home Town	Cerići
Period of Detention in Čelebići	22 May, then taken to Musala Sports Hall for about 20 days; then returned to Čelebići by Delić - release date unknown

Name	**Witness T**
Dates of testimony	3-4 September 1997
Ethnic background	Croat
Age	28
Occupation	Locksmith / Driver in Čelebići
Home Town	Konjic

Name	**Risto VUKALO**
Dates of testimony	14 - 15 August 1997
Ethnic background	Serb
Age	33
Occupation	Machine worker / Welder
Home Town	Bjelovčina, Municipality Konjic
Period of Detention in Čelebići	22 May - 9 December 1992

Name	**Fadil ZEBIĆ**
Dates of testimony	21 October 1997
Ethnic background	Muslim
Occupation	Director of the Standard public utilities company in Konjic from 1989 until 1994

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Annex 3-2

Pictures of
Factual Prosecution Witnesses*

(Photocopies from video stills)

*For those witnesses whose image was not disclosed to the public, the Prosecution is providing to the Registrar under seal a separate enclosure with photographs

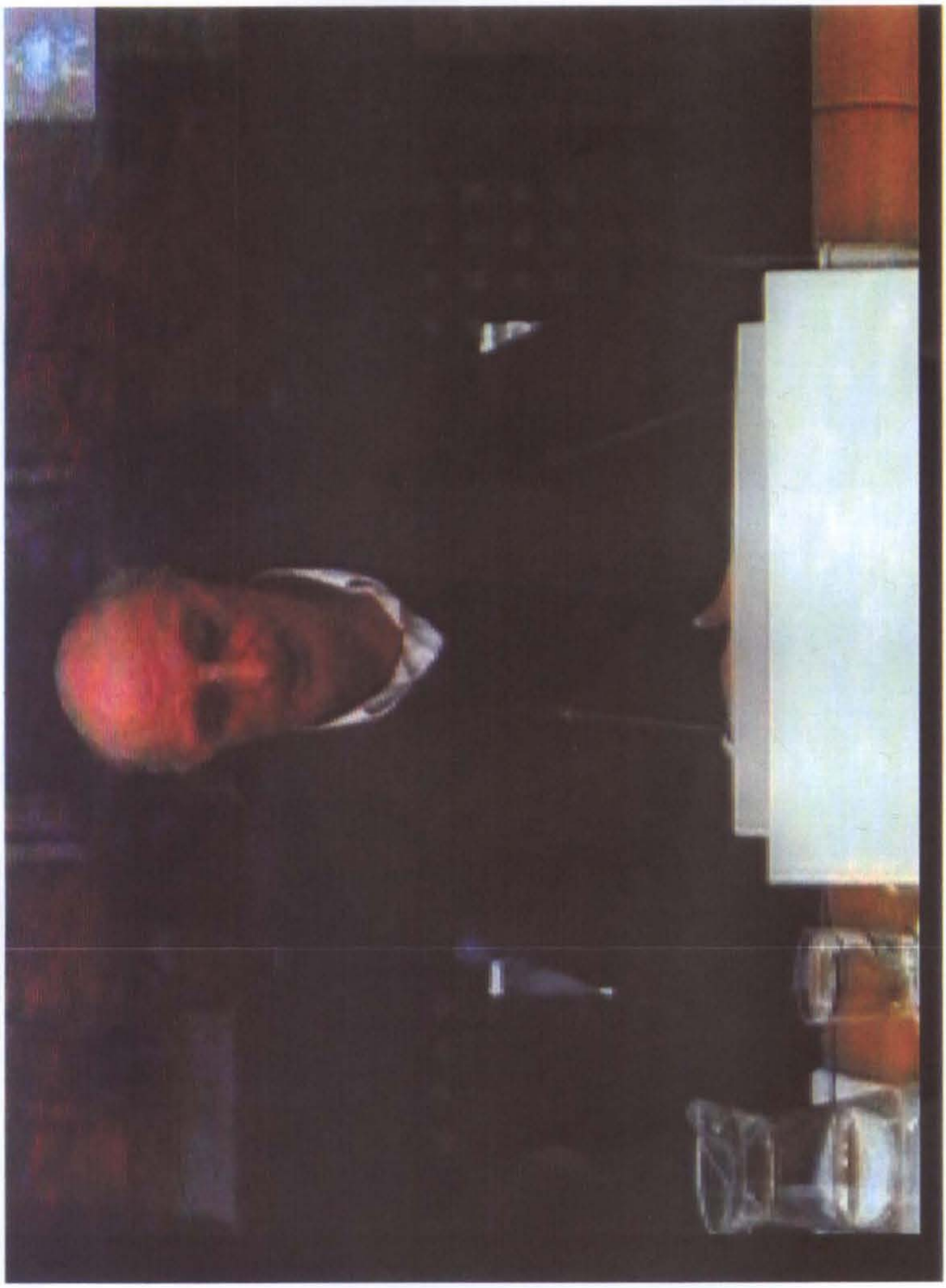
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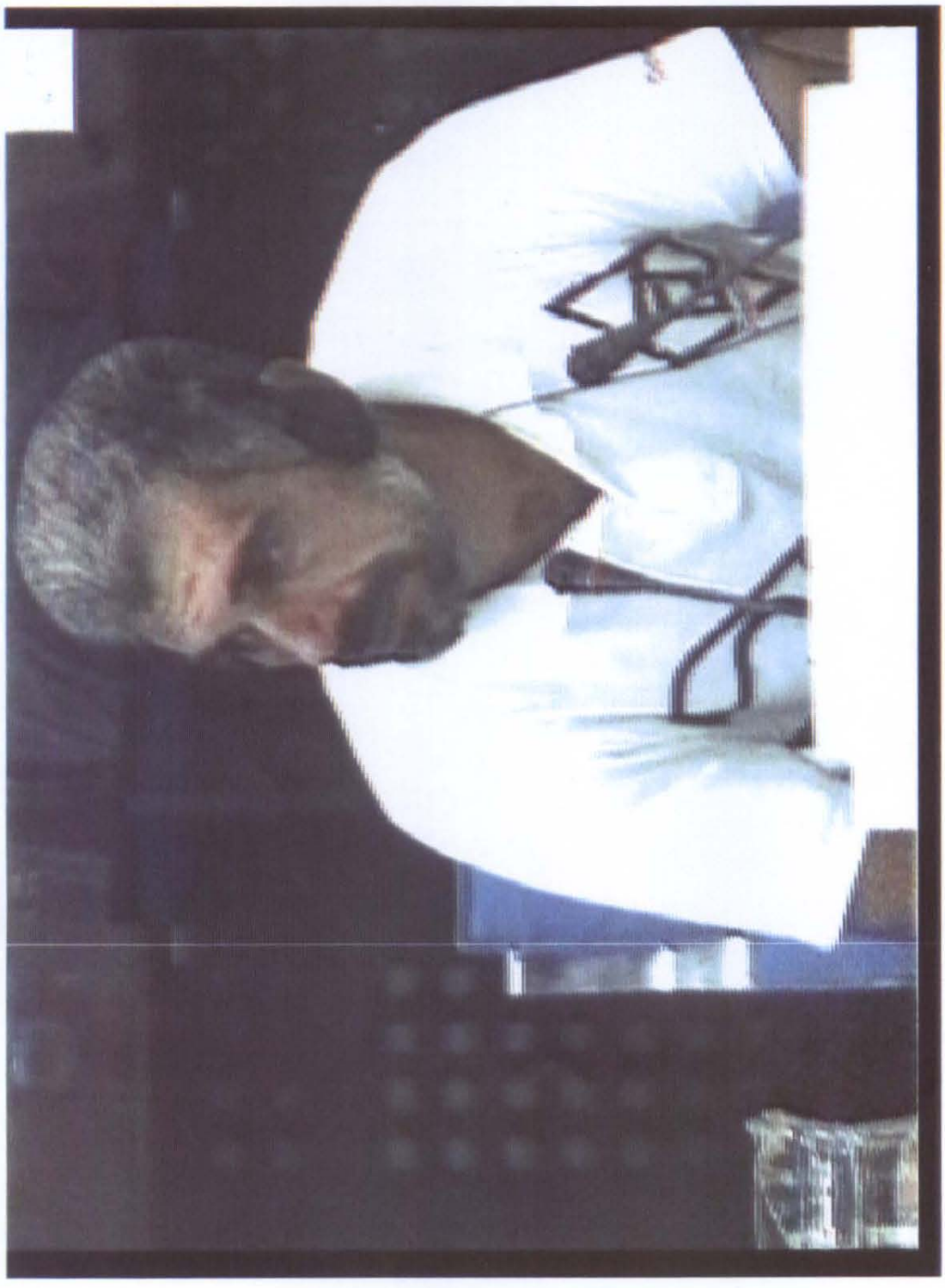
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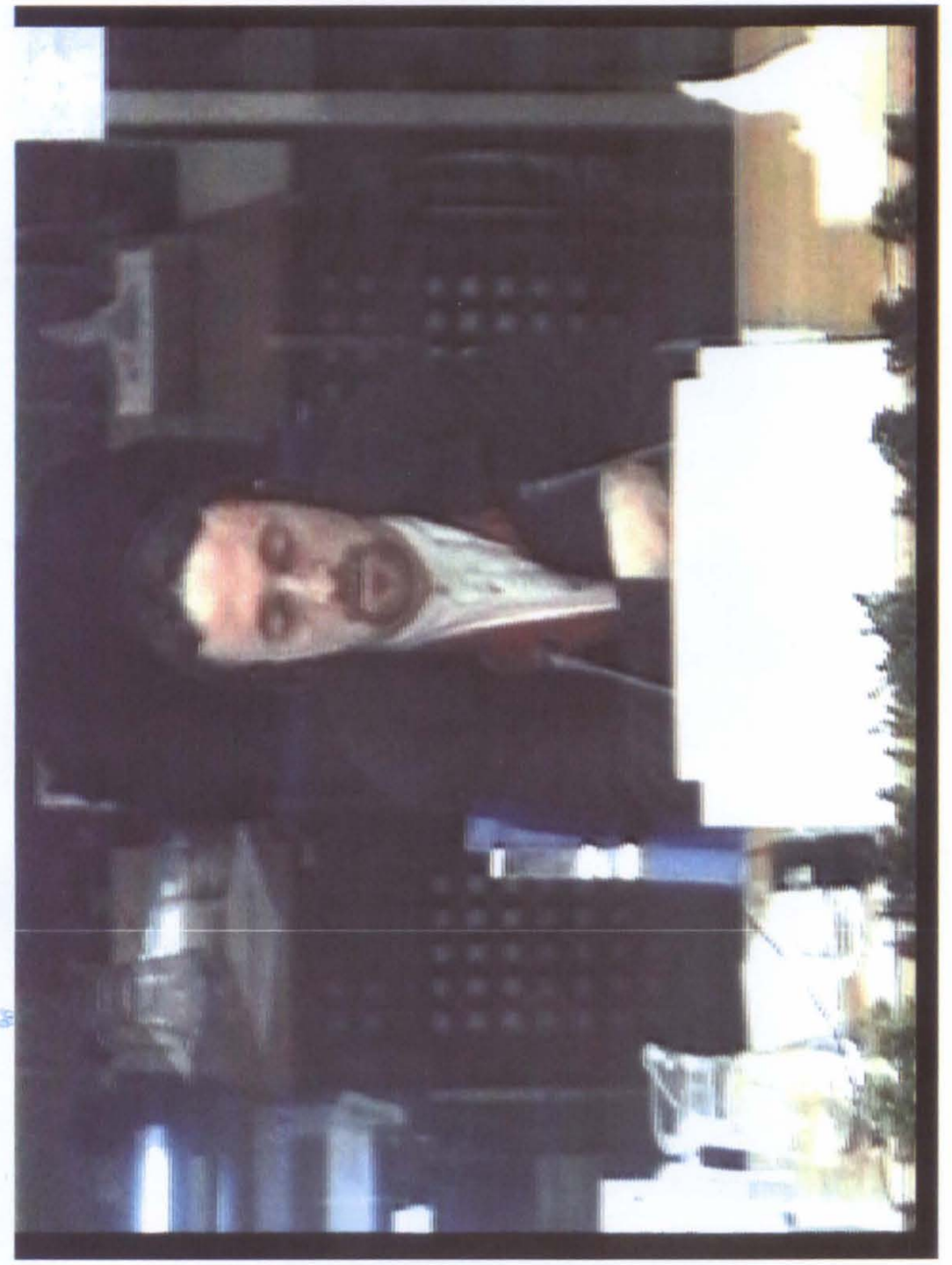


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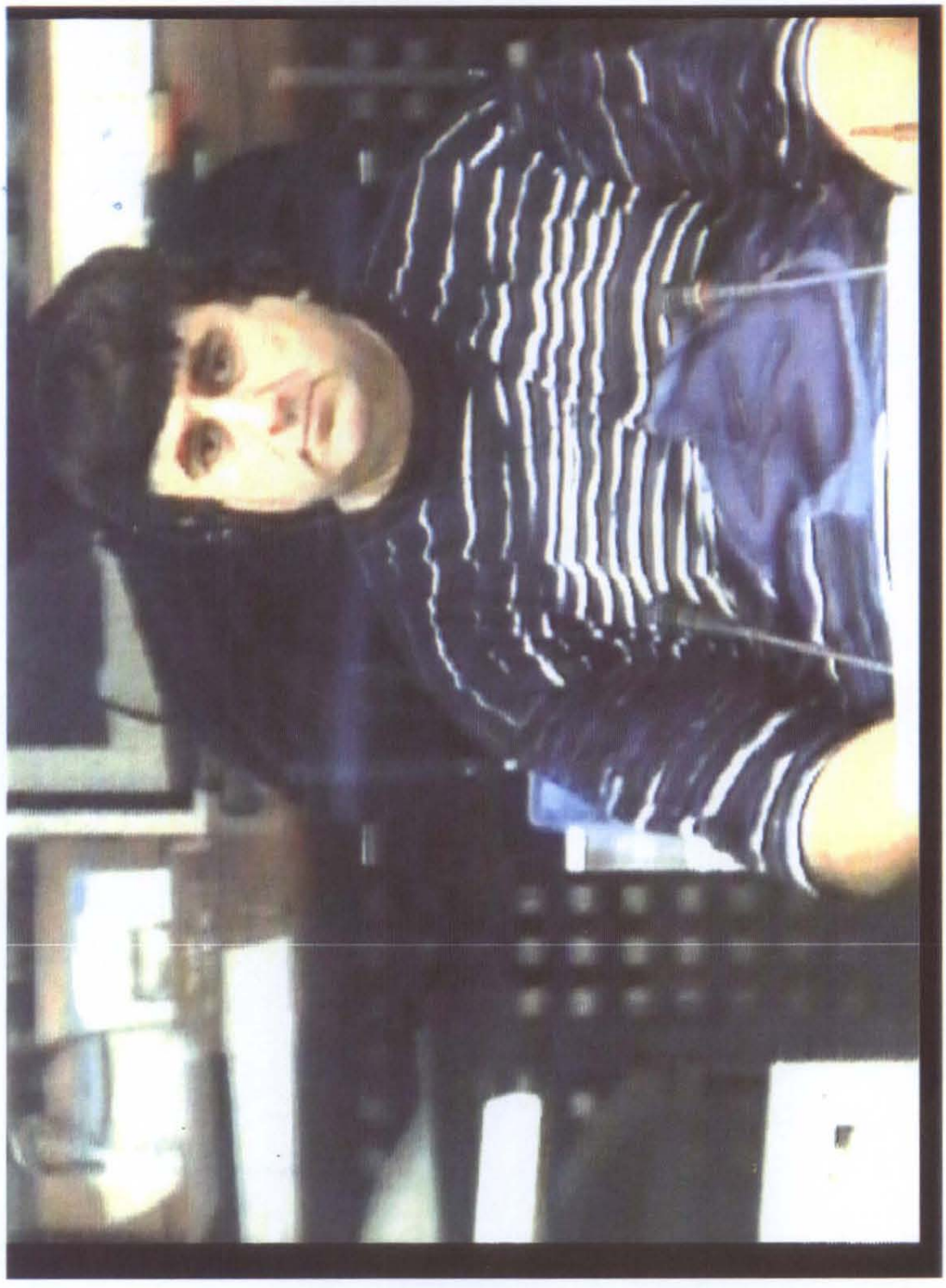
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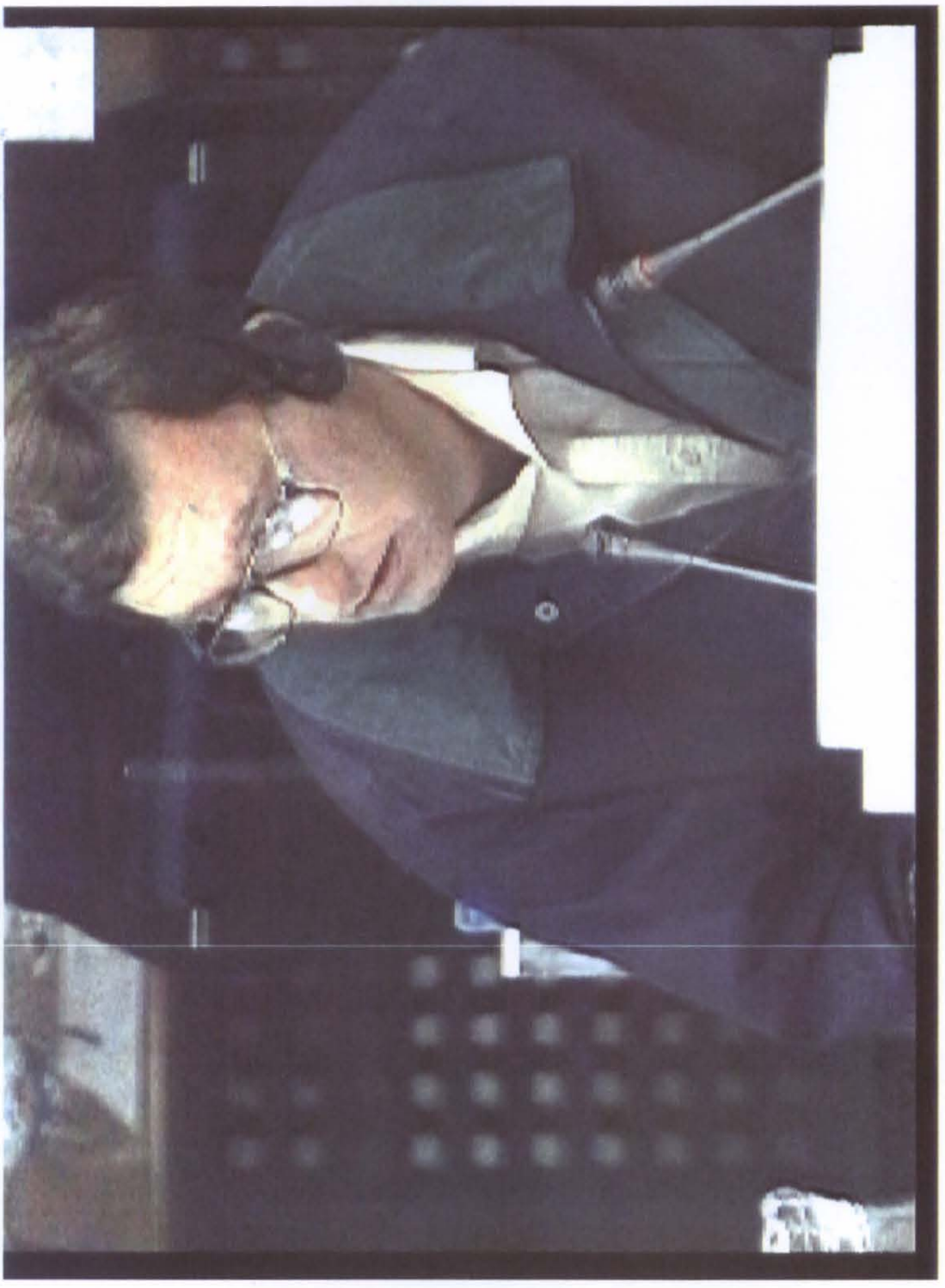


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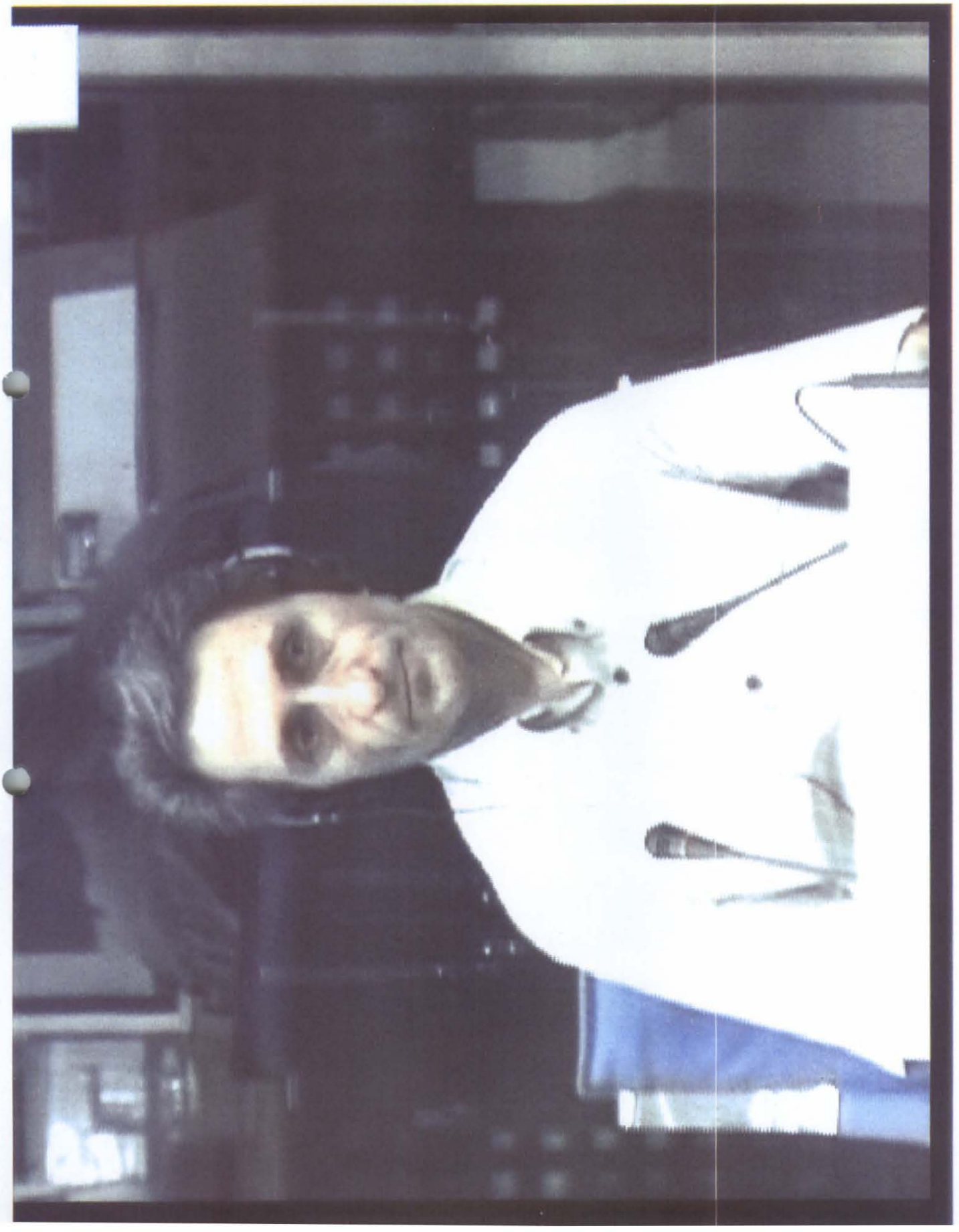


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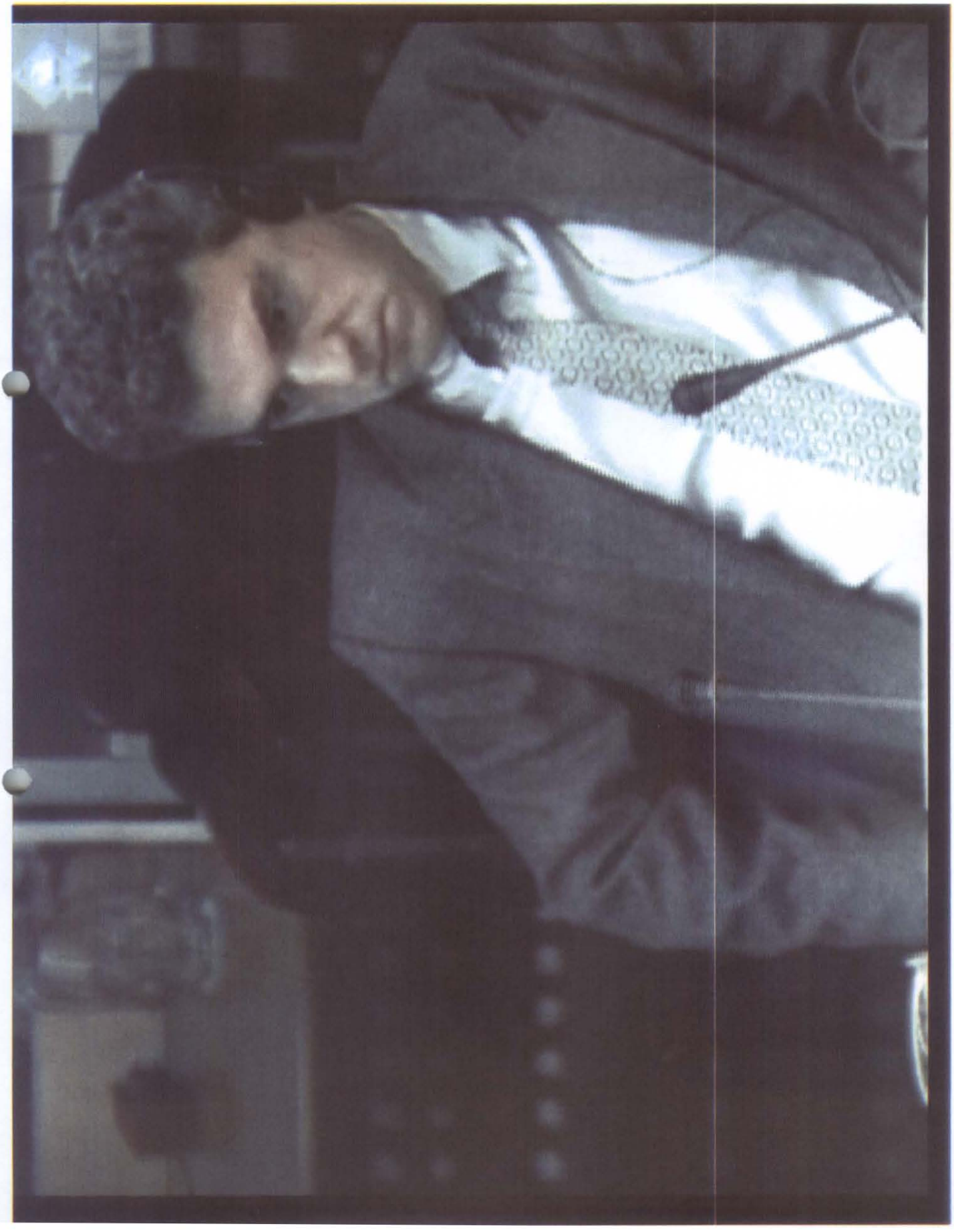


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IT 96 21 -T

7618

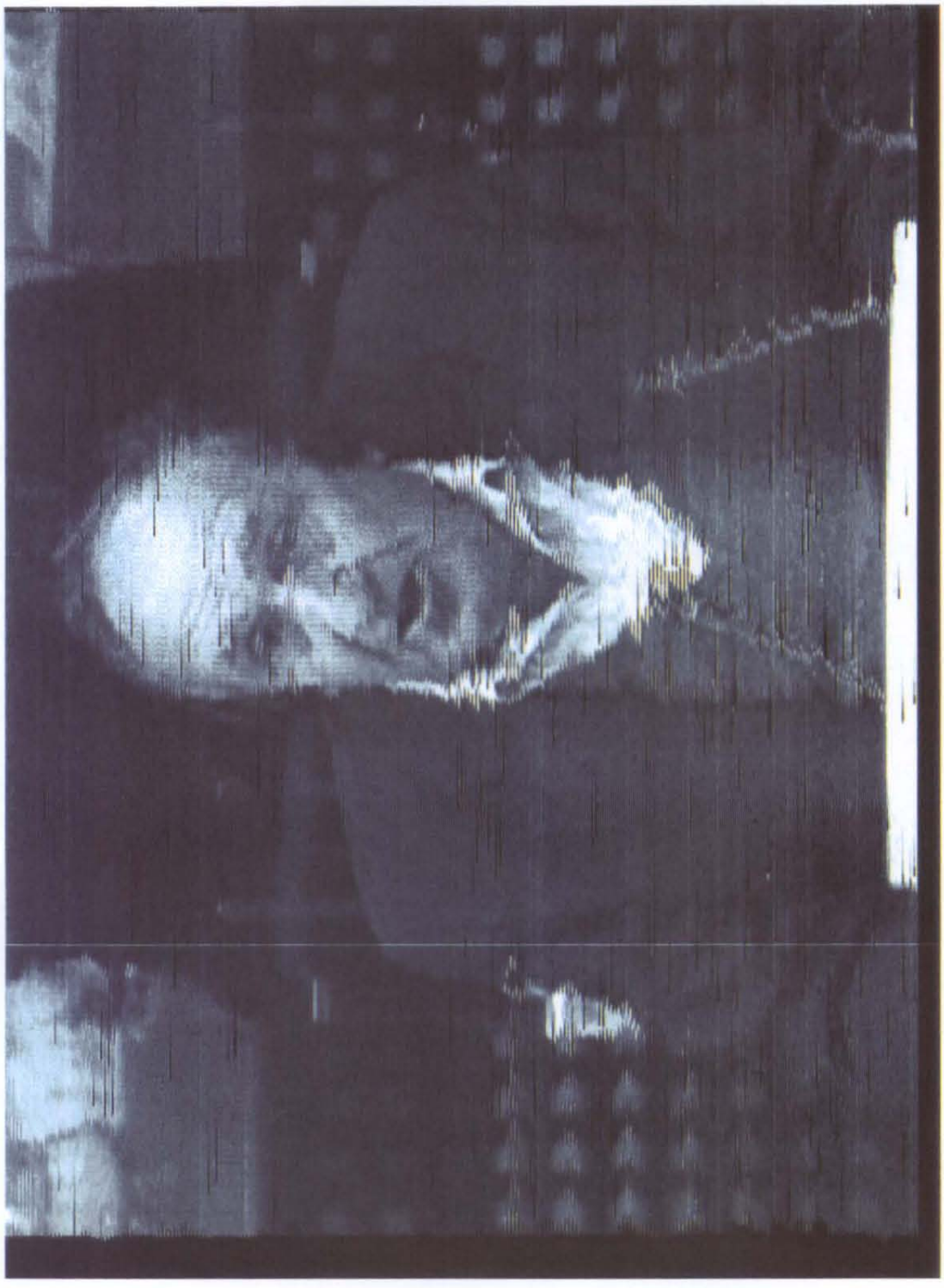
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IT 96 21-T

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