

**UNITED  
NATIONS**



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

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

**IN TRIAL CHAMBER II**

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

**Registrar:** Mr. John Hocking

**Judgement of:** 10 June 2010

**PROSECUTOR**

v.

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

***PUBLIC REDACTED***

**JUDGEMENT  
Volume II**

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A handwritten signature in black ink, appearing to be a stylized name, possibly 'V. Støle', written over a horizontal line.

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## VOLUME II

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## V. INDIVIDUAL CRIMINAL RESPONSIBILITY

### A. Applicable Law

#### 1. Article 7(1) of the Statute

##### (a) Planning

1005. Planning requires that one or more persons design criminal conduct constituting one or more statutory crimes that are later perpetrated,<sup>3307</sup> with the awareness of the substantial likelihood that a crime would be committed in the realisation of that act or omission.<sup>3308</sup> This applies whether the *mens rea* of a crime is general or specific.<sup>3309</sup>

1006. While there are often several people involved in a plan, planning can be done by one person acting alone.<sup>3310</sup> It is not necessary to establish that the crime at issue would not have been committed absent the accused's plan; however, the Appeals Chamber has held that the plan must have been a factor "substantially contributing to" "criminal conduct constituting one or more statutory crimes that are later perpetrated."<sup>3311</sup> As is evident from the words "that are later perpetrated,"<sup>3312</sup> there cannot be liability for planning if the crime, which the accused is charged with planning, was not actually committed.<sup>3313</sup>

##### (b) Instigating

1007. Instigation requires that the Prosecution prove that an accused prompted another person to commit a crime,<sup>3314</sup> with the intent that a crime be committed,<sup>3315</sup> or prompted an act or omission with the awareness of the substantial likelihood that a crime would be committed in the realisation of that act or omission.<sup>3316</sup> This applies whether the *mens rea* of a crime is general or specific.<sup>3317</sup>

<sup>3307</sup> *Kordić and Čerkez* Appeal Judgement, para. 26.

<sup>3308</sup> *Ibid.*, para. 31.

<sup>3309</sup> *See ibid.*, para. 112, referring to *Blaškić* Appeal Judgement, para. 166. The *Kordić and Čerkez* Appeals Chamber first considered the requisite *mens rea* for establishing liability under Article 7(1) of the Statute pursuant to planning and subsequently applied it to the crime of persecution.

<sup>3310</sup> *See ibid.*, para. 26.

<sup>3311</sup> *Ibid.*, para. 26.

<sup>3312</sup> *Ibid.*

<sup>3313</sup> *Aleksovski* Appeal Judgement, para. 165. *See also Orić* Trial Judgement, para. 269 fn. 732; *Brdanin* Trial Judgement, para. 271; *Simić et al.* Trial Judgement, para. 161.

<sup>3314</sup> *Brdanin* Appeal Judgement, para. 312; *Kordić and Čerkez* Appeal Judgement, para. 27.

<sup>3315</sup> *Ibid.*

<sup>3316</sup> *Kordić and Čerkez* Appeal Judgement, para. 30.

<sup>3317</sup> *Ibid.*, paras. 32, 112. *See also Blaškić* Appeal Judgement, para. 166.

1008. The prompting that constitutes instigation need not be direct or public.<sup>3318</sup> Moreover, liability for instigation may be incurred even though an accused lacks any sort of authority over the person committing the crime.<sup>3319</sup>

1009. While the Prosecution need not prove that the crime at issue would not have been committed absent the accused's prompting,<sup>3320</sup> the Appeals Chamber has held that the prompting must have been a factor "substantially contributing to the conduct of another person in committing the crime."<sup>3321</sup> The logical implication of this pronouncement is that there cannot be liability for instigating, if the crime, which the accused is charged with instigating, was not actually committed.<sup>3322</sup>

(c) Ordering

1010. Ordering requires that an accused instructed another person to engage in an act or omission<sup>3323</sup> with the intent that a crime be committed in the realisation of that act or omission,<sup>3324</sup> or with the awareness of the substantial likelihood that a crime would be committed in the realisation of that act or omission.<sup>3325</sup>

1011. The *Blaškić* Appeals Chamber held that "an individual who orders an act with the awareness of a substantial likelihood that persecutions as a crime against humanity will be committed in the order's execution, may be liable under Article 7(1) for the crime of persecutions."<sup>3326</sup>

1012. The Prosecution need not demonstrate that a formal superior-subordinate relationship existed between the accused and the individual committing the crime.<sup>3327</sup> Instead, it must merely put forth "proof of some position of authority on the part of the accused that would compel another

<sup>3318</sup> *Akayesu* Appeal Judgement, para. 483. (This is distinct from acts of incitement to commit genocide under Article 4(3)(c) of the Statute which must be direct and public).

<sup>3319</sup> *Orić* Trial Judgement, para. 272; *Brđanin* Trial Judgement, para. 359; *Semanza* Appeals Judgement, para. 257.

<sup>3320</sup> See *Gacumbitsi* Appeal Judgement, para. 129; *Kordić and Čerkez* Appeal Judgement, para. 27.

<sup>3321</sup> *Kordić and Čerkez* Appeal Judgement, para. 27. See also *Gacumbitsi* Appeal Judgement, para. 129.

<sup>3322</sup> This conclusion has been explicitly stated by several Trial Chambers, see, e.g., *Orić* Trial Judgement, para. 269 fn. 732; *Brđanin* Trial Judgement, para. 267; *Galić* Trial Judgement, para. 168. See also *Mpambara* Trial Judgement, para. 18.

<sup>3323</sup> *Galić* Appeal Judgement, para. 176; *Kordić and Čerkez* Appeal Judgement, para. 28. See also *Semanza* Appeal Judgement, para. 361.

<sup>3324</sup> *Kordić and Čerkez* Appeal Judgement, para. 29. See also *Ntagerura et al.* Appeal Judgement, para. 365.

<sup>3325</sup> *Galić* Appeal Judgement, para. 152; *Kordić and Čerkez* Appeal Judgement, para. 30; *Blaškić* Appeal Judgement, paras. 41–42.

<sup>3326</sup> *Blaškić* Appeal Judgement, para. 166. See also *Blaškić* Appeal Judgement, para. 42; *Kordić and Čerkez* Appeal Judgement, para. 30.

<sup>3327</sup> *Galić* Appeal Judgement, para. 176. See also *Semanza* Appeal Judgement, para. 361; *Kamuhanda* Appeal Judgement, para. 75. (In contrast to superior responsibility under Article 7(3), an accused may incur liability for ordering even though he did not enjoy effective control over the person ordered, *Kamuhanda* Appeal Judgement, para. 75.)

to commit a crime in following the accused's order."<sup>3328</sup> The accused need not give the order directly to the person committing the crime,<sup>3329</sup> and the order need not be in writing or in any particular form.<sup>3330</sup>

1013. While the Prosecution need not prove that the crime at issue would not have been committed absent the accused's order, the Trial Chamber agrees with the ICTR Appeals Chamber that the order must have had "a direct and substantial effect on the commission of the illegal act."<sup>3331</sup> The logical implication of this pronouncement is that there cannot be liability for ordering, if the crime, which the accused is charged with ordering, was not actually committed.<sup>3332</sup>

(d) Aiding and Abetting

1014. Aiding and abetting is a form of accomplice liability.<sup>3333</sup> In *Blagojević and Jokić*, the Appeals Chamber reiterated that:

an aider and abettor carries out acts specifically directed to assist, encourage, or lend moral support to the perpetration of a certain specific crime, which have a substantial effect on the perpetration of the crime. [...] The requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator.<sup>3334</sup>

The Appeals Chamber however observed that "specific direction" was not always included as an element of the *actus reus* of aiding and abetting.<sup>3335</sup> It referred to the contextual nature of the statement and confirmed that "specific direction" is not an essential ingredient of the *actus reus* of aiding and abetting.<sup>3336</sup>

1015. An aider and abettor contributes "to the perpetration" of a crime, whether he assists a crime committed by a physical perpetrator or a participant in a joint criminal enterprise who might not be

<sup>3328</sup> *Semanza* Appeal Judgement, para. 361. See also *Galić* Appeal Judgement, para. 176; *Kamuhanda* Appeal Judgement, para. 75; *Kordić and Čerkez* Appeal Judgement, para. 30.

<sup>3329</sup> *Strugar* Trial Judgement, para. 331; *Brdanin* Trial Judgement, para. 270; *Naletilić and Martinović* Trial Judgement, para. 61; *Kordić and Čerkez* Trial Judgement, para. 388.

<sup>3330</sup> *Kamuhanda* Appeal Judgement, para. 76.

<sup>3331</sup> *Ibid.*, para. 75. See also *Strugar* Trial Judgement, para. 332; *Galić* Trial Judgement, para. 169.

<sup>3332</sup> *Martić* Trial Judgement, para. 441; *Brdanin* Trial Judgement, para. 267; *Kajelijeli* Trial Judgement, para. 758; *Semanza* Trial Judgement, para. 378.

<sup>3333</sup> *Tadić* Appeal Judgement, para. 229.

<sup>3334</sup> *Blagojević and Jokić* Appeal Judgement, para. 127. See also; *Simić* Appeal Judgement, paras. 85–86; *Vasiljević* Appeal Judgement, para. 102; *Blaškić* Appeal Judgement, para. 45; *Tadić* Appeal Judgement, para. 229. See also *Ntagerura et al.* Appeal Judgement, para. 370.

<sup>3335</sup> *Blagojević and Jokić* Appeal Judgement, para. 189, referring to *Krnojelac* Appeal Judgement, para. 37, citing *Tadić* Appeal Judgment, para. 229; *Čelebići* Appeal Judgement, para. 345, citing *Tadić* Trial Judgement, para. 688.

<sup>3336</sup> *Blagojević and Jokić* Appeal Judgement, paras. 185–186, 188–189. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 159.



a physical perpetrator.<sup>3337</sup> There cannot be liability for aiding and abetting, if the crime, which the accused is charged with aiding and abetting, was not actually committed.<sup>3338</sup>

1016. An accused needs to know that his or her acts assist the commission of the crime that he or she is charged with aiding and abetting, though the accused does not need to have the intent to commit the crime.<sup>3339</sup> The aider and abettor does not need to know who is committing the crime.<sup>3340</sup> The person or persons committing the crime need not have been tried or identified, even in respect of a crime that requires specific intent.<sup>3341</sup> Neither does the person or persons committing the crime need to be aware of the involvement of the aider and abettor.<sup>3342</sup> Accordingly, the Prosecution generally need not provide evidence that a plan or an agreement existed between the aider and abettor and the person or persons committing the crimes.<sup>3343</sup>

1017. While an accused may know of a number of crimes that might be committed with his contribution, he must be aware, at a minimum, of the essential elements of the crime for which he is charged with aiding and abetting.<sup>3344</sup> The accused needs to know that the person or persons in the joint criminal enterprise intended the crime he or she is charged with aiding and abetting.<sup>3345</sup> With respect to specific-intent crimes such as genocide and persecution, the accused needs to know that the person or persons in the joint criminal enterprise possessed the genocidal or discriminatory intent.<sup>3346</sup>

1018. The assistance, encouragement, or moral support provided by an aider and abettor must have had a substantial effect on the commission of the crime.<sup>3347</sup> The Prosecution need not, however,

<sup>3337</sup> *Blagojević and Jokić* Appeal Judgement, para. 127; *Brdanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, para. 102.

<sup>3338</sup> *Aleksovski* Appeal Judgement, para. 165.

<sup>3339</sup> *Brdanin* Appeal Judgement, para. 484; *Blaškić* Appeal Judgement, para. 49; *Vasiljević* Appeal Judgement, paras. 102, 142–143; *Aleksovski* Appeal Judgement, para. 162; *Tadić* Appeal Judgement, para. 229.

<sup>3340</sup> *Krstić* Appeal Judgement, para. 143. *See also* *Brdanin* Appeal Judgement, para. 355. The Appeals Chamber held *Krstić* responsible for aiding and abetting genocide, irrespective of the fact that the individuals committing the genocide were not identified.

<sup>3341</sup> *Krstić* Appeal Judgement, para. 143. *See also* *Brdanin* Appeal Judgement, para. 355.

<sup>3342</sup> *Tadić* Appeal Judgement, para. 229.

<sup>3343</sup> *Krnjelac* Appeal Judgement, para. 33; *Tadić* Appeal Judgement, para. 229.

<sup>3344</sup> *Brdanin* Appeal Judgement, para. 484; *Simić* Appeal Judgement, para. 86; *Aleksovski* Appeal Judgement, para. 162.

<sup>3345</sup> *Brdanin* Appeal Judgement, paras. 487–488.

<sup>3346</sup> *Krstić* Appeal Judgement, para. 143; *Vasiljević* Appeal Judgement, paras. 142–143. *See Blagojević and Jokić* Appeal Judgement, para. 127; *Simić* Appeal Judgement, para. 86; *Krstić* Appeal Judgement, para. 140 (genocide); *Krnjelac* Appeal Judgement, para. 52 (persecution). *See also Semanza* Appeal Judgement, para. 316 (genocide); *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 501 (genocide).

<sup>3347</sup> *Brdanin* Appeal Judgement, para. 348; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 46; *Vasiljević* Appeal Judgement, para. 102; *Čelebići* Appeal Judgement, para. 352; *Aleksovski* Appeal Judgement, para. 162; *Tadić* Appeal Judgement, para. 229. *See also Gacumbitsi* Appeal Judgement, para. 140; *Furundžija* Trial Judgement, para. 234.

prove that the crime would not have been committed absent contribution of the aider and abettor.<sup>3348</sup>

1019. The Appeals Chamber has held that omission proper may lead to individual criminal responsibility under Article 7(1) of the Statute where there is a legal duty to act.<sup>3349</sup> Moreover, the Appeals Chamber has consistently found that, in the circumstances of a given case, the *actus reus* of aiding and abetting may be perpetrated through an omission.<sup>3350</sup> The *Orić* Appeals Chamber held that

at a minimum, the offender's conduct would have to meet the basic elements of aiding and abetting. Thus, his omission must be directed to assist, encourage or lend moral support to the perpetration of a crime and have a substantial effect upon the perpetration of the crime (*actus reus*). The aider and abettor must know that his omission assists in the commission of the crime of the principal perpetrator and must be aware of the essential elements of the crime which was ultimately committed by the principal (*mens rea*).<sup>3351</sup>

Thus, the *actus reus* and *mens rea* requirements for aiding and abetting by omission are the same as for aiding and abetting by a positive act.<sup>3352</sup> The critical issue to be determined is whether, on the particular facts of a given case, it is established that the failure to discharge a legal duty assisted, encouraged, or lent moral support to the perpetration of the crime, and had a substantial effect on it. In particular, the question as to whether an omission constitutes "substantial assistance" to the perpetration of a crime requires a fact based enquiry.<sup>3353</sup> The fact that the accused provided a more limited assistance to the commission of a crime than others does not preclude the accused's assistance from having had a substantial effect on the perpetration of the crime.<sup>3354</sup> With regard to the standard of proof, the Prosecution must show (i) that the omission had a substantial effect on the

<sup>3348</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 81 (holding "[t]here is no requirement of a cause-effect relationship between the conduct of the aider and abettor and the commission of the crime or that such conduct served as the precedent to the commission of the crime"); *Brdanin* Appeal Judgement, para. 348; *Simić* Appeal Judgement, para. 85; *Blaškić* Appeal Judgement, para. 48. The Appeals Chamber in *Brdanin* held that "[i]n cases where tacit approval or encouragement has been found to be the basis for criminal responsibility, it has been the authority of the accused combined with his presence on (or very near to) the crime scene, especially if considered together with his prior conduct, which all together allow the conclusion that the accused's conduct amounts to official sanction of the crime and thus substantially contributes to it." *Brdanin* Appeal Judgement, para. 277, referring to *Kayishema and Ruzindana* Appeal Judgement, para. 201; *Akayesu* Trial Judgement, paras. 706-707; *Furundžija* Trial Judgement, paras 207-209; *Aleksovski* Trial Judgement, para. 88; *Bagilishema* Trial Judgement, para. 36; *Ndindabahizi* Trial Judgement, para. 457.

<sup>3349</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 49, citing *Orić* Appeal Judgement, para. 43, *Brdanin* Appeal Judgement, para. 274; *Galić* Appeal Judgement, para. 175; *Blaškić* Appeal Judgement, para. 663; *Ntagerura et al.* Appeal Judgement, paras. 334, 370. See also *Tadić* Appeal Judgement, para. 188.

<sup>3350</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 134, referring to *Blaškić* Appeal Judgement, para. 47. See also *Nahimana et al.* Appeal Judgement, para. 482; *Ntagerura et al.* Appeal Judgement, para. 370.

<sup>3351</sup> *Orić* Appeal Judgement, para. 43. See also *Mrkšić and Šljivančanin* Appeal Judgement, para. 49.

<sup>3352</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 146, referring to *Orić* Appeal Judgement, para. 43; *Blaškić* Appeal Judgement, para. 47 ("The Appeals Chamber leaves open the possibility that in the circumstances of a given case, an omission may constitute the *actus reus* of aiding and abetting").

<sup>3353</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras. 146, 200, referring to *Blagojević and Jokić* Appeal Judgement, para. 134 ("The Appeals Chamber observes that the question of whether a given act constitutes substantial assistance to a crime requires a fact-based inquiry"); *Muvunyi* Appeal Judgement, para. 80.

<sup>3354</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 200, citing *Blagojević and Jokić* Appeal Judgement, para. 134.

crime in the sense that the crime would have been substantially less likely had the accused acted; and (ii) that the accused knew that the commission of the crime was probable and that his inaction assisted it.<sup>3355</sup>

1020. The *Mrkšić and Šljivančanin* Appeals Chamber considered that aiding and abetting by omission necessarily requires that the accused has “the ability to act, or in other words, that there were means available to the accused to fulfil this duty”.<sup>3356</sup>

(e) Committing, including Participation in a Joint Criminal Enterprise

(i) Joint Criminal Enterprise (JCE)

1021. Three categories of JCE existed in customary international law before the events alleged in the Indictment.<sup>3357</sup> The first category is a “basic” form of JCE, which is characterised by cases where all participants, acting pursuant to a common purpose, possess the same criminal intention.<sup>3358</sup> The second category is a “systemic” form of JCE, characterised by the existence of an organised system of ill-treatment.<sup>3359</sup> The third category is an “extended” form of JCE, which involves responsibility of a participant in a JCE for a crime beyond the common purpose but which is nevertheless a natural and foreseeable consequence of carrying out the crimes forming part of the common purpose (“extended crime”).<sup>3360</sup> The first and third categories of JCE are charged in the Indictment.<sup>3361</sup>

1022. For an accused to incur liability for a crime forming part of the common purpose under the first category JCE, the accused must possess the intent required for the crime, including the specific intent, when relevant.<sup>3362</sup>

<sup>3355</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras. 97, 101; *Orić* Appeal Judgement, para. 43.

<sup>3356</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 154, referring to *Ntagerura et al.* Appeal Judgement, para. 335.

<sup>3357</sup> *Brdanin* Appeal Judgement, paras. 363–364; *Vasiljević* Appeal Judgement, para. 95; *Milutinović et al.* May 2003 Appeal Decision, para. 29; *Tadić* Appeal Judgement, paras. 195–226.

<sup>3358</sup> *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, paras. 96–99; *Krnjelac* Appeal Judgement, paras 83–84; *Tadić* Appeal Judgement, paras 195–225. See also *Gacumbitsi* Appeal Judgement, para. 158; *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 463; *Krnjelac* Appeal Judgement, para. 84.

<sup>3359</sup> *Kvočka et al.* Appeal Judgement, para. 82; *Vasiljević* Appeal Judgement, paras. 96–99; *Krnjelac* Appeal Judgement, para. 89; *Tadić* Appeal Judgement, paras. 202–203. (The *Vasiljević* Appeals Chamber found that “[i]t is a variant of the basic form, characterised by the existence of an organised system of ill-treatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.” *Vasiljević* Appeal Judgement, para. 98.)

<sup>3360</sup> *Stakić* Appeal Judgement, para. 65; *Kvočka et al.* Appeal Judgement, para. 83; *Blaškić* Appeal Judgement, para. 33; *Vasiljević* Appeal Judgement, paras. 96–99; *Krnjelac* Appeal Judgement, para. 89; *Tadić* Appeal Judgement, paras. 202–204.

<sup>3361</sup> See Indictment, paras. 27–29, 36.

<sup>3362</sup> *Tadić* Appeal Judgement, para. 188. Including those crimes requiring specific intent such as genocide and persecution. *Brdanin* Appeal Judgement, para. 365; *Stakić* Appeal, para. 65; *Kvočka et al.* Appeal Judgement, paras. 110, 240; *Brdanin* March 2004 Appeal Decision, para. 6 (genocide); *Krnjelac* Appeal Judgement, paras. 111–112 (persecution); *Tadić* Appeal Judgement, para. 204.

1023. The Appeals Chamber has identified three elements required for a finding of criminal liability under the JCE doctrine. The first element is the participation of a plurality of persons in a common purpose.<sup>3363</sup> It is not required that each member in the JCE is identified by name: “it can be sufficient to refer to categories or groups of persons.”<sup>3364</sup> However, the participants need not be organised into any sort of military, political, or administrative structure.<sup>3365</sup>

1024. The second element is the existence of a common purpose that amounts to or involves the commission of a crime provided for in the Statute.<sup>3366</sup> The common purpose need not be previously arranged or formulated but “may materialise extemporaneously and be inferred from the fact that a plurality of persons act in unison to put into effect a joint criminal enterprise”.<sup>3367</sup> The Trial Chamber must “specify the common criminal purpose in terms of both the criminal goal intended and its scope (for example, the temporal and geographic limits of this goal, and the general identities of the intended victims)”.<sup>3368</sup> The Appeals Chamber has held that where the common purpose is alleged to include crimes committed over a wide geographical area, an accused may be found criminally responsible for his participation in the enterprise, even if his contributions to the enterprise occurred only in a much smaller geographical area.<sup>3369</sup>

1025. The *Brđanin* Appeals Chamber held that “what matters in a first category JCE is not whether the person who carried out the *actus reus* of a particular crime is a member of the JCE, but whether the crime in question forms part of the common purpose”.<sup>3370</sup> The determination of whether a particular crime is part of the common purpose has to be assessed “on a case-by-case basis”.<sup>3371</sup>

<sup>3363</sup> *Brđanin* Appeal Judgement, para. 364; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 466.

<sup>3364</sup> *Krajišnik* Appeal Judgement, para. 156, referring to *Limaj et al.* Appeal Judgement, para. 99; *Brđanin* Appeal Judgement, para. 430. See also *Stakić* Appeal Judgement, para. 69.

<sup>3365</sup> *Stakić* Appeal Judgement, para. 64; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227.

<sup>3366</sup> *Brđanin* Appeal Judgement, para. 364; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 466; *Kayishema and Ruzindana* Appeal Judgement, para. 193.

<sup>3367</sup> *Furundžija* Appeal Judgement, para. 119, quoting *Tadić* Appeal Judgement, para. 227. See also *Brđanin* Appeal Judgement, para. 418.

<sup>3368</sup> *Brđanin* Appeal Judgment, para. 430.

<sup>3369</sup> *Tadić* Appeal Judgement, para. 199, fn. 243, citing two cases of the Supreme Court for the British Zone (of occupied Germany) dealing with the participation of accused in the *Kristallnacht* riots: *Case no. 66*, Strafsenat. Urteil vom 8 Februar 1949 gegen S. StS 120/48, vol. II, p. 284-290 and *Case no. 17*, vol. I, pp. 94-98.

<sup>3370</sup> *Brđanin* Appeal Judgement, para. 410.

<sup>3371</sup> *Ibid.*, para. 413. This may be inferred from various factors, “including the fact that the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose,” especially “when a member of the JCE uses a person outside the JCE to carry out the *actus reus* of a crime, the fact that the person in question knows of the existence of the JCE – without it being established that he or she shares the *mens rea* necessary to become a member of the JCE – may be a factor to be taken into account

1026. The third element is the participation of the accused in the common purpose.<sup>3372</sup> An accused may contribute to and further the common purpose of the JCE by various acts, which need not involve carrying out any part of the *actus reus* of a crime forming part of the common purpose, or indeed any crime at all.<sup>3373</sup> While a crime must have been committed for liability through JCE to ensue,<sup>3374</sup> the Prosecutor need not demonstrate that the accused's participation is a *sine qua non*, without which the crime could or would not have been committed.<sup>3375</sup> There is no requirement that the accused is present at the time and place of perpetration of the crime.<sup>3376</sup>

1027. The Appeals Chamber has held that, for liability for participation in a JCE, it suffices that an accused perform acts "that in some way are directed to the furthering of the common plan or purpose."<sup>3377</sup> The participation or contribution of an accused to the common purpose need not be substantive,<sup>3378</sup> but "it should at least be a significant contribution to the crimes for which the accused is found responsible."<sup>3379</sup>

1028. The common criminal objective of the JCE may also evolve over time, as the Appeals Chamber has held "a JCE can come to embrace expanded criminal means, as long as the evidence shows that the JCE members agreed on this expansion of means."<sup>3380</sup> It means that the crimes that make up the common purpose may evolve and change over time and as such the JCE may have different participants at different times. Determinative factors are the accused's intention and whether the expanded crimes became part of the common objective.<sup>3381</sup>

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when determining whether the crime forms part of the common criminal purpose. However, this is not a *sine qua non* for imputing liability for the crime to that member of the JCE." *Ibid.*, para. 410.

<sup>3372</sup> *Ibid.*, paras. 364, 427; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 81; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, para. 31; *Tadić* Appeal Judgement, para. 227. *See also* *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 466; *Kayishema and Ruzindana* Appeal Judgement, para. 193.

<sup>3373</sup> *Krajišnik* Appeal Judgement, para. 215; *Brdanin* Appeal Judgement, para. 427; *Stakić* Appeal Judgement, para. 64; *Kvočka et al.* Appeal Judgement, para. 99; *Tadić* Appeal Judgement, para. 227.

<sup>3374</sup> *Brdanin* Appeal Judgement, para. 430.

<sup>3375</sup> *Kvočka et al.* Appeal Judgement, paras. 98, 193; *Tadić* Appeal Judgement, paras. 191, 199.

<sup>3376</sup> *Krnojelac* Appeal Judgement, para. 81.

<sup>3377</sup> *Kvočka et al.* Appeal Judgement, para. 187; *Vasiljević* Appeal Judgement, para. 102; *Tadić* Appeal Judgement, para. 229.

<sup>3378</sup> *Krajišnik* Appeal Judgement, para. 215; *Babić* Appeal Judgement, para. 38; *Kvočka et al.* Appeal Judgement, para. 99; *Ntakirutimana* Appeal Judgement, para. 466; *Vasiljević* Appeal Judgement, para. 100; *Krnojelac* Appeal Judgement, paras. 31, 81; *Tadić* Appeal Judgement, para. 227(iii).

<sup>3379</sup> *Krajišnik* Appeal Judgement, para. 215; *Brdanin* Appeal Judgement, para. 430. *See also* the *Kvočka et al.* Appeals Chamber, which held that "there may be specific cases which require, as an exception to the general rule, a substantial contribution of the accused to determine whether [the accused] participated in the joint criminal enterprise" and that "[i]n practice, the significance of the accused's contribution will be relevant to demonstrating that the accused shared the intent to pursue the common purpose." *Kvočka et al.* Appeal Judgement, para. 97.

<sup>3380</sup> *Krajišnik* Appeal Judgement, para. 163; *Brdanin* Appeal Judgement, para. 410.

<sup>3381</sup> *Krajišnik* Appeal Judgement, paras. 164–173.

1029. The Appeals Chamber has held that persons carrying out the *actus reus* of the crime forming part of the common purpose need not have been participants in or members of the JCE.<sup>3382</sup> Consequently, persons carrying out the *actus reus* of the crime need not share the intent of the crime with the participants in the common purpose.<sup>3383</sup> Nor is the mental state of persons carrying out the *actus reus* of a crime a determinative factor in finding the requisite intent for the participants in a JCE.<sup>3384</sup> It is necessary however, that the JCE member used the non-member to commit the *actus reus* of a crime that can be imputed to the member of the JCE.<sup>3385</sup> This is assessed on a case-by-case basis.<sup>3386</sup>

1030. For an accused to incur third category JCE liability, the Prosecution must first prove, as for the first category JCE, that the accused possesses the intent for the crimes forming part of the common purpose.<sup>3387</sup> Further, an accused “can only be held responsible for a crime outside the common purpose, if under the circumstances of the case: (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group[<sup>3388</sup>] and (ii) the accused willingly took that risk”.<sup>3389</sup> The Appeals Chamber specified that “willingly took that risk” means that the accused, “with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.”<sup>3390</sup>

1031. For third category JCE liability, the accused does not need to possess the requisite intent for the extended crime—the crime falling outside the common purpose.<sup>3391</sup> This also applies to specific intent crimes.<sup>3392</sup> The mental state of the person or persons carrying out the *actus reus* of the

<sup>3382</sup> *Brđanin* Appeal Judgement, paras. 413, 419, 430. See also *Krajišnik* Appeal Judgement, para. 225; *Martić* Appeal Judgment, para. 168.

<sup>3383</sup> See *Brđanin* Appeal Judgement, para. 362.

<sup>3384</sup> *Krajišnik* Appeal Judgement, para. 226.

<sup>3385</sup> *Ibid.*, paras. 225–226. “Factors indicative of such a link include evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime. However, it is not determinative whether the non-JCE member shared the *mens rea* of the JCE member or that he knew of the existence of the JCE; what matters in [first category JCE] is whether the JCE member used the non-JCE member to commit the *actus reus* of the crime forming part of the common purpose.” *Ibid.*, para. 226.

<sup>3386</sup> *Krajišnik* Appeal Judgement, para. 226; *Martić* Appeal Judgement, para. 168; *Brđanin* Appeal Judgement, para. 413.

<sup>3387</sup> See *Stakić* Appeal Judgement, para. 65; *Kvočka et al.* Appeal Judgement, para. 83; *Vasiljević* Appeal Judgement, para. 101; *Krnjelac* Appeal Judgement, para. 32; *Tadić* Appeal Judgement, para. 220.

<sup>3388</sup> The crimes may also be “perpetrated by one or more of the persons used by [the accused] (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose.” *Brđanin* Appeal Judgement, para. 411.

<sup>3389</sup> *Brđanin* Appeal Judgement, paras. 365, 411. See also *Stakić* Appeal Judgement, para. 87; *Kvočka et al.* Appeal Judgement, para. 83; *Blaškić* Appeal Judgement, para. 33; *Vasiljević* Appeal Judgement, para. 101. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 467.

<sup>3390</sup> *Brđanin* Appeal Judgement, para. 411.

<sup>3391</sup> *Brđanin* March 2004 Interlocutory Appeal Decision, paras. 5–7.

<sup>3392</sup> *Ibid.*, paras. 6, 9. The *Brđanin* Appeals Chamber found that an accused can be found criminally responsible for the crime of genocide under the third category of JCE if the Prosecution can “establish that it was reasonably foreseeable to the accused that an act specified in Article 4(2) [of the Statute] would be committed and that it would be committed with genocidal intent”. Genocidal intent on the part of the accused is not required. *Ibid.*

extended crime is therefore not relevant for the finding of the mental state of the accused, but is determinative to the finding of which extended crime was committed, if any.

1032. The reburial is alleged as “a natural and foreseeable consequence of the execution and original burial plan conceived by the [JCE to Murder].”<sup>3393</sup> However, legally, only a crime can constitute an extended crime pursuant to third category JCE. A reburial is not a crime in itself under the Statute and therefore cannot legally constitute a foreseeable consequence of the alleged JCE to Murder.

## 2. Article 7(3) of the Statute

1033. Under Article 7(3) of the Statute, a superior may incur individual criminal responsibility for failing to take the necessary and reasonable measures either to prevent a subordinate from committing a crime within the jurisdiction of the Tribunal, or to punish a subordinate for having committed a crime, if the following elements exist: (1) a superior-subordinate relationship; (2) the superior knew or had reason to know that a criminal act was about to be, was being or had been committed, and (3) failure to take necessary and reasonable measures to prevent or punish the conduct in question.<sup>3394</sup>

1034. This form of responsibility was well established in customary international law at the time of the events charged in the Indictment.<sup>3395</sup> A superior bears responsibility under Article 7(3) for failing to discharge a duty required by international law, rather than for participating in the crime.<sup>3396</sup>

1035. The Appeals Chamber has held that “superior responsibility under Article 7(3) of the Statute encompasses all forms of criminal conduct by subordinates,” including “all other modes of participation under Article 7(1).”<sup>3397</sup> Hence, a superior may bear superior responsibility for his failure to prevent or punish the physical commission, including through participation in a JCE, planning, instigation, ordering, or aiding and abetting of crimes by a subordinate.<sup>3398</sup>

<sup>3393</sup> Indictment, para. 32. The absence of cross-references leads the Trial Chamber to conclude that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** are charged for these reburials pursuant to the third category of JCE, only under Counts 1 and 2.

<sup>3394</sup> *Orić* Appeal Judgement, para. 18; *Kordić and Čerkez* Appeal Judgement, paras. 827, 839; *Blaškić* Appeal Judgement, para. 69; *Čelebići* Appeal Judgement, paras. 191–192, 197, 256; *Aleksovski* Appeal Judgement, para. 72. See also *Gacumbitsi* Appeal Judgement, para. 143.

<sup>3395</sup> *Blaškić* Appeal Judgement, para. 85; *Hadžihasanović et al.* July 2003 Appeal Decision, para. 11.

<sup>3396</sup> *Krnjelac* Appeal Judgement, para. 171. See also *Orić* Trial Judgement, para. 293; *Hadžihasanović and Kubura* Trial Judgement, para. 75; *Halilović* Trial Judgement, para. 54.

<sup>3397</sup> *Blagojević and Jokić* Appeal Judgement, para. 280.

<sup>3398</sup> *Orić* Appeal Judgement, para. 21; *Blagojević and Jokić* Appeal Judgement, paras. 280–282.

1036. The failure to prevent and the failure to punish are distinct legal obligations as the failure to prevent concerns future crimes of subordinates and the failure to punish concerns past crimes of subordinates.<sup>3399</sup> A superior may therefore be convicted for either or both failure to prevent and failure to punish.

(i) A Superior-Subordinate Relationship

1037. A superior-subordinate relationship exists where a superior has “effective control” over the subordinate in question—that is, a material ability to prevent or punish the subordinate’s criminal conduct.<sup>3400</sup> This standard applies to any superior, whether military or civilian.<sup>3401</sup>

1038. Superior responsibility can arise by virtue of the superior’s *de jure* or *de facto* power over the relevant subordinate.<sup>3402</sup> The possession of *de jure* power may not suffice for the finding of superior responsibility if it does not manifest itself in effective control.<sup>3403</sup> The *Orić* Appeals Judgement held that “[t]he possession of *de jure* authority, without more, provides only some evidence of such effective control.”<sup>3404</sup> Proof is required that the superior was not only able to issue orders but that his orders were actually followed.<sup>3405</sup> Whether a superior has the requisite level of power for a finding of “effective control” is a matter which has to be determined on the basis of the evidence presented in each case.<sup>3406</sup>

1039. According to the Appeals Chamber’s jurisprudence, a superior cannot incur responsibility under Article 7(3) for crimes committed by a subordinate before he assumed the position as superior over the subordinate in question.<sup>3407</sup> A superior may however incur superior responsibility no matter how far down the chain of authority the subordinate may be,<sup>3408</sup> and even if the subordinate has participated in the crimes through intermediaries.<sup>3409</sup> The relationship between the

<sup>3399</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 259; *Blaškić* Appeal Judgement, para. 83.

<sup>3400</sup> *Orić* Appeal Judgement, para. 20; *Halilović* Appeal Judgement, para. 59; *Kordić and Čerkez* Appeal Judgement, para. 840; *Blaškić* Appeal Judgement, paras. 67, 375; *Čelebići* Appeal Judgement, para. 256. *See also Gacumbitsi* Appeal Judgement, para. 143; *Kajelijeli* Appeal Judgement, para. 86; *Bagilishema* Appeal Judgement, paras. 51–52, 56, 61.

<sup>3401</sup> *Čelebići* Appeal Judgement, paras. 195–197, 240; *Aleksovski* Appeal Judgement, para. 76. *See also Kajelijeli* Appeal Judgement, para. 85; *Bagilishema* Appeal Judgement, paras. 50–52, 56.

<sup>3402</sup> *Čelebići* Appeal Judgement, paras. 191–192, 197. *See also Gacumbitsi* Appeal Judgement, para. 143; *Kajelijeli* Appeal Judgement, para. 85; *Bagilishema* Appeal Judgement, para. 50.

<sup>3403</sup> *Halilović* Appeal Judgement, para. 204; *Čelebići* Appeal Judgement, para. 197. *See also Blagojević and Jokić* Appeal Judgement, para. 302.

<sup>3404</sup> *Orić* Appeal Judgement, para. 92. *See also Hadžihasanović and Kubura* Appeal Judgement, para. 21; *Čelebići* Appeal Judgement, para. 197.

<sup>3405</sup> *See Strugar* Appeal Judgement, para. 256; *Halilović* Appeal Judgement, para. 207; *Blaškić* Appeal Judgement, para. 69.

<sup>3406</sup> *Čelebići* Appeal Judgement, para. 206; *Aleksovski* Appeal Judgement, paras. 73–74.

<sup>3407</sup> *Hadžihasanović et al.* July 2003 Appeal Decision, paras. 45–51. *See also Halilović* Appeal Judgement, para. 67.

<sup>3408</sup> *See Blaškić* Appeal Judgement, para. 67; *Čelebići* Appeal Judgement, paras. 252, 303.

<sup>3409</sup> *Orić* Appeal Judgement, para. 20; *Halilović* Appeal Judgement, para. 59.



superior and subordinate need not be permanent in nature.<sup>3410</sup> The superior does not need to know the identity of the subordinate.<sup>3411</sup>

(b) The Superior Knew or Had Reason to Know

1040. The second element of superior responsibility is that a superior knew or had reason to know that a subordinate's criminal act was about to be, was being, or had been realised.<sup>3412</sup> Actual knowledge may not be presumed by virtue of a position of command alone.<sup>3413</sup> However, such knowledge may be inferred from circumstantial evidence.<sup>3414</sup>

1041. A superior had reason to know "only if information was available to him which would have put him on notice of offences committed by subordinates."<sup>3415</sup> The determination of whether a superior had "reason to know" must take account of the circumstances of each case.<sup>3416</sup> The "reason to know" standard is met if the superior possessed "information sufficiently alarming to justify further inquiry."<sup>3417</sup>

1042. The information required to put a superior on notice need not be specific.<sup>3418</sup> Rather it must "put him on notice of possible unlawful acts by his subordinates."<sup>3419</sup>

(c) Failure to Take Necessary and Reasonable Measures

1043. For responsibility under Article 7(3), the Prosecution must further prove that the commander failed to take measures that were "necessary and reasonable" to either prevent or punish the

<sup>3410</sup> *Strugar* Trial Judgement, para. 363, fn. 1072.

<sup>3411</sup> *Blagojević and Jokić* Appeal Judgement, para. 287.

<sup>3412</sup> *See Kordić and Čerkez* Appeal Judgement, para. 839; *Blaškić* Appeal Judgement, para. 57; *Krnojelac* Appeal Judgement, para. 154; *Čelebići* Appeal Judgement, para. 241. *See also Gacumbitsi* Appeal Judgement, para. 143; *Bagilishema* Appeal Judgement, para. 37.

<sup>3413</sup> *Blaškić* Appeal Judgement, para. 57.

<sup>3414</sup> *See Galić* Appeal Judgement, paras. 171, 180–184; *Blaškić* Appeal Judgement, para. 57 (stating that the following factors may assist: "the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of troops involved; the logistics involved, if any; the geographical location of the acts; the widespread occurrence of the acts; the speed of the operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the commander at the time." *Ibid.*, fn. 101 (referring to *Blaškić* Trial Judgement, para. 307).

<sup>3415</sup> *Čelebići* Appeal Judgement, para. 241, referring to *Čelebići* Trial Judgement, para. 393. *See also Galić* Appeal Judgement, para. 184; *Blaškić* Appeal Judgement, para. 62; *Bagilishema* Appeal Judgement, para. 42.

<sup>3416</sup> *Krnojelac* Appeal Judgement, para. 156.

<sup>3417</sup> *Strugar* Appeal Judgement, para. 298. *See also Hadžihasanović and Kubura* Appeal Judgement, paras. 27–28 (referring to the *Čelebići* Appeal Judgement and stating: "It follows that, in order to demonstrate that a superior had the *mens rea* required under Article 7(3) of the statute, it must be established whether, in the circumstances of the case, he had information sufficiently alarming to justify further inquiry."); *Čelebići* Appeal Judgement, paras. 226, 232, 241 (stating: "a superior will be criminally responsible through the principles of superior responsibility only if information was available to him which would have put him on notice of offences committed by his subordinates. This is consistent with the customary law standard of *mens rea* as existing at the time of the offences charged in the indictment.").

<sup>3418</sup> *Čelebići* Appeal Judgement, para. 238.

<sup>3419</sup> *Ibid.* *See also Krnojelac* Appeal Judgement, para 155; *Bagilishema* Appeal Judgement, para. 42.

commission of a crime charged in the Indictment.<sup>3420</sup> “Necessary” measures are appropriate measures which show that the superior genuinely tried to prevent or punish, and “reasonable” measures are those reasonably falling within the material powers of the superior.<sup>3421</sup> A superior is not expected to perform the impossible,<sup>3422</sup> but must use every means within his or her material ability, based on the circumstances prevailing at the time the superior acquires the requisite knowledge or has reason to know.<sup>3423</sup>

1044. The determination of what constitutes “necessary and reasonable measures” is not a matter of substantive law but of fact, to be determined on a case-by-case basis.<sup>3424</sup> This assessment depends upon the superior’s level of effective control over the subordinate.<sup>3425</sup> As Article 7(3) contains no requirement of causality, the superior’s failure to take necessary and reasonable measures to prevent does not need to have caused the subordinate’s misconduct.<sup>3426</sup>

1045. “Necessary and reasonable” measures may include carrying out an investigation,<sup>3427</sup> transmitting information in a superior’s possession to the proper administrative or prosecutorial authorities,<sup>3428</sup> issuing special orders aimed at bringing unlawful practices of subordinates in compliance with the rules of war<sup>3429</sup> and securing the implementation of these orders,<sup>3430</sup> protesting against or criticising criminal action,<sup>3431</sup> taking disciplinary measures against the commission of atrocities,<sup>3432</sup> reporting the matter to the competent authorities,<sup>3433</sup> and/or insisting before a superior authority that immediate action be taken.<sup>3434</sup>

<sup>3420</sup> *Kordić and Čerkez* Appeal Judgement, para. 839; *Blaškić* Appeal Judgement, para. 72; *Krnojelac* Appeal Judgement, para. 172. See also *Gacumbitsi* Appeal Judgement, para. 143.

<sup>3421</sup> *Orić* Appeal Judgement, para. 177; *Halilović* Appeal Judgement, para. 63.

<sup>3422</sup> *Blaškić* Appeal Judgement, para. 417.

<sup>3423</sup> *Ibid.*, paras. 72, 417, 499. See also *Bagilishema* Appeal Judgement, para. 35.

<sup>3424</sup> *Boškoski and Tarčulovski* Appeal Judgement, para. 259; *Orić* Appeal Judgement, para. 177; *Halilović* Appeal Judgement, para. 63; *Blaškić* Appeal Judgement, para. 72; *Čelebići* Appeal Judgement, para. 206; *Aleksovski* Appeal Judgement, paras. 73-74.

<sup>3425</sup> *Blaškić* Appeal Judgement, para. 72. See also *Boškoski and Tarčulovski* Appeal Judgement, paras. 230, 231; *Bagilishema* Appeal Judgement, para. 35; *Kayishema and Ruzindana* Appeal Judgement, para. 302.

<sup>3426</sup> *Kordić and Čerkez* Appeal Judgement, para. 832; *Blaškić* Appeal Judgement, para. 77. See also *Halilović* Trial Judgement, para. 78.

<sup>3427</sup> *Limaj et al.* Trial Judgement, para. 529; *Halilović* Trial Judgement, paras. 97, 99–100; *Strugar* Trial Judgement, para. 376, 416.

<sup>3428</sup> See *Galić* Appeal Judgement, para. 184. See also *Milutinović et al.* Trial Judgement, Vol.1, para 123; *Hadžihasanović and Kubura* Trial Judgement, paras. 173–174, 176; *Limaj et al.* Trial Judgement, para. 529; *Halilović* Trial Judgement, paras. 97, 99, 100; *Strugar* Trial Judgement, para. 376; *Kvočka et al.* Trial Judgement, para. 316.

<sup>3429</sup> *Halilović* Trial Judgement, para. 74; *Strugar* Trial Judgement, para. 374. See also *Bagilishema* Trial Judgement, para. 265.

<sup>3430</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 153; *Halilović* Trial Judgement, para. 74; *Strugar* Trial Judgement, para. 378.

<sup>3431</sup> *Halilović* Trial Judgement, para. 89; *Strugar* Trial Judgement, para. 374.

<sup>3432</sup> *Ibid.*

<sup>3433</sup> *Boškoski and Tarčulovski* Appeal Judgement, para. 230; *Hadžihasanović and Kubura* Trial Judgement, para. 154; *Blaškić* Trial Judgement, paras. 329, 335. See also *Boškoski and Tarčulovski* Appeal Judgement, para. 234.

<sup>3434</sup> *Halilović* Trial Judgement, para. 89; *Strugar* Trial Judgement, para. 374.

1046. The quality and completeness of any investigation ordered or undertaken by the superior is determinative when assessing whether it was a “necessary and reasonable” measure.<sup>3435</sup> In order to satisfy the obligation under Article 7(3), a superior’s report to the investigating authorities must, under normal circumstances, be likely to trigger a proper investigation into the alleged criminal conduct.<sup>3436</sup> Even if, in fact, the investigation undertaken was not satisfactory, if the failure of the investigating authorities was not attributable to the superior, and he or she did not know of their failure, or could not anticipate it at the time, the superior cannot be held responsible under Article 7(3).<sup>3437</sup> No further reporting or action is required in such a case.<sup>3438</sup> Furthermore, when the most which could be done by a superior would be to report the illegal conduct of subordinates to the very persons who had ordered it, the superior cannot be found responsible under Article 7(3).<sup>3439</sup>

## B. Findings

### 1. Joint Criminal Enterprise to Murder

#### (a) Prosecution Submissions

1047. The Prosecution alleges that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** participated in a joint criminal enterprise to murder the able-bodied Bosnian Muslim men from Srebrenica in July 1995 (the “JCE to Murder”).<sup>3440</sup> According to the Indictment, between the evening hours of 11 July and the morning of 12 July, **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** developed a plan to:

murder the hundreds of able-bodied men identified from the crowd of Muslims in Potočari [...] <sup>3441</sup>  
The execution of the plan to murder the able-bodied men from Srebrenica began in the afternoon of 12 July with the forcible separation of the able-bodied men in Potočari from their families

<sup>3435</sup> *Hadžihasanović and Kubura* Trial Judgement, para. 175; *Strugar* Trial Judgement, para. 376.

<sup>3436</sup> *Boškoski and Tarčulovski* Trial Judgement, para. 536. *See also* *Boškoski and Tarčulovski* Appeal Judgement, paras. 231, 234.

<sup>3437</sup> *Boškoski and Tarčulovski* Trial Judgement, para. 536. *See also* *Boškoski and Tarčulovski* Appeal Judgement, paras. 268, 269, 270.

<sup>3438</sup> *Boškoski and Tarčulovski* Trial Judgement, para. 536.

<sup>3439</sup> *Krnjelac* Trial Judgement, para. 127. This finding was not disturbed on appeal. *See Krnjelac* Appeal Judgement. *See also* *Krstić* Appeal Judgement, para. 143, fn. 250.

<sup>3440</sup> Indictment, paras. 27–30, 36–44. The Prosecution alleges that the officers within both the JCE to Forcibly Remove and the JCE to Murder include, but are not limited to, all seven accused plus the following people: Radovan Karadžić, President of the RS; General Ratko Mladić, the Commander of the VRS; General Milenko Živanović, Commander of the Drina Corps; General Radislav Krstić, Chief of Staff/Deputy Commander and Commander of the Drina Corps; General Zdravko Tolimir, Assistant Commander for Intelligence and Security, Main Staff; Colonel Petar Salapura, Chief of Intelligence of the Main Staff; Colonel Radoslav Janković, Intelligence Officer of the Main Staff; Major Dragomir Pećanac, Security Officer of the Main Staff; Lieutenant Colonel Rajko Krsmanović, Drina Corps Chief of Transportation Services; Colonel Lazar Aćamović, Drina Corps Assistant Commander for Rear Services; Colonel Vidoje Blagojević, Commander of the Bratunac Brigade; Captain Momir Nikolić, Chief of Security and Intelligence, Bratunac Brigade; Lieutenant Colonel Dragan Obrenović, Deputy Commander and Chief of Staff of the Zvornik Brigade; and Captain Milorad Trbić, Security Officer, Zvornik Brigade. Indictment, paras. 96–97.

<sup>3441</sup> Indictment, para. 27.

[...].<sup>3442</sup> On the morning of 13 July and continuing all day, over 6,000 able-bodied Muslim men surrendered to or were captured by Bosnian Serb forces stationed on the road between Bratunac, Konjević Polje and Milići. The majority of those prisoners were transported to Bratunac and Kravica where they were temporarily detained [...] along with the Muslim men who had been separated in Potočari. The plan to murder the able-bodied Muslim men from Srebrenica encompassed the murder of this group of over 6,000 men.<sup>3443</sup>

1048. According to the Prosecution, the plan to murder the able-bodied Bosnian Muslim men from Srebrenica was carried out between 11 July 1995 and 1 November 1995.<sup>3444</sup> The Prosecution alleges that the plan and logistical arrangements for the killing operation took shape between the evening of 11 July and the morning of 12 July, and the plan was in place as of 10 a.m. on 12 July.<sup>3445</sup>

1049. The Prosecution alleges that the first phase of the plan involved the separation and detention of the able-bodied Bosnian Muslim men and boys in Potočari. The men and boys were later transferred from Potočari to various places of detention in Bratunac.<sup>3446</sup> The Prosecution alleges that a series of systematic and organised mass executions followed, beginning on 13 July at Konjević Polje and ending “in late July or August” with the murder of six men from Srebrenica by the Serbian MUP unit known as the Scorpions.<sup>3447</sup>

(b) The Common Purpose

1050. Over a period of a few days in July 1995, the Bosnian Serb Forces executed several thousand Bosnian Muslim males from in and around Srebrenica in a large scale, systematic operation. The operation began on 12 July with the separation of the Bosnian Muslim men from the women and children gathered at Potočari. These men were subsequently detained in the White House and then various places in Bratunac. Organised mass killings began on 13 July in the Bratunac area at the Kravica Warehouse (where at least 1,000 men were killed), and continued between 14 and 16 July in the Zvornik area at Orahovac (between 800 and 2,500 men killed), Petkovci (over 800 men killed), Kozluk (over 1,000 men killed) and Pilica (between 1,000 and 2,000 men killed).

(c) Formation and Initial Stages of the Plan

1051. The Trial Chamber cannot determine with precision when the plan to murder was formed. However, immediately prior to the third meeting held at the Hotel Fontana, around 10.00 a.m. on

<sup>3442</sup> *Ibid.*, para. 28.

<sup>3443</sup> Indictment, para. 29.

<sup>3444</sup> Prosecution Final Brief, para. 460.

<sup>3445</sup> *Ibid.*, paras. 461–462.

<sup>3446</sup> *Ibid.*, paras. 466–467.

<sup>3447</sup> *Ibid.*, paras. 471–487.

12 July, security personnel were already discussing the planned execution of the Bosnian Muslim men from Potočari.<sup>3448</sup> Specifically, Momir Nikolić, Chief of Security and Intelligence of the Bratunac Brigade, and his superior **Popović**, Chief of Security of the Drina Corps, met outside the Hotel where **Popović** informed Nikolić that the able-bodied men within the crowd of Bosnian Muslim civilians would be separated, temporarily detained in Bratunac, and killed shortly thereafter.<sup>3449</sup> **Popović** advised Momir Nikolić that he was to assist in this operation. **Popović** and Nikolić were joined by Kosorić, Assistant Chief of Staff for Intelligence in the Drina Corps,<sup>3450</sup> and they went on to discuss some of the logistics of the operation, in particular what locations could be used for the detention and killings.<sup>3451</sup>

1052. Immediately after this conversation between **Popović**, Kosorić and Momir Nikolić, there was a third meeting at the Hotel Fontana. At this meeting, for the first time, Mladić announced that all the Bosnian Muslim men in Potočari would be separated to be screened for war crimes. He gave no details as to the logistics of this exercise.<sup>3452</sup> The Trial Chamber finds that the forecasted separation process in Potočari, which began later that day, marked the commencement of the implementation of the plan to murder the Bosnian Muslim males from Srebrenica.<sup>3453</sup>

1053. The Trial Chamber also notes that the conditions of detention of the Bosnian Muslim men in Potočari stands as further evidence that a plan to kill was in progress. The men were detained in unbearably cramped conditions and deprived of basic necessities with a total disregard for their safety and well being. Surrendered identification documents were burned<sup>3454</sup> and there was a ban on

<sup>3448</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. For an analysis of Momir Nikolić’s credibility, *see supra*, paras. 48–53, 280–288.

<sup>3449</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. On 11 July, Momir Nikolić wrote a report about the number of men in Potočari and forwarded it to his Command and to the intelligence and security officers of the Drina Corps who were present at the Hotel Fontana. The following day, Momir Nikolić learned that the estimated number of men was between 400 and 700 men. Nikolić explained that once his subordinate units entered Potočari on 12 July, they were able to see how many able-bodied men there were. Momir Nikolić, T. 33009–33010 (22 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 1.

<sup>3450</sup> Svetozar Kosorić, T. 33760 (30 June 2009).

<sup>3451</sup> *See supra*, para. 286.

<sup>3452</sup> Pieter Boering, T. 1969, 1974 (21 Sept 2006).

<sup>3453</sup> There is evidence before the Trial Chamber that some efforts were made to screen the Bosnian Muslim prisoners: DutchBat members testified that Momir Nikolić, together with Colonel Vuković, did make some effort to check the identities of the detained men at Potočari, and that they did this with a list of alleged war criminals in their possession (*supra*, paras. 320, 323); Johannes Rutten testified that on 12 July at the White House, the VRS checked the men’s fingers to see if they smelled of gunpowder and looked for military clothing or identification papers on them (Johannes Rutten, T. 4853–4855 (30 Nov 2006)). However, the efforts were so sporadic and void of superior direction or supervision that one cannot derive a sincere intention on the part of the Bosnian Serb Forces to carry out a legitimate screening operation. The Trial Chamber thus considers that the vague statements and patchy efforts made regarding screening of the Bosnian Muslim males at Potočari against a list of war criminals are not capable of raising a reasonable doubt as to the existence of a plan to kill Bosnian Muslim males from Srebrenica.

<sup>3454</sup> The Bosnian Muslim men surrendered their belongings, including identity cards and passports, on the lawn of the White House, and the pile of documents was set on fire after the men were transported away. *See supra*, para. 331.

registration.<sup>3455</sup> The words of Mane Đurić to Leendert van Duijn that “the men didn't need the passports anymore”<sup>3456</sup> further demonstrate that a murder operation was in motion.

1054. As was the case throughout, these initial steps of separation and detention were carried out by members of various components of the Bosnian Serb Forces including Jahorina Recruits of the MUP, under Jević and Đurić, and members of the Bratunac Brigade Military Police, supervised by Momir Nikolić from the Bratunac Brigade Security Organ.<sup>3457</sup>

(d) Implementation of the Plan

1055. While the initial focus of the operation was the men in Potočari, with the discovery that a large number of men, including most of the 28th Division, had already fled the enclave in a column, the scope of the plan quickly expanded. In the days that followed, the Bosnian Serb Forces vigorously pursued the column, seeking to capture—through force or surrender—as many prisoners as possible.<sup>3458</sup>

1056. By 13 July, the Bosnian Muslim men separated in Potočari had all been taken to places of detention in Bratunac. They were joined by a large number of men from the column who had surrendered to or been captured by the Bosnian Serb Forces.<sup>3459</sup> There was awareness, from the Brigade level right up to the RS President, that on 13 July, a large number of Bosnian Muslim men were in the custody of the Bosnian Serb Forces around Srebrenica.<sup>3460</sup> By 5:30 p.m. on 13 July, an intercepted conversation indicates that approximately 6,000 Bosnian Muslim prisoners were

<sup>3455</sup> When a DutchBat patrol arrived at the White House in the afternoon of 12 July, the Bosnian Serb Forces on guard prevented DutchBat from entering the house or registering the prisoners. *See supra*, para. 327.

<sup>3456</sup> Leendert Van Duijn, T. 2304 (27 Sept 2006). *See supra*, para. 331. *See also* PW-126, T. 3608, 3611(private session) (6 Nov 2006) (saying Nenad Đokić told her that her brother would not be needing his coat).

<sup>3457</sup> *See supra*, paras. 316, 319.

<sup>3458</sup> *See supra*, paras. 380–382. Reports of 12 July show that at Brigade, Corps and Main Staff levels, the VRS had knowledge of the column of Bosnian Muslims fleeing Srebrenica. Ex. P00240, “Document from the Command of the 1st Bratunac Light Infantry Brigade to the Drina Corps Command, Major Golić signed by Captain Pećanac, 12 July 1995”; Ex. P00323, “Intelligence report from the 1st Zvornik Infantry Brigade Command Intelligence organ to the Drina Corps Command signed by Captain 1st Class Duško Vukotić, 12 July 1995”; Ex. P00147, “Document from the Command of the Drina Corps Intelligence Department to the VRS Main Staff signed by Major Pavle Golić, 12 July 1995”; Ex. P00148, “Document from the Command of the Drina Corps Intelligence Dept. to the Main Staff Intelligence and Security Sector signed by Tolimir, 12 July 1995” (stating that according to a prisoner of war, a group of about 500 Bosnian Muslims set off from Sućeska together with ABiH Command, aiming to reach Tuzla). A report from the Bratunac Brigade to the Drina Corps states that “our forces are mopping up the enclave and preventing the enemy from breaking through [in the direction of Milačevići-Jaglići-Bokčoin Potok].” Ex. P00239, “Bratunac Brigade daily combat report signed by Colonel Vidoje Blagojević, 12 July 1995”.

<sup>3459</sup> *See supra*, paras. 380–383.

<sup>3460</sup> Although no information is reported on the size and location of the Bosnian Muslims from the column or the progress of the operation to capture them, it is clear from the reports that from the Corps level right through to the RS President, it was reported that large numbers of Bosnian Muslim men (described as “the enemy” or “troops”) were surrendering to Bosnian Serb forces. Ex. P00136, “Regular Combat report from the Drina Corps Command signed by Major General Radislav Krstić, 13 July 1995”; Ex. P00047, “Document from the VRS Main Staff signed by Radivoje Miletić, 13 July 1995”.

detained in the Bratunac area.<sup>3461</sup> As in Potočari, the conditions in which the men were detained provides further evidence that these men were all targeted for execution.<sup>3462</sup>

1057. Even more direct evidence of the murder plan comes from Mladić himself in the evening of 13 July when he issued the following order to the Drina Corps (a proposal along these lines<sup>3463</sup> was circulated at 2 p.m.):

1. By means of a planned and organised control prevent the entry of all uninvited individuals to the area of combat operations in the wider areas of Srebrenica and Žepa;
2. Until further notice close Konjević Polje — Kravica — Bratunac and Rogatica — Borike — Višegrad roads to traffic, except for military vehicles of the VRS and MUP units engaged in combat operations;
3. Set up road blocks and check-points for the regulation and control of traffic at the cross-roads in Konjević Polje, just outside Bratunca [sic] on the road to Kravica, and on the Rogatica-Borike and Višegrad-Borike roads;
4. In the area of combat operations in the wider areas of Srebrenica and Žepa, prevent the entry of all local and foreign journalists, except for the journalists of the VRS Main Staff Press Centre;
5. Ban and prevent the giving of information, the making of announcements and statements to the media regarding the course, situation and results of combat operations in this area and the overall activities in this area, particularly on prisoners of war, evacuated civilians, escapees and similar.<sup>3464</sup>

1058. The Trial Chamber is satisfied that these instructions from the VRS Commander had a singular and nefarious purpose—to set conditions of secrecy necessary to carry out a plan to commit mass murder. The repeated references to “combat” conditions in this context were nothing more than a frail attempt to disguise the true nature of the imminent operation. Here before the Trial Chamber is clear evidence of a premeditated, calculated effort to put measures in place to ensure the planned killings could be carried out covertly without any unwanted interference.

1059. In the afternoon of 13 July, the killings began in earnest. By nightfall, over 1,000 Bosnian Muslim males had been executed.<sup>3465</sup> Events at Sandići Meadow illustrated that the destiny of the Bosnian Muslim men was predetermined already: when the buses to transport the men for execution

<sup>3461</sup> See *supra*, para. 383.

<sup>3462</sup> At the Sandići Meadow, prisoners were told to drop their belongings in a pile and hand over their money; at Konjević Polje, the men were searched and their belongings were taken from them; at the Nova Kasaba Football Field, prisoners had to throw their belongings in a large pile, and were not given any food or water, the men's belongings were set alight after they were transported away, when the prisoners began boarding buses between 5 and 6 p.m., they were told they would no longer need their belongings; at the Vuk Karadžić School, prisoners were told to leave their bags, including food, outside, they were not asked their names, nor were they interviewed. See *supra*, paras. 384–396.

<sup>3463</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995”. See paras. 1671, 1756.

<sup>3464</sup> Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

<sup>3465</sup> At least 1,000 at the Kravica Warehouse, see *supra*, para. 443; approximately 150 at Cerska Valley, see *supra*, para. 414; and 15 at Jadar River, see *supra*, para. 409.

ran out, an order came for the remaining men to be shot on site.<sup>3466</sup> On the evening of 13 July, Bosnian Muslim men were detained overnight in Bratunac, and a small number were transferred to Zvornik.<sup>3467</sup>

1060. Meanwhile in Bratunac, **Beara**, Chief of Security for the Main Staff, and Miroslav Deronjić, President of the SDS in Bratunac, had a series of heated exchanges as they debated where the remaining mass executions should be carried out.<sup>3468</sup> As an illustration of the cold and calculated nature of the plan, at the heart of their disagreement was not what the fate of these men should be but solely where this reprehensible operation should be carried out. The discussions concerning location were followed by a series of meetings in which logistics were considered, most notably how to secure the necessary equipment for burial of thousands.<sup>3469</sup>

1061. By the morning of 14 July, Zvornik had been selected as the location for the killings and early on that day, key figures of the Security Branch, **Beara**, **Popović** and **Nikolić**, met at the Standard Barracks to discuss the operation.<sup>3470</sup> Following this meeting, the Bosnian Muslim men were transported to various places of detention in Zvornik.<sup>3471</sup>

1062. In the wake of the order from Mladić blocking access to the area and **Popović**'s instructions about avoiding written records,<sup>3472</sup> there are just two reports concerning the prisoners after 13 July: **Pandurević**'s interim combat reports to the Drina Corps of 15 July stating that a "large number of prisoners [were] distributed throughout schools in the brigade area"<sup>3473</sup> and 18 July stating that "During the last ten days or so the municipality of Zvornik has been swamped with Srebrenica Turks. It is inconceivable to me that someone brought in 3,000 Turks of military age and placed them in schools in the municipality, in addition to the 7,000 or so who have fled into the forests".<sup>3474</sup>

1063. The transportation and detention of the Bosnian Muslim men followed a pattern. The men were taken from Bratunac and divided across various detention sites in the Zvornik area. The transportation was conducted under guard by the Bratunac Brigade and civilian police.<sup>3475</sup> The men

<sup>3466</sup> See *supra*, para. 421.

<sup>3467</sup> See *supra*, paras. 383–396, 467.

<sup>3468</sup> See *infra*, paras. 1264–1271.

<sup>3469</sup> *Ibid.*

<sup>3470</sup> See *supra*, para. 472.

<sup>3471</sup> See *supra*, paras. 478, 495.

<sup>3472</sup> On 15 July, Jokić told Obrenović that prisoners were being transferred from Bratunac and Srebrenica to be shot and that "Popović had ordered him not to write down anything concerning that, not to note down anything, and not to use radio equipment to convey this information." For an analysis of this evidence, See *supra*, para. 1122.

<sup>3473</sup> Ex. P00329, "Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 15 July 1995".

<sup>3474</sup> Ex. P00334, "Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 18 July 1995".

<sup>3475</sup> See *supra*, paras. 476, 505.



were detained in Schools.<sup>3476</sup> Once at the detention sites, the prisoners were guarded *inter alia* by members of the Zvornik Brigade, including Military Police.<sup>3477</sup> The manner in which the Zvornik Brigade Battalions were enlisted followed a pattern: the relevant Battalion Commanders were generally informed of the detentions but not necessarily the plan to murder.<sup>3478</sup>

1064. In the days that followed, primarily between 14 and 17 July, several thousand Bosnian Muslim men were executed.<sup>3479</sup> The mass executions also followed a coordinated pattern. The VRS organised trucks to carry the detainees from the detention site to an execution site. The execution site was generally a secluded area close to the place of detention, for example a field near Orahovac, a Dam near Petkovci, a gravel pit near Kozluk, and a farm in Pilica. Assorted VRS units were mobilised to guard, transport and execute the Bosnian Muslim men, including members of the Bratunac Brigade,<sup>3480</sup> the Zvornik Brigade Battalions,<sup>3481</sup> the Zvornik Brigade Military Police<sup>3482</sup> and the 10th Sabotage Detachment, a unit of the VRS Main Staff.<sup>3483</sup> The involvement of so many different units shows the level of planning and coordination in place, and the involvement of the 10th Sabotage Detachment in particular shows that the VRS Main Staff was directly involved in the operation.<sup>3484</sup>

1065. There is abundant evidence before the Trial Chamber to establish that this was a coordinated effort reaching from the VRS Commander and some members of the Main Staff through the Drina Corps, the MUP and down to the Zvornik and Bratunac Brigades and the Battalions thereof. While the evidence does not permit an exact determination as to who were participants and who were perpetrators, it is clear that individual units from across the VRS worked together in the

<sup>3476</sup> The men were detained in the Grbavci School, the Petkovci School, the Ročević School and the Kula School. *See supra* paras. 476–478, 495–496, 505, 528–529.

<sup>3477</sup> *See supra*, paras. 476–477, 505, 528. At the Grbavci School and the Kula School, the location had been prepared in advance of the prisoners arrival by the Zvornik Brigade. *See supra*, paras. 471, 527.

<sup>3478</sup> At Petkovci, on the morning of 14 July the Duty Officer informed the Deputy Commander of the 6th Battalion that prisoners would be brought to the Petkovci School that day. *See supra*, paras. 494. At Ročević, on the early morning of 15 July, the Commander of the 2nd Battalion, received instructions that he should deploy men to participate in the execution of prisoners detained at Ročević School. *See supra*, paras. 506–509. On the morning of 14 July, the Deputy Commander of the 1st Battalion had been informed that prisoners were on their way to the Kula School. *See supra*, paras. 527.

<sup>3479</sup> The Trial Chamber has found that at least 5,336 identified individuals were killed in the executions following the fall of Srebrenica, and this number could well be as high as 7,826. *See supra*, para. 664.

<sup>3480</sup> Members of the Bratunac Brigade, including Military Police, guarded the prisoners at the Ročević School. *See supra* para. 505.

<sup>3481</sup> Members of the Zvornik Brigade 1st Battalion were involved in the detentions at the Kula School, members of the Zvornik Brigade 2nd Battalion were involved in the detentions at Ročević, members of the Zvornik Brigade 4th Battalion were involved in the detentions at Orahovac, members of the Zvornik Brigade 6th Battalion were involved in the detentions at Petkovci and at least one member of the Zvornik Brigade was involved in the killings at Kozluk. *Supra*, paras. 476–478, 479–480, 495–496, 505, 519, 528–529.

<sup>3482</sup> Members of the Zvornik Brigade Military Police guarded the prisoners at the Grbavci School and the Ročević School, and also transported prisoners to the execution site at Orahovac. *See supra*, paras. 477, 481, 515.

<sup>3483</sup> The 10th Sabotage detachment participated in the executions at Pilica (Branjevo Military Farm and Pilica Cultural Centre). *See supra*, paras. 535–536, 540–541.

<sup>3484</sup> *See supra*, para. 127.

implementation of the common purpose.

1066. Members of the Zvornik Brigade Engineering Company were also mobilised to dig pits and to bury the bodies before, during and after the executions. The Zvornik Brigade Engineering Company was present at Orahovac,<sup>3485</sup> Petkovći Dam<sup>3486</sup> and Kozluk.<sup>3487</sup> The graves were occasionally dug in advance of the execution, as was the case in Orahovac.<sup>3488</sup> Members of the Engineering Company worked simultaneously as the killings were taking place.<sup>3489</sup> Throughout the murder campaign, members of the Zvornik Brigade were involved in the delivery of petrol and ammunition to the detention sites.<sup>3490</sup>

1067. The Trial Chamber notes that the reburial operation, which took place during September and October 1995,<sup>3491</sup> is corroborative of the Trial Chamber's finding that the mass executions following the fall of Srebrenica were planned and organised as part of a wide scale, premeditated killing operation. In the same way that the plan to murder was formed within the ranks of the VRS Main Staff and disseminated via the Security Organ, the plan to obscure evidence of the plan's existence also came from the VRS Main Staff through the Security Organ.<sup>3492</sup> The evidence of the reburial operation is compatible with, and even analogous to, the formulation and coordination of the plan to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>3493</sup> The Trial Chamber considers that this evidence strengthens the conclusion that the plan to murder included a plan to conceal the fact that it was taking place.

1068. While the murder operation implicated personnel and units from the Main Staff to the Corps and the Brigades, the heavy hand of the Security Branch was evident throughout. **Beara** was at the centre of the operations with **Popović**, and together they were responsible for overall planning and implementation—logistics, locations, personnel. They also organised security officers to assist.<sup>3494</sup> Notably, Momir Nikolić and **Drago Nikolić** were engaged to help in their areas of responsibility.<sup>3495</sup> While Momir Nikolić was heavily involved in the separations and the capture of men in the immediate vicinity of Srebrenica, he became pivotal to the organisation of detentions

<sup>3485</sup> See *supra*, paras.489–490.

<sup>3486</sup> See *supra*, para. 501.

<sup>3487</sup> See *supra*, paras. 521–522.

<sup>3488</sup> See *supra*, paras. 479, 489.

<sup>3489</sup> See *supra*, para. 489, fn. 1773.

<sup>3490</sup> See *supra*, paras. 517, 533; *infra*, para. 1129.

<sup>3491</sup> See *supra*, para. 600.

<sup>3492</sup> See *supra*, para. 601.

<sup>3493</sup> See *supra*, paras. 601–606.

<sup>3494</sup> See *infra*, paras. 1097–1098, 1104.

<sup>3495</sup> See *infra*, paras. 1097–1098, 1104. Momir Nikolić was the Chief of Security and Intelligence of the Bratunac Brigade, and Drago Nikolić was Chief of Security of the Zvornik Brigade. See *supra*, para. 139; *infra*, para. 1137.

and executions once the Zvornik area was selected for the bulk of the executions.<sup>3496</sup> Together in Zvornik, **Beara**, **Popović** and **Nikolić** translated the murder plan into actions, engaging various members and units of the VRS as and where necessary.<sup>3497</sup> The words of Dragan Jokić, as recounted, were apt in this context: “**Beara** and **Popović** were taking people wherever they wanted”.<sup>3498</sup>

1069. Moreover, the Security Branch worked in a highly coordinated manner. The meetings, acts, movements and whereabouts of **Popović**, **Beara** and **Nikolić** from the morning of 14 July onward evince the close cooperation and communication between the officers of the Security Branch as the plan unfolded. For example, **Nikolić** placed calls to Aćimović in the early morning hours of 15 July arranging for him to attend at the Ročević School later that morning, and when Aćimović arrived it was **Popović** who was there to meet him.<sup>3499</sup> Aćimović observed **Popović** complaining that he had insufficient personnel to complete the operation.<sup>3500</sup> An hour later, **Beara** asked Krstić to provide him with troops for the killing operation, complaining that the men should have been sent before.<sup>3501</sup>

1070. The Trial Chamber is thus satisfied that while various Battalion, Brigade and Corps Commanders, forces and individual members were drawn into the plan as participants and perpetrators, each contributing in different ways, this was an operation steadily organised and directed by the Security Branch of the VRS.

1071. Further, what is clear from the evidence before the Trial Chamber is that such an operation, on a massive scale, involving the participation of a multitude of VRS members from the Main Staff down, could not have been undertaken absent the authorisation and order of VRS Commander Mladić. Given his role in the military structure and his acts and words at the time, including his direct involvement in critical components of the operation, any alternative conclusion is inconceivable.<sup>3502</sup> His imprint—through rhetoric,<sup>3503</sup> threats,<sup>3504</sup> speeches,<sup>3505</sup> orders<sup>3506</sup> and

<sup>3496</sup> See *supra*, paras. 1266–1269, 1354.

<sup>3497</sup> See *infra*, paras. 1105–1135, 1272–1288, 1345–1371.

<sup>3498</sup> PW-168, T. 15871 (closed session) (26 Sept 2007). For an analysis of this evidence, see *infra*, para. 1122.

<sup>3499</sup> See *supra*, paras. 510–511.

<sup>3500</sup> See *supra*, para. 511.

<sup>3501</sup> See *infra*, para. 1285.

<sup>3502</sup> See, for example, PW-168, T. 15948–15950 (closed session) (27 Sep 2007) (stating that on 23, 24 or 25 July, Pandurević told PW-168 about a discussion he had with Mladić concerning the situation in Zvornik after the fall of Srebrenica. Pandurević said “[i]t’s known Mladić ordered this ... with Mladić up there, we are all doomed”.)

<sup>3503</sup> As Mladić walked victorious through the streets of Srebrenica on 11 July, he is captured on video saying *inter alia* “finally, after the rebellion against the Dahis, the time has come to take revenge on the Turks in this region”; “we give this town to the Serb people as a gift”; “move on immediately towards Bratunac [...] we are going straight to Bratunac, man! Straight to Potočari from here!”; and upon meeting a Serb woman from Srebrenica, he states “may this be a happy town for you!”. Ex. P02047, “Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 11.

physical presence<sup>3507</sup>—appears on an ongoing basis at critical junctures of this murder enterprise. The Trial Chamber is satisfied that Mladić was a central, driving force behind the plan to murder and its implementation.

1072. The Trial Chamber notes the scale of the operation, the number of units involved, the fact that these units fell across the entire spectrum of the VRS hierarchy, the compact time-frame in which the operation was carried out, the sheer number of different locations and the relative geographic disparity of these locations. The only reasonable conclusion available on the evidence is that the killing operation was undertaken pursuant to a pre-conceived, coordinated plan to murder. This plan emanated from the highest echelons of the VRS Main Staff, including Mladić, the Commander of the VRS. The VRS Security Branch planned, organised and implemented the murder operation. The Drina Corps, MUP, Bratunac Brigade and Zvornik Brigade, along with other units detailed above, were also implicated in the murder operation.<sup>3508</sup> The Trial Chamber is therefore convinced beyond reasonable doubt that there was a plan involving a plurality of persons to murder the able-bodied Bosnian Muslim males from Srebrenica, and that these persons participated in the common purpose and shared the intent to murder.

(e) Scope of the Joint Criminal Enterprise

1073. The Trial Chamber finds that the common purpose involved the commission of murder, a

<sup>3504</sup> At the Third Hotel Fontana meeting, which took place at around 10 a.m. on 12 July, Mladić stated: “There is no need for your people to get killed, your husband, your brothers or your neighbours. All you have to do is say what you want. As I told this gentleman last night, you can either survive or disappear. For your survival, I demand that all your armed men, even those who committed crimes – and many did – against our people, surrender their weapons to the VRS.” Ex. P01995, “Video clip of the third meeting at Hotel Fontana taken from Ex. P02047”; Ex. P02048, “Srebrenica Trial Video Transcript”, p. 51.

<sup>3505</sup> Mladić made the following speech at the second Hotel Fontana meeting, which took place at around 11 p.m. on 11 July: “Please write down the following: Number one, you need to lay down your weapons and I guarantee that all those who lay down their weapons will live...I need to have a clear position of the representatives of your people on whether you want to survive...stay or vanish. I am prepared to receive here tomorrow at 10am hrs a delegation of officials from the Muslim side with whom I can discuss the salvation of your people from the enclave, the former enclave of Srebrenica. I shall order a cessation of operations until 10 a.m. tomorrow. If your .... fighters, your fighters who lay down their arms we shall treat in accordance with international conventions and we guarantee that everybody will live, even those who committed crimes against our people. Have I made myself clear? Nesib, the future of your people is in your hands [...] bring the people who can secure the surrender of weapons and save your people from destruction.” Ex. P02047, “Srebrenica Trial Video”; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 47–48.

<sup>3506</sup> For example, the order to block outside access to the Zvornik area. *See supra*, para. 1057.

<sup>3507</sup> Mladić was constantly moving through Potočari as the separation, transport and detention was taking place, and was seen at the White House. *See supra*, paras. 330, 343. On 13 July, Mladić addressed the prisoners at Sandići Meadow, the football field outside Nova Kasaba and the hangar outside the Vuk Karadžić School. *See supra*, paras. 387, 394, 402. The Trial Chamber notes that at Sandići Meadow, Mladić told the prisoners that they would be exchanged. However, in light of the events outlined in this section, in particular Mladić’s actions before and after making this statement, the Trial Chamber is of the opinion that Mladić was lying to the prisoners at Sandići Meadow, and had no intention to exchange them.

<sup>3508</sup> In relation to the involvement of the Security Organ, Jokić told Obrenović on 15 July that **Beara** and **Popović** had brought prisoners from Bratunac and Srebrenica in order to shoot them. Specifically, he said that “Beara and Popović were taking people wherever they wanted”. *See infra*, paras. 1122, 1283.

crime under the Statute,<sup>3509</sup> and the scale upon which the murders were carried out is sufficient to establish extermination, also a crime under the Statute.<sup>3510</sup> The Trial Chamber is also satisfied that cruel and inhumane treatment fell within the common purpose.<sup>3511</sup> The first and second elements of a JCE have thus been established. The third element required to prove participation in a JCE—participation of the accused in the common purpose—will be discussed below in the responsibility section pertaining to each Accused.

1074. The Trial Chamber does not have evidence in respect of each killing site to determine whether the physical perpetrators of each mass execution were themselves members of the JCE. The Trial Chamber will therefore consider whether each killing formed part of the common purpose, even when the crimes were committed by persons outside the JCE or by unknown members of the JCE. The Trial Chamber recalls that the killings at Jadar River,<sup>3512</sup> Cerska Valley,<sup>3513</sup> Kravica Warehouse,<sup>3514</sup> and Sandići Meadow<sup>3515</sup> occurred in the area of Bratunac. The common elements, including the units involved (Bratunac Brigade), the method and means by which the killings were carried out and the time frame within which they occurred bring these events within the scope of the common purpose. It is also significant that the victims of the killings at Bratunac and Zvornik were linked in that they had all come from Srebrenica and been either taken into custody at Potočari or captured from the column.<sup>3516</sup> The killings at the Luke School near Tišća are linked to the common purpose in that the killed Bosnian Muslim males came from Potočari, and one of the intended victims was on a bus bound for Muslim-held territory when he was separated from the women and children and taken to a nearby school. He was detained in that school with other Bosnian Muslim men who were later killed.<sup>3517</sup>

1075. The killings in Orahovac, Petkovci Dam, Ročević School, Kula School, Kozluk, Branjevo Military Farm and Pilica Cultural Centre were well organised and followed the same pattern: men

<sup>3509</sup> The Trial Chamber is satisfied that members of the JCE knew that the murders were conducted as part of a widespread and systematic attack against the civilian population. The Trial Chamber is therefore satisfied that the mental element required for the crime of murder as a war crime (Article 3), and murder as a crime against humanity (Article 5(a)), is established. *See supra*, para. 796.

<sup>3510</sup> The Trial Chamber is satisfied that members of the JCE knew that extermination was conducted as part of a widespread and systematic attack against the civilian population. The Trial Chamber is therefore satisfied that the mental element required for the crime of extermination as a crime against humanity (Article 5(b)), is established. *See supra*, para. 806.

<sup>3511</sup> The Trial Chamber is satisfied that this underlying act was committed against the Bosnian Muslim males as they were detained in Bratunac and Zvornik prior to execution. *See supra*, para. 995. In order to prove persecution, a crime against humanity, the Prosecution must establish discriminatory intent on the part of the perpetrator. This issue is analysed in relation to each Accused in the responsibility sections below. *See infra*, paras. 1194, 1331, 1426.

<sup>3512</sup> *See supra*, paras. 408–409.

<sup>3513</sup> *See supra*, paras. 410–414.

<sup>3514</sup> *See supra*, paras. 424–445.

<sup>3515</sup> *See supra*, paras. 421–423.

<sup>3516</sup> *See supra*, paras. 325–331, 383.

<sup>3517</sup> *See supra*, paras. 351–353.

were detained, transported to an appropriate site and summarily executed. The Zvornik Brigade Military Police guarded the prisoners prior to their execution, various Zvornik Brigade Battalions were involved, and the Zvornik Brigade Engineering Company buried the bodies.<sup>3518</sup> All of these large scale executions took place between 14 and 16 July in a geographically concentrated area. The Trial Chamber is satisfied that all of these incidents fall within the common purpose of the JCE.

1076. Additional killings took place in the Zvornik area between 16 and 27 July. Incidents occurred at Baljkovica (near Nezuk)<sup>3519</sup> and Snagovo,<sup>3520</sup> and two other incidents can be linked to the Standard Barracks: the killing of ten patients from the Milići Hospital<sup>3521</sup> and four men who had survived the execution at Branjevo Military Farm.<sup>3522</sup> The Trial Chamber is satisfied that the killings at Snagovo, the killing of the men from the Milići Hospital and the killing of the four Branjevo Military Farm survivors all have significant geographic and temporal links to the common purpose of the JCE to Murder. The killings took place within the same time frame and location as the larger-scale mass executions in the Zvornik area<sup>3523</sup> and the victims were all Bosnian Muslim males from Srebrenica.<sup>3524</sup> Based on these factors, the Trial Chamber is satisfied that the killings at Snagovo, the killing of the men from the Milići Hospital and the killing of the four Branjevo Military Farm survivors fall within the common purpose of the JCE to Murder.

1077. The killings at Baljkovica, near Nezuk, occurred on 19 July, only a few days after the mass execution at Branjevo Military Farm, the victims were from Srebrenica and a unit resubordinated to the Zvornik Brigade was involved in their capture.<sup>3525</sup> The Trial Chamber is satisfied that there are sufficient geographic and temporal links to the JCE for this incident to fall within its scope. Once the execution had commenced, an order came through the radio that the men should not be executed, as they could be used for a prisoner exchange.<sup>3526</sup> This shows that there was a presumption that the captured men would be killed, and further strengthens the Trial Chamber's conclusion that these particular men were executed as part of the JCE to Murder.

1078. The Prosecution also alleges that the execution by the Scorpions Unit of six Bosnian Muslim men and boys near the town of Trnovo was part of the common purpose to kill all the able-

<sup>3518</sup> See *infra*, paras. 1064, 1066.

<sup>3519</sup> See *supra*, paras. 565–569.

<sup>3520</sup> See *supra*, paras. 578–583.

<sup>3521</sup> See *supra*, paras. 570–577.

<sup>3522</sup> See *supra*, paras. 584–588.

<sup>3523</sup> The Snagovo killings occurred on or around 22 July. See *supra* para. 583. The men from the Milići Hospital and the Branjevo Military Farm survivors were killed some time after 23 July, and last seen at the Standard Barracks. In addition, the latter victims had escaped the larger-scale execution at Branjevo Military Farm. See *supra*, paras. 573, 589.

<sup>3524</sup> See *supra*, paras. 565–588.

<sup>3525</sup> An infantry company of the 16th Krajina Motorised Brigade was resubordinated to the Zvornik Brigade. See *supra* paras. 565–569.

bodied Bosnian Muslim males from Srebrenica.<sup>3527</sup> The Prosecution submits that these killings fall within the JCE to Murder because the men were from Srebrenica, they were arrested in the Drina Corps zone of responsibility, and the logistics of their transport would have required involvement from the VRS Main Staff.<sup>3528</sup> The Prosecution asks the Trial Chamber to infer that the men were transported on board buses or trucks that were used in the forcible transfer or the murder operation in order to scatter the victims and cover up the killings.<sup>3529</sup> The Prosecution also submits that the Scorpions would not have been able to take any actions without orders from the Bosnian Serb Forces and the MUP in Trnovo.<sup>3530</sup>

1079. However, the Trial Chamber was not presented with evidence indicating that the six men were detained in the area of responsibility of the Drina Corps, nor was it presented with evidence concerning the men's journey from Srebrenica to the Trnovo area. Similarly, no evidence was presented indicating that there was any VRS Main Staff involvement in the six men coming into the custody of the Scorpions Unit. Any inference that there was coordination with the VRS Main Staff is speculation.

1080. Nevertheless, the killings occurred in July 1995, after the fall of Srebrenica, and the victims were Bosnian Muslim men from Srebrenica. Thus, the Trial Chamber considers, by majority, Judge Kwon dissenting, that these factors are sufficient to link the killings at Trnovo to the common purpose of the JCE to Murder, *i.e.* to murder the able-bodied Bosnian Muslim males from Srebrenica. Even without evidence as to how the men arrived at this location or into the custody of the Scorpions, the Trial Chamber, by majority, considers it an unreasonable inference that within the same relative time period, in an adjoining area, there was a separate, distinct murder operation targeting precisely the same victims. In all the circumstances therefore the Trial Chamber finds, by majority, Judge Kwon dissenting,<sup>3531</sup> that the killings at Trnovo fall within the scope of the JCE to Murder.

(f) Third Category Joint Criminal Enterprise

1081. In addition to the first category JCE, the Prosecution alleges that five of the Accused (**Popović, Beara, Nikolić, Borovčanin** and **Pandurević**) are criminally responsible under third category JCE for the so-called "opportunistic" killings. It is alleged that on 12 and 13 July, several Bosnian Muslim men who had either surrendered or been captured from the column or had been

<sup>3526</sup> See *supra*, para. 568.

<sup>3527</sup> Indictment, para. 30.16.

<sup>3528</sup> Prosecution Closing Arguments, T. 34277–34278 (4 Sept 2009).

<sup>3529</sup> *Ibid.*, T. 34277 (4 Sept 2009).

<sup>3530</sup> *Ibid.*, T. 34278 (4 Sept 2009).

<sup>3531</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 36–39.

separated at Potočari were killed near the UN compound in Potočari,<sup>3532</sup> in Bratunac town,<sup>3533</sup> at Petkovci School,<sup>3534</sup> and at a supermarket in Kravica.<sup>3535</sup> The Prosecution argues that these “opportunistic” killings, which were less organised in their nature, were not part of the common purpose to kill the able-bodied Bosnian Muslim males from Srebrenica, but they were a foreseeable consequence of it.<sup>3536</sup>

1082. The Trial Chamber has found that murder was committed near the UN compound in Potočari,<sup>3537</sup> in Bratunac town,<sup>3538</sup> at the Petkovci School.<sup>3539</sup> The Trial Chamber has found, by majority, Judge Kwon dissenting, that murder also occurred at the Kravica Supermarket.<sup>3540</sup> The Trial Chamber considers that within the context of the plan to kill a large number of able-bodied Bosnian Muslim males from Srebrenica, it was foreseeable to members of the JCE that Bosnian Muslims would not just be killed at locations earmarked by the VRS as execution sites in accordance with the plan, but that killings would also occur as the men were detained and captured. The Trial Chamber is satisfied that the killings by VRS soldiers in Potočari, Bratunac, at the Petkovci School and at the Kravica Supermarket were foreseeable consequences of the plan to kill all the able-bodied Bosnian Muslim males from Srebrenica.

1083. The Prosecution also alleges that the reburial operation was a natural and foreseeable consequence of the JCE to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>3541</sup> The Trial Chamber notes that as reburial is not a crime under the Statute, none of the Accused may be held criminally responsible for it under the third category of JCE.

## 2. Joint Criminal Enterprise to Forcibly Remove the Populations from Srebrenica and Žepa

1084. The Prosecution alleges that all seven Accused, together with other VRS and MUP officers and units and RS officials, were members of and knowingly participated in a joint criminal enterprise, the common purpose of which was to force the Muslim populations out of the Srebrenica and Žepa enclaves to areas outside the control of the RS from about 8 March 1995 through the end of August 1995.<sup>3542</sup>

<sup>3532</sup> Indictment, para. 31.1.

<sup>3533</sup> *Ibid.*, para. 31.2.

<sup>3534</sup> Indictment, para. 31.4.

<sup>3535</sup> *Ibid.*, para. 31.3.

<sup>3536</sup> *Ibid.*, para. 31; Prosecution Closing Argument, T. 34178 (3 Sept 2009).

<sup>3537</sup> *See supra*, paras. 354–361.

<sup>3538</sup> *See supra*, paras. 452–463.

<sup>3539</sup> *See supra*, para. 497.

<sup>3540</sup> *See supra*, para. 749. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

<sup>3541</sup> Indictment, para. 32.

<sup>3542</sup> *Ibid.*, para. 49.



1085. As has been found and detailed by the Trial Chamber in the section addressing the general requirements of Article 5 of the Statute, there was an attack against the civilian populations of the Srebrenica and Žepa enclaves.<sup>3543</sup> The Trial Chamber finds that the same acts constituting the attack against the civilian populations, i.e. the issuance of Directive 7, which marked the commencement of the attack, the restrictions on humanitarian aid to the enclaves and re-supply of UNPROFOR, and the military actions, including the indiscriminate shelling of civilians,<sup>3544</sup> leading up to the fall of the two enclaves, illustrate the intention by the Bosnian Serb political and military leadership to forcibly remove the Bosnian Muslim populations from the Srebrenica and Žepa enclaves.

1086. The Trial Chamber recalls that the plan as laid out in Directive 7 and the 20 March Drina Corps Order was to create “an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>3545</sup> This plan was first pursued by limiting the aid to the enclaves and the subsequent military attacks. Eventually, the implementation of the plan culminated in the terrorising of the people in Srebrenica town,<sup>3546</sup> as well as the terrorising and cruel and inhumane treatment of the people gathered at Potočari.<sup>3547</sup> The Trial Chamber is satisfied that all these acts were intrinsic steps to the ultimate aim to force the Bosnian Muslim populations out of the enclaves.<sup>3548</sup> This common purpose was finally achieved through the actual busing of the people out of the enclaves and amounted to forcible transfer of the Bosnian Muslim civilian population from Srebrenica and the Bosnian Muslim population from Žepa.<sup>3549</sup>

1087. The Trial Chamber is therefore satisfied of a joint criminal enterprise of the Bosnian Serb political and military leadership to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa. At the latest, this JCE came into existence with the issuance of Directive 7. As found above, the terrorising and cruel and inhumane treatment of the Bosnian Muslim population in Srebrenica were inherent components of the implementation of the plan to forcibly remove the Bosnian Muslim population and thus part of the common purpose of the JCE.

1088. The Trial Chamber notes that the Prosecution has not only charged the “opportunistic” killings as a natural and foreseeable consequence of the JCE to Murder, but also as a natural and foreseeable consequence of the JCE to Forcibly Remove.<sup>3550</sup> The Trial Chamber, by majority, Judge

<sup>3543</sup> See *supra*, paras. 760–761. See also *supra*, Chapter IV, Section B.2.(b).

<sup>3544</sup> See *supra*, Chapter IV, Section B.2.(b).

<sup>3545</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10. Cf. Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6. See also *supra*, paras. 199, 201.

<sup>3546</sup> See *supra*, paras. 920, 924, 996, 998.

<sup>3547</sup> See *supra*, paras. 917–918, 992–994, 997, 998.

<sup>3548</sup> See *supra*, para. 760. See also *supra*, Chapter IV, Section B.2.(b).

<sup>3549</sup> See *supra*, paras. 936, 962. See also *supra*, Chapter IV, Section G.2.

<sup>3550</sup> Indictment, paras. 31, 83.

Kwon dissenting, is satisfied that in the circumstances of this forced movement of an entire population, numbering in the thousands, it was foreseeable that “opportunistic” killings would occur. This is particularly the case where the movement was accompanied by acts of cruel and inhumane treatment and terrorisation. Therefore, the Trial Chamber is satisfied that “opportunistic” killings were a natural and foreseeable consequence of the JCE to Forcibly Remove. However, given the two JCEs alleged in this case and the Trial Chamber’s findings as to the detention of the men being part of the JCE to Murder, the Trial Chamber is of the view that only the killings which occurred in Potočari were foreseeable consequences of the forcible removal of the population. The Trial Chamber will also address the foreseeability of the “opportunistic” killings in the context of the forcible transfer with regard to the responsibility of the specific Accused who have been found to be participants in the JCE to Forcibly Remove.<sup>3551</sup>

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<sup>3551</sup> See *infra*, paras. 1724–1727, 1732–1735, 1828–1831, 1834. See also Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–28.

### 3. Vujadin Popović

#### (a) The Case against Popović

1089. The Prosecution alleges that **Popović** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.<sup>3552</sup> Specifically, the Prosecution alleges that **Popović** was a member of a joint criminal enterprise to summarily execute the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).<sup>3553</sup>

#### (b) Position and Function

1090. **Vujadin Popović** was a Desk Officer in the Department for Security and Intelligence of the 2nd Krajina Corps of the VRS until November 1992, when he was assigned to the Drina Corps upon its establishment.<sup>3554</sup> In 1995, **Popović** was the Chief of Security of the Drina Corps<sup>3555</sup> and he held the rank of Lieutenant-Colonel.<sup>3556</sup> He was directly subordinated to the Corps Commander, who was Major-General Milenko Živanović until 13 July 1995 and thereafter Major-General Radislav Krstić.<sup>3557</sup> In the professional chain of command, **Popović** was subordinate to **Beara**, the Chief of Security of the Main Staff.<sup>3558</sup> **Beara** and Col. Petar Salapura, the Chief of Intelligence at the Main Staff, were both directly subordinated to Zdravko Tolimir, the Assistant Commander for Intelligence and Security.<sup>3559</sup>

<sup>3552</sup> Indictment, paras. 26–37, 41, 45–71, 79, 83–84, 88. **Popović** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

<sup>3553</sup> Indictment, paras. 41, 79.

<sup>3554</sup> Mikajlo Mitrović, T. 25066 (2 Sept 2008); Prosecution Adjudicated Facts Decision, Fact 75.

<sup>3555</sup> See *supra*, para. 139.

<sup>3556</sup> Ex. P00149, “Document from the Command of the Drina Corps Intelligence Dept. to Intelligence and Security organs signed by Tolimir, 12 July 1995”, p. 1; Ex. 1D01180, “Receipt Hotel Fontana”, p. 1; Ex. P00377, “Zvornik Brigade Duty Officer Logbook”, pp. 143, 149, 150, 177; Ex. P03033, “Order to Chiefs of Security and Intelligence signed by Popović, 20 April 1995”, p. 2. PW-109 and Gordan Bjelanović refer to **Popović** as a “Colonel”. PW-109, T. 14589–14590 (private session) (31 Aug 2007); Gordan Bjelanović, T. 22065 (10 June 2008). However, the Trial Chamber finds that he was a Lieutenant-Colonel in view of the large amount of evidence, in particular documentary evidence, indicating that this was his rank.

<sup>3557</sup> See *supra*, paras. 136–137.

<sup>3558</sup> See *supra*, para. 139; Milorad Birčaković, T. 11012 (7 May 2007). The nature of the professional chain of command is explained above. See *supra*, paras. 136–138.

<sup>3559</sup> See *supra*, para. 119.

1091. In the professional chain of command, **Popović** was superior to the security organs of the Drina Corps brigades, including **Drago Nikolić**, the Chief of Security in the Zvornik Brigade, and Momir Nikolić, the Chief of Security and Intelligence in the Bratunac Brigade.<sup>3560</sup> The Military Police Battalion of the Drina Corps, commanded by Lieutenant Ratko Vujović, was directly subordinated to the Corps Commander, while **Popović**, as Chief of Security, was superior to the Military Police Battalion in the professional sense.<sup>3561</sup>

1092. As Chief of Security, **Popović's** function was the detection and prevention of enemy activities directed against the VRS, which included discovering, documenting, and preventing enemy intelligence.<sup>3562</sup> Counter-intelligence work accounted for around 80% of the Security Organ's tasks, and included the prevention of information about the VRS from reaching the enemy.<sup>3563</sup> **Popović's** exercise of his counter-intelligence function is exemplified by an instruction he issued in April 1995 to the Intelligence and Security Organ heads of all the brigades and the 5th Engineers Battalion regarding the arrest and detention of POWs and others.<sup>3564</sup>

1093. At the relevant time, **Popović** was the sole officer within the security organ of the Drina Corps.<sup>3565</sup> The Department of Intelligence in the Drina Corps was headed by Svetozar Kosorić.<sup>3566</sup> The Drina Corps Security and Intelligence Departments worked separately from each other, but exchanged information that was of interest to one another.<sup>3567</sup>

<sup>3560</sup> See *supra*, para. 139. See also Zlatan Čelanović, T. 6654 (31 Jan 2007) (testifying that **Popović** visited Momir Nikolić frequently); Momir Nikolić, T. 33030–33031 (22 Apr 2009) (testifying that he and **Popović** had “a professional and correct relationship” and that he respected **Popović** as a fellow officer and his superior officer but they were not friends in the sense that he would do him favours such as preparing a meal for him).

<sup>3561</sup> See *supra*, para. 140. The plan of work for the Drina Corps Command for December 1994 gave the intelligence and security organs tasks in relation to forming and equipping the Military Police Battalion of the Corps and controlling its work “and other companies and platoons according to brigades”. Ex. 5D00989, “Plan of work of the Drina Corps Command for December 1994 signed by Radislav Krstić”, p. 7.

<sup>3562</sup> See *supra*, para. 120.

<sup>3563</sup> Ex. P02741, “Instruction on Command and Control over the Security and Intelligence Organs signed by Mladić, 24 October 1994”; Petar Vuga, T. 23090–23091 (1 July 2008); see *supra*, para. 120.

<sup>3564</sup> Ex. P00196, “Drina Corps Security Department instruction, signed by Popović, 15 April 1995”, p. 2, items 1 and 2 (providing that “All prisoners, members of the enemy army are to be handcuffed or their hands tied with anything available immediately after their capture. They are to be searched and all items are to be seized apart from their clothing and footwear. An official record is to be compiled. After the search, they are to be blindfolded at the place of detention prior to being led away in order to prevent them from observing anything. (...) The location where POWs are collected must be such that the prisoners are fully secured, as well as the people from the security organ, from the intelligence organ and from the military police organ that engages in the interrogation and guards POWs.”). Cf. Ex. P03014, “Order to Chiefs of Security and Intelligence on dealing with news reporters signed by Popović, 18 July 1995”, Ex. P03033, “Order to Chiefs of Security and Intelligence signed by Popović, 20 April 1995”.

<sup>3565</sup> See *supra*, para. 139. The Security Sector of the Drina Corps consisted of the Chief of the Security Section and one civilian who served as a technical clerk processing documents; the other positions in the Section were vacant. Petar Vuga, T. 23193 (2 July 2008); Ex. 1D01296, “Organisation and Establishment Manual for the Drina Corps Command, 1993”, p. 24.

<sup>3566</sup> Svetozar Kosorić, T. 33760 (30 June 2009).

<sup>3567</sup> *Ibid.*, T. 33786 (30 June 2009).

1094. **Popović's** professional concern with all of the military police units within the Drina Corps, whether at Corps or Brigade level, is demonstrated by various orders he issued. For example, in one order, **Popović** required the provision of wide-ranging information about the Military Police in the Drina Corps.<sup>3568</sup> In another, he transmitted within the Drina Corps instructions issued by the VRS Main Staff for the work of Military Police at checkpoints.<sup>3569</sup> In yet another, he ordered the military police organs to intensify checks on persons and vehicles at all military police checkpoints.<sup>3570</sup>

1095. The 10th Sabotage Detachment was a special unit of the Main Staff directly subordinated to the Department for Intelligence.<sup>3571</sup> **Popović** used to visit the unit of the 10th Sabotage Detachment in Vlasenica to speak to the Commander, Momir Pelemiš, who was from the same area as he was.<sup>3572</sup> On one occasion in June 1995, Krstić instructed **Popović** to have Momir Pelemiš "come over here with his unit as soon as possible."<sup>3573</sup>

(c) Acts and Whereabouts

(i) 11 July 1995

1096. **Popović** was with **Beara** on the evening of 10 or 11 July 1995 in front of the Bratunac Brigade Headquarters building, along with some other officers.<sup>3574</sup> **Popović**, **Beara** and Miroslav Deronjić were at the Pribićevac IKM on 11 July 1995, when NATO planes dropped bombs

<sup>3568</sup> Ex. P03032 "Order to Security and Intelligence Organs signed by Popović, 7 February 1995".

<sup>3569</sup> Ex. 3D00436, "Instruction from the Drina Corps Command signed by Popović, 6 July 1995".

<sup>3570</sup> Ex. 7D00978, "Order on procedure for members of UNPROFOR and other international organizations signed by Popović, 30 August 1995".

<sup>3571</sup> The 10th Sabotage Detachment had platoons at Vlasenica and Bijeljina, each consisting of about 30 men, and was headed by Col. Petar Salapura, the Chief of Intelligence in the Main Staff. Dražen Erdemović, T. 10931–10932, 10934 (4 May 2007); Manojlo Milovanović, T. 12165–12166 (29 May 2007).

<sup>3572</sup> Dragan Todorović, T. 13993–13994, 14013 (21 Aug 2007). Todorović said that **Popović** never issued orders to any member of the 10th Sabotage Detachment and did not have any influence on it as far as he was aware, but that **Popović** may have conveyed messages to Pelemiš in their conversations. Dragan Todorović, T. 14013–14014 (21 Aug 2007). Although one of the two platoons of the 10th Sabotage Detachment was based in Vlasenica where the Drina Corps Command was also based, there is no evidence that they were both actually at the same location in Vlasenica.

<sup>3573</sup> Ex. P01090a. "Intercept of conversation between Popović and Krstić, 25 June 1995, 14:46 hours". Krstić's instruction to Popović regarding Pelemiš's unit was made in relation to "big problems". Krstić also asks **Popović** to "tell [Pelemiš's] lad that I had asked him". **Popović** later says that "his lad is here with me right now"; and Krstić asks him to speak to him and very soon afterwards Krstić says: "Put Cvetković on now". Ex. P01090a, "Intercept of conversation between Popović and Krstić, 25 June 1995, 14:46 hours". There was a member of the 10th Sabotage Detachment called Aleksandar Cvetković. Dražen Erdemović, T. 10967 (4 May 2007). The Trial Chamber finds that he was the person **Popović** referred to as "Pelemiš's lad".

<sup>3574</sup> Zlatan Čelanović, T. 6654–6655 (31 Jan 2007). Zlatan Čelanović, a desk officer at the Bratunac Brigade, was unsure of the date. *Ibid.* Čelanović indicated that he recognized **Popović**, whom he identified as "the Security Officer of the Corps", because he came to see Nikolić frequently. Zlatan Čelanović, T. 6654 (31 Jan 2007). The Trial Chamber concludes that this is a reference to Momir Nikolić, given his position within the Bratunac Brigade.

there.<sup>3575</sup> Also on 11 July 1995, **Popović** was with General Mladić and other senior VRS officers when they walked through the empty streets of Srebrenica town.<sup>3576</sup>

(ii) 12 July 1995

1097. Prior to the third meeting at the Hotel Fontana on the morning of 12 July, Momir Nikolić<sup>3577</sup> met with **Popović** and Svetozar Kosorić, Assistant Chief of Staff for Intelligence of the Drina Corps, outside the hotel.<sup>3578</sup> Momir Nikolić had the impression that **Popović** was agitated, nervous and angry.<sup>3579</sup> **Popović** told Momir Nikolić that the thousands of Bosnian Muslim women and children in Potočari would be transported to ABiH-held territory, but that the able-bodied Bosnian Muslim men in Potočari would be separated from the crowd and screened to identify those suspected of committing war crimes.<sup>3580</sup> When Nikolić asked why these men would be set aside, **Popović** answered “All the balija have to be killed.”<sup>3581</sup> **Popović** also told Nikolić that it was his responsibility to “help coordinate and [...] organize this operation”,<sup>3582</sup> and that prior to their execution the men were supposed to be temporarily detained in Bratunac.<sup>3583</sup> **Popović**, Kosorić and Nikolić discussed possible detention sites and execution sites outside Bratunac town.<sup>3584</sup> Nikolić

<sup>3575</sup> Božo Momčilović, T. 14085, 14088, 14116 (22 Aug 2007); Prosecution Adjudicated Facts Decision, Fact 113. Momčilović was not entirely clear on the date of the visit of **Popović** and **Beara**, but he does link it to the NATO bombing of Bosnian Serb positions. Božo Momčilović, T. 14088, 14116 (22 Aug 2007). This took place on 11 July 1995. Prosecution Adjudicated Facts Decision, Fact 113 (stating that NATO bombed VRS tanks advancing towards Srebrenica town at around 14:30 on 11 July). There were two bombings on the day concerned, one of which occurred at around 2 or 3 pm and Momčilović thought that **Popović**, **Beara** and Deronjić arrived between the bombings. Božo Momčilović, T. 14114, 14116, 14128–14129 (22 Aug 2007). Momčilović did not know the purpose of their visit, but he believed that “they came by to see the view [of Srebrenica] from Pribićevec”. Božo Momčilović, T. 14085 (22 Aug 2007).

<sup>3576</sup> Ex. P02047, “Srebrenica Trial Video”, 00:30:31–00:30:35, 00:31:13–00:31:14; Jean René Ruez, T. 1330 (8 Sept 2006); Vinko Pandurević, T. 30876–30879, 30882 (30 Jan 2009); PW-109, T. 14583–14585 (closed session) (31 Aug 2007). According to PW-109, this event occurred “around 11 or noon”; however Pandurević indicates that it took place around 3 or 4 pm. PW-109, T. 14584 (closed session) (31 Aug 2007); Vinko Pandurević, T. 30876 (30 Jan 2009). Cf. Dražen Erdemović, T. 10947–10948 (4 May 2007).

<sup>3577</sup> For an analysis of Momir Nikolić’s credibility generally and also on this point, *see supra*, paras. 48–53, 280–288.

<sup>3578</sup> Momir Nikolić, T. 33040–33042 (22 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. Cf. Ex. P01936, “Video stills taken from the Srebrenica Trial Video”, p. 29 (showing **Popović** standing outside the Hotel Fontana with other VRS personnel before the third meeting). Kosorić said that he did not remember seeing **Popović** around the Hotel Fontana on the morning of 12 July, nor did he remember **Popović** being present at the third meeting. Svetozar Kosorić, T. 33768, 33785–33786 (30 June 2009). However, he identified **Popović** in video footage outside the Hotel Fontana shortly before the third meeting and during the meeting itself. Svetozar Kosorić, T. 33787–33790 (30 June 2009); Ex. P02047, “Srebrenica Trial Video”, 01.42.50, 01.44.38.

<sup>3579</sup> Momir Nikolić, T. 32921 (21 Apr 2009).

<sup>3580</sup> *Ibid.*, T. 32917–32918, 32921 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2.

<sup>3581</sup> Momir Nikolić, T. 32918 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. Nikolić testified that it was during this conversation with **Popović** that he realised for the first time that the Bosnian Muslim men would be killed. Momir Nikolić, T. 32920–32921 (21 Apr 2009).

<sup>3582</sup> Momir Nikolić, T. 33040–33042 (22 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2.

<sup>3583</sup> *Ibid.*

<sup>3584</sup> *Ibid.*

suggested specific locations in Bratunac for detaining the prisoners, amongst them the Vuk Karadžić Elementary School, the old school in Bratunac and a hangar in Bratunac.<sup>3585</sup>

1098. At some point in the morning, PW-109 also saw **Popović** in front of the Hotel Fontana, and overheard Krstić speaking to Kosorić, Colonel Krsmanović, Chief of Transportation of the Drina Corps,<sup>3586</sup> and **Popović** about buses.<sup>3587</sup> Also on the morning of 12 July, **Popović** attended the third and final meeting at Hotel Fontana.<sup>3588</sup> **Popović** was in fact staying at the Hotel Fontana on the nights of 11 and 12 July.<sup>3589</sup>

1099. On 12 July **Popović** was present with Bosnian Serb Forces in Potočari.<sup>3590</sup> **Popović** had also seen reports that a large number of Bosnian Muslims had gathered in Potočari.<sup>3591</sup> On this basis, the Trial Chamber finds that **Popović** was aware that on 11 and 12 July there were a large number of Bosnian Muslim men amongst those gathered in Potočari. On the evening of 12 July, Tolimir sent two communications about the movement of the column to various officers, including **Popović**, who was in Bratunac at the time.<sup>3592</sup>

<sup>3585</sup> Momir Nikolić, T. 32918 (21 Apr 2009); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 2. Momir Nikolić described the meeting with **Popović** as not “official”. According to Nikolić, **Popović** had merely told him what was going to happen next. Momir Nikolić, T. 33032–33034 (22 Apr 2009).

<sup>3586</sup> See *supra*, para. 137, fn. 330.

<sup>3587</sup> PW-109, T. 14589–14591, 14607 (closed session) (31 Aug 2007).

<sup>3588</sup> See *supra*, para. 289. At this meeting Mladić said that for the survival of the Bosnian Muslims he demanded that all their armed men surrender their weapons to the VRS, that he would provide vehicles to transport the Bosnian Muslims and that all the Bosnian Muslim men would be separated and screened to identify war criminals. *Supra*, paras. 289–290.

<sup>3589</sup> Ex. 1D01180, “Receipt Hotel Fontana” (showing that **Popović** was given approval to use a room at the Hotel Fontana between 11 and 13 July); Gordan Bjelanović, T. 22111–22112 (11 June 2008). In addition, a bill was made out on 15 July for a stay of two nights by **Popović** at the Hotel Fontana, but it is not clear which two nights are referred to. P00457 “Receipts from Hotel Fontana”, p. 7; Gordan Bjelanović, T. 22097–22098 (10 June 2008).

<sup>3590</sup> At one point, **Popović** was captured on video telling members of the Bosnian Serb Forces to stop distributing bread to the Bosnian Muslims. Ex. P04536, “Video Potočari, 12 July 1995”, 28:33–28:36, 30:13–30:14 (showing that **Popović** was present when the bread was distributed). Ex. P04536 also contains an English transcript of the dialogue on the video, and at page 11, records that **Popović** stated “it’s enough, it’s enough. Stop it! Only that and stop it”. See also Ex. P02047, “Srebrenica Trial Video”, 2:04:05–2:04:08 (showing **Popović** walking behind Krstić as Krstić is giving an interview); Dragoslav Trišić, T. 27160–27164 (21 Oct 2008) (testifying that it was “more likely” that he saw **Popović** in Potočari on 12 July, although he may have seen **Popović** in video footage after the fact).

<sup>3591</sup> On the evening of 11 July Momir Nikolić sent a report to the Security and Intelligence Departments of the Drina Corps in which he estimated that there were between 1,000 and 2,000 able-bodied men in Potočari. Momir Nikolić, T. 32914–32915. (21 Apr 2009). As this report was sent to the Security Department of the Drina Corps, the Trial Chamber is satisfied that **Popović** saw it. Momir Nikolić also passed this assessment orally to staff officers of the Drina Corps Command who were present at the Bratunac Brigade headquarters. *Ibid.* This estimate was revised to between 400 and 700 the following day. Momir Nikolić, T. 33009–33010 (22 Apr 2009).

<sup>3592</sup> Ex. P00149, “Document from the Command of the Drina Corps Intelligence Dept. to Intelligence and Security organs signed by Tolimir, 12 July 1995” (showing a communication apparently sent by General Tolimir on the evening of 12 July 1995 to, amongst others, “Bratunac IKM, Attn. Lieutenant Colonel Popović”, in which it is reported that a radio network of “elements of the 28th Muslim Division” had been intercepted and the individuals concerned were thought to be in the sector of the Cerska and Zvornik–Šekovići road); Ex. P00148 “Document from the Command of the Drina Corps Intelligence Dept. to the Main Staff Intelligence and Security Sector signed by Tolimir, 12 July 1995” (showing a communication apparently sent by General Tolimir on the evening of 12 July

(iii) 13 July 1995

1100. **Popović** attended a meeting on the morning of 13 July 1995 at the Bratunac Brigade Headquarters with Mladić, Vasić and Krstić.<sup>3593</sup> Vasić, in his report to the RS MUP, summarised the topics discussed as follows: evacuation of the remaining civilians from Srebrenica to Kladanj, the need for 10 tons of petrol in connection with the evacuation and the “killing of about 8,000 Muslim soldiers [...] blocked in the woods near Konjević Polje.”<sup>3594</sup> The Trial Chamber finds that the latter issue was discussed in a military context.<sup>3595</sup> Around the time of the meeting, Mladić angrily confronted **Popović** outside the Bratunac Brigade Headquarters over his perception that **Popović** was not getting on with his work.<sup>3596</sup>

1101. On the same day, outside the Bratunac Brigade Headquarters, **Popović** met Momir Nikolić and they went towards several white DutchBat APCs bearing the UN insignia which were parked nearby.<sup>3597</sup> Soon thereafter, Momir Nikolić went with Mirko Janković, the Commander of the Bratunac Military Police Platoon, and Mile Petrović, a member of the military police, along the Bratunac–Konjević Polje road in a DutchBat APC.<sup>3598</sup> During this journey, Nikolić, Janković and Petrović took Bosnian Muslim prisoners into their custody.<sup>3599</sup>

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1995 to, amongst others, “DK IKM Bratunac (Lieutenant Colonel Popović personally)”, in which further information taken from a captured Muslim is passed on and the Commands of the Bratunac, Zvornik and Milići brigades in cooperation with SJBs are ordered to regulate traffic during the night on the Bratunac-Milići-Vlasenica and Zvornik-Konjević Polje-Vlasenica roads).

<sup>3593</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 3.

<sup>3594</sup> Ex. P00886, “Document from the Zvornik CJB to the RS MUP, type-signed Vasić, 13 July 1995”. The Document states in relevant part:

At the meeting with General MLADIĆ this morning we were informed that the VRS/Army of the Republika Srpska/ was continuing operations towards Žepa and leaving all other work to the MUP, as follows:

1. Evacuation of the remaining civilian population from Srebrenica to Kladanj (about 15,000) by bus. We urgently need 10 tons of petrol;
2. Killing of about 8,000 Muslim soldiers whom we blocked in the woods near Konjević Polje. Fighting is going on. This job is being done solely by MUP units;
3. Securing all key buildings in the town of Srebrenica and controlling entry and exit of people and goods at three checkpoints set up;
4. Send the Srbinje or Doboje special detachment to Konjević Polje.

Ex. P00886, “Document from the Zvornik CJB to the RS MUP, type-signed Vasić, 13 July 1995”, p. 1.

<sup>3595</sup> Richard Butler, a former US army intelligence analyst, testified as a Prosecution expert witness, and stated that he believed Vasić was referring to events in a “strictly military context” and the phrase “killing of about 8,000 Muslim soldiers” did not have a “dark meaning”. Richard Butler, T. 19870 (17 Jan 2008).

<sup>3596</sup> Mladić shouted at **Popović**, “Why are you just lingering here and chasing women?”, or told **Popović** that he was “lingering about, as if he was a woman, as if he had had a skirt on”, and then attempted to kick **Popović**. PW-138, T. 3813–3814 (private session) (8 Nov 2006). PW-138 indicated that he did not know whether the events described here took place on 13 July 1995. PW-138, T. 3813 (private session) (8 Nov 2006). However, the testimony of Momir Nikolić evidences that they did. Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, pp. 4–5.

<sup>3597</sup> PW-138, T. 3813–3814, 3817 (private session) (8 Nov 2006). Cf. Momir Nikolić, T. 33029 (22 Apr 2009).

<sup>3598</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5. Cf. PW-138, T. 3815 (private session) (8 Nov 2006).

<sup>3599</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5 (testifying that he went with two Military Policemen along the Bratunac-Konjević Polje Road in a DutchBat APC, calling for Bosnian Muslims to surrender, and six Bosnian Muslims surrendered to them and were taken to Konjević Polje in



1102. An intercepted conversation shows that **Popović** himself went along the Bratunac-Konjević Polje road on 13 July. It includes the following exchange: "They didn't call us yet. Go ahead, you take the message. Question: What message? Answer: They are looking for Janković and Popović. Say that Janković escorted these people to Kladanj and Popović went with APCs towards Konjević Polje".<sup>3600</sup> The Trial Chamber finds that **Popović** had knowledge of the operation along the Konjević Polje Road to capture and detain Bosnian Muslims, and that he went along that road at some time on 13 July.<sup>3601</sup>

1103. Johannes Rutten's evidence, based upon a photo identification, places **Popović** at the White House on 13 July.<sup>3602</sup> Rutten said that he saw a man shown to him in a photograph on the paved road in front of the White House from a distance of 30–50 metres<sup>3603</sup> and he described him as not looking like a "plain soldier", because he spoke not only to the VRS soldiers but also to the other Bosnian Serbs who came in front of the White House.<sup>3604</sup> He addressed several individuals in the area, including soldiers in camouflage uniforms, soldiers in black uniforms, and soldiers in private cars.<sup>3605</sup> Rutten did not know the man's name.<sup>3606</sup> Rutten accepted that he did not refer to the actions of this individual in his statement of October 1995, but he attributed this to his not having been asked the relevant question.<sup>3607</sup> In a proofing session before his testimony in this case, Rutten could not recall the uniform that the man was wearing and, when shown the photograph, his words were "I cannot be certain if I recognise him now", but when this was put to him during his

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the APC); PW-138, T. 3823–3824 (8 Nov 2006) (testifying that that during the journey, two DutchBat officers and two civilians who were "probably" Bosnian Muslims climbed into the APC).

<sup>3600</sup> Ex. P01133g, "Intercept of conversation regarding Popović and Janković, 13 July 1995, 10:30 hours". An intercept operator, PW-140, said that he recalled transcribing this intercept and he commented that at the time information in the intercept was very important for himself and his colleagues because it related to "the problems in Srebrenica". PW-140, T. 5296 (11 Dec 2006).

<sup>3601</sup> In making this finding, the Trial Chamber also notes **Popović's** discussion with Momir Nikolić on 12 July concerning the plan to transfer the women and kill the men, and the following evidence concerning 13 July: the report of the meeting compiled by Vasić; the operation on the Bratunac–Konjević Polje road involving Nikolić, Janković and Petrović; and **Popović's** presence around Konjević Polje.

<sup>3602</sup> Johannes Rutten, T. 4822–4825 (30 Nov 2006) (testifying that said that a man in a brown T-shirt on the left side of a photograph, who is identifiable as **Popović**, was present at the White House, when he went there on 13 July); Ex. P01936, "Video stills taken from the Srebrenica Trial Video", chapter 5, page 9 (which is the same as Ex. 1D00102, "Photograph from tab 6 of book of photographs identified by OTP witness Rutten, J" and Ex. P02324, "Video still of Popović in Srebrenica"). **Popović** submits that both he and Živanović—the other person allegedly in the photograph—were fully engaged in the preparation for the ceremony in Vlasenica on the handover of duties from Živanović to Krstić and therefore could not have been at the White House on 13 July. Popović Final Brief, para. 527. In view of the close geographical proximity between Potočari and Vlasenica, **Popović** could easily have been at both locations on 13 July.

<sup>3603</sup> Johannes Rutten, T. 5218 (7 Dec 2006).

<sup>3604</sup> Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2152–2153 (5 Apr 2000); Johannes Rutten, T. 4822–4825 (30 Nov 2006); Ex. P01936, "Video stills taken from the Srebrenica Trial Video", Ch. 5, p 9. During his testimony in this case, Rutten said that the individual concerned gave direct instructions to other Serb soldiers, but he agreed that he had not said this either in the *Krstić* trial or during the proofing session before he testified in this case. Johannes Rutten, T. 4823 (30 Nov 2006), T. 5221 (7 Dec 2006). Cf. Popović Closing Arguments, T. 34360 (7 Sept 2009).

<sup>3605</sup> Johannes Rutten, Ex. P02178, "92 ter transcript", KT. 2152–2153 (5 Apr 2000).

<sup>3606</sup> Johannes Rutten, T. 4825–4826 (30 Nov 2006).

<sup>3607</sup> *Ibid.*, T. 4992–4995 (4 Dec 2006).

testimony, Rutten still adhered to his identification.<sup>3608</sup> The man in the photograph is identifiable as **Popović**. However, given Rutten's uncertainty about his identification and the lack of corroborating evidence on **Popović's** presence at the White House on this day, the Trial Chamber cannot be satisfied that the man Rutten saw was **Popović**.

1104. In the afternoon of 13 July, **Popović** attended a ceremony in front of the Drina Corps building in Vlasenica, at which Mladić announced the retirement of General Živanović and the appointment of General Krstić as the new Commander of the Drina Corps.<sup>3609</sup> At around 7 or 8 p.m., **Popović** called **Drago Nikolić** and informed him that a large number of prisoners were to be brought from Bratunac to Zvornik to be killed and he asked **Nikolić** to assist.<sup>3610</sup> **Nikolić** then called Obrenović and told him about the conversation that he had had with **Popović**.<sup>3611</sup> **Nikolić** said that the prisoners would be brought by **Beara** and **Popović**, who had been tasked with organising and carrying out the operation and that **Popović** had asked **Nikolić** to assist.<sup>3612</sup>

(iv) 14 July 1995

1105. On 14 July, between 800 and 2,500 Bosnian Muslim men were transported from Bratunac, detained in the Grbavci School in Orahovac and were then executed in a nearby field.<sup>3613</sup>

1106. At around 8 a.m. or shortly after, **Nikolić**, **Popović** and **Beara** met at the Standard Barracks for 15 to 20 minutes to discuss the murder operation.<sup>3614</sup>

<sup>3608</sup> Johannes Rutten, T. 5212–5213 (7 Dec 2006). Rutten agreed that when he was shown the same photograph during a proofing session in the *Krstić* case, he had first said, “those are the men that I probably saw at the ‘White House’”; but that later after flipping through other photographs and looking again he had identified the man in the photograph. Johannes Rutten, T. 5210–5212 (7 Dec 2006). **Popović** submits that Rutten's apparent identification of **Popović** was an instance of the general tendency described by Erwin Wagenaar of the worsening of memory over time coupled with an increasing confidence in the memory. Popović Closing Arguments, T. 34359–34360 (7 Sept 2009); Erwin Wagenaar, T. 25371 (8 Sept 2008).

<sup>3609</sup> PW-109, T. 14598, 14600 (private session) (31 Aug 2007); Gordan Bjelanović, T. 22067–22068, 22083 (10 Jun 2008). PW-109 indicated that the ceremony took place at around 5 or 6 in the evening; whereas Gordan Bjelanović said that it took place at about noon. PW-109, T. 14598–14599 (private session) (31 Aug 2007); Gordan Bjelanović, T. 22067–22068 (10 June 2008). When presented with evidence that (a) General Mladić was at Sandići Meadow at 2p.m. (Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 March 2002”) and (b) the hand-over ceremony took place at 1800 hours (Counsel for the Prosecution (Nicholls) cited testimony of PW-109), Bjelanović stated “I cannot remember precisely, after so much time. In any case, I know it was that day. I know it was in Vlasenica. As for the morning or the afternoon, I don't know. I thought it was around noon. I can't tell you anything else precisely [...] I can't remember, after so much time, whether it was in the afternoon or in the morning. A lot of years have gone by. I cannot remember -- I can remember it was during the day.” Gordan Bjelanović, T. 22108–22109 (11 June 2008).

<sup>3610</sup> PW-168, T. 15830–15833 (closed session) (26 Sept 2007). PW-168 testified that **Drago Nikolić** called Obrenović to say that “he had just received a call from Lieutenant Colonel **Popović**.” PW-168, T. 15830 (closed session) (26 Sept 2007). See *infra*, paras. 1345–1356 for an analysis of the evidence presented concerning this conversation.

<sup>3611</sup> PW-168, T. 15830–15833 (closed session) (26 Sept 2007). See *infra*, paras. 1345–1356.

<sup>3612</sup> *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007). See *infra*, paras. 1345–1356.

<sup>3613</sup> See *supra*, paras. 476–492.

1107. Some time after this meeting, **Popović**, who was in Bratunac, ordered a military policeman, PW-138, to take a UN APC and go to an intersection near the bus station in Bratunac and park facing Konjević Polje.<sup>3615</sup> **Popović** met PW-138 there, and told him to move the APC ahead and to take some fuel from a nearby tanker truck.<sup>3616</sup> **Popović** then told PW-138 to drive forward, and a column of vehicles formed behind the APC.<sup>3617</sup> The vehicles in the column had Bosnian Muslim men on board and there was one soldier on each vehicle.<sup>3618</sup>

1108. **Popović** then accompanied the convoy to the Grbavci School in his dark blue golf.<sup>3619</sup> He ordered PW-138 to follow his vehicle in the UN APC.<sup>3620</sup> The convoy travelled behind them, through Konjević Polje to Zvornik.<sup>3621</sup> It stopped *en route* at the Vidikovac Hotel in Divič, where **Drago Nikolić** and **Birčaković** were waiting.<sup>3622</sup> From Divič, the convoy continued on to Karakaj, then to the Grbavci School, where the prisoners disembarked.<sup>3623</sup>

1109. After the convoy arrived, **Popović** left his vehicle and spoke to two men by the side of the road in front of the school.<sup>3624</sup> The prisoners were in the process of being moved into the school as

<sup>3614</sup> Milorad Birčaković, T. 11014–11017 (7 May 2007); 11090–11091 (8 May 2007). For an analysis of this evidence, *See supra*, para. 472.

<sup>3615</sup> PW-138, T. 3811, 3837–3843 (private session) (8 Nov 2006). PW-138 does not expressly say that he set off from Bratunac with the convoy. He states that he stopped by the intersection where the road turned off towards the headquarters. In light of his position in Bratunac Brigade Military Police Platoon and the context of his testimony on this point, the Trial Chamber finds that PW-138 led the convoy of vehicles in the UN APC.

<sup>3616</sup> PW-138, T. 3839 (private session) (8 Nov 2006).

<sup>3617</sup> *Ibid.*, T. 3840 (private session) (8 Nov 2006).

<sup>3618</sup> *Ibid.*, T. 3842 (private session) (8 Nov 2006).

<sup>3619</sup> *Ibid.*, T. 3842–3844 (8 Nov 2006) (private session), T. 3849–3851 (9 Nov 2006). Orić testified that the convoy headed towards Konjević Polje was headed by an UNPROFOR APC. Mevludin Orić, T. 934–938 (29 Aug 2006). Birčaković testified that the convoy comprised 15 to 20 buses, or even fewer, carrying prisoners, was headed by an UN APC, and accompanied by a high ranking VRS officer. Stanoje Birčaković, T. 10741, 10745–10746, 10766 (1 May 2007).

<sup>3620</sup> PW-138, T. 3796 (private session), 3837–3838, 3840–3843 (private session) (8 Nov 2006). Birčaković, who joined the convoy part way through the journey, did not testify that **Popović** led the way. Milorad Birčaković, T. 11151–11153 (8 May 2007). In addition, Momir Nikolić testified that someone else led the convoy, and did not mention **Popović** in this context. Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 7. *See also* Popović Final Brief, para. 489. The Trial Chamber notes this evidence, but does not consider the failure of these witnesses to mention **Popović** in this context as capable of raising a reasonable doubt. The Trial Chamber finds that **Popović** travelled with the convoy from Bratunac to Orahovac, and took a leading role in the operation to transfer the men.

<sup>3621</sup> PW-138, T. 3843 (private session) (8 Nov 2006). Milorad Birčaković was driving an Opel Rekord on 14 July. Milorad Birčaković, T. 11014 (7 May 2007). A Zvornik Brigade vehicle worklog for an Opel Rekord shows that on 14 July 1995, the vehicle travelled the route “Standard - Orahovac - Divič - Orahovac - Ročević - Orahovac - Zvornik - Standard - Local”. Ex. P00296, “Vehicle logbook for Opel Rekord P-4528”, p. 4. Milorad Birčaković confirmed that on 14 July he had been to Orahovac, Divič and Standard Barracks. Milorad Birčaković, T. 11052–11053 (7 May 2007).

<sup>3622</sup> Milorad Birčaković, T. 11017–11019 (7 May 2007). Birčaković was not consistent about the time of arrival of the convoy. At first he said that it came at about 8.30 or 9. Milorad Birčaković, T. 11018 (7 May 2007). However, when an earlier statement was put to him, he said that he did not know the exact time and that it could have been between 10 and 11 or an hour later or earlier. Milorad Birčaković, T. 11083–11085 (8 May 2007).

<sup>3623</sup> PW-138, T. 3838, 3842–3844 (private session) (8 Nov 2006).

<sup>3624</sup> Milorad Birčaković, T. 11024 (7 May 2007); Tanacko Tanić, T. 10337–10338 (23 Apr 2007).

PW-138 left in the UN APC.<sup>3625</sup> **Popović** stopped PW-138 and asked him to stay at the School; however PW-138 told **Popović** that he could not because he had been ordered by Momir Nikolić to return.<sup>3626</sup>

1110. At around 2 p.m. on 14 July, it was overheard on the radio that the Duty Officer was requesting two machine operators from the Zvornik Brigade Engineering Company to “go build a road”. The machine operators were required in Orahovac “in relation to the task being performed by **Beara** and **Popović**”.<sup>3627</sup>

1111. In the afternoon of 14 July, an officer whom PW-101 described as “a lieutenant colonel or a colonel at the most” was present at the field near Orahovac while executions of those detained in the Grbavci School were taking place.<sup>3628</sup> PW-101 testified that **Drago Nikolić** and this other officer directed the men who were escorting the prisoners from the truck at the execution site, not yelling at them but simply directing them as to what to do.<sup>3629</sup> As the executions took place, a young boy emerged from the pile of corpses calling for his father.<sup>3630</sup> The “lieutenant colonel or colonel” asked the soldiers what they were waiting for and said “Just finish him off”; however the soldiers disobeyed.<sup>3631</sup> According to PW-101, the “lieutenant colonel or colonel” was tall, had a moustache, was good-looking and well-built. He was wearing an officer’s uniform displaying rank insignia and had a pistol.<sup>3632</sup> As will be shown below, the Trial Chamber finds that this “lieutenant colonel or colonel” was **Popović**.

1112. **Popović** spent the morning of 14 July in the company of **Nikolić** transporting prisoners from Bratunac to the Grbavci School. The Trial Chamber has evidence before it that **Popović**, in cooperation with **Beara** and **Nikolić**, played a coordinating role in the operation at Orahovac that day. The three men met in the morning at the Standard Barracks, following which **Nikolić** and **Popović** accompanied the transportation of prisoners from Bratunac to Orahovac.<sup>3633</sup> In the early afternoon, machinery was requested from the Zvornik Brigade Engineering Company in relation to work being done by **Beara** and **Popović** at Orahovac.<sup>3634</sup> **Popović** was embroiled in several

<sup>3625</sup> PW-138, T. 3850 (9 Nov 2006).

<sup>3626</sup> *Ibid.*, T. 3850–3851 (9 Nov 2006). PW-138 said that the reason he gave **Popović** for leaving Grbavci School was false and that he did not wish to remain and felt that there was no reason for his continued presence. *Ibid.*

<sup>3627</sup> PW-168, T. 15844–15846, 15853–15857 (closed session) (26 Sept 2007).

<sup>3628</sup> PW-101, T. 7581–7582 (22 Feb 2007). PW-101 said of the officer: “This officer, I think he was lieutenant-colonel. I’m sure he was lieutenant-colonel or colonel at the most.” *Ibid.*, T. 7581.

<sup>3629</sup> *Ibid.*, T. 7590 (22 Feb 2007). PW-101 said that **Nikolić** and the other officer were the only ones able to issue orders at the execution site, and that they were the most senior in rank present. *Ibid.*, T. 7581–7582, 7586, 7589–7590.

<sup>3630</sup> PW-101, T. 7581–7582 (22 Feb 2007). *See supra*, paras. 487–488.

<sup>3631</sup> *Ibid.*, T. 7581–7582, 7586, 7590 (22 Feb 2007). *See supra*, paras. 487–488.

<sup>3632</sup> PW-101, T. 7586 (22 Feb 2007).

<sup>3633</sup> *See supra*, paras. 472–474, 478.

<sup>3634</sup> *See supra*, para. 482.

important aspects of the operation at Orahovac that day, and the Security Branch was clearly the coordinating authority for the executions.<sup>3635</sup> **Popović** matches the description of the “lieutenant colonel or colonel”. He had a moustache in July 1995<sup>3636</sup> and held the rank of Lieutenant Colonel.<sup>3637</sup> There is no evidence before the Trial Chamber, from PW-101 or otherwise, to suggest that any other high ranking officer was present at the execution site at this time. The Trial Chamber is satisfied that there is no reasonable conclusion available on the evidence other than that the officer directing the executions at Orahovac with **Nikolić** was in fact **Popović**.

1113. In the evening of 14 July, after visiting Ročević School himself, Srećko Aćimović, Commander of the 2nd Battalion of the Zvornik Brigade, called the Zvornik Brigade Command at the Standard Barracks, and was told by the Duty Officer that **Pandurević** and **Obrenović** were absent, but that **Popović** had just arrived.<sup>3638</sup> Aćimović reported to **Popović** that prisoners were being detained in the Ročević School and there were reports that some had been killed. **Popović** told Aćimović not to be so dramatic as the prisoners would be exchanged the next morning.<sup>3639</sup>

1114. On the basis of the evidence of Gordan Bjelanović, **Popović** presented an alibi.<sup>3640</sup> Gordan Bjelanović testified that he saw **Popović** at the Krivače IKM on the day after the hand-over ceremony between Generals Živanović and Krstić, which took place on 13 July;<sup>3641</sup> but he does not indicate how long **Popović** spent at the IKM on that day.<sup>3642</sup> Bjelanović later stated that he could not remember precisely whether his visit to the Krivače IKM occurred on the first or the second day after the hand-over ceremony.<sup>3643</sup>

1115. The Trial Chamber notes the jurisprudence of the Tribunal, which holds that an alibi does not constitute a “defence” in the ordinary sense of the word.<sup>3644</sup> The burden remains with the

<sup>3635</sup> See *infra*, para. 1068.

<sup>3636</sup> Jean René Ruez, T. 1330 (8 Sep 2006); Ex. P02047, “Srebrenica Trial Video”, 00:31:13.

<sup>3637</sup> See *supra*, para. 1090.

<sup>3638</sup> Srećko Aćimović, T. 12937, 12939–12940 (20 June 2007); Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007). Aćimović made the telephone call from Kozluk at his “former logistics unit”. Srećko Aćimović, T. 12937 (20 June 2007).

<sup>3639</sup> Srećko Aćimović, T. 12940–12941 (20 June 2007); T. 13008–13009 (21 June 2007). Although he did not identify **Popović** as the person to whom Aćimović spoke, Mitar Lazarević said that Aćimović spoke to a “security man” from the corps. Mitar Lazarević, T. 13372–13373, 13392 (27 June 2007).

<sup>3640</sup> Popović Final Brief, paras. 513–518.

<sup>3641</sup> PW-109, T. 14598, 14600 (private session) (31 Aug 2007) (testifying that the handover ceremony occurred on 13 July).

<sup>3642</sup> Gordan Bjelanović, T. 22072–22073, 22067, 22084 (10 June 2008). Bjelanović testified “I went to the IKM, in the direction of Žepa [...] I don’t know exactly the name of the place, whether Kusače or Krivače, I’m not sure. It’s been a while. I don’t remember.” *Ibid.*, T. 22072–22073. The Trial Chamber finds that Bjelanović must have been referring to the Krivače IKM.

<sup>3643</sup> Gordan Bjelanović, T. 22108–22110 (11 June 2008). Bjelanović’s account of his visit to the IKM also contains an inconsistency in regard to Krstić: at one point Bjelanović says that he went to the IKM around noon and stayed till evening, when Krstić was “brought there”; and at another he says that he drove Krstić to the IKM. Gordan Bjelanović, T. 22073, 22084 (10 June 2008).

<sup>3644</sup> *Čelebići* Appeal Judgement, para. 581; *Zigiranyirazo* Appeal Judgement, para. 17.

Prosecution to establish beyond reasonable doubt that, despite the alibi, the facts alleged are nevertheless true.<sup>3645</sup> The Trial Chamber also notes that the Krivače IKM is located between Han Pijesak and Žepa,<sup>3646</sup> roughly 40 kilometres from Zvornik. In light of the closeness of the Krivače IKM to Zvornik and Bjelanović's uncertainty about times and dates, the Trial Chamber finds that Bjelanović's testimony does not raise a reasonable doubt that **Popović** was in the Zvornik area on 14 July.

(v) 15 July 1995

a. Petkovci

1116. In the early morning hours of 15 July, over 800 Bosnian Muslim men who had been detained in the Petkovci School were transported to a field near Petkovci Dam and executed.<sup>3647</sup> A member of the 6th Battalion noticed a dark blue Golf vehicle parked beside the buses and trucks in front of the Petkovci School on the day before the executions.<sup>3648</sup> **Popović** was generally known to drive a dark blue Golf in July 1995,<sup>3649</sup> and he did so on 13 July when he accompanied the convoy of prisoners to Orahovac.<sup>3650</sup> However, on the basis of this evidence alone, the Trial Chamber cannot be satisfied that **Popović** was at the Petkovci School on 15 July.

b. Ročević

1117. On 14 and 15 July, approximately 1,000 Bosnian Muslim men were detained at the Ročević School. On 15 July, the men were taken to Kozluk and executed.<sup>3651</sup>

1118. At around 9 or 10 a.m. on 15 July, Aćimović, the Commander of the 2nd Battalion of the Zvornik Brigade,<sup>3652</sup> drove to the Ročević School where he saw at least a dozen corpses lying on the ground.<sup>3653</sup> Aćimović met **Popović** in front of the School.<sup>3654</sup> **Popović** shouted at Aćimović,

<sup>3645</sup> *Zigiranyirazo* Appeal Judgement, paras. 17–18.

<sup>3646</sup> Milenko Jevđević, T. 29610 (12 Dec 2008).

<sup>3647</sup> *See supra*, para. 503.

<sup>3648</sup> Marko Milošević, T. 13305 (26 June 2007).

<sup>3649</sup> PW-138, T. 3838, 3843 (private session) (8 Nov 2006). The Golf vehicle that **Popović** used was assigned to the Security Organ and was also used by others. Gordan Bjelanović, T. 22071–22072 (10 June 2008); PW-172, T. 32589 (10 Mar 2009). *See supra*, paras. 474, 1108, fn. 329.

<sup>3650</sup> PW-138, T. 3838, 3843 (private session) (8 November 2006).

<sup>3651</sup> *See supra*, para. 524.

<sup>3652</sup> Srećko Aćimović, T. 12930–12931 (20 June 2007). *See also ibid.*, T. 13035–13036 (21 June 2007). Aćimović's evidence is analysed in detail at *supra*, para. 506, where the Trial Chamber concluded that it must examine Aćimović's evidence carefully on each salient issue in order to determine what weight, if any, to attribute to it and has accordingly done so in the analysis which follows.

<sup>3653</sup> Srećko Aćimović, T. 12957–12958 (20 June 2007); Mitar Lazarević, T. 13379 (27 June 2007) (testifying that Aćimović went to the Ročević School alone in order to inform those at the school that Aćimović would not dispatch any men to participate in the executions); Dragan Jović, T. 18049, 18050 (21 Nov 2007) (testifying that he

asking him why he had not brought men as ordered.<sup>3655</sup> **Popović** threatened Aćimović that he would be held responsible for not following the order.<sup>3656</sup> **Popović** asked Aćimović about suitable execution sites, and also pressured Aćimović to ask the soldiers in the schoolyard to find volunteers willing to participate in the executions.<sup>3657</sup>

1119. While he was with Aćimović on the morning of 15 July, **Popović** called the Zvornik Brigade Command at the Standard Barracks, requesting that trucks be sent to Ročević.<sup>3658</sup> He also asked that one of two men who were located at Petkovci or Orahovac be sent urgently.<sup>3659</sup> Aćimović was later told by Milorad Trbić, Security Officer in the Zvornik Brigade, that **Popović** had probably meant that either Trbić or Miomir Jasikovac, the Commander of the Zvornik Brigade Military Police, should come to the school.<sup>3660</sup> Jasikovac arrived at the school around 11 a.m. or noon.<sup>3661</sup>

1120. **Popović** was angry when only a single truck arrived and said that the prisoners would all have to be killed near the school.<sup>3662</sup> **Popović** attempted to source additional trucks by engaging civilian drivers.<sup>3663</sup> At some point, a soldier said someone had volunteered to participate in the executions.<sup>3664</sup> This volunteer was not a member of the Zvornik Brigade, and **Popović** told the volunteer to go out and find other volunteers.<sup>3665</sup>

1121. Members of the Zvornik Brigade Military Police, acting upon orders from Jasikovac, guarded the prisoners.<sup>3666</sup> Members of the Zvornik Brigade 2nd Battalion and members of the

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heard that there were dead bodies at the Ročević School on 14 July); Mitar Lazarević, T. 13367 (26 June 2007) (testifying that Aćimović told him that prisoners had been killed at the school).

<sup>3654</sup> Srećko Aćimović, T. 12957–12958 (20 June 2007); Dragan Jović, T. 18055–18056 (21 Nov 2007). *See supra*, para. 511.

<sup>3655</sup> Srećko Aćimović, T. 12958–12959, 12964–12965 (private session) (20 June 2007).

<sup>3656</sup> *Ibid.*

<sup>3657</sup> *Ibid.*, T. 12959–12961, 12964–12965 (20 June 2007). Aćimović testified: “[Popović] was putting pressure on me all this time. He continued doing so. He insisted on me trying to go down there, [...] to talk to somebody in the school-yard, as there were a lot of different soldiers there. [...] I saw them as I was coming in. I told him I wouldn’t do that, that I would not ask anybody to do any such thing. He kept on insisting.” *Ibid.*, T. 12960 (20 June 2007).

<sup>3658</sup> *Ibid.*, T. 12965–12966 (20 June 2007).

<sup>3659</sup> *Ibid.*, T. 12986 (21 June 2007).

<sup>3660</sup> Srećko Aćimović, T. 12986–12988 (21 June 2007).

<sup>3661</sup> PW-142, T. 6463 (private session) (29 Jan 2007); Dragoje Ivanović, T. 14553–14555 (30 Aug 2007). For details of Jasikovac’s arrival, *see supra*, para. 512.

<sup>3662</sup> Srećko Aćimović, T. 12968–12969 (private session) (20 June 2007).

<sup>3663</sup> *Ibid.*, T. 12967–12970 (private session) (20 June 2007). For details of this engagement, *see supra*, para. 513.

<sup>3664</sup> *Ibid.*, T. 12971 (private session) (20 June 2007).

<sup>3665</sup> *Ibid.*, T. 12971–12972 (private session) (20 June 2007). Aćimović said he had never seen this individual before, and described the volunteer as 17 or 18 years old, wearing civilian clothes. *Ibid.*, T. 12971 (private session) (20 June 2007); T. 13118 (private session) (22 June 2007).

<sup>3666</sup> *See supra*, para. 515.

Military Police participated in the transportation of the prisoners to a gravel pit near Kozluk, where they were subsequently killed.<sup>3667</sup>

1122. At about 11 a.m. on 15 July at the Standard Barracks, Obrenović, on his way to meet with Vasić and **Borovčanin** in his office, was stopped by Dragan Jokić, the Duty Officer at the Standard Barracks.<sup>3668</sup> Jokić told Obrenović that **Beara** and **Popović** had brought prisoners from Bratunac and Srebrenica in order to shoot them and that there were “huge problems” with guarding and burying them.<sup>3669</sup> Jokić also told Obrenović that “**Beara** and **Popović** were taking people wherever they wanted, that **Popović** had ordered him not to write down anything concerning that, not to note down anything, and not to use radio equipment to convey this information.”<sup>3670</sup> The **Popović** Defence argued that this evidence should be rejected on the grounds that **Popović** was not authorised to issue orders to Jokić and there was no evidence of a policy throughout the Brigade to refrain from recording information about the prisoners.<sup>3671</sup> The Trial Chamber is, however, of the view that **Popović** gave Jokić instructions not to record details concerning the Bosnian Muslim prisoners or to speak of them over the radio. Furthermore, whether or not **Popović** had authority to issue instructions of this nature does not affect the Trial Chamber’s finding, and it remains satisfied that **Popović** made these comments to Jokić as described.

1123. Sometime after 6:30 p.m., **Popović** and **Beara** met at the Standard Barracks.<sup>3672</sup>

(vi) 16 July 1995

1124. On 14 and 15 July, Bosnian Muslim men were detained at Kula School in Pilica. On 16 July, the men were taken to the nearby Branjevo Military Farm and executed.<sup>3673</sup> Other Bosnian

<sup>3667</sup> See *supra*, paras. 517–520.

<sup>3668</sup> PW-168, T. 15869–15870 (closed session) (26 Sept 2007), T. 16515–16517 (closed session) (17 Oct 2007).

<sup>3669</sup> *Ibid.*, T. 15871 (closed session) (26 Sept 2007); see also *ibid.* T. 16517–16518 (closed session) (17 Oct 2007).

<sup>3670</sup> *Ibid.*, T. 15871 (closed session) (26 Sept 2007).

<sup>3671</sup> Popović Final Brief, para. 274.

<sup>3672</sup> PW-165, T. 9961–9962 (4 Apr 2007). PW-165 was told by persons wearing camouflage uniform at the Standard Barracks that the two men he observed were **Popović** and **Beara** and they were there to meet with a Commander. PW-165 testified that he would not have recognised **Popović** at the time, but after seeing the warrant for his arrest in 1998 or 1999, PW-165 recognised **Popović** as the man that he saw that night. PW-165 thought that the commander who they met with was Obrenović, although he was not sure of this. PW-165, T. 9962, 9965, 9966, 10001, 10003, 10004 (4 Apr 2007). However, there is evidence before the Trial Chamber that Obrenović arrived at the 4th Battalion Command near Baljkovica on the afternoon of 15 July. PW-168, T. 15888–15889 (27 Sept 2007); Lazar Ristić, T. 10090–10091 (16 Apr 2007). The Prosecution argues that the commander would have been **Pandurević**, because he returned to Zvornik from Žepa at around midday on 15 July. Prosecution Final Brief, para. 867. The Prosecution did not put this to **Pandurević** on cross examination. There is evidence before the Trial Chamber that **Pandurević** was at the Kitovnice IKM on the afternoon of 15 July. See *infra*, para. 1864. The Trial Chamber finds that there is insufficient evidence to make a finding as to the identity of the Commander with whom **Popović** and **Beara** met.

<sup>3673</sup> See *supra*, para. 550.



Muslims were also executed at the Pilica Cultural Centre on this day. In total, between 1,000 and 2,000 Bosnian Muslims were executed in the Pilica area on 16 July.

1125. Around noon on 16 July, **Popović** arrived at the Kula School in Pilica with **Beara**.<sup>3674</sup> A van containing about ten or twelve soldiers arrived subsequently and the van was followed by an empty bus.<sup>3675</sup> As soon as **Popović** arrived, the prisoners were driven away.<sup>3676</sup> The prisoners were taken to the Branjevo Military Farm and executed.<sup>3677</sup>

1126. At 1:58 p.m. on 16 July, the duty officer of the Zvornik Brigade told his counterpart at the Drina Corps that **Popović** urgently required 500 litres of fuel to be delivered to Pilica “or else the

<sup>3674</sup> Slavko Perić, T. 11414 (11 May 2007). Perić reluctantly acknowledged that he had previously identified two men at the Kula School on 16 July as **Beara** and **Popović**, however he could not now be sure who they were. Slavko Perić, T. 11414 (11 May 2007); T. 11429 (14 May 2007). Perić said that he was 50 metres from the prisoners when they were removed from the school, although it is not clear that he was also 50 metres from the two officers. Slavko Perić, T. 11415 (11 May 2007). Willem Wagenaar was of the view that identification from 50 metres would be “extremely risky” without further testing. Willem Wagenaar, T. 25363–25364 (8 Sept 2008). Perić said that the Prosecution never showed him any photographs either during interviews or at any other time. Slavko Perić, T. 11437 (14 May 2007). However, the Trial Chamber considers that Perić’s demeanour was such during his testimony that he made a reliable identification of **Beara** and **Popović**. Of particular relevance to the identification of **Popović** is his testimony that one of the two officers he saw at the Kula School was addressed by a soldier as “Pope”. Slavko Perić, T. 11409, 14411, 14115 (11 May 2007). There is evidence before the Trial Chamber that **Popović** was referred to by the nickname “Pop”. Svetozar Kosorić, T. 33801 (30 June 2009); P01204a, “Intercept of conversation between Trbić and X, 16 July 1995, 22:33 hours”; Ex. P02437d, “Intercept of conversation between Popović and Nikolić, 19 January 1995, 10:57 hours”; Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44 hours”; Ex. P02352a, “Intercept of conversation between Popović and Nikolić, 20 April 1995, 19:10 hours”. Cf. Ex. P01218a, “Intercept of conversation between Golić and Zlatar 1, 17 July 1995, 12:42 hours”; Ex. P01219a, (confidential); Mile Janjić, T. 17960, 17982, (20 Nov 2007). Perić testified that “Pope” was a shortened version of **Popović**’s name, but that priests could also be referred to in this way. Slavko Perić, T. 11415, 11424 (11 May 2007). Perić conceded that if he heard a soldier use a nickname such as “Pope”, this would indicate that the person he was addressing was not an Assistant Corps Commander. Slavko Perić, T. 11426 (11 May 2007). Gordan Bjelanović testified that all RS soldiers addressed **Popović** as “Colonel, sir” and none of the common soldiers would use a nickname when addressing him, although his fellow officers might. Gordan Bjelanović, T. 22070–22071 (10 June 2008). However, **Drago Nikolić**, who was a more junior Officer, addressed **Popović** as “Pop”. Ex. P02437d, “Intercept of conversation between Popović and Nikolić, 19 January 1995, 10:57 hours”; Ex. P02352a “Intercept of conversation between Popović and Nikolić, 20 April 1995, 19:10 hours”; Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44 hours”. Having weighed all the evidence, the Trial Chamber is satisfied that Perić saw **Beara** and **Popović** at the Kula School.

<sup>3675</sup> Slavko Perić, T. 11409–11410 (11 May 2007).

<sup>3676</sup> *Ibid.*, T. 11415 (11 May 2007). When asked whether the officer who was addressed as “Pope” was present at the time that the prisoners were removed from the school, Perić said: “I cannot be precise about the sequence of events now. I said as soon as they arrived, they started loading and driving the prisoners away. Where each of them was at any given moment, I really can’t say.” Slavko Perić, T. 11415 (11 May 2007).

<sup>3677</sup> See *supra*, para. 532–539.

work he's doing will stop."<sup>3678</sup> At 2 p.m. a note was made in the Zvornik Brigade Duty Officer Logbook that "**Popović** requested a bus with a full tank and 500 litres of D2."<sup>3679</sup>

1127. At 4:40 p.m., a note in the Zvornik Brigade Duty Officer Logbook indicates that **Popović** was in the area of Pilica village and Branjevo Military Farm at that time. The entry reads "Message from Zlatar that Lieutenant Colonel Popović must go to Vinko Pandurević in the field at 1640 hrs. Message through the **1st pb** [battalion] that Popović must report to the duty officer so he can be sent on a task by Zlatar" (emphasis added).<sup>3680</sup> The 1st Battalion zone contained Pilica village and Branjevo Military Farm.<sup>3681</sup>

1128. At 7:12 p.m., the following conversation was intercepted between a certain Bašević and an unknown interlocutor:

- B Well the petrol's run out completely. Miki, I said to Miletić today when I was on the phone with him, like, to do with this request that, that Zvornik sent, and Šekovići.
- Y Zvornik is solved.
- B I said I have no petrol, oil, and.
- Y Listen, Zvornik is solved
- B Well, I know, I saw ... You know, but the problem is what's going on ... going across Šekovići this way ... it's not possible this /illegible/, its on hold there and I have to immediately now, I sent 600 litres of petrol there today.<sup>3682</sup>

The Trial Chamber is satisfied that the reference to Zvornik is a reference to the delivery of fuel.

1129. Branko Bogičević transported 500 litres of fuel from the Standard Barracks to Pilica on 16 July 1995.<sup>3683</sup> VRS soldiers took the fuel from Bogičević using a hose and jerrycans.<sup>3684</sup> Bogičević's memory of the circumstances of his journey is vague.<sup>3685</sup> His vehicle log showed that on 16 July he used his vehicle from 7 a.m. until 9:30 p.m. and that he made three journeys on the

<sup>3678</sup> Ex. P01189a, "Intercept, 16 July 1995, 13:58 hours". See also Ex. P00291, "Material Dispatch Order by Zvornik Brigade for D2 diesel fuel, 16 July 1995" (recording that 500 litres of fuel were delivered to Popović in Zvornik, and 140 litres were returned). Cf. Ex. P00286, "Internal Distribution Logbook" (reflecting the assignment of 500 litres of D-2 fuel to the Command of the Drina Corps on 16 July 1995); P00685, "Srebrenica Military narrative - Operation Krivaja 95, 15 May 2000", p. 75. Pandurević did not know anything about such a request for fuel, and did not approve any such transfer. Vinko Pandurević, T. 31014 (2 Feb 2009). **Pandurević** noted that it was common for such fuel transfers to occur between units. Vinko Pandurević, T. 31318-31323 (12 Feb 2009).

<sup>3679</sup> Ex. P00377, "Zvornik Brigade Duty Officer Logbook", p. 148.

<sup>3680</sup> *Ibid.*, p. 149. "Zlatar" was the code-name for the Drina Corps command. Vinko Pandurević, T. 31046 (3 Feb 2009).

<sup>3681</sup> Ex. 7DP02109, "Map of the Drina Corps Area of Responsibility"; Richard Butler, T. 20019-20020 (18 Jan 2008).

<sup>3682</sup> Ex. P01199a, "Intercept of conversation between Bašević and Y, 16 July 1995, 19:12 hours".

<sup>3683</sup> Branko Bogičević, T. 22360-22361 (18 June 2008); Ex. P00291, "Material Dispatch Order by Zvornik Brigade for D2 diesel fuel, 16 July 1995".

<sup>3684</sup> Branko Bogičević, T. 22364-22365 (18 June 2008).

<sup>3685</sup> *Ibid.*, T. 22361-22364, 22371-22372, 22394-22395 (18 June 2008). Bogičević did not recall whether he took charge of the fuel in the barracks or at the petrol station, who gave him the order to transport the fuel, whether he was given any special document to accompany this trip, or whether he was given the name of any specific individual to deliver the fuel to.

route Standard-Klisa-Pilica-Zvornik-Standard.<sup>3686</sup> Bogičević confirmed that the vehicle log accurately reflected the time of his return to the Standard Barracks.<sup>3687</sup> Bogičević initially stated that he left for Pilica at 7 p.m., but this was not evident from the logbook and his testimony on this point was not clear.<sup>3688</sup> The Trial Chamber nevertheless finds that Bogičević's testimony provides corroboration of the evidence that the fuel was delivered on 16 July to Pilica.<sup>3689</sup>

1130. The request for fuel was made on the same day as the executions at Branjevo Military Farm.<sup>3690</sup> The following day the bodies were buried there.<sup>3691</sup> The Trial Chamber is satisfied that **Popović's** request for fuel and its delivery was related to the operation of executing and burying the prisoners.

1131. Brano Gojković was in charge of a unit of members of the 10th Sabotage Detachment of the Main Staff.<sup>3692</sup> On the morning of 16 July, Gojković ordered eight men from his unit to execute busloads of Bosnian Muslims due to arrive at the Branjevo Military Farm. These eight men travelled to the headquarters of the Zvornik Brigade at the Standard Barracks where a certain "lieutenant-colonel" and two military police officers joined them.<sup>3693</sup> They continued on to Branjevo Military Farm together; however the "lieutenant-colonel" and the military policemen left as the Bosnian Muslims began to arrive.<sup>3694</sup>

<sup>3686</sup> Ex. P00295, "Zvornik Brigade July 1995 Vehicle work log book".

<sup>3687</sup> Branko Bogičević, T. 22367 (18 June 2008).

<sup>3688</sup> *Ibid.*, T. 22389–22391 (18 June 2008.)

<sup>3689</sup> No finding can be made on the evidence as to the time of the delivery.

<sup>3690</sup> Dražen Erdemović, T. 10972 (4 May 2007); Branko Bogičević, T. 22360–22361 (18 June 2008); Ex. P00291, "Material Dispatch Order by Zvornik Brigade for D2 diesel fuel, 16 July 1995"; *see supra*, paras. 532–539.

<sup>3691</sup> *See supra*, para. 546–547. Some of the fuel used for the vehicles that carried out the burial can be traced. The TAM truck that Milenko Tomić used to transport bodies from Pilica to Branjevo Military Farm was issued 40 litres of fuel on 17 July. Milenko Tomić, T. 21001–21003 (5 Feb 2008); Ex. P00295, "Zvornik Brigade July 1995 Vehicle Work log book", pp. 583–584. Tomić said that the procedure before receiving assignments was to receive a travel order and fuel. Milenko Tomić, T. 20999 (5 Feb 2008). The Engineering Company Daily Orders Log recorded that the BGH-700 and the ULT 220 were in Branjevo on 17 July 1995. Damjan Lazarević, T. 14472 (29 Aug 2007); Ex. P00297, "Zvornik Brigade Engineer Company Daily Orders log book", p. 128. On 17 July 1995 the ULT-220 was working for the VRS "digging trenches in Branjevo" for eight and a half hours and was assigned 170 litres of fuel. Ex. P00302, "Zvornik Brigade vehicle logbook for ULT 220 from Birac-Holding". However, Damjan Lazarević testified that this machine was not in Branjevo on 17 July 1995, and there was another ULT-220 machine in Branjevo that was the property of the quarry at Jošanica. Damjan Lazarević, T. 14481 (29 Aug 2007).

<sup>3692</sup> *See* Dražen Erdemović, T. 10963 (4 May 2007).

<sup>3693</sup> Dražen Erdemović, T. 10962–10966 (4 May 2007). The "lieutenant-colonel" travelled in an olive-green-grey Opel Cadet, which Erdemović and the other men followed to Branjevo Military Farm. Dražen Erdemović, T. 10967–10969 (4 May 2007). Erdemović identified the site on two exhibits: Ex. P01915 "Photograph of the Standard Barracks"; Ex. P01916 "Photograph of the Standard Barracks". Dražen Erdemović, T. 10964–10965 (4 May 2007). There is no corroborating evidence that these two photographs are in fact of the Standard Barracks, however another photograph of what is evidently the same complex was identified by Stevo Kosorić as the Zvornik Brigade Headquarters. Ex. 3D00497, "Photograph from Standard"; Stevo Kosorić, T. 25996 (22 Sept 2008).

<sup>3694</sup> Dražen Erdemović, T. 10969–10971 (4 May 2007). Erdemović testified that they travelled to a farm halfway between Zvornik and Bijeljina. *Ibid.*, T. 10969 (4 May 2007).

1132. At around 3 or 4 p.m., the “lieutenant-colonel”<sup>3695</sup> returned to the Branjevo Military Farm and ordered the VRS soldiers deployed there to go to the Pilica Cultural Centre in order to execute the 500 Bosnian Muslims who were detained there.<sup>3696</sup> Members of the 10th Sabotage Detachment refused to go;<sup>3697</sup> however soldiers from Bratunac who had also been at Branjevo Military Farm that day volunteered and left with the “lieutenant-colonel” and two military policemen.<sup>3698</sup> The roads from the direction of Pilica were secured, and that same afternoon, firing and explosions could be heard in Pilica town, coming from the direction of the Pilica Cultural Centre.<sup>3699</sup>

1133. Pursuant to an instruction from the “lieutenant-colonel”, Dražen Erdemović, a member of the 10th Sabotage detachment, went to a café directly across the road from the Pilica Cultural Centre at 3 or 4 p.m. from which point he could observe a number of bodies outside the Pilica Cultural Centre.<sup>3700</sup> A check-point had been set up outside the centre guarded by armed civilian police.<sup>3701</sup> After a short while, VRS soldier Radenko Tomić, who was nicknamed Gargija and had participated in the executions at Branjevo Military Farm, entered the café and told the “lieutenant-colonel” that “everything was finished”.<sup>3702</sup> Later, just before they all left the café the “lieutenant-colonel” stood up and announced: “Who remained alive has remained alive.”<sup>3703</sup> As will be shown below, the Trial Chamber finds that this “lieutenant-colonel” was **Popović**.

1134. As previously stated, **Popović** held the rank of Lieutenant Colonel in July 1995.<sup>3704</sup> He was at the Kula School just as transportation to the execution site at Branjevo Military Farm began. As established above, in the days leading up to 16 July, **Popović** played a coordinating role in the operations at Orahovac and Ročević. The executions in Pilica were part of the same operation.<sup>3705</sup> Furthermore, the evidence establishes that **Popović** was involved in the executions at Pilica. **Popović** was at Pilica throughout the day of 16 July: he was seen at the Kula School around noon, an intercept places him in the Pilica area at 4.40 p.m.—around the time the execution at Branjevo Military Farm occurred<sup>3706</sup>—and communications within the Zvornik Brigade on the afternoon of

<sup>3695</sup> Dražen Erdemović, T. 10966–10967, 10970–10971, 10982 (4 May 2007). *See infra*, paras. 1134–1135 regarding the identity of the Lieutenant Colonel.

<sup>3696</sup> *Ibid.*, T. 10982 (4 May 2007). This estimate corresponds with the testimony of Jevto Bogdanović, who saw approximately 550 bodies in and around the Pilica Cultural Centre in July 1995. Jevto Bogdanović, T. 11333 (10 May 2007).

<sup>3697</sup> Dražen Erdemović, T. 10982 (4 May 2007).

<sup>3698</sup> *Ibid.*, T. 10982, 10966–10967 (4 May 2007).

<sup>3699</sup> *Ibid.*, T. 10983–10985 (4 May 2007). The firing and explosions were heard around 3 or 4 p.m. *Ibid.*

<sup>3700</sup> *Ibid.*, T. 10983–10986 (4 May 2007); Ex. P01820, “Video of Pilica Cultural Center”, 0:34–0:55.

<sup>3701</sup> Dražen Erdemović T. 10984 (4 May 2007). There were two or three armed civilian policemen wearing blue camouflage uniforms of the RS MUP. *Ibid.*

<sup>3702</sup> Dražen Erdemović, T. 10984–10985 (4 May 2007).

<sup>3703</sup> *Ibid.*, T. 10986 (4 May 2007).

<sup>3704</sup> *See supra*, para. 1090.

<sup>3705</sup> *See supra*, para. 1075.

<sup>3706</sup> The execution occurred between 10 a.m. and 3 or 4 p.m. *See supra*, para. 536.

16 July indicate that **Popović** needed fuel delivered to Pilica in relation to the executions and burials there otherwise “his work will stop”. There is no evidence before the Trial Chamber of any other Lieutenant Colonel in Pilica at this time. In light of this, the Trial Chamber is satisfied that there is no other reasonable conclusion available on the evidence but that the Lieutenant Colonel whom Erdemović saw at Branjevo Military Farm and in Pilica town on 16 July was **Popović**.

1135. The Trial Chamber has carefully considered the fact that Erdemović was unable to identify **Popović** in a photo line up.<sup>3707</sup> However, the Trial Chamber considers that given the traumatic circumstances in which Erdemović met **Popović** and the significant passage of time since then, Erdemović’s failure to identify **Popović** in a photo line up does not raise a reasonable doubt as to the Trial Chamber’s conclusion that the man whom Erdemović saw at Pilica on 16 July was, in fact, **Popović**.

1136. As stated above, at 4:40 p.m., a note in the Zvornik Brigade Duty Officer Logbook reads “Message from Zlatar that Lieutenant Colonel Popović must go to Vinko Pandurević in the field at 1640 hrs. Message through the 1st pb that Popović must report to the duty officer so he can be sent on a task by Zlatar”.<sup>3708</sup> In an intercepted conversation at 4:43 p.m., it is stated that **Popović** or **Nikolić** is to visit “Vinko” to see “what’s going on there”.<sup>3709</sup> In another conversation at 9:16 p.m., the following exchange took place:

Popović: I was just up there  
 Rašić: Yes.  
 Popović: I was with the boss personally.  
 Rašić: Yes.  
 Popović: Here where I am ... you know where I am?  
 Rašić: I know.  
 Popović: Well, you got his interim report.  
 Rašić: All of it.  
 Popović: It’s just like he wrote it ... I was there on the spot and saw for myself he had received some numbers ... well, that’s not even important ... I’ll come there tomorrow so tell the General ... I’ve finished the job.  
 Rašić: You finished?  
 Popović: I finished everything.  
 Rašić: Good.  
 Popović: I’ll come there tomorrow when I’m sure that that’s all been taken care of, you know.

<sup>3707</sup> See Ex. 2D00571, “Stipulation between OTP and Popović” (stating that when Erdemović was shown a photo-board containing the photographs of eight individuals including **Popović**, he did not identify any of the eight individuals in the picture as the Lieutenant-Colonel whom he testified that he had seen on 16 July 1995 at the Branjevo Military Farm and “Pilici”).

<sup>3708</sup> Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995”, p. 149.

<sup>3709</sup> Ex. P01225f, “Intercept of conversation between X and Y, 16 July 1995, 16:43 hours”.

Rašić: Good.

Popović: After I bring a transport from there.

Rašić: Right.

Popović: Well, in general, there weren't any major problems. But up there, there were horrible problems and that thing the commander sent, it was just the right thing.

Rašić: Good.<sup>3710</sup>

1137. The Trial Chamber is satisfied that “the boss” is a reference to Pandurević.<sup>3711</sup> **Pandurević**, however, denies that he saw **Popović** at any point on 16 July.<sup>3712</sup> In light of this intercept, and noting the amount of time that has passed since the events as well as **Pandurević’s** concession that “the boss” was probably a reference to himself, the Trial Chamber is satisfied that **Popović** met **Pandurević** on 16 July in the Zvornik area.

1138. In the first half of the intercept, **Popović** relays information from the Zvornik Brigade Interim Combat Report of 16 July, signed by **Pandurević** and containing information on combat operations in the area as well as **Pandurević’s** decision to open a corridor so that the civilian population may be evacuated.<sup>3713</sup> The conversation shifts from this topic when **Popović** states “well, that’s not even important ... I’ll come there tomorrow so tell the General ... I’ve finished the job”. **Popović** made this call from the Standard Barracks at 9.16 p.m., and by 10:33 p.m., he had left.<sup>3714</sup> Taking into account all of the evidence, and **Popović’s** activities in the days leading up to this conversation, the Trial Chamber is of the opinion that the only reasonable interpretation of this evidence is that the reference to “the job” is a reference to the killing operation.

1139. The **Popović** Defence proffers a contrary explanation for **Popović’s** presence in Zvornik after 12 July. The **Popović** Defence argues that from 12 July onwards the column “threaten[ed] to invade Zvornik in coordination with ABiH 2nd Corps”.<sup>3715</sup> Petar Vuga, defence expert and retired JNA Colonel,<sup>3716</sup> testified that counter intelligence work was the main task of the Security Organ. According to Vuga, all the duties of the Drina Corps Security Organ were carried out personally by **Popović**.<sup>3717</sup> Given the need for counter intelligence work to be carried out in these circumstances,

<sup>3710</sup> Ex. P01201a, “Intercept of conversation between Popović and Rašić, 16 July 1995, 21:16 hours”.

<sup>3711</sup> **Pandurević** acknowledged that the reference to “the boss” was probably a reference to himself. Vinko Pandurević, T. 32244–32245 (27 Feb 2009).

<sup>3712</sup> Vinko Pandurević, T. 32247 (27 Feb 2009).

<sup>3713</sup> Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Pandurević, 16 July 1995”.

<sup>3714</sup> Ex. P01201a, “Intercept of conversation between Popović and Rašić, 16 July 1995, 21.16 hours”; Prosecution Adjudicated Facts Decision, Fact 87 (stating that the reference to “Palma” is a reference to the Zvornik Brigade); P01204a, “Intercept of conversation between Trbić and X, 16 July 1995, 22.33 hours” (indicating that **Popović** had left the Zvornik Brigade Headquarters by then (“Yes, he was here and gone.”)).

<sup>3715</sup> Popović Final Brief, para. 581.

<sup>3716</sup> Petar Vuga, T. 23034 (30 June 2008).

<sup>3717</sup> Ex. 1D01175, “Expert Report by retired Colonel Mr. Petar Vuga, 31 March 2008”, paras. 4.17–4.20. Vuga estimated that “security organs must be engaged in counterintelligence work up to 80% of their total working capacity”. *Ibid.*, para. 4.17. *See Supra*, para. 1092.

and also that **Popović** was the only person responsible for counter intelligence work,<sup>3718</sup> whereas “any officer” could carry out tasks in relation to prisoners, the **Popović** Defence argues that **Popović’s** presence in Zvornik after 12 July was strictly for the purpose of carrying out counter intelligence tasks.<sup>3719</sup>

1140. Further, the **Popović** Defence points to the fact that on 15 July 1995, the Drina Corps issued an urgent mobilisation request and order for conscripts to report to the Zvornik Brigade.<sup>3720</sup> Prosecution expert Richard Butler testified that he could foresee a situation where the Security Organ would be required to gather information from potential conscripts to determine whether any of them might pose potential security or counter-intelligence threats.<sup>3721</sup>

1141. The Trial Chamber notes that the arguments of the **Popović** Defence on this point are rooted in speculation. Even if, for the sake of argument, one concludes that **Popović** was engaged in legitimate operations in Zvornik after 12 July—either counter intelligence activities or screening recruits—this has no effect whatsoever on his proven involvement with prisoners from Srebrenica. Having considered all the evidence, the Trial Chamber is satisfied beyond reasonable doubt that **Popović** was present in Orahovac, Ročević and Pilica during the period 14–16 July. The arguments of the **Popović** Defence raise no reasonable doubt as to **Popović’s** presence at these locations, or involvement with prisoners in the days that followed 12 July, including their killing.

(vii) 17 July 1995

1142. In the space of a few minutes around midday on 17 July, three telephone conversations were intercepted, all of which concern a message to be passed on to **Popović**. In the first conversation, at 12:42 p.m., Major Golić tells General Krstić that **Popović** is in Zvornik, but is expected to be back at the IKM that afternoon. Krstić states “Listen, Golić, find this **Popović** chap and have him report to the IKM [...] find him and have him report immediately”.<sup>3722</sup> Two minutes later, Trbić, a security officer at the Zvornik Brigade, says that **Popović** “went there, to, towards that task” and that the task was north of Trbić.<sup>3723</sup> Five minutes later, an unknown interlocutor says to Trbić “It’s changed again [...] if you get in touch with him, let him finish that work [...] And have him come /here/

<sup>3718</sup> See *supra*, para. 1093.

<sup>3719</sup> Popović Final Brief, paras. 581–582.

<sup>3720</sup> Ex. 1D00698, “Request from the Drina Corps Command for mobilisation of non-assigned conscripts, signed by Krstić 15 July 1995”; Ex. 1D00697, “Order from the Ministry of Defence of the Republika Srpska signed by Secretary Stevan Ivanović 15 July 1995”.

<sup>3721</sup> Richard Butler, T. 20139–20142 (22 Jan 2008).

<sup>3722</sup> Ex. P01218a, “Intercept of conversation between Golić and Zlatar 1, 17 July 1995, 12:42 hours”. Zlatar 1 is a reference to the Commander of the Drina Corps, at the time General Krstić. Vinko Pandurević, T. 31047 (3 February 2009).

<sup>3723</sup> Ex. P01219a (confidential).

immediately [...] So, let him finish that work that he's doing, and have him report immediately here".<sup>3724</sup> Later, at 4:22 p.m., **Popović** tells an unknown interlocutor whom he refers to as "boss", that "everything's OK, that job is done ... everything's been brought to an end, no problems [...] I'm at the base ... at the base [...]. Can I just take a little break, take a little break, take a shower and then I'll think again later ... basically, that all gets an A ... an A ... the grade is an A, everything's OK".<sup>3725</sup> In light of all the evidence before it concerning **Popović's** acts and whereabouts in the days preceding this conversation, the Trial Chamber finds that the "job" that **Popović** is referring to in this intercept is the operation to kill and bury Bosnian Muslim males in Zvornik during the period 13–17 July 1995.

(viii) 23 July 1995

a. Bišina

1143. On 7 April 2008, two months after the close of the Prosecution case,<sup>3726</sup> the Prosecution filed a motion to reopen its case in order to present evidence relating to an alleged mass execution in an area known as Bišina, in which **Popović** was allegedly involved.<sup>3727</sup> The Trial Chamber granted the Prosecution motion, stating:

[...] because the executions at Bišina are not specified in the Indictment, it is not possible for Popović—or any of the other six Accused—to be found criminally responsible for those executions. Rather, the evidence is relevant and probative as to Popović's knowledge, intent and "pattern of conduct" during the period relevant to the executions which are alleged in the Indictment and for which the Prosecution's evidence has been led.<sup>3728</sup>

1144. In the morning of 23 July 1995, a member of the Drina Corps Military Police Battalion in Han Pijesak was assigned with two others to collect some prisoners at the Sušica military prison in Vlasenica<sup>3729</sup> in a military truck.<sup>3730</sup> Once the truck was loaded with prisoners, it set off in a north-

<sup>3724</sup> Ex. P01220a, (confidential).

<sup>3725</sup> Ex. P01224a, "Intercept of conversation between Popović and Y, 17 July 1995, 16:22 hours".

<sup>3726</sup> The Prosecution brought its case to a close on 7 February 2008. T. 21222 (7 Feb 2008).

<sup>3727</sup> Motion to Reopen the Prosecution Case, with Two Appendices (confidential), 7 Apr 2008.

<sup>3728</sup> Decision on Motion to Reopen the Prosecution Case, 9 May 2008, para. 39. Rule 93(A) provides: "Evidence of a consistent pattern of conduct relevant to serious violations of international humanitarian law under the Statute may be admissible in the interests of justice".

<sup>3729</sup> Nikodin Jovičić, who in July 1995 was the Deputy Commander of the Uniform Police in Han Pijesak, testified that there was a military prison in Vlasenica, known as Sušica, but he did not recall the time period. Nikodin Jovičić, Ex. P04438, "92 ter statement" (17 Mar 2007), paras. 6, 12.

<sup>3730</sup> PW-172, T. 32566–32568 (private session), 32570; 32575–32578 (private session), 32578–32580 (10 Mar 2009); Ex. P04425, (confidential). PW-172 identified on the vehicle log for the TAM truck used that day and the entry indicates that the TAM truck was used on 23 July between 8:30 a.m. and 3 p.m.



westerly direction towards Šekovići and it was joined, at some point, by another truck, and a minibus.<sup>3731</sup>

1145. Somewhere along the main road between Tišća and Šekovići, the vehicles pulled over near a restaurant, where five or six soldiers, some bearing the insignia of the 10th Sabotage Detachment, boarded the minibus.<sup>3732</sup> They were armed with automatic rifles and were masked, with caps over their heads; some with fingerless gloves; some wearing camouflage uniforms, others wearing civilian T-shirts.<sup>3733</sup> A few more prisoners were loaded onto the trucks at the same location, before continuing in the direction of Bišina.<sup>3734</sup>

1146. At some point **Popović**, driving a car, joined the other vehicles.<sup>3735</sup> The convoy of vehicles stopped about 200 to 300 meters from the Bišina Battalion Command.<sup>3736</sup> Three or four uniformed men wearing yellow or white belts were standing close to the Command.<sup>3737</sup>

1147. The soldiers from the 10th Sabotage Detachment engaged in a very brief conversation with **Popović**, who was the most senior officer present.<sup>3738</sup> The soldiers then opened the back door of one of the trucks, took five prisoners approximately 30 metres from where the trucks were parked, and shot them.<sup>3739</sup> This procedure continued at the same rate: the prisoners were being taken from the trucks five at a time, to be shot very quickly, while **Popović** was present.<sup>3740</sup> PW-172

<sup>3731</sup> PW-172, T. 32570 (10 Mar 2009); PW-175, T. 32782–32789 (25 Mar 2009); Ex. P04432, “Vehicle log for Minibus”, p. 2.

<sup>3732</sup> PW-172, T. 32571, T. 32575 (10 Mar 2009), PW-175, T. 32783–32784 (25 Mar 2009). PW-172 had heard about the 10th Sabotage Detachment from his conversations with other soldiers, specifically, he heard that they were billeted at near Vlasenica. PW-172, T. 32575–32576 (10 Mar 2009). On 23 July 1995, at 10:30 a.m., a member of the Drina Corps was tasked by Momo Amović, the Commander of the administrative HQ of the Drina Corps, to pick up some people. He drove a minibus from Vlasenica to Dragaševac where he picked up five or six men. When the minibus was approaching Šekovići, the passengers instructed the driver to instead drive to Bišina. PW-175, T. 32782–32786 (25 Mar 2009). The relevant entry in the vehicle log for the minibus showed that the vehicle was used between 10:30 and noon on 23 July 1995 on a route given as “Vlasenica-Šehovići-Bišina-Šehovići”, with a total number of 8 people onboard, and 48 kilometres travelled. Ex. P04432, “Vehicle log for Minibus”; PW-175, T. 32793–32794 (25 Mar 2009).

<sup>3733</sup> PW-175, T. 32784, T. 32788 (25 Mar 2009); PW-172, T. 32588 (10 Mar 2009). *But see* PW-175, initially testifying that he could only see that two passengers were armed as he was too afraid to look at them. PW-175, T. 32784 (25 Mar 2009).

<sup>3734</sup> PW-172, T. 32571 (10 Mar 2009).

<sup>3735</sup> PW-172, T. 32572 (10 Mar 2009).

<sup>3736</sup> *Ibid.*, T. 32572 (10 Mar 2009). PW-172 testified that he was unfamiliar with this place. *Ibid.* PW-175, T. 32786–32788 (25 Mar 2009).

<sup>3737</sup> PW-175, T. 32788 (25 Mar 2009). *See also* PW-175, T. 32787 (25 Mar 2009), testifying as to the presence of two or three civilians in the area.

<sup>3738</sup> PW-172, T. 32575, 32588–32589 (10 Mar 2009). The conversation did not involve any sort of a command; **Popović** was not issuing any direct orders to them. *Ibid.*, T. 32572–32573, 32588–32589 (10 Mar 2009).

<sup>3739</sup> *Ibid.*, T. 32572–32573 (10 Mar 2009).

<sup>3740</sup> *Ibid.*, T. 32573, 32598 (10 Mar 2009). PW-172 said that **Popović** was present while the executions were taking place but that he believes that he had nothing to do with the transport of the prisoners from Šekovići to Bišina. *Ibid.*, T. 32598 (10 Mar 2009). The driver of the minibus wrote “Lieutenant Colonel Popović” next to “Vlasenica-Šehovići-Bišina-Šehovići” as his record of the journey on 23 July 1995 and he said that he wrote this because he had been told that **Popović** was in charge, but he was not altogether clear about this or the circumstances

approached **Popović**, dispensing with protocol and using his nickname, and asked him what was happening; **Popović** did not answer. PW-172 described the interaction as follows: “I approached him, and I just told him, Pop, what has just happened? He never replied to me. I could see tears in his eyes, and he just turned his head away from me”.<sup>3741</sup> Bodies have been exhumed from a mass grave in the Bišina area and among them the remains of Himzo Mujić have been identified.<sup>3742</sup> In an intercepted conversation that took place on the day after the killings, **Popović** is said to know the whereabouts of Himzo Mujić and what happened to him.<sup>3743</sup>

1148. Later, a construction machine, a front loader, arrived and dug a hole.<sup>3744</sup> The person who operated the machine asked a member of the Military Police Battalion in Han Pijesak to load the dead bodies.<sup>3745</sup> One of them refused; then **Popović** told the other two military policemen: “Do it if you can and if you will.”<sup>3746</sup> They accepted, and did it.<sup>3747</sup>

1149. On the basis of the evidence of Slaviša Vlačić,<sup>3748</sup> Dragiša Čojić<sup>3749</sup> and Milenko Kojić,<sup>3750</sup> **Popović** presented an alibi concerning his involvement in the killings in Bišina.<sup>3751</sup> These witnesses testified as follows.

1150. Slaviša Vlačić gave evidence of a meeting he had with **Popović** at the *Vežionica* factory in Zvornik, in the morning sometime in July 1995. At one point **Popović** made a phone call in which he shouted several questions, like: “When?”, “Where?”, and “Why?”. Directly thereafter, **Popović**

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surrounding it. Ex. P04432, “Vehicle Work Log No. 28/3-202 for Minibus”; PW-175, T. 32794–32799 (25 Mar 2009).

<sup>3741</sup> PW-172, T. 32573–32574 (10 Mar 2009).

<sup>3742</sup> Ex. P03517 (confidential); Ex. 1D01366 (confidential); Ex. 1D01389 (confidential); Ex. 1D01330 (confidential); Ex. P04494 (confidential); Ex. 1D01392, “Federation of BiH Cantonal Prosecutor’s office for the Tuzla Canton - Exhumation report, 1 June 2006”; Thomas Parsons, T. 33463–33467, 33468–33470 (private session) (29 Apr 2009).

<sup>3743</sup> Ex. P01324a, “Intercept of conversation between X and Y, 24 July 1995, 12:50 hours” (One of the speakers asks the other to tell Kane that “Himzo [MUJIĆ] is no longer in prison here”, that he should call Lieutenant-Colonel **Popović** at the Drina Corps and that **Popović** is “the only one who knows where he went from here and what happened to him”). In an earlier intercepted conversation on the same day a speaker, who is identified as Kane, says that Himzo Mujić, “would like to talk to Jovičić, because [he] used to work for him”. Later in the conversation the other speaker says: “Check that down there, you know? Maybe **Popović**, the security guy will.” Ex. P01323a, “Intercept of conversation between X (Kane) and Y, 24 July 1995, 11:32 hours”. Nikodin Jovičić testified that Himzo Mujić was his “operational contact” before the war, but he did not recall knowing Mujić’s whereabouts in July 1995. Jovičić later heard that Mujić and his brothers had gone to Srebrenica and had been killed. Nikodin Jovičić, Ex. P04438, “92 *ter* statement” (17 Mar 2007), paras. 6–7, 8, 10.

<sup>3744</sup> PW-172, T. 32573–32574 (10 Mar 2009).

<sup>3745</sup> *Ibid.*, T. 32574 (10 Mar 2009).

<sup>3746</sup> *Ibid.*

<sup>3747</sup> *Ibid.* PW-172 said that “there was nothing resembling military command or order”, but that **Popović** simply said to them, “if you are willing to do that or if you can”. *Ibid.*, T. 32603 (10 Mar 2009). PW-172 further stated that he never received an order from **Popović**, “not then, not before then, and not after then.” PW-172, T. 32588 (10 Mar 2009).

<sup>3748</sup> Slaviša Vlačić, Ex. 1D01438, “92 *ter* statement” (20 Apr 2008).

<sup>3749</sup> Dragiša Čojić, Ex. 1D01439, “92 *ter* statement” (28 Dec 2008).

<sup>3750</sup> Milenko Kojić, Ex. 1D01446, “92 *ter* statement” (25 Dec 2008).

<sup>3751</sup> **Popović** Final Brief, paras. 650–656; T. 34383-34390 (7 Sept 2009).

said that “he had to go back immediately”. **Popović** had stayed at the factory for about half an hour. Vlačić said that he made the visit several days after the capture of **Popović**’s relative, Đordije Popović, which occurred on 18 July.<sup>3752</sup> There is also documentary evidence that **Popović** went to Zvornik at 9 a.m. on 23 July.<sup>3753</sup> Dragiša Čojić said that some time in July 1995 **Popović** came to the construction site of the Bišina Barracks and asked him whether his brother-in-law, Milenko Kojić, was there and he replied that he was and called him. Čojić said that he had seen two trucks drive past at least two hours before **Popović** came.<sup>3754</sup> Milenko Kojić gave an account of seeing **Popović** at the construction site of the Bišina Barracks a few days after he heard about the capture of Đordije Popović. He said that he saw **Popović** between 1 and 2 p.m. **Popović** asked him whether he had seen any military trucks going by. He replied that he had about two or three hours previously. **Popović** stayed only for a few minutes before driving off in the same direction as the vehicles had previously gone. He returned to the construction site half an hour later appearing “tired and miserable”.<sup>3755</sup> **Popović**’s position is that he arrived at the site of the executions after they had taken place.<sup>3756</sup>

1151. The Trial Chamber recalls its observations about alibi.<sup>3757</sup> The Trial Chamber finds that the alibi evidence presented by **Popović** does not raise a reasonable doubt as to the Prosecution evidence placing **Popović** at the scene as the executions took place. This is so for a number of reasons. First, the Trial Chamber found PW-172 to be a credible witness. Secondly, Vlačić, Čojić and Kojić were not specific as to the date on which they saw **Popović**.<sup>3758</sup> Thirdly, the military trucks that Čojić and Kojić said that they saw could have been performing any of a number of functions other than that of transporting prisoners to Bišina, particularly given the closeness of Bišina to the confrontation line. Based on the evidence before the Trial Chamber, the only reasonable conclusion is that **Popović** was involved with and present during the executions at Bišina.

1152. However, **Popović** has not been indicted for crimes in relation to this incident. The Trial Chamber accepts the evidence presented by the Prosecution relating to the execution at Bišina, and finds it to be corroborative of the Trial Chamber’s previous findings on **Popović**’s involvement in the killing operation, as alleged in the Indictment.

<sup>3752</sup> Slaviša Vlačić, Ex. 1D01438, “92 *ter* statement” (20 Apr 2008), pp. 2-3; Ex. P00141, “Regular Combat Report from the Drina Corps Command to the VRS Main Staff signed by Krstić, 18 July 1995”, p. 2.

<sup>3753</sup> Ex. P00197, “Vehicle Log from 1 to 31 July 2008 from Military Post 7111”, p. 4.

<sup>3754</sup> Dragiša Čojić, Ex. 1D01439, “92 *ter* statement” (28 Dec 2008), pp. 2–3.

<sup>3755</sup> Milenko Kojić, Ex. 1D01446, “92 *ter* statement” (25 Dec 2008), pp. 3–4.

<sup>3756</sup> Popović Final Brief, para. 654; T. 34388 (7 Sept 2009).

<sup>3757</sup> See *supra*, para. 1115.

<sup>3758</sup> Slaviša Vlačić, Ex. 1D01438, “92 *ter* statement” (20 Apr 2008), pp. 2-3; Milenko Kojić, Ex. 1D01446, “92 *ter* statement” (25 Dec 2008), pp. 3–4 ; Dragiša Čojić, Ex. 1D01439, 92 *ter* statement” (28 Dec 2008), pp. 2–3.

b. Wounded Bosnian Muslim Prisoners From Milići Hospital

1153. Some time in July 1995, ten wounded Bosnian Muslim prisoners from Milići Hospital were transferred to the Standard Barracks, where they stayed until around 23 July.<sup>3759</sup> Two intercepted conversations on 23 July 1995 indicate that **Pandurević** sought guidance on the issue of wounded Bosnian Muslims and was told that **Popović** would arrive to sort the matter out. In the first conversation at 8 a.m., **Pandurević** tells Colonel Cerović, Assistant for Moral, Legal and Religious Affairs in the Drina Corps, that he has some wounded prisoners whom he does not know what to do with, and inquires about the possibility of an exchange.<sup>3760</sup> The second call occurs five minutes later, and Cerović instructs the Duty Officer to tell **Pandurević** that **Popović** will arrive at 5 p.m. to “say what needs to be done regarding the work we talked about.”<sup>3761</sup>

1154. Sometime thereafter, Obrenović learned from the Zvornik Brigade Duty Officer that early in the morning, the wounded men were transported away from the Standard Barracks.<sup>3762</sup> Later, on the same day that Obrenović learned the prisoners had been taken away, **Pandurević** told Obrenović that **Popović** had arrived with an order from Mladić for the injured Bosnian Muslim men to be liquidated and they were driven away.<sup>3763</sup>

1155. On 23 July, the vehicle log for a car assigned to **Popović** recorded that this car travelled from Vlasenica to Zvornik.<sup>3764</sup> Of the 10 wounded Bosnian Muslim prisoners who were transferred to the Standard Barracks, the remains of one have been identified in a grave at Liplje,<sup>3765</sup> and as of November 2007, the remaining nine were still missing.<sup>3766</sup>

1156. The Trial Chamber is satisfied that the ten wounded Bosnian Muslim men were killed some time around 23 July.<sup>3767</sup> The Trial Chamber is further satisfied, based on the evidence above, that these men were placed in the custody of **Popović** around 23 July. In light of this evidence, as well as the previously examined evidence concerning **Popović’s** involvement in the mass executions in

<sup>3759</sup> See *supra*, para. 572–573.

<sup>3760</sup> Exhibit P01309a “Intercept, 23 July 1995, 08:00 hours”; Vinko Pandurević, T. 31146 (9 Feb 2009) (stating that he believed the other participant in the conversation to be Cerović).

<sup>3761</sup> Ex. P01310a “Intercept, 23 July 1995, 08:05 hours”. PW-168, T. 16025 (closed session) (28 Sept 2007) (stating that, based on his knowledge of the incident and review of the intercept, the “Ljubo” referred to is Major Ljubo Bojanović, who was on duty that day); See also Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 177 (stating “0830 hrs. – Lieutenant Colonel Cerović relayed a message for commander that LTC **Popović** will arrive by 17:00 hours”); Vinko Pandurević, T. 32262–32263 (27 Feb 2009); see *supra*, para. 1904.

<sup>3762</sup> PW-168, T. 15915 (closed session) (27 Sept 2007).

<sup>3763</sup> PW-168, T. 15915–15916 (closed session) (27 Sept 2007). **Pandurević** denies having authorised the execution of the Bosnian Muslim prisoners and contrary to PW-168’s account, testified that Obrenović reported to him that the wounded Bosnian Muslim prisoners were taken to the Batković detention centre, in Bijeljina. Vinko Pandurević, T. 31170 (10 Feb 2009).

<sup>3764</sup> Ex. P00197, “Vehicle log for VW GOLF P-7065 assigned to Vujadin Popović from 1–31 July 1995”, p. 4.

<sup>3765</sup> Ex. P04494, (confidential), p. 163; See *supra*, para. 576.

<sup>3766</sup> Ex. P03159a, (confidential).

the Zvornik area in July, the Trial Chamber finds that **Popović** killed or facilitated the killing of the ten wounded Bosnian Muslim prisoners from Milići Hospital.

(ix) 2 August 1995 (Žepa)

1157. **Popović** spoke with General Krstić twice during the Žepa operation in the second half of July.<sup>3768</sup> Two intercepted conversations dated 2 August show that Krstić gave instructions to **Popović** to go to Serbia to handle the issue of the Bosnian Muslim men from Žepa.<sup>3769</sup> The second conversation at 1 p.m. indicates that the Serbian MUP was refusing to allow VRS representatives to talk to the Bosnian Muslims who had crossed the Drina River to Serbia or to take them back into custody.<sup>3770</sup> In this same conversation, **Popović** told Krstić that **Beara** had just called **Popović** recounting that **Beara** had reported to **Miletić** that there were 500 to 600 Bosnian Muslims in Serbia but that the Serb authorities would not allow anyone to speak to them.<sup>3771</sup>

(x) September 1995

1158. In September 1995, **Popović** instructed Momir Nikolić, Chief of Security and Intelligence of Bratunac Brigade, to conduct a reburial of the bodies of Bosnian Muslims at Glogova.<sup>3772</sup> He also told Momir Nikolić that the order for reburial came from the VRS Main Staff and that “the Drina Corps Command or the Security Organ of the Drina Corps” was tasked to ensure the necessary quantity of fuel to carry out the operation.<sup>3773</sup>

1159. Around 14 September,<sup>3774</sup> Obrenović was assuming the position of the Zvornik Brigade Commander when he received information about a telegram for an unusually large quantity of fuel for Captain Trbić.<sup>3775</sup> Obrenović called the duty officer at the Drina Corps to follow up but the latter

<sup>3767</sup> See *supra*, para. 577.

<sup>3768</sup> PW-109, T. 14603 (private session) (31 Aug 2007).

<sup>3769</sup> Ex. P01392d, “Intercept, 2 August 1995, 1240 hours”; Ex. P01395g, “Intercept, 2 August 1995, 1300 hours”.

<sup>3770</sup> Ex. P01395g, “Intercept, 2 August 1995, 1300 hours”.

<sup>3771</sup> *Ibid.*

<sup>3772</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 7; Momir Nikolić, T. 32960–32962 (21 Apr 2009). See also PW-138, T. 3865, 3867 (private session) (9 Nov 2006) (testifying Momir Nikolić was involved in the reburial operation and that he received orders from his superiors, along the security chain of command).

<sup>3773</sup> Momir Nikolić, T. 32960–32962 (21 Apr 2009).

<sup>3774</sup> Ex. P00041, “Document from the VRS Main Staff to the Drina Corps, signed by Ratko Mladić, 14 September 1995”; Ex. 3D00217, “Excerpt from Ex. P379 - Duty Officer's Notebook - entry for 14 Sep 95” (recording “Strictly Confidential Cable 03/4-2341 dated 14 September 1995”). This is the Main Staff Order on fuel for Trbić (Ex. P00041). PW-168, T. 15921–15922 (27 Sept 2007), T. 17006–17012 (closed session) (26 Oct 2007).

<sup>3775</sup> PW-168, T. 15921–15922 (closed session) (27 Sept 2007); T. 17006 (closed session) (26 Oct 2007). At this time Obrenović was assuming the position of the Zvornik Brigade Commander in the absence of **Pandurević**, as documented in a formal order issued by Krstić on 8 August. PW-168, T. 15923–15924 (closed session) (27 Sept 2007); T. 16621–16622 (closed session) (19 Oct 2007); Vinko Pandurević, T. 31191–31193 (10 Feb 2009); Ex. 5D00452 (confidential). The telegram requested five thousand tonnes of fuel, and this was unusual because the Brigade would normally only have two tonnes of fuel reserve. PW-168, T. 15921–15922 (closed session) (27 Sept 2007).

“had no idea about this”.<sup>3776</sup> A few minutes later, Obrenović received a call from **Popović** asking how he knew about the fuel, to which he replied he had heard this from the Zvornik Brigade duty officer.<sup>3777</sup> **Popović** responded that “the duty officers messed things up and that they had no clue”, after which the conversation ended.<sup>3778</sup> Later that day, the Zvornik Brigade *did* receive a Main Staff order approving 5,000 litres of D-2 Diesel for engineering works for Captain Trbić.<sup>3779</sup>

1160. On 22 September, **Popović** followed up on the delivery of fuel during an intercepted conversation with “Mihalić” and asked whether Trbić was around.<sup>3780</sup> Mihalić replied that Trbić had left, to which **Popović** responded “he is working on that, right”.<sup>3781</sup> On 26 September, **Popović** came to the Zvornik Brigade with a large map to see **Pandurević** and **Drago Nikolić**.<sup>3782</sup>

1161. The Trial Chamber finds the evidence outlined above of **Popović’s** involvement in the reburial operation to be corroborative of the findings made above concerning his involvement in the mass executions in the Zvornik area in July 1995.

(d) Findings

1162. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Participation in Two Joint Criminal Enterprises

1163. The centrepiece of the Prosecution’s case against **Popović** is his commission of crimes through participation in two joint criminal enterprises, as outlined in the Indictment. The Trial Chamber will therefore begin with an examination of **Popović’s** alleged participation in these joint criminal enterprises.

<sup>3776</sup> PW-168, T. 15921 (closed session) (27 Sept 2007); T. 17006 (closed session) (26 Oct 2007).

<sup>3777</sup> *Ibid.*

<sup>3778</sup> *Ibid.*, T. 15921 (closed session) (27 Sept 2007).

<sup>3779</sup> *Ibid.*; Ex. P00041, “Main Staff Order on assignment of fuel, type-signed Ratko Mladić, 14 Sept. 95” (stating that Trbić was responsible for the accurate maintenance of the records on the number of engine work hours of engineering machines and to account accordingly for consumption of fuel). Although the document states the fuel be delivered to the Standard Barracks in Zvornik, to “Captain Milorad Trpić”, PW-168 confirmed this was most likely a typographical error by the teleprinter operator and that it should read Captain Milorad Trbić. PW-168, T. 15922 (closed session) (27 Sept 2007). The Prosecution also noted a translation error on the English version of Ex. P00041: the first two lines of the order read “General Staff of the Army of Republika Srpska”, where it should read “Main Staff of the Army of Republika Srpska”. PW-168, T. 15922 (closed session) (27 Sept 2007).

<sup>3780</sup> Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44”.

<sup>3781</sup> Ex. P02391a, “Intercept of conversation between Popović and Nikolić, 22 September 1995, 18:44”.

<sup>3782</sup> PW-168, T. 15926 (closed session) (27 Sept 2007).

a. The Joint Criminal Enterprise to Murder

i. First Category Joint Criminal Enterprise

1164. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>3783</sup> The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Chamber will now turn to the third element: participation of the accused in the common purpose.

1165. The Trial Chamber recalls that in order for **Popović** to incur liability pursuant to the first category of joint criminal enterprise, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Popović** must have significantly contributed to the common purpose and have shared with other members of the JCE to Murder the intent to carry out the common purpose.

1166. By morning on 12 July, **Popović** was aware of a plan to murder Bosnian Muslim men,<sup>3784</sup> and in the days that followed, as the plan expanded in scope and scale, he helped establish a framework according to which the plan could be executed. **Popović** figured prominently in the various aspects of the implementation of the plan and at a number of key locations. He enlisted members of the VRS to assist in the murder operation, including Momir Nikolić on 12 July, **Drago Nikolić** on 13 July<sup>3785</sup> and Srećko Aćimović on 15 July.<sup>3786</sup> **Popović** was in Potočari where civilians had gathered, including the men whom he knew were to be separated for execution.<sup>3787</sup> He was at all but one of the locations in the Zvornik area where large-scale detentions and executions were carried out,<sup>3788</sup> and in one instance, he was present as executions took place.<sup>3789</sup> He organised the transportation of Bosnian Muslim prisoners to a place of detention immediately prior to their

<sup>3783</sup> See *supra*, para. 1073.

<sup>3784</sup> **Popović** told Momir Nikolić of the operation immediately before he attended the third Hotel Fontana meeting. See *supra*, paras. 1097–1099.

<sup>3785</sup> See *supra*, para. 1104.

<sup>3786</sup> See *supra*, para. 1118.

<sup>3787</sup> See *supra*, para. 1099.

<sup>3788</sup> There were four locations where large-scale executions took place in the Zvornik area between 14 and 16 July 1995 (Orahovac, Petkovci, Ročević/Kozluk and Pilica). **Popović** accompanied the convoy of vehicles to the Grbavci School in Orahovac where Bosnian Muslim men were detained and was present later that day at a nearby field as the men were executed. See *supra*, paras. 1107–1115. **Popović** was present at the Ročević School on 15 July as Bosnian Muslim men were detained there, organizing logistics for their transport to the execution site at Kozluk. See *supra*, paras. 1117–1122. **Popović** was also present on 16 July in Pilica at the Kula School where Bosnian Muslim men were detained, the Branjevo Military Farm and Pilica village, recruiting men to participate in the executions. See *supra*, paras. 1131–1135.

<sup>3789</sup> **Popović** was present at a field in Orahovac on 14 July as Bosnian Muslim men were executed. See *supra*, paras. 1111–1115.

execution<sup>3790</sup> and he coordinated logistics “on-site” for two of the mass executions.<sup>3791</sup> Throughout the operation, **Popović** interacted and met with other participants in the murder operation, including **Drago Nikolić** and **Ljubiša Beara**.<sup>3792</sup> **Popović’s** participation in the JCE to Murder is also corroborated by his presence at an execution site in Bišina<sup>3793</sup> and his participation in the reburial operation.<sup>3794</sup>

1167. On 17 July, **Popović** is intercepted reporting on the killing operation to an unknown interlocutor whom he refers to as “boss”, that “everything’s OK, that job is done ... everything’s been brought to an end, no problems [...] basically, that all gets an A [...] the grade is an A, everything’s OK”.<sup>3795</sup> Through this intercepted conversation, **Popović’s** own words illustrate his commitment to the common purpose. Even after declaring that “everything’s been brought to an end”, his efforts continued when around 23 July he played a central role in arranging for the murder of ten wounded Bosnian Muslim prisoners from the Standard Barracks.<sup>3796</sup>

1168. Based on the abundant evidence before it, the Trial Chamber is satisfied beyond reasonable doubt that **Popović** made a significant contribution to the JCE to Murder and that he shared the intent to carry out the common purpose. This is evident in the pivotal role that he played in the organization, coordination and implementation of the killing operation. The Trial Chamber therefore finds that **Popović** was a participant in the JCE to Murder.

<sup>3790</sup> **Popović** ordered a military policeman to take a UN APC to an intersection near the bus station in Bratunac and park facing Konjević Polje. Once at the bus station, **Popović** gave further instructions regarding refueling and told the military policeman to position the APC so that a column of vehicles could form behind it. The APC and the column then followed **Popović** to Orahovac, where the prisoners were killed. *See supra*, paras. 1107–1112.

<sup>3791</sup> At the Ročević School, **Popović** called the Zvornik Brigade Command to request trucks and men to be sent to Ročević urgently. **Popović** also attempted to engage civilian drivers to assist with transportation of prisoners to the execution site. *See supra*, para. 1120. At Pilica, **Popović** requested delivery of fuel in relation to the execution and burial of Bosnian Muslim prisoners. *See supra*, paras. 1126–1130.

<sup>3792</sup> **Popović** met with **Beara** and **Nikolić** at the Standard Barracks in the morning of 14 July. *See supra*, para. 1106. **Popović** also met with **Beara** at the Standard Barracks in the evening of 15 July. *See supra*, para. 1123. **Popović’s** participation in the common purpose was corroborated in a conversation about the killing operation between Jokić and Obrenović on 15 July. *See supra*, para. 1122.

<sup>3793</sup> This event is not specified in the Indictment. Therefore, no finding in regard to it can serve as a basis for conviction on any of the counts in the Indictment. However, the evidence of the killings at Bišina was admitted on the grounds that it was relevant and probative as to **Popović’s** knowledge, intent and “pattern of conduct” during the period relevant to the executions which are alleged in the Indictment. The circumstances of **Popović’s** participation in the events at Bišina have important similarities with those of his participation in the events at the Grbavci School, the Ročević School, the Kula School, the Branjevo Military Farm and the Pilica Cultural Centre. **Popović’s** involvement in the killings in Bišina occurred in the same region and during the same time period as these other events and in each instance **Popović** participated in a process that resulted in the killing of prisoners by the Bosnian Serb Forces. Therefore the Trial Chamber is of the opinion that **Popović’s** actions in Bišina provide corroboration for the already strong evidence of his participation in the JCE to Murder. *See Decision on Motion to Reopen the Prosecution Case*, 9 May 2008.

<sup>3794</sup> It is established that the Security Organs at the Corps and Brigade levels were responsible for the organization of the reburial operation in the Bratunac and Zvornik areas and that **Popović** participated in this operation in September 1995. *See supra*, para. 1161.

<sup>3795</sup> *See supra*, para. 1142.

<sup>3796</sup> *See supra*, para. 1156.



ii. Third Category Joint Criminal Enterprise

1169. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Popović** that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Murder.<sup>3797</sup> The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.<sup>3798</sup> The Trial Chamber, by majority, Judge Kwon dissenting, has found that “opportunistic” killings also occurred near the Kravica Supermarket.<sup>3799</sup> The Trial Chamber recalls its finding above that **Popović** was an active participant in the JCE to Murder. The operation occurred in a time of chaos and involved soldiers with personal revenge motivations. A huge number of men were transported and detained with intent to murder. The Trial Chamber finds that it was foreseeable to **Popović** that the “opportunistic” killings would occur in addition to the large-scale executions and these “opportunistic” killings were a probable consequence of the JCE to Murder. When he participated in the JCE to Murder, **Popović** willingly took this risk.

b. The Joint Criminal Enterprise to Forcibly Remove

1170. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>3800</sup>

1171. A Drina Corps order dated 20 March 1995 echoed the language of Directive 7 by stating that it was the task of the Drina Corps to “create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>3801</sup> This order was from the Drina Corps Command and included a section entitled “Security Support”, which outlines the actions required from the Security Organ in support of the combat operation.<sup>3802</sup> This order dealt with **Popović’s** area of expertise, and considering his position as Chief of Security of the Drina Corps, the Trial Chamber finds that **Popović** was aware of this order.

1172. At the time of his conversation with Momir Nikolić before the third meeting at Hotel Fontana on the morning of 12 July, **Popović** was aware that the thousands of Bosnian Muslim

<sup>3797</sup> Indictment, para. 31. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

<sup>3798</sup> See *supra*, paras. 359, 361, 455, 457, 459, 463, 497.

<sup>3799</sup> See *supra*, para 449. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–39.

<sup>3800</sup> See *supra*, para. 1087. The Trial Chamber recalls its previous finding that the transport of the men to detention and execution sites does not constitute forcible transfer. *Ibid.* Therefore, the Trial Chamber will not address **Popović’s** alleged participation in forcible transfer through his involvement in transportation of the men.

<sup>3801</sup> Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6.

<sup>3802</sup> *Ibid.*, pp. 17–18. See also *supra*, paras. 1092–1093.

women and children in Potočari were to be transported to ABiH-held territory.<sup>3803</sup> **Popović** was also physically present in Potočari during the day of 12 July.<sup>3804</sup> It is clear from the video footage of this event that **Popović** could see the desperate situation of those gathered there and would have experienced the coercive atmosphere that encompassed Potočari on this day, which left the people gathered there without a genuine choice regarding their transfer. This conclusion is corroborated by **Popović's** presence at the third Hotel Fontana meeting where the situation of the people gathered in Potočari was discussed.<sup>3805</sup> The Trial Chamber therefore finds that throughout the day on 12 July, **Popović** knew that it was intended that all the Bosnian Muslim women and children then in Potočari were to be forcibly transferred from the Srebrenica enclave.

1173. The question whether **Popović** contributed to forcible transfer in Srebrenica is less straightforward. The Trial Chamber notes that there is some evidence in support of this conclusion. On 12 July, **Popović** discussed the plan to transfer the women and children gathered in Potočari to ABiH controlled territory with Momir Nikolić;<sup>3806</sup> and **Popović** was present in Potočari that same day and he issued instructions to a member of the VRS present there.<sup>3807</sup> The 20 March Drina Corps order contains security measures and instructions, which **Popović** was aware of,<sup>3808</sup> and **Popović** attended a meeting on 13 July where the transfer was discussed.<sup>3809</sup> However, taken in its totality, while there is evidence of **Popović's** awareness of the operation to forcibly remove, there is a paucity of evidence concerning any action taken by him in support of this goal. Informing Momir Nikolić of the plan to remove the population, and instructing a member of the VRS to stop distributing bread do not amount to a significant contribution to the JCE to Forcibly Remove as required by the jurisprudence. The Trial Chamber is therefore of the view that the evidence is insufficient to establish that **Popović** made a *significant* contribution to the JCE, and thus his actions in relation to the population in Srebrenica do not indicate that he was a participant in the JCE to Forcibly Remove.<sup>3810</sup>

1174. Further, the Trial Chamber finds that **Popović** did not contribute to the forcible transfer of the population of Žepa. The only evidence of his involvement in the Žepa area consists of two intercepts of 2 August 1995, in which he is making efforts to bring back to the RS the Bosnian

<sup>3803</sup> See *supra*, paras. 1097–1099.

<sup>3804</sup> See *supra*, para. 1099.

<sup>3805</sup> See *supra*, para. 1098.

<sup>3806</sup> See *supra*, paras. 1097–1098.

<sup>3807</sup> **Popović** was captured on video giving instructions concerning the distribution of bread to the people gathered in Potočari. See *supra*, para. 1099, fn. 3590.

<sup>3808</sup> See *supra*, paras. 1092–1093.

<sup>3809</sup> The meeting took place at the Bratunac Brigade Headquarters with Mladić, Vasić and Krstić, and *inter alia*, the “evacuation” of the remaining civilians from Srebrenica to Kladanj and the need for 10 tons of petrol in connection with this was discussed. See *supra*, para. 1100.

<sup>3810</sup> See *supra*, para. 1026–1027.

Muslim men from Žepa who had crossed the Drina River to Serbia.<sup>3811</sup> The Trial Chamber considers this evidence, in and of itself, insufficient to establish that **Popović** made a significant contribution to the JCE to Forcibly Remove with respect to Žepa. Although, as stated above, **Popović** knew the full extent of the plan to forcibly remove, *i.e.* that the plan involved the Bosnian Muslim population of Žepa as well as Srebrenica,<sup>3812</sup> there is insufficient evidence to establish that he significantly contributed to either aspect of the operation. Therefore, it has not been established that **Popović** was a participant in the JCE to Forcibly Remove.

(ii) Count 1: Genocide

1175. The Trial Chamber has found that **Popović** was a participant in the JCE to Murder.<sup>3813</sup> **Popović** therefore committed the underlying act of killing members of the group, and through this killing, inflicted serious bodily and mental harm on the families of the victims and the survivors of the executions, as articulated in Article 4(2)(a) and (b) of the Statute. The Trial Chamber will now focus upon whether **Popović** carried out these underlying acts with genocidal intent.

1176. As is often the case, there is no direct explicit evidence that **Popović** had the requisite specific intent for genocide.<sup>3814</sup> Therefore, the Trial Chamber must look at all of the surrounding circumstances, including **Popović's** words and acts, as well as the inferences to be drawn, to determine whether genocidal intent has been established.

1177. The Prosecution submits that **Popović's** genocidal intent is evidenced by his ethnic animus towards Bosnian Muslims.<sup>3815</sup> As will be seen below, the Trial Chamber finds that **Popović** acted with the specific intent to discriminate on political, racial or religious grounds.<sup>3816</sup> However, a finding that **Popović** participated in the killing operation with the specific intent to discriminate is not on its own sufficient to establish the specific intent for genocide, namely the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.<sup>3817</sup> The Trial Chamber recalls that the words “as such” here underscore that something more than discriminatory intent is required for genocide, that the intent “must be to destroy the group as a separate and distinct entity” and that the ultimate victim of the crime of genocide is the group.<sup>3818</sup> The Trial Chamber finds that

<sup>3811</sup> See *supra*, para. 1157.

<sup>3812</sup> **Popović** was aware of this by virtue of his knowledge of the 20 March Drina Corps order. Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”.

<sup>3813</sup> See *supra*, para. 1168.

<sup>3814</sup> See *supra*, para. 823.

<sup>3815</sup> Prosecution Final Brief, paras. 2585–2589.

<sup>3816</sup> See *infra*, para. 1194.

<sup>3817</sup> Art. 4(2) of the Statute.

<sup>3818</sup> See *supra*, paras. 821–822.

while **Popović** was obviously not sympathetic towards Bosnian Muslims, his use of derogatory language such as the term “*balija*” is in no way determinative of his alleged specific intent to commit genocide, though it is relevant to it.

1178. However, an examination of the circumstances of the killings and **Popović**’s knowledge and participation provides a clear picture as to his state of mind. **Popović** knew of the plan to murder from the time of its inception, and was privy to each development: from the discussions at Bratunac before the operation began,<sup>3819</sup> to the capture of Bosnian Muslim men from the column,<sup>3820</sup> to the large scale killings at Zvornik.<sup>3821</sup> **Popović** had an overview of the full scale of the murder operation. In particular, he knew of the scope of the plan; that it encompassed killing men separated in Potočari and later pursuing those fleeing in the column with the aim of capturing and executing them. He visited almost all the major killing sites while prisoners were being detained and thus had visual confirmation of the thousands of individuals destined for execution. From these facts alone **Popović** knew that the intent was not just to kill those who had fallen into the hands of the Bosnian Serb Forces, but to kill as many as possible with the aim of destroying the group. **Popović**’s ensuing robust participation in all aspects of the plan demonstrates that he not only knew of this intent to destroy, he also shared it.

1179. **Popović** was not a marginal participant in the JCE to Murder. The evidence shows that he was entrenched in several aspects of the operation, and that he participated with resolve. He was ubiquitous in the Zvornik area, present at all but one of the major killing sites. His own words at the outset of the operation, telling Momir Nikolić that “*all* the *balija* have to be killed” (emphasis added),<sup>3822</sup> are also evidence of his genocidal intent. Even after thousands had been executed and the large-scale killing was complete, **Popović** remained determined—he arrived at the Standard Barracks to arrange for the murder of the injured Bosnian Muslim men held at the hospital facilities there. The evidence supports the finding that **Popović** aimed to spare no one amongst the Bosnian Muslims within his reach, not even a young boy.<sup>3823</sup>

1180. The factors which the Trial Chamber considers to be decisive in finding that **Popović** had the requisite specific intent for genocide are the scale of the atrocities committed to his knowledge, his vigorous participation in several aspects of the massive killing operation, in particular his direct participation in the organisation of large-scale murders at Grbavci School (where between 800 and

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<sup>3819</sup> **Popović** discussed the plan to kill the Bosnian Muslims with Momir Nikolić on the morning of 12 July, and attended the third meeting at the Hotel Fontana immediately afterwards. *See supra*, paras. 1097–1098.

<sup>3820</sup> *See supra*, paras. 1100–1103.

<sup>3821</sup> *See supra*, paras. 1107–1115, 1118–1122, 1125–1138.

<sup>3822</sup> *See supra*, para. 1097.

<sup>3823</sup> *See supra*, paras. 1111–1122.

2,500 Bosnian Muslims were killed), Ročević School (where approximately 1,000 Bosnian Muslims were killed), and Pilica (where between 1,000 and 2,000 Bosnian Muslims were killed).<sup>3824</sup> The systematic, exclusive targeting of Bosnian Muslims; and the repetition by **Popović** of destructive and discriminatory acts evidence his genocidal intent.<sup>3825</sup> Further, his participation in these killings with knowledge that they would contribute to the destruction of the group also demonstrates his genocidal intent. Even his own words, grading the success of the operation with a top mark,<sup>3826</sup> demonstrate his commitment to the destruction of the group. The Trial Chamber is satisfied beyond reasonable doubt that **Popović** participated in the JCE to Murder with genocidal intent. He is therefore guilty of genocide.

1181. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>3827</sup> The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but he also planned and ordered the murder of the Bosnian Muslim males from Srebrenica, with genocidal intent. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of genocide through his participation in the JCE to Murder with genocidal intent.

(iii) Count 2: Conspiracy to Commit Genocide

1182. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide;<sup>3828</sup> and to be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.<sup>3829</sup>

1183. As outlined above, **Popović** consciously cooperated with other members of the JCE to Murder, shared in its common purpose and worked towards realisation of the common goal. The Trial Chamber has also found that **Popović** had the specific intent for genocide.

<sup>3824</sup> See *supra*, paras. 1105–1115, 1117–1141.

<sup>3825</sup> See *Jelisić* Appeal Judgement, para. 47.

<sup>3826</sup> See *supra*, para. 1142; Ex. P01224a, “Intercept of conversation between Popović and Y, 17 July 1995, 16:22 hours” (recording that **Popović** stated “basically, that all gets an A ... an A ... the grade is an A, everything’s OK”)

<sup>3827</sup> Indictment, para. 88.

<sup>3828</sup> *Musema* Trial Judgement, para. 191. See also *Nahimana et al.* Trial Judgement, para. 1041; *Kajelijeli* Trial Judgement, para. 787; *Ntagerura et al.* Trial Judgement, para. 70; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798.

<sup>3829</sup> *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 799(i)–(ii). See also *supra*, paras. 821–830.

1184. The *actus reus* of the criminal act of conspiracy to commit genocide is the act of entering into an agreement to commit genocide.<sup>3830</sup> Conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework.<sup>3831</sup> Evidence has already been examined of the coordinated actions and unified framework of those who participated in the operation to murder the able-bodied Bosnian Muslim males from Srebrenica in July 1995, including **Popović**.<sup>3832</sup> Based upon this evidence, the Trial Chamber concludes that at least by 13 July 1995, it is evident that **Popović** had entered into an agreement to commit genocide, and he himself possessed specific intent to commit genocide. He is therefore criminally responsible for conspiracy to commit genocide.<sup>3833</sup>

(iv) The Knowledge Requirement for a Crime Under Article 5 of the Statute

1185. **Popović** is responsible for a crime against humanity under Article 5 of the Statute, if his acts were part of the widespread and systematic attack against the civilian population and if at the time he knew of that attack and that his crimes comprised a part thereof.<sup>3834</sup>

1186. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. As established above, **Popović** had knowledge of the 20 March Drina Corps Order,<sup>3835</sup> through which the plan for the transfer of the Bosnian Muslim population from the Srebrenica and Žepa enclaves was to be implemented.<sup>3836</sup> He also knew of the military attack on Srebrenica.<sup>3837</sup> **Popović**'s acts of murder are clearly tied to the attack on Srebrenica,<sup>3838</sup> and **Popović**—with his overview of the killing operation from its inception—knew that this was the case. On this basis, the Trial Chamber finds that **Popović** meets the knowledge requirement for commission of a crime under Article 5 of the Statute.

(v) Counts 4 and 5: Murder

1187. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims initially residing or taking refuge in Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or

<sup>3830</sup> *Nahimana et al.* Appeal Judgement, para. 894.

<sup>3831</sup> *Nahimana et al.* Trial Judgement, para. 1047.

<sup>3832</sup> *See supra*, paras. 1164–1168.

<sup>3833</sup> *But see infra*, paras. 2120–2127.

<sup>3834</sup> *See supra*, para. 751.

<sup>3835</sup> Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”.

<sup>3836</sup> *See supra*, para. 1171.

<sup>3837</sup> *Ibid.*

<sup>3838</sup> *See supra*, para. 779.

customs of war.<sup>3839</sup> The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it.<sup>3840</sup> **Popović** participated in the JCE to Murder and he met the knowledge requirement for murder as a crime against humanity. He also knew that the victims were taking no active part in the hostilities when the murders were committed. He is therefore criminally responsible for murder as a crime against humanity as well as being liable for murder as a violation of the laws or customs of war, both for the murders found to be part of the scope of the JCE to murder and the “opportunistic” killings.<sup>3841</sup>

1188. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>3842</sup> The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of murder through his participation in the JCE to Murder.

(vi) Count 3: Extermination

1189. The Trial Chamber has found that the large-scale murders of men and boys from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5. These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it. **Popović** participated in the JCE to Murder and met the knowledge requirement for a crime against humanity. He is therefore criminally liable for extermination as a crime against humanity.

1190. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>3843</sup> The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but also planned and ordered the extermination of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of extermination through his participation in the JCE to Murder.

<sup>3839</sup> See *supra*, para. 796.

<sup>3840</sup> See *supra*, paras. 796, 1081–1083.

<sup>3841</sup> See *supra*, paras. 1074–1083. But see Judge Kwon’s Dissenting Opinions, *infra*, paras. 36–46.

<sup>3842</sup> Indictment, para. 88.

<sup>3843</sup> *Ibid.*

(vii) Count 6: Persecution

1191. The Trial Chamber has found that persecution, a crime against humanity, was committed *inter alia*, through the murder of thousands of Bosnian Muslims (including the “opportunistic” killings) and cruel and inhumane treatment of men detained in Bratunac and Zvornik.<sup>3844</sup> The Trial Chamber has found that these acts fall within the scope of the JCE to Murder, or were a natural and foreseeable consequence of it.<sup>3845</sup>

1192. The Trial Chamber has also found that **Popović** was a participant in the JCE to Murder, and through his participation he was responsible for murder on a large scale, including the “opportunistic” killings, the latter being a natural and foreseeable consequence of the JCE to Murder.<sup>3846</sup>

1193. The Trial Chamber has heard evidence from witnesses who testified that **Popović** did not display any signs of intolerance towards members of other ethnic groups.<sup>3847</sup> However, **Popović** used the term “balija” when referring to Bosnian Muslims on several occasions.<sup>3848</sup> This term was derogatory and its use was not appropriate,<sup>3849</sup> although use of such language was not unusual in the VRS.<sup>3850</sup>

1194. The Trial Chamber is of the opinion that **Popović’s** knowledge of the plan to murder a single ethnic group and his willing participation in that plan clearly show his discriminatory intent. His use of pejorative language about Bosnian Muslims is also to some extent evidence of such intent. For all these reasons, the Trial Chamber finds that **Popović** participated in the JCE to Murder with specific intent to discriminate on political, racial or religious grounds and thereby committed persecution through murder and cruel and inhumane treatment.<sup>3851</sup>

1195. For an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the Prosecution needs to establish is that it was reasonably foreseeable to the

<sup>3844</sup> See *supra*, para. 990–995.

<sup>3845</sup> See *supra*, paras. 1074–1083. See also Indictment, para. 83.

<sup>3846</sup> See *supra*, paras. 1164–1169, 1188.

<sup>3847</sup> Milan Vojinović, T. 23681, 23712, 23719 (21 Jul 2008) (testifying that he interacted regularly with **Popović** while he was the security officer in the Second Romanija Brigade and **Popović** never demonstrated animosity towards other ethnic groups except for the enemy armies); Mikajlo Mitrović, T. 25067–25069 (2 Sept 2008) (testifying that he worked with **Popović** in the Department of Security and Intelligence of the 2nd Krajina Corps, and that **Popović** did not display any signs of intolerance towards members of other ethnic groups in the 2nd Krajina Corps).

<sup>3848</sup> Momir Nikolić, T. 33032 (22 Apr 2009); Ex. P03497, “Document from the Security Department of the Drina Corps Command signed by Popović, 29 April 1995”; Ex. 1D01076 “Document from the Security and Intelligence Department of the Drina Corps Command signed by Popović, 11 February 1995.”

<sup>3849</sup> Petar Vuga, T. 23412, 23416 (7 July 2008); Lazar Ristić, T. 10183 (17 Apr 2007).

<sup>3850</sup> Momir Nikolić, T. 33032 (22 Apr 2009) (testifying that 95% of officers in the VRS at the time called Bosnian Muslims “balija”).

<sup>3851</sup> See *supra*, paras. 990–995. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–39.



accused that the extended crime would be committed and that it would be committed with the required specific intent.<sup>3852</sup> The Trial Chamber is satisfied that it was foreseeable to **Popović** that the “opportunistic” killings would be carried out with persecutory intent. By participating in the JCE to murder, **Popović** willingly took this risk. He is therefore responsible, through his participation in the JCE to Murder, for persecution as a crime against humanity through “opportunistic” killings under the third category JCE.<sup>3853</sup>

1196. The Prosecution alleges that **Popović** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>3854</sup> The Trial Chamber finds that **Popović** not only committed, through his participation in the JCE to Murder, but also planned and ordered persecution of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as commission of the crime of persecution through murder and cruel and inhumane treatment, committed as part of the JCE to Murder with discriminatory intent.

(viii) Count 7: Inhumane Acts (Forcible Transfer)

1197. The Trial Chamber has found that **Popović** did not participate in the JCE to Forcibly Remove.<sup>3855</sup> Similarly, the evidence is insufficient to establish that he aided and abetted forcible transfer in either Srebrenica or Žepa, nor does it demonstrate that he is responsible for forcible transfer through another mode of liability. The Trial Chamber therefore, finds that **Popović** is not criminally responsible for forcible transfer (inhumane acts) as a crime against humanity.

(ix) Count 8: Deportation

1198. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Popović** is not criminally responsible for deportation as a crime against humanity.

<sup>3852</sup> See *supra* paras. 1030–1031.

<sup>3853</sup> See *supra*, paras. 1073–1083. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

<sup>3854</sup> Indictment, para. 88.

<sup>3855</sup> See *supra*, para. 1171–1174.

4. Ljubiša Beara(a) The Case against Beara

1199. The Prosecution alleges that **Beara** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.<sup>3856</sup> Specifically, the Prosecution alleges that **Beara** was a member of a joint criminal enterprise to summarily execute the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).<sup>3857</sup>

(b) Positions and Functions

1200. **Beara** was born on 14 July 1939 in Sarajevo, Bosnia and Herzegovina.<sup>3858</sup> In 1962, **Beara** graduated from the Yugoslav Military and Naval Academy.<sup>3859</sup> He worked in Brioni as Commander of the Guards in 1964 and subsequently joined the JNA Security Services.<sup>3860</sup> **Beara** was transferred to Split in 1971 and then to Kumbor in Montenegro during 1979.<sup>3861</sup>

1201. In 1985, **Beara** was Assistant Chief of the Security Department and Deputy Chief of the 8th Naval Military District with the rank of Naval Captain.<sup>3862</sup> **Beara** continued to serve in the security organ of the Naval Military District. Its command was moved from Split to Kumbor in 1992.<sup>3863</sup> At that time, **Beara** was Tolimir’s superior.<sup>3864</sup>

1202. In late 1992, **Beara** joined the VRS Main Staff in Crna Rijeka as the Chief of the Administration for Security<sup>3865</sup> with the rank of Colonel.<sup>3866</sup> He remained in this position during the

<sup>3856</sup> Indictment, paras. 26–37, 40, 45–71, 78, 83–84, 88–91. **Beara** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

<sup>3857</sup> Indictment, paras. 40, 78.

<sup>3858</sup> Case No. IT-02-58-I, Initial Appearance, T. 6 (9 Nov 2004); Mikajlo Mitrović, T. 25047 (2 Sept 2008).

<sup>3859</sup> Nadežda Beara, Ex. 2D00664, “92 *bis* statement” (17 Mar 2008), p. 1.

<sup>3860</sup> *Ibid.*

<sup>3861</sup> *Ibid.*; Spiridon Alacov, T. 23551 (10 July 2008).

<sup>3862</sup> Mikajlo Mitrović, T. 25040–25041 (2 Sept 2008), T. 25154–25155 (3 Sept 2008).

<sup>3863</sup> 2DPW-19, T. 25623 (11 Sept 2008).

<sup>3864</sup> Mikajlo Mitrović, T. 25046 (2 Sept 2008).

<sup>3865</sup> Manojlo Milovanović, T. 12153 (29 May 2007) (testifying that **Beara** joined the Main Staff in September 1992); Spiro Pereula, T. 24151 (28 July 2008) (testifying that **Beara** joined the Main Staff in November 1992); Ljubomir Mitrović, T. 24279 (29 July 2008) (testifying that **Beara** was appointed the Chief of the Security “sometime in

period relevant for the Indictment.<sup>3867</sup> **Beara's** immediate superior was Tolimir, the Assistant Commander for Intelligence and Security in the VRS Main Staff.<sup>3868</sup>

1203. During the war, **Beara** had a good working relationship with Mladić, who trusted him.<sup>3869</sup> **Beara** attended morning briefings of the Main Staff with Mladić, the Assistant Commanders of the Main Staff, and **Miletić**.<sup>3870</sup>

1204. **Beara's** function as Chief of the Security Administration included overseeing the security organs of the VRS and of the Main Staff military police, as well as counter-intelligence activities.<sup>3871</sup> He would make proposals to the Main Staff Commander concerning the use of the Military Police Battalion of the 65th Protection Regiment.<sup>3872</sup>

1205. In the professional chain of command, **Beara** was superior to **Popović**, who was superior to the security organs of the Drina Corps brigades, including **Drago Nikolić** and Momir Nikolić.<sup>3873</sup>

1206. As officer in charge of the security organs in the VRS, **Beara** had to be apprised of the subordinate security organs' work in order to provide guidance and evaluate and monitor their

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November or December 1992"); Mikajlo Mitrović, T. 25047 (2 Sept 2008) (testifying that **Beara** was appointed to the position "either at the end of 1992 or beginning or middle of 1993").

<sup>3866</sup> Manojlo Milovanović, T. 12153 (29 May 2007); Ex. P00480, "Article by Sredoje Simić", p. 2.

<sup>3867</sup> See Manojlo Milovanović, T. 12212 (30 May 2007); Momir Nikolić, T. 32903 (21 Apr 2009). Certain members of the VRS expressed displeasure at **Beara's** appointment as Chief of Security because they viewed **Beara** as someone who was more pro-Yugoslavia than pro-Serb. Srđa Trifković, T. 25218–25219 (4 Sept 2008). See also *ibid.*, T. 25223 (4 Sept 2008). **Beara** was often believed to be a Croat by ethnicity because of his Dalmatian accent. Mikajlo Mitrović, T. 25047 (2 Sept 2008). See also Branimir Grulović, T. 23783–23784 (22 July 2008); Ljuban Mrković, T. 24309 (29 July 2008).

<sup>3868</sup> Manojlo Milovanović, T. 12153 (29 May 2007); Ljubomir Obradović, T. 28249 (14 Nov 2008). One of the officers serving in the intelligence branch was Colonel Radoslav Janković. Ex. P00692, "Main Staff Structure". See *supra*, para. 119.

<sup>3869</sup> Mikajlo Mitrović, T. 25108 (2 Sept 2008), T. 25127–25128 (3 Sept 2008).

<sup>3870</sup> Manojlo Milovanović, T. 12188–12189 (29 May 2007). See *supra*, para. 113.

<sup>3871</sup> Petar Vuga, T. 23327–23329 (4 July 2008).

<sup>3872</sup> Milomir Savčić, T. 15240 (12 Sept 2007). See *supra*, para. 113.

<sup>3873</sup> Svetozar Kosorić, T. 33760 (30 June 2009); Richard Butler, T. 19646–19647 (14 Jan 2008). See also Mile Janjić, T. 17967 (20 Nov 2007). See *supra*, para. 122.

work.<sup>3874</sup> **Beara** would send instructions to the subordinate security organs, including instructions regarding the arrest and the detention of prisoners of war.<sup>3875</sup>

(c) Acts and Whereabouts

(i) Preliminary Issues—Beara's Submissions

1207. **Beara** contends that he was not present in Eastern Bosnia between 10 and 16 July at the places and times alleged by the Prosecution and had no involvement in the mass executions which took place during this time.<sup>3876</sup> According to **Beara**, the fourteen witnesses who testified to his presence in Eastern Bosnia during that period were either deliberately giving false testimony in order to incriminate him or were mistaken in their identification of him.<sup>3877</sup> It is further submitted that any intercept or documentary evidence tending to show that **Beara** was in the area was either mistakenly attributed to him or deliberately falsified to incriminate him.<sup>3878</sup> Finally, he submits that witnesses and documents adduced by him concerning the events that occurred on 13 and 14 July are reliable and thus should be given full weight.<sup>3879</sup> In light of the extensive arguments advanced by **Beara**, the Trial Chamber will consider them as a preliminary matter.

<sup>3874</sup> Peter Vuga, T. 23109 (1 July 2008). *See also* Ex. P02741, "Instruction on command and control over the Security and Intelligence organs of the VRS signed by Mladić, 24 October 1994" p. 1 ("2. The security and intelligence organs are directly commanded by the commander of the unit or institution of which they form part, but with regard to professional activities they are controlled centrally by the security and intelligence organs of the superior command."), p. 2 ("4. Security and intelligence organs at all levels must submit to the superior organ in the professional sense, in a timely fashion and the prescribed form, security and intelligence reports in accordance with the Rules of Service and the Instructions on Applying Work Methods and Means of the VRS OB [Security Organ]."), p. 3 ("6. All security and intelligence organs and unit and institution command organs are obliged to provide every assistance in their operative work and tasks to the detached and deployed organs of the 410th Intelligence Centre and Counter-Intelligence Group of the VRS."). *See supra*, para. 122.

<sup>3875</sup> Instructions detailing the procedure for the arrest and detention of prisoners of war violating rules and regulations were sent via telegram dated 1 April 1994 from the VRS Security Administration to the Drina Corps Security Department. *See* Ex P00196, "Drina Corps Security Department instruction, signed by Popović, 15 April 1995" (Disseminating the instructions in full which had been received from the VRS Security Administration to the Drina Corps Security Department and requesting that they inform Military Police units of the instructions and act upon the provisions listed. The provisions listed from page 2 of the document comprise detailed instructions, the first provision reads: "All prisoners, members of the enemy army are to be handcuffed or their hands tied with anything available immediately after their capture. They are to be searched and all items are to be seized apart from their clothing and footwear. An official record is to be compiled. After the search, they are to be blindfolded at the place of detention prior to being led away in order to prevent them from observing anything").

<sup>3876</sup> *See* Beara Final Brief, paras. 377–378, 404.

<sup>3877</sup> Beara Closing Arguments, T. 34462–34464 (8 Sept 2009); Beara Final Brief, paras. 105–249.

<sup>3878</sup> Beara Final Brief, paras. 252–354.

<sup>3879</sup> *Ibid.*, paras. 78–104.

a. Identification Evidence

i. Allegations of Deliberate Falsification

1208. **Beara** first challenges the evidence of Miroslav Deronjić, PW-161, PW-162, Ljubisav Simić and Zlatan Čelanović, who testified to **Beara**'s presence in the Bratunac area and his involvement in a series of meetings there between 13 and 14 July 1995. **Beara** contends that these witnesses untruthfully testified about his whereabouts during the period with the intention of concealing their own involvement in the crimes charged and shifting the responsibility to him.<sup>3880</sup> **Beara** argues that:

[Th]e whereabouts of **Ljubiša Beara** on 13 and 14 July were untruthfully portrayed by the group of small but close-knit local civilian officials and friends who stayed in close contact after the events. [...] Deronjić's testimony was premeditated construction full of previous lies by his own admission and that he and his associates, because of their own involvement, had a strong motive to shift the responsibility to somebody else, in this case **Ljubiša Beara**.<sup>3881</sup>

1209. **Beara** argues that Deronjić and "his close associates" agreed to shift the responsibility for the crimes, from Deronjić and local civilian officials of Bratunac, to **Beara**.<sup>3882</sup> **Beara** submits that Ljubisav Simić, PW-161, PW-162 and Čelanović falsely corroborated Deronjić's fabricated story.<sup>3883</sup> In this regard, **Beara** alleges that Ljubisav Simić was a school friend of Deronjić and knew other local civilian officials of Bratunac and that, the same as Čelanović, these officials still maintain "a close bond and have collaborated with each other before, during and after the war".<sup>3884</sup> According to **Beara**, Deronjić spoke to Simić in order to synchronise their future statements so that they could vouch for Deronjić's own chronology of events.<sup>3885</sup> **Beara** further argues that Simić is not a credible witness because his testimony on the meeting between Deronjić and **Beara** was confusing, due to Simić giving contradictory evidence as to whether he was present or not.<sup>3886</sup> With regard to PW-161 and PW-162's evidence, in addition to challenging their identifications of **Beara**, which will be discussed later,<sup>3887</sup> **Beara** argues that they were deeply involved in the crimes against

<sup>3880</sup> Beara Final Brief, paras. 105–123, 132–166. In this context, **Beara** also notes that 2DPW-19 testified that it was the local authorities who organised the crimes against non-Serbs in Bratunac in 1992 and that it was the local nationalists who organised the paramilitary groups and that, in his view, it was the same perpetrators, the same program, and the same system that were responsible for the events in July 1995. *Ibid.*, para. 166, referring to 2DPW-19, T. 25630–25631 (11 Sept 2008).

<sup>3881</sup> *Ibid.*, para. 105. See also *ibid.*, paras. 137, 139.

<sup>3882</sup> Beara Final Brief, para. 139. **Beara** also argues that the involvement of the local civilian officials of Bratunac in the crimes was clear by virtue of the fact that Deronjić, Ljubisav Simić and Davidović were present at the meeting at the Hotel Fontana at 10 a.m. on 12 July when "the [fate] of the Muslim population was discussed". *Ibid.*, para. 152.

<sup>3883</sup> Beara Final Brief, paras. 110–119.

<sup>3884</sup> *Ibid.*, paras. 133–135 (quotation at para. 135).

<sup>3885</sup> *Ibid.*, paras. 139–140.

<sup>3886</sup> *Ibid.*, para. 142. **Beara** further argues that Simić did not participate in the meeting because he was asleep in front of Deronjić's office. *Ibid.* **Beara** also challenges Simić's identification of Beara. In this regard, see *infra* para. 1264.

<sup>3887</sup> See *infra*, paras. 1222–1224.

the Bosnian Muslims in Srebrenica and joined in the implication of **Beara** to avoid their own criminal responsibility.<sup>3888</sup>

1210. The Trial Chamber has considered **Beara**'s allegation that these five witnesses constructed their evidence regarding **Beara** in order to shift the responsibility for these criminal acts from themselves and the civilian authorities on to **Beara** and the VRS. **Beara** has not pointed to any direct evidence of collusion amongst these five witnesses as a group. In particular, his allegations of close collaboration before, during and after the war and the suggestion that Deronjić spoke to Simić to synchronise future stories is without evidentiary support. Thus, the Trial Chamber was left to consider these broad allegations on the basis of a consideration of the evidence of these witnesses taken individually and cumulatively. Having done so, the Trial Chamber finds that there is simply no evidence of such construction amongst these witnesses so as to raise a reasonable doubt as to the reliability of the testimony of these witnesses. The witnesses testify to different, albeit related, events. While in some instances, the witnesses corroborate each other, there is a significant portion of the testimony of each of them which is not interrelated. Further, there is nothing in the content or nature of the evidence provided which would suggest such construction.<sup>3889</sup> Thus the Trial Chamber finds no evidence which would suggest that these witnesses collaborated to construct their evidence to cast blame on **Beara** and thus no reasonable doubt as to the reliability of their evidence arises on that basis.

1211. On a related but separate point, **Beara** argues that PW-161 and PW-162, who were friends before, during and after the war,<sup>3890</sup> had a chance to harmonise their stories given that they travelled together to testify before the Tribunal, and also stayed in the same hotel during their testimony.<sup>3891</sup> The Trial Chamber notes that while the two witnesses were friends and did have some contact prior to their testimony, both denied that they in any way constructed their evidence together.<sup>3892</sup> In addition, both witnesses testified to distinct meetings and different events such that there is little intersection in their evidence so as to allow for construction or even "refreshment" of memory.<sup>3893</sup> Again, the Trial Chamber finds this allegation to be unfounded.

1212. As to their overall credibility, PW-161, PW-162 and Zlatan Čelanović were called by the Prosecution and Ljubisav Simić by **Borovčanin** and they all testified before the Trial Chamber

<sup>3888</sup> Beara Final Brief, paras. 148–155.

<sup>3889</sup> In this regard, the specific allegations regarding Deronjić, whose evidence was admitted under Rule 92 *quater*, will be considered separately below. *See infra*, paras. 1213–1215.

<sup>3890</sup> Beara Final Brief, para. 133.

<sup>3891</sup> *Ibid.*, para. 147.

<sup>3892</sup> PW-162, T. 9268–9269 (private session) (22 Mar 2007); PW-161, T. 9405–9406 (private session) (26 Mar 2007), T. 9513–9514, 9517 (private session) (27 Mar 2007).

<sup>3893</sup> *See infra*, paras. 1267, 1274.

about their meetings with **Beara** in the SDS offices between 13 and 14 July, except for Čelanović who testified about his two encounters with **Beara** in Bratunac.<sup>3894</sup> The Trial Chamber had an opportunity to assess the quality of their evidence, the accuracy of their memory and their demeanour during their testimony. It also considered internal inconsistencies and differences between their testimony,<sup>3895</sup> in order to assess the reliability and credibility of their evidence. Simić, PW-161 and PW-162 were present at meetings with **Beara**,<sup>3896</sup> and Čelanović saw **Beara** at the Bratunac Brigade Headquarters where six Bosnian Muslim prisoners were brought in.<sup>3897</sup> Later they went to the Bratunac town where the Bosnian Muslim prisoners were detained.<sup>3898</sup> The Trial Chamber, as previously found, does not consider that they harmonised their evidence so as “to evade their own personal involvement in the crimes”.<sup>3899</sup> The same holds true for Čelanović and the Trial Chamber finds no evidence to suggest that he fabricated his evidence to corroborate Deronjić’s evidence. The Trial Chamber will discuss the individual credibility of these witnesses below as their evidence is considered. Lastly, in terms of **Beara**’s challenge to Simić’s credibility, the Trial Chamber is of the opinion that his evidence was not confusing and that Simić clearly stated that he went to the SDS offices where he met a “senior officer” whom he was later told was **Beara** although he did not know his name at this time.<sup>3900</sup> As will be discussed later, the Trial Chamber is convinced that Simić saw **Beara**.<sup>3901</sup>

1213. In addition to levelling a general allegation of construction, **Beara** submits that Deronjić’s testimony in the *Blagojević and Jokić* case, which was admitted into evidence under Rule 92 *quater* in this case, should not be given any weight and that to rely on evidence that was not cross-examined by **Beara** would result in a miscarriage of justice. **Beara** also contends that Deronjić’s testimony is unreliable in that (i) his description and recollection of events in 1995 was unlikely because he admitted in the *Blagojević and Jokić* case that he consulted or “used some friendly connections”, including Ljubisav Simić, Davidović and Vasić among others, to recreate the chronology of the events; and (ii) Deronjić did not mention the purported sightings or meetings with **Beara** in his first statement made to the Prosecution in 1997.<sup>3902</sup>

<sup>3894</sup> See *infra*, paras. 1256, 1262, 1264, 1267, 1274..

<sup>3895</sup> For their respective evidence, see *infra, ibid.*

<sup>3896</sup> See *infra*, paras. 1264, 1267, 1274.

<sup>3897</sup> See *infra*, para. 1256.

<sup>3898</sup> See *infra*, para. 1262.

<sup>3899</sup> See *Beara* Final Brief, para. 137.

<sup>3900</sup> Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7626–7627 (15 Apr 2004). See also *infra*, para. 1264.

<sup>3901</sup> See *infra*, para. 1264.

<sup>3902</sup> *Beara* Final Brief, paras. 137–138, 143 (quotation at para. 138). **Beara** also argues that like Deronjić, PW-161, PW-162 and Simić did not mention **Beara** during their first statements to the Prosecution. *Beara* Final Brief, paras. 143–144.

1214. The Trial Chamber first notes that in its decision pursuant to Rule 92 *quater*, issued on 21 April 2008,<sup>3903</sup> it acknowledged that Deronjić's evidence contains a number of inconsistencies, admissions of prior false statements and uncorroborated claims.<sup>3904</sup> It also noted that corroboration of Deronjić's evidence is a factor to be taken into consideration for assessing its reliability.<sup>3905</sup> In the *Krstić* case, the Appeals Chamber also held that "the discrepancies in the evidence given by Mr. Deronjić and the ambiguities surrounding some of the statements he made, [...] caution the Appeals Chamber against relying on his evidence alone".<sup>3906</sup>

1215. In addition, to the concerns outlined above, the Accused in this case did not have the opportunity to cross-examine Deronjić because of Rule 92 *quater* procedures.<sup>3907</sup> In these combined circumstances, the Trial Chamber has exercised caution in assessing and attributing weight because of the 92 *quater* procedure and looked for corroboration with reference to those parts that relate to critical issues.

1216. In sum, the Trial Chamber finds that the testimony of these witnesses does not suggest that they fabricated or falsified their evidence with regard to **Beara**. Therefore, the Trial Chamber is satisfied that, when evaluated together with the totality of evidence, the evidence of these witnesses is mutually corroborative in terms of **Beara**'s presence in the Bratunac area and at the meetings in the SDS office.

1217. **Beara** also contests the reliability of identifications of **Beara** made by Marko Milošević and Ostoja Stanišić, the Deputy Commander and Commander respectively of the 6th Battalion of the Zvornik Brigade.<sup>3908</sup> **Beara** argues that Milošević and Stanišić "untruthfully" made up an incident whereby Milošević delivered a message to **Beara** on Stanišić's order, motivated by the knowledge that the Prosecution were aware Stanišić was involved in crimes committed at Petkovci.<sup>3909</sup> **Beara** notes that there is no entry or confirmation in the Zvornik Brigade Duty Officer Notebook to corroborate the meeting or that the purported message was ever conveyed to **Beara**.<sup>3910</sup> **Beara** further argues that the testimony of Milošević and Stanišić is suspect and unreliable.<sup>3911</sup> He further

<sup>3903</sup> Decision on Prosecution Motion for Admission of Evidence Pursuant to Rule 92 *quater*, 21 Apr 2008.

<sup>3904</sup> *Ibid.*, para. 61.

<sup>3905</sup> *Ibid.*, para. 62.

<sup>3906</sup> *Krstić* Appeals Judgement, para. 94.

<sup>3907</sup> Although Deronjić was extensively cross examined during the *Blagojević* and *Jokić* case.

<sup>3908</sup> *Beara* Final Brief, paras. 177–186.

<sup>3909</sup> *Ibid.*, para. 185.

<sup>3910</sup> *Ibid.*, para. 182.

<sup>3911</sup> *Ibid.*, para. 183. **Beara** argues that Stanišić and Milošević drove together to Banja Luka to each provide statements to the Prosecution in 2002, although Milošević stated that they did not discuss the events of 14 July 1995 during that journey; it is argued that such a proposition is "illogical and reveals Milošević's lack of credibility"; that Milošević and Stanišić's story is inconsistent because while affirming that the two travelled together in 2002, Stanišić stated they did "jog each other's memory" before the interview. *Ibid.*, paras. 183–184.



points to Stanišić's discussions with Obrenović after the events, and the fact that Stanišić and Milošević had the chance to coordinate their stories as further contributing to the lack of reliability of their evidence.<sup>3912</sup>

1218. The Trial Chamber finds that there is nothing in the testimony of Stanišić and Milošević, or elsewhere for that matter, to suggest fabrication of evidence in order to avoid self-incrimination and untruthfully place blame on **Beara**. In the Trial Chamber's view, both witnesses were forthcoming in testifying about their involvement in the operations in Petkovci. The Trial Chamber had an opportunity to hear and view each of them and to assess their responses, particularly as they were extensively tested on cross-examination. The Trial Chamber found both witnesses to be honest and straightforward in their answers and forceful in their rejection of allegations that they constructed evidence. Further, the Trial Chamber accepts the circumstances of the conversation between Obrenović and Stanišić occurred as described, that Stanišić was not threatened or intimidated but merely advised not to say anything about the events at the Petkovci school,<sup>3913</sup> and finds that this does not affect the credibility of Stanišić's evidence. In addition, while it is the case that Stanišić and Milošević had the opportunity to discuss matters when they travelled to their interviews together, the Trial Chamber, having assessed their evidence in its totality, does not consider that this affects the reliability or credibility of either witness.

## ii. Reliability of Positive Identifications

1219. **Beara** contests the reliability of many witnesses' identifications of **Beara**. In this respect, **Beara** relies heavily on the evidence of identification expert Willem Wagenaar. In assessing the evidence of **Beara**'s presence in Eastern Bosnia between 10 and 16 July 1995 the Trial Chamber will now consider Wagenaar's evidence. Wagenaar testified that an adequate identification procedure usually requires a photo line-up, and that such a line-up was not held for many of the witnesses who said they identified **Beara**.<sup>3914</sup> While the Trial Chamber agrees that a photo line-up may add to the strength of an identification,<sup>3915</sup> such evidence must be considered on a case-by-case basis and the absence of a line-up does not necessarily reduce the probative value of the

<sup>3912</sup> Beara Final Brief, paras. 184–186. While Wagenaar testified that Milošević might have only been looking for the highest rank or the only colonel (Willem Wagenaar, T. 25449 (9 Sept 2008); Ex. P03704 (confidential); Ex. P03669c (confidential), the Trial Chamber considers this to be purely speculative. Further, while the suggested use of a photo line-up may have provided additional evidence to the Trial Chamber, the absence of it does not affect the credibility or reliability of the evidence provided.

<sup>3913</sup> Ostoja Stanišić, T. 11619, 11636–11639 (16 May 2007).

<sup>3914</sup> Willem Wagenaar, T. 25325, 25331–25332, 25337–25338 (8 Sept 2008); Ex. 2D00574, "Report by Willem A. Wagenaar", p. 10; *See also* Beara Final Brief, paras. 229–249.

<sup>3915</sup> In relation to a number of witnesses, Wagenaar admitted that the possibility of their subsequent exposure to images of **Beara** through the media would have rendered a photo line-up inappropriate. Willem Wagenaar, T. 25407 (9 Sept 2008).

identification. As such, the Trial Chamber has analysed all the circumstances under which the relevant identifications were made and has assessed the reliability of those identifications with caution.

1220. **Beara** first challenges DutchBat officer Egbers's identification of **Beara** outside the school, near the Nova Kasaba Football Field, on the morning of 14 July.<sup>3916</sup> **Beara** claims that there is significant uncertainty with Egbers' recognition of him and thus the recollection is unreliable.<sup>3917</sup> According to Egbers, **Beara** did not speak English very well but he mentioned his name.<sup>3918</sup> Egbers' interpreter told him that the man he had met with was **Beara**.<sup>3919</sup> Egbers described him as a tall man with grey hair "with an atmosphere of a colonel", in a camouflage suit with a colonel rank.<sup>3920</sup> On cross-examination, Egbers testified that **Beara** "looked an older man between 45 and 50" with grey or greying hair and 1.90 metres tall.<sup>3921</sup> When interviewed by the Prosecution on 30 April 2000, Egbers was shown a video of an inspection of troops by Mladić seven or eight times before he could identify **Beara**.<sup>3922</sup> During his testimony, a video showing an inspection of troops by Mladić was played to Egbers and he identified the individual behind Mladić as Colonel **Beara**.<sup>3923</sup> Wagenaar testified that uncertainties as to whom Egbers saw could have been solved by using a photo line-up test.<sup>3924</sup> Having considered all the evidence, particularly in light of the fact that Egbers' interpreter told him that the man he met was **Beara**, the Trial Chamber considers that the limited uncertainties described above do not cast doubt on Egbers' identification of **Beara**. Moreover, his encounter with **Beara** on that day is recorded in the report he wrote upon his return to Potočari on 15 July 1995:

<sup>3916</sup> Beara Final Brief, paras. 167–173. See also *ibid.*, paras. 239–242 (concerning Wagenaar's evidence), 246 (arguing that Egbers neglected to mention in the affirmative that he saw **Beara** with glasses or that he was not continually wearing glasses).

<sup>3917</sup> Beara Final Brief, para. 169.

<sup>3918</sup> Vincent Egbers, T. 2821 (19 Oct 2006) (further stating that, "there was no conversation in English between Colonel Beara and me at that time. There was always an interpreter who could speak English and Serbo-Croatian as well").

<sup>3919</sup> Vincent Egbers, T. 2820–2821 (19 Oct 2006).

<sup>3920</sup> *Ibid.*, T. 2776 (19 Oct 2006).

<sup>3921</sup> Vincent Egbers, T. 2822, 2824, 2831 (19 Oct 2006) (quotation at T. 2822). See also Martijn Anne Mulder, Ex. P02199, "92 *bis* statement" (24 and 25 Oct 1995, 12 May 2000), pp. 15–16, 18 (12 May 2000) (stating that in the morning of 14 July, he saw a blue-coloured private car driven by an unarmed military driver arriving at the parking lot of the school. A VRS officer, who appeared to be of high rank, but whose rank Mulder could not see, exited from the back seat. Mulder described him as being tall (approximately 190 cm), heavily built with a belly and about 50 years of age. He was dressed in a dark camouflage uniform and was wearing a strange cap. Mulder was shown a video (Ex. P02025) and, after a couple of viewings, retained the impression that the third man behind Mladić was the man he saw at the school on the morning of 14 July, except that, in the video, the man is wearing sunglasses, and at the time Mulder saw him on 14 July 1995 in Nova Kasaba he was without sunglasses. Mulder drew these conclusions based on the person's distinctive height, posture and belly. In an addendum to his statement dated 25 September 2007, Mulder specified that the man he saw at the school on 14 July was around 1.80 metres).

<sup>3922</sup> Vincent Egbers, T. 2849–2850 (20 Oct 2006).

<sup>3923</sup> *Ibid.*, T. 2777 (19 Oct 2006); Ex. P2D00021, "Egbers Statement, 30 April 2000"; Ex. P02025, "Video showing Mladić and Beara in Potočari".

<sup>3924</sup> Willem Wagenaar, T. 25323 (8 Sept 2008).

1. On 13 July transports were organized from Potočari in the direction of Kladanj.
2. A number of incidents took place between Potočari and Nova Kasaba. Vehicles, helmets and flak jackets were taken away [...]
3. On the way back, in the direction of Bratunac, our vehicle was forced to stop in the rough area of map reference JNA 88229622.

[...]

5. I sought contact with the local commander in an old school building that was being used as temporary barracks, Major Malinić Zoran (born in 1961) and told him that the convoys were being escorted on the orders of General Mladić.

[...]

8. As a large group of BiH fighters was assembling, several [VRS] units advanced. Our safety could not be guaranteed, because Major Zoran had no contact with them. His commanding officer, Colonel Beara, would look into the matter.

9. I made the acquaintance of the colonel. He wore the insignia of his rank and drove an expensive car.

10. I gave an account of what happened to us, which was written down. Colonel Beara has the original, and there is a copy in the possession of section 2/3.<sup>3925</sup>

In light of the above, the Trial Chamber is satisfied with Egbers' identification of **Beara**.

1221. **Beara** next challenges the identification of Birčaković, who testified to **Beara**'s presence and his meeting with **Nikolić** and **Popović** at the Standard Barracks on the morning of 14 July 1995.<sup>3926</sup> Wagenaar testified that Birčaković's recognition of **Beara** was not certain given that he expressed doubts as to having met **Beara** in a statement prior to his testimony.<sup>3927</sup> In his testimony, Birčaković stated that when **Beara** arrived at the Standard Barracks with **Popović**, "everybody saw it" and that he saw **Beara** and **Popović** go in to the barracks.<sup>3928</sup> Birčaković confirmed that he did not mention seeing **Beara** on that day in his prior statement because no such question was put to him during the interview.<sup>3929</sup> On the basis of this testimony, taking into account that Birčaković already knew **Beara** in July 1995,<sup>3930</sup> the Trial Chamber has no doubt about Birčaković's identification of **Beara**.

1222. **Beara** challenges both the credibility and reliability of the evidence of PW-161 and PW-162.<sup>3931</sup> He challenges PW-161's credibility noting that he gave various versions as to the date of his meeting with **Beara**.<sup>3932</sup> As to reliability, he points to PW-161's limited contact with **Beara**

<sup>3925</sup> Ex. 2D00024, "Dutch Ministry of Defence Debriefing Statement", p. 6.

<sup>3926</sup> Beara Final Brief, para. 243. See also *ibid.*, para. 175.

<sup>3927</sup> Willem Wagenaar, T. 25339 (8 Sept 2008) (further testifying that the conditions for Birčaković's familiarity with **Beara**, and thus his ability to recognise him were uncertain), T. 25480 (9 Sept 2008).

<sup>3928</sup> Milorad Birčaković, T. 11097, 11102 (8 May 2007).

<sup>3929</sup> *Ibid.*, T. 11103, 11105–11107 (8 May 2007). Further, Birčaković denied the proposition that he did not tell the truth about **Beara**. *Ibid.*, T. 11113 (8 May 2007).

<sup>3930</sup> *Ibid.*, T. 11012 (7 May 2007).

<sup>3931</sup> Beara Final Brief, paras. 116, 245.

<sup>3932</sup> *Ibid.*, para. 111.

prior to the relevant meetings described and the expert evidence surrounding weaknesses in his identification.<sup>3933</sup> Similarly, **Beara** argues that PW-162's identification was unreliable in that he acknowledged he would not know **Beara** today if he "saw him in the street"<sup>3934</sup> and that he was able to identify him in the courtroom because he had seen him on television broadcasts from the Hague.<sup>3935</sup>

1223. While PW-161 did give contradictory versions of the chronology surrounding his meeting with **Beara**,<sup>3936</sup> the Trial Chamber considers that he was simply unable to clearly recollect the order of the events he was describing. However, his evidence as to the meeting itself—location, circumstances, participants and the conversation—was clear. Further, his evidence is generally consistent with that of other witnesses to meetings with **Beara** on the night of 13 July at the SDS premises.<sup>3937</sup> As to the identification of **Beara**, the Trial Chamber notes that PW-161 was summoned to the SDS offices specifically to meet with "Colonel Beara".<sup>3938</sup> When he arrived he indicated he was there to see Colonel Beara and he was then admitted to an office where he saw Colonel Beara.<sup>3939</sup> He knew that **Beara** was a senior officer of the VRS and he had seen him previously.<sup>3940</sup> On the basis of this evidence, the Trial Chamber is satisfied beyond reasonable doubt that PW-161 met with **Beara** on the night of 13 July at the SDS offices and that they had a conversation as described by PW-161 in his testimony.

1224. The Trial Chamber is also satisfied with the evidence of PW-162 as to his meeting with **Beara** on the morning of 14 July which also took place at the SDS offices. While **Beara** and PW-162 had not met before, when he arrived at the offices **Beara** introduced himself by name.<sup>3941</sup> Given these circumstances and the totality of the evidence surrounding **Beara**'s presence at the SDS offices, the Trial Chamber has no doubt that PW-162 met with **Beara** and had a discussion as described.

1225. Next **Beara** challenges PW-104's identification of **Beara** on the afternoon of 14 July.<sup>3942</sup> He highlights that PW-104 conceded that when he saw **Beara** on television in connection with the

<sup>3933</sup> Beara Final Brief, para. 245 (noting that Wagenaar relied on the fact that PW-161 did not refer to **Beara**'s glasses).

<sup>3934</sup> *Ibid.*, para. 116 (referring to PW-162, T. 9267 (22 Mar 2007)).

<sup>3935</sup> *Ibid.*, para. 116 (referring to PW-162, T. 9268 (22 Mar 2007)).

<sup>3936</sup> In particular, PW-161 was inconsistent as to whether the meeting occurred the same day as events he witnessed at the Kravica Warehouse or a day before. PW-161, T. 9362–9362, 9365–9366 (23 Mar 2007), T. 9415–9417, 9445–9447 (26 Mar 2007). Whatever the precise chronology of events, the Trial Chamber is satisfied from other evidence and the actual content of the conversation that the meeting with **Beara** took place on the night of 13 July.

<sup>3937</sup> *See infra*, paras. 1264–1266, 1268.

<sup>3938</sup> PW-161, T. 9362 (23 Mar 2007). *See also infra*, para. 1267.

<sup>3939</sup> PW-161, T. 9365–9366 (23 Mar 2007).

<sup>3940</sup> *Ibid.*, T. 9362 (23 Mar 2007).

<sup>3941</sup> PW-162, T. 9230 (22 Mar 2007).

<sup>3942</sup> Beara Final Brief, paras. 223–225, 246.

Tribunal's proceedings, he was (and remains) of the view that this **Beara** did not (and does not) resemble the man he met in July 1995.<sup>3943</sup> Wagenaar testified that he saw no reason why the Prosecution investigators had failed to conduct a photo board identification test for PW-104, although in cross-examination Wagenaar conceded that such a test would have been ineffective from the moment PW-104 saw pictures of **Beara** in the media.<sup>3944</sup> The Trial Chamber notes that in these circumstances Wagenaar's evidence is not of assistance in assessing the reliability of PW-104's identification of **Beara**. While PW-104 had not met or spoken with **Beara** prior to this encounter, importantly, when PW-104 arrived at the SDS offices there was an officer present who introduced himself as "Colonel Beara".<sup>3945</sup> PW-104 described this individual as tall and well built, with grey hair, aged around 50 or 55, and wearing a camouflage uniform.<sup>3946</sup> The Trial Chamber is satisfied that this description matches roughly with the physical features of **Beara** in 1995 and is similar to other descriptions of him at the relevant time. PW-104 admitted that **Beara** looked different in the media pictures just before his arrival in The Hague to testify before the Tribunal.<sup>3947</sup> However, given the passage of time and taken in the context of all the evidence, in particular that **Beara** introduced himself at the meeting, the Trial Chamber does not consider that this raises any doubt as to the identification of **Beara** as a participant in this meeting. Finally, the Trial Chamber notes that the circumstances of the meeting and the subject discussed parallels other meetings with **Beara** taking place at that time, as described by different witnesses. Thus the identification is corroborated by other testimony. Therefore, in view of the totality of the evidence on this point, the Trial Chamber is satisfied that PW-104 did meet with **Beara** in July 1995 and that the content of the conversation they had was as recounted by PW-104.

1226. **Beara** contests Perić's identification of **Beara** at around noon on 16 July 1995 at the Kula School, together with **Popović**.<sup>3948</sup> The Trial Chamber has already discussed their identification issues in the section concerning **Popović**'s acts and whereabouts.<sup>3949</sup> As previously found, the Trial Chamber is satisfied that Perić identified **Beara** there.

1227. Finally, **Beara** contests the identification of PW-165, who testified to **Beara**'s presence, together with **Popović**, at the Standard Barracks at 6:30 p.m. on 15 July 1995.<sup>3950</sup> The Prosecution has presented PW-165's evidence as further corroborating other credible evidence that **Beara** was heavily involved in organising the execution of the remaining Muslim men still being held in the

<sup>3943</sup> PW-104, T. 8015 (1 Mar 2007).

<sup>3944</sup> Willem Wagenaar, T. 25459 (9 Sept 2008).

<sup>3945</sup> PW-104, T. 7941 (28 Feb 2007).

<sup>3946</sup> *Ibid.*, T. 8014 (1 Mar 2007).

<sup>3947</sup> PW-104, T. 8015 (1 Mar 2007).

<sup>3948</sup> **Beara** Final Brief, paras. 422–425.

<sup>3949</sup> *See supra*, para. 1125.

Zvornik area.<sup>3951</sup> PW-165 testified that “up the stairs there were a few people walking around, and they were wearing camouflage uniforms and I saw their backs and I asked who they were and one of them said, ‘Well, the commander has a meeting with **Popović** and **Beara**”.<sup>3952</sup> PW-165 stated that he did not see **Beara** at the time and he did not know him,<sup>3953</sup> and that he never saw him before or after this event at the Standard Barracks.<sup>3954</sup> **Beara** argues that PW-165’s evidence is not capable of amounting to identification evidence when the witness had only seen this person from the back, and had never seen **Beara** before.<sup>3955</sup> Wagenaar questioned PW-165’s recognition of **Beara**, testifying that a line-up test could have been carried out by the Prosecution; however he admitted that this could only have been conducted under the condition that PW-165 had not seen **Beara** on a warrant poster after the possible encounter.<sup>3956</sup>

1228. The Trial Chamber has found previously that PW-165’s subsequent identification of **Popović** as one of the men that he saw, combined with the evidence of what he was told, was sufficient to satisfy the Trial Chamber that **Popović** was present.<sup>3957</sup> This is not the same in the case of **Beara**, as PW-165 did not see him at the time other than from the back and he was not able to subsequently identify him, thus PW-165 does not directly identify **Beara** as having been present. However, the fact remains that PW-165 was told that this was **Beara** and **Popović**, and that information was confirmed in part by the subsequent identification of **Popović**.<sup>3958</sup> When considered in combination with other evidence, especially as to **Beara**’s presence in the area at the time, the Trial Chamber is satisfied that **Beara** was present with **Popović** at the Standard Barracks in the early evening of 15 July 1995.

1229. Lastly, the Trial Chamber notes that **Beara** challenged the identification made by Rajko Babić, who testified to the presence of a “high ranking officer” he did not know at the Kula School in Pilica on the afternoon of 15 July 1995.<sup>3959</sup> This officer was addressed as either Colonel or Lieutenant Colonel, was tall with receding blonde hair combed over to one side, neatly shaven, no moustache, and did not wear spectacles.<sup>3960</sup> No attempt was made to have Babić identify **Beara** at

<sup>3950</sup> See *supra*, para. 1123. See also *infra*, para. 1284.

<sup>3951</sup> Prosecution Final Brief, para. 2274.

<sup>3952</sup> PW-165, T. 9962 (4 Apr 2007).

<sup>3953</sup> *Ibid.*, T. 9965 (4 Apr 2007).

<sup>3954</sup> *Ibid.*, T. 9979 (4 Apr 2007).

<sup>3955</sup> Beara Final Brief, para. 247. See also *ibid.*, para. 246 (stating that PW-165 neglected to mention in the affirmative that he saw **Beara** in glasses or that he was not continually wearing glasses).

<sup>3956</sup> Willem Wagenaar, T. 25334, 25337–25338, 25353–25355 (8 Sept 2008), T. 25408–25422 (9 Sept 2008); Ex. 2D00574, “Report by Willem A. Wagenaar”. See also Beara Final Brief, para. 248.

<sup>3957</sup> See *supra*, para. 1123.

<sup>3958</sup> *Ibid.*

<sup>3959</sup> Beara Final Brief, paras. 222, 235–236. See also *ibid.*, para. 425.

<sup>3960</sup> Rajko Babić, T. 10237–10241, 10247 (18 Apr 2007). Babić went on to state that the officer was strong, heavy-built and had a military appearance and that he wore a camouflage uniform. *Ibid.*, T. 10240 (18 Apr 2007).

trial. **Beara** submits that it is plain that Rajko Babić did not recognise **Beara** and thus **Beara** is not the person he was referring to.<sup>3961</sup> Wagenaar was asked extensively about Rajko Babić being shown photographs of **Beara**,<sup>3962</sup> the relevance of which seems marginal at best given that no identification was made or attempted at trial. Indeed, while the Prosecution refers to his evidence, it does not claim that the officer Rajko Babić saw was **Beara**, let alone any other Accused.<sup>3963</sup> For these reasons, the Trial Chamber finds that the evidence is insufficient to find that **Beara** was the officer Rajko Babić saw. Therefore, the Trial Chamber will not rely on Rajko Babić's identification with regard to **Beara**.

b. Intercept Evidence

1230. **Beara** contests the reliability of intercept evidence relating to him on the following grounds: the intercepts cannot be used to deduce the location from which he is calling;<sup>3964</sup> the intercepts are subject to transcription errors because of inexperienced operators and poor quality audio;<sup>3965</sup> the dates and times recorded on the intercepts may be unreliable;<sup>3966</sup> the intercepted conversations were only selectively transcribed;<sup>3967</sup> it would not have been possible for the intercept operators accurately to recognise his voice,<sup>3968</sup> and the intercept records could have been subject to manipulation and tampering.<sup>3969</sup>

1231. Challenging the analysis made by the Prosecution's expert witnesses, **Beara** relies on evidence from linguistic expert Remetić in arguing that the Trial Chamber should give no weight to the intercepted conversations.<sup>3970</sup> Remetić met with **Beara** twice in April 2008 and, on the basis of his observations of **Beara**'s speech patterns on these occasions, analysed 18 transcripts of intercepted communications alleged to have involved **Beara**.<sup>3971</sup> Remetić testified that of the 18 intercepts, only one, Ex. P01387a,<sup>3972</sup> was consistent with **Beara**'s current speech patterns.<sup>3973</sup> In assessing the evidence of **Beara**'s presence in Eastern Bosnia between 10 and 16 July 1995, the Trial Chamber has considered Remetić's evidence, which is discussed in more detail where it is

<sup>3961</sup> Beara Final Brief, para. 222.

<sup>3962</sup> Willem Wagenaar, T. 25195–25196 (3 Sept 2008), T. 25332–25334, 25366–25367 (8 Sept 2008), T. 25425–25429 (9 Sept 2008), T. 25523–25525 (10 Sept 2008); Ex. 2D00574, "Report by Willem A. Wagenaar", p. 10.

<sup>3963</sup> Prosecution Final Brief, para. 918.

<sup>3964</sup> Beara Final Brief, para. 257.

<sup>3965</sup> See, *inter alia*, Beara Final Brief, paras. 252–273.

<sup>3966</sup> See, *inter alia*, Beara Final Brief, paras. 269–273.

<sup>3967</sup> See, *inter alia*, *ibid.*, paras. 272–273, 282.

<sup>3968</sup> See, *inter alia*, *ibid.*, paras. 274–293.

<sup>3969</sup> See *ibid.*, paras. 252–332.

<sup>3970</sup> See, *inter alia*, *ibid.*, paras. 294–332.

<sup>3971</sup> Slobodan Remetić, T. 24568, 24577, 24595 (25 Aug 2008).

<sup>3972</sup> Ex. P01387a, "Intercept, 2 August 1995, 09:50 hours".

relevant below. However, the Trial Chamber notes that Remetić's opinions were formed on the basis of limited contact with **Beara** after the events in question, during the trial. Further, his analysis of the intercepts was carried out without the benefit of hearing audio recordings of the relevant intercepts where linguistic patterns of speech would be most apparent. Therefore, in its general context Remetić's evidence is not of such a nature as to raise doubt as to the reliability of the intercept evidence overall. Nevertheless, in assessing the intercept evidence, particularly as to **Beara's** presence in Eastern Bosnia between 10 and 16 July 1995, the Trial Chamber has considered Remetić's evidence on specific intercepts where it is relevant below.

1232. The Trial Chamber has discussed its general approach to the intercept evidence above.<sup>3974</sup> In considering each specific challenged intercept, the Trial Chamber has placed reliance on the general procedures employed by the intercept operators.<sup>3975</sup> Conversations were initially transcribed simultaneously and then verified, with the operators often listening to an intercept several times to capture it as accurately as possible. In many instances the assistance of other intercept operators was sought to ensure the accuracy of the transcription.<sup>3976</sup> Further, the Trial Chamber notes that the operators were well aware of the importance of the intelligence collected through the intercepts and the possible serious implications of mistaken transcription. The Trial Chamber heard extensive evidence from numerous operators who described the efforts taken to ensure that the transcriptions were as precise as possible as to participants and content.<sup>3977</sup> The Trial Chamber, thus, has taken the credibility of the intercept process into account in assessing the weight to be attributed to individual conversations. Further, the Trial Chamber has carefully analysed the content of each intercept and the individual intercept operators' evidence when assessing the weight to be given to each intercepted communication.

1233. Chronologically, the first intercept specifically challenged by **Beara** is Ex. P01130a.<sup>3978</sup> Remetić testified that this intercept could not be attributed to **Beara** because the intercept contains insufficient elements to reach such a conclusion.<sup>3979</sup> The intercept operator PW-124 based his

<sup>3973</sup> Ex. 2D00551, "Linguistic Analysis of Intercepts to be connected to the Name of Ljubiša Beara", p. 22. *See also* Slobodan Remetić, T. 24596 (25 Aug 2008).

<sup>3974</sup> *See supra*, paras. 64–66.

<sup>3975</sup> *See supra*, para. 65.

<sup>3976</sup> *See* PW-132, T. 4283 (21 Nov 2006) (stating that sometimes intercept operators re-listened to the conversations together with other operators); PW-157, T. 7191 (9 Feb 2007) (when PW-157 was not sure about something, he would ask his colleagues for assistance, so they could decipher together what was said); PW-136, T. 6230 (23 Jan 2007) (if PW-136 could not understand a certain word he invited others, including the commander, to listen to the tape and give their opinion); PW-145, Ex. P02430 (confidential), p. 2 (sometimes PW-145 would consult with other intercept operators to have "another set of ears").

<sup>3977</sup> *See supra*, paras. 64–65.

<sup>3978</sup> Ex. P01130a, "Intercept dated 13 July 1995, 10:09 hours". **Beara** argued during PW-124's testimony that much of this conversation is mistakenly attributed to **Beara** rather than to Lučić. *See* PW-124, T. 5825–5832 (12 Jan 2007).

<sup>3979</sup> Slobodan Remetić, T. 24631–24632 (26 Aug 2008).



identification of the conversant as **Beara** “because he introduced himself as that”.<sup>3980</sup> Further, in describing his attributions to **Beara** he stated “one collocutor, **Beara** in this case, could be heard very well. So I had no doubts that it was him”.<sup>3981</sup> **Beara** also challenged the reliability of this intercept because the operator had crossed out a large section of it and rewrote it with some substantive differences.<sup>3982</sup> In fact, the Trial Chamber finds that this correction by the operator only adds to the reliability of the captured words. When questioned as to why this alteration had been made he said “because I wasn’t satisfied with what I heard, so I listened to the conversation again, and re-transcribed it.”<sup>3983</sup> In these circumstances, the Trial Chamber is satisfied both as to **Beara**’s participation in the conversation and the words attributed to him. It does not consider that Remetić’s evidence as to linguistic elements raises any doubt as to this finding.

1234. The second intercept specifically challenged by **Beara** is Ex. P01164a.<sup>3984</sup> **Beara** submits that this intercept was transcribed inaccurately and that he did not participate in this conversation, arguing that there is no logical explanation why **Beara** would not have known to whom the number 155 was assigned.<sup>3985</sup> In Remetić’s opinion, this intercept contains very little linguistic data upon which the intercept could be attributed to **Beara**.<sup>3986</sup> Intercept operator PW-132 testified that he ascertained from the request made by a conversant “Let me talk to Beara”<sup>3987</sup> during the intercept, as well as “the course of the conversation” and “his rank, he mentions it” that the conversant “Mr Jović is talking to the person he asked to talk to”.<sup>3988</sup> As to the content of the conversation, PW-132 gave evidence that it was difficult to transcribe, stating that he listened to the conversation “for the second time and then for the third time and I don’t know how many times, that is when I realised how many participants there were in the conversation”, explaining that this was the reason why several corrections were inserted in the notebook.<sup>3989</sup> The Trial Chamber finds that these corrections improve the reliability of the identification of the participants and the content of the intercept. PW-132 explained that the letters “B”, “J” and “BE” stands for the participants Jokić,<sup>3990</sup> **Beara**,<sup>3991</sup> and

<sup>3980</sup> PW-124, T. 5771–5772 (11 Jan 2007) (quotation at T. 5772).

<sup>3981</sup> *Ibid.*, T. 5831–5832 (12 Jan 2007) (quotation at T. 5831).

<sup>3982</sup> *Ibid.*, T. 5834 (12 Jan 2007).

<sup>3983</sup> *Ibid.*, T. 5767 (11 Jan 2007).

<sup>3984</sup> Ex. P01164a, “Intercept, 14 July 1995, 21:02 hours”.

<sup>3985</sup> **Beara** Final Brief, paras. 299, 304.

<sup>3986</sup> Slobodan Remetić, T. 24641 (26 Aug 2008). Remetić also pointed out a mistake on the part of the operator where he used the letter B to denote **Beara** instead of Badem station. Remetić stated that this observation was made in his expert linguistic capacity. *Ibid.*, T. 24722–24723 (27 Aug 2008).

<sup>3987</sup> PW-132, T. 4322 (21 Nov 2006).

<sup>3988</sup> *Ibid.*, T. 4345–4346 (22 Nov 2006).

<sup>3989</sup> *Ibid.*, T. 4361 (22 Nov 2006).

<sup>3990</sup> *Ibid.*, T. 4341 (22 Nov 2006). PW-132 omitted the name of the person who was talking in the first and third lines, although from the conversation itself it becomes clear that this was Jokić. *Ibid.*, T. 4498–4499 (private session) (24 Nov 2006).

<sup>3991</sup> *Ibid.*, T. 4345 (22 Nov 2006). PW-132 testified that the letters “BE” appear in the text of the intercept but not in the actual line which designates the participants. PW-132 clarified that the name **Beara** did not appear in the section prepared by his unit: “[F]irst it was B, and then e was added. It had been listened a number of times and when this

someone from Badem.<sup>3992</sup> PW-132 also stated that the name **Beara** should have been added to the line designating the participants, but was omitted by mistake in “haste” due to the urgency with which the intercept needed to be sent out.<sup>3993</sup> The Trial Chamber is satisfied based on the identifying information mentioned during the conversation, the explanations of PW-132 and the conversation itself, that **Beara** was a participant in it.

1235. The third intercept specifically challenged by **Beara** is Ex. P01178a.<sup>3994</sup> **Beara** disputes that **Beara** participated in this conversation, relying on Remetić’s conclusion that there are insufficient linguistic indicators to attribute this and other conversations to **Beara**.<sup>3995</sup> PW-157, who transcribed this conversation, testified that he recognised **Beara**’s voice and heard that **Beara** called Živanović, another participant of this conversation.<sup>3996</sup> PW-157 was examined and cross-examined extensively as to the basis for his identification of **Beara** as a participant in the conversation. He described that while initially when he began this work he was unable to identify voices without the speakers introducing themselves,<sup>3997</sup> by 1993 “I could recognise most of their voices, starting with Beara, Kristić, Živanović, Borovčanin.”<sup>3998</sup> In terms of the procedures he used in transcribing intercepted conversations, PW-157 stated that when he was not sure about something, he would ask “one colleague, two or three” for assistance; however, he stated in this context, I “wouldn’t tell them what I thought I heard” and after they had listened to the portion of the conversation they would “jointly conclude” what was said.<sup>3999</sup> In light of PW-157’s evidence, the Trial Chamber is satisfied that this conversation can be attributed to **Beara** and that the intercept is reliable as to its content.

1236. Another intercept specifically challenged by **Beara** is Ex. P01179, which was recorded by three different operators in three different locations between 9:55 a.m. and 10 a.m. on 15 July 1995.<sup>4000</sup> Remetić testified that the three intercept operators recorded one single conversation and that there were insufficient linguistic indicators to attribute this and other conversations to

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all ended, it turned out to be the way you see it now.” [...] All the while I had a switchboard operator under Badem, every time, and after that, another person would join the conversation whom I could not hear, and then when the switch operator called that person, judging by the course of the conversation led by Jokic, in my book, from then on, this was Beara.” *Ibid.*, T. 4455–4456 (23 Nov 2006).

<sup>3992</sup> *Ibid.*, T. 4323 (private session) (21 Nov 2006).

<sup>3993</sup> *Ibid.*, T. 4457 (23 Nov 2006).

<sup>3994</sup> Ex. P01178a, “Intercept, 15 July 1995, 9:54 hours”.

<sup>3995</sup> Slobodan Remetić, T. 24651–24652 (26 Aug 2008), T. 24718 (27 Aug 2008).

<sup>3996</sup> PW-157, T. 7170–7171 (9 Feb 2007).

<sup>3997</sup> PW-157, T. 7224 (9 Feb 2007).

<sup>3998</sup> *Ibid.*, T. 7223–7224 (9 Feb 2007).

<sup>3999</sup> *Ibid.*, T. 7191 (9 Feb 2007).

<sup>4000</sup> Beara Final Brief, para. 307. Ex. P01179(a)(b), “Intercept, 15 July 1995, 10:00 hours” and “Intercept, 15 July 1995, 09:55 hours”; Ex. P01179(c), “Intercept, 15 July 1995, 10:00 hours;” Ex. P01179(k)(l), “Intercept, 15 July 1995, 09:57 hours”.

**Beara**.<sup>4001</sup> All three intercept operators who independently transcribed the conversation at the time identified **Beara** as a participant. PW-136 testified that he transcribed the communication at 9:55 p.m.<sup>4002</sup> PW-136 stated that he recognised the voice of the man he identified as “Colonel Ljubo”.<sup>4003</sup> While he failed to record the last name at the time, he knew that it was “Ljubomir Beara” who was one of the participants in the conversation.<sup>4004</sup> He testified that his identification was based on information provided to him as to call signs, as well as voice identification.<sup>4005</sup> PW-157, who transcribed the conversation at 9:57 p.m., testified that he could only hear **Beara**’s side because there was one channel for one side and another channel for the other.<sup>4006</sup> PW-157 determined that **Beara** was a participant by voice recognition and the fact that **Beara** introduced himself.<sup>4007</sup> PW-133, who transcribed the conversation at 10 a.m., testified that he recognised **Beara**’s voice because he heard it frequently.<sup>4008</sup> All three witnesses also recognised Krstić.<sup>4009</sup> In light of the combined evidence of the three intercept operators and the content of the intercepts themselves, the Trial Chamber finds that these three intercepts record the same conversation, which is attributable to **Beara**.

1237. Finally, **Beara** asserts that the intercepted conversation transcribed on 1 August at 10:45 p.m. related to **Beara** and Žepa is unreliable.<sup>4010</sup> Remetić testified that the language used in the conversation transcribed on 1 August at 10:45 p.m. is incompatible with the language used in the conversation earlier that morning at 10:02 a.m.,<sup>4011</sup> and that the conversation therefore cannot be linked with **Beara**.<sup>4012</sup> **Beara** argues that it cannot be concluded that a reference to “Ljubo” in this conversation is a reference to **Beara**.<sup>4013</sup> PW-145, who transcribed this conversation, testified that

<sup>4001</sup> Slobodan Remetić, T. 24651–24652 (26 Aug 2008), T. 24723–24726 (27 Aug 2008). *See also* Beara Final Brief, para. 308.

<sup>4002</sup> PW-136, T. 6220–6221 (23 Jan 2007).

<sup>4003</sup> Ex. P02383 (confidential), p. 6.

<sup>4004</sup> PW-136, Ex. P02383 (confidential), p. 6; PW-136, T. 6220 (23 Jan 2007).

<sup>4005</sup> PW-136, T. 6220–6223 (23 Jan 2007).

<sup>4006</sup> PW-157, Ex. P02440 (confidential), p. 5.

<sup>4007</sup> PW-157, T. 7171 (9 Feb 2007).

<sup>4008</sup> PW-133, T. 5476 (13 Dec 2006). *See also ibid.*, T. 5569–5570 (14 Dec 2006).

<sup>4009</sup> PW-136, Ex. P02383 (confidential), p. 6; PW-133, Ex. P02333 “confidential – 92 *ter* statement”, BT. 4141 (11 Nov 2003); PW-157, Ex. P02439 “confidential – 92 *ter* statement”, KT. 4514 (closed session) (22 June 2000).

<sup>4010</sup> Beara Final Brief, paras. 390–394 (regarding Ex P01380a, “Intercept, 1 August 1995, 22:45 hours”). With regard to Ex. P01378a, “Intercept, 1 August 1995, 10:02 hours”, **Beara** concedes that based on Remetić’s opinion the language used in this intercept is consistent with **Beara**’s speech today and submits that this conversation does not display **Beara**’s criminal intent. *Ibid.*, paras. 321, 392. The Trial Chamber considers that **Beara** is not challenging **Beara**’s participation in that conversation.

<sup>4011</sup> Slobodan Remetić, T. 24602–24603 (25 Aug 2008) (referring to Ex. P01378a, “Intercept, 1 August 1995, 10:02 hours”).

<sup>4012</sup> *Ibid.*, T. 24605 (25 Aug 2008) (testifying that “one person cannot utter within one day or within 13 or so hours, the speeches that differ to such an extent”).

<sup>4013</sup> Beara Final Brief, para. 393. In this regard, **Beara** argues that the Prosecution attempts to attribute certain conversations to **Beara** because of a reference to the common first name “Ljubo”. More specifically, **Beara** submits that although two intercepted conversations (Ex. P01310a, “Intercept, 23 July 1995, 08:05 hours” and Ex. P01328a, “Intercept, 25 July 1995, 07:09 hours”) have the reference to the name of “Ljubo”, they cannot be

he identified **Beara** on the basis that Stevo, a participant in the conversation, addressed **Beara** by his first name, Ljubo.<sup>4014</sup> PW-145 explained the various parameters and indicators he used to identify participants including identifying information given upon connection and comparisons with other intercepted conversations. He repeatedly explained the steps taken to be certain as to identifications<sup>4015</sup> and how he recognised the participants.<sup>4016</sup> On the basis of his evidence, the Trial Chamber is therefore satisfied that **Beara** was the person taking part in these conversations.

c. Alibi for 13 to 14 July 1995

1238. **Beara** raises an alibi for 13 and 14 July 1995, arguing that he was present in Belgrade at that time in order to celebrate his birthday. **Beara** relies on three witnesses: Miroslava Čekić, Svetlana Gavrilović and Milan Kerkez, each of whom testified to his presence in Belgrade on those dates.

1239. Čekić testified that on the evening of 13 July, **Beara** was in Belgrade, having dinner in a restaurant with his wife, Čekić and her late husband, Toma Božinović.<sup>4017</sup> Čekić stated that around noon on the same day, **Beara**, who was at home, called her late husband and they agreed to meet for dinner that evening.<sup>4018</sup> During this dinner, which lasted until 11 or 11.30 p.m., Nada Beara, **Beara**'s wife, told the Čekićs that the following day would be **Beara**'s birthday. For this reason, Čekić invited **Beara** and his wife to her house in Belgrade for a birthday gathering, together with Svetlana and Đorđe Gavrilović on the evening of 14 July.<sup>4019</sup> Čekić stated that she remembered the date of **Beara**'s birthday because "if somebody tells me something, then I remember things".<sup>4020</sup> Čekić testified that they did not discuss the developments in Bosnia at the birthday gathering, as **Beara** did not want to talk about these matters.<sup>4021</sup> As an explanation as to how she remembers the year, she relies on the conversation during the evening. She says that, they spoke, among other things, about the 25th anniversary of Svetlana and Đorđe Gavrilović's marriage and their plan to

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attributed to **Beara**. Since the Prosecution does not claim that the Ljubo in these conversations was **Beara**, the Trial Chamber will not consider the reliability of these conversations in this section.

<sup>4014</sup> PW-145, T. 7287 (19 Feb 2007).

<sup>4015</sup> PW-145, Ex. P02430, "confidential – 92 *ter* statement", para. 6 (stating that the intercept operators would always try to confirm the identification of a participant such as by the participant being identified in the conversation by himself/herself or others, or by voice identification and that they would not write down a participant's name if they were not sure).

<sup>4016</sup> PW-145, T. 7287 (19 Feb 2007) (testifying that "And I explained why we were sure that it's precisely these particular speakers. Normally, at the beginning of a conversation when the link was made, when they were connected, their subordinates would give certain identifications and then they would connect the senior officers, and then the intercept that follows would begin").

<sup>4017</sup> Miroslava Čekić, T. 24835, 24841 (28 Aug 2008).

<sup>4018</sup> Miroslava Čekić, T. 24835, 24841 (28 Aug 2008).

<sup>4019</sup> *Ibid.*, T. 24831–24833, 24847–24848, 24850 (28 Aug 2008).

<sup>4020</sup> *Ibid.*, T. 24886 (29 Aug 2008).

<sup>4021</sup> *Ibid.*, T. 24851 (28 Aug 2008).

travel on the Orient Express.<sup>4022</sup> Čekić stated that she could recollect these topics because it was extravagant and unusual to travel on the Orient Express.<sup>4023</sup> She stated that **Beara** joked about taking those who were at the dinner to the train station to look at the train,<sup>4024</sup> and that someone—probably one of the Gavrilovićs—joked about going to a newly opened restaurant, which was located in an old fashioned train wagon, instead of travelling on the Orient Express.<sup>4025</sup>

1240. Gavrilović gave a similar account to Čekić, claiming that she remembered the date of **Beara**'s birthday because it fell in the same month as her own and that they used to joke about sharing the same star sign.<sup>4026</sup> She also stated that she specifically remembered the year because it was during the year of her 25th wedding anniversary, which had fallen on 4 January 1995.<sup>4027</sup> She recalled that Čekić's husband had made jokes about their failed attempt to plan a trip on the Orient Express for this anniversary and about a newly opened restaurant in Belgrade named the "Orient Express".<sup>4028</sup> According to Gavrilović, Čekić remembered this joke.<sup>4029</sup>

1241. Kerkez, a friend of **Beara**'s son, testified that at around 2 p.m. on 14 July, he visited **Beara**'s son at his family apartment in Belgrade to discuss the holiday for which they were about to depart.<sup>4030</sup> When Kerkez arrived, he saw and greeted **Beara**, who was with his wife and some other people.<sup>4031</sup> Kerkez stated that he and his friends had gone on holiday on the evening of 15 July and returned two weeks later, setting off on a Saturday and arriving back on 31 July in order to start his handball training on Monday, 1 August.<sup>4032</sup> Kerkez said that he discussed the details of the trip with his friends while they were all reminiscing over drinks one night in April 2008.<sup>4033</sup> Kerkez claimed to have a better recollection of the details than the rest of his friends—partly because he had organised the trip that year.<sup>4034</sup>

<sup>4022</sup> Miroslava Čekić, T. 24852–24853 (28 Aug 2008).

<sup>4023</sup> *Ibid.*, T. 24853 (28 Aug 2008).

<sup>4024</sup> *Ibid.*, T. 24851 (28 Aug 2008). *See also ibid.*, 24875–24876 (29 Aug 2008).

<sup>4025</sup> *Ibid.*, T. 24853–24855 (28 Aug 2008). *See also ibid.*, 24874–24876 (29 Aug 2008).

<sup>4026</sup> Svetlana Gavrilović T. 24760–24761 (27 Aug 2008).

<sup>4027</sup> *Ibid.*, T. 24760–24761 (27 Aug 2008).

<sup>4028</sup> Svetlana Gavrilović, T. 24761–24762, 24770–24771 (27 Aug 2008), T. 24851 (28 Aug 2008). Gavrilović insisted that she was able to recall the party on that day because jokes were made about her silver wedding anniversary and the Orient Express and because she had highlighted **Beara**'s handsomeness. *Ibid.*, T. 24774–24776 (27 Aug 2008), T. 24786–24791 (28 Aug 2008).

<sup>4029</sup> *Ibid.*, T. 24761–24762, 24770–24771, 24851 (27 Aug 2008).

<sup>4030</sup> Milan Kerkez, T. 24911–24914 (29 Aug 2008).

<sup>4031</sup> *Ibid.*, T. 24911–24912 (29 Aug 2008).

<sup>4032</sup> *Ibid.*, T. 24909, 24949, 24956 (29 Aug 2008).

<sup>4033</sup> *Ibid.*, T. 24912–24914, 24922, 24925–24930, 24944–24952 (29 Aug 2008).

<sup>4034</sup> *Ibid.*, T. 24945–24948 (29 Aug 2008) (Kerkez presumed that he was contacted by the **Beara** Defence because Branko Beara gave them his name and asked them to contact him about the details of the vacation).

1242. **Beara** claims that the evidence of these witnesses is further corroborated by documentary evidence, namely, a war diary prepared by Bob Đurđević.<sup>4035</sup> According to Đurđević's diary, when he was stopped on the Bosnian side of the Drina River on 13 July 1995, Đurđević heard a group of military police guards inform Miloš Tomović, **Beara**'s driver, that the road via Kasaba and Konjević Polje was closed.<sup>4036</sup> Based on this diary entry, **Beara** submits that Tomović drove **Beara** to Belgrade on the morning of 13 July when he was stopped together with Đurđević by military police.<sup>4037</sup> **Beara** further submits that the accuracy of the Đurđević's diary is corroborated by the testimony of Srđa Trifković, a freelance journalist who mentions a meeting with Đurđević in July 1995,<sup>4038</sup> and by Radovan Karadžić's appointment book for July 1995, in which Trifković's name appears on 13 and 14 July.<sup>4039</sup>

1243. The Trial Chamber recalls that where alibi evidence has been raised by an accused, the burden remains on the Prosecution to eliminate any reasonable possibility that the alibi is true.<sup>4040</sup> In this case, when assessing whether the alibi pleaded by **Beara** was "reasonably possibly true" or whether the Prosecution eliminated any reasonable possibility of its truth, the Trial Chamber has considered the cumulative effect of all relevant evidence adduced by both parties. The Trial Chamber recalls that it is the "totality" of the relevant evidence, including considerations of the honesty and reliability of witnesses and the quality of any identification, which must be weighed when determining whether the Prosecution has eliminated any reasonable possibility that the alibi is true.<sup>4041</sup>

1244. In the view of the Trial Chamber, while Čekić and Gavrilović had unusually vivid memories and identical accounts about the date, the specific topics of conversation, the jokes and other details of **Beara**'s birthday party on 14 July 1995, this was in contrast to their blurred recollections on other relevant matters. Čekić could not recall how many birthdays she had celebrated with the Bearas, nor did she remember the date of the birthday of Nada Beara, whom she has known since 1985.<sup>4042</sup> Gavrilović testified that she attended one previous birthday party of **Beara**'s around 1993, but she could not recall the exact date or specific topics of the conversation at that time.<sup>4043</sup>

<sup>4035</sup> Beara Final Brief, paras. 90–91.

<sup>4036</sup> *Ibid.*, para. 91.

<sup>4037</sup> *Ibid.*, paras. 91–92, which refers to Ex. 2D00531, "War Diary by Bob Đurđević", pp. 18–19, 31.

<sup>4038</sup> Srđa Trifković, T. 25230, 25240, 25243, 25270, 25284 (4 Sept 2008).

<sup>4039</sup> *Ibid.*, T. 25235 (4 Sept 2008); Ex. P02905, "Excerpt from appointment calendar for Radovan Karadžić for 13–14 July 1995".

<sup>4040</sup> *See supra*, para. 57.

<sup>4041</sup> *See supra*, para. 58.

<sup>4042</sup> Miroslava Čekić, T. 24827, 24841–24842 (28 Aug 2008).

<sup>4043</sup> Svetlana Gavrilović, T. 24776–24778 (27 Aug 2008) (Gavrilović however remembered details concerning **Beara**'s clothes at the party).

1245. The circumstances surrounding Čekić and Gavrilović's meetings with the **Beara** Defence team prior to their testimony in this case raise further questions of reliability. Čekić stated that her conversations with the **Beara** Defence team jogged her memory about the date of **Beara**'s birthday.<sup>4044</sup> Čekić was asked by the Prosecution about the lack of information on the Orient Express conversation and on the specific dates of the Čekić's dinners with **Beara** and his wife in her 65 *ter* witness summary. Čekić responded that the specific dates of the two dinners and the Orient Express conversation were not mentioned in the summary, probably because either the **Beara** Defence team might have omitted to note down the dates or she might have recalled them later.<sup>4045</sup> Čekić further testified that a few days after meeting with the **Beara** Defence team, she met Gavrilović and they reminded each other about the evening of 14 July 1995.<sup>4046</sup> According to Čekić, Gavrilović told Čekić the rough date of the birthday gathering in July 1995, but Čekić never gave her the exact date of the birthday dinner and they did not share any of their conversations with **Beara**'s wife or the **Beara** Defence team.<sup>4047</sup> Čekić also stated that she and Gavrilović had spoken to each other about the joke on the Orient Express only after Čekić met with the **Beara** Defence team in August 2009.<sup>4048</sup> In Gavrilović's account, the day after her interview with the **Beara** Defence team in March or April 2008, she called Čekić to inform her that the **Beara** Defence team had asked her about the birthday party on 14 July 1995.<sup>4049</sup> About two weeks later, Gavrilović talked about the meeting with **Beara** Defence team with Čekić, and a few days before their trip to The Hague to testify before the Tribunal, Gavrilović and Čekić talked about the necessary preparations on the phone.<sup>4050</sup> Gavrilović stated that she had not spoken to **Beara**'s wife about **Beara**'s birthday party.<sup>4051</sup>

1246. The Trial Chamber does not consider that Gavrilović and Čekić deliberately falsified their testimony. However, their detailed and almost identical accounts of 14 July 1995 are so unusual—particularly in comparison to their memory of other events—that they lack credibility individually and cumulatively. In addition, the circumstance by which the information was conveyed to the defence, in particular as to the date and the reasons for the clear recollection of it, further damages the reliability of the evidence. Furthermore, the frequent discussions between the two witnesses and the way in which they developed their memories of the event further weaken the trustworthiness of

<sup>4044</sup> Miroslava Čekić, T. 24886 (29 Aug 2008). Čekić also alluded to being able to remember things that are told to her and to having possibly made a note of the date afterwards. *Ibid.*

<sup>4045</sup> *Ibid.*, T. 24887, 24892–24893 (29 Aug 2008).

<sup>4046</sup> *Ibid.*, T. 24900 (29 Aug 2008).

<sup>4047</sup> Miroslava Čekić, T. 24887, 24899–24903 (29 Aug 2008).

<sup>4048</sup> *Ibid.*, T. 24896–24898 (29 Aug 2008).

<sup>4049</sup> Svetlana Gavrilović, T. 24786 (28 Aug 2008).

<sup>4050</sup> *Ibid.*, T. 24788–24789 (28 Aug 2008).

<sup>4051</sup> *Ibid.*, T. 24791 (28 Aug 2008).

their evidence. Consequently, in the Trial Chamber's view, Gavrilović's and Čekić's recollections are simply unreliable and the Trial Chamber can attribute no weight to them.

1247. Despite Milan Kerkez's expressed clear memory of the exact dates of his holiday in 1995, he could not recall when he took his holiday in 1996 nor was he able to remember the date or even the day of the week that the **Beara** Defence called him in April 2008 prior to his testimony in August 2008.<sup>4052</sup> Kerkez's memory was also not strong when he was tested as to other details about July of 1995, such as what the **Beara** house looked like at the time, what clothes **Beara** was wearing on 14 July 1995, and who else was at the **Beara** house. Kerkez was only able to answer some of these questions.<sup>4053</sup> Moreover, as noted by the Prosecution, 1 August 1995 was a Tuesday, contrary to Kerkez's testimony that he started his training on a Monday.<sup>4054</sup> In the Trial Chamber's view, Kerkez did not deliberately falsify his testimony, and the event he described might have happened at some point during 1995. However, in light of the deficiencies in his memory, particularly as to the day his training started (which does not correspond to 1 August 1995),<sup>4055</sup> Kerkez's evidence is not credible as to the date when he saw **Beara** in Belgrade in 1995.

1248. Finally, with respect to the war diary, the Trial Chamber notes that the entry itself—a hearsay statement from Đurđević—is vague as to the time and circumstances of this encounter. Most significantly it also does not attest to the presence of **Beara** at the checkpoint on 13 July. The Trial Chamber can accord little probative value to this evidence with respect to the whereabouts of **Beara** at the time and finds that the evidence is not corroborative of his presence in Belgrade on 13 and 14 July.

1249. As discussed in subsequent paragraphs,<sup>4056</sup> the Trial Chamber has been presented with convincing evidence that places **Beara** in the Bratunac and Zvornik areas on 13 and 14 July. For all these reasons, in light of the totality of evidence, the Trial Chamber finds that the alibi raised by **Beara** is not reasonably possibly true and does not raise a reasonable doubt about his presence in Bratunac and Zvornik on 13 and 14 July.

1250. In light of this conclusion the Trial Chamber will now consider **Beara**'s acts and whereabouts during the period relevant to the Indictment.

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<sup>4052</sup> Milan Kerkez, T. 24923, 24940 (29 Aug 2008).

<sup>4053</sup> *Ibid.*, T. 24918–24924, 24940–24941, 24954–24957 (29 Aug 2008).

<sup>4054</sup> Prosecution Final Brief, para. 2316.

<sup>4055</sup> Milan Kerkez, T. 24940, 24956 (29 Aug 2008) (stating that 1 August 1995 was a weekend and he started training on the Monday). However, the Trial Chamber notes that 1 August 1995 was a Tuesday.

<sup>4056</sup> *See infra*, paras. 1255–1280.



(ii) The Srebrenica Enclavea. Up to the Fall of Srebrenica

1251. During the period of March to June 1995 **Beara** visited Srebrenica on at least two occasions with the purpose of making enquiries of DutchBat about the ABiH's positions in the enclave.<sup>4057</sup>

1252. On 5 July 1995, **Beara** attended one of the monthly meetings with security organs in the Sarajevo-Romania Corps in Ilijas, west of Sarajevo, in which the military and political situation in the RS and the Sarajevo theatre was discussed.<sup>4058</sup> An intercept conversation indicates that **Beara** remained there for some days.<sup>4059</sup> **Beara** then left for Krajina in Western Bosnia.<sup>4060</sup>

1253. On 11 July 1995,<sup>4061</sup> **Beara** came to the Drina Corps IKM in Pribićevec, together with **Popović** and **Deronjić**.<sup>4062</sup> Upon arrival, they reported to **Krstić**, who was already present.<sup>4063</sup>

1254. On the evening of 10 or 11 July 1995, Zlatan Čelanović, a desk officer for legal, religious, and moral affairs at the Bratunac Brigade, saw **Beara** with **Popović** in front of the Bratunac Brigade Headquarters.<sup>4064</sup>

b. 12–13 July 1995

<sup>4057</sup> Pieter Boering, T. 1875–1877, 1902 (19 Sept 2006).

<sup>4058</sup> Ljuban Mirković, T. 24280–24281, 24283–24284 (29 July 2008).

<sup>4059</sup> *Ibid.*, T. 24296, 24498–24299 (29 July 2008). *See also ibid.*, T. 24290–24298 (29 July 2008).

<sup>4060</sup> *Ibid.*, T. 24288, 24290–24299 (29 July 2008); Ex 2D00557 “Audio recordings of intercepted conversations between Ljuban Mirković and unknown male”.

<sup>4061</sup> Momčilović testified that around 11 July, NATO planes dropped bombs in the area around Pribićevec. Božo Momčilović, T. 14088 (22 Aug 2007). *See supra*, para. 1096.

<sup>4062</sup> Božo Momčilović, T. 14114–14117 (22 Aug 2007) (testifying that there were two bombings a couple of hours apart and that **Popović**, **Beara** and **Deronjić** arrived in between); *ibid.*, T. 14085 (22 Aug 2007) (testifying that Momčilović did not know the purpose of their visit). Momčilović testified he did not know who **Popović** and **Beara** were and that some soldiers present at the location told him they were security officers. Later he saw **Popović** and **Beara** on TV and he recognised them. *Ibid.*, T. 14085–14088, 14110–14111 (22 Aug 2007). *See supra*, para. 1096.

<sup>4063</sup> Božo Momčilović, T. 14122 (22 Aug 2007). *See also* PW-138, T. 3799–3801 (private session) (8 Nov 2006). Grulović, the bureau chief for the Balkans section of Reuters in Belgrade, testified that on or about 11 July, when Srebrenica fell, **Beara** was seen at an IKM “in the area of responsibility of the 2nd Krajina Corps” and that **Beara** was present at a meeting held at the IKM where **Gvero** and **Milovanović** and some others also attended. Branimir Grulović, T. 23776–23778, 23812–23816 (22 July 2008). This evidence does not change the Trial Chamber’s view that **Beara** was at the IKM in Pribićevec on 11 July. PW-161 testified that **Beara** was in or around Hotel Fontana a few days before 13 July. PW-161, T. 9362 (23 Mar 2007). When confronted on cross-examination with what he said in his prior interview to the Prosecution in 2000, that is, he had seen **Beara** for the first time “that year” or 1995 (*see* Ex. 2D1D00167 (confidential), p. 9), PW-161 stated that he must have meant that the first time was in July 1995, not sometime earlier in 1995. *Ibid.*, T. 9500–9501 (27 Mar 2007).

<sup>4064</sup> Zlatan Čelanović, T. 6654–6655 (31 Jan 2007).

1255. On 12 July 1995, **Borovčanin** saw **Beara** in the area towards Potočari.<sup>4065</sup> On the afternoon of the same day, **Borovčanin** saw **Beara** with Deronjić in the centre of Bratunac.<sup>4066</sup> **Beara** stated that there was a large column moving towards Zvornik and that help would be needed.<sup>4067</sup>

1256. Either on the evening of 12 July or the morning of 13 July, Čelanović met with **Beara** in front of the Bratunac Brigade Headquarters.<sup>4068</sup> **Beara** asked him to check whether any Bosnian Muslim men taken into custody by the military police had “sinned” against the Serb people by torching Serb villages or killing Serb civilians in previous years.<sup>4069</sup> In such cases, **Beara** told Čelanović to inform one of the security organs so that the matter could be brought to the attention of the competent prosecutor.<sup>4070</sup> **Beara** then departed on foot to the Bratunac Brigade Headquarters building, about 30 to 50 metres away.<sup>4071</sup> At about 10 or 11 a.m. on 13 July and subsequent to Čelanović’s first meeting with **Beara**, five Muslim prisoners arrived in a vehicle and were brought to Čelanović’s office by “members of special forces” or “special military police forces” and later one Bosnian Muslim man was brought in by Momir Nikolić.<sup>4072</sup> Following their interrogation, the six men were taken by the special police or a special platoon of the VRS to the Vuk Karadžić School in Bratunac town.<sup>4073</sup>

1257. In a conversation intercepted on 13 July at 10:09 a.m., **Beara** told Lučić, the Deputy Commander of the Military Police Battalion of the 65th Protection Regiment,<sup>4074</sup> that “400 *Balijas* have shown up in Konjević Polje”.<sup>4075</sup> **Beara** instructed Lučić to “[s]hove them all on the playground, who gives a fuck about them”.<sup>4076</sup> **Beara** then asked, “Do you have enough room over there?”, and noted that “it’s not really detention there at your place, it’s just – like that. [...] Well line them up in 4–5 rows”.<sup>4077</sup> Later in the conversation, **Beara** spoke to “Zoka”, Zoran Malinić,<sup>4078</sup>

<sup>4065</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 14–15. Trišić, Assistant Commander for Logistics in the Bratunac Brigade, testified that although his previous statement to the Prosecution indicates that **Beara** was in Potočari on 12 July, he could not confirm that he saw **Beara** in Potočari on 12 July. Dragoslav Trišić, T. 27159–27164, 27180–27183, 27185–27186 (21 Oct 2008). The Trial Chamber finds that Trišić’s evidence lacks reliability.

<sup>4066</sup> Ex. P02852, “Transcript of OTP Interview of Ljubomir Borovčanin, 20 Feb 2002”, p. 76.

<sup>4067</sup> *Ibid.*, p. 77.

<sup>4068</sup> Zlatan Čelanović, T. 6628–6631 (31 Jan 2007).

<sup>4069</sup> *Ibid.*, T. 6628–6631 (31 Jan 2007). Upon **Beara** requesting information about perpetrators of crimes committed against Serbs, Čelanović told **Beara** that these crimes were well documented in the book *The Chronicle of our Cemetery* by Milivoje Ivanišević. *Ibid.*, T. 6631–6632 (31 Jan 2007).

<sup>4070</sup> Zlatan Čelanović, T. 6628–6632, 6649 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović” (with the venue of the meeting with **Beara** marked by Čelanović as B1).

<sup>4071</sup> Zlatan Čelanović, T. 6627–6628, 6649, 6699 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”.

<sup>4072</sup> *See supra*, para. 391.

<sup>4073</sup> *Ibid.*

<sup>4074</sup> Milomir Savčić, T. 15236 (12 Sept 2007).

<sup>4075</sup> Ex. P01130a, “Intercept, 13 July 1995, 10:09 a.m.”

<sup>4076</sup> *Ibid.*

<sup>4077</sup> *Ibid.*

who said “they’re killing themselves [...] there are also plenty of wounded...”. **Beara** responded, “You mean they’re doing it amongst themselves? [...] Well, excellent. Just let them continue, fuck it.”<sup>4079</sup>

1258. At 11:25 a.m. on 13 July 1995, another conversation was intercepted,<sup>4080</sup> in which **Beara** was heard saying that he was “sending four buses, two trucks, and one trailer truck to Kasaba to transport Muslim prisoners”, and that “[t]hey will be dispatched to the camp in Batkovići village, where they will be ‘sorted’ into war criminals and normal soldiers”.<sup>4081</sup> **Beara** argues that in this intercept he is instructing that 1,300 prisoners should be transported to Batković camp and preparations should be made for them.<sup>4082</sup> **Beara** submits that this evidences that at the time he intended and was making efforts to arrange for the prisoners to be transported to a detention facility and thus **Beara** was unaware of any plan to murder at that point.<sup>4083</sup>

1259. The Trial Chamber notes first that the intercept in question is in summary form and does not provide the actual content of the conversation nor is the other participant in the conversation identified. Similarly, it is not clear in what context the information about the prisoners being taken to a camp was conveyed. While there is some evidence of preparations being made for the arrival of 1,300 prisoners at the Batković camp on that date, the Trial Chamber notes those preparations were futile in that only a handful of prisoners ever arrived.<sup>4084</sup> In this context, the Trial Chamber further notes the secret nature of the killing operation and **Beara**’s knowledge of the vulnerability of phone conversations to interception.<sup>4085</sup> It is also striking that his reference to a detention camp mirrors the speeches Mladić was giving at the time to the detained prisoners at Sandići Meadow.<sup>4086</sup> The Trial Chamber has found those statements by Mladić to have been deliberate lies.<sup>4087</sup> As noted above, there is no evidence that any Bosnian Muslim prisoners were transported to Batković until 18 July.<sup>4088</sup> To the contrary, there is evidence that the Bosnian Muslim males held at the Nova

<sup>4078</sup> See *supra*, para. 133. Milomir Savčić, testified that Zoran Malinić’s nickname was “Zoka”, which was a typically short form of the name “Zoran”. Milomir Savčić, T. 15274–15278 (12 Sept 2007). The Trial Chamber finds that “Zoka” mentioned in this intercept is Zoran Malinić.

<sup>4079</sup> Ex. P01130a, “Intercept, 13 July 1995, 10:09 a.m.”

<sup>4080</sup> The intercept conversation was obtained by Croatian authorities. See Prosecution Final Brief, para. 2216; Beara Final Brief, para. 435, fn. 970.

<sup>4081</sup> Ex. 7D2D00642, “Intercept, 13 July 1995, 11:25 a.m.”

<sup>4082</sup> Beara Final Brief, para. 440.

<sup>4083</sup> Beara Final Brief, paras. 441–442.

<sup>4084</sup> See *supra*, para. 590.

<sup>4085</sup> Exs. P01033, 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”. See *supra*, paras. 1057–1058. Concerning of the vulnerability of phone conversations to interception, see Ex. P01179(a)(b), “Intercept, 15 July 1995, 10:00 hours” and “Intercept, 15 July 1995, 09:55 hours”; Ex. P01179(c), “Intercept, 15 July 1995, 10:00 hours;” Ex. P01179(k)(l), “Intercept, 15 July 1995, 09:57 hours”; Ex. P01178(e), (confidential).

<sup>4086</sup> See *supra*, para. 387.

<sup>4087</sup> See *supra*, para. 1071.

<sup>4088</sup> See *supra*, para. 591.

Kasaba Football Field or captured along the road to Nova Kasaba on 13 July were detained in various locations and ultimately executed.<sup>4089</sup> Considering this summary intercept in the context of all the evidence, including the earlier intercept described above, the Trial Chamber finds that the intercept does not reflect a genuine intent or real efforts on the part of **Beara** to transfer the prisoners to a detention camp. The Trial Chamber is satisfied that this conversation was deliberately misleading as to the fate which awaited these Bosnian Muslim males and an attempt to mask their true intentions.

1260. On the same day, five DutchBat officers were captured by VRS Soldiers while trying to escort convoys of Bosnian Muslim women, children and elderly from Potočari to ABiH-held territory.<sup>4090</sup> They were taken to a school building close to the Nova Kasaba Football Field where the Military Police of the 65th Protection Regiment were stationed.<sup>4091</sup> There, Vincent Egbers, one of the DutchBat officers, met with Zoran Malinić,<sup>4092</sup> who was in charge of the school, and complained about the manner in which VRS soldiers had treated DutchBat officers.<sup>4093</sup> Malinić told Egbers that the DutchBat officer could not leave before **Beara**'s arrival as their safety on the journey back to Srebrenica could otherwise not be guaranteed.<sup>4094</sup> The next morning, Egbers met with **Beara** outside the school near the Nova Kasaba Football Field for 10 to 15 minutes.<sup>4095</sup> According to Egbers, **Beara** took a written complaint from Egbers and went to see Malinić inside the school.<sup>4096</sup> **Beara** stayed for half an hour and, a few hours after his visit, Malinić arranged the return of the DutchBat soldiers to the DutchBat compound in Potočari in a VRS APC.<sup>4097</sup> As will be seen below, on the same morning of 14 July, **Beara** went to the brick factory in Bratunac.<sup>4098</sup>

<sup>4089</sup> See *supra*, Chapter III, Sections F.4(d), 5–6, G3. H3.

<sup>4090</sup> Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), p. 5 (24 and 25 Oct 1995), p. 5 (12 May 2000); Vincent Egbers, T. 2756–2757 (19 Oct 2006). See *supra*, para. 396.

<sup>4091</sup> Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), pp. 4–5 (24 and 25 Oct 1995); Bojan Subotić, T. 24976, 24984 (1 Sept 2008); Vincent Egbers, T. 2758 (19 Oct 2006); Ex. P01688, “Photograph of School at Nova Kasaba”. See *supra*, para. 396.

<sup>4092</sup> Vincent Egbers, T. 2758, 2784, 2787–2788, 2799–2800 (19 Oct 2006); Ex 2D00024, “Document, Dutch MOD Debriefing Statement”, p. 6. Egbers was questioned extensively on the appearance of Major Malinić. Despite minor inconsistencies in the description of Malinić's hair, the Trial Chamber agrees that Egbers met Malinić.

<sup>4093</sup> Bojan Subotić, T. 24995, 25014 (1 Sept 2008); Vincent Egbers, T. 2757–2758 (19 Oct 2006). Mulder, another DutchBat soldier, was with Egbers at the time and complained that he had been forced by a Bosnian Serb to go in a Dutch APC, through the woods, presenting himself as a UN peacekeeper and calling to the Bosnian Muslims saying that it was safe for them to come out of the woods. In addition to speaking to Malinić through an interpreter, Egbers also made a written complaint to Malinić about this incident, the stealing of the vehicles and other improper treatment of DutchBat troops. Vincent Egbers, T. 2757–2760 (19 Oct 2006). Egbers initially described **Beara** as Malinić's commanding officer. *Ibid.*, T. 2759 (19 Oct 2006). He later stated that it was his impression at the time that there was a “relationship between the two”. *Ibid.*, T. 2854–2856 (20 Oct 2006).

<sup>4094</sup> Vincent Egbers, T. 2760 (19 Oct 2006), T. 2856 (20 Oct 2006). See also Milomir Savčić, T. 15249 (12 Sept 2007).

<sup>4095</sup> Vincent Egbers, T. 2775–2776, 2817, 2826–2827 (19 Oct 2006). **Beara** arrived in what Egbers described as a “luxurious car [...]”. *Ibid.*, T. 2776 (19 Oct 2006).

<sup>4096</sup> Vincent Egbers, T. 2779 (19 Oct 2006).

<sup>4097</sup> *Ibid.*, T. 2778–2779 (19 Oct 2006); Martijn Anne Mulder, Ex. P02199, “92 *bis* statement” (24 and 25 Oct 1995, 12 May 2000), pp. 5–6 (24 and 25 Oct 1995), p. 13 (12 May 2000) (stating that after negotiations between Egbers and the VRS Major, they were told that they could leave to Kladanj at their own risk).

<sup>4098</sup> See *infra*, para. 1275.

Considering that the locations are very close, the Trial Chamber is satisfied that **Beara** could have been in both places during that time.

1261. The Zvornik Brigade Duty Officer Notebook contains a notation made at some time on 13 July, most likely after 4 p.m.,<sup>4099</sup> which reads: “President of the Municipality Mitorović<sup>4100</sup> called and asked that the flat-bed trailer (~~Colonel Beara~~) be sent to Bratunac to bring a bulldozer 1000. Colonel Beara passed on the message”.<sup>4101</sup>

1262. On the evening of 13 July around dusk, Čelanović again met **Beara** in front of a building where Čelanović’s office was in Bratunac.<sup>4102</sup> Čelanović reported that only a few people had been brought to the military police building, and he had not turned up any new information after looking at their IDs and questioning them.<sup>4103</sup> At this time, large numbers of buses and trucks carrying Bosnian Muslim men were parked on the street leading to the Vuk Karadžić School, and at the Bratunac stadium.<sup>4104</sup> Čelanović raised concerns about the security of the town, considering the large number of Bosnian Muslim prisoners being held there, to which **Beara** responded that, “I hope that they will make it through the night and we will too, because I guess they're going to Kladanj tomorrow.”<sup>4105</sup> Then they walked towards the Vuk Karadžić School; on the way **Beara** looked at the vehicles and the guards, but did not address the prisoners.<sup>4106</sup> When Čelanović asked why the prisoners on the vehicles were not being transported out of Bratunac immediately, **Beara** responded that it was not safe to transport them, as there were too few vehicles to transport them, and that they would have to wait until the other vehicles that had transported the women and children had returned before taking these men to Kladanj the next morning.<sup>4107</sup> They then walked to the stadium,<sup>4108</sup> where there were vehicles with detained Bosnian Muslim men.<sup>4109</sup> **Beara** and

<sup>4099</sup> The Prosecution submits that this entry “must have been made after 14:45 hours and probably after 16:00 hours on 13 July”, based on pp. 122–123 of Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”. Prosecution Final Brief, para. 2220, fn. 4911.

<sup>4100</sup> Mitorović was the President of the Zvornik municipality. See Vinko Pandurević, T. 31810 (19 Feb 2009).

<sup>4101</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 124.

<sup>4102</sup> Zlatan Čelanović, T. 6638, 6641 (31 Jan 2007). Čelanović stated that during his two encounters with **Beara** he did not make derogatory remarks about Bosnian Muslims, and he behaved like an officer. *Ibid.*, T. 6683 (31 Jan 2007).

<sup>4103</sup> *Ibid.*, T. 6639 (31 Jan 2007).

<sup>4104</sup> See *supra*, para. 407.

<sup>4105</sup> Zlatan Čelanović, T. 6640–6641 (31 Jan 2007).

<sup>4106</sup> Zlatan Čelanović, T. 6640–6641 (31 Jan 2007). Čelanović marked the route they took. *Ibid.*, T. 6650 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”.

<sup>4107</sup> Zlatan Čelanović, T. 6641 (31 Jan 2007). When Čelanović and **Beara** arrived at the street going down towards the school, **Beara** continued toward the school, and on his return told Čelanović that it was not quite safe, but that he thought there would not be any problems. *Ibid.*, T. 6640–6641 (31 Jan 2007).

<sup>4108</sup> Zlatan Čelanović, T. 6641–6642 (31 Jan 2007) (testifying that **Beara** looked inside the stadium from the gate, while he stayed behind). See *supra*, para. 407.

<sup>4109</sup> Zlatan Čelanović, T. 6652 (31 Jan 2007). Čelanović placed a “0” on the spot where he could see part of them. *Ibid.*, T. 6653 (31 Jan 2007); Ex. PIC00060, “Ex. P02103 marked by Zlatan Čelanović”. See *supra*, para. 407.

Čelanović walked back toward the school, and then to the police building.<sup>4110</sup> When they arrived in front of the police building, **Beara** went into the yard of the Bratunac Brigade Headquarters.<sup>4111</sup>

1263. Several witnesses testified that **Beara** was present in Bratunac and took part in informal meetings held at the SDS offices between 13 and 14 July 1995. The Trial Chamber will therefore first consider evidence presented by each witness.

i. Deronjić

1264. At around 8 p.m. on 13 July, Deronjić received a call in his SDS office from Karadžić who instructed him to place the “goods inside warehouses before twelve tomorrow”.<sup>4112</sup> Deronjić stated that he understood this to mean that the Bosnian Muslim prisoners should be transported outside Bratunac and placed in a military prison.<sup>4113</sup> Karadžić said that he would also inform Mladić of his instructions.<sup>4114</sup> Shortly after Deronjić’s conversation with Karadžić, **Beara** came to his office.<sup>4115</sup> He said that he was in the Bratunac area to “kill all the Bosnian Muslims that were being warehoused in schools and buses in Bratunac”,<sup>4116</sup> adding that his orders were “from the top”.<sup>4117</sup> **Beara** was “very drunk”.<sup>4118</sup> Deronjić responded that he would not allow for the killings to be carried out in Bratunac in light of the orders he had received from Karadžić.<sup>4119</sup> He told **Beara** that

<sup>4110</sup> Zlatan Čelanović, T. 6643 (31 Jan 2007).

<sup>4111</sup> *Ibid.*

<sup>4112</sup> Ex. P01149a, “Intercept, 13 July 1995, 20:10 hours”; Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6438, 6441–6443 (22 Jan 2004).

<sup>4113</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6441–6443 (22 Jan 2004).

<sup>4114</sup> *Ibid.*, BT. 6439, 6441–6465 (22 Jan 2004). This conversation between Karadžić and Deronjić was intercepted and is thus corroborated. *See* Ex. P01149a, “Intercept, 13 July 1995, 20:10 hours”. The Trial Chamber therefore accepts Deronjić’s evidence as to this conversation.

<sup>4115</sup> Miroslav Deronjić, Ex. P03139a, “confidential - 92 *quater* transcript”, BT. 6440–6441 (22 Jan 2004).

<sup>4116</sup> *Ibid.*, BT. 6226 (20 Jan 2004).

<sup>4117</sup> *Ibid.*, BT. 6447, 6449 (22 Jan 2004). Deronjić testified he did not know who **Beara** was exactly referring to and that the fact that **Beara** did not specify any names suggested that he intended to remain discrete on the identity of the individual(s) who entrusted him with this order. Miroslav Deronjić, Ex. P03139a, “confidential - 92 *quater* transcript”, BT. 6447 (22 Jan 2004).

<sup>4118</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6449 (22 Jan 2004). *See also* *ibid.*, BT. 6452 (22 Jan 2004). Deronjić testified that his secretary, Sofir, and Simić, the president of the Bratunac Municipality, remembered **Beara**’s visit and that the conversation was disrupted and he thus told people to leave the room in order to have a one-on-one discussion with **Beara**. *Ibid.*, BT. 6441, 6448 (22 Jan 2004). Ljubisav Simić, the President of the Bratunac Municipality in 1995, testified that sometime on 13 July 1995, Davidović, the President of the Executive Board in Bratunac, informed him of the fact that during the evening of 12 July, some buses carrying people arrived in Bratunac and that they were leaving towards Konjević Polje. Davidović suggested that Simić go to the Hotel Fontana or to the SDS office, where he could inquire with someone on duty about this event. He first went to the SDS office, where he met a senior officer, who he was told later was **Beara**, but at that time he did not know his name. Ljubisav Simić, Ex. 4D00606, “92 *ter* transcript”, BT. 7625–7627 (15 Apr 2004). Simić reiterated that he was told later on by someone that the officer he had spoken to “was probably **Beara**,” but, to this day, he did not know if it actually was **Beara**. Ljubisav Simić, T. 27238–27239, 27245 (22 Oct 2008). In light of the totality of evidence, the Trial Chamber is satisfied that Simić saw **Beara**.

<sup>4119</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6274, 6278 (20 Jan 2004). Deronjić testified that he told **Beara** “you cannot do this” and characterised his reaction as a human gesture rather than an order. Deronjić thought that, by the end of the meeting, he had managed to secure an agreement with **Beara** to

he intended to see Karadžić the next morning to report their conversation.<sup>4120</sup> **Beara** then left the meeting angrily.<sup>4121</sup>

ii. Borovčanin

1265. At around 8 p.m. on 13 July, **Borovčanin** went to the Bratunac Brigade Headquarters and spoke with Krstić on the phone.<sup>4122</sup> There, he overheard Deronjić and **Beara** arguing about whether Bosnian Muslim captives were to be brought to Bratunac.<sup>4123</sup> **Beara** supported the idea but not Deronjić.<sup>4124</sup> Deronjić said that the mayors of Milići and Zvornik were trying to get rid of the prisoners from their respective areas.<sup>4125</sup> **Borovčanin** then returned to the police station in Bratunac.<sup>4126</sup>

iii. Momir Nikolić

1266. At around 8:30 p.m. on 13 July in the centre of Bratunac, Momir Nikolić saw **Beara**,<sup>4127</sup> who ordered him to go to the Zvornik Brigade and inform **Drago Nikolić** that thousands of Bosnian Muslims were held in Bratunac and would be sent to Zvornik that evening.<sup>4128</sup> **Beara** also said that they should be detained in the Zvornik area and executed.<sup>4129</sup> Momir Nikolić then drove to Zvornik via Konjević Polje.<sup>4130</sup> After conveying the orders from **Beara** to **Drago Nikolić** at the Kitovnice IKM, Momir Nikolić drove back to Bratunac at around midnight and reported to **Beara** at the Hotel Fontana.<sup>4131</sup> Thereafter, Momir Nikolić was told to go to the SDS offices.<sup>4132</sup> At the time, Bratunac was crowded with Bosnian Muslim prisoners and there was insufficient transportation to move

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make sure that no killings would be perpetrated in Bratunac that night: “[e]ven though we had reached some kind of agreement about that, I got the impression that he would not do anything else with the prisoners anymore in Bratunac but would act upon orders of President Karadžić, in the way I conveyed them to him”. *Ibid.*, BT. 6226, 6278 (20 Jan 2004), BT. 6450 (22 Jan 2004).

<sup>4120</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 quater transcript”, BT. 6448 (22 Jan 2004).

<sup>4121</sup> *Ibid.*, BT. 6277 (20 Jan 2004).

<sup>4122</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 35–36, 75–76, 79–80; Ex. P00993a, “Intercept, 13 July 1995, 20:40 hours.”

<sup>4123</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 83.

<sup>4124</sup> *Ibid.*, pp. 83, 92.

<sup>4125</sup> *Ibid.*, p. 92.

<sup>4126</sup> *Ibid.*, p. 83 (stating that Deronjić also stopped by and complained that the VRS was putting a large number of prisoners in Bratunac).

<sup>4127</sup> Momir Nikolić stated that he received a call at the Bratunac Brigade Headquarters to report to **Beara**. Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

<sup>4128</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

<sup>4129</sup> *Ibid.* Momir Nikolić said that this was the first time that he heard about the transfer of prisoners to Zvornik. Momir Nikolić, T. 32937 (21 Apr 2009).

<sup>4130</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

<sup>4131</sup> *Ibid.*; Momir Nikolić, T. 32937–32939 (21 Apr 2009). Momir Nikolić testified that on his way back to Bratunac he saw buses between Drinjaca and Konjević Polje, on the road leading to Zvornik. He indicated this on a map. *Ibid.*, T. 33256–33257 (27 Apr 2009); Ex. 3DIC00247, “Map marked by Momir Nikolić”.

<sup>4132</sup> Momir Nikolić, T. 32939 (21 Apr 2009).

them to Zvornik.<sup>4133</sup> Momir Nikolić saw **Beara**, Deronjić<sup>4134</sup> and Dragomir Vasić at the SDS offices.<sup>4135</sup> Deronjić and **Beara** were arguing<sup>4136</sup> and they were drunk during the meeting.<sup>4137</sup> Deronjić was concerned that the prisoners were posing a security threat and did not want them to be killed in or around Bratunac.<sup>4138</sup> Deronjić invoked instructions from Karadžić on how to handle the prisoners in Bratunac and those who would soon be arriving from Konjević Polje, insisting that they should be transferred to Zvornik.<sup>4139</sup> **Beara** invoked different instructions he had received from “his boss”.<sup>4140</sup> Momir Nikolić testified that the “killing operation was openly discussed”.<sup>4141</sup> Decisions were made and changed constantly, due to the chaotic situation in Bratunac at that time.<sup>4142</sup> It was ultimately decided that all the prisoners should be quickly transferred to Zvornik<sup>4143</sup> and that until then, the Bosnian Muslim men in and around Bratunac should continue to be guarded by elements of the Bratunac Brigade Military Police, various MUP forces and armed volunteers from Bratunac town.<sup>4144</sup>

<sup>4133</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6. *See also* Momir Nikolić, T. 33180 (24 Apr 2009).

<sup>4134</sup> Nikolić testified that Deronjić was married to his cousin. Momir Nikolić, T. 33083–33084 (23 Apr 2009).

<sup>4135</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6 (stating that all the participants indicated that they had been reporting to their various chains of command).

<sup>4136</sup> Momir Nikolić, T. 32940 (21 Apr 2009).

<sup>4137</sup> Momir Nikolić, T. 33193–33194 (24 Apr 2009).

<sup>4138</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6.

<sup>4139</sup> Momir Nikolić, T. 32942–32943 (21 Apr 2009), T. 33176 (24 Apr 2009).

<sup>4140</sup> *Ibid.*, T. 32943 (21 Apr 2009). Asked to clarify the positions of Deronjić and **Beara** concerning prisoners in Bratunac, Nikolić stated that **Beara** “claimed that he had totally different instructions [on] how to deal with prisoners who were in Bratunac at the moment and who were arriving from Konjević Polje by the minute.” *Ibid.*, T. 32941–32942 (21 Apr 2009).

<sup>4141</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6; Momir Nikolić, T. 32944–32945 (21 Apr 2009).

<sup>4142</sup> Momir Nikolić, T. 33182 (21 Apr 2009) (asked to clarify the positions of Deronjić and **Beara** concerning prisoners in Bratunac, Nikolić stated that **Beara** “claimed that he had totally different instructions [on] how to deal with prisoners who were in Bratunac at the moment and who were arriving from Konjević Polje by the minute.” Momir Nikolić further testified that, “The situation that prevailed on the 11th, 12th, and the 13th, could you really believe that you could have consistent decisions about something that is totally in order and that all the orders were clear and consistent? It was obvious that the decisions, what to do and how to do things were changed and made every ten minutes, as far as I know. Instructions were pouring in. Orders were pouring in. Of course, I’m not talking about written instructions, but there were telephone calls. There were communications through radio communication lines, and there was a huge influx of information that affected the positions and the decisions on what to do next. I was trying to describe to you the situation in Bratunac. There were thousands of people on the streets of Bratunac. They had been brought in there from that axis, and the people who were supposed to secure them had left, simply left. [...] The same situation prevailed when it came to taking a decision what to do with these people, regardless of the fact that there were many people from the army, from the — both civilian and army police, from the reserve forces or people who were under work obligation, including civilians armed with rifles. The situation was horrible. And as for the status of these prisoners, they made different decisions every half an hour, let’s say.”).

<sup>4143</sup> Momir Nikolić, T. 33180 (24 Apr 2009).

<sup>4144</sup> Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 6. The following day, Momir Nikolić returned to Bratunac and informed Blagojević about the SDS meeting and about the fact that, as instructed by **Beara**, all the Bosnian Muslim prisoners would be moved to Zvornik, detained and killed. Blagojević did not contest. *Ibid.*, pp. 6–7.



iv. PW-161

1267. At around 9 p.m. on 13 July,<sup>4145</sup> PW-161 was called to attend a meeting with **Beara** at the SDS offices.<sup>4146</sup> He arrived at the SDS offices at around 9:30 p.m.<sup>4147</sup> He had seen **Beara** in Bratunac a day or two prior to this, in or around Hotel Fontana, but he only knew that **Beara** was a senior officer in the VRS.<sup>4148</sup> **Beara** and two VRS officers were present in Deronjić's office but Deronjić was absent.<sup>4149</sup> **Beara** asked PW-161 about the availability of machinery and manpower and told PW-161 to go to Milići, where there were many dead bodies that needed to be buried.<sup>4150</sup> He also stated that PW-161 would receive further orders later on.<sup>4151</sup> In the early hours of 14 July, at about 1 or 2 a.m., PW-161 was called again to the SDS offices to receive further instructions.<sup>4152</sup> **Beara** was present there,<sup>4153</sup> and ordered him to go with a military policeman to find a burial location.<sup>4154</sup>

v. PW-170

1268. Around the same time PW-161 went to meet **Beara** at the SDS offices on the evening of 13 July, PW-170 was also called to report to the SDS offices,<sup>4155</sup> where he met Deronjić with two uniformed officers.<sup>4156</sup> While he does not indicate that **Beara** was present at the meeting, the Trial Chamber finds that his evidence further demonstrates that there was a series of meetings that evening, during which there were discussions amongst various participants all on the same subject of either execution or burial of prisoners. In this instance, the subject matter at the respective meetings attended by PW-161 and PW-170 was the same—the organisational details of the burial operation of the bodies in Kravica.<sup>4157</sup> Sometime after midnight, PW-170 was called again to the

<sup>4145</sup> PW-161, T. 9358–9365 (23 Mar 2007), T. 9433–9434, 9446, 9449 (26 Mar 2007).

<sup>4146</sup> *Ibid.*, T. 9362 (23 Mar 2007).

<sup>4147</sup> *Ibid.*, T. 9459 (26 Mar 2007).

<sup>4148</sup> PW-161, T. 9362 (23 Mar 2007).

<sup>4149</sup> *Ibid.*, T. 9366 (23 Mar 2007) (testifying that he did not recognise these other two officers and that there was no one else inside the office), T. 9433 (26 Mar 2007).

<sup>4150</sup> *Ibid.*, T. 9367–9369 (23 Mar 2007). *See also ibid.*, T. 9432 (26 Mar 2007).

<sup>4151</sup> PW-161, T. 9369 (23 Mar 2007). The meeting lasted for 30 to 40 minutes. *Ibid.*, T. 9460 (26 Mar 2007).

<sup>4152</sup> *Ibid.*, T. 9369–9370 (23 Mar 2007).

<sup>4153</sup> *Ibid.*, T. 9370 (23 Mar 2007) (testifying that there was a bottle of whiskey and a glass in front of **Beara** and that the other two officers from before were in an adjacent office).

<sup>4154</sup> *Ibid.*, T. 9369 (23 Mar 2007). PW-161 did not know the name of the military policeman and stated that he was not from Bratunac. *Ibid.*, T. 9486–9488 (27 Mar 2007).

<sup>4155</sup> PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7873 (closed session) (20 Apr 2004).

<sup>4156</sup> *Ibid.*, BT. 7873, 7901 (closed session) (20 Apr 2004) (testifying that he did not recognise these officers).

<sup>4157</sup> At the meeting Deronjić said that many Bosnian Muslim prisoners had been killed in Kravica and then the two officers said that the bodies of those killed should be removed to a bauxite mine located in Rupovo Brdo in Milići and that civilian protection workers from the “*asanacija*” and the “works obligation unit” were to load the bodies onto vehicles. At the end of the meeting, it was decided that the officers would find the vehicles necessary to transport the bodies and that the civilian protection workers were to report to Kravica the next morning. PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7873–7874 (closed session) (20 Apr 2004); PW-170, T. 17909 (closed session) (19 Nov 2007).

SDS offices, where he again met Deronjić and the same two officers to further discuss the identical issue of burials.<sup>4158</sup> Momir Nikolić was present either at the first or second meeting.<sup>4159</sup>

1269. The Trial Chamber has carefully considered the evidence of Momir Nikolić describing his actions and this series of meetings on 13 and 14 July. The Trial Chamber notes that again the core of this evidence<sup>4160</sup> was recounted by him in his original Statement of Facts and Acceptance of Responsibility of May 2003 and it remained consistent during his testimony.<sup>4161</sup> His evidence on these points, in particular that which highlights the role he played in conveying information about the killing operation to **Drago Nikolić**, is highly self-incriminatory, adding to its reliability.<sup>4162</sup> His account is also corroborated in different parts by other witnesses.<sup>4163</sup> On this basis, the Trial Chamber finds the evidence of Momir Nikolić reliable and accepts his description of the various events and meetings on 13 and 14 July as described above.<sup>4164</sup>

1270. The Trial Chamber has also carefully analysed the evidence of Deronjić as to his meeting with **Beara** on 13 July. Given the corroboration provided through the intercept,<sup>4165</sup> by all the witnesses as to the various meetings that evening and **Borovčanin** and Momir Nikolić<sup>4166</sup> as to the subject matter discussed, the Trial Chamber accepts the evidence of Deronjić with respect to the discussion and argument he had with **Beara** as to where the prisoners should be killed.

1271. Having considered the evidence above, the Trial Chamber is satisfied that there is an abundance of mutually corroborative evidence which places **Beara** in the Bratunac area, and in particular at a series of meetings which took place in the SDS offices during the evening of 13 July,

<sup>4158</sup> PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7876, 7902 (closed session) (20 Apr 2004).

<sup>4159</sup> *Ibid.*; PW-170, T. 17862 (closed session) (19 Nov 2007). PW-170 was informed that Rajko Dukić, the director of the bauxite mine in Milići, had refused to take the bodies and that civilian protection workers needed to be sent to Glogova in the morning where they had to report to Momir Nikolić and assist in digging a large grave. PW-170, Ex. P02960, “confidential – 92 *ter* transcript”, BT. 7876–7877 (closed session) (20 Apr 2004).

<sup>4160</sup> Specifically, that **Beara** summoned him at about 8:30 p.m. and ordered him to travel to the Zvornik Brigade to inform **Drago Nikolić** that thousands of Bosnian Muslim prisoners would be transferred from Bratunac to Zvornik where they would be executed; that Momir Nikolić then traveled to the Standard Barracks and on to the Zvornik Brigade IKM where he relayed this information to **Drago Nikolić**; that there was a meeting at which he, Deronjić, **Beara** and Vasić were present during which the executions of the prisoners was discussed. *See supra*, para. 1266.

<sup>4161</sup> The Trial Chamber notes that while Momir Nikolić sought to emphasise the limited role he played in the meetings that night, he did not depart from his description as to the substance of the discussions.

<sup>4162</sup> *See also infra*, para. 1354.

<sup>4163</sup> PW-170 corroborates Momir Nikolić’s presence at the SDS offices that evening; **Borovčanin** confirms that Deronjić and **Beara** were arguing about the detention of prisoners in Bratunac; Deronjić confirms that he and **Beara** were arguing as to whether the prisoners should be killed in Bratunac; and PW-161 and PW-170 confirm the meetings that took place that evening at the SDS on the related subject of burials.

<sup>4164</sup> *See supra*, para. 1266.

<sup>4165</sup> Ex. P01149a, “Intercept, 13 July 1995, 20:10 hours”. *See also supra*, para. 1264.

<sup>4166</sup> The Trial Chamber has considered the evidence of Deronjić, describing his discussion with Momir Nikolić at the UNDU about the meeting between Deronjić and **Beara** in which allegedly Nikolić stated that he was not at the meeting and that he learned the details of the meeting and the gist of conversation directly from **Beara**. Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6139–6140 (closed session) (19 Jan 2004),

continuing until the early morning hours of 14 July.<sup>4167</sup> The Trial Chamber is further satisfied that the subject-matter of the meetings was the logistics of the planned murder operation, including the location for the killings and burial as well as transportation and equipment. The Trial Chamber finds that throughout the evening, **Beara** actively participated in the organisation and coordination of the transport of the prisoners from Bratunac and Zvornik and was fully aware of the ultimate purpose—to execute them. The Trial Chamber determines that **Beara** played a key role in coordinating and facilitating the transportation, execution and burial of the prisoners with local civilian authorities, the Bratunac Brigade and the Zvornik Brigade.

c. 14 July 1995

1272. At around 7 a.m. on 14 July, **Popović** and **Beara** arrived at the Standard Barracks, looking for **Nikolić**.<sup>4168</sup> At around 8 a.m., **Nikolić** arrived at Standard Barracks and met with **Popović** and **Beara** for 15 to 20 minutes.<sup>4169</sup> Then **Beara** returned to Bratunac.<sup>4170</sup> As previously found, **Beara**, **Popović** and **Nikolić** discussed the organisation and coordination of the killing operation at this meeting.<sup>4171</sup>

1273. On that morning, at around 9 a.m., PW-161 and the military policeman went to Glogova.<sup>4172</sup> The military policeman indicated a spot near Glogova for digging graves.<sup>4173</sup> When an excavator and an operator for the excavator arrived, the “common grave was dug”.<sup>4174</sup> The excavator was a ULT loader excavator, not a backhoe and it was thus unable to dig the graves properly.<sup>4175</sup> PW-161 reported this to **Beara**, who promised to send a backhoe.<sup>4176</sup> A yellow backhoe then arrived on a trailer pulled by a FAP-18 truck from the direction of Kravica or Konjević Polje.<sup>4177</sup>

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BT. 6476–6478 (private session) (22 Jan 2004). However, having considered all the circumstances and evidence, the Trial Chamber accepts Momir Nikolić’s version that he was present at the meeting.

<sup>4167</sup> While the evidence discussed above is not consistent in every aspect and there are some discrepancies as to what was discussed and who participated in the meetings, the subject-matter remains essentially the same, as does the fact that **Beara** was present and actively involved in these discussions.

<sup>4168</sup> Milorad Birčaković, T. 11011, 11013–11014 (7 May 2007), T. 11088, 11102, 11118 (8 May 2007). Birčaković stated that when he arrived at the Standard Barracks, **Popović** and **Beara** arrived there as well and he “saw them go in [the Standard Barracks]”. Milorad Birčaković, 11102 (8 May 2007).

<sup>4169</sup> Milorad Birčaković, T. 11014–11017, 11052–11054 (7 May 2007), T. 11090–11091 (8 May 2007). Ex. P00296, “Vehicle logbook for Opel Rekord P-4528”, p. 4. *See supra*, para. 472.

<sup>4170</sup> *See infra*, para. 1274.

<sup>4171</sup> *See supra*, para. 472.

<sup>4172</sup> PW-161, T. 9370–9371 (23 Mar 2007), T. 9485–9487 (27 Mar 2007).

<sup>4173</sup> *Ibid.*

<sup>4174</sup> *Ibid.*, T. 9371 (23 Mar 2007).

<sup>4175</sup> *Ibid.*

<sup>4176</sup> *Ibid.* During cross-examination by the **Beara** Defence, Momir Nikolić testified that, during a proofing session he had with the Prosecution in 2007, he stated that to his knowledge, **Beara** had nothing to do with the burial of bodies in Glogova in 1995, and that PW-161 had lied about this in his statement. Momir Nikolić, T. 33127–33129 (private session) (23 Apr 2009). Nikolić further testified that he found out what PW-161 had said about **Beara**’s

1274. At around 9:30 a.m. on the same day, PW-162 received a call from the SDS offices in Bratunac to go there “because there was a man waiting” to see him.<sup>4178</sup> There he saw **Beara** for the first time who was sitting in the first office when he arrived.<sup>4179</sup> **Beara** asked PW-162 to go into the second office, telling him there were some people there who would like to talk to him.<sup>4180</sup> These officers asked PW-162 which companies in the Bratunac municipality had construction machinery.<sup>4181</sup> PW-162 told them that the brickworks had a ULT and that the utilities company had a SKIP, which was a very small machine used for digging.<sup>4182</sup> PW-162 called the brick company and promised the officers that the machinery would be available.<sup>4183</sup> **Beara** remained in the first office for the duration of the meeting and did not discuss the subject matter of the meeting with PW-162.<sup>4184</sup>

1275. That morning, **Beara** himself went to the brick factory in Bratunac.<sup>4185</sup> Deronjić was informed that **Beara** was looking for the brick factory in Bratunac municipality in order to place some prisoners there with the intention of detaining and killing them.<sup>4186</sup> He then drove to the brick factory and told **Beara** that there could be no detention and no killings.<sup>4187</sup> **Beara** got angry and left the premises.<sup>4188</sup>

1276. The Zvornik Brigade Duty Officer Notebook contains an entry made by the Duty Officer Jokić on 14 July.<sup>4189</sup> The entry reads: “Colonel Salapura called—Drago and **Beara** are to report to

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involvement in Glogova by reading his statement and that PW-161 had never personally admitted to him that **Beara** did not participate in that event. Nikolić drew this conclusion from his personal knowledge of the situation in the area in 1995. Momir Nikolić, T. 33129–33130 (private session) (23 Apr 2009). Asked to explain why he was sure that **Beara** had nothing to do with this event, Momir Nikolić stated that **Beara** had nothing to do with the machinery that came from Zvornik that was used to bury the bodies, and he had no ability to secure them. *Ibid.*, T. 33355 (28 Apr 2009). Given PW-161’s first hand knowledge, in contrast to Momir Nikolić’s evidence which was speculative on this point, the Trial Chamber finds that PW-161’s account is reliable.

<sup>4177</sup> PW-161, T. 9371–9372 (23 Mar 2007), T. 9553 (private session) (27 Mar 2007). The operator was Rade Đurković and he and the backhoe were from the state-owned company called Brickworks Bratunac (“Ciglan”). *Ibid.*, T. 9371–9372 (23 Mar 2007).

<sup>4178</sup> PW-162, T. 9230 (22 Mar 2007).

<sup>4179</sup> *Ibid.* See also *ibid.*, T. 9267–9268 (private session) (22 Mar 2007). With regard to PW-162’s identification of **Beara**, see *supra*, paras. 1222, 1224.

<sup>4180</sup> PW-162, T. 9231 (22 Mar 2007).

<sup>4181</sup> *Ibid.*, T. 9231–9232 (22 Mar 2007).

<sup>4182</sup> *Ibid.*, T. 9232 (22 Mar 2007).

<sup>4183</sup> *Ibid.*, T. 9235 (22 Mar 2007).

<sup>4184</sup> PW-162, T. 9233–9234 (22 Mar 2007). Considering the evidence of PW-162 with respect to the brick factory, and the Trial Chamber’s finding as to **Beara**’s involvement with organising the killing and burial, the Trial Chamber is satisfied that Deronjić’s evidence on this point is reliable.

<sup>4185</sup> Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* transcript”, BT. 6275, 6278 (20 Jan 2004).

<sup>4186</sup> *Ibid.*, BT. 6275 (20 Jan 2004).

<sup>4187</sup> *Ibid.*, BT. 6278 (20 Jan 2004).

<sup>4188</sup> *Ibid.*, BT. 6279 (20 Jan 2004) (testifying that he subsequently saw that the convoys were heading out to Zvornik). Deronjić later met with Karadžić in Pale and reported about the meeting with **Beara**. *Ibid.*, BT. 6448–6449 (22 Jan 2004).

<sup>4189</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 126. See also Kathryn Barr, T. 13181 (25 June 2007). See also Ex. P02846, “Kathryn Barr Handwriting Analysis Report, 16 July 2003”; Ex. P02847, “Kathryn Barr Handwriting Analysis Report, 22 August 2003”.

Golić”.<sup>4190</sup> “Salapura” is Petar Salapura, the Chief of the Administration of Intelligence of the Main Staff and “Golić” is Major Pavle Golić, an officer of the Department of Intelligence in the Drina Corps.<sup>4191</sup> The Trial Chamber is satisfied that “Drago” is **Drago Nikolić**. The Notebook also reads that at 3 p.m., “Colonel Beara is coming [in the following] order to Orovoc [namely, Orahovac] Petkovci Ročević Pilica”.<sup>4192</sup>

1277. At around 2 p.m. on 14 July 1995, Obrenović heard on the radio that the Duty Officer was requesting two machine operators from the Zvornik Brigade Engineering Company to “go build a road” and when he inquired about this request, he was told that the two machine operators had to go to Orahovac “in relation to the task being performed by **Beara** and **Popović**”.<sup>4193</sup> Nada Stojanović, a 92 *quater* witness, gave evidence that she saw **Beara** at the Grbavci School in Orahovac on 14 July.<sup>4194</sup> **Beara** submits that Stojanović is only speculating.<sup>4195</sup> In her statement, Stojanović stated that when she arrived at Orahovac before 10 a.m. on 14 July, she saw a “grey-haired officer from Vlasenica”, who she thought was a Lieutenant Colonel but definitely a higher ranking officer. Stojanović knew this officer was from Vlasenica because she had seen him before in the Standard Barracks. She, however, did not know his name.<sup>4196</sup> Stojanović was later asked whether she knew anything about a meeting at headquarters on the morning of 14 July 1995 of **Nikolić**, **Popović**, and **Beara**.<sup>4197</sup> She stated that while she did not know about this alleged meeting, the mention of **Beara**’s name had caused her to recall that the grey-haired man she had previously mentioned was actually **Beara**.<sup>4198</sup> The Trial Chamber recognises that Stojanović’s 92 *quater* statement was untested. However, the Trial Chamber is of the view that PW-168’s evidence and the Zvornik Brigade Duty Officer Notebook are corroborative of Stojanović’s evidence. The Trial Chamber is therefore satisfied that **Beara** was present at the Grbavci School in Orahovac at this time.

<sup>4190</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 126.

<sup>4191</sup> See *supra*, paras. 127, 138.

<sup>4192</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 128. The Prosecution claims that “Orovoc” was a misspelling of Orahovac. Prosecution Final Brief, para. 2244. The Trial Chamber is satisfied that the entry also concerns Orahovac.

<sup>4193</sup> PW-168, T. 15844–15846, 15853–15857 (closed session) (26 Sept 2007).

<sup>4194</sup> Although she did not give a time, Nada Stojanović told the OTP that she saw **Beara** in Orahovac on 14 July, standing near the entrance to the school yard. Nada Stojanović, Ex. 3D00511, “92 *quater* statement” (1 July 2002), pp. 39, 43–45.

<sup>4195</sup> Beara Final Brief, para. 415.

<sup>4196</sup> Nada Stojanović, Ex. 3D00511, “92 *quater* statement” (1 July 2002), pp. 27–28.

<sup>4197</sup> *Ibid.*, pp. 38–39.

<sup>4198</sup> *Ibid.*

1278. Sometime after 3 p.m. on that day,<sup>4199</sup> PW-104 was called to a briefing with **Beara** at the Standard Barracks.<sup>4200</sup> During the meeting **Beara** said: “We have a lot of prisoners and it is very hard for us to control them. They are at various locations in the Zvornik municipality. We have to get rid of them. I expect assistance from the municipality.”<sup>4201</sup> PW-104 interpreted this to mean that **Beara** needed the municipality’s help in burying the bodies.<sup>4202</sup> **Beara** also told him that this order came “from two presidents”, and that he was in command of the barracks and that PW-104 should obey his orders.<sup>4203</sup>

1279. Some time in the afternoon of 14 July,<sup>4204</sup> Stanišić, Commander of the 6th Battalion, received a call from Dragan Jokić, instructing him to notify **Beara**—whom Jokić said could be found around the Petkovci School—that **Beara** needed to report to the Standard Barracks.<sup>4205</sup> Following this call, between 6 and 7 p.m., Stanišić sent Marko Milošević, the Deputy Commander of the 6th Battalion, to deliver this message and Milošević met **Nikolić** at the crossroads 70 or 80 metres from the Petkovci School.<sup>4206</sup> Milošević delivered the message to **Beara** after **Nikolić** pointed him out.<sup>4207</sup> Milošević approached **Beara**, greeted him, and conveyed the message that he, **Beara**, should contact “the Brigade”.<sup>4208</sup> **Beara**, however, did not respond at all.<sup>4209</sup> The encounter with **Beara** lasted for about a minute or two.<sup>4210</sup> Stanišić subsequently notified the Zvornik Brigade

<sup>4199</sup> PW-104 could not remember the precise date or time of the meeting. However, he recalled receiving a telephone call advising him to come to the Standard Barracks. PW-104, T. 7941 (private session) (28 Feb 2007), T. 8011 (private session) (1 Mar 2007). The Zvornik Brigade Duty Officer Log indicates that someone was advised to call PW-104’s phone number sometime after 3.03 pm on 14 July 1995. PW-104, T. 7938–7939 (private session) (28 Feb 2007); Vinko Pandurević, T. 32406–32407 (private session) (3 Mar 2009). *See also* Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, p. 131. The same entry does not appear in the Duty Officer Logbook (Ex. 7DP00378, “Zvornik Brigade Duty Officer logbook, 12 February 1995 to 3 January 1996”).

<sup>4200</sup> PW-104, T. 7941 (28 Feb 2007), T. 8011 (private session), 8014–8015 (1 Mar 2007).

<sup>4201</sup> PW-104, T. 7942 (28 Feb 2007).

<sup>4202</sup> *Ibid.*, T. 7944 (28 Feb 2007), T. 8013 (1 Mar 2007).

<sup>4203</sup> *Ibid.*, T. 7942, 7944 (28 Feb 2007).

<sup>4204</sup> Milošević said that Stanišić told him about this second call from Jokić at around 4 or 5 p.m. Marko Milošević, T. 13302 (26 June 2007). Later in his testimony, Milošević said that the time was 3 p.m. *Ibid.*, T. 13336 (26 June 2007).

<sup>4205</sup> *Ibid.*, T. 13302–13303 (26 June 2007) (testifying that he was told to convey a message to **Beara** to report to the “brigade command”); Ostoja Stanišić, T. 11601 (16 May 2007) (stating that when he asked Jokić which “command” **Beara** was supposed to report to, Jokić said “Well, he knows well which command he’s supposed to report to”), *Ibid.*, T. 11604 (16 May 2007), T. 11703–11705, 11725–11726 (17 May 2007).

<sup>4206</sup> Ostoja Stanišić, T. 11604–11606 (16 May 2007); Marko Milošević, T. 13302–13304 (26 June 2007). Although Milošević did not specify the time when he met **Nikolić** and **Beara** at the school, Stanišić said that he sent Milošević between 6 and 7 p.m. Ostoja Stanišić, T. 11604–11606 (16 May 2007).

<sup>4207</sup> Marko Milošević, T. 13303 (26 June 2007). *See also* Ostoja Stanišić, T. 11604–11606 (16 May 2007) (testifying that Marko Milošević told him that he met **Beara** at the intersection of the small road leading to the old Petkovci school and the main Zvornik-Sapna road. At this time **Beara** was in the company of **Drago Nikolić**, some unknown troops as well as military policemen).

<sup>4208</sup> Marko Milošević, T. 13303 (26 June 2007).

<sup>4209</sup> *Ibid.*, T. 13305 (26 June 2007).

<sup>4210</sup> *Ibid.*, T. 13319 (26 June 2007).

Duty Operations Officer that the message had been relayed to **Beara**.<sup>4211</sup> Two days later, Stanišić told Obrenović that “**Beara** had brought prisoners to the school in Petkovci, and the last group that was brought there had been executed there by that school and the bodies remained lying around there”.<sup>4212</sup> Based on this evidence the Trial Chamber finds that **Beara** was present at Petkovci on 14 July, overseeing and coordinating the detention, transport, execution and burial of the prisoners detained there.

1280. The Zvornik Brigade Duty Officer Notebook contains an entry made by the Duty Officer Jokić some time after 8 p.m.<sup>4213</sup> The entry reads: “Beara to call 155”,<sup>4214</sup> a number associated with the operations office of the Main Staff,<sup>4215</sup> and “from Beara–Drago to report Mane – Đukići 0900 Beara is coming”.<sup>4216</sup> The Trial Chamber is satisfied that **Beara** was coming to the Standard Barracks the next morning. On 14 July at 9:02 p.m., Jokić called at the Bratunac Brigade Headquarters to speak to **Beara**.<sup>4217</sup> Jokić said that it was urgent for **Beara** to call 155,<sup>4218</sup> that “[t]here are big problems. Well, with the people, I mean, with the parcel.”<sup>4219</sup> Jokić further said, “Drago is nowhere around”.<sup>4220</sup> When **Beara** asked Jokić, “Why number 155. Where is that?”, Jokić responded, “Well I can’t tell you on this line, you know. You have it over there at the signalmen [...]”.<sup>4221</sup>

<sup>4211</sup> Ostoja Stanišić, T. 11605 (16 May 2007). Although Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, does not contain a “message conveyed” entry under the heading of 14 July 1995, the Trial Chamber is satisfied that Milošević delivered the message to **Beara**.

<sup>4212</sup> PW-168, T. 1597–15898 (closed session) (27 Sept 2007). Although Stanišić does not directly confirm that this was said during his evidence, he acknowledges that he was made aware that the prisoners had been brought to the school in Petkovci by **Beara** and that prisoners’ bodies had been left in the area. See Ostoja Stanišić T. 11601, 11604–11605, 11610–11611 (16 May 2007).

<sup>4213</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 133. See also Kathryn Barr, T. 13181 (25 June 2007). See also Ex. P02846, “Kathryn Barr Handwriting Analysis Report, 16 July 2003”; Ex. P02847, “Kathryn Barr Handwriting Analysis Report, 22 August 2003”. See also *supra*, para. 82.

<sup>4214</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 133. The Prosecution submits that based on the entries on the preceding pages, this entry must have been made after 8 p.m. on 14 July. Prosecution Final Brief, para. 2249, fn. 4971. The Trial Chamber is satisfied that the entry was made at around that time.

<sup>4215</sup> Manojlo Milovanović, T. 12209, 12215, 12272–12274 (30 May 2007) (testifying that the extension number of Milovanović’s office was “155”; and that this extension number was also connected with the Operations Centre of the Administration for Operations and Training and, according to Milovanović, became a “public phone” in the Main Staff very soon after it was connected). See also *infra*, para. 1624.

<sup>4216</sup> Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, p. 134. The Trial Chamber concludes that “Mane Đukići” was Mendeljev Đurić, Deputy Chief of the Zvornik CJB. See Mendeljev Đurić, T. 10892 (3 May 2007); Slaviša Simić, T. 27493 (28 Oct 2008).

<sup>4217</sup> Ex. P01164a, “Intercept, 14 July 1995, 2102 hours.” The conversation initially took place between Jokić and the Bratunac Brigade switchboard operator, who then put **Beara** on the line.

<sup>4218</sup> *Ibid* (Jokić said to **Beara**, “We were together Colonel, Sir. Number 155 called you and asked you to call him urgently”; “Number 155. That’s I mean, the higher house, you go ahead and call them, you have, so I don’t speak this”; “What? Call up there number 155 in the higher house and that’s it. OK boss”).

<sup>4219</sup> *Ibid*.

<sup>4220</sup> *Ibid*.

<sup>4221</sup> *Ibid*.

d. 15 July 1995

1281. On the morning of 15 July, at 9:52 a.m., **Beara** “was looking for General Živanović, but he was not there. He said he was to call him at ext. 139”.<sup>4222</sup> 139 was **Nikolić’s** extension at the Standard Barracks.<sup>4223</sup> A few minutes later, **Beara** spoke with Živanović.<sup>4224</sup> **Beara** stated that he “informed the commander about it, Furtula didn’t send Lukić’s intervention platoon”.<sup>4225</sup> **Beara** went on to say that Furtula ignored a “commander’s order”.<sup>4226</sup> **Beara** requested half of the soldiers of Lukić’s platoon but Živanović responded that he could not give such an order any longer because he was no longer the Drina Corps Commander.<sup>4227</sup> Živanović referred **Beara** to extension 385 at Zlatar,<sup>4228</sup> which was the extension of Krstić.<sup>4229</sup>

1282. At 10 a.m. on 15 July, **Beara** called and spoke to Krstić,<sup>4230</sup> who was at that time at the Drina Corps IKM.<sup>4231</sup> This intercept reads (B = Beara/ K = Krstić):

B: General, Furtula didn’t carry out the boss’s order.

K: Listen, he ordered him to lead out a tank, not a train.

B: But I need 30 men just like it was ordered.

K: Take them from Nastić or Blagojević, I can’t pull anybody out of here for you.

B: But I don’t have any here. I need them today and I’ll give them back tonight. Krle, you have to understand. I can’t explain it to you like this.

K: I’ll disturb everything on his axis if I pull them out, and a lot depends on him.

B: I can’t do anything without 15 to 30 men with Boban Inđić.

K: Ljubo, this/line/is not secure.

B: I know, I know.

K: I’ll see what I can do, but I’ll disturb a lot. Check down with Nastić and Blagojević.

B: But I don’t have any. If I did, I wouldn’t still be asking for the third day.

K: Check with Blagojević, take his Red Berets.

<sup>4222</sup> Ex. P01177a, “Intercept, 15 July 1995, 09:52 hours”. See also Dragan Todorović, T. 14029 (21 Aug 2007)

<sup>4223</sup> Vinko Pandurević, T. 32183–32184 (26 Feb 2009) (testifying that **Drago Nikolić’s** extension was 139). PW-157 testified in *Krstić* that the participant in this intercepted conversation was **Beara**, mainly because **Beara** introduced himself to the exchange and PW-157 could also have recognised **Beara’s** voice. PW-157 believed that this conversation was on 15 July 1995 by counting the number of days from this conversation to the next date. PW-157, Ex. P02439, “confidential - 92 ter transcript”, KT. 4544 (closed session) (22 June 2000); PW-157, T. 7220–7221, 7163, 7170, 7195, 7197 (9 Feb 2007).

<sup>4224</sup> Ex. P01178a, “Intercept, 15 July 1995, 09:54 hours”. See also PW-157, T. 7171 (9 Feb 2007) (testifying that he determined that **Beara** was a participant by voice recognition).

<sup>4225</sup> Ex. P01178a, “Intercept, 15 July 1995, 09:54 hours”.

<sup>4226</sup> *Ibid.* Furtula was Lieutenant Colonel Radomir Furtula who commanded the 5th Podrinje Brigade.

<sup>4227</sup> *Ibid.*

<sup>4228</sup> *Ibid.*

<sup>4229</sup> Vinko Pandurević, T. 32188 (26 Feb 2009); Milenko Jevđević, T. 29828 (16 Dec 2008).

<sup>4230</sup> Ex. P01179(a)(b), “Intercept, 15 July 1995, 10:00 hours” and “Intercept, 15 July 1995, 09:55 hours”; Ex. P01179(c), “Intercept, 15 July 1995, 10:00 hours”; Ex. P01179(k)(l), “Intercept, 15 July 1995, 09:57 hours” (the intercept operator heard **Beara** introduce himself and ask if Krstić was there).

<sup>4231</sup> Vinko Pandurević, T. 30940–30941 (30 Jan 2009), T. 30947–30948 (2 Feb 2009); Milenko Jevđević, T. 29620 (12 Dec 2008).



B: They're not there, only four of them are still there. They took off, fuck 'em, they're not there anymore.

K: I'll see what I can do.

B: Check it out and have them go to Drago's.

K: I can't guarantee anything.

B: Krle, I don't know what to do anymore.

K: Ljubo, then take those MUP guys from up there.

B: No, they won't do anything. I talked to them and there's no other solution but for those 15 to 30 men with Indić that were supposed to arrive on the 13th but didn't.

K: Ljubo, you have to understand me, you guys fucked me up so much.

B: I understand, but you have to understand me too, had this been done then, we wouldn't be arguing over it now.

K: Fuck it, now I'll be the one to blame.

B: I don't know what to do. I mean it Krle. There are still 3,500 "parcels" that I have to distribute and I have no solution.

K: Fuck it, I'll see what I can do.

At this time, there were approximately 1,000 prisoners being held at the Ročević School, and 1,000–2,000 at the Kula School and the Pilica Culture Centre in Pilica, who were still to be executed.<sup>4232</sup> The only inference that the Trial Chamber can draw from this conversation is that

**Beara** was organising troops to assist in relation to the killing operation in these areas.

1283. At around 11 a.m. on 15 July, at the Standard Barracks, Dragan Jokić stopped Obrenović and informed him that **Beara** and **Popović** had brought in prisoners "from up there Bratunac and Srebrenica, in order to shoot them there".<sup>4233</sup> Jokić also told Obrenović that "there were huge problems with guarding and burying the prisoners", and that **Beara** and **Popović** "were taking people wherever they wanted".<sup>4234</sup>

1284. Sometime after 6:30 p.m., **Beara** and **Popović** met at the Standard Barracks.<sup>4235</sup>

e. 16–17 July 1995

1285. The Zvornik Brigade Duty Officer Notebook has an entry on 16 July 1995, which reads: "Beara to call Panorama 155 at 09:30 hours".<sup>4236</sup> At 11:11 a.m. on 16 July, a conversation was intercepted, which involved a participant X, who was Milorad Trbić, **Beara** and **Cerović**,<sup>4237</sup>

<sup>4232</sup> See *supra*, paras. 504–550.

<sup>4233</sup> PW-168, T. 16517–16518 (closed session) (17 Oct 2007). See also *ibid.*, T. 15871 (closed session) (26 Sept 2007).

<sup>4234</sup> *Ibid.*, T. 15871 (closed session) (26 Sept 2007). See also *ibid.*, T. 16517–16518 (closed session) (17 Oct 2007).

<sup>4235</sup> PW-165, T. 9961–9965 (4 Apr 2007).

<sup>4236</sup> Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995", p. 145.

<sup>4237</sup> Ex. P01187a, "Intercept, 16 July, 11:11 hours".

Assistant Commander for Morale, Legal and Religious Affairs of the Drina Corps, who was serving as duty officer at Drina Corps headquarters in Vlasenica at the time.<sup>4238</sup> The intercept reads (C=Cerović, X=Trbić, B=Beara):

C: Hey, listen to me. Triage has to be done today...? ...taken prisoners.  
 X: Yes.  
 C: ...  
 X. To do triage.  
 C: Triage has to be done on the prisoners.  
 X. Colonel Beara is right here by me.  
 C: Give me Beara.  
 X: Go ahead.  
 B: Yes?  
 C: Ljubo.  
 B: I hear you.  
 C: Hello! Cerović speaking.  
 B: I hear you.  
 C: Trkulja was here with me just now and he was looking for you. I don't know.  
 B: Yes.  
 C: So, he told me...? ...he got instructions from above.  
 B: Yes.  
 C: To do triage on those (he's interrupted).  
 B: I don't want to talk about it on the phone.  
 C: OK.  
 B: OK, take care.  
 C: Cheers.<sup>4239</sup>

**Beara** contends that “triage” used in this conversation refers to “the type of selection customarily utilised when discussing the sick and wounded” and that the association of this term with execution “is not the most reasonable conclusion from the evidence”.<sup>4240</sup> At around this time, however, there were 1,000–2,000 Bosnian Muslim prisoners being held at the Kula School in Pilica and the Pilica Cultural Centre.<sup>4241</sup> There is no evidence to support that there was any kind of legitimate medical triage being carried out on these Bosnian Muslim prisoners in Zvornik.<sup>4242</sup> The Trial Chamber is thus satisfied that this conversation was a coded and cryptic reference to the killing operation.

<sup>4238</sup> Ex. P01187a, “Intercept, 16 July, 11:11 hours”.

<sup>4239</sup> Ex. P01187a, “Intercept, 16 July 1995, 11:11 hours”.

<sup>4240</sup> Beara Final Brief, paras. 310–313 (quotation at para. 310).

<sup>4241</sup> *See supra*, paras. 525–550.

<sup>4242</sup> In this regard, referring to Ex. P01200a, “Intercept, 16 July 1995, 19:48 hours” (in which a certain Đurđić and a certain Jelena talked about organising the transportation of the Bosnian Muslim wounded from Bratunac and Potočari. Đurđić stated that “[...] we agreed there today for UNPROFOR/to transport/them from Potočari to

1286. The conversation between **Beara** and Cerović was nearly simultaneously recorded in the Zvornik Brigade duty officer notebook on 16 July at 11:15 a.m., which reads: “It was reported from Zlatar that a triage of wounded and prisoners must be carried out. It was reported to (**Beara**)”.<sup>4243</sup> On that day, Trbić was the Zvornik Brigade Duty Officer.<sup>4244</sup>

1287. At around noon on 16 July, **Beara** and **Popović** arrived at the Kula School.<sup>4245</sup> A van containing about ten or twelve soldiers arrived subsequently and the van was followed by an empty bus.<sup>4246</sup>

1288. Early in the morning of 17 July 1995, Pandurević spoke with Obrenović.<sup>4247</sup> Obrenović said that Trbić, who was the duty officer, told him that **Beara** had been in the area of Pilica and Ročević and “was in charge of that business”—the accommodation and execution of the prisoners in the schools in Pilica and Ročević.<sup>4248</sup>

(iii) The Žepa Enclave

1289. A few days before the fall of Grahovo and Glamoč on 27 and 28 July 1995 **Beara** visited and stayed in the 2nd Krajina Corps zone of responsibility, for one day.<sup>4249</sup>

1290. During the Žepa operation, which began on 14 July and lasted for 15 to 16 days,<sup>4250</sup> only one witness, PW-109, testified that he saw **Beara** in person. PW-109 stated that he saw **Beara** only once during the Žepa operation<sup>4251</sup> “at a UN checkpoint” in Žepa towards the end of the operation.<sup>4252</sup>

1291. Three intercept conversations involving **Beara** were transcribed on 1 August 1995. On 1 August at 10:02 a.m., first “Stevo”, who identifies himself as **Beara**’s subordinate, and then

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Bratunac to a designated place and then from there to take the shortest road to Ljubovija along the right bank. And where will the selection and triage be done to see who goes to Belgrade and who to Tuzla [...]”, **Beara** argues that the word triage on Ex. P01187a “relates to the type of selection customarily utilized when discussing the sick and wounded” and thus the Prosecution’s submission that this word relates to execution is “not the most reasonable conclusion.”, *Beara* Final Brief, para. 310. In the Trial Chamber’s view, these two intercepted communications relate to different matters and locations and it cannot be concluded that by analogy the content in Ex. P01187a should be interpreted in the same way as Ex. P01200a. *See also infra*, para. 1793.

<sup>4243</sup> Ex. P00377, “Zvornik Brigade Duty Officer Log Book, 29 May 1995 to 27 July 1995”, p. 146. Zlatar is the Drina Corps Command.

<sup>4244</sup> *See* Ex. P01204a, “Intercept, 16 July 1995, 22:33 hours”.

<sup>4245</sup> Slavko Perić, T. 11414 (11 May 2007).

<sup>4246</sup> *Ibid.*, T. 11409–11410 (11 May 2007).

<sup>4247</sup> Vinko Pandurević, T. 31083–31084 (9 Feb 2009).

<sup>4248</sup> *Ibid.*

<sup>4249</sup> Mikajlo Mitrović, T. 25057–25058, 25065 (2 Sept 2008).

<sup>4250</sup> PW-109, T. 14601 (closed session) (31 Aug 2007).

<sup>4251</sup> *Ibid.*, T. 14603–14604 (closed session) (31 Aug 2007).

**Beara**, spoke to Jevtić, a Serbian army (“VJ”) officer.<sup>4253</sup> Jevtić told Stevo and **Beara** that the VJ and the Serbian MUP had caught Bosnian Muslim men, and handed them over to the RS.<sup>4254</sup> **Beara** told Jevtić that he would go to see him, adding that “we’ll try to do something” but he did not “want to talk about it on the phone”.<sup>4255</sup> At 10:45 p.m. on that evening, **Beara** spoke to Stevo.<sup>4256</sup> **Beara** stated that he was in Serbia with regard to “parcels”.<sup>4257</sup> **Beara** said that representatives of ICRC and UNHCR filmed a “pile of parcels” to be shown on TV. **Beara** and “Stevo” discussed the difficulties of preventing Muslims from fleeing across the river. **Beara** remarked that there were “no plans to kill them, [...] but to exchange them”.<sup>4258</sup> About 20 minutes later, “Stevo” again spoke with **Beara**, stating that he “just called the boss”.<sup>4259</sup> Stevo told **Beara** about drafting a request to the Serbian authorities. **Beara** responded that the Serbian authorities said he came to Serbia for nothing because “the order” regarding the Bosnian Muslims had come “from the highest”.<sup>4260</sup>

1292. On 2 August 1995, at 1 p.m., **Popović** informed Krstić that, since their earlier conversation, he had received a call from **Beara** and said that **Beara** had reported to **Miletić** that “there are about 500–600 of them over there”.<sup>4261</sup>

1293. On 16 August 1995, **Beara** sent a report to the RS military court and prosecutors, informing them that a VRS investigation team would interrogate POWs from the “Baliže enclave of Žepa” held in Serbia in order to document crimes against humanity and war crimes.<sup>4262</sup> This documentation would, **Beara** explains, enable the team to request a handover of the POWs to the VRS.<sup>4263</sup>

(iv) Reburial Operation

1294. **Beara**’s involvement in the reburial operation was addressed in both the Prosecution’s Pre-Trial Brief and Final Brief.<sup>4264</sup> The Prosecution conceded, in response to the Trial Chamber’s

<sup>4252</sup> PW-109, T. 14604 (closed session) (31 Aug 2007). PW-109 knew **Beara** at the time. *Ibid.*, T. 14603 (closed session) (31 Aug 2007). **Beara** challenged PW-109’s testimony because it was not corroborated. *Beara* Closing Arguments, T. 34454–34455 (8 Sept 2009). The Trial Chamber accepts PW-109’s account as honest and credible.

<sup>4253</sup> Ex. P01378a (confidential). *See supra*, para. 735.

<sup>4254</sup> Ex. P01378a (confidential).

<sup>4255</sup> *Ibid.*

<sup>4256</sup> Ex. P01380a (confidential). *See supra*, para. 735.

<sup>4257</sup> Ex. P01380a (confidential).

<sup>4258</sup> *Ibid.*

<sup>4259</sup> Ex. P01381a (confidential). *See supra*, para. 735.

<sup>4260</sup> Ex. P01381a (confidential) (**Beara** decides that he will send a request the following day to have the Serbian authorities provide him with a list of those caught and turn those individuals over to the VRS, with a UNPROFOR escort if necessary, in order to exchange for captured Serbs).

<sup>4261</sup> Ex. P01395g, “Intercept, 2 August 1995, 13:00 hours”. *See supra*, paras. 735, 1157.

<sup>4262</sup> Ex. P00539, “VRS Main Staff Security Administration Report, signed by Ljubiša Beara, 16 August 1995”.

<sup>4263</sup> *Ibid.*

<sup>4264</sup> Prosecution Pre-Trial Brief, para. 302; Prosecution Final Brief, paras. 2282–2283.

request for clarification during the closing arguments with respect to **Beara**'s involvement in the reburial operation, that there was nothing in the Indictment suggesting that **Beara** had participated in the reburials and submitted that he therefore "cannot be held responsible under the Indictment for that".<sup>4265</sup> The Trial Chamber will therefore not consider any evidence adduced during the trial with respect to **Beara**'s involvement in the reburial operation.<sup>4266</sup>

(d) Findings

1295. While specific references are provided below in relation to the findings, the Trial Chamber notes that these findings are based upon all the relevant evidence.

(i) Participation in Two Joint Criminal Enterprises

1296. The centrepiece of the Prosecution's case against **Beara** is his commission of crimes through participation in two joint criminal enterprises, as outlined in the Indictment. The Trial Chamber will therefore begin with an examination of **Beara**'s alleged participation in these joint criminal enterprises.

a. The Joint Criminal Enterprise to Murder

i. First Category Joint Criminal Enterprise

1297. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>4267</sup> The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Chamber will now turn to the third element: participation of the accused in the common purpose.

1298. The Trial Chamber recalls that in order for **Beara** to incur liability pursuant to the first category of joint criminal enterprise, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Beara** must have significantly contributed to the common purpose and have shared with other members of the JCE to Murder the intent to carry out the common purpose.

<sup>4265</sup> Prosecution Closing Arguments, T. 34287 (4 Sept 2009), T. 34321 (7 Sept 2009).

<sup>4266</sup> *See ibid.*, T. 34321 (7 Sept 2009).

<sup>4267</sup> *See supra*, para. 1072.

1299. By the morning of 12 July, the plan to murder had been formulated and the Security Branch of the VRS had been tasked with a central coordinating role in the implementation of that plan.<sup>4268</sup> The Trial Chamber notes there is no direct evidence before it of **Beara**'s participation in the murder operation prior to 13 July.<sup>4269</sup> However, there is clear evidence before the Trial Chamber that as of the morning of 12 July, **Popović**, **Beara**'s subordinate in the Security Branch, was aware of the plan to murder as were Momir Nikolić and Kosorić.<sup>4270</sup> In addition, the Trial Chamber has found that the orders with respect to this operation were given by Mladić.<sup>4271</sup> In these circumstances, and given his responsibilities as Chief of Security for the VRS Main Staff, the subordinate relationship of **Popović** to him and the role played by members of the Security Branch from the beginning, the Trial Chamber is satisfied that by the morning of 12 July, **Beara** was aware of and implicated in the plan to murder.<sup>4272</sup> The evidence is clear that from that point onward, **Beara** played a key role in orchestrating the murder operation by planning, coordinating and overseeing the detention, transportation, execution and burial of the able-bodied Bosnian Muslim males.<sup>4273</sup>

1300. The first evidenced act on the part of **Beara** illustrates well the pivotal and high level role he played in the murder operation. He arrives on 13 July at the offices of the President of the Bratunac SDS with orders "from the top" to kill all the Bosnian Muslim males housed in and around Bratunac.<sup>4274</sup> His appearance there came shortly after Deronjić had been discussing the prisoners with Karadžić and a call was to be made on that very subject between Karadžić and Mladić.<sup>4275</sup> From there, **Beara** makes multiple contributions to the common plan, guiding and directing implementation at all phases. His reach extends across various components of the VRS and to relevant civilian authorities.<sup>4276</sup> He is implicated in identifying locations, in securing personnel and equipment and in overseeing the effective execution of the plan at the individual killing sites.<sup>4277</sup> As tellingly noted in the Zvornik Brigade Duty Officers notebook: "Beara is coming [in the following] order to Orovc [namely, Orahovac] Petkovci Ročević Pilica".<sup>4278</sup> He interacts and meets with other

<sup>4268</sup> See *supra*, paras. 1051–1072.

<sup>4269</sup> See *supra*, paras. 1251–1256.

<sup>4270</sup> See *supra*, paras. 1051–1052.

<sup>4271</sup> See *supra*, paras. 1051–1072.

<sup>4272</sup> See *supra*, paras. 1204–1206.

<sup>4273</sup> See *supra*, paras. 1253–1258, 1262–1268, 1271.

<sup>4274</sup> See *supra*, para. 1264.

<sup>4275</sup> *Ibid.*

<sup>4276</sup> See *supra*, para. 1271.

<sup>4277</sup> *Ibid.*

<sup>4278</sup> Ex. P00377, "Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995", p. 128. See *supra*, para. 1272.

participants in the killing operation including **Popović** and Drago **Nikolić**,<sup>4279</sup> and he is omnipresent in the Zvornik area—the scene of mass killings.<sup>4280</sup>

1301. Throughout the critical period of 13–16 July, the evidence demonstrates **Beara**'s overarching responsibility for and participation in the killing operation carried out in pursuance of the common purpose to murder the able-bodied Bosnian Muslim males.<sup>4281</sup> His contribution to the common purpose cannot be classified as anything other than significant and by his actions and words there can be no doubt that he shared the intent to murder on a massive scale.

1302. Based on the abundant evidence before it, the Trial Chamber is satisfied beyond reasonable doubt that **Beara** made a significant contribution to the JCE to Murder and he shared the intent to carry out the common purpose. The Trial Chamber therefore finds that **Beara** was a participant in the JCE to Murder.

#### ii. Third Category Joint Criminal Enterprise

1303. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Beara** that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Murder.<sup>4282</sup> The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.<sup>4283</sup> The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.<sup>4284</sup>

1304. The Trial Chamber recalls its finding above that **Beara** was an active participant in the JCE to Murder. The operation occurred in a time of chaos and involved soldiers with personal revenge motivations.<sup>4285</sup> A huge number of men were transported and detained with intent to murder. The Trial Chamber finds that it was foreseeable to **Beara** that the “opportunistic” killings would occur in addition to the large-scale executions and those “opportunistic” killings were a probable consequence of the JCE to Murder. When he participated in the JCE to Murder, **Beara** willingly took this risk.

<sup>4279</sup> See *supra*, para. 1272.

<sup>4280</sup> See *supra*, paras. 1272–1288. There were four locations where large-scale executions took place in the Zvornik area between 14 and 16 July 1995 (Orahovac, Petkovci, Ročević/Kozluk and Pilica). See *supra*, paras. 1227, 1249, 1266.

<sup>4281</sup> See *supra*, paras. 1286–1287.

<sup>4282</sup> Indictment, para. 31. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

<sup>4283</sup> See *supra*, Chapter III, Sections E.7(b), F.6(b)(v), G.3(b).

<sup>4284</sup> See *supra*, Chapter III, Section E.6(b); see Judge Kwon's Dissenting Opinion, *infra*, paras. 40–46.

<sup>4285</sup> See *supra*, Chapter V, Section B.1.

b. The Joint Criminal Enterprise to Forcibly Remove

1305. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>4286</sup>

1306. Directive 7 and its objective, namely, to “create an unbearable situation of total insecurity, with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”,<sup>4287</sup> was implemented through two orders known as *Krivaja-95*<sup>4288</sup> issued on 2 July 1995 by Živanović. These orders refer expressly to Directives 7 and 7/1 (which was issued on 31 March 1995 in the name of Mladić). The *Krivaja-95* combat order specifically instructs the Drina Corps Brigades “by a surprise attack, to separate and reduce in size the Srebrenica and Žepa enclaves, to improve the tactical position of the forces in the depth of the area, and to create conditions for the elimination of the enclaves”.<sup>4289</sup> A copy of the combat order was sent to the Main Staff on 2 July 1995. Considering his position as Chief of Security of the VRS Main Staff, the Trial Chamber finds that **Beara** was aware of Directives 7 and 7/1 and “*Krivaja-95*”.

1307. The only evidence which places **Beara** physically in Potočari is the interview of **Borovčanin** who stated that he saw **Beara** “in the area towards Potočari” on 12 July.<sup>4290</sup> This evidence, on its own, is insufficient to infer that **Beara** knew about the forcible transfer of the Bosnian Muslim women, children and elderly from Srebrenica. However, throughout the day on 12 July, **Popović**, **Beara**’s subordinate in the Security Branch, knew that it was intended that all the Bosnian Muslim women and children then in Potočari were to be forcibly transferred from Srebrenica.<sup>4291</sup> Further, on 13 July, the VRS soldiers captured five DutchBat officers who were trying to escort convoys of the Bosnian Muslim women, children and elderly from Potočari to ABiH-held territory, and detained the officers in a school building close to the Nova Kasaba Football Field.<sup>4292</sup> When Egbers complained about the detention to Malinić, he was informed that the DutchBat officers could not leave before **Beara**’s return, as their safety could not be guaranteed.<sup>4293</sup> Moreover, during the conversation with Čelanović about the transportation of the prisoners on the vehicles out of Bratunac that evening, **Beara** stated that they would have to wait

<sup>4286</sup> See *supra*, Chapter V, Section B.2.

<sup>4287</sup> See *supra*, para. 199.

<sup>4288</sup> Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”.

<sup>4289</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, para. 4.

<sup>4290</sup> See *supra*, para. 1255.

<sup>4291</sup> See *supra*, paras. 1099, 1166.

<sup>4292</sup> See *supra*, para. 1260.

<sup>4293</sup> *Ibid.*



until the other vehicles that had transported the women and children had returned.<sup>4294</sup> In these combined circumstances, the Trial Chamber therefore finds that **Beara** knew that it was intended that all the Bosnian Muslim woman, children and elderly in Potočari were to be forcibly transferred from the Srebrenica enclave.

1308. However, in order to establish beyond reasonable doubt that **Beara** was a member of the JCE to Forcibly Remove the Bosnian Muslim women, children and elderly it must be demonstrated that he made a significant contribution to the execution of the plan to forcibly remove. While there is evidence of **Beara**'s awareness of the operation, there is a paucity of evidence concerning any action taken by him in support of this goal. The Trial Chamber is therefore of the view that the evidence is insufficient to establish that **Beara** made a *significant* contribution to the JCE, and thus his actions in relation to the population in Srebrenica do not indicate that he was a participant in the JCE to Forcibly Remove.<sup>4295</sup>

1309. Further, the Trial Chamber finds that **Beara** did not contribute to the forcible transfer of the Bosnian Muslim population of Žepa. The only evidence of his involvement in the Žepa area consists of some intercepts transcribed between 1 and 2 August 1995 and a report dated 16 August 1995, in which he is making efforts to bring back to the RS the Bosnian Muslim men from Žepa who had crossed the Drina River to Serbia.<sup>4296</sup> The Trial Chamber considers this evidence, in and of itself, insufficient to establish that **Beara** made a significant contribution to the JCE to Forcibly Remove with respect to Žepa. Although, as stated above, **Beara** knew the full extent of the plan to forcibly remove, *i.e.* that the plan involved the Bosnian Muslim population of Žepa as well as Srebrenica, there is insufficient evidence to establish that he significantly contributed to either aspect of the operation. Therefore, it has not been established that **Beara** was a participant in the JCE to Forcibly Remove.

(ii) Count 1: Genocide

1310. The Trial Chamber has found that **Beara** was a participant in the JCE to Murder.<sup>4297</sup> He therefore committed the underlying act of killing members of the group, and through this killing, inflicted serious bodily and mental harm on the families of the victims and the survivors of the executions, as articulated in Article 4(2)(a) and (b) of the Statute. The Trial Chamber will now focus upon whether **Beara** carried out these underlying acts with genocidal intent.

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<sup>4294</sup> See *supra*, para. 1260.

<sup>4295</sup> See *supra*, para. 1027.

<sup>4296</sup> See *supra*, paras. 1291–1293.

<sup>4297</sup> See *supra*, para. 1302.

1311. There is no direct explicit evidence that **Beara** had the requisite specific intent for genocide. Therefore, the Trial Chamber must look at all of the surrounding circumstances, including **Beara**'s words and acts, as well as the inferences to be drawn, to determine whether genocidal intent has been established.

1312. The Prosecution submitted that **Beara**'s genocidal intent is evidenced by the existence of a genocidal plan and his central involvement in it.<sup>4298</sup> The Trial Chamber has found below that **Beara** acted with the specific intent to discriminate on political, racial or religious grounds.<sup>4299</sup> However, a finding that **Beara** participated in the killing operation with the specific intent to discriminate is not on its own sufficient to establish the specific intent for genocide, namely the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".<sup>4300</sup> The Trial Chamber recalls that the words "as such" here underscore that something more than discriminatory intent is required for genocide, that the intent must be "to destroy the group as a separate and distinct entity" and that the ultimate victim of the crime of genocide is the group.<sup>4301</sup> Similar to **Popović**, his use of derogatory language such as the term "balija" is in no way determinative of his alleged specific intent to commit genocide, although it is relevant to it.<sup>4302</sup>

1313. Far more telling are the inferences which can be drawn from his detailed knowledge of the killing operation itself and **Beara**'s high level and far reaching participation in it. As the most senior officer of the Security Branch—the entity charged with a central directing role—he had perhaps the clearest overall picture of the massive scale and scope of the killing operation. Further, from his walk through Bratunac on the night of 13 July, his personal visits to the various execution sights and the extensive logistical challenges he faced throughout,<sup>4303</sup> he had a very personal view of the staggering number of victims destined for execution.

1314. Steeped in knowledge, **Beara** became a driving force behind the murder enterprise. His vigorous efforts to organise locations and sites, recruit personnel, secure equipment and oversee executions<sup>4304</sup> all evidence his grim determination to kill as many as possible as quickly as possible. His encounters with Deronjić on the night of 13 July provide a chilling illustration of a mind set on destruction.<sup>4305</sup> He announces an intent to "kill all" the detained men, and without pause to

<sup>4298</sup> Prosecution Final Brief, paras. 2303–2303.

<sup>4299</sup> See *infra*, para. 1331.

<sup>4300</sup> Art. 4(2) of the Statute.

<sup>4301</sup> See *supra*, para. 821.

<sup>4302</sup> **Beara** is intercepted talking with Lučić, the Deputy Commander of the Military Police Battalion of the 65th Protection Regiment that "400 Balijas have shown up in Konjević Polje". Ex. P01130a, "Intercept, 13 July 1995, 10:09 a.m." See *supra*, para. 1257.

<sup>4303</sup> See *supra*, paras. 407, 1256–1257, 1260–1262, 1264, 1272–1275, 1278, 1281–1283.

<sup>4304</sup> See *supra*, para. 1271.

<sup>4305</sup> See *supra*, para. 1264.

consider or comment upon the horrific nature of his “orders” he launches into a series of heated exchanges about the best location for this reprehensible undertaking.<sup>4306</sup>

1315. **Beara**’s own words provide further evidence of his intent. He stated on 13 July:

Shove them all on the playground, who gives a fuck about them.

You mean they are doing it amongst themselves [killing themselves]? Well, excellent. Just let them continue. Fuck it.<sup>4307</sup>

**Beara** further stated on 14 July:

We have a lot of prisoners and it is very hard for us to control them. They are at various locations in the Zvornik municipality. We have to get rid of them. I expect some assistance from the municipality.<sup>4308</sup>

1316. And there are his striking words to Krstić as he implores him for more men to carry out this nefarious crime: “I don’t know what to do. I mean it Krle. There are still 3500 ‘parcels’ that I have to distribute and I have no solution.”<sup>4309</sup> These words capture clearly and succinctly the state of mind of a man bent on destroying a group by killing all the members of it within his reach.

1317. From his knowledge, his actions and his words, the Trial Chamber is satisfied beyond reasonable doubt of **Beara**’s genocidal intent.

1318. The factors which the Trial Chamber finds to be decisive in finding that **Beara** had the requisite specific intent for genocide are the scale and scope of the killing operation carried out with his knowledge, pursuant to his instructions and under his supervision, his extensive and forceful participation in all components of the killing operation, his demonstrated determination to kill as many as possible and his vital contribution in overcoming hurdles and challenges to effective implementation. Further, the systematic, exclusive targeting of Bosnian Muslims, the repetition by **Beara** of destructive and discriminatory acts and his words all evidence his genocidal intent.<sup>4310</sup> Further, his participation in these killings with knowledge that they would contribute to the destruction of the group also demonstrates his genocidal intent. Accordingly, the Trial Chamber is satisfied beyond reasonable doubt that **Beara** participated in the JCE to Murder with genocidal intent. He is therefore guilty of genocide.

<sup>4306</sup> See *supra*, para. 1264.

<sup>4307</sup> Ex. P01130a, “Intercept, 13 July 1995, 10:09 a.m.”

<sup>4308</sup> PW-104, T. 7942 (28 Feb 2007); see also *supra*, para. 1278.

<sup>4309</sup> See *supra*, para. 1282.

<sup>4310</sup> *Jelisić* Appeal Judgement, para. 47.

1319. The Prosecution alleges that **Beara** “ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4311</sup> The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of the Bosnian Muslim males from Srebrenica, with genocidal intent. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of genocide through his participation in the JCE to Murder with genocidal intent.

(iii) Count 2: Conspiracy to Commit Genocide

1320. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide;<sup>4312</sup> and to be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.<sup>4313</sup>

1321. As outlined above, **Beara** consciously cooperated with other members of the JCE to Murder, shared in the common purpose and worked towards the realisation of the common goal. The Trial Chamber has also found that **Beara** had the specific intent for genocide.

1322. The *actus reus* of the criminal act of conspiracy to commit genocide is the act of entering into an agreement to commit genocide.<sup>4314</sup> Conspiracy to commit genocide can be inferred from coordinated actions by individuals who have a common purpose and are acting within a unified framework.<sup>4315</sup> Evidence has already been examined of the coordinated actions and unified framework of those who participated in the operation to murder the able-bodied Bosnian Muslim males from Srebrenica in July 1995, including **Beara**.<sup>4316</sup> Based upon this evidence, the Trial Chamber concludes that **Beara** entered into an agreement to commit genocide, and he himself possessed specific intent to commit genocide. He is therefore criminally responsible for conspiracy to commit genocide.<sup>4317</sup>

<sup>4311</sup> Indictment, para. 88. *See also* Prosecution Final Brief, para. 2301.

<sup>4312</sup> *See supra*, para. 868.

<sup>4313</sup> *Ibid.*

<sup>4314</sup> *Nahimana et al.* Appeal Judgement, para. 894; *Kajelijeli* Trial Judgement, para. 788.

<sup>4315</sup> *Nahimana et al.* Trial Judgement, para. 1047.

<sup>4316</sup> *See supra*, paras. 1060–1072, 1299–1302.

<sup>4317</sup> *But see infra*, paras. 2111–2127.

(iv) The Knowledge Requirement for a Crime Under Article 5 of the Statute

1323. **Beara** is only responsible for a crime against humanity under Article 5, if at the time he knew that there was a widespread or systematic attack directed against a civilian population and knew that his crimes comprise part of that attack against this population.<sup>4318</sup>

1324. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. As Chief of Security in the VRS Main Staff from 1992, **Beara** had knowledge of the strategic goals of the RS and VRS's leadership to remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>4319</sup> His position required that he had intimate knowledge of Directive 7, Directive 7/1, the *Krivaja-95* Operation, and all orders pursuant to the implementation of Directive 7 that passed to subordinate security organs.<sup>4320</sup> From this, the Trial Chamber is satisfied beyond reasonable doubt that **Beara** was well aware of the aim of the illegal purpose of Directive 7, Directive 7/1, as well as *Krivaja-95*, and of the military action against a civilian population. On this basis, the Trial Chamber finds that **Beara** meets the knowledge requirement for the commission of a crime under Article 5 of the Statute.

(v) Count 3: Extermination

1325. The Trial Chamber has found that the large-scale murders of Bosnian Muslim males from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5.<sup>4321</sup> These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it. **Beara** participated in the JCE to Murder and met the knowledge requirement for a crime against humanity. He is therefore criminally liable for extermination as a crime against humanity.

1326. The Prosecution alleges in the Indictment that **Beara** “committed, ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4322</sup> The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the extermination of the

<sup>4318</sup> See *supra*, paras. 751, 758.

<sup>4319</sup> Božo Milovanović, T. 12188-12189 (stating that **Beara** regularly attended daily VRS Main Staff meetings). Further **Beara** had first hand knowledge of the military and security situation in the Drina Corps. See Ex. P02741, “Instruction on command and control over the Security and Intelligence organs of the VRS signed by Mladić, 24 October 1994”, paras. 4, 6; Pieter Boering T. 1876–1877, 1902–1904 (19 Sept 2006), 2109–2111, 2121 (25 Sept 2006).

<sup>4320</sup> See *supra*, paras. 1200–1206.

<sup>4321</sup> See *supra*, paras. 802–806.

<sup>4322</sup> Indictment, para. 88.

Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of extermination through his participation in the JCE to Murder.

(vi) Counts 4 and 5: Murder

1327. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims initially residing or taking refuge in Srebrenica. The aforementioned killings have been found to constitute murder, both as a crime against humanity and a violation of the laws or customs of war.<sup>4323</sup> The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to murder the able-bodied Bosnian Muslim males from Srebrenica or as a natural and foreseeable consequence of it.<sup>4324</sup> **Beara** participated in the JCE to Murder and met the knowledge requirement for murder as a crime against humanity. He also knew that the victims were taking no active part in the hostilities when the murders were committed. He is therefore criminally responsible for murder as a crime against humanity as well as being liable for murder as a violation of the laws or customs of war, both for the murders found to be part of the scope of the JCE to murder and the “opportunistic” killings.<sup>4325</sup>

1328. The Prosecution alleges that **Beara** “committed, ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4326</sup> The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of the Bosnian Muslim males from Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of murder through his participation in the JCE to Murder.

(vii) Count 6: Persecution

1329. The Trial Chamber has found that persecution, as a crime against humanity, was committed, *inter alia*, through the murder of thousands of Bosnian Muslim males (including “opportunistic” killings) and cruel and inhumane treatment of males detained in Bratunac and Zvornik.<sup>4327</sup> The Trial Chamber has found that these acts fall within the scope of the JCE to Murder, or were a natural and foreseeable consequence of it.<sup>4328</sup>

<sup>4323</sup> See *supra*, paras. 793–796.

<sup>4324</sup> See *supra*, paras. 1050–1082.

<sup>4325</sup> See *supra*, paras. 1050–1082. *But see* Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–46.

<sup>4326</sup> Indictment, para. 88; Prosecution Final Brief, para. 2300.

<sup>4327</sup> See *supra*, paras. 990–995.

<sup>4328</sup> See *supra*, paras. 1050–1082. *See also* Indictment, para. 83.

1330. The Trial Chamber has also found that **Beara** was a participant in the JCE to Murder, and through his participation he was responsible for murder on a large scale, including the so-called “opportunistic” killings, the latter being a natural and foreseeable consequence of the JCE to Murder.<sup>4329</sup>

1331. **Beara** was intercepted using the term “balija” when referring to Bosnian Muslims on 13 July.<sup>4330</sup> This term was “mildly derogatory” and its use was inappropriate, although not unusual.<sup>4331</sup> The Trial Chamber has also heard evidence from witnesses who testified that **Beara** did not display any signs of intolerance towards members of other ethnic groups.<sup>4332</sup> The Trial Chamber is of the opinion that **Beara**’s knowledge of the plan to murder a single ethnic group and his willing participation in that plan, and to some limited extent his use of pejorative language about Bosnian Muslims, establishes that he acted with discriminatory intent. On this basis, the Trial Chamber finds that **Beara** participated in the JCE to Murder with the specific intent to discriminate on political, racial or religious grounds. He thereby committed persecution as a crime against humanity through murder and cruel and inhumane treatment committed by his participation in the JCE to Murder.

1332. For an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the Prosecution needs to establish that it was reasonably foreseeable to the accused that the extended crime would be committed and that it would be committed with the required specific intent.<sup>4333</sup> The Trial Chamber is satisfied that it was foreseeable to **Beara** that the “opportunistic” killings would be carried out with persecutory intent. By participating in the JCE to Murder, **Beara** willingly took this risk. He is therefore responsible, through his participation in the JCE to Murder, for persecution as a crime against humanity through “opportunistic” killings under the third category JCE.<sup>4334</sup>

1333. The Prosecution alleges that **Beara** “committed, ordered, planned, instigated and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4335</sup> The Trial Chamber finds that **Beara** not only committed, through his participation in the JCE to Murder, but also planned and ordered the persecution of the Bosnian Muslim males from

<sup>4329</sup> See *supra*, paras. 1301–1302.

<sup>4330</sup> Ex. P01130a, “Intercept, 13 July 1995, 10:09 hours”.

<sup>4331</sup> See *supra*, para. 1193.

<sup>4332</sup> See 2DPW-19, T. 25633–23635, 25640 (11 Sept 2008); Mikajlo Mitrović, T. 25042, 25044, 25054 (2 Sept 2008); Milan Alaica, T. 24809, 24811–24812 (28 Aug 2008); Alajica Bosko, Ex. 2D00665, “92 *bis* statement” (15 June 2008), p. 2; Slobodan Makivić, Ex. 2D00658, “92 *bis* statement” (27 Mar 2008), p. 4; Dragan Beara, Ex. 2D00661, “92 *bis* statement” (15 Mar 2008), p. 1; Marina Beara, Ex. 2D00662, “92 *bis* statement” (15 Mar 2008), p. 1; Mirsad Tokić, Ex. 2D00655, “92 *bis* statement” (11 Apr 2007), p. 1; Rajko Jelusić, Ex. 2D00652, “92 *bis* statement” (14 Dec 2006), p. 2.

<sup>4333</sup> See *supra*, paras. 1030–1031.

<sup>4334</sup> See *supra*, para. 1302. *But see* Judge Kwon’s Dissenting Option, *infra*, paras. 40–46.

Srebrenica. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of the crime of persecution as a crime against humanity through murder and cruel and inhumane treatment committed as part of participation in the JCE to Murder with discriminatory intent.

(viii) Count 7: Inhumane Acts (Forcible Transfer)

1334. The Trial Chamber has found that while **Beara** knew of the common plan to forcibly remove the Bosnian Muslim population, he did not make a significant contribution to it.<sup>4335</sup> Similarly, the evidence is insufficient to establish that he aided and abetted forcible transfer in either Srebrenica or Žepa, nor does it demonstrate that he is responsible for forcible transfer through another mode of liability. The Trial Chamber therefore finds that **Beara** is not criminally responsible for forcible transfer as a crime against humanity.

(ix) Count 8: Deportation

1335. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute the crime of deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Beara** is not criminally responsible for deportation as a crime against humanity.

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<sup>4335</sup> Indictment, para. 88; Prosecution Final Brief, para. 2300.

<sup>4336</sup> *See supra*, paras. 1307, 1309.



## 5. Drago Nikolić

### (a) The Case against Nikolić

1336. The Prosecution alleges that **Nikolić** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.<sup>4337</sup> Specifically, the Prosecution alleges that **Nikolić** was a member of a joint criminal enterprise to summarily execute the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).<sup>4338</sup>

### (b) Position and Function

#### (i) Authority as Chief of Security of the Zvornik Brigade

1337. In July 1995, **Nikolić** was the Chief of Security in the Zvornik Brigade,<sup>4339</sup> and he held the rank of Second Lieutenant in the VRS.<sup>4340</sup> The work of the Zvornik Brigade Security Organ is described in more detail in another section of this Judgment.<sup>4341</sup>

1338. **Nikolić** was subordinate to the Zvornik Brigade Commander **Pandurević** (subordination line), but for security matters, he was subordinate to the Assistant Commander for Security of the Drina Corps, **Vujadin Popović** (specialty line).<sup>4342</sup> **Nikolić** was not obliged to inform the Brigade

<sup>4337</sup> Indictment, paras. 26–37, 42, 45–74, 80, 83–84, 88. **Nikolić** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

<sup>4338</sup> Indictment, paras. 42, 80.

<sup>4339</sup> PW-142, T. 6440–6441 (private session) (29 Jan 2007); PW-143, T. 6526 (private session) (30 Jan 2007); Lazar Ristić, T. 10036 (16 Apr 2007), T. 10123, 10183 (17 Apr 2007); Nebojša Jeremić, T. 10418, 10447 (24 Apr 2007); Milorad Birčaković, T. 11011 (7 May 2007); Miodrag Dragutinović, T. 12562 (13 June 2007); Srećko Aćimović, T. 12931–12932 (20 June 2007), T. 13041 (21 June 2007), T. 13066–13067 (22 June 2007); Dragoje Ivanović, T. 14538 (30 Aug 2007); Sreten Milošević, T. 33960 (15 July 2009); Stevo Kostić, T. 25988 (22 Sept 2008); PW-168, T. 15753, 15760 (closed session) (25 Sept 2007).

<sup>4340</sup> Ex. P00373, “Details of professional serviceman, Drago Nikolić”.

<sup>4341</sup> See *supra*, Chapter III, Section B.1(c).

<sup>4342</sup> PW-168, T. 15758, 15767–15768 (closed session) (25 Sept 2007), T. 16213–16215 (closed session) (11 Oct 2007). “The security and intelligence organs are directly commanded by the commander of the unit or institution of which they form part, but with regard to professional activities they are controlled centrally by the security and intelligence organs of the superior command. This indicates their full independence in the implementation of intelligence and counter-intelligence tasks and operative combinations [...]”. Ex. P02741 “Instruction on command and control over the Security and Intelligence organs of the VRS from the Main Staff of the VRS, signed by Ratko Mladić, 24 October 1994”, para. 2.

Commander **Pandurević** on matters of security.<sup>4343</sup> However, **Nikolić** was duty-bound to provide **Pandurević** with information regarding anything that could endanger the Zvornik Brigade and advise him on measures that could be taken to remove that danger.<sup>4344</sup>

1339. When sending official correspondence to his superior organ in the Drina Corps, he did not have to seek clearance from the Brigade Commander, unlike all others in the Brigade.<sup>4345</sup> All correspondence that arrived at the Brigade that was addressed to the Chief of Security, or to **Nikolić** personally, was treated as confidential; the Brigade Commander was not entitled to look into that correspondence.<sup>4346</sup> **Nikolić** had a vehicle and a driver at his disposal.<sup>4347</sup> That vehicle was not attached to the Brigade Headquarters, but was given to him by the “superior” Security Organ.<sup>4348</sup>

1340. The Chief of Security enjoyed further privileges within the Brigade. **Nikolić** was entitled to use the teleprinter station, which was the only method of communicating with the “superior” Security Organ.<sup>4349</sup> No one else in the Brigade could do that without the express approval of the Brigade Commander.<sup>4350</sup> Lastly, the Chief of Security was not obliged to serve as Duty Officer.<sup>4351</sup>

1341. In the winter of 1994, **Pandurević** tried to level the privileges of **Nikolić** with those of the other Assistant Commanders in the Brigade. Specifically, **Pandurević** had ordered that every outside communication with other security organs would have to be disclosed and approved by **Pandurević**, that **Nikolić**'s vehicle should be attached to the Zvornik Brigade's headquarters, and that he was not allowed to use encryption any longer and that he also had to serve as a duty officer.<sup>4352</sup> **Pandurević** also ordered **Nikolić** to include a section on the Security Organ in the daily combat reports that the Zvornik Brigade sent to the higher command, which **Nikolić** refused.<sup>4353</sup>

1342. Soon after this order from **Pandurević**, the Drina Corps Command, copying Mladić's instructions on command and control of security organs, issued an order setting out the privileges of the Chief of Security.<sup>4354</sup> Pursuant to this order, **Pandurević** had to revoke his order removing

<sup>4343</sup> PW-168, T. 16237–16238 (closed session) (11 Oct 2007).

<sup>4344</sup> *Ibid.*, T. 15768 (closed session) (25 Sept 2007).

<sup>4345</sup> *Ibid.*

<sup>4346</sup> *Ibid.*, T. 15762 (closed session) (25 Sept 2007).

<sup>4347</sup> *Ibid.*, T. 15761 (closed session) (25 Sept 2007), T. 16234 (closed session) (11 Oct 2007); Ex. P00904, “Vehicle work log for Opel Rekord P-4528”. In July 1995, **Nikolić** had an olive-drab green Opel Station Wagon that he used at his own discretion. Vinko Pandurević, T. 32395 (3 Mar 2009).

<sup>4348</sup> PW-168, T. 15761 (closed session) (25 Sept 2007) (testifying that it was the “superior organ” through which **Nikolić** acquired his own vehicle, which in this context appears to be the Drina Corps.)

<sup>4349</sup> PW-168, T. 15762 (closed session) (25 Sept 2007).

<sup>4350</sup> *Ibid.*

<sup>4351</sup> *Ibid.*, T. 15762 (closed session) (25 Sept 2007), T. 17053 (closed session) (29 Oct 2007).

<sup>4352</sup> PW-168, T. 15762–15765 (closed session) (25 Sept 2007), T. 17053 (closed session) (29 Oct 2007). *See also* Vinko Pandurević, T. 30779–30780 (28 Jan 2009), T. 31346 (12 Feb 2009).

<sup>4353</sup> Miodrag Dragutinović, T. 12563 (13 June 2007).

<sup>4354</sup> *See supra*, para. 124, fn. 301.

**Nikolić's** privileges. However, **Nikolić's** exemption from service as a duty officer was not reinstated.<sup>4355</sup>

(ii) The Security Organ and the Military Police of the Zvornik Brigade

1343. As discussed in more detail above,<sup>4356</sup> the Zvornik Brigade Military Police was under the command and control of the Zvornik Brigade Commander.<sup>4357</sup> The Commander of the Zvornik Brigade Military Police was Miomir Jasikovac.<sup>4358</sup> He would advise Brigade Commander **Pandurević** on the use of the Military Police “for certain purposes, for certain operations in terms of their number”.<sup>4359</sup> However, as the Brigade’s Chief of Security, **Nikolić** was the main advisory organ to the Brigade Commander regarding the use of the Military Police.<sup>4360</sup> In the “subordination line” the Military Police reported to Brigade Commander **Pandurević**;<sup>4361</sup> however, in the “specialty line” or “professional line”, **Nikolić** could give orders directly to the Commander of the Military Police.<sup>4362</sup>

(c) Acts and Whereabouts

(i) 12 July 1995

1344. **Nikolić** was seen in and around the Standard Barracks during the days following the fall of Srebrenica on 11 July.<sup>4363</sup> In the morning of 12 July, the Zvornik Brigade Command received an order from the Drina Corps Command to send a traffic squad of about four to five Military Policemen to Konjević Polje to regulate the traffic giving priority to buses from Srebrenica and to take over the Konjević Polje junction at 4:30 p.m.<sup>4364</sup> PW-168 testified that either the Duty Officer or **Nikolić** carried out the order by sending a small passenger vehicle with four or five Military

<sup>4355</sup> PW-168, T. 15765–15766 (closed session) (25 Sept 2007), T. 16218 (closed session) (11 Oct 2007). Cf. Miodrag Dragutinović, T. 12563–12564 (13 June 2007).

<sup>4356</sup> See *supra*, Chapter III, Section B.1(c)(iii).

<sup>4357</sup> Ex. P00707, “Service Regulations of the SFRY Armed Forces Military Police, 1985”, para. 12.

<sup>4358</sup> Nebojša Jeremić, T. 10418 (24 Apr 2007); Stevo Kostić, T. 25982 (22 Sept 2008).

<sup>4359</sup> Miodrag Dragutinović, T. 12777 (18 June 2007).

<sup>4360</sup> *Ibid.*

<sup>4361</sup> *Ibid.*, T. 12567–12571 (13 June 2007), T. 12777 (18 June 2007).

<sup>4362</sup> PW-168, T. 16239, 16240 (closed session) (11 Oct 2007); Ex. 7D00539, “Organisation of infantry brigade-scheme”. See also Vinko Pandurević, T. 30764 (28 Jan 2009). **Pandurević** added that the military police could not be used in combat without the permission of either the Brigade Commander or the Chief of Staff, except in the case of an emergency. *Ibid.*, T. 31685 (18 Feb 2009).

<sup>4363</sup> Nebojša Jeremić, T. 10426 (24 Apr 2007).

<sup>4364</sup> PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16150–16151 (closed session) (10 Oct 2007), T. 16500 (closed session) (17 Oct 2007); Ex. 7DP00157, “Order from the Command of the Drina Corps signed by Milenko Živanović, 12 July 1995”.

Policemen.<sup>4365</sup> The Trial Chamber has not drawn any inference from this evidence, as it remains unknown by whom the order was carried out.

(ii) 13 July 1995

1345. On 13 July between 7 and 8 p.m., Dragan Obrenović received a phone call from **Nikolić** who was at the IKM in Kitovnice.<sup>4366</sup> **Nikolić** told Obrenović that **Popović** had called him that evening. **Popović** had told **Nikolić** to make preparations for a large number of Bosnian Muslim prisoners coming from Bratunac to the “Zvornik sector”,<sup>4367</sup> and told him that on Mladić’s order they were to be shot.<sup>4368</sup> **Popović** had also told **Nikolić** that the prisoners would be brought by **Beara** and **Popović** who would “organise this and [...] carry this out”, and requested **Nikolić** to be involved “in this” as well.<sup>4369</sup> **Nikolić** told Obrenović that “the superior command” was informed about it as was **Pandurević**.<sup>4370</sup> **Nikolić** also indicated to Obrenović that **Popović** was to “send somebody to convey verbally information concerning this”.<sup>4371</sup> **Nikolić** then asked Obrenović to be relieved of duty at the IKM and insisted that, in order to carry out the task requested of him, he should be “given” the Commander of the Zvornik Brigade’s Military Police Miomir Jasikovac and at least a military police platoon.<sup>4372</sup> Obrenović authorised **Nikolić** to use a military police squad and released him from his duties at the Zvornik Brigade IKM. Obrenović then ordered Military Police Commander Jasikovac to return from Siroki Put<sup>4373</sup> to Zvornik with his Military Police platoon.<sup>4374</sup> Jasikovac was informed that prisoners would be brought from Bratunac, and that he and a squad of about four or five military policemen should stay in the Standard Barracks and wait for **Nikolić**’s orders.<sup>4375</sup>

1346. **Nikolić** has vigorously challenged the evidence of PW-168 with regard to his account of an alleged conversation between Obrenović and **Nikolić** on the evening of 13 July. He argues that PW-168, motivated by revenge, fabricated this evidence in order to falsely implicate **Nikolić**.<sup>4376</sup>

<sup>4365</sup> PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16500 (closed session) (17 Oct 2007); Ex. P00322, “Zvornik Brigade regular combat report, 12 July 1995”, p.1 (point 2) (showing that one Military Police squad was sent to Konjević Polje pursuant to the order).

<sup>4366</sup> PW-168, T. 15830 (closed session) (26 Sept 2007).

<sup>4367</sup> *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007).

<sup>4368</sup> *Ibid.*

<sup>4369</sup> *Ibid.*, T. 15831 (closed session) (26 Sept 2007).

<sup>4370</sup> *Ibid.*

<sup>4371</sup> *Ibid.*, T. 15830–15831 (closed session) (26 Sept 2007).

<sup>4372</sup> *Ibid.*, T. 15830–15832 (closed session) (26 Sept 2007).

<sup>4373</sup> Siroki Put is a hill in the Siroki Polje area. PW-168, T. 15828, 15835 (closed session) (26 Sept 2007).

<sup>4374</sup> PW-168, T. 15831–15833, 15835–15837 (closed session) (26 Sept 2007).

<sup>4375</sup> PW-168, T. 15836–15837 (closed session) (26 Sept 2007).

<sup>4376</sup> [REDACTED]

1347. As previously indicated, the Trial Chamber generally considers PW-168 to be a credible witness.<sup>4377</sup> However given the length and extent of his testimony, the Trial Chamber has also carefully assessed individual parts of his evidence, taking into account the defence arguments. This is the case with reference to the alleged conversation of 13 July given its significance and the defence challenges to it. The Trial Chamber considers that there are several points regarding this evidence which support its credibility.

1348. [REDACTED]<sup>4378 4379</sup>

1349. Importantly, key points of PW-168's description of the conversation are corroborated by other evidence. PW-168 says **Nikolić** requested that Obrenović release him from IKM duty and Mihajlo Galić's testimony, as well as the contemporaneous IKM logbook entry that Galić made in the Zvornik Brigade Logbook, evidence that this is what occurred.<sup>4380</sup>

1350. Moreover, PW-168 testified that Obrenović authorised **Nikolić** to use a Military Police unit for this criminal task and he ordered the Zvornik Brigade Military Police Commander Jasikovac and members of the Zvornik Brigade Military Police to await **Nikolić's** orders regarding an assignment to guard prisoners. He testified that later that evening and the next day, **Nikolić**, Jasikovac and some members of his military police squad participated in the preparation of detention sites. This evidence is also corroborated. The tactical intercept notebook records a conversation of 13 July at 20:50 indicating that Dragan Obrenović ordered two Military Police Platoons to come to the Zvornik Brigade Standard Barracks, and that they should wait outside

<sup>4377</sup> See *supra*, paras. 28–47.

<sup>4378</sup> [REDACTED]

<sup>4379</sup> [REDACTED]

<sup>4380</sup> Subsequent to the request of **Nikolić** to be relieved of duty at the IKM in Kitovnice, Mihajlo Galić was ordered to replace **Nikolić** on 13 July at approximately 10 or 11 p.m. When Galić arrived at the IKM, **Nikolić** had already left. Galić officially took over **Nikolić's** duty at 11 p.m. that evening. A 13 July entry in the IKM logbook in Mihajlo Galić's handwriting provides "I took over duty, unscheduled, from Lieutenant **Drago Nikolić** at 2300 hours." Mihajlo Galić, T. 10498, 10501 (25 Apr 2007); Ex. P00347, "Zvornik Brigade IKM Duty Officer Logbook, 7 July – 5 October 1995", p. 6. Both Mihajlo Galić and PW-168 recognised Galić's handwriting. Mihajlo Galić, T. 10500–10501 (25 Apr 2007); PW-168, T. 15835 (closed session) (26 Sept 2007). The Trial Chamber notes that Dragan Stojkić gave contrary testimony to the effect that Mihajlo Galić did not come to replace **Nikolić** on the evening of 13 July, and that **Nikolić** and he stayed at the IKM until 8.00 a.m. on 14 July 1995. When shown the IKM Logbook with Galić's note that he replaced **Nikolić** on 13 July 1995 at 2300 hours, Dragan Stojkić became very evasive and stated that Galić's entry was "not true". Stojkić also testified that Galić, several years after the events, came to him and tried to convince him that Galić replaced **Nikolić** on the evening of 13 July, to which Stojkić responded that he was lying. The Prosecution presented credible evidence that Stojkić was a member of Tactical Group 1, and that Tactical Group 1 was at Rijeka in the late evening of 13 July and early morning of 14 July 1995. Particularly in light of the IKM Logbook and Mihajlo Galić's evidence confirming his entries therein, and considering that Stojkić was in Rijeka on the evening of 13 July 1995, the Trial Chamber finds that Dragan Stojkić was either mistaken or he was untruthful when he testified that Mihajlo Galić was not at the IKM on the evening of 13 July 1995. Dragan Stojkić, T. 21993–21994, 21999–22000 (9 June 2008); Ex. P00347 "Zvornik Brigade IKM Duty Officer Logbook, 7 July – 5 October 1995"; Prosecution Closing Arguments, T. 31460–34161 (3 Sept 2009) (referring to the evidence of Miodrag Dragutinović, T. 12591–12592 (14 June 2007)). See also

Standard Barracks for further instructions.<sup>4381</sup> Several witnesses corroborate Jasikovac's orders to members of the Zvornik Brigade Military Police Company to go to the Grbavci School in Orahovac and to prepare the school for the arrival of prisoners.<sup>4382</sup> PW-143 testified that it was **Nikolić** who assigned him and other Military Policemen to spend the night behind the Grbavci School and guard the prisoners.<sup>4383</sup> Two witnesses confirmed Miomir Jasikovac's and **Nikolić**'s presence at the Grbavci School on the night of 13 and the morning of 14 July 1995. PW-143 testified that he saw **Nikolić** and Jasikovac at the Grbavci School on the night of 13 July 1995.<sup>4384</sup> Ivanović testified that he saw **Nikolić** and Jasikovac at the Grbavci School on the early morning of 14 July 1995.<sup>4385</sup> In addition, there is documentary evidence that corroborates **Nikolić**'s presence at the Grbavci School. The Zvornik Brigade Vehicle Log also corroborates **Nikolić**'s presence<sup>4386</sup> at the school on 13 July

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Ex. P03396, "Tactical Group Command Commander Lt. Colonel Vinko Pandurević" (confirming Stojkić's membership of Tactical Group 1).

<sup>4381</sup> Ex. P02232, "Exhibit P-121/a in Case No. IT-02-60-T - Draft English translations covering 11 to 20 July 1995 - Tactical intercepts notebook", p.3 ("At 20.50 Lovac 1 reported to Lovac that the column was moving below Zlatni kamen. They immediately called and said to round up two more military platoons and to wait in front of Standard. Not to get off the truck and that the Chief will wait for them there"). Dragan Obrenović was referred to by the name of Lovac 1, and the Zvornik Brigade Radio Centre was referred to as Lovac, *see e.g.*, Vinko Pandurević, T. 31039 (3 Feb 2009), T. 31833 (19 Feb 2009), T. 31920 (20 Feb 2009).

<sup>4382</sup> Dragoje Ivanović, T. 14539–14541 (30 Aug 2007); Stanoje Birčaković, T. 10741–10744, 10764 (1 May 2007); PW-143, T. 6527 (30 Jan 2007). PW-143 initially testified that either **Nikolić** or Miomir Jasikovac issued this order because he would receive orders only from the two of them during this period. PW-143, T. 6527–6528 (private session) (30 Jan 2007). On cross-examination, PW-143 said that he mentioned these two names because he was not sure which one of them issued the order. PW-143, T. 6599 (private session) (30 Jan 2007). PW-143 further stated that the fact that PW-142, another MP member, had stated that Miomir Jasikovac ordered him to go to Orahovac did not help him refresh his memory. *Ibid.*, T. 6600–6601 (private session) (30 Jan 2007). On re-examination, PW-143 stated that he remembered that **Nikolić** gave him the order, which he had also said in a previous statement. PW-143, T. 6611–6612 (private session) (30 Jan 2007). However, two other witnesses indicated that the order was given by Jasikovac. Stevo Kostić stated that on 13 July, Commander Jasikovac sent all available Military Policemen at the Standard Barracks to Orahovac. Stevo Kostić, T. 26003 (22 Sept 2008). Stanoje Birčaković also testified that during the late afternoon or early evening of 13 July 1995, he was lined up, together with others, and was ordered by Company Commander Miomir Jasikovac to go to Orahovac to guard "prisoners of war". Birčaković did not use **Nikolić**'s car to get to Orahovac; he entered a minibus of the Military Police Company. In the minibus there were between 10 and 15 people from the Military Police Company. Stanoje Birčaković, T. 10741–10742, 10743, 10744, 10764, 10765 (1 May 2007). The Trial Chamber accepts that Birčaković went to Orahovac on Jasikovac's order.

<sup>4383</sup> PW-143, T. 6533 (30 Jan 2007).

<sup>4384</sup> *Ibid.*, T. 6532, 6611–6612 (private session) (30 Jan 2007). Having observed the whole of PW-143's testimony, the Trial Chamber rejects **Nikolić**'s argument that PW-143's testimony is "completely unreliable" because he could not remember certain facts regarding the night of 13 July 1995, such as exactly how long he slept during his guard duty or the kind of vehicle that drove him to Orahovac. *See* **Nikolić** Final Brief, para. 1166.

<sup>4385</sup> Dragoje Ivanović, T. 14544 (30 Aug 2007). Ivanović further testified that **Nikolić**'s arrival was shortly followed by the arrival of 20 to 30 soldiers. Dragoje Ivanović, T. 14544 (30 Aug 2007). The evidence of Ivanović that **Nikolić** "came" at around 8 a.m., does not affect the Trial Chamber's finding that **Nikolić** was present at Grbavci School during the night of 13 July 1995, nor does it affect the credibility of PW-143's evidence that he saw **Nikolić** on the night of 13 July 1995.

<sup>4386</sup> The vehicle log for **Nikolić**'s Opel Rekord provides for 13 July: "Standard, IKM, Zvornik local; Orahovac–Zvor–Orahovac, Standard–Bratunac–Orahovac." Ex. P00904, "Vehicle log for Opel Rekord, P-4528". When shown the logbook, **Nikolić**'s driver Milorad Birčaković said he did not remember going to Orahovac on 13 July 1995, Milorad Birčaković, T. 11054 (7 May 2007). He also testified that, generally, the logbook was not always accurate. *Ibid.*, T. 11052–11053 (7 May 2007). Birčaković's evidence does not affect the Trial Chamber's finding regarding **Nikolić**'s presence at Orahovac on 13 July 1995.

1995, and the Transport Service Log corroborates the presence of the Military Police at Orahovac during the late evening of 13 July and the morning of 14 July.<sup>4387</sup>

1351. The role ultimately played by **Nikolić**, Jasikovac and some members of his squad in guarding the prisoners on the night of 13 July and the morning of 14 July further corroborates the conversation between Obrenović and **Nikolić**, and will be discussed below.

1352. [REDACTED]<sup>4388 4389</sup>

1353. [REDACTED]

1354. Momir Nikolić also testified about events on the night of 13 July 1995 relevant to the evidence of PW-168. On that same evening, Momir Nikolić was told by **Beara** that the Bosnian Muslim prisoners would be detained in the Zvornik area and executed.<sup>4390</sup> He was instructed by **Beara** to travel to the Zvornik Brigade to convey this information to **Drago Nikolić**. Momir Nikolić went to the Standard Barracks in Zvornik and from there was taken to the IKM where **Drago Nikolić** was serving as Duty Officer on the evening of 13 July 1995.<sup>4391</sup> He passed on the information to **Drago Nikolić** who responded that he would convey **Beara**'s order to his command.<sup>4392</sup> The Trial Chamber has carefully considered Momir Nikolić's evidence on this point and finds it to be reliable.<sup>4393</sup> While the evidence of Momir Nikolić does not correspond to that of PW-168 in all its particulars, the Trial Chamber is satisfied that the core of the evidence of both

<sup>4387</sup> The Transport Service Log, a log used by the logistics sector to record shipments, also corroborates that there was a Zvornik Brigade Military Police presence at Orahovac during the late evening of 13 July or as early as 1 a.m. on 14 July. Sreten Milošević, T. 34013–31015 (15 July 2009); Ex. P00289, "Log book Kp-6 of transport service detailing vehicle movements, 2 Dec 1994 to 31 Dec 1995", p. 8. Although the Transport Service Log only mentions the word "police", read in conjunction with the Zvornik Brigade Military Police attendance roster and considered with the evidence of PW-143, Dragoje Ivanović and Stevo Kostić, the Trial Chamber concludes that the Transport Log referred to members of the Military Police. Stevo Kostić admitted to having altered the Zvornik Brigade Military Police attendance roster to indicate that members of the Military Police had not been at Orahovac, when in fact they had been there. For certain Military Police members, Kostić had erased the "O", which referred to Orahovac, and replaced it with a "T", which referred to a soldier generally being in the field. Stevo Kostić, T. 26025, 26043, 26054–26057 (22 Sept 2008); Ex. P00354, "Zvornik Brigade Military Police unit attendance roster for July 1995".

<sup>4388</sup> [REDACTED]

<sup>4389</sup> [REDACTED]

<sup>4390</sup> Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 6.

<sup>4391</sup> *Ibid.*; Momir Nikolić, T. 32937, 32938 (21 Apr 2009).

<sup>4392</sup> Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 6.

<sup>4393</sup> *See supra*, para. 1266. In addition the Trial Chamber has taken into account that Momir Nikolić's account of his meeting with **Drago Nikolić** is corroborated by the abundant evidence which demonstrates that **Drago Nikolić** was on duty at the IKM that evening until he was replaced by Mihajlo Galić. In reaching this conclusion the Trial Chamber has considered the evidence of Sreten Milošević that he did not see Momir Nikolić at the Standard Barracks that evening. Sreten Milošević, T. 33971 (15 July 2009). However, the Trial Chamber considers that in answering the Prosecution's questions regarding his presence Milošević was very evasive in his testimony such that his evidence lacks credibility. Further, there is evidence to suggest that he was not constantly at his post. Sreten Milošević, T. 34009–340011 (15 July 2009). Therefore, the Trial Chamber finds that his evidence does not raise a doubt as to Momir Nikolić's description of his meeting with **Drago Nikolić** at the IKM on 13 July.

witnesses is substantially similar. While the accounts of Momir Nikolić and PW-168 vary particularly as to timing, the Trial Chamber is satisfied that the two descriptions can otherwise stand together. In essence, **Drago Nikolić** would have heard from **Popović** by phone and from Momir Nikolić in person about the planned killings. In content, the evidence of both witnesses is identical in that **Drago Nikolić** (i) received the information about the killing operation on the evening of 13 July 1995, (ii) he was at the IKM when he was told about the operation, and (iii) he received his instructions from superiors in the specialty line (**Beara-Popović-Nikolić**). Further, **Drago Nikolić** also indicated to Obrenović that **Popović** was to “send somebody to convey verbally information concerning this”.<sup>4394</sup> This may well have been a reference to Momir Nikolić’s subsequent visit. While Momir Nikolić testified that **Drago Nikolić** was “surprised” when he heard of **Beara**’s instructions,<sup>4395</sup> that was only his impression and does not detract from the overall consistency of the evidence of both witnesses. Thus the Trial Chamber finds that the evidence of PW-168 and Momir Nikolić as to the knowledge and actions of **Drago Nikolić** on the night of 13 July 1995 to be mutually corroborative and reliable.

1355. Rémi Landry, a military expert called by **Nikolić**, provided evidence which was critical of what Obrenovic did and failed to do on the evening of 13 July. He stated in essence that from a military perspective he could not explain Obrenović’s failure to obtain additional information after his phone call with **Nikolić** on an unsecured line on the evening of 13 July.<sup>4396</sup> He did so in support of the defence allegation that PW-168 could not be telling the truth. Richard Butler provided his assessment<sup>4397</sup> as to **Nikolić**’s acts and whereabouts on the evening of 13 July 1995. In the view of the Trial Chamber, both Landry and Butler strayed well beyond the purview of an expert witness in providing these particular pieces of evidence. Landry’s testimony was premised on a hypothesis as to how a military person should react in the extraordinary circumstances where he is given insufficient information about an operation to murder prisoners. As such Landry’s comments can only be viewed as purely speculative and not founded on any military expertise. In the case of Butler, the acts and whereabouts of **Nikolić** are factual matters for the Trial Chamber’s determination and not issues falling within his expertise or upon which the Trial Chamber has need of expert opinion. Thus, the Trial Chamber gives no weight to the evidence of Landry or Butler on these points.

<sup>4394</sup> PW-168, T. 15830–15833 (closed session) (26 Sept 2007).

<sup>4395</sup> Momir Nikolić, T. 33211–33212 (24 Apr 2009).

<sup>4396</sup> Rémi Landry, T. 26260–26261, 26265–26267, 26268 (25 Sept 2008). Cf. Ex. 3D00409, “Military Expert Report by Rémi Landry,” paras. 133, 140, 160.

<sup>4397</sup> Richard Butler, T. 20446–20449 (25 Jan 2008).



1356. Considering all the evidence before it, the Trial Chamber is satisfied beyond reasonable doubt that the conversation between Obrenović and **Nikolić**, as described by PW-168, took place on the evening of 13 July.

(iii) 14 July 1995

a. Transport of Prisoners from Bratunac to Zvornik

1357. On 14 July at around 8 a.m., **Nikolić**, **Popović** and **Beara** met at the Standard Barracks for 15 to 20 minutes to discuss the murder operation.<sup>4398</sup> After the meeting, **Nikolić** was sombre and “not in a good mood”,<sup>4399</sup> and did not say much.<sup>4400</sup>

1358. Shortly after the meeting, **Nikolić** and Birčaković went to the Vidikovac Hotel at Divić about two kilometres from Zvornik and waited for buses.<sup>4401</sup> Sometime that morning,<sup>4402</sup> between five and ten vehicles arrived at Divić,<sup>4403</sup> carrying Bosnian Muslim prisoners accompanied by “security guards.”<sup>4404</sup> **Nikolić** ordered Birčaković to get on one of the vehicles and to go to Orahovac.<sup>4405</sup>

b. Kula School

1359. On the morning of 14 July, Slavko Perić, Assistant Commander for Intelligence and Security of the 1st Battalion of the Zvornik Brigade, was informed by Deputy Battalion

<sup>4398</sup> Milorad Birčaković, T. 11014–11017 (7 May 2007), T. 11090–11091 (8 May 2007). For an analysis of this evidence, *see supra*, para. 472.

<sup>4399</sup> Milorad Birčaković, T. 11015 (7 May 2007).

<sup>4400</sup> *Ibid.*, T. 11017 (7 May 2007). During cross-examination Birčaković confirmed that he had stated in his previous statement that when **Nikolić** came out of the meeting, he was very angry “because he was not consulted beforehand but was only ordered to find some accommodation” for people coming in for exchange. *Ibid.*, T. 11120 (8 May 2007).

<sup>4401</sup> *Ibid.*, T. 11017 (7 May 2007), T. 11121 (8 May 2007).

<sup>4402</sup> *Ibid.*, T. 11018 (7 May 2007).

<sup>4403</sup> *Ibid.*, T. 11017–11019 (7 May 2007). PW-110, a Bosnian Muslim prisoner, stated that 20–30 vehicles with prisoners left Bratunac, and passed through Konjević Polje, Drinjača, Joševac, Divić, where “someone saw that there was an APC near the Vidikovac Hotel, which was about 800 metres away from where we were”. He further testified that they passed through Divić and Zvornik, and continued towards Karakaj, where they turned towards Tuzla, and arrived at Grbavci schoolyard in Orahovac on 14 July. PW-110, T. 675–679 (24 Aug 2006). PW-110 did not know whether all the 20–30 vehicles that he had seen in the convoy went to Grbavci School or whether they also went to other places. *Ibid.*, T. 761 (25 Aug 2006). PW-169, who was transported from Bratunac to Orahovac on 13 July, testified that he was in a convoy of six vehicles. PW-169, T. 17324, 17326–17327 (1 Nov 2007). Mevludin Orić, who was transported to Orahovac on 14 July, testified that he was in a convoy of six buses and four trucks. Mevludin Orić, T. 933–934 (29 Aug 2006).

<sup>4404</sup> Milorad Birčaković, T. 11019 (7 May 2007). During cross-examination, Birčaković confirmed that the security guards on the bus were civilian policemen in blue uniforms. Following questioning from **Borovčanin**, Birčaković testified that he was not sure whether the security guards were civilian policemen or Military Police. *Ibid.*, T. 11085, 11122, 11149–11150 (8 May 2007), T. 11158–11159 (9 May 2007).

<sup>4405</sup> *Ibid.*, T. 11018, 11054–11055 (7 May 2007). Birčaković testified that a convoy of at least four buses arrived at the Grbavci School in Orahovac. Milorad Birčaković, T. 11019–11020 (7 May 2007).

Commander Momir Pelemiš that a group of around 200 Bosnian Muslim prisoners would be arriving and they would be accommodated in the school-house near Kula.<sup>4406</sup> Shortly thereafter, the 1st Battalion received a telegram containing an order to prepare the Kula School for the arrival of those prisoners. Approximately one hour later, Perić spoke with **Nikolić** on the telephone.<sup>4407</sup> **Nikolić** repeated the content of the telegram to Perić,<sup>4408</sup> and ordered him to go to the school to “avoid any problems with the surrounding citizenry.”<sup>4409</sup> The Trial Chamber rejects **Nikolić**’s argument<sup>4410</sup> that his order to Perić to secure the prisoners at the Kula School was merely a “suggestion”. Initially, Perić testified that what **Nikolić** told him did not constitute an order. However, shortly thereafter he classified the instruction from **Nikolić** as an order,<sup>4411</sup> and the Trial Chamber has interpreted it as such. An hour or two after his phone conversation with **Nikolić**, Perić went to the Kula School and secured it.<sup>4412</sup>

1360. The Trial Chamber is satisfied that **Nikolić** ordered Perić of the Zvornik Brigade 1st Battalion to secure the prisoners at the Kula School in the awareness that these prisoners were to be executed. In this regard, it is immaterial that **Nikolić** went to a funeral on 16 July 1995 on the day that they were killed at Branjevo Military Farm.<sup>4413</sup>

### c. Orahovac

1361. For much of the day on 14 July, **Nikolić** was at the Grbavci School in Orahovac.<sup>4414</sup> During the day, **Nikolić** was directing members of the Military Police and interacting with Jasikovac and

<sup>4406</sup> Slavko Perić, T. 11375–11376 (11 May 2007).

<sup>4407</sup> See *supra*, para. 527.

<sup>4408</sup> Slavko Perić, T. 11376 (11 May 2007).

<sup>4409</sup> *Ibid.*, T. 11376 (11 May 2007).

<sup>4410</sup> See **Nikolić** Final Brief, paras. 1176–1177.

<sup>4411</sup> Slavko Perić, T. 11376, 11378, 11380 (11 May 2007). In the professional line, **Nikolić** could also give an order to Slavko Perić. See *supra*, paras. 121–124.

<sup>4412</sup> Slavko Perić, T. 11380–11381 (11 May 2007). Perić testified that he went to the Kula School together with Rajko Babić and Dragan Pantić, and “I’m not sure whether or not a dozen or so soldiers went out together with us or whether they came later”. Slavko Perić, T. 11380 (11 May 2007). Rajko Babić also testified that 12 soldiers went along to the Kula School to secure all the entrances and assess the building. Rajko Babić, T. 10220 (18 Apr 2007).

<sup>4413</sup> In the early afternoon of 16 July 1995, **Nikolić** received a call at the Zvornik Brigade Command regarding the burial of his late cousin, Dušan Nikolić. From the afternoon of 16 July until the evening of 17 July, **Nikolić** participated in the funeral ceremonies, see *infra*, para. 1373.

<sup>4414</sup> Dragoje Ivanović, a private in the traffic unit of the Zvornik Brigade Military Police, testified that at approximately 8 a.m., **Nikolić** arrived at the Grbavci School, followed shortly by 20 to 30 soldiers. Dragoje Ivanović, T. 14544 (30 Aug 2007). Milorad Birčaković, **Nikolić**’s driver, stated that **Nikolić** arrived at the Grbavci School at approximately 11 a.m., and that he came from the direction of Zvornik. Milorad Birčaković, T. 11022 (7 May 2007), T. 11124–11125 (8 May 2007). See also Ex. P00904, “Vehicle log for Opel Rekord, P-4528”. Some time after noon. Tanacko Tanić, a treasurer in the Zvornik Brigade, saw **Nikolić** in front of the Grbavci School gym in the schoolyard. Tanacko Tanić, T. 10334, 10337–10338 (23 Apr 2007). Stanoje Birčaković, a Military Police officer, testified that he saw **Nikolić** between noon and 2 p.m. in the yard outside the Grbavci School gym or “perhaps a bit further up closer to the road”. Stanoje Birčaković, T. 10748–10750 (1 May 2007). Stanoje Birčaković marked on a photograph and a sketch where he saw **Nikolić**. Stanoje Birčaković, T. 10749, 10776–10777 (1 May 2007); Ex. PIC00095, “Photograph P01691 marked by the witness”; Ex. 3DIC00097, “Sketch 3D84

other VRS officers outside the Grbavci School.<sup>4415</sup> In an effort to have the 4th Battalion soldiers present to assist with the executions, **Nikolić** tried to prevent Lazar Ristić from removing them by offering them new uniforms if they stayed.<sup>4416</sup> He offered these uniforms through Sreten Milošević and ultimately these 4th Battalion soldiers stayed at Orahovac and participated.<sup>4417</sup>

1362. In the afternoon of 14 July, the prisoners held at the Grbavci School were led onto TAM trucks by members of the Zvornik Brigade including members of the 4th Battalion, the Zvornik Brigade Logistics Company and members of the Zvornik Brigade Military Police.<sup>4418</sup> **Nikolić** moved around in different directions while the trucks full of prisoners were leaving and returning empty.<sup>4419</sup> **Nikolić** also got into a metallic grey military station wagon, and drove in the direction to which the trucks transporting prisoners to the execution field headed.<sup>4420</sup> When PW-101 arrived at a

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marked by the witness". PW-142, a member of the Zvornik Brigade Military Police, stated that he saw **Nikolić** outside the Grbavci School between noon and 2 or 3 p.m. and on two more occasions at the school the same day. PW-142, T. 6451–6452 (29 Jan 2007). PW-143, a member of the Zvornik Brigade Military Police, testified that he saw **Nikolić** at Grbavci School that day. PW-143, T. 6536 (private session), 6538 (30 Jan 2007). Sreten Milošević, Assistant Commander for Logistics in the Zvornik Brigade, did not see **Nikolić** in Orahovac on 14 July, but he was told by those who were present in Orahovac that **Nikolić** had been there during the day. Sreten Milošević, T. 3973, 33985 (15 July 2009).

<sup>4415</sup> According to Dragoje Ivanović, **Nikolić** "told Jasikovac that we were free to go, but that we should stay close by with the minibus." Dragoje Ivanović, T. 14544 (30 Aug 2007). PW-143 testified that **Nikolić** ordered him to guard the prisoners at the Grbavci School. PW-143, T. 6531–6533, 6612 (30 Jan 2007). Tanacko Tanić saw **Nikolić** in front of the Grbavci School gym in the schoolyard. He also saw Sreten Milošević and a man whom a Military Policeman identified as **Vujadin Popović**. Tanacko Tanić, T. 10334, 10337–10338 (23 Apr 2007). PW-143 saw **Nikolić** talking with Miomir Jasikovac and "a tall officer" at the Grbavci School. PW-143, T. 6535–6538 (private session) (30 Jan 2007).

<sup>4416</sup> PW-168, T. 15887–15888 (closed session) (27 Sept 2007) (testifying that he was told by Ristić that **Nikolić** prevented Ristić from removing the 4th Battalion soldiers from Orahovac because he wanted them to participate in the killings). PW-168 also stated that **Nikolić** had offered the 4th Battalion soldiers uniforms through Sreten Milošević if they stayed. *Ibid.*, T. 15888 (closed session) (27 Sept 2007). Ristić denied that such a conversation between himself and PW-168 took place, and that he was in fact able to remove his men from Orahovac. Lazar Ristić, T. 10072, 10076, 10101–10102, 10104 (16 Apr 2007). According to Sreten Milošević, the Zvornik Brigade did not have new uniforms, and they used the existing ones—the old JNA and M77 uniforms. Sreten Milošević, T. 33988, 34032 (15 July 2009). Milošević was evasive and non responsive on this issue, particularly when he was shown the Prosecution evidence regarding the new uniforms for his battalion. Sreten Milošević, T. 33997–33999, 34001–34003, 34032–34033 (15 July 2009); Ex. P04602, "Request to the Drina Corps Command for the Listed Equipment for the Military Post 7469, signed by Sreten Milošević, 2 July 1995"; Ex. P04600, "Zvornik Brigade Material List for Camouflage Uniforms, signed by Sreten Milošević, 17 July 1995". The Trial Chamber notes the corroboration of PW-168's evidence through Ex. P04600, "Zvornik Brigade Material List for Camouflage Uniforms, signed by Sreten Milošević, 17 July 1995" (which indicates that 19 new uniforms were provided to the Zvornik Brigade on 17 July), and by the evidence of the subsequent participation of the 4th Battalion members. *See infra*, para. 1362. Further, having observed the demeanor of PW-168, Ristić and Sreten Milošević when testifying in court, the Trial Chamber finds PW-168's evidence reliable on the issue. Therefore, the Trial Chamber is satisfied that **Nikolić** offered new uniforms to members of the 4th Battalion as an incentive for them to participate in the executions at Orahovac and they did so. *See also supra*, paras. 479–484.

<sup>4417</sup> PW-168, T. 15888 (closed session) (27 Sept 2007). Sreten Milošević was the Assistant Commander for Logistics in the Zvornik Brigade. Sreten Milošević, T. 33959 (15 July 2009).

<sup>4418</sup> *See supra*, para. 481.

<sup>4419</sup> PW-143, T. 6540 (30 Jan 2007).

<sup>4420</sup> *Ibid.*, T. 6540, 6607, 6614 (private session) (30 Jan 2007). During cross-examination, PW-143 allowed for the possibility that **Nikolić**'s vehicle sometimes travelled without him in it, and **Nikolić** may not have been in the car when he saw it following the trucks. PW-143, T. 6606–6607 (private session) (30 Jan 2007). On re-examination, PW-143 agreed with the Prosecution that at a certain point of that day, he saw **Nikolić** going into the car and heading in the directions the trucks had headed. PW-143, T. 6614 (private session) (30 Jan 2007).

field in Orahovac around 8.30 p.m. where prisoners were being executed, he saw **Nikolić** there.<sup>4421</sup> **Nikolić** and **Popović** gave directions to the soldiers at the execution site, “not yelling at them”, but “simply directing them what to do”.<sup>4422</sup>

1363. Milorad Birčaković described that when he drove **Nikolić** from Grbavci School to the IKM in the evening, he saw in the reflection of the headlights approximately 50 bodies on the left side of the road, possibly five meters away from the road.<sup>4423</sup>

1364. The Trial Chamber is satisfied that **Nikolić** was actively involved in organising the detention of the prisoners held at Grbavci School in Orahovac, and that he was personally present at the execution site.

1365. The Trial Chamber notes that **Nikolić**, in his closing statement, confirmed his presence at Grbavci School on 14 July 1995:

I understand that I bear some part of the responsibility because at certain moments I was at Orahovac school on the 14th of July, but I kindly ask you to take into account my limited possibilities in relation to the events that took place. I could not have influenced them in any way.<sup>4424</sup>

#### d. Petkovci School

1366. In the late afternoon of 14 July, **Nikolić** and **Beara** were at a crossroad 70 or 80 metres from the Petkovci School,<sup>4425</sup> where prisoners were being held.<sup>4426</sup>

<sup>4421</sup> PW-101, T. 7624, 7581–7582, 7586, 7589–7590 (22 Feb 2007). **Nikolić** confronted PW-101 with the fact that he did not mention **Nikolić**'s presence at the execution site to the Prosecution when he met with them in 2005 and 2006. *Ibid.*, T. 7686 (private session), T. 7686–7690 (23 Feb 2007). The Trial Chamber, who had the opportunity of assessing the demeanor of PW-101 during his testimony, finds that PW-101 was consistent in his testimony that **Nikolić** was present at the execution site, and finds that his testimony was not shaken in cross-examination. Its finding was not disturbed by the fact that PW-101 did not mention **Nikolić**'s presence at the execution site when he met with the Prosecution in 2005 and 2006.

<sup>4422</sup> *Ibid.*, T. 7590 (22 Feb 2007). PW-101 testified that he saw **Nikolić** and another officer directing executions at a field in Orahovac. PW-101 stated that this officer was lieutenant-colonel or colonel at the most. PW-101 also said that the “lieutenant-colonel” and **Nikolić** were the only ones able to issue orders at the execution site, and the most senior in rank present. *Ibid.*, T. 7581–7582, 7586, 7589–7590 (22 Feb 2007). The Trial Chamber is satisfied that there is no reasonable conclusion available on the evidence other than that the officer directing the soldiers at the execution site at Orahovac with **Nikolić** was in fact **Popović**. *See supra*, para. 1111.

<sup>4423</sup> Milorad Birčaković, T. 11038, 11042 (7 May 2007). Birčaković testified that it was probably 50 metres away from the fountain at Grbavci School. *Ibid.*, T. 11042 (7 May 2007).

<sup>4424</sup> **Nikolić** Closing Arguments, T. 34899 (15 Sept 2009).

(iv) 15 July 1995

a. Ročević School

1367. On 15 July, **Nikolić** was the Duty Officer at Standard Barracks.<sup>4427</sup> Between 1 and 2 a.m. on 15 July, Commander of the 2nd Battalion of the Zvornik Brigade Aćimović received a telegram from the Zvornik Brigade Command that a platoon of soldiers should be dispatched to execute the prisoners at the Ročević School.<sup>4428</sup>

1368. Around 2:30 a.m. that morning, Aćimović received a call from **Nikolić**, who told him that the order “had come from above” and had to be carried out.<sup>4429</sup> **Nikolić** called him again at approximately 7 or 8 a.m. to find out whether Aćimović had executed the order.<sup>4430</sup> Aćimović told **Nikolić** that he would not assign anyone to execute the prisoners.<sup>4431</sup> **Nikolić** was angry and ordered Aćimović to meet him at the Ročević School that same morning.<sup>4432</sup> **Nikolić** was informed on the evening of 14 July that **Beara** was coming to the Standard Barracks at 9 a.m on 15 July 1995.<sup>4433</sup>

<sup>4425</sup> Marko Milošević, Deputy Commander of the 6th Battalion of the Zvornik Brigade and former assistant to **Nikolić**, met **Nikolić** at that crossroad, where he saw him with **Beara**. Ostoja Stanišić, T. 11604–11606 (16 May 2007); Marko Milošević, T. 13302–13304 (26 June 2007).

<sup>4426</sup> *See supra*, para. 494–495.

<sup>4427</sup> PW-168, T. 17210 (closed session) (31 Oct 2007), referring to Ex. 7DP00378 “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”. The logbook states for 15 July at 06.30 a.m. “**Drago Nikolić**” and PW-168 recognised **Nikolić**’s signature. PW-168, T. 17210 (closed session) (31 Oct 2007). Todor Gavrić, a member in the artillery of the Bratunac Brigade saw **Nikolić**, between 8 and 9 a.m., together with Dule Nikolić and Mico Gavrić outside the hangar at the Standard Barracks. **Nikolić** was wearing a military uniform. Todor Gavrić, T. 26449, 26452–26454 (29 Sept 2008). Dušica Sikimić, wife of Dušan Nikolić, **Nikolić**’s cousin, called **Nikolić** at the Standard Barracks on 15 July at around 10 am. Dušica Sikimić, T. 25962–25964, 25969 (18 Sept 2008). Kathryn Barr, a handwriting analysis expert, gave evidence that five entries and associated signatures of 15 July in the Duty Officer’s Logbook could be concluded to be **Nikolić**’s handwriting and signature, and that five pages of record on 15 July in the Duty Officer’s Notebook also could be concluded to be **Nikolić**’s handwriting. Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 Jan 1996”; Kathryn Barr, T. 13183–13184, 13185, 13259 (25 June 2007); Ex. P02845, “Handwriting report Milorad Trbić, Drago Nikolić and Ljubislav Strbac, 29 June 2006”, pp. 8–10; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”. **Nikolić**’s handwritings found in the Duty Officer Logbook show that he wrote into the logbook on five occasions at 4:40, 6:30 a.m., 1:45, 1:50, 4:45 p.m. **Nikolić**’s handwritings found in the Duty Officer Notebook show that he wrote into the notebook concerning the events that happened from 11:45 a.m. to 3:50 p.m. Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 Feb 1995 to 3 Jan 1996”; Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May–27 July 1995”. *See also* Vinko Pandurević, T. 31360 (12 Feb 2009).

<sup>4428</sup> *See supra*, para. 508.

<sup>4429</sup> *See supra*, paras. 509–510.

<sup>4430</sup> *See supra*, para. 510.

<sup>4431</sup> *Ibid.*

<sup>4432</sup> *Ibid.*

<sup>4433</sup> The Zvornik Brigade Duty Officer Notebook contains an entry made by the Duty Officer Jokić some time after 8 p.m. The entry reads: “from Beara–Drago to report Mane – Đukići 0900 Beara is coming”. Ex. P00377, “Zvornik Brigade Duty Officer Notebook, 29 May to 27 July 1995”, pp. 133–134. An intercept on the evening of 14 July at 10:18 p.m. indicates that a “Chief of Security Centre” named “Đukić” in Vlasenica tried to call **Drago Nikolić** at the Standard Barracks but could not, and asked for **Nikolić** to call him back. “Đukić” also required that **Nikolić** be informed stating “tell him we’ll meet there, where you are, Tomorrow morning at 0900. There, where you are”. Ex. P01165a, “Intercept 14 July 1995, 22:18 hours”. The Trial Chamber concludes that “Mane” and “Đukić” referred to Mane Đurić, Deputy Chief of the Zvornik CJB. *See, inter alia*, Mendeljev Đurić, who also testified that

1369. At around 9 or 10 a.m. on 15 July, Aćimović drove to the Ročević School where he saw at least a dozen corpses lying on the ground.<sup>4434</sup> Instead of **Nikolić**, Aćimović found **Popović** in front of the School,<sup>4435</sup> who asked Aćimović why he had not brought any men as ordered and threatened that he would be held responsible for not obeying the order.<sup>4436</sup>

1370. The Trial Chamber has already found that the Military Police Company of the Zvornik Brigade was present at and around the Ročević School and that several of its members performed duties.<sup>4437</sup> On 15 July 1995,<sup>4438</sup> PW-165, a Zvornik Brigade Military Policeman, was sent by Miomir Jasikovac with his colleague to the checkpoint in Ročević, which was “the main village road leading off the main road about 400 metres towards the school”,<sup>4439</sup> where he stayed from approximately 11:30 a.m. to 5 p.m.<sup>4440</sup> During his shift in Ročević, PW-165 witnessed two vehicles passing by. PW-165’s colleague said to him that the “security officers” had arrived, meaning Trbić and **Nikolić**, although PW-165 did not personally see that it was **Nikolić** who arrived.<sup>4441</sup> Given his contradictory and uncertain testimony on the point, the Trial Chamber is not satisfied that the evidence of PW-165 is sufficient to prove that **Nikolić** was physically present at the Ročević School on 15 July 1995.

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it was not him. Mendeljev Đurić, T. 10892 (3 May 2007), *See also* T. 7348 (20 Feb 2007) (where the parties agreed that Mane Đurić, as mentioned in the intercept Ex. P01165a, was not the same person as witness Mendeljev Đurić); Slaviša Simić, T. 27493 (28 Oct 2008).

<sup>4434</sup> Srećko Aćimović, T. 12957–12958 (20 June 2007). Mitar Lazarević testified that Aćimović went to the Ročević School alone in order to inform those at the school that Aćimović would not dispatch any men to participate in the executions. Mitar Lazarević, T. 13379 (26 June 2007). Jović heard that there were dead bodies at the Ročević School on 14 July. Dragan Jović, T. 18049, 18050 (21 Nov 2007). Aćimović told Lazarević that prisoners had been killed at the school. Mitar Lazarević, T. 13367 (26 June 2007).

<sup>4435</sup> Srećko Aćimović, T. 12957–12958 (20 June 2007). In front of the goal on the soccer pitch nearby, Dragan Jović saw Aćimović talking to a “rather big” man with a shaven, round face who wore a uniform without a rank, and wore no gun or uniform hat. Jović did not recognise him as someone from the Zvornik Brigade. Dragan Jović, T. 18055–18056 (21 Nov 2007).

<sup>4436</sup> Srećko Aćimović, T. 12958–12959, 12964–12965 (20 June 2007).

<sup>4437</sup> *See supra*, para. 505.

<sup>4438</sup> PW-165 testified that he received this order on 11 July. In examination-in-chief, after PW-165 had said that he was in Ročević on 11 July, he was reminded that he had said in a statement to the Prosecution in 2005 that he did not know the date on which he had been in Ročević and that it must have been soon after the fall of Srebrenica. PW-165 nevertheless still maintained that he was in Ročević on 11 July. PW-165, T. 9916 (3 Apr 2007). However, based upon the testimony of PW-142 and PW-143 that they received this assignment the day after they were stationed at the Grbavci School, together with the Zvornik Brigade Military Police attendance roster detailed below, the Trial Chamber concludes that PW-165 was mistaken about the date and was actually present at the Ročević School with the other men on 15 July. *See supra*, para. 516, fn. 1887.

<sup>4439</sup> PW-165, T. 9910, 9911 (3 Apr 2007). *See also* PW-165, T. 9919–9920 (3 Apr 2007).

<sup>4440</sup> PW-165, T. 9905, 9909–9913, 9923 (3 Apr 2007).

<sup>4441</sup> PW-165, T. 9923 (3 Apr 2007), T. 9961 (4 Apr 2007). PW-165 said that in July 1995 the security officers in the Zvornik Brigade were Milorad Trbić and **Nikolić**, though he qualified this by saying that he was not sure whether Milorad was Trbić’s first name. PW-165, T. 9906 (3 Apr 2007). PW-165 initially testified that he did not himself see Trbić and **Nikolić**. PW-165, T. 9923 (3 Apr 2007). Later however, when responding to a question from Judge Prost, he gave evidence that he saw Trbić, that he had heard **Nikolić** had arrived, but that he had not personally seen that it was **Nikolić** who had arrived. *Ibid.*, T. 9961 (4 Apr 2007).

1371. The Trial Chamber recalls that, on 15 July 1995, the prisoners detained at the Ročević School were subsequently blindfolded and brought to a gravel pit in Kozluk, where they were executed.<sup>4442</sup>

(v) 16 July 1995

1372. The Prosecution submits that **Nikolić** was Duty Officer at the Standard Barracks on the morning of 16 July 1995,<sup>4443</sup> and that between 4 a.m. and 6 a.m. he made a notation in the Zvornik Brigade Notebook that the 1st Battalion requested 50 litres of oil and 20 litres of gasoline for “transport of troops to Kula” and 10 crates of ammunition.<sup>4444</sup> A follow-up notation in the same Notebook at 6 a.m. states that the situation regarding the 1st Battalion is “under control”.<sup>4445</sup> The Prosecution argues (1) that the references to the transport of troops “can only have been related to the detention of prisoners at Kula School”, (2) that there was “no combat activity in the area of the 1st Battalion at that time”, and (3) that the ammunition “must have been used for the mass executions planned that day at the Branjevo Military Farm”.<sup>4446</sup> **Nikolić**, referencing the same Duty Officer Notebook, claims that he was at the Zvornik Brigade between the morning of 15 and the morning of 16 July 1995, and thus he acknowledges he made the entry.<sup>4447</sup> However, no evidence was led by the Prosecution to support its statement that there was “no combat activity in the area of the 1st Battalion at that time.”<sup>4448</sup> Considering the burden of proof, in the absence of such evidence, the Trial Chamber is not convinced that the only reasonable inference to be drawn from the Zvornik Brigade Notebook entries is that they concerned materials required for the killing operation.

1373. In the early afternoon of 16 July 1995, **Nikolić** received a call at the Zvornik Brigade Command regarding the death of his cousin, Dušan Nikolić.<sup>4449</sup> From the afternoon of 16 July 1995

<sup>4442</sup> See *supra*, paras. 517–520.

<sup>4443</sup> Prosecution Final Brief, para. 2780.

<sup>4444</sup> Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, p. 143. Ten crates of ammunition would equal approximately 11,000 bullets. Vinko Pandurević, T. 31304–31305 (11 Feb 2009).

<sup>4445</sup> Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, p. 144.

<sup>4446</sup> Prosecution Final Brief, para. 2781.

<sup>4447</sup> Nikolić Final Brief, paras. 1258, 1269, 1275.

<sup>4448</sup> Prosecution Final Brief, para. 2781.

<sup>4449</sup> On 16 July 1995 at 2 p.m. Mara Milošević testified she made a call to **Nikolić** who was in the Zvornik Brigade Command. Mara Milošević, Ex. 3D00476, “92 *ter* statement”, p. 2 (28 Apr 2008). The call to **Nikolić** was made from the home of Dušica Sikimić. Mara Milošević, T. 25957 (18 Sept 2008); Dušica Sikimić, T. 25965 (18 Sept 2008). Dragan Milošević, a cousin-in-law of **Nikolić**, testified he met **Nikolić** between 3 and 4 p.m. on 16 July at the Standard Barracks. Dragan Milošević, Ex. 3D00475, “92 *ter* statement”, p. 2 (23 Apr 2008). On cross-examination, Dragan Milošević stated that it was difficult to know what time it was exactly. He estimated that it was between 3 and 4 in the afternoon, “give or take half an hour”. *Ibid.*, T. 25945 (18 Sept 2008).

to the evening of 17 July 1995, **Nikolić** was with the family of his cousin participating in the funeral ceremonies.<sup>4450</sup>

(vi) Evidence Given by PW-102 and PW-108 regarding Physical Participation of Nikolić in Executions

1374. The Prosecution presented the evidence of PW-102 and PW-108 regarding a meeting that PW-102 had with **Nikolić** on an unspecified day in July 1995. During that meeting, **Nikolić** said to PW-102 that **Nikolić** had been personally involved in killings that occurred on that day. The core of PW-108's evidence is what he heard from PW-102 regarding that meeting. The evidence of PW-102 was received pursuant to Rule 92 *quater*.

1375. PW-102 testified that in "mid-July 1995" (he did not specify the date) the school playground in Ročević "was full of buses and soldiers of some kind".<sup>4451</sup> There, PW-102 received information about killings at Ročević School.<sup>4452</sup> PW-102 then left and came to see PW-108 at his work post.<sup>4453</sup> PW-108 and PW-102 both set off on a trip to the Zvornik Brigade Command.<sup>4454</sup> PW-108 could not recall the exact date of the trip.<sup>4455</sup> When they came to the Standard Barracks, they could not find the Brigade Commander.<sup>4456</sup> According to PW-102 and PW-108, they met **Nikolić** on the first floor

<sup>4450</sup> Mara Milošević, Ex. 3D00476, "92 *ter* statement", pp. 2–3 (28 Apr 2008); Dušica Sikimić, T. 25962–25966 (18 Sept 2008); Ex. 3D00462, "Obituary of Dušan Nikolić"; Dragan Milošević, T. 25948 (18 Sept 2008); Milorad Birčaković, T. 11141–11142, 11144 (8 May 2007). The funeral procession for Dušan Nikolić set out from Zvornik at around noon on 17 July 1995, Dragan Milošević, T. 25947 (18 Sept 2008). After the funeral, a religious ceremony or funeral mass was held in the church in Bratunac. Dušica Sikimić, T. 25966 (18 Sept 2008); Dragan Milošević, T. 25948 (18 Sept 2008). Milorad Birčaković testified that on 17 July 1995, late in the afternoon, he drove in a van to Kravica, where the funeral was held, together with **Nikolić** and the entire Military Police. Milorad Birčaković, T. 11141–11142, 11144 (8 May 2007). *See also* Vinko Pandurević, T. 31084 (9 Feb 2009). In cross-examination, **Nikolić** asked, "You said in your testimony that Trbić would have said to PW-168 that **Drago** was not there because his brother-in-law or his cousin died. Do you recall saying this?" to which **Pandurević** answered "Yes, that's what I said." *Ibid.* T. 31360–31361 (12 Feb 2009).

<sup>4451</sup> PW-102, Ex. P03128, "confidential – 92 *quater* transcript", MT. 21040, 21043 (private session), T. 21091 (22 May 2003). He also stated that he went to Ročević with a relative on private business. PW-102, Ex. P03128, "confidential – 92 *quater* transcript", MT 21043, 21095–21096 (private session) (22 May 2003).

<sup>4452</sup> PW-102, Ex. P03128, "confidential – 92 *quater* transcript", MT. 21040–21041 (private session) (22 May 2003). The locals at the school who were protesting and disapproved told PW-102 that "they were killing people from Srebrenica there." PW-102 could hear frequent bursts of gunfire. *Ibid.*, MT. 21040–21042 (private session) (22 May 2003). PW-102 recalled: "A woman was protesting, and then this soldier headed towards her with a rifle in his hand. They said that they had brought several busloads there and that they were killing them behind the school." *Ibid.*, MT. 21042 (private session) (22 May 2003).

<sup>4453</sup> PW-108, T. 14982 (private session) (7 Sept 2007). PW-108 testified that he "think(s) it was a working day". *Ibid.* T. 14982 (private session) (7 Sept 2007).

<sup>4454</sup> *Ibid.*, T. 14757 (private session) (4 Sept 2007).

<sup>4455</sup> *Ibid.*, T. 14982 (private session) (7 Sept 2007).

<sup>4456</sup> PW-102 testified that they were looking for "the commander of the brigade [...], Mr. Obrenović". Later during his testimony, PW-102 specifies him as the "chief of the brigade". PW-102, Ex P03128, "confidential – 92 *quater* transcript", MT. 21094–21096 (private session) (22 May 2003). According to PW-108, they were looking for **Pandurević**. PW-108, T. 14747 (private session) (4 Sept 2007). The Zvornik Brigade seemed empty, PW-108, T. 14757 (private session) (4 Sept 2007).



of the Standard Barracks.<sup>4457</sup> PW-102 and **Nikolić** went to an office to talk, leaving PW-108 in the corridor.<sup>4458</sup>

1376. According to PW-102, **Nikolić** said during his meeting with him “that **Beara** had ordered that 6,900 people had to disappear within five days [...]”,<sup>4459</sup> PW-102 stated that **Nikolić** had soot on his arms and had said “that he himself had to pick up a weapon and shoot.”<sup>4460</sup> According to PW-102, **Nikolić** appeared “disturbed, excited, in haste”<sup>4461</sup> and **Nikolić** indicated that he had come from an execution site where they were killing people.<sup>4462</sup>

1377. The Trial Chamber emphasises that neither PW-102 nor PW-108 was able to attach a precise date to the events they described. The evidence regarding the date on which they encountered **Nikolić** is conflicting and contains several inconsistencies.<sup>4463</sup>

1378. The evidence of PW-102 regarding **Nikolić**’s physical involvement in killings was received pursuant to Rule 92 *quater*, which means **Nikolić** did not have an opportunity to cross-examine the witness. PW-108 testified that he only heard from PW-102 that **Nikolić** was personally involved in

<sup>4457</sup> PW-102, Ex. P03128, “confidential – 92 *quater* transcript” MT. 21041 (private session) (22 May 2003); PW-108, T. 14757–14758 (private session) (4 Sept 2007), T. 14993–14994 (private session) (7 Sept 2007). The Trial Chamber notes that in their first statements they provided to the Prosecution in 1995, neither PW-102 nor PW-108 mentioned their visit to the Zvornik Brigade. Ex. P03134 (confidential); Ex. 3D00197, “PW-108 – OTP Info Report, 27 Nov 1992”.

<sup>4458</sup> PW-108, T. 14747, 14758, 14762 (private session) (4 Sept 2007). PW-108 could only hear PW-102 asking “What are you doing? What is it that you’re doing?” before the office door closed, *ibid*, T. 14762 (private session) (4 Sept 2007). In his statement, PW-102 did not specify that PW-108 waited outside the office, Ex. P03133, “OTP Witness Statement of PW-102, 11 February 2003”, pp 10–11.

<sup>4459</sup> PW-102, Ex. P03128, “confidential – 92 *quater* transcript”, MT. 21041 (private session) (22 May 2003).

<sup>4460</sup> PW-102, Ex. P03128, “confidential – 92 *quater* transcript”, MT. 21041 (private session) (22 May 2003).

<sup>4461</sup> *Ibid*.

<sup>4462</sup> *Ibid*.

<sup>4463</sup> For example, some of their evidence suggests that the encounter with **Nikolić** occurred on 14 July 1995 (there was a general absence of personnel at the Zvornik Brigade Command and “it was a working day” [14 July 1995 being a Friday]. PW-108, T. 14757 (private session) (4 Sept 2007), T. 14982 (private session) (7 Sept 2007)). However, according to PW-108, Srebrenica was “under siege” (PW-108, T. 14751 (4 Sept 2007), whereas it was no longer under siege on 14 July, a fact that should have been known to both PW-102 and PW-108. Moreover, the Trial Chamber also heard testimony of Stevo Kostić and Nebojša Jeremić who testified that they did not remember seeing **Nikolić** or any civilians passing by on 14 July, while they were guarding the reception gate at the Standard Barracks. Stevo Kostić, a Military Police member, stated that it was not possible that a civilian could enter the Standard Barracks without the Military Policemen knowing as they guarded the only entrance to the compound. According to them, Jeremić and Kostić were the only Military Policemen present at the Standard Barracks on 14 July 1995. Kostić did not recall seeing **Nikolić**’s driver Milorad Birčaković, **Nikolić** himself, or any visitors that day. Jeremić testified that no one dressed as civilians visited the Standard Barracks that day, Nebojša Jeremić, T. 26092 (23 Sept 2008). Both PW-102 and PW-108 were wearing civilian clothes, PW-108, T. 14997 (7 Sept 2007). There is also evidence to suggest that their visit to the Zvornik Brigade took place on 16 July 1995 as, particularly, (i) PW-102 testified that he had visited the Ročević School and was informed of the killings there, which had not yet taken place before the afternoon of 14 July, (ii) **Nikolić** was at the Standard Barracks on the afternoon of 16 July, (iii) and that PW-108 had seen a convoy of vehicles several days prior to their visit to the Zvornik Brigade. PW-108, T. 14755 (4 Sept 2007), T. 14983-14984 (private session) (7 Sept 2007). On the basis of the evidence of PW-102 and PW-108, the Trial Chamber cannot conclude beyond reasonable doubt on which day the encounter took place, and whether it involved crimes committed in Orahovac or in Ročević. Stevo Kostić, T. 25987, 26000–26001, 26004, 26006–26007 (22 Sept 2008); Nebojša Jeremić, T. 26092 (23 Sept 2008); PW-108, T. 14755 (4 Sept 2007), T. 14983-14984 (private session), 14997 (private session) (7 Sept 2007).

killings. For these reasons, as well as several important inconsistencies in the evidence of PW-102 and PW-108 and conflicting testimony regarding (1) the date of their visit and (2) the criminal activity in which **Nikolić** would have been involved, the Trial Chamber finds that the evidence of PW-102 and PW-108 is insufficient to make a finding that **Nikolić** executed prisoners.

(vii) After 17 July 1995

a. Four Branjevo Military Farm Survivors

1379. The Trial Chamber has found previously that four Bosnian Muslim men who were survivors of the Branjevo Military Farm executions were killed sometime after 23 July 1995.<sup>4464</sup> On 23 July these men were in the custody of the Zvornik Brigade Crimes Prevention Service at the Standard Barracks.<sup>4465</sup> Sometime between 19 and 23 July, **Nikolić** had interrogated and punished Neško and Slobodan Đokić, father and son, who had admitted to giving the four Bosnian Muslim survivors food and fresh clothes.<sup>4466</sup> There is no evidence that **Nikolić** had any direct involvement with the four survivors; however the Trial Chamber has found that he was aware of their presence and the fact that they had survived the mass killing. Specifically, the Trial Chamber has found that **Nikolić** mentioned the prisoners to **Pandurević**, telling **Pandurević** that they had escaped from an execution site in Pilica.<sup>4467</sup> In response, **Pandurević** told **Nikolić** to stay after the morning briefing so they could discuss the matter.<sup>4468</sup> There is no further evidence before the Trial Chamber as to the discussion which took place between **Pandurević** and **Nikolić** nor as to the precise circumstances under which these four men were killed. Thus, while it was **Nikolić** who informed **Pandurević** of the capture of these four men, in the view of the Trial Chamber, there is more than one reasonable inference that can be made as to the course of action taken by **Nikolić** subsequently with respect to these four prisoners. In the absence of such evidence, the Trial Chamber cannot be satisfied beyond reasonable doubt that **Nikolić** was involved in the murder of the four Branjevo Military Farm survivors. The Trial Chamber does, however, attribute the responsibility for these killings to the members of the Joint Criminal Enterprise to Murder.<sup>4469</sup>

<sup>4464</sup> See *supra*, paras. 584–588.

<sup>4465</sup> See *supra*, para. 586.

<sup>4466</sup> Nebojša Jeremić, T. 10417–10418, 10427, 10428 (24 Apr 2007).

<sup>4467</sup> See *infra*, para. 1911.

<sup>4468</sup> *Ibid.*

<sup>4469</sup> See *supra*, para. 1076. See *infra*, paras. 1387–1392, where the Trial Chamber finds **Nikolić** was a member of the JCE to Murder.

b. Wounded Bosnian Muslim Prisoners from Milići Hospital

1380. Of the eleven Bosnian Muslim men who came from the Milići Hospital to the Zvornik Hospital on 14 July, ten men were subsequently brought to the Standard Barracks and guarded by the Military Police of the Zvornik Brigade.<sup>4470</sup> These wounded Bosnian Muslim prisoners stayed at the Standard Barracks for five to seven days.<sup>4471</sup> During this time, **Pandurević** sought assistance from the superior command to solve the problem as to what to do with these wounded prisoners.<sup>4472</sup> The Trial Chamber has found that these ten wounded prisoners were ultimately taken by **Popović** and that he arranged for their murder. However there is scant evidence as to the precise circumstances under which this occurred. There is even less evidence as to what, if any, role **Nikolić** had in the matter. The only evidence on this point comes from PW-168 who says that after the wounded prisoners had been taken away from the Brigade, **Pandurević** told Obrenović that **Popović** had arrived with an order from Mladić for the injured Bosnian Muslim men to be liquidated “and that the wounded were taken from **Nikolić** and driven away, taken away.”<sup>4473</sup> PW-168 could provide no further details and he did not clarify this vague reference to **Nikolić**. In these circumstances, the Trial Chamber cannot be satisfied as to what involvement **Nikolić** had with the ten wounded prisoners and more specifically his role in terms of their custody. The Trial Chamber is therefore not satisfied beyond reasonable doubt that **Nikolić** was involved in the murder of the ten wounded Bosnian Muslim prisoners from the Milići Hospital. The Trial Chamber does, however, attribute the responsibility for these killings to the members of the Joint Criminal Enterprise to Murder.<sup>4474</sup>

<sup>4470</sup> See *supra*, para. 570. One man, Aziz Bećirović had passed away in the Milići Hospital. Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 2; Radivoje Novaković, T. 9039–9041, 9075, 9084 (20 Mar 2007). See also Ex. P01884 (confidential), p. 34. The Zvornik Brigade Duty Officer’s notebook entry for 16 July 1995 states “Aziz Bećirović died at the hospital. Novaković notified that the utility company should take care of it”. Ex. 7D00169, “Page from Zvornik Brigade Duty Officer’s Notebook, 16 July 1995”. Novaković testified that he did not remember having reported this or the Zvornik Brigade being informed of Aziz Bećirović’s death. Radivoje Novaković, T. 9081–9082 (20 Mar 2007). Novaković’s failure to recall whether Bećirović’s death was reported does not affect the Trial Chamber’s finding that he did, in fact, pass away at the Zvornik Hospital.

<sup>4471</sup> Zoran Begović, Ex. P02481 “92 *ter* statement” (2 Apr 2003), p. 3.

<sup>4472</sup> PW-168, T. 15914 (closed session) (27 Sept 2007); Ex. P01309a, “Intercept 23 July 1995, 08:00 hours”.

<sup>4473</sup> PW-168, T. 15914 (closed session) (27 Sept 2007). On 20 November 2009, the Trial Chamber requested the Tribunal’s translation section (“CLSS”) to verify the translation of T. 15914, lines 20-23, which read “A. (...) He told [Obrenović] that Lieutenant-Colonel arrived with Mladić’s order for them to be liquidated and that the wounded were taken from Drago Nikolić and driven away, taken away. That’s all I know about that.” CLSS responded on 1 December 2009, confirming its translation, but noting that “the original in BCS is ambiguous. While the interpretation provided into English is correct, the original could also be construed to mean “... that the wounded were taken by Drago Nikolić [...]” It further clarified that name of “the Lieutenant-Colonel is missing” and that the original should read: A. (...) He told [Obrenović] that Lieutenant-Colonel Popović arrived with Mladić’s order for them to be liquidated and that the wounded were taken from Drago Nikolić and driven away, taken away. That’s all I know about that.” Internal Memorandum re. Verification of accuracy of interpretation in case no. IT-05-88-T, hearing of 27 September 2007, confidential, 4 December 2009.

<sup>4474</sup> See *supra*, para. 1076. See *infra*, paras. 1387–1392, where the Trial Chamber finds **Nikolić** was a member of the JCE to Murder.

c. Reburial Operation

1381. On 14 September 1995, the VRS Main Staff approved the delivery of five tons of diesel fuel to Milorad Trbić, **Nikolić**'s subordinate in the Security Organ of the Zvornik Brigade.<sup>4475</sup> On 22 September 1995, **Popović** called **Nikolić** and asked him whether the fuel had arrived, to which **Nikolić** responded that it had not. They referred to Milorad Trbic, who was working on the "fuel supply matter".<sup>4476</sup> The Trial Chamber is satisfied that the "fuel supply matter" referred to the mass reburial operation that was being carried out in the Zvornik area.<sup>4477</sup>

1382. At the end of November 1995, **Nikolić** told Dragan Obrenović that "the majority of the bodies from the graves where they had been buried were taken to different locations and that practically nothing was left in these other graves".<sup>4478</sup> **Nikolić** did not go into too much detail,<sup>4479</sup> but there were stories circulating in the Standard Barracks about the reburials.<sup>4480</sup>

1383. **Nikolić** argued that, as the reburial operation according to Damjan Lazarević lasted a maximum of six days,<sup>4481</sup> and since the first order regarding the reburial operation was of 14 September 1995, the reburial operation was executed between 14 and 20 September 1995.<sup>4482</sup> As **Nikolić** was away during this time period, he could not have been involved in the reburial operation. The Trial Chamber does not agree that the VRS Main Staff Order of 14 September 1995

<sup>4475</sup> Ex. P00041, "Document from the Main Staff of the VRS to the Command of the Drina Corps, signed by Ratko Mladić, 14 Sept 1995". Although the document says that the fuel shall be delivered to the Standard Barracks in Zvornik, to "Captain Milorad Trpić", PW-168 confirmed that this most likely was a typo made by the teleprinter operator, and that it should read "Captain Milorad Trbić", with a "b" instead of a "p". PW-168, T. 15922 (closed session) (27 Sept 2007).

<sup>4476</sup> An intercept of a conversation on 22 September records **Popović** asking a person called "Mihalić", nicknamed "Nido", whether fuel arrived and received the answer that it had not. **Popović** and "Nido" referred to Trbić who was working on the fuel supply matter. Another intercept adduced by the Prosecution shows that "Nido" was a nickname **Popović** used for **Nikolić**. Based on this second intercept, the Trial Chamber is satisfied that Nido was in fact **Nikolić**. Ex. P02391e, "Intercept, 22 Sept 1995, 18:44 hours"; Ex. P02437a, "Intercept of conversation, 19 January 1995, 10:57 hours", p. 1 ("[N: Nikolić here. P: This is Popović. N: How are you Pop? P: Hi Nidjo, old buddy [...]]"). The Trial Chamber also heard evidence that **Popović** came to the Zvornik Brigade with a large map and asked if **Pandurević** and "Drago" were there on 26 September 1995. No further evidence was led as to whether in fact a meeting between **Popović** and **Nikolić** occurred on that day, and what that meeting would have been about. PW-168, T. 15925-15926 (closed session) (27 Sept 2007).

<sup>4477</sup> See *supra*, Chapter III, Section I.

<sup>4478</sup> PW-168, T. 15927 (closed session) (27 Sept 2007).

<sup>4479</sup> *Ibid.*

<sup>4480</sup> *Ibid.*, T. 15927-15928 (closed session) (27 Sept 2007).

<sup>4481</sup> Damjan Lazarević, T. 14510 (30 Aug 2007).

<sup>4482</sup> **Nikolić** led evidence that between 14 and 19 September 1995 he was not present in the Zvornik Brigade area, but that in fact he was in the Krajina as part of a new brigade composed by Radislav Krstić. Miodrag Dragutinović confirmed seeing **Nikolić** "on the ground" in the Krajina on an unspecified time. **Nikolić** Final Brief, para. 1317; Ex. 7DP02925, "Zvornik Brigade Command Roster for September 1995", p. 1; Miodrag Dragutinović, T. 12780 (18 June 2007). The Trial Chamber is of the view that whether **Nikolić** was in the Krajina or not during this period is of little relevance since the Trial Chamber is satisfied, in the context of all the evidence regarding the reburial operation, that the only reasonable inference on the evidence is that the "fuel supply matter" in question concerned fuel necessary for the reburial operation and that **Nikolić** was involved in this.

evidences that the reburials physically started on that day, or that they would have ended precisely on 20 September 1995.

1384. However, while the Trial Chamber is satisfied that **Nikolić** had some knowledge of the reburial operation in September 1995 and afterwards, there is no evidence as to his participation beyond his discussion of fuel with **Popović**.

(d) Findings

1385. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Participation in Two Joint Criminal Enterprises

1386. The Prosecution's case against **Nikolić** is that he committed crimes through participation in two joint criminal enterprises. The Trial Chamber will begin with an examination of **Nikolić's** alleged participation therein.

a. The Joint Criminal Enterprise to Murder

i. First Category Joint Criminal Enterprise

1387. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>4483</sup> The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Chamber will now turn to the third element: participation of the accused in the common purpose.

1388. The Trial Chamber recalls that in order for **Nikolić** to incur liability pursuant to the first category of JCE, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Nikolić** must have significantly contributed to the common purpose and have shared the intent with other members of the JCE to Murder to carry out the common purpose.

1389. On the evening of 13 July 1995, **Nikolić** knew that the Bosnian Muslim able-bodied males from Srebrenica were to be brought from Bratunac to Zvornik to be killed. **Nikolić** was requested to assist in the murder operation, and he sought his release from the IKM for this purpose. When

**Nikolić** requested to be relieved from his duty as Duty Officer at the IKM in order to organise the detention and killings of prisoners, **Nikolić** became an active member of the JCE to kill the Bosnian Muslim able-bodied males from Srebrenica.

1390. During the evening of 13 July 1995, **Nikolić** made preparations for detaining the prisoners at Orahovac, and was at Orahovac giving directions to the Zvornik Brigade Military Police he had previously ordered to go there. On the morning of 14 July, **Beara**, **Popović** and **Nikolić** met at the Standard Barracks to organise and coordinate the killing operation.<sup>4484</sup> After the meeting, **Nikolić** travelled to the Vidikovac Hotel at Divić, where he awaited the Bosnian Muslim prisoners arriving on buses from Bratunac.<sup>4485</sup> For much of the day on 14 July 1995, **Nikolić** was present at the Grbavci School in Orahovac and coordinated and directed the subsequent killings at the Orahovac execution site.<sup>4486</sup> On 14 July, **Nikolić** ordered Slavko Perić of the 1st Battalion to secure the prisoners at the Kula School in the awareness that they would be executed.<sup>4487</sup> On 15 July 1995 **Nikolić**, working closely with **Beara** and **Popović**, was involved in organising the detention and execution of prisoners at Ročević School.<sup>4488</sup>

1391. Thus, **Nikolić** was involved in the operation at many of the sites in the Zvornik area where Bosnian Muslims were detained and executed. He participated in various aspects of the operation – planning, physical preparations, and securing personnel. At Orahovac, he was giving directions at the execution site.<sup>4489</sup> Throughout the operation, **Nikolić** interacted and met with other participants in the murder operation, including **Popović** and **Beara**. **Nikolić's** participation in the JCE to Murder is also corroborated by his participation, albeit limited, in the reburial operation.<sup>4490</sup>

1392. As outlined above, there is substantial evidence before the Trial Chamber that **Nikolić** was involved in various aspects of the JCE to Murder. He played an important role in the organisation of the operation by which the common purpose was achieved, and he made a number of contributions to that common purpose through his work, behind the scenes of and at, various detention and execution sites in Zvornik. Notably he arranged for personnel to guard and carry out executions and was personally present at Orahovac, in an organizational capacity, at the detention and execution sites, at times while the executions were being carried out. Through these acts he made a significant

<sup>4483</sup> See *supra*, para. 1072.

<sup>4484</sup> See *supra*, paras. 472, 1357.

<sup>4485</sup> See *supra*, para. 1358.

<sup>4486</sup> See *supra*, paras. 1361–1364.

<sup>4487</sup> See *supra*, paras. 1359–1360.

<sup>4488</sup> See *supra*, paras. 1367–1369.

<sup>4489</sup> See *supra*, para. 1362.

<sup>4490</sup> It is established that the Security Organs at the Corps and Brigade levels were responsible for the organisation of the reburial operation in the Bratunac and Zvornik areas and that **Nikolić** participated in this operation in September 1995. See *supra*, paras. 1381–1384, 1390 and Chapter III, Section I.

contribution and from his steadfast and resolute approach to the task given to him in the murder operation, it is clear that he shared the intent of the common purpose. The Trial Chamber therefore finds that **Nikolić** significantly contributed to the common purpose of the JCE to Murder and that he shared the intent to carry out the common purpose. Thus, the Trial Chamber finds that **Nikolić** was a participant in the JCE to Murder.

ii. Third Category Joint Criminal Enterprise

1393. The Prosecution alleges that pursuant to the third category of liability through participation in a joint criminal enterprise, it was foreseeable to the participants of the JCE that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Murder.<sup>4491</sup> The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.<sup>4492</sup> The Trial Chamber, by majority, Judge Kwon dissenting, has found that “opportunistic” killings also occurred at the Kravica Supermarket.<sup>4493</sup> The Trial Chamber recalls its finding above that, as of the evening of 13 July 1995, **Nikolić** became an active participant in the JCE to Murder. At that point, **Nikolić** was aware that a large number of prisoners would be brought to Zvornik for detention and execution. The next day **Nikolić** witnessed first hand the transport of a significant number of prisoners and he was subsequently present at Grbavci School to witness the conditions of detention. The operation occurred in a time of chaos and involved soldiers with personal revenge motivations. The Trial Chamber finds that given these combined circumstances it was clearly foreseeable to **Nikolić** that “opportunistic” killings of the Bosnian Muslim men held in the Zvornik area would occur, in addition to the large-scale executions. However, given the timing of **Nikolić**’s participation in the JCE and the fact that his sphere of knowledge was limited to Zvornik, the evidence does not show that the detentions and killings in Bratunac were foreseeable to **Nikolić**. Rather it was the “opportunistic” killings of prisoners detained at the Petkovci School that occurred on 14 July 1995 that were foreseeable to him.<sup>4494</sup> Thus, the Trial Chamber is satisfied that these murders were foreseeable to **Nikolić** and that he willingly took the risk that they would occur. The Trial Chamber finds that as a member of the JCE to Murder therefore **Nikolić** was also responsible for these killings at Petkovci School.

<sup>4491</sup> Indictment, para. 31. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

<sup>4492</sup> *See supra*, para. 497.

<sup>4493</sup> *See supra*, paras. 446–449; *see* Judge Kwon’s Dissenting Opinion, *infra*, para. 40–46.

<sup>4494</sup> *See supra*, paras. 1345–1356, 1366.

b. Participation in the Joint Criminal Enterprise to Forcibly Remove

1394. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>4495</sup> The Trial Chamber recalls its previous finding that the transport of the men to detention and execution sites does not constitute forcible transfer.<sup>4496</sup> Therefore, the Trial Chamber will not address **Nikolić**'s alleged participation in forcible transfer through his involvement in the transportation of the men from Bratunac.

1395. According to procedure, **Nikolić** should have known about the content of the 20 March 1995 Order.<sup>4497</sup> However, whether or not **Nikolić** knew about the plan to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa, the Trial Chamber finds that there is no evidence that he participated in the JCE to Forcibly Remove. Therefore, the Trial Chamber finds there is no evidence that **Nikolić** contributed to the JCE to Forcibly Remove.

1396. The Trial Chamber further finds that there is no evidence that it was "clearly foreseeable"<sup>4498</sup> to him, as the Prosecution alleged, that his participation in the murder of the Bosnian Muslim males from Srebrenica would "contribute to the climate of fear in Žepa which resulted in the forcible removal the Muslim population from that area".<sup>4499</sup>

(ii) Count 1: Genocide

1397. The Trial Chamber has found that **Nikolić** shared the intent to bring about the common purpose of the JCE to Murder, namely to murder the able-bodied Muslim males from Srebrenica, and that he made a significant contribution to the commission of the crimes within the scope of this JCE. Through his participation in the JCE to Murder, **Nikolić** committed murder. The Trial Chamber has further found that **Nikolić** planned and ordered murder.<sup>4500</sup> With reference to genocide, what must be considered, however, is whether his participation in the JCE to Murder and his acts of planning and commission were carried out with genocidal intent.

1398. As described previously, direct evidence of genocidal intent is rare. Instead, it must be inferred from the acts, conduct and knowledge of the accused, as well as other relevant circumstances. The Prosecution points to various factors in support of their allegation that **Nikolić**

<sup>4495</sup> See *supra*, Chapter III, Section G.2.

<sup>4496</sup> See *supra*, para. 934.

<sup>4497</sup> In accordance with Rule 131 of the Brigade Rules, **Pandurević** should have briefed the members of the Zvornik Brigade Command, including **Nikolić** as the Chief of Security, on the task contained in the 20 March Order. See Ex. 7DP00408, "JNA Brigade Rules, 1984", Rule 131 and 132. **Pandurević** confirmed in his testimony that he had received the 20 March Order. Vinko Pandurević, T. 30822 (29 Jan 2009).

<sup>4498</sup> See Prosecution Final Brief, para. 2790.

<sup>4499</sup> *Ibid.*

<sup>4500</sup> See *infra*, para. 1421,



had genocidal intent. They highlight the derogatory language **Nikolić** used to refer to Bosnian Muslims, with special emphasis on entries he made on 15 July 1995 in the Duty Officer Notebook and in the Duty Officer Diary, where he describes Muslims as “Turks”.<sup>4501</sup> The Prosecution submits that the use of such language just a day after the killings at Orahovac and on the same day of the killings at Ročević and Kozluk, clearly shows **Nikolić**’s ethnic hatred toward the Muslim population.<sup>4502</sup> They also allude to other instances where derogatory terms are used with reference to Muslims and other ethnic groups.<sup>4503</sup>

1399. As indicated before, while the use of derogatory language may be of relevance in relation to genocidal intent, it does not in and of itself evidence such intent.<sup>4504</sup> This is particularly the case given the culture within the VRS and the Zvornik Brigade in which such language was commonplace. Further, the Trial Chamber has considered the proximity of **Nikolić**’s use of the language to the criminal acts but is not persuaded that this adds weight to the evidence as an indicator of genocidal intent. His words are captured at that time because he served as duty officer during the relevant period and again there is nothing to suggest this was other than a reflection of an unacceptable but common practice.

1400. More significantly, the Prosecution points to the systematic and coordinated nature of the murder operation and the various forms and extent of **Nikolić**’s involvement in the execution of the plan to murder, including his role in planning, organising and coordinating. Further, the Prosecution points to the willingness to participate in the common plan, which **Nikolić** demonstrated.

1401. The starting point in the analysis is **Nikolić**’s knowledge of the details and features of the murder operation which evidences that it was being carried out with genocidal intent. **Nikolić**, argues that while he came to know of the killings at Orahovac, he never learned of or shared a genocidal intent.

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<sup>4501</sup> Prosecution Final Brief, para. 2802. *See* Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May to 27 July 1995”, pp. 140, 142; Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”, p. 3.

<sup>4502</sup> Prosecution Final Brief, paras. 2802–2803. The Prosecution also referred to evidence of his ethnic bias towards other ethnic groups. In an intercepted conversation between **Nikolić** and **Popović** on 20 April 1995, **Nikolić** talked about two Polish volunteers calling them “Catholic peasants” and threatening to “slit their throats and dump them in the Drina.” According to the **Nikolić** Defence, this intercept does not establish the genocidal intent of the Accused. It emphasizes **Nikolić**’s good relation with his sister-in-law (who was a Catholic Croat), and argues that such language was uttered during the war, and that during the recorded conversation, **Nikolić** was particularly “agitated” by the problems of security related to the arrival of volunteers under his responsibility. Prosecution Final Brief, para. 2804; Ex. P02352a, “Intercept of conversation between Popović and Nikolić, 20 April 1995, 19:10 hours”; **Nikolić** Final Brief, paras. 1580–1584

<sup>4503</sup> Prosecution Final Brief, paras. 2804.

<sup>4504</sup> *See supra*, para. 1117.

1402. **Nikolić's** knowledge of the murder operation was of a different nature from that of **Beara** and **Popović**. **Nikolić** is first informed of the murder plan on the evening of 13 July.<sup>4505</sup> On the evidence before the Trial Chamber, the information he was given was sparse; a large number of prisoners were being brought from Bratunac to Zvornik to be executed.<sup>4506</sup> The timing is also significant. By then the murder operation was well underway, the vast majority of the victims had been detained and over 1,000 had been or were about to be executed at the Kravica Warehouse and in Sandići Meadow.<sup>4507</sup>

1403. On the evidence before the Trial Chamber, **Nikolić** had no knowledge of those events. Other than his general understanding that these were prisoners taken as a result of the attack on, and fall of the Srebrenica enclave, he had no information as to the circumstances by which these men had ended up in VRS custody. He did not know about the indiscriminate separations in Potočari or the vigorous pursuit of victims on the Konjević Polje road.<sup>4508</sup> Thus he was not aware that this murderous enterprise went well beyond killing those who had fallen into VRS custody and was in fact an operation designed to maximise the number of victims, with the aim of destruction of the group.<sup>4509</sup> In addition having had no direct involvement with the prisoners at that point, while it would have been evident the prisoners were Bosnian Muslims, there is no evidence he knew that the intended victims included a significant component of civilians.<sup>4510</sup> Thus, the Trial Chamber finds that on 13 July when he joined in the common plan, **Nikolić** was aware of the plan to murder on a large scale but not of some of the key features of the operation which would evidence genocidal intent. In this respect, the Prosecution is correct in its assertion that **Nikolić** was willing to pursue his release from duty officer responsibilities at the IKM in order to participate in this operation. Nevertheless, given his state of knowledge at the time, this evidences only his willingness to accede to these patently illegal orders and to participate in murder. In that context, it alone does not show genocidal intent.

1404. However, even accepting that this was **Nikolić's** initial state of knowledge, what happened soon after was more than sufficient for him to conclude that the plan was not just to kill but to destroy. On the morning of 14 July, **Nikolić** acquires a clearer picture of the operation. First, he meets with **Beara** and **Popović** to discuss the details of the killing operation.<sup>4511</sup> The only

<sup>4505</sup> See *supra*, paras. 1345–1356.

<sup>4506</sup> *Ibid.*

<sup>4507</sup> See *supra*, para. 1299, noting that while there is no direct evidence before it of **Beara's** participation in the murder operation prior to 13 July. However, there is clear evidence before the Trial Chamber that as of the morning of 12 July, **Popović**, **Beara's** subordinate in the Security Branch, was aware of the plan to murder).

<sup>4508</sup> See *supra*, Chapter III, Sections E.6 and F.4.

<sup>4509</sup> See *supra*, Chapter III, Section E.6.

<sup>4510</sup> See *supra*, paras. 760–761.

<sup>4511</sup> See *supra*, para. 1357.

reasonable inference to draw from such a planning meeting is that when he leaves Standard Barracks that morning, he knows the details of the plan; the executions were to be carried out in multiple locations in the Zvornik area and the victims would number in the hundreds to thousands.<sup>4512</sup> Later that morning, he sees the convoy of buses and subsequently he acquires first hand information from his observations at Orahovac about the composition of the victims: soldiers and civilians, men, boys and elderly.<sup>4513</sup> It was also apparent that these unarmed, weakened, Bosnian Muslim males, already in VRS custody, constituted no military threat.

1405. The fact that a large number of Bosnian Muslim males had already been killed elsewhere does not detract from the reality that the killings that followed and with which he was involved were sufficient to make **Nikolić** aware of the scale and scope of this killing operation. **Nikolić** observed first hand the systematic and organised manner in which the killing operation was planned and carried out and further he took an active role in it. He saw evidence of the sheer determination that every detained Bosnian Muslim male would be killed, including the incident when **Popović** enjoined the soldiers at an execution site to shoot a young boy.<sup>4514</sup>

1406. His knowledge of the genocidal nature of the plan can also be inferred from his close association and interaction with **Beara** and **Popović**, whom the Trial Chamber has found harbored genocidal intent. The evidence shows that the interaction with these two men did not end with the meeting of 14 July at Standard Barracks. He continued to meet and work with them in the course of the killing operation and the Trial Chamber is satisfied that through this interaction he would have known of their genocidal intent.<sup>4515</sup>

1407. Thus on the basis of this combined evidence, the Trial Chamber is satisfied that soon after the inception of his involvement in the killing operation, and certainly by the time of executions at Orahovac, **Nikolić** knew that this was a massive killing operation being carried out with a genocidal intent. His key contributions to the JCE to Murder are made concurrent with, and after the acquisition of this knowledge.

1408. The Trial Chamber has found above that **Nikolić** played an important role in the JCE to Murder in terms of planning and organising detentions and executions. His contribution can properly be described as persistent and determined. The central issue, however, is whether those actions, combined with his knowledge of the genocidal intent of others, considered in the totality of the evidence, are sufficient to satisfy the Trial Chamber beyond reasonable doubt that **Nikolić** not

<sup>4512</sup> See *supra*, paras. 1345–1356.

<sup>4513</sup> See *supra*, paras. 478–488, 1358.

<sup>4514</sup> See *supra*, paras. 486–488.

<sup>4515</sup> See *supra*, paras. 486–488, 1366. See *supra*, paras. 1368–1369.

only knew of the intent but that he shared it. In reaching this determination the Trial Chamber recalls that “the gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed.”<sup>4516</sup> In this context, “the demanding proof of specific intent” is one of the safeguards to ensure that convictions for this crime will not be imposed lightly.<sup>4517</sup>

1409. The evidence shows that **Nikolić** demonstrated a resolve to carry out his assigned tasks in this murderous operation. For the executions at Orahovac, he was instrumental in arranging for the guarding of the prisoners and he was present, giving directions at the actual killing site.<sup>4518</sup> He even took the extra step of offering new uniforms to soldiers from the Zvornik Brigade in order to encourage them to remain present for the executions.<sup>4519</sup> For Ročević, he pressured Aćimović to provide personnel for the executions after Aćimović had refused the initial request to assist.<sup>4520</sup> As to the scope of his participation, **Nikolić** was actively involved in many facets of the executions at Orahovac. He pursued personnel for executions at Ročević and for guarding at the Kula school though the evidence does not demonstrate that he was physically present at those locations. He was also present with **Popović** near Petkovci while prisoners were held there. His acts and participation therefore provide some evidence from which a genocidal intent on his part could be inferred.<sup>4521</sup>

1410. At the same time, while **Beara** and **Popović** can properly be described as architects of this genocidal operation, **Nikolić** was brought in to carry out specific tasks assigned to him, in implementation of a monstrous plan, designed by others. His criminal acts, though horrific in nature, were confined to his sphere of responsibility – some specific detention and execution sites in Zvornik. His participation and role in the operation viewed in this context is not overarching. He did not participate in capturing nor was he involved in selecting the prisoners. While he had some escort responsibilities, he was not implicated in the arrangements for the movement of the prisoners from Bratunac to Zvornik. He was not involved in recruiting personnel beyond the reaches of the Zvornik Brigade. He had no involvement in securing equipment and there is no evidence of his taking part in the arrangements for the burials. Further, his connection to the reburial operation is minimal. His participation in the killing operation is limited in time, beginning on the night of 13

<sup>4516</sup> *Krstić* Appeal Judgement, para. 37.

<sup>4517</sup> *Krstić* Appeal Judgement, para. 37.

<sup>4518</sup> *See supra*, para. 1362.

<sup>4519</sup> *See supra*, para. 1361.

<sup>4520</sup> *See supra*, paras. 1367–1368.

<sup>4521</sup> The Trial Chamber has also considered the Prosecution argument that the role **Nikolić** played in arranging the murder of the four survivors further evidences **Nikolić**'s genocidal intent. However, as the Trial Chamber has found the evidence insufficient to link **Nikolić** directly to their murder, the Prosecution's argument in this respect falls.

and ending suddenly midday on 16 July. As a result he is not directly implicated in the killings at Branjevo Military Farm or Pilica Cultural Centre.

1411. The Trial Chamber also recalls that the wounded prisoners from Milići Hospital were in the custody of the Zvornik Brigade for several days. The Trial Chamber has some evidence that **Nikolić** had a role in that custody and thus he had an opportunity to further the genocidal plan by arranging himself for their execution. Yet, they remained safe within the custody of **Nikolić** and the Zvornik Brigade and were killed only after **Popović** took control of them.

1412. His acts must also be considered in the context of the evidence in totality and to that end, **Nikolić**'s personal circumstances and position within the VRS at the time are very relevant. **Nikolić** was a 2nd Lieutenant, the lowest rank of officer, had never attended a military academy, and was occupying the position of Chief of Security, a post usually reserved for the rank of Major or higher.<sup>4522</sup> It is evident he was not a senior officer and in the context of an operation directed by **Beara** and **Popović**, **Nikolić** would have little authority of his own. **Nikolić** was brought into the operation by his superiors in the Security Branch who ordered him to make logistical arrangements for the detention and killing of a large number of prisoners in the Zvornik area. Further, he was aware that this was an operation being conducted pursuant to the orders of the VRS Commander Mladić. Of course, these were patently illegal orders and there can be no doubt that **Nikolić** was obligated to refuse to carry them out. However, in terms of assessing his personal intent to destroy a group, it is relevant to place his participation in the context in which it clearly occurred.

1413. The words of **Vinko Pandurević** in describing **Nikolić**'s performance and character as an officer are also very telling. He recounted that **Nikolić** was a disciplined officer, however, "the cloak of the security service that he put on [...] was much too big a size for him [...] with time he would be swallowed by this service. He was actually very devoted to this service and therefore believed the service much more than he believed me."<sup>4523</sup>

1414. Having considered and weighed all of the above factors individually and cumulatively, the Trial Chamber is not satisfied that the only reasonable inference to be drawn from **Nikolić**'s acts is that he shared the genocidal intent. Another reasonable inference is that **Nikolić**'s blind dedication to the Security Service led him to doggedly pursue the efficient execution of his assigned tasks in this operation, despite its murderous nature and the genocidal aim of his superiors. In these circumstances the stringent test for specific intent is not met and the Trial Chamber therefore finds that **Nikolić** did not participate in the JCE to Murder with genocidal intent.

1415. However having found that **Nikolić** knew of that intent on the part of others, his multi-faceted participation in the murder operation not only constituted a significant contribution to the JCE to Murder, it also was a substantial contribution to the commission of genocide. The Trial Chamber therefore finds that **Nikolić** aided and abetted genocide.

(iii) Count 2: Conspiracy to Commit Genocide

1416. The Trial Chamber has found that **Nikolić** did not have the specific intent for genocide. Thus, **Nikolić** did not have the *mens rea* for conspiracy to commit genocide. The Trial Chamber therefore finds that **Nikolić** is not criminally responsible for conspiracy to commit genocide.

(iv) The Knowledge Requirement for a Crime under Article 5 of the Statute

1417. **Nikolić** is responsible for a crime against humanity under Article 5 of the Statute, if his acts formed part of a widespread or systematic attack directed against a civilian population and if at the time he knew of that attack and that his acts comprise part of it.<sup>4524</sup>

1418. The Trial Chamber recalls its finding that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. **Nikolić**, as Chief of Security of the Zvornik Brigade, whose Commander took part in the attack on Srebrenica, knew of the military attack against the protected Srebrenica enclave.<sup>4525</sup> He further knew that the Bosnian Muslim prisoners were transported from Bratunac to Zvornik. Therefore, he knew that these were prisoners who had come into the custody of the VRS as a result of the attack on the civilian enclave of Srebrenica.<sup>4526</sup> **Nikolić** saw that the Bosnian Muslim prisoners detained at the Grbavci School and executed at Orahovac were not only soldiers, but also civilians and that no distinction or selection was made in terms of those to be executed. **Nikolić's** acts of murder are clearly tied to the attack on Srebrenica,<sup>4527</sup> and **Nikolić** knew that this was the case.

1419. On this basis, the Trial Chamber finds that **Nikolić** meets the knowledge requirement for commission of a crime against humanity under Article 5 of the Statute.

<sup>4522</sup> Vinko Pandurević, T. 31340–31342 (12 Feb 2009).

<sup>4523</sup> Vinko Pandurević, T. 31342–31343 (12 Feb 2009).

<sup>4524</sup> See *supra*, paras. 751, 757–758.

<sup>4525</sup> See *supra*, paras. 1841–1850.

<sup>4526</sup> See *supra*, paras. 120–124, 153–157, 1345.

<sup>4527</sup> See *supra*, para. 779.

(v) Counts 4 and 5: Murder

1420. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims from Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.<sup>4528</sup> The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to murder the able-bodied Bosnian Muslim males from Srebrenica or were a natural and foreseeable consequence of it.<sup>4529</sup> **Nikolić** participated in the JCE to Murder and met the knowledge requirement for murder as a crime against humanity. He also knew that the victims were taking no active part in the hostilities when the murders were committed. He is therefore criminally responsible for murder as a crime against humanity as well as being liable for murder as a violation of the laws or customs of war, both for the murders found to be part of the JCE to murder and the “opportunistic” killings.<sup>4530</sup>

1421. The Prosecution alleges that **Nikolić** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4531</sup> The Trial Chamber finds that **Nikolić** not only committed, through his participation in the JCE to Murder, but also planned and ordered the murder of Bosnian Muslim able-bodied males, as is evidenced by his participation in the killings at Orahovac, his meetings with **Beara** and **Popović** in planning and coordinating the murder operation, his conversation with **Aćimović** regarding the killings of the prisoners held at Ročević School, and his conversation with **Obrenović** on the night of 13 July 1995. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of murder through his participation in the JCE.

(vi) Count 3: Extermination

1422. The Trial Chamber has found that the large-scale murders of men and boys from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5.<sup>4532</sup> These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it. **Nikolić** participated in the JCE to Murder and he also ordered and planned murder as a crime against humanity. These murders, to **Nikolić**’s knowledge, were carried out on a massive scale with thousands of victims. Thus **Nikolić** committed, ordered and planned murder on a large scale. On the basis of these combined circumstances the Trial Chamber finds

<sup>4528</sup> See *supra*, paras. 793–798.

<sup>4529</sup> See *supra*, paras. 1081–1082. The Trial Chamber recalls that, in relation to the “opportunistic” killings, **Nikolić** has been found responsible only for the murders that occurred at the Petkovci School. See *supra*, 1393.

<sup>4530</sup> See *ibid.* See also Judge Kwon’s Dissenting Opinion, *infra*, paras. 36–46.

<sup>4531</sup> Indictment, para. 88.

**Nikolić** guilty of extermination. With the knowledge requirement for Article 5 having been met, **Nikolić** is therefore criminally liable for extermination as a crime against humanity.

1423. The Prosecution alleges that **Nikolić** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4533</sup> The Trial Chamber finds that **Nikolić** not only committed, through his participation in the JCE to Murder, but also ordered and planned the extermination of Bosnian Muslim able-bodied males from Srebrenica.<sup>4534</sup> However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of extermination through his participation in the JCE to murder.

(vii) Count 6: Persecution

1424. The Trial Chamber has found that persecution, a crime against humanity, was committed, *inter alia*, through the murder of thousands of Bosnian Muslims (including the so-called “opportunistic” killings) and cruel and inhumane treatment of men detained in Bratunac and Zvornik.<sup>4535</sup> The Trial Chamber has found that these acts fall within the scope of the JCE to Murder, or were a natural and foreseeable consequence of it.<sup>4536</sup>

1425. The Trial Chamber has also found that **Nikolić** was a participant in the JCE to Murder, and that through his participation he was responsible for cruel and inhumane treatment and murder on a large scale, including the so called “opportunistic” killings at Petkovci School, the latter being a natural and foreseeable consequence of the JCE to Murder.<sup>4537</sup>

1426. **Nikolić** participated in the killing operation with the specific intent to discriminate on political, racial or religious grounds. The Trial Chamber is of the opinion that **Nikolić’s** involvement in the organisation and coordination of the massive scale murder of a single ethnic group –the Bosnian Muslims– shows his discriminatory intent. Moreover, his active participation in the detention, killing and reburial, the circumstances and manner of which plainly display discriminatory intent as previously found by the Trial Chamber,<sup>4538</sup> is further proof of **Nikolić’s** intent. The Trial Chamber therefore finds that **Nikolić** participated in the JCE to Murder with

<sup>4532</sup> See *supra*, paras. 802–805.

<sup>4533</sup> Indictment, para. 88.

<sup>4534</sup> See *supra*, para. 1421.

<sup>4535</sup> See *supra*, paras. 990–995.

<sup>4536</sup> See *supra*, paras. 1081–1083. See also Indictment, para. 83.

<sup>4537</sup> See *supra*, paras. 1387–1393, 1420–1421.

<sup>4538</sup> See *supra*, paras. 990–995.



specific intent to discriminate on political, racial or religious grounds and thereby committed persecution through murder and cruel and inhumane treatment.

1427. For an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the Prosecution needs to establish is that it was reasonably foreseeable to the accused that the extended crime would be committed and that it would be committed with the required specific intent.<sup>4539</sup> The Trial Chamber is satisfied that it was foreseeable to **Nikolić** that the “opportunistic” killings at Petkovci School would be carried out with persecutory intent. By participating in the JCE to Murder, **Nikolić** willingly took this risk. He is therefore responsible, through his participation in the JCE to Murder, for persecution as a crime against humanity through “opportunistic” killings under the third category JCE<sup>4540</sup>.

1428. The Prosecution alleges that **Nikolić** “committed, planned, instigated, ordered and otherwise aided and abetted in the planning, preparation and execution of [the crimes with which he was charged]”.<sup>4541</sup> The Trial Chamber finds that **Nikolić** planned, ordered and committed persecution. However, the Trial Chamber is of the view that his conduct is most accurately described as the commission of the crime of persecution as a crime against humanity through murder and cruel and inhumane treatment committed as part of the JCE to Murder with discriminatory intent.

(viii) Count 7: Inhumane Acts (Forcible Transfer)

1429. The Trial Chamber has found that **Nikolić** did not participate in the JCE to Forcibly Remove.<sup>4542</sup> Similarly, the evidence is insufficient to establish that he aided and abetted forcible transfer in either Srebrenica or Žepa, nor does it establish that he is responsible for forcible transfer through another mode of liability.<sup>4543</sup> The Trial Chamber therefore finds that **Nikolić** is not criminally responsible for forcible transfer as a crime against humanity.

(ix) Count 8: Deportation

1430. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only

<sup>4539</sup> See *supra*, para. 1021.

<sup>4540</sup> See *supra*, para. 1420, fn. 1428.

<sup>4541</sup> Indictment, para. 88.

<sup>4542</sup> See *supra*, paras. 1394–1396.

<sup>4543</sup> *Ibid.* The Trial Chamber has drawn no inference from the evidence of PW-168 that “either the Duty Officer or **Nikolić**” carried out an order to regulate the traffic giving priority to buses from Srebrenica and to take over the Konjević Polje junction at 4:30 p.m. PW-168, T. 15823 (closed session) (26 Sept 2007), T. 16150-16151 (closed session) (10 Oct 2007), T. 16500 (closed session) (17 Oct 2007); Ex. 7DP00157, “Order from the Command of the Drina Corps signed by Milenko Živanović, 12 July 1995”.

alleged basis for the charge of deportation in the Indictment, **Nikolić** is not criminally responsible for deportation as a crime against humanity.

6. Ljubomir Borovčanin(a) The Case against Borovčanin

1431. The Prosecution alleges that **Borovčanin** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.<sup>4544</sup> Specifically, the Prosecution alleges that **Borovčanin** was a member of the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica and the JCE to Forcibly Remove.<sup>4545</sup>

1432. **Borovčanin** is also charged as a commander for the acts of his subordinates,<sup>4546</sup> with the same crimes referred to above, pursuant to Article 7(3) of the Statute.<sup>4547</sup>

(b) Position and Function

1433. **Ljubomir** (a.k.a. Ljubiša) **Borovčanin** was born on 27 February 1960 in Han Pijesak, BiH.<sup>4548</sup> He graduated in political science from Sarajevo University in 1982.<sup>4549</sup> From November 1990 until May 1992, **Borovčanin** was Commander of the Kladanj Police Station.<sup>4550</sup> In August 1992 he moved, also in the role of Commander, to the Bratunac Police Station and stayed in that position until February 1994 when he was appointed Deputy Commander of the SBP of the RS MUP, based at the SBP headquarters in Janja, a village close to Bijeljina.<sup>4551</sup> In December 1995, **Borovčanin** was appointed Head of the Police Administration for the MUP in RS until February 1998, when he became Public Security Adviser to the Minister of the Interior of RS.<sup>4552</sup>

<sup>4544</sup> Indictment, paras. 88–89. **Borovčanin** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

<sup>4545</sup> Indictment, paras. 43, 49–71, 81, 84, 90–92. **Borovčanin** is charged under Count 7 of the Indictment with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

<sup>4546</sup> Indictment, paras. 93, 95.

<sup>4547</sup> *Ibid.*, paras. 26–29, 30.4, 30.4.1, 31, 33–37, 43, 45–49, 60–64, 72–73, 81, 83–84.

<sup>4548</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002” p. 4; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 1.

<sup>4549</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 5.

<sup>4550</sup> *Ibid.*, pp. 6, 10; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 154.

<sup>4551</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 6; PW-160, T. 8571 (9 Mar 2007). See also Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 116.

<sup>4552</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 8–9.

1434. During the time relevant to the Indictment, **Borovčanin** was Deputy Commander of the SBP of the RS MUP.<sup>4553</sup> On 10 July 1995, **Borovčanin** was appointed Commander of a joint force of MUP units which was sent to Bratunac.<sup>4554</sup> The order appointing him read in relevant part as follows:

2. The unit shall consist of the 2nd Special Police Detachment from Šekovići, the 1st Company of the PJP /Special Police Unit/ of the Zvornik SJB, a mixed company of joint RSK /Republic of Serbian Krajina/, Serbian and RS MUP forces and a company from the training camp on Jahorina.

[...]

4. [...] Assemble units by 1200 hours on 11 July 1995, in front of the SJB in Bratunac except for the 2nd Special Police Detachment, which shall proceed towards its destination on 11 July 1995 in the afternoon.

5. On arrival at his destination the unit commander is obliged to make contact with the Corps Chief of Staff, General Krstić.<sup>4555</sup>

**Borovčanin** received this order issued by Tomislav Kovač, Deputy Minister of the Interior,<sup>4556</sup> in the afternoon on 10 July, while he was in battle in Trnovo on the Sarajevo front.<sup>4557</sup>

1435. The order was issued pursuant to the RS “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War” which authorised the resubordination of MUP forces to the VRS.<sup>4558</sup> This order resubordinated **Borovčanin** and his units to the command of the Drina Corps.<sup>4559</sup> He was ordered to contact Krstić, then the Drina Corps’ Chief of Staff.<sup>4560</sup> The MUP forces under **Borovčanin** which gathered in Bratunac on 11 July and early in the morning of 12 July 1995 were the 1st PJP Company from Zvornik,<sup>4561</sup> under the command of

<sup>4553</sup> Ex. P02857, “Document brought by Borovčanin to the interview on 20 Feb 2002 and marked Document 3: Memo assigning Borovčanin temporary Deputy Cdr RS Special Police Brigade, 24 Feb 1994”; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 6.

<sup>4554</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 20–21; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 3; Exs P00057, P00094, 4D00337 “RS Ministerial Order 64/95 to MUP units, type-signed Tomislav Kovač, 10 July 1995.”

<sup>4555</sup> Ex. P00057, “RS Ministerial Order 64/95 to MUP units type-signed Tomislav Kovač, 10 July 1995.”

<sup>4556</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 15; PW-160, T. 8574 (9 Mar 2007); Mendeljev Đurić, T. 10797 (1 May 2007).

<sup>4557</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 20–21; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 3.

<sup>4558</sup> Exs. 4D00413, 4DP00725, P00422 “RS Law on the Implementation of the Law on Internal Affairs during an Imminent Threat of War or a State of War, 29 Nov 1994”. An imminent threat of war was declared in RS in April 1992 and in June 1995. Ex. 4D00527, “RS Presidency Decision Declaring an Imminent Threat of War, 15 April 1992”; Exs 4DP00001, 4DP00726, 5D01341, 5D01342, “Presidential Order of Mobilization.”

<sup>4559</sup> Exs P00057, P00094, 4D00337 “RS Ministerial Order 64/95 to MUP units, type-signed Tomislav Kovač, 10 July 1995.”

<sup>4560</sup> *Ibid.* See *supra*, paras. 184–185.

<sup>4561</sup> The 1st PJP Company from Zvornik arrived in Bratunac in the early evening of 11 July. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 47–48; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 5; Nenad Filipović, T. 26992, 26995 (10 Oct 2008); Zarko Zarić, T. 26912–26914 (9 Oct 2008).

Radomir Pantić,<sup>4562</sup> the SBP 2nd Šekovići Detachment,<sup>4563</sup> under the command of its commander Rado Čuturić, (a.k.a. “Oficir”),<sup>4564</sup> and the Jahorina Recruits,<sup>4565</sup> under the command of Đuško Jević (a.k.a. “Staljin”)<sup>4566</sup> and his deputy and commander of the Jahorina Recruits’ 1st Company, Mendeljev Đurić, (a.k.a. “Mane”).<sup>4567</sup> According to RS law, the MUP forces retained their internal chain of command, while resubordinated to the commander of the VRS in whose area of responsibility they were performing combat tasks.<sup>4568</sup>

(c) Acts and Whereabouts

(i) Arrival in Bratunac

1436. On receipt of the order, **Borovčanin** left for Bratunac on the evening of 10 July 1995.<sup>4569</sup> On his way he stopped at Jahorina and discussed his assignment in Srebrenica with his SBP commander, Goran Sarić.<sup>4570</sup>

1437. **Borovčanin** arrived at the Bratunac Police Station around noon on 11 July and headed to the Pribićevac IKM to speak to Krstić.<sup>4571</sup> When he got there at around 3 p.m., he was put on the telephone to Mladić who ordered him to go that same day with his MUP forces from the direction of Žuti Most to Potočari and Milačevići.<sup>4572</sup>

<sup>4562</sup> See *supra*, para. 182.

<sup>4563</sup> The SBP 2nd Šekovići Detachment arrived at around 3 a.m. on the morning of 12 July. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 63–64.

<sup>4564</sup> Milenko Pepić, T. 13539 (9 July 2007). See *supra*, para. 178; fn. 1236.

<sup>4565</sup> The 1st Company of the Jahorina Recruits arrived in Bratunac in the afternoon of 11 July. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002,” pp. 40, 44; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 5; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995,” p. 2; Mendeljev Đurić, T. 10799 (1 May 2007).

<sup>4566</sup> See *supra*, para. 180.

<sup>4567</sup> While the order mentions the “mixed company of joint RSK /Republic of Serbian Krajina/, Serbian and RS MUP forces”, the Trial Chamber finds that there is no evidence as to their whereabouts, except for Borovčanin saying that they did not arrive in Bratunac. Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 26–27, 33. See Ex. P00057, “RS Ministerial Order 64/95 to MUP units type-signed Tomislav Kovač, 10 July 1995.”

<sup>4568</sup> Ex. 4D00413, “RS Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War, 29 Nov 1994”, Art. 14, para. 2; Ex. P00008, “Order of the VRS Main Staff, 22 Apr 1995”; Milomir Savčić, T. 15287–15288 (12 Sept 2007); Dobrisav Stanojević, T. 12873 (19 June 2007).

<sup>4569</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 20–21, 26; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995,” p. 1.

<sup>4570</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 26; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995,” p. 1.

<sup>4571</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 26–28, 30; Dragan Nesković, T. 27425 (27 Oct 2008); Slaviša Simić, T. 27500–27501 (28 Oct 2008).

<sup>4572</sup> Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, pp. 30–32, 38–41, 44–45; Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995”, p. 2.

1438. On returning to the Bratunac Police Station around 5 p.m., **Borovčanin** met with his subordinate commanders Jević, Mane and Pantić.<sup>4573</sup> Dragomir Vasić, Head of the Zvornik CJB, and Danilo Zoljić, Commander of the Zvornik PJPs, also stopped by.<sup>4574</sup>

1439. Around this time, in the late afternoon or early evening of 11 July, **Borovčanin** ordered a reconnoitre of the Potočari area, including the DutchBat compound and the access leading towards Srebrenica.<sup>4575</sup> **Borovčanin** was informed that Bosnian Muslim civilians were gathering in the area of the DutchBat compound.<sup>4576</sup>

1440. At around 7 p.m. on 11 July, Mladić summoned **Borovčanin** to the Hotel Fontana where Mladić, Krstić, and other officers were dining.<sup>4577</sup> When **Borovčanin** informed Mladić that his units had not yet arrived and that he had not yet started to move to Potočari and Milačevići, Mladić dismissed him angrily, whereupon **Borovčanin** returned to the Bratunac Police Station.<sup>4578</sup>

1441. At around 10 p.m., **Borovčanin** went to Žuti Most, outside of Potočari, to reconnoitre the area where his units were to be deployed to scour the area around the Bratunac-Srebrenica Road.<sup>4579</sup> Colonel Slobodan Cerović, Assistant Commander for Moral, Legal, and Religious Affairs of the Drina Corps,<sup>4580</sup> and Momir Nikolić, the Chief of Security and Intelligence of the Bratunac Brigade, were there, as were a large number of VRS officers and soldiers.<sup>4581</sup>

1442. At the time, in response to information received on the movement of the ABiH 28th Division, Bosnian Serb Forces were ordered to block the withdrawal of the ABiH from the Srebrenica enclave by ensuring control over the territory along the defence lines of the VRS in the Bratunac area.<sup>4582</sup> At one point, **Borovčanin** saw DutchBat members and some Bosnian Muslim civilians leaving the area, whereupon Cerović informed him that they were going to a meeting.<sup>4583</sup> **Borovčanin** later learned of the results of the Hotel Fontana meetings, that the Bosnian Muslims

<sup>4573</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 45; PW-160, T. 8574–8575 (9 Mar 2007).

<sup>4574</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 44–45; PW-160, T. 8574 (9 Mar 2007).

<sup>4575</sup> PW-160, T. 8579 (9 Mar 2007), T. 8655, 8657 (12 Mar 2007). *See* Momir Nikolić, T. 33220 (24 Apr 2009).

<sup>4576</sup> PW-160, T. 8579 (9 Mar 2007).

<sup>4577</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 45–46.

<sup>4578</sup> *Ibid.*

<sup>4579</sup> *Ibid.*, p. 51; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 5; Zarko Zarić, T. 26917–26918 (9 Oct 2008); Milenko Pepić, T. 13544–13545 (9 July 2007).

<sup>4580</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 52; Prosecution Adjudicated Facts Decision, Annex, Fact 80.

<sup>4581</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 52–53.

<sup>4582</sup> *See supra*, para. 364.

<sup>4583</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 51–52. The Trial Chamber notes that this was the Second Hotel Fontana Meeting.

were to be transported out of Potočari, and that the Bosnian Muslim representatives had signed documents to this effect.<sup>4584</sup>

1443. Late that evening, while he was at the Bratunac Police Station, Momir Nikolić, who had just come out of a meeting at the Hotel Fontana,<sup>4585</sup> passed on an order from Mladić to **Borovčanin** to strengthen the Žuti Most line towards Potočari in the early hours of the morning as Bosnian Muslims, both civilians and members of the ABiH, were amassing there.<sup>4586</sup> That evening, **Borovčanin** instructed the Jahorina Recruits to advance to Potočari the next morning to assist in the transportation of the Bosnian Muslim civilians, and to wait for further orders.<sup>4587</sup>

(ii) Advance on Potočari

1444. At around 5 a.m. on 12 July, **Borovčanin** went to Žuti Most.<sup>4588</sup> From there, the Jahorina Recruits and the 1st PJP Company from Zvornik, later joined by the SBP 2nd Šekovići Detachment,<sup>4589</sup> advanced towards Potočari and managed to take control of OP Papa, the UN checkpoint at Žuti Most, without any reaction from DutchBat.<sup>4590</sup> Eventually an order arrived from the VRS that all military activities were to be halted to await the result of the meeting at the Hotel Fontana.<sup>4591</sup> The Jahorina Recruits and the 1st PJP Company from Zvornik proceeded to enter Potočari and together with other members of Bosnian Serb Forces took up positions in the area surrounding the DutchBat compound.<sup>4592</sup>

1445. **Borovčanin** also went to the DutchBat compound in Potočari that morning and remained in the taped-off area where the Bosnian Muslims were gathered.<sup>4593</sup> While Mladić was there, **Borovčanin** together with some other Bosnian Serb officers and soldiers handed out bread and

<sup>4584</sup> PW-160, T. 8579 (9 Mar 2007).

<sup>4585</sup> The Trial Chamber notes that this was the Second Hotel Fontana Meeting.

<sup>4586</sup> Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", p. 2; Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 55, 59–61.

<sup>4587</sup> Mendeljev Đurić, T. 10804, 10855–10856 (2 May 2007); PW-160, T. 8579–8580, 8607 (9 Mar 2007), T. 8719–8720 (13 Mar 2007). *But see* Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 50–52, 65–66.

<sup>4588</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 63.

<sup>4589</sup> Milenko Pepic, T. 13545 (9 July 2007); Predrag Čelić, T. 13465 (28 June 2007); Dobrisav Stanojević, T. 12875, 12905 (19 June 2007).

<sup>4590</sup> Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", p. 2; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", p. 1; PW-160, T. 8657–8659, 8589 (9 Mar 2007), T. 8657–8658 (12 Mar 2007), T. 8725 (13 Mar 2007); Mendeljev Đurić, T. 10805–10807, 10856–10858 (2 May 2007); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 61, 63–64; Nenad Filipović, T. 26994, 26996–26997 (10 Oct 2008); Robert Franken, T. 2588 (17 Oct 2006); Johannes Rutten, T. 4962 (4 Dec 2006).

<sup>4591</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 64–65. Borovčanin did not remember who gave this order but said that someone gave it orally. Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 65. The Trial Chamber notes that this was the Third Hotel Fontana Meeting.

<sup>4592</sup> *See supra*, paras. 302, 304.

<sup>4593</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 13, 18–19, 143.

sweets to the Bosnian Muslims.<sup>4594</sup> At around noon, **Borovčanin** noticed a Bratunac Brigade military police unit with Momir Nikolić arriving; they had lists with them to screen Bosnian Muslim men of fighting age.<sup>4595</sup> He understood that this was what had been agreed upon the day before in the Hotel Fontana meetings.<sup>4596</sup> At some point, **Borovčanin**, Jević, and a DutchBat officer went into the DutchBat compound to check whether there were ABiH soldiers inside.<sup>4597</sup>

(iii) Controlling the Movement of the Bosnian Muslim Women, Children and the Elderly out of Potočari

1446. Some time thereafter, **Borovčanin** noticed buses and trucks arriving in Potočari.<sup>4598</sup> In order to implement Mladić's order of earlier that day—**Borovčanin** had met Mladić on the road between Potočari and Žuti Most, and Mladić had ordered **Borovčanin** to leave some of his men in Potočari and move with others to the Bratunac-Konjević Polje Road to secure the area<sup>4599</sup>—**Borovčanin** left around 40 to 45 men<sup>4600</sup> from the 1st Company of the Jahorina Recruits, under their commanders, Jević and Mane<sup>4601</sup> in Potočari.<sup>4602</sup> The Trial Chamber has already found above that the Jahorina Recruits assisted in coordinating the boarding of the buses by the Bosnian Muslim women, children, and the elderly and the separation of the men.<sup>4603</sup>

1447. On the evening of 12 July, Jević reported to **Borovčanin** at the Bratunac Police Station, after the transportation of the Bosnian Muslims out of Potočari stopped at around 10 or 11 p.m.<sup>4604</sup> **Borovčanin** told Jević to continue the next day.<sup>4605</sup>

<sup>4594</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 13–14, 143; Ex. P02047, "Srebrenica Trial Video", 1:57:27–1:57:42.

<sup>4595</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 10–12, 21

<sup>4596</sup> *Ibid.*, p. 10; Momir Nikolić, Ex. C00001, "Statement of Facts and Acceptance of Responsibility, 6 May 2003", para. 6; Momir Nikolić, Ex. C00002, "Supplementary Statement provided by Momir Nikolić on request of the Trial Chamber, 16 April 2009", p. 3; T. 33033 (22 Apr 2009), T. 33269 (private session) (27 Apr 2009).

<sup>4597</sup> PW-160, T. 8583, 8585 (9 Mar 2007), T. 8672 (12 Mar 2007).

<sup>4598</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 23.

<sup>4599</sup> The Trial Chamber notes that the issue raised by the Prosecution as to inconsistencies between **Borovčanin's** reports and statements regarding being ordered by Mladić to go "to", or "towards" Zvornik, aimed to challenge **Borovčanin's** credibility, is of no significance in terms of the events which transpired that day or **Borovčanin's** credibility. *See* Prosecution Final Brief, paras. 2070–2102; *See also* Prosecution Closing Arguments, T. 34218–34219 (4 Sep 2009).

<sup>4600</sup> Mendeljev Đurić, T. 10800 (1 May 2007), T. 10857 (2 May 2007); PW 160, T. 8580, 8587, 8604 (9 Mar 2007), T. 8637–8638 (private session), 8639, 8654–8655, 8657–8658, 8683 (12 Mar 2007), T. 8725 (13 Mar 2007).

<sup>4601</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", p. 70; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 24, 125; PW-160, T. 8580, 8586–8587, 8604 (9 Mar 2007), T. 8637–8638 (private session), T. 8639, 8654–8655, 8657–8658, 8683 (12 Mar 2007), T. 8725 (13 Mar 2007).

<sup>4602</sup> Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", pp. 1–2.

<sup>4603</sup> *See supra*, paras. 316, 319, 323.

<sup>4604</sup> PW-160, T. 8607–8608 (9 Mar 2007).

<sup>4605</sup> *Ibid.*, T. 8607 (9 Mar 2007). **Borovčanin** spent the night of 12 July in his apartment in Bratunac. Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 84.



1448. In the afternoon of 13 July, approximately between 2:30 p.m. and 3:30 p.m., **Borovčanin** was again in Potočari.<sup>4606</sup> While he was there, the Red Cross tractor that was being used to bring water to Potočari was taken away, and when DutchBat officer Van Duijn requested that it be returned, **Borovčanin** intervened and the tractor was in fact returned.<sup>4607</sup> Kingori, the UNMO observer, also complained to **Borovčanin** of the crowded conditions in the White House, while they were standing next to it.<sup>4608</sup> **Borovčanin** remained in Potočari for about half an hour.<sup>4609</sup>

(iv) Securing the Bratunac-Konjević Polje Road

1449. Following Mladić's order on 12 July, **Borovčanin** left Potočari at around 1:30 p.m. and went to the Bratunac Police Station to organise the deployment of the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment.<sup>4610</sup> As described above, around dusk, the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment were deployed along the Bratunac-Konjević Polje Road from Kravica-Sandići-Pervani up to Hrnčići.<sup>4611</sup> Their task was to assist in securing the Bratunac-Konjević Polje Road against the column which was trying to break through the VRS defence lines.<sup>4612</sup> Later that night some men from the 1st Company of the Jahorina Recruits were also deployed along the Bratunac-Konjević Polje Road.<sup>4613</sup>

1450. **Borovčanin** remained in Bratunac for the rest of 12 July, though he maintained radio communication with his units who were on the Bratunac-Konjević Polje Road throughout most of

<sup>4606</sup> See *supra*, para. 329; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 84–85; Ex. P02047, "Srebrenica Trial Video", 2:27:41–2:28:01; 2:28:22–2:28:25; 2:28:30–2:28:32; 2:29:51–2:30:01; Zoran Petrović, T. 18852 (6 Dec 2007).

<sup>4607</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 85, 126; Zoran Petrović, T. 18850–18851 (6 Dec 2007); Leendert van Duijn, T. 2301 (27 Sep 2006); Ex. P02047, "Srebrenica Trial Video", 2:27:41–2:28:01; 2:28:22–2:28:25; 2:28:30–2:28:32; 2:29:51–2:30:01.

<sup>4608</sup> Ex. P02047, "Srebrenica Trial Video", 02:29:45–02:30:00 (showing **Borovčanin** standing with Joseph Kingori and Miki, the interpreter, outside the White House).

<sup>4609</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 87–88; Zoran Petrović, T. 18855 (6 Dec 2007).

<sup>4610</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 24, 27; Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", pp. 1–2.

<sup>4611</sup> Hrnčići was in the direction of Konjević Polje. See Ex. 4D00510 "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3.

<sup>4612</sup> Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007); Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 70–71, 73; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 27–28; Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P03789, "Borovčanin Report to SBP and other police staff, 13 July 1995", pp. 1–2. See also *supra*, paras. 377–378.

<sup>4613</sup> Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Srebrenica, 5 Sept 1995", p. 3; Ex. P00060, "CJB Zvornik Report, 13 July 1995"; Mendeljev Đurić, T. 10812–10813, 10819, 10865–10866, 10869–10870 (2 May 2007); Nenad Filipović, T. 26998–26999, 27015 (10 Oct 2008) (when asked on cross-examination if he was ordered to go to Zvornik or to deploy on that road in the area of Sandići, he replied "Just to deploy along the road at Sandići"); Zarko Zarić, T. 26931–26933 (9 Oct 2008). But see Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 35. The Trial Chamber concludes that the 1st Company of the Jahorina Recruits was deployed on the Bratunac-Konjević Polje Road in the evening of 12 July. See *supra*, para. 377.

the night.<sup>4614</sup> During the night, the column attacked the Bosnian Serb Forces stationed there and heavy fighting ensued.<sup>4615</sup>

1451. On 13 July, the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment remained deployed along the Bratunac-Konjević Polje Road.<sup>4616</sup> More men from the 1st Company of the Jahorina Recruits were also sent to the Bratunac-Konjević Polje Road on 13 July.<sup>4617</sup> At around 7 a.m., **Borovčanin** went to Sandići after receiving reports that a member of the 1st PJP Company from Zvornik had been killed and others wounded.<sup>4618</sup> **Borovčanin** spoke to his subordinate commander Pantić and to Miloš Stupar, the former Commander of the SBP 2nd Šekovići Detachment<sup>4619</sup> and travelled along the Bratunac-Konjević Polje Road with them for about an hour or an hour and a half.<sup>4620</sup>

1452. After visiting Potočari in the afternoon of 13 July, **Borovčanin** returned to the Bratunac-Konjević Polje Road.<sup>4621</sup> He stopped at Sandići Meadow where he saw a large number of Bosnian Muslim men who had surrendered to and were still surrendering to Bosnian Serb Forces, including to the 1st Company of the Jahorina Recruits,<sup>4622</sup> the 1st PJP Company from Zvornik,<sup>4623</sup> and the

<sup>4614</sup> Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 79, 87; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002," pp. 33–34.

<sup>4615</sup> Milenko Pepić, T. 13594–13595 (9 July 2007); Nenad Filipović, T. 27001, 27003 (10 Oct 2008); Ex. 4DP03113, "Bulletin of daily events of the Zvornik Public Security Centre for 13/14 July 1995 signed by Vlado Kovacević, 14 July 1995"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 33–34, 41.

<sup>4616</sup> Ex. P00062, Document from Zvornik CJB signed by Dragomir Vasić, 13 July 1995; Ex. P00886, "Document from the Zvornik CJB to the RS MUP type-signed Vasić, 13 July 1995"; Ex. P03112, "CJB Zvornik Dispatch regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995"; Mendeljev Đurić, T. 10822, 10870–10871 (2 May 2007); Ex. P01937, (confidential), pp. 62, 64, 67–69; Ex. P02985, "Transcript of Petrović video", pp. 10–14.

<sup>4617</sup> Mendeljev Đurić, T. 10822, 10870–10871 (2 May 2007); PW-100, T. 14822, 14824–14826, 14908–14909 (5 Sept 2007).

<sup>4618</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 40–41; Milenko Pepić, T. 13594–13595 (9 July 2007).

<sup>4619</sup> Predrag Čelić, T. 13458–13459 (28 June 2007).

<sup>4620</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 41.

<sup>4621</sup> *Ibid.*, p. 5; Zoran Petrović, T. 18746 (4 Dec 2007), T. 18764, 18782–18784, 18786, 18795–18796 (5 Dec 2007), T. 18855, 18857–18858 (6 Dec 2007); Joseph Kingori, T. 19292–19293 (14 Dec 2007) (Kingori recognising **Borovčanin** as one of the senior officers to whom he spoke about the issue of overcrowding at the White House); Ex. P02047, "Srebrenica Trial Video", 02:47:45 – 02:48:12.

<sup>4622</sup> PW-100, T. 14824–14826, 14839 (5 Sep 2007) (stating *inter alia* that Bosnian Muslims were surrendering to members of the 1st Company of the Jahorina Recruits and that his platoon-leaders instructed them that if anyone surrendered, they were to notify their superiors and pass on the prisoners); PW-160, T. 8586 (9 Mar 2007); Ex. P02000, "Video footage shot by Zoran Petrović during July 1995, provided by the BBC", 0:18:45-0:21:32 (showing a member of the Jahorina Recruits identified by PW-160, T. 8642 (12 Mar 2007) and PW-100, T. 14843–14844 (5 Sept 2007); Ex. P02985, Transcript of Petrović video, pp. 12–14; *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 53–54 (stating that it was possible that they were also surrendering to MUP officers).

<sup>4623</sup> Ex. P02000, "Video footage shot by Zoran Petrović during July 1995, provided by the BBC", 0:22:25- 0:24:05 (showing Predrag Krstić, a member of the 1st Company PJP from Zvornik); Dobrisav Stanojević, T. 12897 (19 June 2007) (identifying Predrag Krstić). *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 53–54 (stating that it was possible that they were also surrendering to police officers).

SBP 2nd Šekovići Detachment.<sup>4624</sup> The commander of the 3rd Platoon (a.k.a. “Skelani Platoon”)<sup>4625</sup> of the SBP 2nd Šekovići Detachment, Milenko Trifunović (a.k.a. “Čop”),<sup>4626</sup> was calling to the Bosnian Muslim men in the forest to surrender.<sup>4627</sup> **Borovčanin**’s units were also guarding the Bosnian Muslim men at Sandići Meadow.<sup>4628</sup>

1453. While at Sandići Meadow, **Borovčanin** spoke with his subordinate commanders, their subordinate officers and platoon commanders, including Pantić, Čturić, and Stupar, who complained to him about the increasing number of surrendering Bosnian Muslim men and expressed concern on how to detain the prisoners overnight.<sup>4629</sup> Some time around 4 p.m., Mladić arrived at Sandići Meadow with a number of officers and gave a speech to the Bosnian Muslims detained there, telling them that the transportation to ABiH-held territory was under way and that they would be exchanged as prisoners of war.<sup>4630</sup> In his interview with the Prosecution, **Borovčanin** stated that he thought Mladić was sincere when he said that.<sup>4631</sup> He left before Mladić finished his speech and continued towards Konjević Polje.<sup>4632</sup>

(v) Kravica Warehouse

1454. In the afternoon of 13 July, around 4:50 p.m., **Borovčanin**, who was in a car on the Bratunac-Konjević Polje Road, asked an unidentified interlocutor over the radio on “the column

<sup>4624</sup> Predrag Čelić, T. 13460, 13489–13490 (28 Jun 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 53–56, 129–130; PW-111, T. 6796 (6 Feb 2007); PW-160, T. 8586 (9 Mar 2007); Zoran Petrović, T. 18795–18796 (5 Dec 2007), T. 18857–18858 (6 Dec 2007); Ex. P02000, Video footage shot by Zoran Petrović during July 1995, provided by the BBC, 0:09:45–0:10:47; 0:18:45–0:21:32; Ex. P02985, Transcript of Petrović video, pp. 8, 11–15; Ex. P02047, “Srebrenica Trial Video”, 02:47:45–02:48:12, 02:50:45–02:52:56; Ex. P03789, “Borovčanin Report to SBP and other police staff, 13 July 1995”, p. 2. *See also* Ex. P03112, “CJB Zvornik Dispatch regarding the activities of various PJP units, Dragomir Vasić, 14 July 1995.”

<sup>4625</sup> Milenko Pepić, T. 13541 (9 July 2007).

<sup>4626</sup> Predrag Čelić, T. 13460, 13489–13490 (28 Jun 2007) (also stating that he knew Trifunović well as Čelić often saw Trifunović when Trifunović came to the Šekovići base).

<sup>4627</sup> Predrag Čelić, T. 13489–13490 (28 Jun 2007) (identifying Trifunović instructing Ramo Osmanović, a Bosnian Muslim man, to call to the Bosnian Muslims in the forest to surrender).

<sup>4628</sup> Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC”, 0:09:39–0:10:50, 0:12:15–0:12:18, 0:22:10–0:23:52 (showing, *inter alia*, Predrag Krstić, a member of the 1st PJP Company from Zvornik, identified by Dobisrav Stanojević at T. 12897 (19 Jun 2007) and Milenko Trifunović, a member of the SBP 2nd Šekovići Detachment, identified by Predrag Čelić at T.13489-13490 (28 Jun 2007) guarding prisoners); Ex. P01937, (confidential), pp. 56–57, 60, 72–73; PW-100, T. 14822, 14830–14832 (5 Sep 2007) (stating that members of the Jahorina Recruits guarded prisoners); PW-160, T. 8586 (9 Mar 2007) (stating that members of the Jahorina Recruits guarded prisoners); Milenko Pepić, T. 13541 (9 July 2007) (describing the green and coffee-coloured, one-piece camouflage uniform with a flag on a black-coloured insignia on the left sleeve worn by the 2nd Šekovići Detachment).

<sup>4629</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 56–57.

<sup>4630</sup> *Ibid.*, pp. 58–59. *See supra*, para. 387.

<sup>4631</sup> *Ibid.*

<sup>4632</sup> *Ibid.*, pp. 59, 62; Ex. P02000, “Video footage shot by Zoran Petrović during July 1995, provided by the BBC,” 16:55–17:30; Ex. P02047, “Srebrenica Trial Video,” 2:54:58–2:55:27; Ex. P02986, “Road Book – Still Images from the Petrović Video and images of locations found in the Petrović Video,” p. 38.

[...] on the road” and was informed that “the column is moving.”<sup>4633</sup> A few seconds later, **Borovčanin** called Čuturić, the Commander of the SBP 2nd Šekovići Detachment, and ordered him to “stop the traffic” behind him.<sup>4634</sup>

1455. Milenko Pepić, a subordinate member of the 2nd Platoon of the Commander of the SBP 2nd Šekovići Detachment, was eventually ordered by Čuturić to stop the convoy of buses carrying Bosnian Muslim women, children, and the elderly travelling from Potočari to Konjević Polje, so that the Bosnian Muslim prisoners who had been detained at Sandići Meadow could pass unhindered to Kravica Warehouse.<sup>4635</sup>

1456. Some time after Pepić had stopped the convoy, from their position on the Bratunac-Konjević Polje Road, he and Čelić, another member of the 2nd Platoon of the SBP 2nd Šekovići Detachment, heard loud and intense one-sided gunfire coming from the direction of the Kravica Warehouse.<sup>4636</sup> He also heard voice traffic over the radio, including Čuturić calling out the call sign “Bor,” the code name for **Borovčanin**,<sup>4637</sup> and reporting that the “hairpin had happened”, meaning that someone had been killed or injured.<sup>4638</sup>

1457. Meanwhile, while **Borovčanin** was in the car on the Bratunac-Konjević Polje Road, he heard shooting and detonations over his Motorola, as well as the voice of Miloš Stupar, the former commander of the SBP 2nd Šekovići Detachment.<sup>4639</sup> **Borovčanin** called Stupar on his radio, who told **Borovčanin** that “something terrible has happened” and to go urgently to Kravica Warehouse.<sup>4640</sup> This was some time between 5 p.m. and 5:15 p.m.<sup>4641</sup>

<sup>4633</sup> Ex P02047, “Srebrenica Trial Video”, 02:45:25–02:45:53; Ex P02048, “Srebrenica Trial Video Transcript”, p. 70; Ex P02054, “Copy of the Zoran Petrović’s roll material in 8 mm”, 00:13:50; Ex. P02985, “Transcript of Petrović video”, pp. 10–11.

<sup>4634</sup> Ex P02047, “Srebrenica Trial Video”, 02:45:31–02:45:53; Ex P02048, “Srebrenica Trial Video Transcript”, p. 70; Ex P02054, “Copy of the Zoran Petrović’s roll material in 8 mm”, 00:13:50; Ex. P02985, Transcript of Petrović video, pp. 10–11.

<sup>4635</sup> Mileško Pepić, T. 13538–13539, 13555–13557, 13559, 13561–13562, 13595–13596 (9 July 2007).

<sup>4636</sup> Milenko Pepić, T. 13560–13561 (9 July 2007). *See also* Predrag Čelić, T. 13479 (28 June 2007).

<sup>4637</sup> Milenko Pepić, T. 13558 (9 July 2007).

<sup>4638</sup> *Ibid.*, T. 13561 (9 July 2007).

<sup>4639</sup> Ex P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 63; Zoran Petrović, T. 18797–18798 (5 Dec 2007).

<sup>4640</sup> *Ibid.*

<sup>4641</sup> The Trial Chamber finds that based on the time stamp of 16:49 hours on Ex. P02047, “Srebrenica Trial Video”, 2:34:26, the Bratunac Health Centre log indicating 5:30 p.m. as the time the first casualty of the Kravica Warehouse “burnt-hands” incident is recorded, the real running time of the video and the known distances between the locations videotaped, this would have been the approximate time. **Borovčanin** generally agrees with this timeline. Borovčanin Closing Arguments, T. 34563 (9 Sept 2009).

1458. **Borovčanin** arrived at Kravica Warehouse some time between 5:15 p.m. and 5:30 p.m.<sup>4642</sup> He stopped at Kravica Warehouse where, according to him, Milan Lukić's soldiers,<sup>4643</sup> as well as members of the SBP 2nd Šekovići Detachment who had been deployed along the Bratunac-Konjević Polje Road, including Stupar, were gathered.<sup>4644</sup> **Borovčanin** saw "a large number [...] several dozens" of dead bodies in the yard in front of the West and Centre Rooms of Kravica Warehouse.<sup>4645</sup> The door of the West Room of Kravica Warehouse was closed.<sup>4646</sup> A large number of bullet holes were also visible on the outside walls of Kravica Warehouse.<sup>4647</sup> **Borovčanin's** arrival at Kravica Warehouse and the scene before him were captured on the Petrović video.<sup>4648</sup>

1459. **Borovčanin** said that he stayed at the junction of the road and the driveway into Kravica Warehouse only long enough to have a short conversation with Stupar.<sup>4649</sup> Stupar told him that an unknown military unit had brought the Bosnian Muslim prisoners to Kravica Warehouse, that a prisoner shot a policeman, and that the same military unit shot the Bosnian Muslim prisoners.<sup>4650</sup> **Borovčanin** said that Stupar told him no MUP member participated in the killings.<sup>4651</sup>

1460. After checking on Čturić, who had been hurt in the "burnt-hands" incident, at the hospital, **Borovčanin** returned to the Bratunac Police Station, visibly angry and agitated, and was heard saying, "What's going on? What's being done? Give me a phone quickly. I have to phone the brigade."<sup>4652</sup> At some point, he was informed that a military unit had arrived in the area where his

<sup>4642</sup> **Borovčanin** generally agrees with this time-line, stating however that it was more likely that he was there between 5:20 p.m. and 5:30 p.m. Borovčanin Closing Arguments, T. 34563 (9 Sept 2009). See also Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 65, 72 (describing the timing as being "afternoon, but still daylight" and "half an hour, forty minutes max" after Mladić's speech).

<sup>4643</sup> The Trial Chamber notes that there is no other evidence to corroborate **Borovčanin's** statement that Lukić's men were there. See also Ex. P01147a, "Intercept, 13 July 1995, 19:19 hours" (stating that a bus carrying soldiers from Višegrad has broken down).

<sup>4644</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 63–65.

<sup>4645</sup> Prosecution Closing Arguments, T. 34233 (4 Sept 2009); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 64, 66; Ex. P02047, "Srebrenica Trial Video", 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, "Video by Zoran Petrović, Studio B Version", 18:08–18:11.

<sup>4646</sup> In its closing arguments, the Prosecution offered to enter an agreement of facts that the doors of Kravica Warehouse that are seen on the video footage were closed when **Borovčanin** was there. Prosecution Closing Arguments, T. 34232 (4 Sept 2009). See Borovčanin Final Brief, para. 150.

<sup>4647</sup> Ex. P02047, "Srebrenica Trial Video," 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, "Video by Zoran Petrović, Studio B Version," 18:08–18:11.

<sup>4648</sup> See Ex. P02047, "Srebrenica Trial Video," 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, "Video by Zoran Petrović, Studio B Version", 18:08–18:11. Zoran Petrović, a Serb journalist, accompanied **Borovčanin** on 13 and 14 July 1995. Petrović filmed a documentary on the events surrounding the fall of Srebrenica as he travelled with **Borovčanin**. These include shots of the happenings at Potočari and the Bratunac-Konjević Polje Road, including Sandić Meadow and the Kravica Warehouse. Excerpts of the Petrović video are included in the Srebrenica Trial Video. See Zoran Petrović, T. 18745 (4 Dec 2007), T. 18754–18757 (5 Dec 2007); Ex. P02054, "Copy of the Zoran Petrović's roll material in 8 mm", 08:58:4; 10:15; 23:21; 24:10.

<sup>4649</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 64–65.

<sup>4650</sup> *Ibid.*

<sup>4651</sup> *Ibid.*

<sup>4652</sup> Dragan Nesković, T. 27436–27437 (2 Oct 2008); Slaviša Simić, T. 27506–27507 (2 Oct 2008); Ex. 4D00620, "CJB Bratunac, Attendance Roster, June–August 1995"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11

units were deployed along the Bratunac-Konjević Polje Road, so he pulled out the 1st PJP Company from Zvornik and the 1st and 2nd Platoons of the SBP 2nd Šekovići Detachment from along the Bratunac-Konjević Polje Road and sent them to rest.<sup>4653</sup>

1461. At 8:40 p.m., an intercepted conversation between **Borovčanin** and Krstić records Krstić asking **Borovčanin**, “How’s it going,” to which he replied, “It’s going well”, that there were no problems, and that “We’ll continue tomorrow.”<sup>4654</sup>

(vi) 14–18 July 1995

1462. **Borovčanin** spent almost the whole day of 14 July in Srebrenica, with Vasić and Deputy Minister of the Interior Kovač, who was visiting.<sup>4655</sup> They went to see the newly established police station in Srebrenica and visited a factory in Zeleni Jadar.<sup>4656</sup> **Borovčanin** returned to Bratunac in the late afternoon and remained at home for the rest of that day.<sup>4657</sup>

1463. In the morning of 15 July, **Borovčanin** set off by car from Bratunac to Zvornik.<sup>4658</sup> He stopped first at the police station, where he met Vasić and Stupar.<sup>4659</sup> Later on that morning, the three met at the Standard Barracks of the Zvornik Brigade some time before noon.<sup>4660</sup> Obrenović received them, briefed them on the situation in the field, and informed them that he had been ordered to strengthen the line in the area of Baljkovica to prevent Bosnian Muslims from going through towards ABiH-held territory.<sup>4661</sup> **Borovčanin** or Vasić suggested that it may be better to open the line and let the column of Bosnian Muslims through, but ultimately that idea was denied.<sup>4662</sup> Some time into the meeting, **Pandurević** arrived.<sup>4663</sup>

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and 12 Mar 2002”, p. 74; *see also* Borovčanin Final Brief, para. 297 (stating that **Borovčanin** had not taken Čuturać personally to the hospital but he visited him there).

<sup>4653</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 74–75 (stating that he did not know which military unit replaced them or what time they were replaced, maybe in the evening hours or during the night); Predrag Čelić, T. 13471, 13480, 13505 (28 June 2007); Milenko Pepić, T. 13567, 13572–13573, 13600 (9 July 2007). There is no evidence on where the members of the 3rd Platoon, the Skelani Platoon, were that night.

<sup>4654</sup> Ex. P00993a, “Intercept, 13 July 1995, 20:40 hours”; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 75–76.

<sup>4655</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 95; Zoran Petrović, T. 18821–18823 (5 Dec 2007), T. 18861 (6 Dec 2007).

<sup>4656</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 95.

<sup>4657</sup> *Ibid.*

<sup>4658</sup> *Ibid.*, pp. 101–102.

<sup>4659</sup> *Ibid.*, p. 102.

<sup>4660</sup> *Ibid.*; PW-168, T. 15869–15873 (closed session) (26 Sept 2007), T. 16524 (closed session) (17 Oct 2007), T. 16527–16528 (closed session) (18 Oct 2007).

<sup>4661</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 102. *See also* Ex. 4D5D01346, “Drina Corps Command, document n.03/157-7, order, Krstić.” On 15 July 1995, Krstić ordered that until the return of certain elements of the Zvornik Brigade, MUP units were to take all measures to block and capture “Muslim forces” from Srebrenica to prevent their linking up with those in Tuzla. *Ibid.*

<sup>4662</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 102–103, 105. *See supra*, para. 552.

1464. At that meeting, **Borovčanin** said that a large number of Bosnian Muslims had been captured and that he did not wish the civilian police, meaning the MUP units he commanded,<sup>4664</sup> “to guard those prisoners once they were placed in the facilities and once they were brought to their destination.”<sup>4665</sup>

1465. The meeting lasted about thirty or forty minutes and **Borovčanin** then proceeded to Baljkovica around noon or 1 p.m.<sup>4666</sup> At the time, **Borovčanin** was under the command of the Zvornik Brigade and communicated with the VRS through the local battalion commander.<sup>4667</sup>

1466. At Baljkovica, **Borovčanin** saw that his units—the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment—were under intensive fire.<sup>4668</sup> **Borovčanin** remained there with them until 18 July.<sup>4669</sup> On 18 July, **Borovčanin** left the Bratunac and Zvornik areas and returned to the SBP headquarters in Janja.<sup>4670</sup>

(d) Findings

1467. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Preliminary Issue on Vagueness of the Indictment: The Sandići Meadow Murders Charge, Counts 3 to 6 and Count 8

1468. **Borovčanin** argues that paragraphs 30.4.1 and 95 of the Indictment only allege superior responsibility with regard to the Sandići Meadow murders, that the Indictment is vague as to whether this is also part of the alleged JCE to Murder, and that it is vaguer still as to which of his acts and omissions satisfy the *actus reus* or *mens rea* of the alleged crime.<sup>4671</sup> **Borovčanin** submits that he interprets paragraph 30.4.1 of the Indictment as only charging superior responsibility and objects on the ground of lack of notice if the Prosecution argues that it has charged **Borovčanin** with having committed this act, directly or by way of a JCE.<sup>4672</sup>

<sup>4663</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 104.

<sup>4664</sup> PW-168, T. 15877 (closed session) (26 Sept 2007).

<sup>4665</sup> *Ibid.*

<sup>4666</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 105–106; PW-168, T. 15876–15877 (closed session).

<sup>4667</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 103–104, 106 (also stating that he was not specifically under Obrenović’s command, though Obrenović could order him to go to Baljkovica).

<sup>4668</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 106.

<sup>4669</sup> *Ibid.*, pp. 110, 116; PW-160, T. 8706, 8735–8736 (13 Mar 2007). The distance between Bratunac and Zvornik is approximately 40 to 50 km. PW-160, T. 8706 (13 Mar 2007).

<sup>4670</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 116.

<sup>4671</sup> Borovčanin Final Brief, para. 399.

<sup>4672</sup> Borovčanin Final Brief, para. 399.

1469. Furthermore, **Borovčanin** objects to Counts 3 to 6 (extermination as a crime against humanity, murder as a crime against humanity and as a violation of the laws or customs of war and persecution as a crime against humanity) and 8 (deportation as a crime against humanity) of the Indictment as they do not indicate which modes of liability under Article 7(1) are being alleged and which material facts support them.<sup>4673</sup> With regard to Kravica Warehouse, **Borovčanin** concedes that the Indictment does give notice of the JCE to Murder, superior responsibility, aiding and abetting, instigation, and “*Blaškić* omission liability,”<sup>4674</sup> so he reads the language of Counts 3 to 6 and 8 narrowly to incorporate only these forms of liability.<sup>4675</sup> Specifically, he reads the Indictment as not charging aiding and abetting in respect of any crimes committed in Potočari, including forcible transfer and other forms of persecution.<sup>4676</sup>

1470. The Prosecution submits that the time to challenge the form of the Indictment has passed and that paragraph 88 lays out all forms of liability for all the Accused in all the events charged in the Indictment and that paragraph 92 further elaborates on **Borovčanin**’s mode of liability for the Kravica Warehouse.<sup>4677</sup> It also submitted in closing arguments that the Indictment charges aiding and abetting and all forms of liability and that it covers any aspects of “aiding and abetting,” including the *Mrkšić and Šljivančanin* Appeals Judgement standard<sup>4678</sup> that was subsequently developed after the Indictment was drawn up, and not just “*Blaškić* omission liability.”<sup>4679</sup> Specifically, the Prosecution also argues that **Borovčanin**’s responsibility also covers aiding and abetting forcible transfer.<sup>4680</sup>

1471. The Trial Chamber notes that it has already ruled on the same or very similar challenges to the Indictment that **Borovčanin** has brought earlier on in the proceedings.<sup>4681</sup> The Trial Chamber recalls that it has already held that the Indictment is clear as to what is charged under Counts 3 to 8 with regard to **Borovčanin**, and in particular, that paragraphs 88 to 95 cover all the various forms of the alleged individual responsibility of the Accused.<sup>4682</sup>

1472. The Trial Chamber finds that the Indictment clearly charges all modes of liability for all alleged crimes, including the Sandići Meadow murders, and that **Borovčanin** has been sufficiently

<sup>4673</sup> Borovčanin Final Brief, para. 411.

<sup>4674</sup> Borovčanin Final Brief, paras. 411–412 (referring to “*Blaškić* omission liability”).

<sup>4675</sup> Borovčanin Final Brief, para. 412.

<sup>4676</sup> *Ibid.*, para. 413.

<sup>4677</sup> Prosecution Closing Arguments, T. 34305–34306 (4 Sept 2009), T. 34318–34319 (7 Sept 2009).

<sup>4678</sup> See *supra*, paras. 1019–1020.

<sup>4679</sup> Prosecution Closing Arguments, T. 34289–34290 (4 Sept 2009).

<sup>4680</sup> Prosecution Final Brief, para. 2035.

<sup>4681</sup> See Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006; Decision on Further Amendments and Challenges to the Indictment, 13 July 2006.

<sup>4682</sup> See Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006, para. 94; Decision on Further Amendments and Challenges to the Indictment, 13 July 2006, paras. 25–27.



put on notice of such charges. Furthermore, it notes that as the Prosecution has charged “aiding and abetting,” the Trial Chamber will apply the law as most recently interpreted by the Appeals Chamber, which encompasses the *Mrkšić and Šljivančanin* Appeals Judgement standard of aiding and abetting by omission.<sup>4683</sup>

(ii) Forcible Transfer

1473. The Trial Chamber notes that the centrepiece of the Prosecution’s case against **Borovčanin**, with regard to forcible transfer is his alleged commission of the crime through participation in the JCE alleged in the Indictment. The Trial Chamber will therefore begin with an examination of **Borovčanin**’s alleged participation in the JCE to Forcibly Remove.

a. JCE to Forcibly Remove

1474. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>4684</sup>

i. Prosecution Allegations

1475. **Borovčanin** is charged with forcibly removing the Bosnian Muslims of Srebrenica and Žepa by: (i) disabling the UN forces militarily, by taking “military control of Potočari and the Dutchbat based there” on the morning of 12 July, and “commanding MUP forces [...] who assisted the VRS in disarming DutchBat troops in and around Potočari” on 12 and 13 July; and (ii) controlling the movement of the Bosnian Muslim population out of the enclaves by commanding “MUP forces [...] who assisted the VRS in organizing the transportation on buses and trucks” of the Bosnian Muslim women, children, and the elderly to areas outside RS on 12 and 13 July.<sup>4685</sup>

1476. The Prosecution submits that **Borovčanin** was fully aware of the VRS’s plan to move out the Bosnian Muslim population from in and around Potočari.<sup>4686</sup> **Borovčanin** knew of the wartime history of the enclave and of the Bosnian Serbs’ plan, evident since 1992, to remove the Bosnian Muslim civilians from Eastern Bosnia and as he came from that region, he would have known that

<sup>4683</sup> Cf. *Aleksovski* Appeal Judgement, para. 113; *Krajišnik* Appeal Judgement, para. 670; Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction-Joint Criminal Enterprise, IT-99-37-AR72, 21 May 2003, paras. 37–39.

<sup>4684</sup> See *supra*, para. 1087. The Trial Chamber recalls its previous finding that the transport of the men to detention and execution sites does not constitute forcible transfer. *Ibid.* Therefore, the Trial Chamber will not address **Borovčanin**’s alleged participation in forcible transfer through his involvement in the transportation of the men.

<sup>4685</sup> Indictment, para. 81; Prosecution Pre-Trial Brief, paras. 197–198.

<sup>4686</sup> Prosecution Final Brief, paras. 1877, 1891.

the Bosnian Muslims of Srebrenica would only leave if left with no other option.<sup>4687</sup> The Prosecution argues that **Borovčanin** knew by the late evening of 11 July that the VRS intended to forcibly remove the Bosnian Muslims in Potočari and that he and his units were expected to play a key role.<sup>4688</sup> According to the Prosecution, **Borovčanin** would have been fully aware that the Bosnian Serb Forces left the Bosnian Muslims no choice.<sup>4689</sup>

1477. The Prosecution argues that **Borovčanin**'s actions by commanding the MUP forces who assisted the VRS in controlling the Bosnian Muslim population made the VRS's goal to forcibly remove the Bosnian Muslim population from Srebrenica possible.<sup>4690</sup> **Borovčanin** was in command of the MUP forces who assisted the VRS in organizing the transportation of the Bosnian Muslim women, children, and the elderly to areas outside of the VRS.<sup>4691</sup>

1478. The Prosecution also submits that the disarming of DutchBat was done to facilitate the separation and forcible transfer.<sup>4692</sup> It submits that MUP forces under the command of **Borovčanin** advanced on Potočari, took over OP Papa, and forcibly entered the DutchBat compound.<sup>4693</sup> Further, it is submitted that they disarmed DutchBat troops in and around Potočari.<sup>4694</sup> Lastly, it argues that the taking over of Potočari where the Bosnian Muslims were gathered was a significant step to the actual expulsion of the Bosnian Muslim population from Potočari.<sup>4695</sup>

1479. Finally, the Prosecution claims that in his role of neutralising DutchBat and taking control of the Bosnian Muslim population, **Borovčanin** would have appreciated the important role he played in forcing the Bosnian Muslim population out and as such he and his forces played a significant role in achieving the goal of the JCE to Forcibly Remove.<sup>4696</sup>

## ii. Knowledge of the JCE to Forcibly Remove

1480. The evidence does not demonstrate that **Borovčanin** was involved in the formation of the plan to forcibly remove the Bosnian Muslim population from the RS, nor in the steps taken prior to 10 July 1995 to implement that plan. The evidence similarly does not support an inference that **Borovčanin** was made aware either of the plan or its incremental implementation prior to his arrival in Bratunac.

<sup>4687</sup> Prosecution Final Brief, paras. 1877, 1892.

<sup>4688</sup> *Ibid.*, paras. 1877, 1891.

<sup>4689</sup> *Ibid.*, para. 1893.

<sup>4690</sup> *Ibid.*, para. 1891.

<sup>4691</sup> *Ibid.*, paras. 1894-1901.

<sup>4692</sup> Prosecution Closing Arguments, T. 34224 (4 Sept 2009).

<sup>4693</sup> Indictment, para. 81; Prosecution Final Brief, paras. 1880-1900.

<sup>4694</sup> Indictment, para. 81; Prosecution Final Brief, para. 1890.

<sup>4695</sup> Prosecution Final Brief, paras. 1884, 1888.

<sup>4696</sup> Prosecution Final Brief, para. 1893.

1481. In particular, the evidence is insufficient to find that **Borovčanin** knew about Directive 7 or Directive 7/1, or that he understood that these Directives outlined an attack against the civilian population in the enclaves.<sup>4697</sup> With respect to the progressive efforts to force the Bosnian Muslim population to leave the enclaves, there is no evidence that **Borovčanin** knew of the VRS policy to restrict humanitarian aid to the enclaves, or the fact that the humanitarian situation in the enclaves deteriorated after Directive 7 was issued.<sup>4698</sup> There is also no evidence that **Borovčanin** knew that the civilian population had been the target of shelling and sniping prior to the fall of Srebrenica, or that members of DutchBat were similarly targeted.<sup>4699</sup> Nor is there evidence that **Borovčanin** knew of the *Krivaja-95* Orders to take military action against the enclaves, or in particular that these Orders also had an illegal goal, namely, to forcibly remove the Bosnian Muslim civilian population from the enclaves.<sup>4700</sup>

1482. The Trial Chamber notes that **Borovčanin** was brought into the Srebrenica operation in part due to his familiarity with the Bratunac area.<sup>4701</sup> Evidence of **Borovčanin**'s knowledge of the region's past and his local contacts is insufficient to conclude that **Borovčanin** must have inferred that there was a plan to forcibly transfer the Bosnian Muslim population. Moreover, it is not the only reasonable conclusion to be made that Mladić, Krstić or other VRS personnel informed **Borovčanin**, either before he arrived in Bratunac or after he was resubordinated to the Drina Corps, of the plan to forcibly remove the Bosnian Muslim population.

1483. However, the Trial Chamber notes that **Borovčanin** was present in Bratunac and Potočari between 11 and 13 July, when the plan to forcibly remove culminated in the actual forcible transfer of the Bosnian Muslim women, children, and the elderly.<sup>4702</sup> **Borovčanin** was based in Bratunac, at the police station,<sup>4703</sup> the centre of activity. The evidence establishes that **Borovčanin** received instructions and information from Mladić and his subordinates, including Krstić, Cerović, and Momir Nikolić during this period.<sup>4704</sup> While it is possible that **Borovčanin** learned of the plan to forcibly remove from these communications, other inferences are possible, including that he was simply not told.

1484. The Trial Chamber turns then to consider whether, from **Borovčanin**'s acts over the period of 11 to 13 July, the Trial Chamber can conclude that he gained knowledge of the plan to forcibly

<sup>4697</sup> See *supra*, paras. 762–765.

<sup>4698</sup> See *supra*, paras. 766–767.

<sup>4699</sup> See *supra*, paras. 770.

<sup>4700</sup> See *supra*, paras. 769, 774–775.

<sup>4701</sup> See Miroslav Deronjić, Ex. P03139a, “confidential–92 *quater* transcript,” BT. 6376–6377, 6384 (21 Jan 2004), BT. 6407–6408, 6432–6435 (22 Jan 2004).

<sup>4702</sup> See *supra*, para. 1437–1448.

<sup>4703</sup> See *supra*, paras. 1437–1438, 1440, 1443, 1447, 1449.

remove the population or whether from those actions, the orders he received, and what he saw, he would have been aware of the plan.

1485. In the evening of 11 July, **Borovčanin** knew that masses of Bosnian Muslims were gathering in Potočari around the DutchBat compound for protection, following the attack on and fall of Srebrenica town earlier that day.<sup>4705</sup>

1486. In the early morning of 12 July, **Borovčanin** and his units arrived in Potočari after they took over OP Papa without any fighting.<sup>4706</sup> **Borovčanin** and the MUP units had been brought to the area to assist in the military operation which was ongoing at that time. This military operation had a dual purpose—one of which was the legitimate aim to demilitarise the enclave and to respond militarily to the ABiH.<sup>4707</sup> In these circumstances, advancing towards Potočari to secure the area at a time when the VRS was not clear as to the location of the ABiH 28<sup>th</sup> Division does not demonstrate that **Borovčanin** must have then known of the illegal common purpose of the JCE. It is also reasonable to conclude that **Borovčanin** was simply participating in a purely legitimate military combat activity at that point and that he believed this to be the case, even though he knew that Potočari was full of Bosnian Muslims seeking safety.<sup>4708</sup> The Trial Chamber concludes that **Borovčanin**'s participation in the advance towards and securing of Potočari and the DutchBat compound in the early morning of 12 July does not evidence knowledge on his part of the plan to forcibly remove, nor from that participation would the plan have become evident to **Borovčanin**.

1487. The following paragraphs are decided by majority, Judge Kwon dissenting.<sup>4709</sup>

1488. Later that morning of 12 July, **Borovčanin** was present in Potočari with his men, who took up positions among the Bosnian Muslims, before the separation of the men and the transportation of the Bosnian Muslim women, children, and the elderly out of Potočari began.<sup>4710</sup> He was aware at that time that the population assembled there was to be transported out of the area and the Jahorina Recruits were to participate in that process. The video footage evidences clearly what **Borovčanin** would have seen in Potočari at that stage—human suffering and a desperate and terrified population of Bosnian Muslims gathered under chaotic conditions.<sup>4711</sup> Faced with the reality of the dire humanitarian situation on the ground, even if he had been told that the civilian population was to be evacuated at their request, he must have known then that the Bosnian Muslims were not voluntarily

<sup>4704</sup> See *supra*, paras. 1437, 1440–1441, 1443, 1446–1447.

<sup>4705</sup> See *supra*, paras. 1439, 1443; Ex. P02852, “Transcript of OTP Interview of Borovčanin, 20 Feb 2002”, p. 39.

<sup>4706</sup> See *supra*, para. 1444.

<sup>4707</sup> See *supra*, paras. 774–775.

<sup>4708</sup> See *supra*, paras. 1439, 1443.

<sup>4709</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35

<sup>4710</sup> See *supra*, paras. 304–305, 1445.

leaving the enclave.<sup>4712</sup> The coercive atmosphere in Potočari would have been tangible to him, the terror on the faces of the population, young and old, men and women, visible and palpable to such an extent that the only reasonable inference is that he knew that the population of Srebrenica had been forced out of their homes by the attack, into those desperate conditions.

1489. The Trial Chamber has considered that **Borovčanin** had not participated in the initial stages of the military attack on the enclave, nor is there evidence before the Trial Chamber that he was aware of the scale of it or the methods used, particularly with reference to the civilian population. Nevertheless, it must have been evident to him upon seeing the Bosnian Muslim population—women, children, infants, elderly gathered in chaos, carrying meagre possessions—that this was not a voluntary evacuation of the residents of Srebrenica. It was also clear to him at the time that the triggering event for this massive movement of population was the military attack which had been launched against the enclave by the VRS. There were, at that stage, no signs of the ABiH in Potočari and the military action there had ceased. **Borovčanin** therefore could have been under no illusion that the population were being moved for their safety. The Trial Chamber is satisfied that given all these circumstances, the only reasonable inference is that, at the time he was in Potočari on 12 July, **Borovčanin** was aware that he was witnessing a forcible transfer.

1490. **Borovčanin** left the Jahorina Recruits under his subordinate commanders Jević and Mane, with orders for them to participate with, *inter alia*, the Bratunac Brigade Military Police, in the process whereby the Bosnian Muslim population in Potočari was to be removed from the area and transported to ABiH-held territory. During the course of that day, Jević and Mane and the Jahorina Recruits assisted with the boarding of the women, children, and the elderly onto the buses.<sup>4713</sup> They also participated in the separation of the men from their families though there is no evidence before the Trial Chamber that on 12 July **Borovčanin** was aware that there would be such a separation on a massive scale. On the evidence before the Trial Chamber he left the area before the separations and boarding began. Jević, who was on the ground in Potočari reported to **Borovčanin** on the evening of 12 July.<sup>4714</sup> While there is no evidence on the details of the report, **Borovčanin** told Jević to continue what he was doing the next day.<sup>4715</sup> **Borovčanin** therefore was fully aware of his men's participation in the movement of the population on 12 July and he ordered their continued involvement on the 13th.

<sup>4711</sup> See *supra*, paras. 317–318, 320, 325.

<sup>4712</sup> See *supra*, Chapter III, Section E.5.

<sup>4713</sup> See *supra*, paras. 316, 321, 323.

<sup>4714</sup> See *supra*, paras. 321, 1447.

<sup>4715</sup> See *supra*, paras. 321, 1447.

1491. There is however no evidence that Jević reported to **Borovčanin** any instances of abuse of the Bosnian Muslims that day or about the separation process particularly.<sup>4716</sup> There is further no evidence that **Borovčanin** ordered or knew of the actions of the Jahorina Recruits who detained and disarmed DutchBat officer Rutten and his men on 12 July, and who threatened and robbed DutchBat soldiers during the night of 12 July.<sup>4717</sup>

1492. **Borovčanin**'s return to Potočari in the afternoon of 13 July is partly captured on the Petrović video.<sup>4718</sup> **Borovčanin** saw the boarding and transportation of the remaining Bosnian Muslim women, children, and the elderly which was still ongoing when he was there.<sup>4719</sup> **Borovčanin** denies seeing the actual separation process though he saw its result.<sup>4720</sup> The overcrowded conditions in the White House where the separated men were detained was specifically drawn to his attention by UNMO member Kingori and he is caught on videotape standing in front of the White House during this conversation.<sup>4721</sup> From where he stood, **Borovčanin** could also see a pile of belongings outside the White House.<sup>4722</sup> Nonetheless, there is no evidence before the Trial Chamber that he saw any abuse, assault or ill-treatment while in Potočari, or that reports on these were made to **Borovčanin** by his subordinate commanders, Jević and/or Mane.

1493. What **Borovčanin** witnessed therefore on 13 July was the completion of the process of the forcible transfer of the Bosnian Muslim women, children, and the elderly, of which he was already aware.<sup>4723</sup> In addition, he then knew that a large number of men had been separated from the rest of the population and were being detained in crowded and inhumane conditions. This new information is very relevant in terms of **Borovčanin**'s knowledge of the JCE to Murder and it will be assessed by the Trial Chamber in that context below. However, in so far as the plan to forcibly remove is concerned, the Trial Chamber considers that this additional knowledge of the detention of the men and the conditions of that, would have further confirmed **Borovčanin**'s knowledge that the transfer of the remainder of the population was a forcible one. In this context, the Trial Chamber has also considered that **Borovčanin** could not but know that the women, children, and the elderly would not voluntarily choose to leave without their male family members and that they were thus being

<sup>4716</sup> See *supra*, paras. 321, 1447.

<sup>4717</sup> See *supra*, paras. 307–308.

<sup>4718</sup> See *supra*, paras. 329, 1448.

<sup>4719</sup> Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 85–86.

<sup>4720</sup> *Ibid.*, pp. 127–128.

<sup>4721</sup> Ex. P02047, "Srebrenica Trial Video," 02:28:33–02:30:37; see also Ex. P02047, "Srebrenica Trial Video", 02:30:39–02:30:50; Zoran Petrović, T. 18852 (6 Dec 2007).

<sup>4722</sup> Ex. P02047, "Srebrenica Trial Video" 02:29:45–02:30:37.

<sup>4723</sup> *Ibid.*

forced out of the enclave. The Trial Chamber considers that this is the only reasonably possible inference in the circumstances.

1494. Therefore, the Trial Chamber finds that while he did not have prior knowledge, on 12 July, with his presence in Potočari and what he witnessed there, **Borovčanin** came to know that there was a forcible transfer of the civilian population of Srebrenica taking place. With that knowledge **Borovčanin** ordered two of his subordinate commanders and the Jahorina Recruits under his command to assist with that forcible transfer operation. He further authorised their continued participation on 13 July.

1495. However, the Trial Chamber notes that on the evidence, **Borovčanin** was aware only that a forcible transfer was in progress. He had no knowledge of the advance plan, details of the attack, the terrorisation of the population or even specifics as to the conditions suffered by the population over the night of 11 and into 12 July. In these circumstances, the Trial Chamber is satisfied that while **Borovčanin** knew of a forcible transfer operation in Potočari, the evidence is insufficient to demonstrate that he shared the intent to forcibly transfer himself. In this respect, the Trial Chamber notes that the same circumstances which evidenced to him that this was a forced movement, also would have clearly revealed to **Borovčanin** that the population of Srebrenica was now facing a catastrophic humanitarian situation. Thus while one reasonable inference from his actions in authorising the participation of his men is that he intended to forcibly transfer, an equally reasonable inference is that he intended to assist with the removal of the population because of these horrific conditions. As further support, the Trial Chamber notes that there is no evidence of **Borovčanin**'s knowledge or authorisation of any abusive conduct with respect to the population. In fact, the only evidence before the Trial Chamber demonstrates the assistance he rendered in securing the return of a water truck for the use of the civilians. Thus, the Trial Chamber is not satisfied that **Borovčanin** shared in the common purpose of the JCE or had the intent to forcibly transfer. Therefore, the Trial Chamber finds that he was not a member of the JCE to Forcibly Remove.

b. Other Modes of Liability

1496. The Prosecution also alleges that **Borovčanin** committed (other than through participation in a JCE), planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.<sup>4724</sup> The Trial Chamber has found that **Borovčanin** had no intent to forcibly transfer. In addition, there is no evidence before the Trial Chamber of any acts or

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<sup>4724</sup> Indictment, paras. 88–89, 92.

omissions on his part which would constitute other Article 7(1) forms of responsibility, except for aiding and abetting which is discussed below, in relation to the crime of forcible transfer.

c. Aiding and Abetting

1497. To aid and abet a crime, the accused must carry out an act, whether a positive act or an omission, to assist, encourage or lend moral support to the perpetration of a crime, and this support has a substantial effect upon the perpetration of such crime.<sup>4725</sup> The requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal.<sup>4726</sup>

1498. At the outset, the Trial Chamber recalls that **Borovčanin** had no involvement in the attack on the Žepa enclave. Turning to the Srebrenica enclave, on 12 July, **Borovčanin** left the 1st Company of the Jahorina Recruits in Potočari to assist in the forcible transfer. He continued to permit them to practically assist on 13 July. The Trial Chamber has considered the evidence as to **Borovčanin**'s subordinate commanders, Jević and Mane and the Jahorina Recruits' role in assisting with the boarding of the Bosnian Muslim women, children, and the elderly onto buses and trucks, separating the men from their families, counting the people as they stepped onto the buses, and patrolling the area in which the Bosnian Muslims were gathered until the forcible transfer was completed.<sup>4727</sup> It finds that they were instrumental in executing the actual physical forcible transfer out of Potočari, and it was a key role they played. By so doing, the Trial Chamber finds that they contributed substantially to the commission of the crime.

1499. The Trial Chamber recalls its majority finding above that **Borovčanin** knew, as of 12 July when he was in Potočari, that a forcible transfer of the civilian population was taking place.<sup>4728</sup> In ordering his commanders and units to participate in the operation to move the population, **Borovčanin** knew that this would assist substantially with the crime of forcible transfer. This knowledge would have only been reinforced on the evening of the 12 July when Jević reported to him on the actions of the unit during that day.<sup>4729</sup>

1500. As found above, the Trial Chamber is not satisfied that **Borovčanin** had any intent to forcibly transfer. Further, the evidence is insufficient to demonstrate that he intended to assist in a forcible transfer. As it is, however, under the jurisprudence of this Tribunal, not only is the accused

<sup>4725</sup> See *supra*, paras. 1014–1015.

<sup>4726</sup> See *supra*, paras. 1016–1017.

<sup>4727</sup> See *supra*, paras. 316, 319–323.

<sup>4728</sup> See *supra*, para. 1494.

<sup>4729</sup> See *supra*, paras. 321, 1447.



not required to share the intent of the crime, he or she need not even have the intent to assist with the crime for responsibility through aiding and abetting to attach.<sup>4730</sup> It is sufficient for the accused to know that an act will assist the commission of the crime by the principal.<sup>4731</sup> The Trial Chamber notes that in the vast majority of cases, the acts of the accused, with the requisite knowledge that it assists a crime, will allow for no other reasonable inference than that the accused intended to assist the commission of an offence. That is, however, not the case in this instance where the participation of **Borovčanin**'s men substantially assisted a crime, but at the same time aided in providing relief to a population facing a humanitarian disaster. The law of the Tribunal however does not allow for a distinction to be drawn on this basis in terms of criminal responsibility.

1501. In light of his knowledge of the forcible transfer, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Borovčanin**'s action in allowing the use of his personnel—his subordinate commanders and the Jahorina Recruits—to assist in the transfer of the Bosnian Muslim women, children, and the elderly out of Potočari, amounts to aiding and abetting the crime of forcible transfer. The circumstances described above which surround **Borovčanin**'s intent will be considered by the Trial Chamber in mitigation of sentence.

(iii) Murder

1502. The Trial Chamber notes that the centrepiece of the Prosecution's case against **Borovčanin**, with regard to murder, extermination, and genocide is his alleged commission of the crime through participation in the JCE to Murder alleged in the Indictment. The Trial Chamber will therefore begin with an examination of **Borovčanin**'s alleged participation in the JCE to Murder.

a. First Category JCE to Murder

1503. The Trial Chamber has found that in July 1995, a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>4732</sup> The first two elements required for a finding of liability through participation in a joint criminal enterprise have thus been satisfied. The Trial Chamber will now turn to the third element: participation of the accused in the common purpose.

1504. The Trial Chamber recalls that in order for **Borovčanin** to incur liability pursuant to the first category of joint criminal enterprise, he must have contributed to the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this

<sup>4730</sup> See *supra*, paras. 1016–1017.

<sup>4731</sup> See *supra*, paras. 1016–1017.

element, **Borovčanin** must have significantly contributed to the common purpose and have shared with other members of the JCE to Murder the intent to carry out the common purpose.

i. Prosecution Allegations

1505. The Prosecution submits that **Borovčanin** was a member of the conspiracy to commit genocide and of the JCE to Murder.<sup>4733</sup> By the end of the day of 12 July, **Borovčanin** and his commanders must have been fully aware of the VRS's intentions to separate and murder the Bosnian Muslim men and boys in Potočari.<sup>4734</sup> Furthermore, in the afternoon of 13 July 1995, **Borovčanin** received orders from his VRS superior command to execute at least 1,000 of the Bosnian Muslim men detained by his units at the Sandići Meadow.<sup>4735</sup>

1506. The Prosecution alleges that (i) on 12 and 13 July 1995, **Borovčanin** commanded MUP forces as they, together with the VRS, separated, detained and transported the Bosnian Muslim men and boys of Potočari, knowing that they would be executed,<sup>4736</sup> (ii) on 13 July 1995, **Borovčanin** was present along the Bratunac-Konjević Polje Road, including the Kravica Warehouse, along with his units, who assisted in capturing, detaining, transporting, and executing hundreds of able-bodied Bosnian Muslim men and boys from Srebrenica, with full knowledge that the Bosnian Muslim men would be executed,<sup>4737</sup> (iii) on 13 July 1995, **Borovčanin** was present at Kravica Warehouse when hundreds of Bosnian Muslim prisoners were being summarily executed by or in the presence of his units, including members of the Skelani Platoon of the SBP 2nd Šekovići Detachment,<sup>4738</sup> (iv) as commander, **Borovčanin** had a responsibility to ensure the safety and welfare of all the Bosnian Muslim prisoners within his custody and/or control; specifically with regard to Kravica Warehouse, his presence at or near it, together with his failure to intercede in order to protect the prisoners there, constituted a wilful failure to discharge his legal duty to protect the detainees who were then in his custody and/or control, and that the failure to discharge this legal duty results in omission liability under Article 7(1),<sup>4739</sup> and (v) on 13 July, a deputy platoon commander from the Jahorina Recruits of the SBP, under the command and control of **Borovčanin**, issued an order to summarily execute 10 to 15 Bosnian Muslim prisoners remaining at Sandići Meadow.<sup>4740</sup>

<sup>4732</sup> *See supra*, paras. 1049–1080.

<sup>4733</sup> Indictment, paras. 27–37, 43.

<sup>4734</sup> *Ibid.*, para. 43(a)(ii); Prosecution Final Brief, paras. 1878, 1914.

<sup>4735</sup> Prosecution Final Brief, paras. 1861, 1988, 2006, 2008.

<sup>4736</sup> Indictment, para. 43(a)(i); Prosecution Final Brief, para. 1856.

<sup>4737</sup> Indictment, para. 43(a)(ii).

<sup>4738</sup> *Ibid.*, paras. 30.4, 43(iii), Prosecution Final Brief, paras. 1861–1862.

<sup>4739</sup> Indictment, paras. 43(iv), 92; Prosecution Final Brief, paras. 1852, 2036–2043.

<sup>4740</sup> Indictment, paras. 30.4.1, 43(a).

ii. Knowledge of the JCE to Murder

1507. As discussed above, **Borovčanin** was in Potočari, Bratunac, and on the Bratunac-Konjević Polje Road when the plan to murder was developed and put into place and he was also communicating with Mladić, Krstić, and Momir Nikolić, all involved, in varying degrees, in the JCE to Murder alleged in the Indictment.<sup>4741</sup> **Borovčanin** believed that the men in Potočari were to be screened to identify any ABiH members.<sup>4742</sup> He understood this to have been agreed upon in the Hotel Fontana meetings, and he saw the Bratunac Brigade Military Police and Momir Nikolić arriving with lists which he thought were for that purpose.<sup>4743</sup> In addition, at one point, **Borovčanin** himself went into the DutchBat compound to check whether there were ABiH soldiers in the crowd.<sup>4744</sup>

1508. The Trial Chamber has found that the separation of the Bosnian Muslim men in Potočari was the first step in the execution of the plan to murder them.<sup>4745</sup> On the days following 12 July, the plan to murder was expanded to include all the Bosnian Muslim men who were in the custody of the VRS.<sup>4746</sup> By the afternoon of 13 July, **Borovčanin** was aware that the Bosnian Muslim men in Potočari had been separated from the rest of the population and were being detained in overcrowded conditions in the White House.<sup>4747</sup> He also saw many buses full of Bosnian Muslim men going into the Bratunac stadium that evening.<sup>4748</sup> However, there is no evidence before the Trial Chamber that he witnessed the actual separation process or that he knew of its extent. Further, there is no evidence before the Trial Chamber that this was reported to **Borovčanin** by his subordinate commanders Jević and Mane. Aside from the conditions of the White House, there is similarly no evidence before the Trial Chamber that instances of abuse, assault or ill-treatment were drawn to his attention by the UNMOs or DutchBat soldiers present.

1509. The Trial Chamber has considered these circumstances individually and cumulatively and is not satisfied that the only reasonable inference which can be drawn from these facts is that **Borovčanin** knew of the plan to murder. He could have also reasonably believed that the Bosnian Muslim men in Potočari and in Bratunac town were being detained for a lawful screening process

<sup>4741</sup> See *supra*, paras. 1437–1453.

<sup>4742</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 10–11, 21.

<sup>4743</sup> See *supra*, paras. 323, 1442, 1445. See also Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 10–11, 21.

<sup>4744</sup> See *supra*, paras. 305, 1445.

<sup>4745</sup> See *supra*, paras. 1052, 1055.

<sup>4746</sup> See *supra*, paras. 1056–1064.

<sup>4747</sup> Ex. P02047, “Srebrenica Trial Video”, 02:29:45–02:30:37 (showing **Borovčanin** standing with Joseph Kingori and Miki, the interpreter, outside the White House); Zoran Petrović, T. 18852 (6 Dec 2007); Ex. P02986, “Road Book - Still frames from the Petrovic video and images of locations found in the Petrovic video”, p 10.

<sup>4748</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 82–83.

and that the crowded conditions of their detention were intended for a limited time period to carry out this process.

1510. **Borovčanin** saw the pile of prisoners' personal belongings on the ground next to where he stood close to the White House on 13 July. From this alone, in the absence of evidence that he saw identification documents, more than one inference can be drawn.<sup>4749</sup> The Trial Chamber also notes that Mane, **Borovčanin**'s subordinate, told the Dutchbat officer that the Bosnian Muslim men would no longer need their passports.<sup>4750</sup> Mane, unlike **Borovčanin**, had been constantly on the ground in Potočari in those two days.<sup>4751</sup> From this evidence alone, however, the Trial Chamber cannot infer that if Mane knew that these prisoners were to be killed, **Borovčanin**, as his superior, must also have known. There is also no evidence that **Borovčanin** overheard Mane's remark to the DutchBat officer. Nor can the Trial Chamber conclude that Jević knew or reported this to **Borovčanin** the evening before.<sup>4752</sup> Looking at all the evidence before it, the Trial Chamber finds that it is insufficient for it to conclude that the only reasonable inference to be drawn from **Borovčanin**'s presence and actions in Potočari, what he saw there, and the reports he received from his subordinate commanders Jević and Mane, is that he knew that the Bosnian Muslim prisoners held in Potočari would be killed.

1511. Moving on to the involvement of **Borovčanin**'s units in securing the Bratunac-Konjević Polje Road, **Borovčanin** was aware that his units, together with other units of the Bosnian Serb Forces, were not only fighting the column militarily, but also capturing and guarding detained Bosnian Muslim prisoners in Sandići Meadow on 13 July.<sup>4753</sup> Nevertheless, there is insufficient evidence before the Trial Chamber to conclude that **Borovčanin** knew at that time that the detained Bosnian Muslim men would be killed. **Borovčanin** was present at Sandići Meadow in the mid-afternoon of 13 July, when Mladić told the prisoners that they would be exchanged as prisoners of war.<sup>4754</sup> He had no reason to disbelieve Mladić at the time, as he had just seen the busing of the Bosnian Muslim women, children, and the elderly in Potočari. It was reasonably possible for him to believe that after their screening, the men would indeed be exchanged.<sup>4755</sup>

<sup>4749</sup> Ex. P02047, "Srebrenica Trial Video", 02:28:33–02:30:00 (showing **Borovčanin** standing with Joseph Kingori and Miki, the interpreter, outside the White House); Zoran Petrović, T. 18770–18771 (5 Dec 2007), T. 18847 (6 Dec 2007); Ex. P02853, "Transcript of OTP Interview of **Borovčanin**, 11 and 12 Mar 2002", pp. 85–86; Ex. P02011, "Video by journalist Zoran Petrović, Studio B version, which includes two scenes not in the original video (V000-0550)."

<sup>4750</sup> See *supra*, para. 331.

<sup>4751</sup> See *supra*, paras. 316, 319–321, 323.

<sup>4752</sup> See *supra*, paras. 321, 1447.

<sup>4753</sup> See *supra*, paras. 386–387, 1451–1453.

<sup>4754</sup> See *supra*, paras. 387, 1453.

<sup>4755</sup> See *supra*, paras. 305, 1445.

1512. There is no evidence before the Trial Chamber to find that **Borovčanin** saw or received any reports of beatings or killings of prisoners while in Sandići Meadow. There is evidence that while he was in Sandići Meadow, some women, young girls, and boys were allowed to leave and get on the buses heading to ABiH-held territory.<sup>4756</sup> Though he would have likely realised that the masses of prisoners detained in Sandići Meadow were not being given sufficient food or water, that alone cannot be sufficient to infer **Borovčanin**'s knowledge of the plan to murder, particularly in so far as he viewed the detention as a temporary measure.

1513. Turning to **Borovčanin**'s knowledge of the murders, the Trial Chamber notes that it has already found that the Sandići Meadow killings were committed by members of the Jahorina Recruits who had been guarding the Bosnian Muslim prisoners upon the order of "Aleksa", the Deputy Commander of a platoon of an SBP company.<sup>4757</sup> On the basis of the evidence before it, the Trial Chamber finds that it was members of a unit under **Borovčanin**'s command who murdered the Bosnian Muslim prisoners, as there were no other SBP units, as distinct from other MUP units, in Sandići Meadow on that day.<sup>4758</sup> Nevertheless, there is no evidence before the Trial Chamber that **Borovčanin** knew of or ordered these murders.

1514. The Trial Chamber will now consider **Borovčanin**'s knowledge of what happened at Kravica Warehouse, the role of the SBP 2nd Šekovići Detachment, one of his subordinate units, and his subsequent gained knowledge and actions. The Prosecution alleges that **Borovčanin**'s order to close the Bratunac-Konjević Polje Road was to facilitate the murder of the Bosnian Muslim prisoners in the Kravica Warehouse.<sup>4759</sup> The Trial Chamber has considered the evidence as to the circumstances of the Bratunac-Konjević Polje Road closure. While one possible inference is that this was done to facilitate the killings, an equally reasonable inference is that the Bratunac-Konjević Polje Road was closed because of the movement of the column along it from Sandići to the Kravica Warehouse.<sup>4760</sup> In fact, according to Pepić, this is what Cuturić indicated was the reason at the time. The Bratunac-Konjević Polje Road was busy and it needed to be secured for the column of prisoners to pass.<sup>4761</sup> In the circumstances, the Trial Chamber is not satisfied the only reasonable inference to be drawn from the Bratunac-Konjević Polje Road closure is that **Borovčanin** knew of the plan to murder the Bosnian Muslim prisoners. There being no other evidence, the Trial Chamber is not satisfied that prior to the killings, **Borovčanin** was aware of the plan to murder generally or specifically with reference to the Kravica Warehouse.

<sup>4756</sup> Zoran Petrović, T. 18793 (5 Dec 2007); *see supra*, para. 385.

<sup>4757</sup> *See supra*, paras. 387, 1453.

<sup>4758</sup> *See supra*, para. 386.

<sup>4759</sup> *See* Prosecution Final Brief, para. 1988.

<sup>4760</sup> *See supra*, paras. 424, 454.

<sup>4761</sup> Milenko Pepić, T. 13555–13557, 13559 (9 July 2007).

1515. The Prosecution alleges that shortly thereafter, MUP forces under the command of **Borovčanin**, including the Skelani Platoon of the SBP 2nd Šekovići Detachment and at least one member of the Bratunac Brigade Red Berets, participated in the murder of roughly 500 Muslims detained in the West Room of the Kravica Warehouse.<sup>4762</sup> They then moved to the East Room and murdered “the 500 remaining Muslim prisoners”.<sup>4763</sup> The Prosecution further alleges that from the automatic gunfire that can be heard on the Petrović video, the executions were in progress in the East Room when **Borovčanin** arrived at Kravica Warehouse.<sup>4764</sup> Moreover, the Prosecution alleges that the “burnt-hands” incident happened twenty minutes into an already ongoing execution.<sup>4765</sup>

1516. Based on the abundant evidence, the Trial Chamber is satisfied that when **Borovčanin** arrived at the Kravica Warehouse, the “burnt-hands” incident had occurred approximately ten to fifteen minutes before, and what appears to be a busload of Bosnian Muslim prisoners outside the West and Centre Rooms had been shot dead.<sup>4766</sup> However, there is insufficient evidence before the Trial Chamber to find that the Bosnian Muslim prisoners held inside the West Room had also been killed by this time.<sup>4767</sup> The evidence of PW-156 provides some support for the argument that the killings commenced in the West Room and were carried out on a continuous basis with no significant interruption.<sup>4768</sup> However, as is discussed in more detail below, the Trial Chamber finds this evidence, particularly when viewed with the evidence of PW-111, is not sufficient to satisfy the Trial Chamber that the killings were conducted as a single mass execution without significant interruption. Similarly, this evidence is not sufficient to demonstrate that when **Borovčanin** arrived, the prisoners in the West Room had been killed and the executions were ongoing.

1517. The Trial Chamber has studied carefully the Petrović video passage related to this issue. While gunfire can be heard simultaneously with the footage showing the Kravica Warehouse with the bodies out front, the Trial Chamber cannot conclude where the gunfire was coming from and in particular that there was an ongoing execution at the time.<sup>4769</sup> The Trial Chamber notes that the video images do not capture anyone shooting on the grounds of the Warehouse at that time. Thus the video does not establish that executions were ongoing when **Borovčanin** arrived.

<sup>4762</sup> Indictment, para. 43(a)(iii); Prosecution Final Brief, para. 1989.

<sup>4763</sup> Prosecution Final Brief, para. 1989.

<sup>4764</sup> See Prosecution Final Brief, paras. 625–627, 1989, 1993. In its closing arguments, the Prosecution offered to enter an agreement of facts that the doors of Kravica Warehouse that are seen on the video footage were closed when **Borovčanin** was there and that one cannot infer as easily that the prisoners in the West Room had already been killed. Prosecution Closing Arguments, T. 34232–34233 (4 Sept 2009). See *Borovčanin* Final Brief, para. 150.

<sup>4765</sup> See Prosecution Final Brief, paras. 2151, 2153–2154, 2156–2160.

<sup>4766</sup> Based on the scene of the parked bus and the pile of bodies lying in front of the Kravica Warehouse, caught on the Petrović video, the Trial Chamber estimates that approximately 50 prisoners, approximately a busload of prisoners were shot. See Ex. P02047, “Srebrenica Trial Video,” 02:56:14–02:56:17, 02:56:24–02:56:49; Ex. P02011, “Video by Zoran Petrović, Studio B Version”, 18:08–18:11.

<sup>4767</sup> See *supra*, paras. 428–433.

1518. The Trial Chamber has also considered the evidence of Pepić, who testified that when Cuturić stopped at the checkpoint where Pepić was located at approximately 5:30 p.m., en route to the Bratunac Health Centre, the “one-sided” firing was still ongoing and Cuturić commented that “they were shooting at Muslims at the warehouse.”<sup>4770</sup> For the reasons outlined below, while Pepić’s evidence provides some support for the Prosecution argument that the shooting was ongoing at the time that **Borovčanin** arrived, the Trial Chamber does not consider it sufficient to establish this fact beyond reasonable doubt.

1519. Having assessed all of this evidence individually and cumulatively, the Trial Chamber is not satisfied that at the time of **Borovčanin**’s arrival, prisoners other than those seen outside the Kravica Warehouse, had been executed or that the execution was ongoing at that moment.

1520. The Trial Chamber turns to consider who participated in the killing of the busload of prisoners following the “burnt-hands” incident. The Trial Chamber notes that there is no direct evidence before it as to which units or members of the Bosnian Serb Forces shot the busload of prisoners seen outside the Kravica Warehouse. The evidence before the Trial Chamber is circumstantial and thus the Trial Chamber has considered the matter in terms of the possible reasonable inferences to be drawn from these circumstances.

1521. **Borovčanin** argues that the evidence does not establish that members of SBP 2nd Šekovići Detachment were guarding the Kravica Warehouse.<sup>4771</sup> While there is direct evidence that two members were present, **Borovčanin** claims they may have been there for personal reasons and not for the guarding of prisoners.<sup>4772</sup> He also submits there is no evidence of their involvement in the commission of crimes and that the evidence suggests that his units were not in control of Kravica Warehouse but were spread out along the Bratunac-Konjević Polje Road.<sup>4773</sup>

1522. The SBP 2nd Šekovići Detachment, together with other MUP units, was brought in immediately after the fall of Srebrenica, to assist in the major operation of securing the Bratunac-Konjević Polje Road, and on 13 July, specifically entrusted with guarding the captured and surrendered Bosnian Muslim prisoners in the area.<sup>4774</sup> The Trial Chamber does not find it credible that during this important operation, at a critical time when approximately a thousand prisoners

<sup>4768</sup> See *supra*, para. 428.

<sup>4769</sup> See *supra*, para. 432.

<sup>4770</sup> See *supra*, para. 433.

<sup>4771</sup> Borovčanin Final Brief, paras. 181–221.

<sup>4772</sup> Borovčanin Final Brief, paras. 190–195; Borovčanin Closing Arguments, T. 34595–34596 (10 Sept 2009), T. 34877 (15 Sept 2009). See also Miloš Đukanović, T. 11759, 11786 (18 May 2008); Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5.

<sup>4773</sup> Borovčanin Final Brief, paras. 166–180. See also, *ibid.*, paras. 181–221.

<sup>4774</sup> See *supra*, paras. 377–378, 386, 1449–1453.

were being held there in custody, the SBP 2nd Šekovići Detachment commander, Čturić, would go off to the Kravica Warehouse with one of his men, to investigate a private matter. The Trial Chamber finds the possibility that these members of the SBP 2nd Šekovići Detachment were at Kravica Warehouse for personal or ulterior reasons and not for guarding purposes unreasonable.

1523. The Trial Chamber does not have direct evidence that more than two members were present at the Kravica Warehouse itself. However, members of the SBP 2nd Šekovići Detachment were part of an integrated force which had been guarding prisoners in the Sandići Meadow and along the Bratunac-Konjević Polje Road all day.<sup>4775</sup> As the bulk of those prisoners were moved to the Kravica Warehouse, the only reasonable inference is that members of the SBP 2nd Šekovići Detachment would have moved with them. Further, Čturić, the commander of the SBP 2nd Šekovići Detachment was present at the Warehouse and was in fact injured during the “burnt-hands” incident. After receiving first aid, he returned directly to the vicinity of the Kravica Warehouse.<sup>4776</sup> The Trial Chamber is satisfied that the only reasonable inference to be drawn from the commander’s initial presence and his return, is that his men—members of the SBP 2nd Šekovići Detachment—were present and guarding there at both times. Considering this evidence combined, the Trial Chamber is satisfied that in addition to Krsto Dragičević, and Čturić, other members of the SBP 2nd Šekovići Detachment were present guarding at the Kravica Warehouse at the time that the “burnt-hands” incident occurred.

1524. As to the actual shooting, again the evidence is circumstantial. However, not only were the members of the SBP 2nd Šekovići Detachment amongst those who were guarding the prisoners, it was in fact their members who were directly involved in the “burnt-hands” incident—Dragičević was killed and Čturić—their commander—was injured.<sup>4777</sup> As a result, members of the SBP 2nd Šekovići Detachment had a strong motivation to take revenge on the prisoners.

1525. The Trial Chamber has also considered the hearsay evidence of PW-100 and PW-168 regarding the killing of the prisoners at the Kravica Warehouse.<sup>4778</sup> It finds it reliable, especially when viewed cumulatively, and because this was contemporaneous hearsay. As to the “burnt-

<sup>4775</sup> See *supra*, paras. 377–378, 386, 1449–1453.

<sup>4776</sup> See *supra*, para. 434.

<sup>4777</sup> The Trial Chamber notes that Miroslav Stanojević, a member of the Red Berets of the Bratunac Brigade was also injured in the “burnt-hands” incident. See *supra*, para. 433.

<sup>4778</sup> PW-100 testified that he heard from a Jahorina Recruit that all the prisoners destined to be exchanged in Tuzla were killed at a “warehouse” by a “regular special police force.” PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007). PW-168 testified how he had heard Stupar describe how one of the prisoners at the Kravica Warehouse had grabbed a rifle and used it to kill a member of his unit. This was followed by an incident “whereby the police men and the soldiers who were there, opened fire on the prisoners and killed them” PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).



hands” incident, it is the evidence of PW-168 which is particularly relevant.<sup>4779</sup> PW-168 received this information from Stupar two days after the Kravica Warehouse killings, and Stupar was at or close enough to Kravica Warehouse when the “burnt-hands” incident happened.<sup>4780</sup> The information coming from Stupar was also self-incriminatory in so far as he places responsibility on the MUP units to which he belonged. According to Stupar’s account, both the police and soldiers present at the time fired on the prisoners.<sup>4781</sup>

1526. Finally the Trial Chamber has considered **Borovčanin**’s account of what Stupar told him—that a VRS unit shot at the prisoners and that the MUP were not involved—but does not find it credible in the light of the other evidence before it.<sup>4782</sup> Looking at all of this evidence cumulatively, the only reasonable inference is that members of the SBP 2nd Šekovići Detachment participated in the shooting and killing of the busload of Bosnian Muslim prisoners immediately after the “burnt-hands” incident occurred and the Trial Chamber so finds.

1527. Much has been said about what then happened at the Kravica Warehouse after the “burnt-hands” incident. What emerges from the evidence is that the shooting of the busload of prisoners was followed by a full-scale execution of all the Bosnian Muslim prisoners detained at the Kravica Warehouse. The timing of this execution has gained significance in the light of **Borovčanin**’s submissions that this only took place later that evening, after the SBP 2nd Šekovići Detachment had been pulled out of the area.<sup>4783</sup> As such, establishing what time the mass execution took place may help evidence who were the perpetrators of the Kravica Warehouse massacre, a necessary step towards consideration of **Borovčanin**’s responsibility.

1528. The Trial Chamber has found that members of the SBP 2nd Šekovići Detachment were present and participated in the initial killings. However, in his statement, **Borovčanin** said that before leaving the Kravica Warehouse, he asked his men to remain on the Bratunac-Konjević Polje Road, telling them that he would ask for their removal from that area as soon as possible.<sup>4784</sup> Indeed there is evidence that the members of the 1st and 2nd Platoons of the SBP 2nd Šekovići Detachment were pulled out of the area at around 8:30 p.m. or 9 p.m.<sup>4785</sup> The Trial Chamber is thus faced with a

<sup>4779</sup> The evidence of PW-100 lacks detail and makes no reference to the “burnt-hands incident”. In addition, in contrast to the evidence of PW-168, PW-100 was not able to recall the source of the information making it difficult to determine the original declarant’s ability to know. *See* PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007).

<sup>4780</sup> Stupar was able to inform **Borovčanin** of what was going on immediately after the incident happened. *See supra*, paras. 432, 1457. *See also* Momir Nikolić, Ex. C00001, “Statement of facts and acceptance of responsibility, 6 May 2003”, p. 5; PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).

<sup>4781</sup> PW-168, T. 15877 (closed session) (26 Sep 2007).

<sup>4782</sup> *See supra*, para. 1459.

<sup>4783</sup> Borovčanin Final Brief, Section V. (c)–(d).

<sup>4784</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 73.

<sup>4785</sup> *See supra*, para. 1460.

gap of about three hours from the moment **Borovčanin** arrives on the scene to the time two Platoons of the SBP 2nd Šekovići Detachment are pulled out, which are unaccounted for. With regard to the members of the 3rd Platoon, the “Skelani” Platoon, whose member, Krsto Dragičević, had been killed in the “burnt-hands” incident, there is no evidence as to their location or whether they remained at the Kravica Warehouse or not.

1529. The Trial Chamber has analysed with care the testimony of the two survivors. While the evidence of PW-111 is more detailed, the Trial Chamber finds both witnesses to be credible and reliable. Further, while there are differences in their evidence, it is not necessarily contradictory particularly given that the witnesses were in two separate rooms and arrived at different times. Understandably, their recollections, particularly as to the time of day or night, and the sequence of events, are not always clear. The timing and turn of events offered by the two survivors as to when and how the full-blown execution commenced, varies somewhat. PW-111 testified that the first episode—the “burnt-hands” incident—happened when one could still see, though it was getting dark, and then later, they opened fire on the prisoners inside the East Room—the full-blown execution.<sup>4786</sup> His estimate as to the gap between the initial shooting and the second wave of killings is however not lengthy—approximately half an hour.<sup>4787</sup> Yet, later, PW-111 testified that the first incident—the “burnt-hands” incident—started after it became dark, with some shelling, and this was probably around 8.30 p.m. or 9 p.m, thereby casting some doubt on his reliability for the timing of both events.<sup>4788</sup> Meanwhile, PW-156 did not refer to the “burnt-hands” incident but described the arbitrary way in which the shootings started in the West Room.<sup>4789</sup> PW-156 said that the shooting continued, with pauses, until it was dark.<sup>4790</sup> One inference to be drawn from this evidence is that there was but a single execution incident with no significant gaps. However, having assessed the evidence of PW-156 individually and with that given by PW-111, the Trial Chamber is not satisfied this is the only reasonable inference. It may well be that in the chaotic and horrifying circumstances, PW-156 did not hear the initial shootings or that he cannot recall them. In assessing this evidence, the Trial Chamber has considered the dark and crowded rooms they were in, and the extreme conditions they were under at the time. Given all these factors and the content of the evidence, the Trial Chamber finds it cannot rely solely or to any great extent on the survivors’ evidence on timing and how the full-scale execution unfolded. Thus, having analysed their evidence with great care, the Trial Chamber cannot be satisfied beyond reasonable doubt that there was a

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<sup>4786</sup> See *supra*, para. 1460.

<sup>4787</sup> See *supra*, paras. 429–430.

<sup>4788</sup> PW-111, T. 6999–7000, 7060–7061 (7 Feb 2007).

<sup>4789</sup> PW-111, T. 6999–7000, 7060–7062 (7 Feb 2007).

<sup>4790</sup> See *supra*, para. 428.

single killing action or that the full-blown execution began in the early evening before the 1st Platoon and 2nd Platoon of the SBP 2nd Šekovići Detachment had been removed.

1530. The Trial Chamber has also considered the evidence of witnesses who were in the vicinity that evening, and who testified on what they saw and heard at the nearby Sandići Meadow and around the Kravica Warehouse. Miloš Đukanović's evidence provides some support for two killing episodes with the second one occurring at dusk.<sup>4791</sup> However his evidence does not provide any further clarity as to the time gap between the two events. The Trial Chamber has also looked at the testimony of Mevludin Orić and PW-117.<sup>4792</sup> Neither Mevludin Orić's nor PW-117's evidence has assisted it in its determination of the timing of the full-scale execution.<sup>4793</sup>

1531. The Trial Chamber notes the evidence of Pepić, who was deployed close to the Kravica Warehouse, on the Bratunac-Konjević Polje Road, and who heard intense one-sided shooting from the Warehouse soon after the column of Bosnian Muslim prisoners had crossed the Bratunac-Konjević Polje Road.<sup>4794</sup> Pepić initially testified that this one-sided shooting was still audible when Čturić, injured, stopped on his way to the Bratunac Health Centre.<sup>4795</sup> He also testified that the shooting continued after Cuturić had left en route to the Health Centre but stopped "more or less" after Cuturić passed through again on his way back.<sup>4796</sup> When asked to give a time as to when the shooting stopped he says, "[p]erhaps it was dusk but it was in the afternoon", "late afternoon".<sup>4797</sup> Under cross-examination, he contradicted some of these statements, most notably, indicating that when Cuturić arrived the first time en route to Bratunac, the intense one-sided firing had stopped<sup>4798</sup> Given the inconsistencies in his evidence and his admitted inability to precisely recount the time-

<sup>4791</sup> Miloš Đukanović heard two short bursts of fire and was told that the "special" he had brought water for was shot and killed and one of the others was wounded. He then heard more gun shots for a period of ten to fifteen minutes, coming directly from the Warehouse. Towards dusk, he heard explosions that sounded more like bombs from the same direction. *See* Miloš Đukanović, T. 11767–11769, 11791 (18 May 2007).

<sup>4792</sup> Orić saw no bodies and does not recall hearing shooting from the direction of Kravica Warehouse when the bus he was on stopped to pick up Bosnian Muslim prisoners at Sandići Meadow, close to the Kravica Warehouse, at around dusk, 9 or 10 p.m. Mevludin Orić, T. 890–891, 897–898 (28 Aug 2006), T. 1061–1062 (30 Aug 2006). PW-117 heard shooting coming from behind the Kravica Warehouse when he was there at dusk and saw a four or five bodies near its entrance. PW-117, Ex. P02207, "92 bis transcript", KT. 3025–3027 (14 Apr 2000).

<sup>4793</sup> Perica Vasović and Miladin Jovanović, both describe hearing gunshots when they went to Kravica Warehouse at around 8 p.m. and 10 p.m. respectively that evening. Both testified that they were unsure from which direction the shots came from. Vasović only mentions a soldier in black coming out of the darkness and asking him to help guard the Warehouse. Jovanović, on the other hand, heard human cries and cursing coming from the Warehouse. The Trial Chamber finds their testimony very limited in specific information and generally unhelpful as to the timing and who was involved in the full-scale execution at Kravica Warehouse. *See* Perica Vasović, Ex. 2D00555, "92 ter statement Perica Vasović, 23 April 2007", p. 1; Perica Vasović, T. 24229–24233, 24250–24251, 24256, 24258–24259, 24261–24262 (29 July 2008); Miladin Jovanović, Ex. 2D00554, "92 ter statement" (24 Apr 2007), p. 1; Miladin Jovanović, T. 24214, 24223–24224 (28 July 2008); Ex. P03592, "Record of Witness Statement of Miladin Jovanović, War Crimes Investigations Centre, State Investigation and Protection Agency, Ministry of Security, Bosnia and Herzegovina, 21 Sept 2005", p. 5.

<sup>4794</sup> *See supra*, paras. 431, 1456.

<sup>4795</sup> Milenko Pepić, T. 13562–13564 (9 July 2007).

<sup>4796</sup> *Ibid.*, T. 13566–13567 (9 July 2007).

<sup>4797</sup> *Ibid.*, T. 13567 (9 July 2007).

frames, the Trial Chamber cannot be satisfied beyond reasonable doubt as to the timing of the shooting which Pepić heard. As a result, the Trial Chamber cannot infer from this evidence, individually or cumulatively with that of the survivors, that the shooting Pepić heard was the reaction to the “burnt-hands” incident, or the ongoing, full-scale execution.<sup>4799</sup>

1532. The Trial Chamber has also considered the hearsay evidence of PW-100 and PW-168. PW - 100’s statement, albeit not detailed, does provide support for the involvement of the SBP in the full-scale execution in that he refers to all the prisoners destined to be exchanged in Tuzla as having been killed at a “warehouse” by a “regular special police force”.<sup>4800</sup> He makes no mention of a separate event triggered by the killing and injury of some police members present at the site and thus the statement supports the participation of the SBP in the full-blown execution. Yet, as noted previously, this statement is vague in content and the source of the hearsay is not identified beyond the person being a member of the Jahorina Recruits. PW-168, on the other hand, recounted a hearsay statement which is more detailed and in which the source is identified. He related that Stupar described that one of the prisoners grabbed a rifle and used it to kill a member of his unit. There was then an incident “whereby the police men and the soldiers who had been there opened fire on the prisoners and killed them”.<sup>4801</sup> However, this statement is ambiguous in its content. It could be interpreted to mean the prisoners in the immediate vicinity were killed, *i.e.*, the “burnt-hands” incident or all the prisoners at the Kravica Warehouse were killed, *i.e.*, full-scale execution. While the Trial Chamber, as noted previously, is satisfied as to the reliability of the evidence, given the lack of detail as to the content and source of PW-100’s information and the ambiguity of the statement made to PW-168, combined with the fact that both involve untested hearsay, the Trial Chamber finds the evidence is not sufficient to establish participation on the part of the SBP 2nd Šekovići Detachment in the full massacre at the Kravica Warehouse.

1533. From the totality of the evidence before it, the Trial Chamber finds that a full-scale execution took place at the Kravica Warehouse that evening, after the “burnt-hands” incident occurred.<sup>4802</sup> While there is evidence that there were pauses between the shooting, the length of the pauses is unclear.<sup>4803</sup> It could have ranged from a mere half hour to three hours. In addition, the Trial Chamber is unable on the evidence to establish the time when the full-scale execution began.

1534. As to who executed the Bosnian Muslim prisoners, the evidence is even more unclear. Taken cumulatively, the Trial Chamber finds that one reasonable inference in the circumstances is

<sup>4798</sup> Milenko Pepić, T. 13598 (9 July 2007).

<sup>4799</sup> See also *supra*, paras. 431, 1456.

<sup>4800</sup> PW-100, T. 14835 (5 Sept 2007), T. 14888 (6 Sept 2007).

<sup>4801</sup> PW-168, T. 15877–15878 (closed session) (26 Sep 2007), T. 16527–16528 (closed session) (18 Oct 2007).

<sup>4802</sup> See *supra*, paras. 428–445.

that members of the SBP 2nd Šekovići Detachment, in particular the 3rd Platoon, the “Skelani” Platoon, remained in Kravica Warehouse after **Borovčanin** left, and together with members of the Bratunac Brigade, continued shooting at the Bosnian Muslim prisoners until virtually all had been killed. In this regard, the Trial Chamber is satisfied that members of the 3rd Platoon, the “Skelani” Platoon were present at the Kravica Warehouse guarding the prisoners, as clearly evidenced by the death of Dragičević, who was from that Platoon. Further, there is no evidence before the Trial Chamber that this 3rd Platoon, the “Skelani” Platoon, was withdrawn with the remainder of the SBP 2nd Šekovići Detachment that evening.

1535. However, on the evidence before it, another reasonable possibility is that upon seeing the busload of dead bodies, **Borovčanin** ordered his men to retreat to the Bratunac-Konjević Polje Road until he pulled them out at dusk, as he claims. As to the members of the 3rd Platoon, the “Skelani” Platoon, may have been sent home as was the custom when one of their men was killed and that is why they were not billeted for the night with the two other Platoons of the SBP 2nd Šekovići Detachment.<sup>4804</sup> Recalling the burden on the Prosecution, given the absence of evidence as to their whereabouts, the benefit of doubt must go to the accused.

1536. In conclusion, the Trial Chamber finds that there is insufficient evidence to determine beyond reasonable doubt which units of the Bosnian Serb Forces were involved in the full-scale execution. While members of the SBP 2nd Šekovići Detachment were present for a few hours in and close to Kravica Warehouse before and after the “burnt-hands” incident occurred, there is insufficient evidence to conclude that they were also there when the full-scale execution took place and that they participated in it.

1537. Turning to **Borovčanin**’s actions again, the Trial Chamber notes that his only major act upon his return to the Bratunac Police Station after being at Kravica Warehouse, was to pull out the 1st PJP Company from Zvornik and the 1st and 2nd Platoons of the SBP 2nd Šekovići Detachment from the area and send them to rest.<sup>4805</sup> In the Trial Chamber’s opinion, this action, coupled with his words—“What’s going on? What’s being done? Give me a phone quickly. I have to phone the brigade.”<sup>4806</sup>—together with evidence of his upset state of mind,<sup>4807</sup> demonstrate his lack of

<sup>4803</sup> See *supra*, paras. 1527–1532.

<sup>4804</sup> See Predrag Čelić, T. 13481 (28 June 2007); Dragan Nesković, T. 27435–27439 (27 Oct 2008); Slavisa Simić, T. 27513–27514 (29 Oct 2008); Miodrag Dragutinović T. 12886 (19 June 2007).

<sup>4805</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 74–75; Predrag Čelić, T. 13480, 13505 (28 June 2007); Milenko Pepić, T. 13567, 13572–13573, 13600 (9 July 2007). There is no evidence before the Trial Chamber on what happened to the Skelani Platoon whose member had been killed in the “burnt-hands” incident.

<sup>4806</sup> Dragan Nesković, T. 27436–27437 (28 Oct 2008).

<sup>4807</sup> *Ibid.*; Slavisa Simić, T. 27506–27507 (2 Oct 2008); Ex. 4D00620, “CJB Bratunac, Attendance Roster, June–August 1995”.

knowledge of the plan to murder the Bosnian Muslim prisoners at Kravica Warehouse. His actions also show that he wanted to distance himself and his men from what had happened and what could later happen there.

1538. The conversation **Borovčanin** and Deronjić had that evening also supports this view. **Borovčanin** informed Deronjić of what had happened at the Kravica Warehouse that evening.<sup>4808</sup> They discussed the fact that many Bosnian Muslim prisoners were being detained in Bratunac and shared their concern that as the VRS was moving on to Žepa, the civilian authorities and the MUP would be left with the responsibility for the fate of the Bosnian Muslim prisoners.<sup>4809</sup> **Borovčanin** indicated he was worried that he and his units would be involved.<sup>4810</sup> **Borovčanin**'s intent to distance himself and his men from the guarding of Bosnian Muslim prisoners is also evident from the 15 July meeting at the Standard Barracks when **Borovčanin** expressly said that he did not wish his MUP units to guard the prisoners who were being captured or surrendering from the column.<sup>4811</sup>

1539. The Prosecution points to the intercepted conversation between **Borovčanin** and Krstić which took place at 8:40 p.m. on 13 July, as evidence of **Borovčanin**'s knowledge.<sup>4812</sup> The Trial Chamber has considered the intercept which reads in part: "K: How's it going? B: It's going well. K: Don't tell me you have problems. B: I don't. I don't [...] B: We'll continue that tomorrow."<sup>4813</sup> It finds that this conversation is too cryptic to conclude that the only reasonable inference to be made is that **Borovčanin** was discussing the plan to kill with Krstić, and that they both knew of the Kravica Warehouse murders. It is equally reasonable to conclude that they were discussing the patrols along the Bratunac-Konjević Polje Road or the blocking of the column, which were tasks **Borovčanin**'s units were also carrying out that day.<sup>4814</sup>

<sup>4808</sup> Miroslav Deronjić, Ex. P03139a, "confidential – 92 ter transcript", BT. 6226 (20 Jan 2004), BT. 6461 (22 Jan 2004).

<sup>4809</sup> Miroslav Deronjić, Ex. P03139a, "confidential – 92 ter transcript", BT. 6418–6420 (22 Jan 2004) (confirming the excerpt of the statement he had given to the Prosecution on 19 June 2003 and read to him by Defence counsel). Deronjić also stated that if that had happened, the fate of the Bosnian Muslim prisoners may have been different. Miroslav Deronjić, Ex. P03139a, "confidential – 92 ter transcript", BT. 6419–6420 (22 Jan 2004). *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 82–83.

<sup>4810</sup> Miroslav Deronjić, Ex. P03139a, "confidential – 92 ter transcript", BT. 6418–6419 (22 Jan 2004). The Trial Chamber finds Deronjić credible as Borovčanin's words are consistent with his subsequent action of withdrawing his units and he echoes them at the Standard Barracks meeting on 15 July.

<sup>4811</sup> *See supra*, para. 1464.

<sup>4812</sup> Prosecution Final Brief, paras. 2022–2030. *See also* Borovčanin Final Brief, paras. 389–390.

<sup>4813</sup> Ex. P00993a, "Intercept, 13 July 1995, 20:40 hours". *See also* Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 35–36, 75–76, 78.

<sup>4814</sup> *See* Ex. P00993a, "Intercept, 13 July 1995, 20:40 hours"; Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 79–80. *See also* Prosecution Final Brief, paras. 2022–2023; Borovčanin Final Brief, paras. 389–390.

1540. Prior to the Kravica Warehouse incident, there is insufficient evidence that **Borovčanin** knew of the plan to murder the Bosnian Muslim men. His knowledge and his actions thereafter will be considered below in the context of aiding and abetting murder.<sup>4815</sup>

iii. Conclusion

1541. The Trial Chamber thus finds that **Borovčanin** did not share the intent with other JCE members to contribute to the common purpose and he was not a member of the JCE to Murder. **Borovčanin**'s lack of intent is also further evident in his proposal or agreement to the opening of the corridor on 15 July.<sup>4816</sup>

b. Other Modes of Liability

1542. The Prosecution also alleges that **Borovčanin** committed (other than through participation in a JCE), planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.<sup>4817</sup> The Trial Chamber has concluded above that **Borovčanin** did not have knowledge of the plan to murder or its implementation. Nor did he have the intent to murder. Except for aiding and abetting which will be discussed below, there is no evidence before the Trial Chamber of any acts or omissions on his part which would constitute other Article 7(1) forms of responsibility in relation to the crime of murder.

c. Aiding and Abetting the Kravica Warehouse Execution

1543. In the case of **Borovčanin** there is no evidence before the Trial Chamber of any particular acts on his part which may have constituted aiding and abetting the crimes committed at the Kravica Warehouse. However, the Trial Chamber must also consider if his conduct can properly constitute aiding and abetting by omission. The Trial Chamber recalls the jurisprudence which provides for aiding and abetting by omission.<sup>4818</sup> Where a person fails to discharge a legal duty and by this failure he assists, encourages or lends moral support to the perpetration of a crime and has a substantial effect on the commission of that crime, he may be held criminally responsible.<sup>4819</sup> The

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<sup>4815</sup> See *infra*, paras. 1543–1563.

<sup>4816</sup> See *supra*, paras. 552, 1463.

<sup>4817</sup> Indictment, paras. 88–89, 92.

<sup>4818</sup> See *supra*, para. 1019.

<sup>4819</sup> *Ibid.*

person must have the ability to act and also must know the essential elements of the crime and that their omission assists the commission of the crime.<sup>4820</sup>

1544. In analysing that issue, the Trial Chamber begins with a consideration of the duty to protect prisoners as imposed by the laws and customs of war. With regard to the legal duty to act, the *Mrkšić and Šljivančanin* Appeals Chamber elaborated on the duty to protect and treat prisoners of war humanely. It found that

Geneva Convention III invests all agents of a Detaining Power into whose custody prisoners of war have come with the obligation to protect them by reason of their position as agents of that Detaining Power. No more specific investment of responsibility in an agent with regard to prisoners of war is necessary. The Appeal Chambers considers that all state agents who find themselves with custody of prisoners of war owe them a duty of protection regardless of whether the investment of responsibility was made through explicit delegation such as through legislative enactment or a superior order, or as a result of the state agent finding himself with *de facto* custody over prisoners of war such as where a prisoner of war surrenders to that agent.<sup>4821</sup>

1545. The *Mrkšić and Šljivančanin* Appeals Chamber further considered that breach of the duty to protect prisoners of war as imposed by the laws and customs of war may give rise to individual criminal responsibility.<sup>4822</sup>

1546. The Trial Chamber notes that the duty to protect under this form of Article 7(1) liability also arises when other units or individuals, not just a commander's subordinates, are involved in crimes.<sup>4823</sup>

i. Custody and/or Control of the Prisoners

1547. Much attention has focused on the question of the presence of **Borovčanin's** SBP 2nd Šekovići Detachment at the Kravica Warehouse itself on the late afternoon of 13 July.<sup>4824</sup> As has been discussed above, this is of course a significant issue, particularly important for a determination as to the physical perpetrators of the crimes which took place there and to the discussion of his command responsibility.<sup>4825</sup> However, it is not the only relevant question for the analysis. What also must be considered is who had custody that day of the Bosnian Muslim prisoners who met their tragic fate at the Kravica Warehouse. The Trial Chamber is of the opinion that in this case, the question of custody must be viewed in the context of the whole operation carried out by Bosnian Serb Forces on 13 July along the Bratunac–Konjević Polje Road.<sup>4826</sup> The Trial Chamber's assessment of who had custody and/or control cannot be limited in scope solely to the Kravica

<sup>4820</sup> See *supra*, para. 1020. See also *Ntagerura et al.* Appeal Judgement, para. 335.

<sup>4821</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 73.

<sup>4822</sup> *Ibid.*, para. 151.

<sup>4823</sup> See *supra*, para. 1019.

<sup>4824</sup> See *supra*, paras. 1526–1527.

<sup>4825</sup> See *supra*, paras. 1526–1527, 1534–1536; see *infra*, paras. 1565–1566, 1568.



Warehouse or compartmentalised into separate and distinct parts. While the final act may have taken place at the Kravica Warehouse, the custodial chain leading up to the killings covers a larger geographic area, including the Sandići Meadow, the Kravica Warehouse and along the Bratunac-Konjević Polje Road in between. The Trial Chamber has considered **Borovčanin**'s submissions on this matter but finds them unconvincing in light of the facts of this case and the totality of the evidence before it.<sup>4827</sup>

1548. It is undisputed that **Borovčanin**'s units were assigned to the Bratunac-Konjević Polje Road as part of the forces responsible to search the terrain, engage militarily with the column as necessary, and capture and detain members thereof.<sup>4828</sup> In the particular area of relevance, there were three main locations where the Bosnian Serb Forces were at work—along the Bratunac-Konjević Polje Road, and in the chosen detention sites, Sandići Meadow and the Kravica Warehouse.<sup>4829</sup> What the video footage, along with supporting testimonial evidence, illustrates is that there was a single operation that day which resulted in the surrender or capture of many hundreds of Bosnian Muslims from the column.<sup>4830</sup> Once captured, the Bosnian Muslim prisoners were escorted to Sandići Meadow.<sup>4831</sup> There they were held for the morning of 13 July and much of the afternoon and early evening.<sup>4832</sup> The vast majority were subsequently transported under guard, on foot and by bus, to the Kravica Warehouse where they were detained prior to the execution.<sup>4833</sup> The evidence satisfies the Trial Chamber that there were not three custodial sites with separate forces responsible for each, but rather a single geographic area—along the Bratunac-Konjević Polje Road, between and including the Sandići Meadow, to and including the Kravica Warehouse—where different units of the Bosnian Serb Forces, blended together, and had joint custody of the prisoners.<sup>4834</sup> Temporally, this was also a compact operation.

1549. There is ample evidence before the Trial Chamber which establishes that **Borovčanin**'s units, the Jahorina Recruits, the 1st PJP Company from Zvornik,<sup>4835</sup> and the SBP 2nd Šekovići

<sup>4826</sup> Prosecution Pre-Trial Brief, para. 214; Prosecution Final Brief, paras. 1926–1929.

<sup>4827</sup> See Borovčanin Final Brief, paras. 360–382, Borovčanin Closing Arguments, T. 34580–34581, 34599–34601 (10 Sept 2009). **Borovčanin** argues that there is no evidence that anyone from the SBP 2nd Šekovići Detachment escorted the Bosnian Muslims or guarded them once they arrived at Kravica Warehouse. The presence of two members of a unit is not strongly probative that other members of the unit were present. He submits that the prisoners were in the custody of the Bratunac Brigade or other military forces at or around the time they were escorted from Sandići Meadow to Kravica Warehouse, and therefore were no longer in his custody. *Ibid*; Borovčanin Final Brief, paras. 181–203, 221; Borovčanin Closing Arguments, T. 34579 (10 Sept 2009).

<sup>4828</sup> See *supra*, paras. 377, 386, 1449, 1451–1453.

<sup>4829</sup> See *supra*, paras. 377, 386, 1449, 1451–1453.

<sup>4830</sup> See *supra*, paras. 384–386.

<sup>4831</sup> See *supra*, paras. 383–386.

<sup>4832</sup> See *supra*, paras. 388, 421, 424–425.

<sup>4833</sup> See *supra*, paras. 425–426.

<sup>4834</sup> See *supra*, paras. 383–384, 386, 388, 1449–1454.

<sup>4835</sup> See *supra*, para. 386.

Detachment,<sup>4836</sup> were a part of this joint force, guarding and moving the Bosnian Muslim prisoners throughout this geographic area.<sup>4837</sup> **Borovčanin**'s units were deployed along the Bratunac-Konjević Polje Road, they guarded the prisoners in Sandići Meadow, and they assisted in the transfer of the prisoners from Sandići to the Kravica Warehouse by guarding the Bratunac-Konjević Polje.<sup>4838</sup> Some members of the SBP 2nd Šekovići Detachment also guarded the Bosnian Muslim prisoners at the Kravica Warehouse.<sup>4839</sup> That the SBP 2nd Šekovići Detachment's presence at the Kravica Warehouse was for this purpose and not for any ulterior or personal reason is clearly evidenced by the fact that the Commander of the SBP 2nd Šekovići Detachment, Čturić, was present at the Kravica Warehouse.<sup>4840</sup> In addition, he immediately returned to that part of the Bratunac-Konjević Polje Road after he was treated in hospital for the injuries he sustained there.<sup>4841</sup> Stupar, the former commander, was also close by.<sup>4842</sup> There can be no doubt that **Borovčanin**'s units were amongst the Bosnian Serb Forces with custody and/or control of the Bosnian Muslim prisoners on 13 July, before and at the time of their murder at Kravica Warehouse.

1550. Thus, the Trial Chamber finds that the SBP 2nd Šekovići Detachment, the Jahorina Recruits, and the 1st PJP Company from Zvornik had joint custody of the Bosnian Muslim prisoners ultimately detained and killed at the Kravica Warehouse and that **Borovčanin**—who had been up and down the Bratunac-Konjević Polje Road much of that day—was fully aware of that custodial role on the part of the units under his command.<sup>4843</sup>

ii. Borovčanin's Duty to Protect the Prisoners

1551. The Trial Chamber recalls that all state agents who find themselves with custody of prisoners owe them a duty of protection.<sup>4844</sup> Importantly on the facts of this case, the Trial Chamber notes that the duty does not end with the transfer of custody to other units. Those charged with the responsibility of prisoners have an ongoing duty in any handover to assure themselves that the prisoners will not be harmed.<sup>4845</sup> **Borovčanin** therefore had a duty to protect these prisoners and to treat them humanely and that duty did not end with the withdrawal of his units from the operation which had created conditions of joint custody.<sup>4846</sup>

<sup>4836</sup> See *supra*, para. 386.

<sup>4837</sup> See *supra*, paras. 377, 386, 1449, 1451–1453.

<sup>4838</sup> See *supra*, paras. 377, 424, 386, 1449, 1451–1454.

<sup>4839</sup> See *supra*, para. 1523.

<sup>4840</sup> See *supra*, paras. 433, 1459–1460.

<sup>4841</sup> See *supra*, para. 434.

<sup>4842</sup> See *supra*, para. 1459.

<sup>4843</sup> See Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002," pp. 43–44.

<sup>4844</sup> See *supra*, para. 1544.

<sup>4845</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 74.

<sup>4846</sup> See *supra*, para. 1544.

iii. Borovčanin's Ability to Act

1552. Given his duty to protect the prisoners, the Trial Chamber must next consider whether in the circumstances, **Borovčanin** had an ability to act; in essence whether there were means available to him to fulfil this duty.

1553. The Trial Chamber notes the circumstances which surrounded the “burnt-hands” incident and **Borovčanin**'s ability to protect those prisoners who were killed at that time. The incident which triggered this initial killing spree could not have been anticipated by **Borovčanin**. He was not present when it began and the Trial Chamber has found there is no evidence of a continuation of the shooting at the time he arrived on the scene.<sup>4847</sup> Thus **Borovčanin** cannot be said to have had the material ability to prevent or stop the killing which took place immediately after the “burnt-hands” incident.

1554. However, the circumstances were significantly altered once **Borovčanin** arrived at the Kravica Warehouse and was confronted with the horrifying scene before him; a scene captured for all to see by the Petrović video footage.<sup>4848</sup>

1555. The Trial Chamber finds that, at this point in time, **Borovčanin** had the means to fulfil his duty to the prisoners in his custody. **Borovčanin** arrived there as a senior commanding officer. Whether commanding officers of other units may have been present does not detract from the fact that he was able to give orders to his subordinates and bring his authority and influence to bear with respect to other units which may have been present. Indeed, the Trial Chamber notes that he himself said that he did not want to interfere in “other people's matters”,<sup>4849</sup> implying that he could have taken measures but chose not to.

iv. Whether Borovčanin's Failure to Act Substantially Contributed to the Crimes

1556. The Trial Chamber finds that despite his ability to do so, **Borovčanin** took no action to fulfil his duty to the Bosnian Muslim prisoners at that time. He failed to take the basic step of checking on the condition of the prisoners visible in the video footage or the remainder lodged at the Kravica Warehouse.<sup>4850</sup> Offering first aid is the least he could have done to protect the prisoners who had already been harmed. He did not seek out other commanders or senior officers present. In fact, there is no evidence he engaged in any way. His discussion with Stupar—whereby he accepted a simple

<sup>4847</sup> See *supra*, para. 1519.

<sup>4848</sup> See *supra*, para. 1458.

<sup>4849</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 69.

<sup>4850</sup> See *supra*, para. 1458; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 72.

denial as to participation by his men—cannot be classified even as a cursory examination into what had happened.<sup>4851</sup> He gave no orders to his units not to fire further or to protect the prisoners from such actions on the part of VRS soldiers present. He also did not engage with the other VRS units in an effort to shield the prisoners from future harm.

1557. Instead, by ordering Stupar to keep his men out of the Kravica Warehouse and to return to the Bratunac-Konjević Polje Road,<sup>4852</sup> **Borovčanin** left the prisoners in the hands of units who committed crimes, including murder, against them. Perhaps even more significantly, he left the scene within minutes without putting in place a single measure of protection for those Bosnian Muslim prisoners who remained. Shortly thereafter he made arrangements for the withdrawal of his units from the area leaving the prisoners to their tragic fate.<sup>4853</sup>

1558. Despite opportunities during his urgent call to the Bratunac Brigade command, and in his conversation with Krstić, **Borovčanin** also failed to engage his superiors in the MUP or the VRS with a view to protecting the prisoners

1559. The Trial Chamber is satisfied that the failure on the part of **Borovčanin** to protect the Bosnian Muslim prisoners then still detained, substantially contributed to the full-scale execution which took place later at the Kravica Warehouse.

v. Borovčanin's Mens Rea

1560. For criminal responsibility by way of aiding and abetting by omission, **Borovčanin** had to know the essential elements of the crime to be committed and that his failure to act would assist the commission of that crime.<sup>4854</sup> The Trial Chamber has found that the evidence before it is insufficient to establish beyond reasonable doubt that **Borovčanin** had any prior knowledge of the plan to murder the Bosnian Muslim prisoners at the Kravica Warehouse.<sup>4855</sup> However the circumstances are quite different once **Borovčanin** arrived at the Warehouse after the “burnt-hands” incident.

1561. The Trial Chamber is satisfied that the pile of bodies of Bosnian Muslim prisoners—what appears to be a busload of them—immediately visible to **Borovčanin**, alone evidenced the danger to the remaining prisoners in his custody. From this significantly disproportionate reaction to the “burnt-hands” incident—the execution of a multiple number of unarmed prisoners—**Borovčanin**

<sup>4851</sup> See *supra*, para. 1459.

<sup>4852</sup> Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 65, 72.

<sup>4853</sup> See *supra*, para. 1460.

<sup>4854</sup> See *supra*, para. 1019.

would have known the probability of more prisoners being murdered. That probability was enhanced by the fact that the original triggering incident—the death of a Bosnian Serb policeman and the injury of another—remained a motive for revenge.

1562. But perhaps the most significant evidence as to **Borovčanin**'s knowledge comes from his own actions which followed. The first and only step that **Borovčanin** took after seeing the evidence of prisoner executions was to remove himself and his men from the Kravica Warehouse as quickly as he could.<sup>4856</sup> The only reasonable inference the Trial Chamber can draw from his words and actions is that at this time, **Borovčanin** knew not only that it was probable these prisoners would be killed but that it was a certainty. Barring that knowledge, there was no reason for **Borovčanin**'s swift actions to distance himself and his units from the ongoing operation at the Kravica Warehouse later that night. Similarly, his overheard words in the evening of 13 July, at the Bratunac Police Station, asking angrily what was going on and for a phone to call the Bratunac Brigade Headquarters, add further weight to the evidence supporting this conclusion.<sup>4857</sup> This is also evident two days later, when he voices his clear opposition to any involvement by his men in the guarding of prisoners.<sup>4858</sup> **Borovčanin** failed in his ongoing duty to protect the prisoners who had been in his custody in the knowledge that murder would be committed and that the removal of his units and the failure to intervene would assist in the commission of that crime. The *mens rea* requirement has thus been met.

#### vi. Conclusion

1563. On the totality of the evidence before it, the Trial Chamber finds that **Borovčanin**'s failure to discharge his legal duty to protect the Bosnian Muslim prisoners assisted the perpetration of murder and the other crimes committed at Kravica Warehouse against the Bosnian Muslim prisoners detained there, and had a substantial effect on the realisation of the said crimes. He thus aided and abetted murder by omission.

#### (iv) "Opportunistic" Killings

1564. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Borovčanin** that certain "opportunistic" killings would be carried out by the Bosnian Serb Forces as part of both the JCE to Murder and the JCE to Forcibly

<sup>4855</sup> See *supra*, paras. 1540–1541.

<sup>4856</sup> See *supra*, para. 1460.

<sup>4857</sup> See *supra*, para. 1460. The Trial Chamber has considered the fact that there is no evidence before it that he got through to the Bratunac Brigade at the time, and that his intercepted conversation with Krstić later that evening, as found above, is equivocal, but finds this does not detract from its finding on **Borovčanin**'s *mens rea* at the time.

Remove.<sup>4859</sup> As **Borovčanin** was not a member of the JCE to Murder or the JCE to Forcibly Remove, he cannot be found responsible under third category JCE liability for the “opportunistic” killings.<sup>4860</sup>

(v) Superior Responsibility

1565. The only issue left for the Trial Chamber to decide is whether **Borovčanin** can be held criminally responsible for not having punished the members of the Jahorina Recruits who killed 10 to 15 men at Sandići Meadow, and the members of the SBP 2nd Šekovići Detachment who participated in the killing of the busload of Bosnian Muslim prisoners following the “burnt-hands” incident.<sup>4861</sup> In doing so, the Trial Chamber will first examine whether there existed a superior-subordinate relationship between **Borovčanin** and the said SBP 2nd Šekovići Detachment at the relevant time, then turn to whether **Borovčanin** knew or had reason to know about the commission of these crimes, and if so, whether he took any necessary and reasonable measures to punish the crimes in question.

a. Existence of a Superior-Subordinate Relationship

1566. By the ministerial order of 10 July 1995, **Borovčanin** was appointed the commander of a MUP force comprised of the SBP 2nd Šekovići Detachment, the 1st PJP Company from Zvornik, and the Jahorina Recruits.<sup>4862</sup>

1567. **Borovčanin** argues that he lacked effective control over the Jahorina Recruits who were in Potočari.<sup>4863</sup> The Trial Chamber notes however that it was on his orders that Jević, Mane, and the members of the 1st Company of the Jahorina Recruits remained in Potočari and it was to him that Jević reported on the evening of 12 July.<sup>4864</sup> As is captured on video footage, while in Potočari, **Borovčanin** acted as a commander, walking with purpose in the crowd, and performing his duties with authority as both Kingori and Van Duijn recognised when they approached him to discuss the issues of the overcrowded White House and the disappearance of the Red Cross tractor,

<sup>4858</sup> See *supra*, para. 1464.

<sup>4859</sup> Indictment, paras. 31, 37. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

<sup>4860</sup> See *supra*, paras. 1495–1541.

<sup>4861</sup> The Trial Chamber finds that as it has found **Borovčanin** responsible for aiding and abetting forcible transfer under Article 7(1) it need not consider his responsibility under Article 7 (3). Furthermore, as discussed above, as there is insufficient evidence that **Borovčanin**'s subordinates participated in the full-scale execution that took place at the Kravica Warehouse, **Borovčanin**'s responsibility under Article 7(3) is not triggered. See *supra* para. 1536.

<sup>4862</sup> See *supra*, para. 1434.

<sup>4863</sup> Borovčanin Final Brief, paras. 92–102.

<sup>4864</sup> See *supra*, paras. 321, 1443, 1446–1447.

respectively.<sup>4865</sup> Based on this, and the unity of command principle of MUP forces re-subordinated to the VRS,<sup>4866</sup> the Trial Chamber finds that the Jahorina Recruits were under **Borovčanin**'s effective control and command while they were in Potočari on 12 and 13 July.<sup>4867</sup>

1568. It is not contested that the SBP 2nd Šekovići Detachment was under **Borovčanin**'s command and control.<sup>4868</sup> The evidence clearly demonstrates that **Borovčanin** was the commander whose orders were followed by his subordinate commanders and units.<sup>4869</sup> Furthermore, the Trial Chamber recalls the principle of unity of command under which MUP forces re-subordinated to the VRS retained their internal chain of command.<sup>4870</sup>

1569. For these reasons, the Trial Chamber finds that a superior-subordinate relationship existed between **Borovčanin** and the Jahorina Recruits in Sandići Meadow on 13 July, and the members of the SBP 2nd Šekovići Detachment—including the subordinate commanders Čturić and Stupar, present along the Bratunac-Konjević Polje Road on 12 and 13 July and in Kravica Warehouse in particular on 13 July. The Trial Chamber finds that **Borovčanin** had effective control over these units.

b. Borovčanin's Knowledge or "Reason to Know"

1570. The Trial Chamber has already found that the killings of 10 to 15 Bosnian Muslim men at Sandići Meadow were committed by members of the Jahorina Recruits upon the order of "Aleksa", a Deputy Commander of a platoon of an SBP company under **Borovčanin**'s command.<sup>4871</sup> Nevertheless, there is no evidence before the Trial Chamber to find that **Borovčanin** knew or "had reason" to know of these murders, nor evidence that he came to know during the relevant time period.

1571. With regard to Kravica Warehouse, the Trial Chamber has found that members of the SBP 2nd Šekovići Detachment, jointly with members of the Bosnian Serb Forces, murdered a busload of Bosnian Muslim prisoners at Kravica Warehouse following the "burnt-hands" incident on 13 July.<sup>4872</sup> As discussed extensively above, **Borovčanin** had actual knowledge of the murder of

<sup>4865</sup> See *supra*, paras. 305, 1445, 1448.

<sup>4866</sup> See *supra*, para. 184. See also Momir Nikolić. T. 32926 (21 Apr 2009).

<sup>4867</sup> The Trial Chamber notes **Borovčanin**'s submission that the Jahorina Recruits were not part of the SBP but of the MUP. Borovčanin Final Brief, para. 28. See also *supra*, fn. 447. In the light of this finding, the Trial Chamber does not consider it necessary to address this issue.

<sup>4868</sup> See e.g. Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", pp. 27–28.

<sup>4869</sup> See e.g. *supra*, paras. 1439, 1443, 1446, 1448.

<sup>4870</sup> See *supra*, para. 184. See also Momir Nikolić. T. 32926 (21 Apr 2009).

<sup>4871</sup> See *supra*, para. 423.

<sup>4872</sup> See *supra*, paras. 1526, 1528.

these prisoners and sufficient information to put him on notice of possible murder by members of the SBP 2nd Šekovići Detachment.<sup>4873</sup>

c. Failure to Punish

1572. The Trial Chamber will now turn to consider whether **Borovčanin** failed to take the necessary and reasonable measures to punish the perpetrators of this crime. The Trial Chamber notes that the duty to punish includes at least an obligation to establish the facts, to investigate possible crimes or have the matter investigated, and if the superior has no power to sanction, to report the perpetrators to the competent authorities.<sup>4874</sup>

1573. Under the “Law on the Implementation of the Law on Internal Affairs During an Imminent Threat of War or a State of War” which regulates the organisation, duties and powers of members of the MUP when re-subordinated to the VRS, a superior officer, including an MUP officer, is obliged, *inter alia*, to take steps to prevent a person who has committed a criminal offence from fleeing or hiding, and to inform the military prosecutor, directly or indirectly, of the criminal offence or what could be a criminal offence.<sup>4875</sup>

1574. The Trial Chamber is satisfied that **Borovčanin** had the means to investigate and punish the members of the SBP 2nd Šekovići Detachment at Kravica Warehouse and that he failed to take measures to do so.<sup>4876</sup> First, the Trial Chamber notes that **Borovčanin** accepted Stupar’s simple denial as to participation by his men without requesting reports from Stupar or anyone else present at the scene.<sup>4877</sup> **Borovčanin** relied on Stupar’s implausible explanation that no one from the SBP 2nd Šekovići Detachment was involved, despite being confronted with the pile of dead bodies before him and the fact that one of his men was dead and the commander himself injured. His acceptance fell well short of his duty to establish the facts and to investigate the possible crimes. It was necessary and reasonable for **Borovčanin** as a commander to further inquire into Stupar’s story, and speak to the other men present.

1575. In addition, there is no evidence that **Borovčanin** reported what he witnessed at Kravica Warehouse to his superiors in the VRS and/or the MUP so that the matter could be fully

<sup>4873</sup> See *supra*, paras. 1516, 1560–1562.

<sup>4874</sup> See *Halilović* Appeal Judgement, para. 182; *Kordić and Čerkez* Trial Judgement, para. 446.

<sup>4875</sup> Exs. P00422, 4DP725, “RS Law on the Implementation of the Law on Internal Affairs during an Imminent Threat of War or a State of War, 29 Nov 1994”, Articles 13–14; Ex. 4D00503, “Report by Branislav Ristivojević”, paras. 5.3–5.6; Ex. 4D00234, “Law on Military Courts, Article 65.” See also Ex. 4D00136, “Law on Internal Affairs, RS Official Gazette 16/95”; Ex. 4D00212, “Official Gazette of Republika Srpska, Year III - Issue 6; Law on internal affairs - final text, President of the Legislative and Legal Affairs Committee, Mirko Mijatović, 25 Mar 1994.”

<sup>4876</sup> See *e.g.*, *supra*, paras. 1555–1556.

<sup>4877</sup> See *supra*, para. 1459; Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 69.



investigated by the competent authorities.<sup>4878</sup> The Trial Chamber notes that the incident at issue is the murder of a busload of Bosnian Muslim prisoners following the “burnt-hands” incident. **Borovčanin** had no prior knowledge of the plan to murder. Thus, at that point in time, he had no knowledge or reason to know that Krstić, his immediate superior in the Srebrenica operation, was involved. Yet, despite having the opportunity, he never raised the matter with Krstić when he spoke to him on the phone on the 13 July in the evening. Even if he determined that Mladić, Krstić, and others in the VRS were involved and thought it useless to report the crimes to them, he had the option and obligation of reporting through his MUP chain of command.<sup>4879</sup> After the Srebrenica operation, **Borovčanin** could also have reported up to Sarić, his MUP commander. He had sent at least one report to the MUP on 13 July, so further contact would have been possible and reasonable.<sup>4880</sup> In his contemporaneous reports to his MUP superiors, the Kravica Warehouse murders are conspicuous by their absence.<sup>4881</sup> Rumours of what had happened in Kravica Warehouse spread fast in the days following 13 July, and there was clearly a need for a proper investigation of what had happened there.<sup>4882</sup> This would have been evident to **Borovčanin**, a policeman by profession and one with an outstanding reputation. Furthermore, it was necessary and reasonable for him to ensure that he reported what he knew so that the competent authorities could investigate further.

#### d. Conclusion

1576. The Trial Chamber therefore finds that **Borovčanin**, as the superior of the SBP 2nd Šekovići Detachment, had knowledge which was sufficient to put him on notice that his subordinates committed the crime of murder. As their superior, **Borovčanin** was obliged to report this crime to the competent authorities responsible for investigating criminal conduct so that the matter could be fully investigated, and any perpetrators, punished. **Borovčanin** did not report anything to anyone. He thus failed to take the necessary and reasonable measures required to punish the relevant

<sup>4878</sup> See Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 69–70.

<sup>4879</sup> Ex. 4D00503, “Report by Branislav Ristivojević,” paras. 5.7–5.8; Branislav Ristivojević, T. 27962–27963 (7 Nov 2008), T. 28073–28074 (12 Nov 2008). The Trial Chamber notes that if an officer for some reason is unable to inform the competent authorities of the commission of a crime, he still carries out his duty by informing another organ, which formally has no jurisdiction, and which then has an obligation and ability to pass that information on to the competent authorities. See *ibid.*

<sup>4880</sup> See Ex. P03789, “Borovčanin Report to SBP and other police staff, 13 July 1995”.

<sup>4881</sup> Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995,” p. 3. In his 5 September 1995 report, Borovčanin’s reference to the Kravica Warehouse is that “One member of the Skelani Platoon of the 2nd Special Police Detachment was killed in the fighting with the enemy.” *Ibid.* Borovčanin did not report the Kravica Warehouse execution in the 13 July 1995 report to his MUP superiors though the Trial Chamber notes that this may have been because it was drawn up earlier that day. See Ex. P03789, “Borovčanin Report to SBP and other police staff, 13 July 1995”, p. 2. See also Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, pp. 70–71.

<sup>4882</sup> See *supra*, paras. 1525, 1532.

members of the SBP 2nd Šekovići Detachment for the murders of the busload of Bosnian Muslim prisoners at the Kravica Warehouse. **Borovčanin** is therefore criminally responsible, pursuant to Article 7(3), for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.

(vi) Counts

a. The Knowledge Requirement for a Crime under Article 5 of the Statute

1577. **Borovčanin** is responsible for a crime against humanity under Article 5 of the Statute, if his acts were part of the widespread and systematic attack against the civilian population and if at the time he knew of that attack and that his crimes comprised a part thereof.<sup>4883</sup>

1578. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica. From the evidence before it, the Trial Chamber notes that at least just prior to his arrival in Bratunac on 11 July, **Borovčanin** knew of the attack on the Srebrenica enclave.<sup>4884</sup> In the afternoon of 11 July, he was at the Pribičevac IKM where he was briefed on the military operation and the participants', including his units' role.<sup>4885</sup> He was also in Bratunac, a few kilometres away from Srebrenica town, when the VRS entered it triumphantly, and he knew of the exodus of the population from Srebrenica to Potočari, where they congregated on the night of 11 July.<sup>4886</sup> Thus, he was aware as of 11 July of the military attack on this civilian enclave, including the taking of the town itself, which was a component of the overall attack and in and of itself a widespread and systematic attack against a civilian population. He also knew that civilians were amassing in Potočari. When on 12 July, he realised a forcible transfer was taking place,<sup>4887</sup> he knew that the crime was a component of the attack against the civilian population, given the temporal and geographic proximity to the actual military attack on the enclave.

1579. Around this time, **Borovčanin** also became aware of the large column which had left Srebrenica as a result of the attack and was attempting to flee to ABiH-held territory. Pursuant to his orders, units under his command then formed part of the Bosnian Serb Forces which combed the area along the Bratunac-Konjević Polje Road, capturing, detaining and guarding prisoners from this column. From his own observations on 13 July, he was also aware of the civilian component of the

<sup>4883</sup> See *supra*, para. 751.

<sup>4884</sup> See *supra*, para. 1436.

<sup>4885</sup> See Ex. P02852, "Transcript of OTP Interview of Borovčanin, 20 Feb 2002", pp. 31–33; Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", pp. 1–2.

<sup>4886</sup> See *supra*, paras. 1437, 1439–1443.

column.<sup>4888</sup> From these facts, he was clearly aware that his acts or omissions directed towards members of the column who were captured or surrendered, formed part of the attack against a civilian population. Specifically, he would have known that his failure by omission to protect these men who had fled Srebrenica as a result of the attack against a civilian population was a continuation of and formed part of that attack.

1580. For the foregoing reasons, the Trial Chamber finds that **Borovčanin** knew that there had been a widespread and systematic attack directed against a civilian population, and that the forcible transfer in Potočari,<sup>4889</sup> and the crimes of murder, extermination and persecution committed at Kravica Warehouse against members of the column that had fled Srebrenica, comprised part of that attack. The Trial Chamber therefore concludes that **Borovčanin** meets the knowledge requirement for commission of a crime under Article 5 of the Statute.

b. Counts 4 and 5: Murder

1581. The Trial Chamber has found that during the period of 12 to 27 July 1995, Bosnian Serb Forces killed thousands of Bosnian Muslims initially residing or taking refuge in Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.<sup>4890</sup> The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica or as a natural and foreseeable consequence of it.<sup>4891</sup>

1582. The Trial Chamber has found that while **Borovčanin** was not a member of the JCE to Murder, he aided and abetted murder at Kravica Warehouse by omission.<sup>4892</sup> He also knew at the time of his omission that the victims were taking no active part in hostilities. **Borovčanin** aided and abetted murder as a crime against humanity,<sup>4893</sup> had the knowledge required for a crime against humanity and for a war crime, and is therefore criminally liable for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.<sup>4894</sup>

1583. In addition, the Trial Chamber has also found that as commander, **Borovčanin** failed to take the necessary and reasonable measures required to punish the relevant members of the SBP 2nd

<sup>4887</sup> *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35.

<sup>4888</sup> *See supra*, paras. 1451–1453; *see also* Ex. P02047, "Srebrenica Trial Video", 02:50:02–02:50:31; 02:51:41–02:52:27.

<sup>4889</sup> *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35.

<sup>4890</sup> *See supra*, paras. 744–748, 779–785.

<sup>4891</sup> *See supra*, paras. 1073–1083.

<sup>4892</sup> *See supra*, paras. 1541, 1563.

<sup>4893</sup> *See supra*, paras. 1577–1580.

<sup>4894</sup> *See supra*, paras. 1577–1580.

Šekovići Detachment for the murder of the busload of Bosnian Muslim prisoners at the Kravica Warehouse.<sup>4895</sup> The Trial Chamber also finds **Borovčanin** responsible under Article 7(3) for failure to punish.

c. Count 3: Extermination

1584. The Trial Chamber has found that at least 1,000 men and boys from Srebrenica were murdered at Kravica Warehouse.<sup>4896</sup> The Trial Chamber has found that **Borovčanin** was present on and patrolling the Bratunac-Konjević Polje Road on 13 July.<sup>4897</sup> He knew that hundreds of prisoners had surrendered or were caught at Sandići Meadow earlier that day, and therefore that in the evening, Kravica Warehouse was crammed with Bosnian Muslim prisoners.<sup>4898</sup> Further, his omission with respect to the duty to protect related to this extensive number of prisoners detained at the Kravica Warehouse. His act thus contributed substantially not just to murder, but to murder on a large scale. Based on these large numbers, the Trial Chamber finds that **Borovčanin** aided and abetted extermination because he knew that his failure to protect the prisoners at Kravica Warehouse would lead to killing on a large scale.<sup>4899</sup>

1585. As **Borovčanin** aided and abetted extermination as a crime against humanity, and had the knowledge required for a crime against humanity, he is therefore criminally liable for extermination as a crime against humanity.<sup>4900</sup>

1586. The Trial Chamber recalls its finding that **Borovčanin** was responsible pursuant to Article 7(3) for murder with respect to the killing of a busload of prisoners following the "burnt-hands" incident. Having considered the nature, scope and particular circumstances of these killings, the Trial Chamber is not satisfied that in relation to this particular incident, **Borovčanin** is responsible under Article 7(3) for the crime of extermination.

d. Count 1: Genocide

1587. The Prosecution submits that the best evidence of **Borovčanin**'s genocidal intent may be inferred from his actions in furtherance of the JCE to Murder and his deliberate lies to the Prosecution, strategically designed to cover his intentions at Kravica Warehouse and Sandići

<sup>4895</sup> See *supra*, para. 1576.

<sup>4896</sup> See *supra*, para. 443.

<sup>4897</sup> See *supra*, paras. 1451–1454.

<sup>4898</sup> See *supra*, para. 1453.

<sup>4899</sup> See *supra*, para. 1563.

<sup>4900</sup> See *supra*, paras. 1577–1580.

Meadow.<sup>4901</sup> Furthermore, his intent to commit genocide may be inferred, amongst other facts, from evidence of other culpable acts systematically directed against the same group.<sup>4902</sup> **Borovčanin**'s familiarity with the history of the Bratunac area and the RS and VRS plans to remove the Bosnian Muslims from eastern Bosnian in 1992 and 1993, events which created a climate of ethnic hatred and VRS policies devised to inflict unbearable conditions upon the Bosnian Muslims in the area where **Borovčanin** was police commander, cannot be severed from what was going on there in 1995.<sup>4903</sup>

1588. The Trial Chamber found that **Borovčanin** was not a member of the JCE to Murder and did not share the intent to murder with members of the JCE to Murder.<sup>4904</sup> He was not involved in the planning, nor in the systematic and organised manner in which the murder operation was executed. There is also no evidence that **Borovčanin** knew of the scale and nature of the murder operation, including the planned killings in Zvornik and Bratunac. His knowledge was limited to the events at the Kravica Warehouse. Further, while **Borovčanin** was responsible for aiding and abetting murder and extermination by omission for the Kravica Warehouse execution,<sup>4905</sup> there is not a single piece of evidence to show that his omission was accompanied by genocidal intent. In fact, the removal of his men from the area and his view on the opening of the corridor<sup>4906</sup> show he did not have any genocidal intent. His knowledge was limited to what happened at the Kravica Warehouse at the time. While **Borovčanin**'s knowledge of the history of systematic forcible transfer and crimes committed in the area is a relevant factor, it cannot be sufficient, in and of itself, in inferring **Borovčanin**'s specific intent for genocide, given his lack of knowledge of even the murder operation.<sup>4907</sup>

1589. The Trial Chamber finds that at the time **Borovčanin** aided and abetted murder and extermination by omission, he had no genocidal intent. Further, there is no evidence at the time of the omission, that he was aware of the genocidal intent of others. The Trial Chamber finds that there is no indication, considering the evidence individually and cumulatively, of genocidal intent on the part of **Borovčanin**. On this basis the Trial Chamber is satisfied that **Borovčanin** is not guilty of genocide.

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<sup>4901</sup> Prosecution Final Brief, paras. 2046–2066.

<sup>4902</sup> *Ibid.*, para. 2052.

<sup>4903</sup> *Ibid.*, para. 2053.

<sup>4904</sup> *See supra*, para. 1541.

<sup>4905</sup> *See supra*, paras. 1541, 1563, 1584.

<sup>4906</sup> *See supra*, paras. 1460, 1463.

<sup>4907</sup> *See Ex. P02853*, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 112.

e. Count 2: Conspiracy to Commit Genocide

1590. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide.<sup>4908</sup> To be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.<sup>4909</sup>

1591. As outlined above, **Borovčanin** did not have the specific intent for genocide.<sup>4910</sup> There is even less evidence that **Borovčanin** entered into an agreement to commit genocide. **Borovčanin** is therefore not guilty of conspiracy to commit genocide.

f. Count 6: Persecution

1592. The Trial Chamber has found that persecution, a crime against humanity, was committed *inter alia*, through forcible transfer, the murder of thousands of Bosnian Muslims (including the alleged “opportunistic” killings), cruel and inhumane treatment of the Bosnian Muslim men detained in the Potočari and the Bratunac areas, and terrorising civilians.<sup>4911</sup>

The Trial Chamber by majority has also found that **Borovčanin** aided and abetted forcible transfer of the Bosnian Muslim women, children, and the elderly.<sup>4912</sup> He has also been found to have aided and abetted by omission murder at the Kravica Warehouse.<sup>4913</sup>

1593. **Borovčanin** knew that the attack on the Srebrenica enclave targeted the Muslim population located there and that only Muslims were being forcibly transferred on both 12 and 13 July.<sup>4914</sup> However, given the nature of his acts of aiding and abetting, and the context in which they were carried out, there is no evidence that **Borovčanin** himself had the specific intent to discriminate. Nonetheless, the Trial Chamber, by majority, Judge Kwon dissenting, is satisfied that the circumstances of the forcible transfer—the movement of the entire population of the enclave—were such that clearly **Borovčanin** knew it was being carried out by others who harboured discriminatory intent. In addition, the Trial Chamber, by majority, Judge Kwon dissenting, finds that given the

<sup>4908</sup> See *Musema* Trial Judgement, para. 191. See also *Nahimana et al.* Trial Judgement, para. 1041; *Kajelijeli* Trial Judgement, para. 787; *Ntagerura et al.* Trial Judgement, para. 70; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798.

<sup>4909</sup> See *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 799(i)–(ii). See also paras. 821–830.

<sup>4910</sup> See *supra*, paras. 1589.

<sup>4911</sup> See *supra*, paras. 991, 995, 999, 1002–1003.

<sup>4912</sup> See *supra*, para. 1501.

<sup>4913</sup> See *supra*, para. 1563.

<sup>4914</sup> See *supra*, paras. 1436, 1443, 1494–1495, 1579.

actions of the Jahorina Recruits in Potočari in assisting generally with the physical movement of the population over a two-day period, **Borovčanin**'s contribution in leaving them there constituted a substantial contribution to the commission of the crime of persecution. In addition, **Borovčanin** knew that by doing this, he was aiding and abetting persecution.

1594. While **Borovčanin** knew that the approximately 1,000 men in the Kravica Warehouse were of the same racial background, namely Muslims,<sup>4915</sup> the circumstances of his aiding and abetting by omission are such that there is no evidence he had a discriminatory intent when he failed to protect them. However, just as he knew these prisoners would probably be killed by the members of the Bosnian Serb Forces there,<sup>4916</sup> he knew this would probably be done with discriminatory intent. Having been involved in the capture, detention, and guarding of these prisoners, and subsequently failing to protect them in the knowledge of others' discriminatory intent, the Trial Chamber is satisfied **Borovčanin** substantially contributed to the crime of persecution. He also knew he was aiding and abetting persecution by this omission.<sup>4917</sup>

1595. Moving on to the underlying act of cruel and inhumane treatment, there are two locations where cruel and inhumane treatment of Bosnian Muslims occurred—Potočari and Sandići Meadow—which are relevant to **Borovčanin**'s responsibility. He knew of the overcrowding at the White House, but there is no evidence he aided and abetted cruel and inhumane treatment or contributed to it in any way.<sup>4918</sup> There is evidence to the contrary—that he retrieved the Red Cross tractor used to distribute water to the crowd, which had been taken away by Bosnian Serb Forces.<sup>4919</sup> With regard to Sandići Meadow, there is no evidence that **Borovčanin** knew of the cruel and inhumane treatment of the Bosnian Muslim prisoners there. For these reasons the Trial Chamber finds that **Borovčanin** is not criminally responsible for persecution through cruel and inhumane treatment.

1596. Lastly, with regard to the underlying act of terrorising civilians, there is no evidence that **Borovčanin** was present during the attack on Srebrenica, or that he had details of the factors constituting the terrorisation of civilians. While **Borovčanin** knew of the fearful and oppressive atmosphere in Potočari, he did not know of the circumstances leading up to that, of the terror of the nights of 11 and 12 July, or that the Jahorina Recruits participated in this to some extent. The Trial Chamber finds that there is no evidence that **Borovčanin** knew that persecution through terrorising civilians was taking place.

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<sup>4915</sup> See *supra*, para. 1584.

<sup>4916</sup> See *supra*, paras. 1560–1562.

<sup>4917</sup> See *supra*, para. 1016.

<sup>4918</sup> See *supra*, paras. 329, 1448, 1508.

<sup>4919</sup> See *supra*, para. 1448.

1597. In conclusion, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Borovčanin** aided and abetted persecution as a crime against humanity, through aiding and abetting forcible transfer. Further, the Trial Chamber is satisfied that he aided and abetted persecution as a crime against humanity, through aiding and abetting murder by omission. In light of these findings, the Trial Chamber finds it unnecessary to consider **Borovčanin**'s responsibility under Article 7(3).

g. Count 7: Inhumane Acts (Forcible Transfer)

1598. The Trial Chamber, by majority, Judge Kwon dissenting, has already found that **Borovčanin** aided and abetted forcible transfer as a crime against humanity.<sup>4920</sup> The Trial Chamber has also found that the act of forcible transfer of the women, children and the elderly is sufficiently serious to amount to "other inhumane acts" under Article 5(i) of the Statute.<sup>4921</sup> Accordingly, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Borovčanin** is criminally responsible for aiding and abetting forcible transfer, an inhumane act, as a crime against humanity.

h. Count 8: Deportation

1599. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Borovčanin** is not criminally responsible for deportation as a crime against humanity.

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<sup>4920</sup> See *supra*, para. 1501.

<sup>4921</sup> See *supra*, para. 937.



## 7. Radivoje Miletić

### (a) The Case against Miletić

1600. The Prosecution alleges that **Radivoje Miletić** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of murder, persecution, inhumane acts (forcible transfer), and deportation.<sup>4922</sup> Specifically, the Prosecution alleges that **Miletić** was an essential figure in the JCE to Forcibly Remove the Bosnian Muslim populations of Srebrenica and Žepa.<sup>4923</sup>

1601. **Miletić** allegedly drafted Directive 7 and played a central role in organising and implementing the efforts to create an unbearable situation with no hope for survival for the Bosnian Muslims in the enclaves.<sup>4924</sup> **Miletić** further monitored the state and surrender of the Muslim forces, and the activities of the VRS before, during, and after the attacks on Srebrenica and Žepa.<sup>4925</sup> The Prosecution also alleges that **Miletić** monitored the progress of the transfer of the civilians from Srebrenica and Žepa by the VRS and the VRS efforts to search Žepa of any remaining Muslims, and was kept informed of the flight of Bosnian Muslim men from Žepa to Serbia.<sup>4926</sup> **Miletić** communicated all information to his superiors, including Karadžić and Mladić, and the subordinate units.<sup>4927</sup>

### (b) Preliminary Issues

#### (i) Alleged Participation in the Joint Criminal Enterprise to Murder

1602. **Miletić** asserts that the Prosecution's allegation in paragraph 97 of the Indictment and in the Final Brief, that **Miletić** was a member of the JCE to Murder "disregards every single principle of criminal law, flies in the face of any legal reasoning, and is not permissible".<sup>4928</sup>

<sup>4922</sup> Indictment, paras. 46–47, 48–71, 75, 83–84, 88.

<sup>4923</sup> Prosecution Final Brief, para. 1663.

<sup>4924</sup> Indictment, para. 75(a); Prosecution Final Brief, paras. 1663, 1669, 1679.

<sup>4925</sup> Indictment, para. 75(b); Prosecution Final Brief, paras. 1686–1687.

<sup>4926</sup> Indictment, paras. 75(c); Prosecution Final Brief, paras. 1686–1687, 1726.

<sup>4927</sup> Indictment, paras. 75(b)–75(c); Prosecution Final Brief, paras. 1686–1687.

<sup>4928</sup> Miletić Closing Arguments, T. 34609–34611 (10 Sept 2009) (arguing that "an accused is not a member of the JCE because it is so alleged in the Indictment", but this must be proven; and further submitting that the paragraphs in the Prosecution Final Brief referring to **Miletić**'s alleged involvement in the murders in Nežuk and Milići hospital must be disregarded and cannot be taken into account to establish **Miletić**'s intent, since they are not part of the charges against him. See Prosecution Final Brief, paras. 1003–1019, 1032–1038). In support of his submission, **Miletić** refers to the Trial Chamber's "Decision on Motions Challenging the Indictment pursuant to Rule 72 of the Rules" of 31 May 2006, according to which **Miletić** is only charged with participation in the JCE to forcibly remove the Bosnian Muslim population out of the Srebrenica and Žepa enclaves. *Ibid.*, para. 47; Miletić Closing Arguments, T. 34609 (10 Sept 2009).

1603. The Trial Chamber notes that the Prosecution has not alleged that **Miletić** is criminally responsible for any crimes as a member of the JCE to Murder. The Trial Chamber will assess the evidence in light of the Prosecution's specific allegations against **Miletić**; these allegations do not include responsibility for murder other than "opportunistic" killings through third category JCE.

(ii) Temporal Scope of the Indictment

1604. **Miletić** submits at the outset, that "[t]echnically speaking, the drafting of Directive 7 does not fall within the period covered by the Indictment" and that "[a]lthough Directive 7 was written before the material time, General **Miletić** is accused for his role in drafting the said Directive".<sup>4929</sup>

1605. The Trial Chamber notes that it is clearly set out at paragraph 49 of the Indictment that **Miletić** is charged with participating in a JCE with a common purpose to forcibly remove the population out of Srebrenica and Žepa, from about 8 March 1995 through the end of August 1995.<sup>4930</sup> The Indictment states that the JCE was formed from *about* 8 March, not that it was formed on 8 March. This wording does not, as such, exclude the drafting of Directive 7 from the Indictment period.

1606. In any event, the Trial Chamber notes that a distinction must be drawn between the crimes alleged in the Indictment and the evidence adduced by the Prosecution to prove such crimes. The Trial Chamber considers that evidence falling outside the temporal scope of the Indictment can be used by the Prosecution in support of its allegations.<sup>4931</sup> In this regard, the Trial Chamber considers that **Miletić**'s role in drafting Directive 7 constitutes evidence relevant to his purported involvement in the JCE, clearly alleged in the Indictment. Furthermore, the Trial Chamber notes that paragraph 75 of the Indictment explicitly states that **Miletić** "drafted Directive 7, which was signed by President Karadžić". Therefore, **Miletić** was put on notice of this allegation.

1607. **Miletić** furthermore raises arguments generally relating to the use of evidence from a time period which he claims to be outside the Indictment period. **Miletić** submits that the relevance of facts prior to the creation of the safe areas—as referred to in the Indictment<sup>4932</sup>—was not demonstrated in relation to events in July 1995.<sup>4933</sup> He further argues that the Prosecution cannot infer **Miletić**'s intent from the knowledge he allegedly had of acts and conducts prior to 8 March

<sup>4929</sup> Miletić Final Brief, para. 97.

<sup>4930</sup> See also Prosecution Pre-Trial Brief, para. 269.

<sup>4931</sup> See *Stakić* Appeal Judgement, paras. 116–121; *Kupreškić et al.* Appeal Judgement, paras. 88–89.

<sup>4932</sup> Indictment, paras. 19–21 (referring to events in 1992).

<sup>4933</sup> Miletić Final Brief, paras. 350–351. **Miletić** however recognizes that the events following the creation of the safe areas, as referred to in paragraphs 22–23 of the Indictment, are relevant to events in July 1995. *Ibid.*, para. 350.

1995, because this should have been clearly pleaded in the Indictment; instead, it was not stated in the Indictment, in the Pre-Trial Brief, or in the Opening Statement.<sup>4934</sup>

1608. The Trial Chamber notes that paragraphs 19–23 of the Indictment specifically address events in 1992, 1993 and 1994 as evidence relevant for background and context to the charges; and therefore, the Accused were put on notice of this.

1609. Furthermore, the Trial Chamber is of the view that evidence from time periods prior to the alleged crimes in the Indictment, when deemed relevant to the allegations therein, can be used to infer the knowledge and intent of an accused. In light of this, the Trial Chamber rejects **Miletić**'s argument.

(iii) Judicial Notice of Facts Concerning Humanitarian Aid and UNPROFOR Convoys

1610. **Miletić** submits that the Trial Chamber taking judicial notice of facts in relation to humanitarian aid and UNPROFOR convoys put him at disadvantage, as it reversed the burden of proof.<sup>4935</sup>

1611. As discussed above, the acceptance of adjudicated facts does not affect the burden of proof.<sup>4936</sup> Once adjudicated facts are admitted, a rebuttable presumption is created as to the truth of those facts. Other than in the manner in which the fact is established, this is no different than any other type of fact established on the evidence. Thus, the Trial Chamber will consider the adjudicated facts in this context and having regard to any evidence adduced. Therefore, in terms of the burden of proof, it remains as always on the Prosecution which must prove its case beyond reasonable doubt.

(iv) Interpretation of “monitoring”

1612. **Miletić** makes a submission with regard to the translation and interpretation of the wording “he monitored”, as in paragraphs 75 (b) and (c) of the Indictment. According to **Miletić**, the English “monitoring” can alternatively be translated into BCS as “supervising” or “following-up”. However, in the BCS version of the Indictment it has always been translated as “supervising” (in BCS “nadzirati”); therefore, **Miletić** submits this is the correct interpretation.<sup>4937</sup>

1613. **Miletić** refers to a hearing on 26 November 2008, when the Prosecution asserted that “monitoring” as written in the English Indictment should be understood as “following-up” and that

<sup>4934</sup> Miletić Closing Arguments, T. 34611 (10 Sept 2009).

<sup>4935</sup> Miletić Final Brief, paras. 179–182, 213–217.

<sup>4936</sup> See *supra*, Chapter II, Section B(h)(ii)..

BSC is not an official language of the Tribunal. **Miletić** submits that, through this statement the Prosecution introduced a new term two years after the commencement of the trial without seeking to amend the Indictment; and contends that the fact the Prosecution used an ambiguous term cannot be held to the detriment of the accused.<sup>4938</sup>

1614. The Trial Chamber considers that the English “monitoring” can be read in a wider sense as to encompass both “supervising” and “following-up”. This would, moreover, be confirmed by the language used in the correspondent paragraphs of the French version of the Indictment, where “he monitored” is translated in three different ways: “il a observé”, “il a suivi” and “il a surveillé”. The Trial Chamber considers the Indictment to be sufficiently clear in describing **Miletić**’s actions and thus finds **Miletić** was put on notice of the nature of the allegations against him. The Trial Chamber considers that the Prosecution’s subsequent clarification of its interpretation of “monitoring” has not changed the case and does not cause prejudice to **Miletić**.

(v) Pleading of Material Facts

1615. **Miletić** also makes a number of submissions arguing that the Prosecution has not sufficiently pleaded the material facts relating to **Miletić**’s alleged participation in the crimes. **Miletić** submits that the Indictment contains no allegations concerning **Miletić**’s involvement (1) in the restriction of UNPROFOR supplies;<sup>4939</sup> (2) in monitoring the Muslim column;<sup>4940</sup> (3) in the requisitioning of buses for transportation of the Bosnian Muslim population;<sup>4941</sup> (4) in the supplying of arms to the Drina Corps during *Krivaja-95*;<sup>4942</sup> and (5) in the drafting of the 10 and 13 July orders.<sup>4943</sup> **Miletić** contends that these allegations constitute material facts and should thus have been expressly set out in the Indictment.<sup>4944</sup>

<sup>4937</sup> Miletić Closing Arguments, T. 34614–34615 (10 Sept 2009).

<sup>4938</sup> *Ibid.*

<sup>4939</sup> Miletić Final Brief, paras. 286–288. *See* Prosecution Final Brief, paras. 1679–1685 (alleging **Miletić**’s involvement in the restriction of re-supply convoys).

<sup>4940</sup> Miletić Closing Arguments, T. 34611–34612 (10 Sept 2009). *See* Prosecution Final Brief, para. 1700 (alleging **Miletić**’s involvement in “following the progress of the Muslim column”). **Miletić** further contends that during its Closing Arguments, the Prosecution expressed a novel position that the column and the people of which it was composed were part of a forcible transfer. *Ibid.* *See* Prosecution Closing Arguments, T. 34146, 34184–34185 (3 Sept 2009).

<sup>4941</sup> Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009). *See* Prosecution Final Brief, paras. 1694–1695 (alleging **Miletić**’s involvement in the requisitioning of vehicles for the transportation of Bosnian Muslim civilians).

<sup>4942</sup> Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009). *See* Prosecution Final Brief, para. 1699 (alleging **Miletić**’s involvement in the supply of ammunition to the Drina Corps).

<sup>4943</sup> Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009). *See* Prosecution Final Brief, paras. 1692, 1703 (alleging **Miletić**’s role in drafting two orders: Exs. P01059, P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed by Gvero, 13 July 1995”; and Ex. P00181, “Order from the VRS Main Staff to the Command of the Drina Corps and the 65th Protection Motorized Regiment signed by Ratko Mladić, 10 July 1995”).

<sup>4944</sup> Miletić Closing Arguments, T. 34612–34613 (10 Sept 2009).

1616. The Trial Chamber notes that **Miletić** is charged with participating in a JCE with a common purpose to forcibly transfer and deport the populations of Srebrenica and Žepa, from about 8 March 1995 through the end of August 1995, and he is alleged to have committed a series of acts in furtherance of this JCE.<sup>4945</sup>

1617. With regard to the argument concerning **Miletić**'s participation in the restriction of UNPROFOR supplies, the Trial Chamber notes that paragraph 75(a)(i) of the Indictment clearly alleges that **Miletić** ordered the "relevant State and military organs" to "reduce and limit the logistic support of UNPROFOR"; and paragraph 75(a)(ii) refers to **Miletić**'s role in restricting humanitarian aid to the Bosnian Muslim populations of Srebrenica and Žepa.<sup>4946</sup> Similarly, the Trial Chamber considers that the submission concerning **Miletić**'s participation in monitoring the "Muslim column" falls within the purview of paragraph 75(b), which is "[d]efeating the Muslim forces militarily".<sup>4947</sup> More specifically, the Indictment states that **Miletić** "monitored the state of the Muslim forces" and "monitored the surrender of the Muslim forces".<sup>4948</sup>

1618. The Trial Chamber further considers that the Prosecution's submission—in its Final Brief—of **Miletić**'s involvement in the requisitioning of buses for the transportation of the Bosnian Muslim population falls within the allegation that **Miletić** was "[c]ontrolling the movement of the Muslim population out of the enclave" and more specifically that he was monitoring the progress of the transfer of civilians from Srebrenica and Žepa, pleaded at paragraph 75(c)(i) of the Indictment.<sup>4949</sup> Furthermore, in relation to the Prosecution's submissions concerning **Miletić**'s involvement in the supplying of arms to the Drina Corps during *Krivaja-95* and in the drafting of the 10 and 13 July orders, the Trial Chamber considers they fall under paragraph 75(b) of the Indictment, alleging **Miletić**'s role in "[d]efeating the Muslim forces militarily".

1619. The Trial Chamber finds the material facts have been properly pleaded and therefore **Miletić** was put on notice of these allegations. For these reasons, the Trial Chamber rejects **Miletić**'s argument.

<sup>4945</sup> Indictment, paras. 49–71, 75.

<sup>4946</sup> See also Prosecution Pre-Trial Brief, para. 270 (alleging that "Miletić played a central role in organizing and implementing the effort to create an unbearable situation for survival. From March 1995 through July 1995 the VRS deliberately restricted humanitarian and aid supplies to the Muslim inhabitants of the two enclaves as the beginning of the effort to remove them.").

<sup>4947</sup> Indictment, para. 75(b). See also Prosecution Pre-Trial Brief, para. 271 (alleging that "Miletić monitored the state of the Muslim forces before, as well as after, their defeat, reporting this information to his superiors, including President Karadžić and to his subordinates").

<sup>4948</sup> Indictment, para. 75 (b)(i) and (ii) respectively.

<sup>4949</sup> Indictment, para. 75(c). See also Prosecution Pre-Trial Brief, para. 272 (alleging that "**Miletić** demonstrated control of the movement of people out of the enclave of Srebrenica by monitoring the progress of the transfer of the civilians of the VRS").

(vi) Liability for Crimes Committed by Subordinates

1620. **Miletić** submits that the fact that officers subordinate to him committed criminal acts may not be held against him for the sake of his participation in the JCE, as the Prosecution must prove that **Miletić** personally contributed to the JCE through his personal and individual acts.<sup>4950</sup>

1621. The Trial Chamber notes that **Miletić** is charged under Article 7(1) of the Statute for having “committed, planned, instigated, ordered and otherwise aided or abetted in the planning, preparation and execution” of the alleged crimes; and that the term “committed”, as used in the Indictment, is meant to include a JCE as a form of co-perpetration.<sup>4951</sup> The Trial Chamber further notes that **Miletić** is not charged with superior responsibility under Article 7(3); and therefore agrees with **Miletić** to the extent that, for his liability, **Miletić** must have participated in the JCE by sharing and furthering its common purpose. However, in light of the jurisprudence of this Tribunal, a person can also be liable in a JCE through acts physically committed by another person, provided that certain elements are met.<sup>4952</sup>

(c) Position and Function(i) Authority as Chief of the Administration for Operations and Training

1622. **Miletić** joined the VRS Main Staff in Crna Rijeka in July 1992.<sup>4953</sup> **Miletić** was appointed as Chief of the rocket and artillery units of the air defence, which was part of the Administration of Air Force and Anti-Aircraft Defence.<sup>4954</sup> In this capacity, he assisted in establishing the artillery rocket battalion of anti-aircraft defence of the 65th Protection Regiment.<sup>4955</sup> **Miletić** immediately displayed an inclination towards operative work and often assisted the Chief of Staff of the Main Staff, Milovanović. He was soon singled out as an “exemplary worker” and a “very good operations man”.<sup>4956</sup> **Miletić** was transferred to the Administration for Operations and Training.<sup>4957</sup> The exact date of his transfer and his title within the Administration after he was transferred are unclear. However, it is established that **Miletić** was in the Administration for Operations and Training from at least 1 May 1993,<sup>4958</sup> and that he was the Chief of this Administration from at least 1 September

<sup>4950</sup> Miletić Closing Arguments, T. 34613–34614 (10 Sept 2009).

<sup>4951</sup> Indictment, para. 88.

<sup>4952</sup> See *Brdanin* Appeal Judgement, paras. 362, 410; *Tadić* Appeal Judgement, para. 192.

<sup>4953</sup> Manojlo Milovanović, T. 12158 (29 May 2007); Milomir Savčić, T. 15260 (12 Sept 2007).

<sup>4954</sup> Manojlo Milovanović, T. 12158 (29 May 2007); Milomir Savčić, T. 15260–15621 (12 Sept 2007).

<sup>4955</sup> Milomir Savčić, T. 15621 (12 Sept 2007).

<sup>4956</sup> Manojlo Milovanović, T. 12158 (29 May 2007); Milomir Savčić, T. 15261 (12 Sept 2007).

<sup>4957</sup> Manojlo Milovanović, T. 12158 (29 May 2007).

<sup>4958</sup> See Ex. P02742, “VRS Main Staff Combat order for the liberation of Žepa and Gorazde, signed by Milovanović, 1 May 1993”, p. 15 (the order mentions **Miletić** as its drafter).

1994 and held this position during the period relevant to this Indictment.<sup>4959</sup> In June 1995, he was promoted to the rank of General.<sup>4960</sup>

1623. The Administration for Operations and Training planned operations at the strategic level, namely, those operations encompassing the entire army or the forces of two or more corps. As its Chief, **Miletić** was directly subordinated to Manojlo Milovanović, who was in turn directly subordinated to Mladić.<sup>4961</sup> The Administration for Operations and Training was divided into three departments: the Department for Operations, the Department for Training, and the Operations Centre.<sup>4962</sup>

1624. The Department for Operations played a role in planning combat activities by coordinating the work of the other organs and drawing up the combat documents.<sup>4963</sup> The Operations Centre was the largest room in the prefabricated office buildings of the Main Staff in Crna Rijeka, the “above-the-ground command post”.<sup>4964</sup> A duty team headed by **Miletić**, or one of his assistants, and composed of operative representatives of the Assistant Commanders and Chiefs of different administrations, representing all sectors and administrations of the Main Staff, was always present in the Operations Centre.<sup>4965</sup> **Miletić** rarely left the Main Staff as he was practically always on duty in the Operations Centre.<sup>4966</sup>

1625. In his position as Chief of Operations and Training, **Miletić** read all reports from the Corps and the 65th Protection Regiment.<sup>4967</sup> The 65th Protection Regiment provided daily combat reports in the morning and evening to **Miletić** by phone in lieu of regular written reports.<sup>4968</sup> **Miletić**,

<sup>4959</sup> Manojlo Milovanović, T. 12158 (29 May 2007) (testifying that **Miletić** took over from Ilić—who according to the Main Staff Personnel was the Chief of the Administration for Operations and Training—in July 1993); Novica Simić, T. 28484 (19 Nov 2008) (testifying that **Miletić** became Chief of the Administration for Operations and Training in 1993); Ex. P03178, “Main Staff personnel employment records”, p. 4 (listing **Miletić** as Chief of Operations and Training, appointed by order of 01-21-195/93. Under remarks it reads “010994”). *See also ibid.*, p. 6 (mentioning **Miletić** as Chief of the Training Department in the rank of Colonel. Under remarks it is written “200692” and “310894”, which may be indicative of dates).

<sup>4960</sup> Manojlo Milovanović, T. 12158–12159 (29 May 2007).

<sup>4961</sup> *Ibid.*, T. 12159 (29 May 2007), T. 12303 (31 May 2007); Mirko Trivić, T. 11936 (22 May 2007).

<sup>4962</sup> Petar Skrbić, T. 15502 (17 Sept 2007); Ljubomir Obradović, T. 28210 (14 Nov 2008).

<sup>4963</sup> Ljubomir Obradović, T. 28287, 28295–28296 (17 Nov 2008).

<sup>4964</sup> Manojlo Milovanović, T. 12210 (30 May 2007). According to Pajić, in May 1995 during the NATO bombing of the Jahorina stream, the Operations Centre was moved underground. Velo Pajić, T. 28792 (25 Nov 2008).

<sup>4965</sup> Manojlo Milovanović, T. 12210–12211, 12272 (30 May 2007). In the absence of Mladić, Milovanović, **Miletić**, or any of Mladić’s assistants, the duty team could deal with current situations on the front line. *Ibid.*, T. 12211 (30 May 2007).

<sup>4966</sup> Novica Simić, T. 28515 (19 Nov 2008), T. 28564 (20 Nov 2008); Manojlo Milovanović, T. 12305 (31 May 2007), T. 12210, 12272 (30 May 2007); Vojislav Babić, T. 29188 (3 Dec 2008). The Operations Centre was connected to extension 155, which was also the extension of Milovanović’s office. Manojlo Milovanović, T. 12209, 12215, 12272–12274 (30 May 2007); Ljubomir Obradović, T. 28306 (17 Nov 2008).

<sup>4967</sup> Novica Simić, T. 28564 (20 Nov 2008); Manojlo Milovanović, T. 12313–12314 (31 May 2007).

<sup>4968</sup> Ex. 5D01205, “65th Protection Regiment Order on regular combat report, signed by Milomir Savčić, 23 Dec 1993”; Ljubomir Obradović, T. 28222, 28251, 28273 (14 Nov 2008), T. 28322–28324 (17 Nov 2008).

together with Milovanović, studied the reports and identified the parts relevant for each department.<sup>4969</sup>

1626. **Miletić** was responsible for putting the Commander's decisions into the appropriate format, such as orders and other documents.<sup>4970</sup> The documents drawn up by the Administration for Operations and Training were inspected by the Chief of Staff before the Commander approved and signed them.<sup>4971</sup> Following signature, **Miletić** forwarded the Commander's orders to the relevant units and monitored their execution through daily reports.<sup>4972</sup> **Miletić** was further responsible for drafting directives.<sup>4973</sup>

1627. Milovanović, **Miletić's** superior at the time, described **Miletić's** role with regard to receiving and drafting documents, such as reports, orders, and directives, as follows:

[t]he most important mission in a war is to keep the trench you are holding. So Miletić's trench was to design documents, to make plans, to coordinate the work of subordinated units [...] Miletić did this as the officer -- an officer of the staff. The value of every operations officer is great, is crucial, but operations officers are considered to be the soul of an army. In this case, he was the soul of the Main Staff of the VRS. He knows everyone, he is able to advise everyone, to give them the appropriate information.<sup>4974</sup>

1628. As Chief of Operations and Training, **Miletić** was not in a position to independently issue orders other than to his direct subordinates.<sup>4975</sup> However, **Miletić** played a role in the process of the Commander's decision to carry out a corps operation: if documents were submitted in time, his Administration was responsible for reviewing the orders, entering the decisions and orders into a map, and providing comments to the Chief of Staff, to be forwarded to Mladić for approval.<sup>4976</sup>

1629. While **Miletić** had no authority with regard to POWs in July 1995,<sup>4977</sup> he was responsible for registering the number of POWs and the number of VRS troops captured.<sup>4978</sup>

(ii) Miletić's Authority in 1995

1630. Milovanović was absent from the Main Staff during the end of 1994 and for most of 1995, in particular during the period between 29 May 1995 and the end of October 1995.<sup>4979</sup> During this

<sup>4969</sup> Manojlo Milovanović, T. 12187–12188 (29 May 2007); Ljubomir Obradović, T. 28322–28324 (17 Nov 2008).

<sup>4970</sup> Manojlo Milovanović, T. 12159–12160 (29 May 2007). Milovanović described **Miletić** as "technical staff" and a "writing man". *Ibid.*

<sup>4971</sup> Ljubomir Obradović, T. 28284, 28287, 28295–28296 (17 Nov 2008).

<sup>4972</sup> Manojlo Milovanović, T. 12161, 12181 (29 May 2007), T. 12313–12314 (31 May 2007).

<sup>4973</sup> Ljubomir Obradović, T. 28472–28474 (19 Nov 2008); Manojlo Milovanović, T. 12274–12275 (30 May 2007).

<sup>4974</sup> Manojlo Milovanović, T. 12309 (31 May 2009).

<sup>4975</sup> Nedeljko Trkulja, T. 15101 (10 Sept 2007); Manojlo Milovanović, 12307 (31 May 2007). *See* Ljubomir Obradović, 28370 (18 Nov 2007).

<sup>4976</sup> Ljubomir Obradović, T. 28287, 28295–28296 (17 Nov 2008).

<sup>4977</sup> Manojlo Milovanović, T. 12315 (31 May 2007); Slobodan Kosovac, T. 30103 (14 Jan 2009), T. 30187 (15 Jan 2009).



time, **Miletić** took on certain of Milovanović's duties.<sup>4980</sup> As Milovanović was present in the theatre of war in western Bosnia, he remained the Chief of Staff of the Main Staff.<sup>4981</sup> When Milovanović was not at the Main Staff, he frequently kept contact with **Miletić**. **Miletić** also acted as his intermediary in communications with the other members of the Main Staff, and often even with the Supreme Command.<sup>4982</sup> Upon Milovanović's return to the VRS Main Staff, **Miletić** was duty-bound to inform him verbally and brief him on the general situation on the front lines.<sup>4983</sup>

1631. A large number of documents were presented to the Trial Chamber signed<sup>4984</sup> by **Miletić** "standing in for the Chief of Staff",<sup>4985</sup> as well as evidence that the practice whereby **Miletić** signed as "standing in for the Chief of Staff" was not in accordance with VRS procedures and was an administrative error or a mistake.<sup>4986</sup>

<sup>4978</sup> Manojlo Milovanović, T. 12315 (31 May 2007).

<sup>4979</sup> *Ibid.*, T. 12159, 12181 (29 May 2007). At the end of 1994, at the time of the Bihać operation, Milovanović went to the western front in Bosanska Krajina. Upon completion of this operation, Milovanović was transferred to the Glamoc front, also in the west of Bosnia. *Ibid.*, T. 12156, 12159 (29 May 2008). From 29 May until the end of October 1995, Milovanović was still on the western front, in Drvar and in Banja Luka. During this period, Milovanović was only back in Crna Rijeka for the retirement party for Živanović on 19 and 20 July 1995. *Ibid.*, T. 12181, 12185 (29 May 2007).

<sup>4980</sup> Manojlo Milovanović, T. 12308 (31 May 2007); Nedeljko Trkulja, T. 15075 (10 Sept 2007); Bogdan Sladojević, T. 14359 (27 Aug 2007). *See also* Ex. P04160, "VJ Gen Staff Sector for system matters personnel administration – Minutes re official interview with Miletić in relation to the ending of his professional military service, signed by Milan Biga, 31 January 2000", p. 2.

<sup>4981</sup> Manojlo Milovanović, T. 12172, 12182 (29 May 2007); Mirko Trivić, T. 11935–11936 (22 May 2007); Petar Skrbić, T. 15505–15506 (17 Sept 2007); Novica Simić, T. 28561 (20 Nov 2008).

<sup>4982</sup> Manojlo Milovanović, T. 12317–12318 (31 May 2007).

<sup>4983</sup> *Ibid.*, T. 12303 (31 May 2007); Ex. 5D01278, "Summary of intercepted conversation involving Milovanović and Miletić, 18 April 1995, 9:46 hours". *See also* Dragiša Masal, T. 29068 (1 Dec 2008).

<sup>4984</sup> In this context, the term "signed" includes both type-signed and personally signed.

<sup>4985</sup> Manojlo Milovanović, T. 12183–12185 (29 May 2007). Milovanović testified that when **Miletić**'s name appears on the document, **Miletić** was taking over Milovanović's duty of reporting to the Supreme Command through VRS Main Staff reports; whereas, when Milovanović's name is on a report to the Supreme Commander, it means that Milovanović would be back temporarily at the Main Staff assuming his duties. Milovanović further testified that he reviewed the Main Staff reports to the Supreme Command from 1995 that are in possession of the Prosecution and many of them were type-signed **Miletić** with the addition "standing in for the Chief of Staff". Milovanović also testified that many of the reports from 1995 were in his own name. He did not give an exact number of reports signed by himself or by **Miletić**, but confirmed when the Prosecution referred to "hundreds of reports that went out in **Miletić**'s name". Milovanović testified he only found one document that included **Miletić**'s signature as it was probably not teletyped but sent either by fax or carrier. It also occurred that documents were type-signed **Miletić** on occasions when Milovanović was at the VRS Main Staff. *Ibid.* There were also occasions when documents were type-signed **Miletić** and Milovanović on the same day, e.g. Ex. P02522, "VRS Main Staff document and Drina Corps, signed by Miletić, 6 March 1995"; Ex. 5D00620, "VRS Main Staff Document to Drina Corps Command signed by Manojlo Milovanović, 6 March 1995".

<sup>4986</sup> Nedeljko Trkulja, 15076–15077 (10 Sept 2007); Manojlo Milovanović, T. 12182 (29 May 2007), T. 12301 (31 May 2007); Petar Skrbić, T. 15510 (17 Sept 2007) (testifying that the documents should have gone out under Milovanović's name and **Miletić** should have put "za" ("for") in front of Milovanović's name before putting his own signature); Bogdan Sladojević, T. 14392 (27 Aug 2007) (testifying that for **Miletić** to sign "standing in" ("zastupa") there should have been an order assigning him accordingly); Ljubomir Obradović, T. 28235 (14 Nov 2008) (testifying that shortly after Milovanović expressed his discontent about receiving reports at the IKM from the VRS Main Staff in his own name, a new practice was introduced following which documents were signed "Standing in for the Chief of Staff, Major General Radivoje Miletić." According to Obradović, it would have been more appropriate and congruent with regulations to have signed "upon the approval of the Chief of Staff"). There is evidence that already in 1993, **Miletić** signed documents using "zastupa". *See* Ex. P04219, "VRS Main Staff Information re approval of entry and movement within RS, sent to the Drina Corps, signed by Miletić, 8 October

1632. The Prosecution argues that **Miletić** was Milovanović's Deputy and, in Milovanović's absence, naturally took over some of his duties; and that he was "standing in" for Milovanović.<sup>4987</sup> **Miletić** submits that he was not formally "standing in" for Milovanović and the fact that **Miletić** (type) signed certain documents, preceded by the indication "standing in for the Chief of Staff", cannot lead to a definitive conclusion as to **Miletić**'s duties, powers and authorities.<sup>4988</sup>

1633. The Trial Chamber has been presented with conflicting evidence as to whether **Miletić** was the Deputy Chief of Staff of the VRS Main Staff and whether this title existed within the Main Staff.<sup>4989</sup> After an examination of that evidence, the Trial Chamber is not satisfied **Miletić** was Deputy Chief of Staff. As to whether **Miletić** was "standing in" for Milovanović, that term in the VRS was a legally defined category, which was regulated by an order.<sup>4990</sup> Such an appointment

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1993." According to the Rules on Official Correspondence and Office Activities in the JNA, documents created in the command of the unit were signed by the commanding officer of the unit. In his absence, his deputy according to establishment could sign. The commanding officer could delegate this responsibility to a person in his command to whom he had delegated specific work from within his field of competence. Ex. 5D01194, "Rules on Official Correspondence and Office Activities in the JNA, 1994", para. 65. These Rules were still applied in 1995. See Ljubomir Obradović, T. 28237 (14 Nov 2008).

<sup>4987</sup> Prosecution Final Brief, paras. 1635, 1641.

<sup>4988</sup> Miletić Final Brief, para. 49.

<sup>4989</sup> Milovanović testified that when he was absent from the Main Staff, **Miletić** as the most senior officer in the Staff Sector of the Main Staff would take over from him. While describing **Miletić**'s tasks when "substituting" for him, Milovanović referred to **Miletić** as Deputy Chief of Staff. Manojlo Milovanović, T. 12173 (29 May), T. 12305–12306 (31 May 2007). Obradović testified that by establishment, the Chief of the Administration for Operations and Training was neither a deputy nor a person standing in for somebody, but the Chief of Staff had the right to transfer his duties and obligations, particularly the authority to sign documents, to the most senior officer. Ljubomir Obradović, T. 28238 (14 Nov 2008) (when shown Ex. 5D01194, "Rules on Official Correspondence and Office Activities in the JNA, 1994", Art. 65). Obradović also testified that Ex. 7DP00410, "Regulations on the Responsibilities on the Land Army Corps Command in Peacetime, 1990", which stipulate in Art. 11.13 that the Chief of Operations and Training shall stand in for the Chief of Staff in his absence, did not apply to the VRS Main Staff. *Ibid.*, T. 28227–28228 (14 Nov 2008). Obradović testified that **Miletić** was "deputising" for Milovanović in his absence, which he described as **Miletić** replacing Milovanović in organising work at the command post because the Armoured Units were directly subordinate to Milovanović as was the Administration for Operations and Training; and as the senior officer in the Staff after the Chief of Staff, **Miletić** conveyed tasks and was responsible for discipline and order in that part of the Staff where those units were. *Ibid.*, T. 28374–28375 (18 Nov 2008). According to Skrbić, Milovanović had the right to pick any senior officer from his sector to fill in for him while he was absent from the command post, but he did not use the option of designating someone other than **Miletić**. Petar Skrbić, T. 15596–15597 (18 Sept 2007). According to Kosovac, the most senior officer stood in for the Chief of Staff in his absence. Slobodan Kosovac, T. 30016 (13 Jan 2009). According to Babić, in the absence of Milovanović, **Miletić** was standing in for Milovanović, but **Miletić** was not referred to as Deputy Chief of Staff. Vojislav Babić, T. 29214 (3 Dec 2008). According to Lazić, at the VRS Main Staff, the Chief of Operations and Training did not automatically stand in for the Chief of Staff, unlike at the Corps level. Milenko Lazić, T. 21753 (4 June 2008). Ex. P03178, "VRS Main Staff personnel employment records" does not indicate that the Chief of the Administration for Operations and Training is the Deputy Chief of Staff, whereas it does indicate that the Chief of Staff is the Deputy Commander (p. 3) and the Chief of the Operations Department is the Deputy Chief of Operations and Training (p. 4). Ex. 5D00431, "Summary of duties of units and establishment elements VRS Main Staff", pp. 3–4, does not indicate the Chief of the Administration for Operations and Training is the Deputy Chief of Staff, whereas it does indicate the Chief of Staff is the Deputy Commander, and the Chief of the Department of Operations is the Deputy Chief of Operations and Training. Ex. 5D00758, "VRS Main Staff – Order on the VRS Main Staff wartime establishment pursuant to the Decision of the Presidency of RS, signed by Ratko Mladić, 16 June 1992" does not indicate the Chief of the Administration for Operations and Training is the Deputy Chief of Staff, whereas it does indicate the Chief of Staff is the Deputy Commander, and the Chief of the Department of Operations is the Deputy Chief of the Administration of Operations and Training.

<sup>4990</sup> Manojlo Milovanović, T. 12182 (29 May 2007); Slobodan Kosovac, T. 30321–30322 (19 Jan 2009), T. 30509–30510 (22 Jan 2009); Milenko Lazić, T. 21799 (5 June 2008). See Ex. 5D00753, "The Law on the Army – Official

brought greater responsibility in exchange for certain benefits.<sup>4991</sup> No order was issued assigning **Miletić** as “standing in” Chief of Staff in 1995.<sup>4992</sup> The Trial Chamber therefore does not find that **Miletić** was formally assigned as “standing in” as that term is reflected in the law and regulations. However, whether or not the practice whereby **Miletić** signed documents as “standing in for the Chief of Staff” was in accordance with proper VRS procedure, the Trial Chamber considers that this practice is evidence of **Miletić**’s authority in the Main Staff and his knowledge of the information contained in the documents that carry his name.

1634. The Trial Chamber is further convinced that **Miletić**, as the most senior officer in the Staff Sector, took over certain tasks from Milovanović during the latter’s absence from the Main Staff.<sup>4993</sup> However, the Trial Chamber considers that it has not been established that **Miletić** did so automatically by virtue of his function as the Chief of the Administration for Operations and Training. Therefore, the Trial Chamber will base its determination as to **Miletić**’s role and his responsibilities, including those undertaken for Milovanović, on the factual evidence before it, and not on any assumptions from the signature format used.

1635. In the absence of Milovanović, **Miletić** worked from Milovanović’s office.<sup>4994</sup> **Miletić** took over Milovanović’s tasks in the Staff Sector,<sup>4995</sup> which included receiving daily combat reports from subordinate units; briefing the Commander, drawing his attention to problems and suggesting solutions; receiving proposals and suggestions from subordinate commanders and transmitting these to the Commander; providing daily Main Staff reports to the President of RS; distributing information across various departments; organising the work of the Staff at the command post in Crna Rijeka; and coordinating the work in the Staff Sector between the departments.<sup>4996</sup> **Miletić** also coordinated the work of the Assistant Commanders but only in an “advisory role”.<sup>4997</sup> **Miletić**

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Gazette of the Serbian people in BiH, Issue no. 7, 1 June 1992”, Art. 156 (stating in paragraph 1 that “A replacement shall be appointed to a post of a senior officer who is temporarily prevented from exercising his duties. Paragraph 3 reads “A replacement may occupy the post for no longer than six months or up to a year if so decided by a second superior officer.”).

<sup>4991</sup> Bogdan Sladojević, T. 14392 (27 Aug 2007); Ratko Miljanović, T. 28887–28888 (26 Nov 2008).

<sup>4992</sup> Petar Skrbić, T. 15510 (17 Sept 2007); Milenko Lazić, T. 21799 (5 June 2008). *See also* Manojlo Milovanović, T. 12308 (31 May 2007).

<sup>4993</sup> *Cf.* Manojlo Milovanović, T. 12173 (29 May 2007), T. 12305–12306 (31 May 2007); Bogdan Sladojević, T. 14359 (27 Aug 2007); Ljubomir Obradović, T. 28374–28375 (18 Nov 2008). *See also* Ex. 7DP00417, “Provisional Service Regulations of the VRS, August 1992”, Art. 17 (stating that members of the Army shall carry out the orders of the most senior officer present when the superior officer is absent); Richard Butler, T. 20826 (31 Jan 2008) (stating that the Provisional Service Regulations were in force in 1995).

<sup>4994</sup> Manojlo Milovanović, T. 12209, 12272 (30 May 2007).

<sup>4995</sup> *Ibid.*, T. 12308 (31 May 2007); Ljubomir Obradović, T. 28251 (14 Nov 2008).

<sup>4996</sup> Manojlo Milovanović, T. 12159–12161, 12173–12174, 12185, 12187–12188 (29 May 2007), T. 12308, 12311 (31 May 2007); Bogdan Sladojević, T. 14364–14365 (27 Aug 2007); Nedeljko Trkulja, T. 15075–15076, 15080–15081 (10 Sept 2007); Dragiša Masal, T. 29074 (1 Dec 2008); Ljubomir Obradović, T. 28222 (14 Nov 2008).

<sup>4997</sup> Manojlo Milovanović, T. 12305–12308 (31 May 2007).

assumed the responsibility to sign certain documents on behalf of Milovanović, including Main Staff daily reports to the President of RS and convoy notifications.<sup>4998</sup>

1636. The decision-making process at the Main Staff Command in terms of planning and carrying out combat operations was based on reports of subordinate units. Units reported to their immediate superior commands and the corps commanders reported to the VRS Main Staff.<sup>4999</sup> In the absence of Milovanović, **Miletić** received these daily as well as interim reports and continued to identify the parts relevant for each department.<sup>5000</sup> In the absence of Milovanović, in addition to the reports from the Corps, the 67th Signals Regiment submitted oral reports directly to **Miletić**.<sup>5001</sup> **Miletić** advised Mladić directly regarding all these reports.<sup>5002</sup>

1637. Every morning at 7 a.m., Mladić and the Assistant Commanders met, regularly joined by **Miletić**, **Beara**, and the Chief of Intelligence. Usually Mladić would call the meeting and give the floor to either Milovanović or, in his absence, **Miletić** who would inform all present about the problems in the theatre of war.<sup>5003</sup> In the absence of Milovanović, **Miletić** participated in the discussions, conveyed proposals to the Commander, and explained the situation in the field because he was familiar with it through the corps reports that he received and the conversations with Milovanović.<sup>5004</sup> The Assistant Commanders and Chiefs of Administrations would study the details brought to their attention and provide proposals to Mladić based on their expertise.<sup>5005</sup> If Mladić and Milovanović were absent, the most senior general present chaired the meeting, while **Miletić** remained the person explaining the situation.<sup>5006</sup> In his capacity as Chief of Operations and Training, **Miletić** also took the minutes of these meetings.<sup>5007</sup>

1638. **Miletić** also informed the Supreme Command of any relevant combat developments through daily Main Staff reports.<sup>5008</sup> He based the reports on the daily and interim reports sent from the Drina Corps and other units to the VRS Main Staff.<sup>5009</sup> The procedure was that in the evening, the

<sup>4998</sup> Bogdan Sladojević, T. 14364–14365 (27 Aug 2007); Nedeljko Trkulja, T. 15091, 15096 (10 Sept 2007); Slobodan Kosovac, T. 30584 (22 Jan 2009); Slavko Kralj, T. 29260–29261 (4 Dec 2008).

<sup>4999</sup> See *supra*, para. 113.

<sup>5000</sup> Manojlo Milovanović, T. 12187–12188 (29 May 2007); Ljubomir Obradović, T. 28322–28324 (17 Nov 2008).

<sup>5001</sup> Vojislav Babić, T. 29188–29189, 29211–29214 (3 Dec 2008).

<sup>5002</sup> Manojlo Milovanović, T. 12311 (31 May 2007).

<sup>5003</sup> *Ibid.*, T. 12188–12189 (29 May 2007).

<sup>5004</sup> *Ibid.*, T. 12319 (31 May 2007).

<sup>5005</sup> *Ibid.*, T. 12189 (29 May 2007).

<sup>5006</sup> *Ibid.*, T. 12189 (29 May 2007).

<sup>5007</sup> Ljubomir Obradović, T. 28248 (14 Nov 2008).

<sup>5008</sup> Manojlo Milovanović, T. 12174 (29 May 2007).

<sup>5009</sup> *Ibid.*, T. 12313–12314 (31 May 2008); Ex. 5D01205, “65th Protection Regiment Order on regular combat reports n.7/354, signed by Milomir Savčić, 23 December 1993”; Ljubomir Obradović, T. 28273 (14 Nov 2008); Vojislav Babić, T. 29188–29189, T. 29211–29213 (3 Dec 2008). Evidence has been adduced that the reports from subordinate units did not always accurately reflect the situation on the ground. However, in light of the totality of

information from the received reports was compiled in one single report by the Administration for Operation and Training. This was a task **Miletić** executed in his function as the Chief of Operations and Training.<sup>5010</sup> In Milovanović's absence, **Miletić** also reviewed and signed these reports before they were encrypted, and sent to the President of RS, the Corps Commands, the Air Force and Anti-Aircraft Defence, the Military School Centre, the 2nd IKM of the Sarajevo-Romanjia Corps, and the VRS Main Staff IKM.<sup>5011</sup> The reports kept the President updated on the events on the battlefield.<sup>5012</sup> A significant amount of the reports for 1995 are type-signed **Miletić**, "standing in for the Chief of Staff".<sup>5013</sup> **Miletić** submits that the reports were initialled on the front page by other officers of the Staff Sector of the VRS Main Staff; and that this means that **Miletić** did not draft the reports.<sup>5014</sup>

1639. The Trial Chamber is satisfied on the evidence that **Miletić** received daily and interim reports from subordinate units and he and his staff were responsible to incorporate the substance of the information received into the daily Main Staff reports to the President. Through this responsibility alone, the Trial Chamber is satisfied that **Miletić** always had knowledge of the

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evidence, including showing that **Miletić** was updated directly by telephone, the Trial Chamber is satisfied that **Miletić** ensured he was kept fully updated.

<sup>5010</sup> Bogdan Sladojević, T. 14364–14365 (27 Aug 2007); Nedeljko Trkulja, T. 15091, 15096 (10 Sept 2007).

<sup>5011</sup> Bogdan Sladojević, T. 14365 (27 Aug 2007); Nedeljko Trkulja, T. 15091, 15096 (10 Sept 2007). For examples of reports, see, e.g., Ex. P02889, "VRS Main Staff Report, type-signed Miletić, 2 July 1995"; Ex. P02890, "VRS Main Staff Report, type-signed Miletić, 3 July 1995"; Ex. P03166, "VRS Main Staff situation, type-signed Miletić, 5 July 1995"; Exs. P00044, P02748, "VRS Main Staff Daily Combat Report, 12 July 1995".

<sup>5012</sup> Manojlo Milovanović, T. 12175–12177 (29 May 2007). When asked if the information in the reports was important for Karadžić to receive, Milovanović answered "yes, yes". He testified he did not know if the Supreme Command in part used the information in the reports to make their decisions, but added that "occasionally the Supreme Commander or the Supreme Command did take a voice, issuing tasks to the VRS and one could conclude that they were in response to some of those reports". *Ibid.* See also Petar Skrbić, T. 15510 (17 Sept 2007).

<sup>5013</sup> Manojlo Milovanović, T. 12184–12185 (29 May 2007). Milovanović testified he had the chance to review all the VRS Main Staff reports for 1995 in the possession of the Prosecution and marked on each document whether it was signed by himself or **Miletić**. He confirmed that from 31 May–4 September, 9 September–18 November, as well as dates in December the reports were type-signed **Miletić**. Milovanović referred in his testimony to a Prosecution document, which listed all these dates; however the exhibit number was not specified. See however Ex. P03163, "OTP Witness Statement of Manojlo Milovanović, 28 May 2007" (according to which Milovanović had been shown VRS Main Staff documents, mainly VRS Main Staff Daily Situation Reports, and he indicated who signed them, i.e. the documents were type-signed Milovanović between 28 January–2 February; 12 February–4 March; 11 March–13 April; 19 April; 22 April–3 May; 9 May–14 May; 19 May–30 May; 19–22 November; 27 November–24 December. Documents were type-signed **Miletić** on 4–5, 7–27 January; 3–5, 7–11 February; 5–10 March; 14–18, 20–21 April; 4–8, 15–18 May; 31 May–4 September (except 8 August); 9 September–18 November; 23–26 November; 25–31 December). It also occurred that documents were type-signed **Miletić** on occasions when Milovanović was at the VRS Main Staff. Manojlo Milovanović, T. 12185 (29 May 2007) (testifying he had noted **Miletić** had signed documents up to December, whereas Milovanović was at the Main Staff from mid-November). There were also occasions where on the same day documents were type-signed **Miletić** and Milovanović, e.g., Ex. P02522, "VRS Main Staff document and Drina Corps, signed by Miletić, 6 March 1995"; Ex. 5D00620, "VRS Main Staff Document to Drina Corps Command signed by Milovanović, 6 March 1995". Milovanović only found one document that included **Miletić**'s signature as it was probably not teletyped but sent either by fax or carrier. Manojlo Milovanović, T. 12183 (29 May 2007). See also Ljubomir Obradović, T. 28235 (14 Nov 2008) (testifying that after December 1994 a new practice was introduced regarding the signing of combat reports in the absence of Milovanović, following which such documents were signed as "Standing in for the Chief of Staff, Major-General Radivoje Miletić" instead of just the block signature of Milovanović).

<sup>5014</sup> Miletić Final Brief, para. 447.

activities of, and issues relating to, the subordinate units. In addition, as noted above, on many occasions these reports went out under **Miletić**'s name. The Trial Chamber considers that in these instances, **Miletić** had taken on the additional task of reviewing and approving the reports before they were encrypted and sent to the President and other addressees. The Trial Chamber notes the significance of these reports, not only in terms of the information contained therein, but also in that they were a central instrument for updating the President and Supreme Command on the activities of the VRS. Thus, the Trial Chamber is satisfied that when the reports were transmitted under his name—signed or type-signed—to the President amongst others, **Miletić** was fully aware of, and responsible for, the content of these Main Staff reports. This would have been the case even if the reports were initialled by others and **Miletić** did not physically draft them. Cumulatively, his involvement in the preparation and submission of these reports evidences that **Miletić** was amongst the most knowledgeable members of the Main Staff when it came to the ongoing operations of the VRS.

1640. Milovanović was the Deputy Commander for the VRS and took command in the absence of Mladić. **Miletić** was not formally in a position to command or issue orders to the Assistant Commanders as Milovanović could in Mladić's absence. The Assistant Commanders did not report to **Miletić** in the absence of Mladić and Milovanović but to the most senior general present.<sup>5015</sup> However, Milovanović testified that "the Main Staff was a harmonious whole. We had a good mutual understanding. And I can't imagine a situation in which General Gvero would refuse the advice of General Miletić, and I can't imagine any of the assistant commanders having any quarrel with what Miletić proposed. We just never experienced such incidents."<sup>5016</sup>

1641. Mladić, as the Commander, took the decisions on reinforcements and movement of staff between the Corps, and **Miletić**'s role was normally to forward these decisions.<sup>5017</sup> The Prosecution submits that on a few occasions **Miletić** took a more active role with the reassignment of units.<sup>5018</sup> Particularly, on 15 July, when Mladić was in Belgrade for part of the day,<sup>5019</sup> **Miletić** issued a report on the reassignment of a unit from the 1st Krajina Corps to assist the Zvornik Brigade.<sup>5020</sup>

<sup>5015</sup> Petar Skrbić, T. 15515 (17 Sept 2007); Manojlo Milovanović, T. 12182 (29 May 2007), T. 12305–12308 (31 May 2007).

<sup>5016</sup> Manojlo Milovanović, T. 12307–12308 (31 May 2007).

<sup>5017</sup> Ljubomir Obradović, T. 28377–28882 (18 Nov 2008) (commenting on Ex. P01198b, "Intercept, 16 July 1995, 18:47 hours"); Slobodan Kosovac, T. 30180–30182 (15 Jan 2009).

<sup>5018</sup> Prosecution Final Brief, paras. 1718–1720.

<sup>5019</sup> See Ex. P02942, "Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milosević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan".

<sup>5020</sup> Ex. P02754, "VRS Main Staff document on the dispatch of an infantry company, type-signed Miletić, 15 July 1995". See also Ex. P01198b, "Intercept, 16 July 1995, 18:47 hours" (stating "At General Mladić request received through Miletić, Col. Čerović asked Blagojević [...] to send some men or a unit. At 2006 hrs Blagojević reports that 5 minutes or a half an hour ago, 50 men left and that he has 60 more down in Kovačevići."). According to

The unit assisted the Zvornik Brigade from 16 to 20 July.<sup>5021</sup> On 21 July, **Miletić** issued an order on the dispatch of the same unit to Trnovo,<sup>5022</sup> which he signed personally.<sup>5023</sup> Even though the document of 15 July is called a report, based on its contents, the Trial Chamber is satisfied that it concerns an order, type-signed **Miletić**. The Trial Chamber further notes that the dispatch of the unit to the Zvornik Brigade took place. The Trial Chamber is satisfied that on these two occasions, *i.e.* on 15 and 21 July, under Mladic's authority,<sup>5024</sup> **Miletić** ordered the dispatch of units.<sup>5025</sup> The Trial Chamber considers this as evidence of **Miletić**'s position and authority at the Main Staff.

1642. Cooperation with UNPROFOR did not fall within the purview of **Miletić**'s normal tasks as Chief of Operations and Training.<sup>5026</sup> In the absence of Milovanović, UNPROFOR Chief of Staff General Nicolai interacted with other members of the Main Staff rather than **Miletić**.<sup>5027</sup> **Miletić** was however, involved in the convoy approval procedure and signed certain UNPROFOR convoy

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Milovanović and Obradović, **Miletić** did not issue the order but forwarded an order from Mladić. Manojlo Milovanović, T. 12373–12374 (1 June 2007); Ljubomir Obradović, T. 28377–28378 (18 Nov 2008).

<sup>5021</sup> Ex. P03923, "VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995", p. 1; Vinko Pandurević, T. 32240 (27 Feb 2009) (testifying he got a unit from the Krajina Corps under his command from the 16th of July). *See also* Ex. P00405, "Order from 1st Krajina Corps, dispatching an infantry company to the Zvornik area, signed by Momir Talić, 16 July 1995".

<sup>5022</sup> Ex. P03923, "VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995. *See also* Ljubomir Obradović, T. 28391–28392 (18 Nov 2008); Ex. P01294g, "Intercept, 21 July 1995, 13:05 hours"; Ex. P01295c, "Intercept, 21 July 1995, 13:23 hours"; PW-168, T. 16020–16021 (closed session) (28 Sept 2007).

<sup>5023</sup> Ex. P03923, "VRS Main Staff Order, dispatch of a motorised company from the 16th Krajina Motorised Brigade to the area of Trnovo, signed by Miletić, 21 July 1995". The document reads "SR" after the block signature of Miletić, "Standing in for the Chief of Staff". The term "SR" next to a signature means the person signed personally. Manojlo Milovanović T. 12267–12268 (30 May 2007); PW-168, T. 17178 (closed session) (30 Oct 2007).

<sup>5024</sup> Manojlo Milovanović, T. 12304–12305 (31 May 2007) (testifying that "None of us, save for the commander of the Main Staff, was able to issue executive orders to subordinate units, unless the commander has authorised one of use to deal with one segment of the front, like he, for instance, authorised me to handle operation Lukavac 93, the counterattack in Bihać and the defence against Croatian Operation Storm. Only in such situations did one of his assistants receive a command role but not for the VRS as a whole but as relating to a certain area, one section of the front").

<sup>5025</sup> **Judge Kwon's Separate Opinion:** The majority's statements that the two documents above, type-signed **Miletić**, concerned an order and that **Miletić** ordered the dispatch of units are misleading. As the Trial Chamber has found, **Miletić** was not in a position to independently issue orders to the subordinate units to the Main Staff, *i.e.*, corps. *Cf. supra, para. 1628 and fn. 4975.* The 15 July document is not only titled as "report" but it also clearly states that the dispatch of the unit was "[b]ased on an agreement with the 1st Krajina Corps Commander". Although the 21 July document was termed as an "order", such an order was only possible since it was based on an agreement with the 1st Krajina Corps Commander. The dispatch of these units would not have been possible without prior agreement of the respective corps commander. In my view, while these documents evidence **Miletić**'s coordinating role, they do not constitute orders by **Miletić** as considered by the majority.

<sup>5026</sup> Slobodan Kosovac, T. 30102 (14 Jan 2009).

<sup>5027</sup> Cornelis Nicolai, T. 18448–18449 (29 Nov 2007). Nicolai testified that his designated contact at the VRS was Milovanović. In the latter's absence he would speak to Mladić or occasionally to Tolimir or Gvero. He did not recall speaking to any other VRS Main Staff officer. *Ibid.* *See also* Ex. 5D01306, "VRS Main Staff Document to UNPROFOR Command Sarajevo to C.H. Nicolai signed by Miletić, 6 March 1995" (proposing to postpone a certain meeting due to Milovanović's absence).

related documents.<sup>5028</sup> He also forwarded the approvals and denials of the convoys to UNPROFOR and at times had direct contact with UNPROFOR.<sup>5029</sup>

1643. **Miletić** attended a meeting with General Smith on 19 September 1995 concerning the implementation of the Framework Agreement. UNPROFOR considered the meeting “productive and satisfactory” and **Miletić** “an intelligent interlocutor” and “man to do business with”.<sup>5030</sup>

(d) Acts

(i) Drafting Documents and Directives, including Directive 7

1644. All written documents issued by the Main Staff, relating to combat activities, were drafted by the Administration for Operations and Training.<sup>5031</sup> This fell within the responsibility of **Miletić**, as the Chief of this Administration.

1645. **Miletić** drafted Supreme Command directives. Since the Supreme Command was not technically equipped to deal with military issues, the task of drafting directives was handed down to the VRS Main Staff. Accordingly, the authors of most directives were members of the VRS Main Staff.<sup>5032</sup> Within the VRS Main Staff, the body charged with drafting was the Administration for Operations and Training.<sup>5033</sup> For such directives, the Supreme Commander would provide, either in writing or orally, instructions to the Commander or the leader of the team in charge of drafting the directive. The team leader then drafted the directive in accordance with the instructions provided, using his knowledge and capabilities.<sup>5034</sup>

1646. The actual process of drafting a Supreme Command directive depended on the methodology applied, which was a decision within the discretion of the Supreme Commander.<sup>5035</sup> Most directives were drafted using the so-called “full” or “complete” method, involving the work of all of the

<sup>5028</sup> See *infra*, paras. 1655–1660.

<sup>5029</sup> Ex. P01399a, “Intercept, 3 August 1995, 15:20 hours” (**Miletić** received a call from UNPROFOR’s Office of the Chief of Staff, enquiring about a specific convoy. **Miletić** informed the caller about the expected time of arrival of the convoy and confirmed the number of vehicles in the convoy). The Trial Chamber furthermore has evidence that **Miletić** was directly involved in medical evacuations by UNPROFOR on one occasion. Ex. 5D01281, “Intercepted conversation between **Miletić** and Nicolai, 12 August 1995, 11:47 hours”; Ljubomir Obradović, T. 28293–28294 (17 Nov 2008).

<sup>5030</sup> Ex. P02908, “UNPROFOR fax reporting on several meetings, including the summary of a meeting between Smith, Bachelet, **Miletić**, and Milosević, 20 September 1995”. See also Ex. P02952, “Notes from meeting between Smith, Bachelet, **Miletić** and Milosević, 19 September 1995” (according to which “**Miletić** is Mladić DCOS and today was the first time we had seen him in the flesh”).

<sup>5031</sup> Manojlo Milovanović, T. 12275 (30 May 2007).

<sup>5032</sup> *Ibid.*, T. 12193 (29 May 2007). See also *supra*, para. 115.

<sup>5033</sup> Novica Simić, T. 28512 (19 Nov 2008); Manojlo Milovanović, T. 12275 (30 May 2007).

<sup>5034</sup> Manojlo Milovanović, T. 12193 (29 May 2007).

<sup>5035</sup> Slobodan Kosovac, T. 30247–30248 (16 Jan 2009).



command organs in the Main Staff.<sup>5036</sup> Each command organ would provide the elements pertaining to its own respective sector.<sup>5037</sup> The Administration for Operations and Training merged all these elements, as approved by the VRS Main Staff Commander, and incorporated them in a single directive.<sup>5038</sup> The drafter wrote the directive in accordance with the Supreme Commander's decisions; he could not change its contents, though in preparing the draft, he had influence on its form and wording.<sup>5039</sup> Upon finalisation, the Chief of Staff normally approved the directive before he, or in his absence **Miletić**, sent it to the Commander for his approval to forward it to the Supreme Commander,<sup>5040</sup> who then reviewed the directive, together with the Supreme Command, and signed it. If the Supreme Commander did not agree with the text, he could remove or add parts, make comments and return it with instructions for redrafting.<sup>5041</sup> Upon implementation of the changes, the final version was returned to the Supreme Commander for signature and the Supreme Command would subsequently send the directive to the Main Staff for further action.<sup>5042</sup>

1647. In 1993, **Miletić** drafted Supreme Command Directive 6, which formulated the task for the VRS to create objective conditions for achievement of the strategic war goals, including "a) the liberation of Sarajevo; b) defining the borders of Republika Srpska on the Neretva river and gaining access to the sea in the Neum - Zaton and the Cavtat - Prevlaka sectors; c) defining the borders of Republika Srpska in the Una river basin; and d) expanding the border of Republika Srpska in its

<sup>5036</sup> Ljubomir Obradović, T. 28304 (17 Nov 2008), T. 28472–28473 (19 Nov 2008). *See also supra*, para. 116. Ex. 5DP00699, "JNA Manual for the Work of Command and Staffs, 1983", pp. 52–62, described the three methods of decision-making, *i.e.* the full-method, the abridged method, and decisions by the Commander without previous consultations within the Command. This document was still applied in the VRS. Ljubomir Obradović, T. 28465 (19 Nov 2008). On the different methods *see also ibid.*, T. 28465–28466 (19 Nov 2008); Dragiša Masal, T. 29072 (1 Dec 2008).

<sup>5037</sup> Ljubomir Obradović, T. 28472 (19 Nov 2008).

<sup>5038</sup> *Ibid.*, T. 28305 (17 Nov 2008), T. 28475 (19 Nov 2008); Novica Simić, T. 28512 (19 Nov 2008). Richard Butler, T. 20584–20585 (29 Jan 2008).

<sup>5039</sup> Manojlo Milovanović, T. 12274–12275 (30 May 2007); Slobodan Kosovac, T. 30053–30054 (13 Jan 2009); Novica Simić, T. 28512 (19 Nov 2008); Mirko Trivić, T. 11926–11927 (22 May 2007); Ljubomir Obradović, T. 28305 (17 Nov 2008). Masal, who drafted Directive 9, testified he had no influence on its contents. Directive 9 was drafted in accordance with the shortened procedure. Masal testified that this process in principle did not differ much from the complete or full method. "The only difference lies in the fact that when it comes to the complete method, all the organs of the Main Staff draft their own contributions for the directive, and they submit their contributions to the person who compiles or drafts the final version of the directive. So the only difference between the full or complete method and shortened method lies in the fact that the drafter has to write everything, and when it comes to the complete method he actually receives already written parts of the directive that he then merges. To put it simply, the drafter of a directive has a much easier time if the method is complete or full rather than shortened." Dragiša Masal, T. 29071–29072 (1 Dec 2008).

<sup>5040</sup> Ljubomir Obradović, T. 28318, 28320 (17 Nov 2008). Obradović was not present at the Main Staff at the time of drafting of Directive 7. He based his answers on his experience in the VRS army and his knowledge of how things proceeded during those times. Ljubomir Obradović, T. 28312, 28319–28320 (17 Nov 2008).

<sup>5041</sup> Ljubomir Obradović, T. 28305, 28321 (17 Nov 2008); Slobodan Kosovac, T. 30089 (14 Jan 2009); Richard Butler, T. 20586 (29 Jan 2008); Petar Skrbić, T. 15523–15524 (17 Sept 2007). *See also* Manojlo Milovanović, T. 12193 (29 May 2007) (testifying that the Supreme Command could remove or add parts of the draft).

<sup>5042</sup> Manojlo Milovanović, T. 12193 (29 May 2007).

northeastern part and establishing firmer ties with Serbia”,<sup>5043</sup> thereby referring to the “Six Strategic Objectives”.<sup>5044</sup>

1648. **Miletić** drew up the agenda for and participated in a two-day combat readiness analysis briefing held on 29 and 30 January 1995.<sup>5045</sup> During this briefing, Karadžić briefed the participants on “defining future political and military goals and strategies of conducting the war and peace strategies”.<sup>5046</sup> Present at the briefing, other than **Miletić**, were Karadžić, the Prime Minister, the Minister of Defence, Mladić with “his associates”, the corps commanders, and the commanders of the units that had direct links to the Main Staff.<sup>5047</sup> **Miletić**’s task during the briefing included extracting the most important points and drawing conclusions, based on the discussions from the participants, which if accepted by Karadžić would form the basis for a directive.<sup>5048</sup> Also, in relation to the combat readiness analysis, all corps were ordered by Mladić to submit their prepared combat readiness analysis reports directly to **Miletić**.<sup>5049</sup> The combat readiness briefing of January resulted in Directive 7.<sup>5050</sup> The Trial Chamber finds that by participating in the combat readiness analysis, **Miletić** gained a wide and substantive knowledge of the strategies and goals of RS.

<sup>5043</sup> Ex. P03919, “RS Supreme Command Directive 6, 11 November 1993”, para. 3. According to Obradović, para. 3 of the Directive “was drawn up in the staff. The proposal for the use of their own forces is done by the operations and training organ, but also the organs of the various branches.” Ljubomir Obradović, T. 28331 (17 Nov 2008). Directive 7 refers directly to Directive 6, stating “In the implementation of other forms of support for combat operations, all measures are to be taken according to Directive Op no. 6.” Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, para. 6.1.

<sup>5044</sup> Ex. P02755, “Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina, 12 May 1992, published in the Official Gazette of Republika Srpska, Vol. II, no. 22, Art. 386, 26 November 1993”. *See supra*, para. 89.

<sup>5045</sup> Ex. 5D00967, “Schedule briefing on Combat Readiness in 1994, 29 and 30 January 1995, signed by Mladić”. The agenda is signed by **Miletić** “Standing in for the Chief of Staff” (p. 5) and approved by Mladić (p. 1).

<sup>5046</sup> *Ibid.*, p. 3.

<sup>5047</sup> Novica Simić, T. 28498–28499 (19 Nov 2008).

<sup>5048</sup> *Ibid.*, T. 28503–28504 (19 Nov 2008). Simić described **Miletić**’s tasks as “secretarial”. *Ibid.*

<sup>5049</sup> Ex. 5D01206, “VRS Main Staff Order on preparation, organization and realization of reporting on combat readiness in 1994, type-signed Mladić, 23 January 1995”, p. 6. The Drina Corps command combat readiness analysis for 1995 suggested as one of its main assignments for 1995 to “find a way to completely close off the Srebrenica and Žepa enclaves.” It further suggested to “[r]esolve [...] at the Main Staff and Supreme Command level: Find a way to eliminate the [Srebrenica and Žepa] enclaves. We see two ways to resolve this matter: either by a military defeat of the enemy force in the enclave or by political and diplomatic means.” Ex. 5D01394, “Drina Corps Analysis of combat readiness for 1994, signed by Milenko Živanović”, pp. 22–23.

<sup>5050</sup> Novica Simić, T. 28659–28660 (21 Nov 2008); Ljubomir Obradović, T. 28319–28320 (17 Nov 2008); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, p. 51, para. 109; Slobodan Kosovac, T. 30058 (13 Jan 2009), T. 30096–30097 (14 Jan 2009). Also, Directive 7 refers to the VRS Main Staff Order to take measures to raise the combat readiness of commands and units during the four-month truce of 5 February 1995, which was issued following the January combat analysis readiness briefing. Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 7; Ex. 5D00969, “VRS Main Staff Order to take measures to raise the combat readiness of commands and units during the four-month truce, signed by Mladić, 5 February 1995”. Kosovac, referring to Ex. 5D01394, “Drina Corps document, Analysis of combat readiness for 1994, signed by Živanović”, testified that the suggestion contained in the report to “Resolve [...] at the Main Staff and Supreme Command level: Find a way to eliminate the [Srebrenica and Žepa] enclaves. We see two ways to resolve this matter: either by a military defeat of the enemy force in the enclave or by political and diplomatic means” was unusual and out of military context as the Drina Corps had received an order for a complete close-off of the Žepa and Srebrenica enclaves as early as 1993. Kosovac excluded the possibility that this suggestion was linked to Directive 7. Slobodan Kosovac, T. 30071–30073 (13 Jan 2009); Ex. 5D01394, “Drina Corps Analysis of combat

1649. The Trial Chamber has heard conflicting evidence on the method of drafting of Directive 7.<sup>5051</sup> If it would have been drafted in accordance with the “full” or “complete” method, all sectors and administrations of the VRS Main Staff would have been duty-bound to provide **Miletić** with their input.<sup>5052</sup> Following an analysis of all evidence before it, the Trial Chamber is satisfied **Miletić** drafted Supreme Command Directive 7 following the full method. Whether or not the command organs of the Main Staff provided the actual words of Directive 7, the Trial Chamber is satisfied they provided substantive input.

1650. Directive 7 was signed by Karadžić and dated 8 March 1995.<sup>5053</sup> The Directive was forwarded to the corps by Milovanović by letter dated 17 March 1995.<sup>5054</sup> The Trial Chamber takes note of the time gap between the date of Directive 7 and the date it was forwarded to the corps. It however also notes there is no conclusive evidence as to what happened during this period.<sup>5055</sup> On

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readiness for 1994, signed by Milenko Živanović”. See also Ex. 5D00988, “Drina Corps work plan for Nov 1994, signed by Živanović, 29 October 1994”.

<sup>5051</sup> Milovanović and Lazić testified Directive 7 was drafted by **Miletić** in accordance with the full-method or complete method. Manojlo Milovanović, T. 12275 (30 May 2007); Milenko Lazić, T. 21763 (4 June 2008). Assistant Commander Skrbić testified he never saw Directive 7 until shown by the Prosecution in 2005, let alone participated in its drafting. Petar Skrbić, T. 15517–15518 (17 Sept 2007). Kosovac testified there is nothing in Directive 7 as such that suggested the method according to which it was drafted. Slobodan Kosovac, T. 30256–30258 (16 Jan 2009). Miljanović, Chief of the Operations and Logistics Department—and during absence of Đukić appointed to stand for him from the end of March—testified he did not recall receiving any request to draft any directive or instructions from Đukić to prepare any proposals for a Directive around the end of March. Ratko Miljanović, T. 28957 (27 Nov 2008).

<sup>5052</sup> Manojlo Milovanović, T. 12275 (30 May 2007); Petar Skrbić, T. 15519–15521 (17 Sept 2007). When asked if **Miletić** approached various sectors in order to ask for their input, Skrbić replied he would have been duty-bound to do so if “the commander of the Main Staff had issued an order to him to consult particular sectors and to ask for their input”. Petar Skrbić, T. 15517–15518 (17 Sept 2007). Skrbić however testified he never saw Directive 7 until shown by the Prosecution in 2005, let alone participated in its drafting. *Ibid.*

<sup>5053</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 2. See also Manojlo Milovanović, T. 12290 (31 May 2007) (testifying that as far as he remembered, Directive 7 was issued on 8 March 1995).

<sup>5054</sup> See, e.g., Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 1; Ex. 5D01326, “Letter forwarding Directive 7 to the Herzegovina Corps, signed by Milovanović, 17 March 1995”; Ex. 5D01327, “Letter forwarding Directive 7 to the Sarajevo-Romanija Corps, signed by Milovanović, 17 March 1995”.

<sup>5055</sup> According to Kosovac, based on the date on Directive 7 and according to military practice, it could only have been forwarded to Karadžić on 7 March at the latest “in order to reserve the number”. Karadžić had a meeting with General Đukić and minister Ninković on 7 March at 2 p.m. Considering Directive 7 was qualified as state-secret and should be forwarded in accordance with applicable regulations, Đukić could have taken the Directive to Karadžić, though Kosovac testified it could also have been delivered in a different way. Also the notes in Karadžić’s diary on 7 March refer to a call with Mladić. Kosovac testified that under normal circumstances, when the Main Staff had prepared a document that required approval by Karadžić, the draft would be reported to the Supreme Commander by the Commander of the VRS. According to Kosovac, it was “highly likely that this directive was sent and that it was said on the phone that it had been sent and that if anything further is needed, then the commander of the VRS was prepared to provide additional explanations”. Slobodan Kosovac, T. 30082–30084 (14 Jan 2009); Ex. 5D01322, “Diary of the Radovan Karadžić’s secretary for the year 1995”, pp. 26–27. According to Masal, the time between 8 March and 17 March was too long considering the document was strictly confidential and very important for further combat activities of the VRS. Dragiša Masal, T. 29055 (1 Dec 2008). Simić testified the delay was “surprising”. He testified that possibly there was dissatisfaction with the document so it was rephrased or there was nobody to forward it. Novica Simić, T. 28513 (19 Nov 2008). Kosovac testified that it was very likely that between 8 and 17 March, Directive 7 was being kept by the President or Supreme Commander of the VRS and it was received by the VRS Main Staff either immediately before it was dispatched further to the Corps, or on the same or following day. He testified there was no set time frame for forwarding an urgent directive to the Corps. Slobodan Kosovac, T. 30084 (14 Jan 2009).

16 March a meeting took place at Karadžić's office, attended by Milovanović and Tolimir.<sup>5056</sup> There is no evidence Miletić was present during the meeting. Taking into consideration the persons attending the meeting, Directive 7 may well have been discussed. However, the Trial Chamber has no basis to draw any conclusion as to the substantive content of the discussion at the meeting. The Trial Chamber further finds that based on the available evidence the actual date of Directive 7 cannot be established. Nevertheless, the Trial Chamber is satisfied that at least on 17 March 1995, the Directive was finalised since on this date it was forwarded to the corps.

1651. Paragraph 5 of Directive 7 concerned the assignment of units and ordered the Drina Corps to carry out "complete physical separation of Srebrenica from Žepa [...] as soon as possible, preventing even communication between individuals in the two enclaves" and "[b]y planned and well-thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for inhabitants of Srebrenica and Žepa".<sup>5057</sup> The Trial Chamber is satisfied that this paragraph fell within the jurisdiction of the Administration for Operations and Training, and accordingly, as Chief of Administration for Operations and Training, **Miletić** played a role in providing the underlying information for this paragraph.<sup>5058</sup>

1652. In order to draft Directive 7, **Miletić** required an in-depth knowledge of the vision on the role of the VRS in implementing its strategic objectives. The Trial Chamber recalls that **Miletić** joined the Main Staff in July 1992 and was transferred to the Administration of Operations and Training at least as of 1 May 1993. He became the Chief of this Administration at least from 1 September 1994, in which position he was responsible for drafting orders and directives.<sup>5059</sup> The Trial Chamber is satisfied that through his position and function at the Main Staff, **Miletić** gained

<sup>5056</sup> Ex. 5D01322, "Diary of the Radovan Karadžić's secretary for the year 1995", p. 31. Kosovac testified that all participants mentioned in the diary maintained by Karadžić's secretary as having attended the 16 March meeting were necessary and indispensable for Directive 7 to be prepared. Slobodan Kosovac, T. 30240–30242 (16 Jan 2009). *See also ibid.*, T. 30086–30087 (14 Jan 2009).

<sup>5057</sup> Ex. P00005, "RS Supreme Command Directive 7, 8 March 1995", para. 5.

<sup>5058</sup> According to Obradović, paragraph 5 was put together by the Administration for Operations and Training and the "arms organs", and **Miletić** would have played a role in it. He also testified that **Miletić** was familiar with the final text of Directive 7. Ljubomir Obradović, T. 28346, 28352 (17 Nov 2008). According to Skrbić, the Assistant Commander for Organisation, Mobilisation and Personnel Affairs, none of the sections of the Directive were within **Miletić**'s jurisdiction. He testified that Karadžić would have given out the tasks in paragraph 5. Petar Skrbić, T. 15519–15521, 15523 (17 Sept 2007). Kosovac was of the same opinion with regard to paragraph 5 but added that to his knowledge, "the VRS adhered to the standard to involve commanders of the corps as much as possible in the decision-making process whenever the possibilities allowed that." Slobodan Kosovac, T. 30099–30102 (14 Jan 2009). The Trial Chamber, having considered the content of paragraph 5 deals with combat operations, is satisfied this paragraph fell within **Miletić**'s purview. In addition, the Trial Chamber accepts the evidence of Obradović on this matter. Obradović was knowledgeable on the issue following his position as chief of the Operations Department within the Administration for Operations and Training in 1995. The Trial Chamber considers the evidence of Kosovac and Skrbić to be speculative on this point.

<sup>5059</sup> *See supra*, paras. 1622, 1626. Prior to Directive 7, **Miletić** for example drafted the Combat Order for Operation *Spring-93*, aimed at the "liberation of Žepa and Goražde", and Directive 6, which included references to the Strategic Objectives. Ex. P02742, "VRS Main Staff Combat order for the liberation of Žepa and Goražde, signed by Milovanović, 1 May 1993", p. 15; Ex. P03919, "RS Supreme Command Directive 6, 11 November 1993", p. 8.

the required knowledge of the larger political and military context of the conflict and the goals and strategies of RS. The Trial Chamber is satisfied that **Miletić** used this knowledge in drafting Directive 7.

1653. The Trial Chamber finds that **Miletić** was well-acquainted with the final text of Directive 7, including the part setting out the criminal objective to forcibly remove the Bosnian Muslims from the enclaves.<sup>5060</sup> The Trial Chamber also finds that through the process of drafting the document and the final document itself, a copy of which **Miletić** kept in his strong box at the Main Staff,<sup>5061</sup> **Miletić** had indepth knowledge of the political leadership's vision on the role of the VRS in implementing its strategic objectives. Considering that Directive 7 was forwarded to the Corps on 17 March 1995, the Trial Chamber is convinced that at least from 17 March, **Miletić** was familiar with the final version of Directive 7.

1654. Subsequent to the issuance of Directive 7, **Miletić** was entrusted with the task of drafting VRS Main Staff Directive 7/1.<sup>5062</sup> Directive 7/1 was based on Directive 7 and laid out a military technical series of orders and instructions for the Corps to implement and made direct references to Directive 7.<sup>5063</sup> Directive 7/1 was available for review at the Main Staff.<sup>5064</sup>

(ii) Role in the Convoy Approval Process

1655. As described previously, notification was required of all convoys passing through RS, though different procedures applied to UNPROFOR convoys than to humanitarian aid convoys.<sup>5065</sup>

1656. Requests for the passage of UNPROFOR convoys were sent to the VRS and were normally decided by Mladić or Milovanović, who marked “yes” or “no” at the top of the page of the original request, together with their initials indicating approval or denial.<sup>5066</sup> **Miletić** at times also initialled the requests.<sup>5067</sup> **Miletić** also signed the documents—notifications—that were subsequently drawn up and sent to UNPROFOR.<sup>5068</sup>

<sup>5060</sup> See *supra*, paras. 199, 762.

<sup>5061</sup> See *supra*, para. 200.

<sup>5062</sup> Ex. 5D00361, “VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995”.

<sup>5063</sup> *Ibid.*, p. 2. Directive 7/1 does not repeat the language of Directive 7 on the creation of an unbearable situation for the population of Srebrenica and Žepa. See *supra*, paras. 202–203, 763–765.

<sup>5064</sup> Ljubomir Obradović, T. 28331 (17 Nov 2008).

<sup>5065</sup> See *supra*, paras. 214–215, 217, 222.

<sup>5066</sup> See *supra*, para. 216.

<sup>5067</sup> Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, p. 3. See also Bogdan Sladojević, T. 14398 (27 Aug 2007); Ex. P02952, “Notes from meeting between Smith, Bachelet, Miletić and Milosević, 19 September 1995”, p. 3, para. 5 (stating that when discussing the issue of convoys to Goražde, Miletić had said that “he would grant clearance if a convoy bid was put in for Goražde”); Ex. P02438a, “Intercept, 28 October 1995, 11:20” (a conversation in which Milovanović requested to be put through to 155, which was answered by an unidentified person. Milovanović then said “I needed Miletić or one of those who give permits”). The Trial

1657. Between 1 January and 28 April 1995, **Miletić** initialled at least 82 UNPROFOR requests attached to VRS Main Staff letters, relating mainly to 12 and 16 January; and 18–19 April.<sup>5069</sup> Fifty of these initialled documents involved approvals and 32 denials.<sup>5070</sup> Of the total of 1,413 initials found on UNPROFOR convoy requests, those of Mladić are found on 652 (481 approvals and 163 denials), those of Milovanović on 302 (131 approvals and 165 denials), those of Tolimir on 293 (242 approvals and 47 denials), and others initialled 84 times.<sup>5071</sup> The Trial Chamber does not have initialled UNPROFOR requests from after 28 April in evidence.

1658. Requests for passage of humanitarian aid convoys, other than UNPROFOR, went through the State Committee for Cooperation with the United Nations and International Humanitarian Organisations and its Coordinating Body for Humanitarian Operations.<sup>5072</sup> The VRS was informed of the State Committee's views.<sup>5073</sup> The Trial Chamber has found that the VRS still had input in the final decision on the approval of humanitarian aid convoys.<sup>5074</sup>

1659. As explained previously, the VRS Main Staff sent notifications for approved and denied UNPROFOR convoys to UNPROFOR. The Main Staff also sent notifications to subordinate units concerning approved UNPROFOR and other humanitarian aid convoys.<sup>5075</sup> In the absence of Milovanović, **Miletić** signed these notifications.<sup>5076</sup>

1660. Out of the 353 VRS Main Staff convoy-related notifications addressed to UNPROFOR or one of the Corps, dating from 1 January to 28 April 1995, that were the subject of stipulations

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Chamber considers the notes of the meeting between Smith, Bachelet, **Miletić** and Milosević and the intercepted conversation of 28 October 1995 as further evidence of **Miletić**'s authority in the convoy approval procedure.

<sup>5068</sup> Ljubomir Obradović, T. 28464–28465 (19 Nov 2008) (testifying Đurđić drafted the approval or refusal document based on the orders of the staff of Mladić. These documents, information notes, were signed by **Miletić** as Đurđić was not authorised to sign them); Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, p. 2 (stipulating that out of the 353 VRS Main Staff convoy-related documents addressed to UNPROFOR or one of the Corps, dating from 1 January to 28 April 1995, 109 were signed by **Miletić**. His name was type-signed 67 times); Slavko Kralj, T. 29259–29261 (4 Dec 2008) (testifying that only in exceptional cases and if the convoy was really important, **Miletić** could be talked into signing. This was not common practice. Alternatively, **Miletić** would ask the convoy to wait until his superiors came back or he obtained approval from Milovanović to sign the document.).

<sup>5069</sup> Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, p. 2 and Annex 3.

<sup>5070</sup> *Ibid.*, Annex 3.

<sup>5071</sup> Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, pp. 2–3.

<sup>5072</sup> *See supra*, paras. 220–221.

<sup>5073</sup> *See supra*, para. 221.

<sup>5074</sup> *See supra*, para. 223.

<sup>5075</sup> *See supra*, paras. 216–217, 222. Occasionally, the notifications also referred to items that were denied.

<sup>5076</sup> Slobodan Kosovac, T. 30190 (15 Jan 2009), T. 30480-300481 (21 Jan 2009); Slavko Kralj, T. 29272 (4 Dec 2008). *See also* Ex. 5D00759, “Expert report, Functioning of the VRS, by Military expert Slobodan Kosovac, 30 March 2008”, paras. 190–191 (“190. Major General Radivoje Miletić participated in decision-making regarding the approving of humanitarian aid and the passage of convoys. 191. Documents signed by General Radivoje Miletić were notifications, which did not have the character of orders.” When asked to explain what he meant when he had written that “Miletić participated in the decision-making process” Kosovac testified this referred to **Miletić**'s role in forwarding the information. Slobodan Kosovac, T. 30480 (21 Jan 2009)). *See also* Ex. 5D01447, “Stipulations concerning convoy-related documents, 2 June 2009”, Appendix, Table 3.

between **Miletić** and the Prosecution, 109 were signed by **Miletić**. His name was type-signed 67 times.<sup>5077</sup> The Trial Chamber has furthermore in evidence six Main Staff notifications concerning UNPROFOR convoys sent after April 1995.<sup>5078</sup> All six notifications are signed by **Miletić**. The Trial Chamber also has evidence that after 28 April, the Main Staff sent 11 notifications to its subordinate units concerning humanitarian convoys, other than UNPROFOR.<sup>5079</sup> Of these, seven notifications are signed by **Miletić**.

<sup>5077</sup> Ex. 5D01447, "Stipulations concerning convoy-related documents, 2 June 2009", p. 2. Milovanović's name was type-signed 232 times and signed 125 times; Tolimir's name was type-signed 2 times and signed 4 times; Mladić's name was type-signed 24 times and signed 17 times; type-signed and signed by others on 28 and 96 occasions. *Ibid.* The documents that are the subject of the Stipulations primarily comprise VRS Main Staff correspondence with UNPROFOR concerning the disposition of convoy requests, as well as related notifications and instructions issued by the VRS Main Staff to its subordinate corps. *Ibid.*, p. 1. The Trial Chamber has three additional notifications from between 1 January and 28 April 1995 in evidence type-signed **Miletić** that are not included in the Stipulations. Ex. P02651a, "VRS Main Staff document to military post 7111 signed Miletić, 14 April 1995" (notifying approval of 4 UNPROFOR convoys and non-approval of 13 UNPROFOR convoys); Ex. P02652b, "VRS Main Staff notification of humanitarian convoys to Command Military Post 7111 and VP 7102, signed by Miletić, 14 April 1995" (notifying approval of 7 humanitarian convoys); Ex. P03989, "VRS Main Staff notification UNPROFOR convoys to Command of military posts 7111 and 7598 signed by Miletić, 18 April 1995" (notifying approval of 7 UNPROFOR convoys, partial approval of 1 UNPROFOR convoys, and non-approval of 11 UNPROFOR convoys).

<sup>5078</sup> Ex. P02497, "VRS Main Staff Notification of UNPROFOR convoys for Žepa, Goražde, and Srebrenica addressed to various brigades, signed by Miletić, 18 June 1995" (3 approvals); Ex. P02554, "VRS Main Notification of UNPROFOR convoys to the Sarajevo-Romanija Corps and the Drina Corps, signed by Miletić, 1 July 1995" (approval of 8 convoys—of which 2 conditionally—and refusal of 2 convoys); Ex. P02556, "VRS Main Staff Notification re UNPROFOR convoys to the Drina Corps, signed by Miletić, 3 July 1995" (departure of personnel from Srebrenica approved; return of convoy to Srebrenica denied); Ex. P02558, "VRS Main Staff notification re UNPROFOR convoys to Military Posts 7598 and 7111, 5 July 1995, signed by Miletić (2 approvals, 2 partial approvals, including 1 departure of personnel approved whereas return of the convoy was denied); Ex. P02565, "VRS Main Staff notification re UNPROFOR convoys to Military Post 7111, signed by Miletić, 12 July 1995" (1 approval); Ex. P02586, "VRS Main Staff notification to Military Post 7111 re approved movement UNPROFOR staff, signed by Miletić, 27 July 1995" (1 approval).

<sup>5079</sup> Ex. 5D00856, "VRS Main Staff Document to the military posts 7102, 7111, 7161, 7001 regarding humanitarian aid convoys, type-signed Manojlo Milovanović, 12 May 1995" (approval of convoys for 13, 15–16, 18 May); Ex. 5D00903, "VRS Main Staff notification concerning humanitarian convoys, signed Manojlo Milovanović, 12 May 1995" (approval of convoys for 13–14, 16–18 May); Ex. 5D00905, "VRS Main Staff notification to Drina Corps and East Bosnia Corps regarding humanitarian aid convoys, signed by Manojlo Milovanović, 19 May 1995" (approval of convoys for 20–21, 23–26 May; request for satellite equipment not approved); Ex. 5D00907, "VRS Main Staff notification on humanitarian convoys to military postcodes 7111 and 7102, signed by Milovanović, 21 May 1995" (approval of 1 convoy on 30 May); Ex. P02714, "VRS Main Staff notification concerning UNHCR convoys, type-signed Miletić, 2 June 1995" (approval of convoys on 3–4, 6–8 June; not approved the Swedish construction project for Srebrenica, one truck of school supplies, 60 litres of oil for saws); Ex. P02717, "VRS Main Staff notification to Drina Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995" (approval of 1 convoy of departing MSF staff on 13 June; exit approved, rotation not approved); Ex. 5D01429, "VRS Main Staff notification to the Drina Corps and East Bosnia Corps concerning humanitarian convoys, type-signed Miletić, 12 June 1995" (approval of convoys on 13–15 June; not approved 1 truck of school supplies, 60 litres of oil for saws); Ex. P04062, "VRS Main Staff Notification to the Drina Corps on authorization of humanitarian aid convoys by Miletić, 30 June 1995" (approval of convoys on 4–5 July; not approved 1 truck of school supplies); Ex. P02570, "VRS Main Staff Notification re movement ICRC and UNHCR to various Military Posts, signed by Miletić, 18 July 1995" (approval of movement of ICRC and UNHCR staff on 19–21 June); Ex. P02551, "VRS Main Staff notification to Military Post 7111 concerning movement of UN civilian observers, type-signed Miletić, 29 June 1995" (approval of movement of UN civilian observers on 30 June); Ex. P02661a, "VRS Main Staff notification to East Bosnia Corps, Drina Corps, Sarajevo-Romanija Corps and Herzegovina Corps, signed by Miletić, 26 July 1995 (approval of travel permits for visits of ICRC teams to reception areas and prisons 26–29 July).

(iii) Role in the Operations in Srebrenica and Žepa

1661. As previously elaborated, **Miletić** kept the President of RS updated of the preparations and the military activity in the area of the Drina Corps through daily and interim Main Staff reports.<sup>5080</sup> He based these reports on the daily and interim reports to the VRS Main Staff from the Drina Corps and other units.<sup>5081</sup> Furthermore, during the daily morning briefings at the Main Staff, **Miletić**, as “the best-informed [officer] on the situation in various theatres of war”, briefed everyone attending on any problems.<sup>5082</sup>

1662. **Miletić**’s authority, his coordinating role at the Main Staff, and the level of his knowledge are further exemplified by his acts and his involvement in the operations concerning Srebrenica and Žepa. As detailed below, **Miletić** was informed of the details of the operations and their implementation; he was in direct contact with subordinate units, including at brigade level, and was the person to turn to for advice.

a. 28 June to 6 July 1995

1663. On 28 June 1995, Karadžić went to the Drina Corps Command in Vlasenica, where he met with Krstić. Karadžić enquired how much time Krstić needed to set off for Srebrenica and told him to try to keep the preparations as short as possible.<sup>5083</sup>

1664. Following Karadžić’s visit to the Drina Corps Command, the Main Staff kept him updated on the combat readiness of the forces for the Srebrenica operation. More specifically, the 2 and 3 July Main Staff reports to Karadžić, type-signed **Miletić**, state that unengaged forces were preparing for “forthcoming combat operations”.<sup>5084</sup> On 4 July, Karadžić was informed that the Corps units were “at the level of combat readiness that was ordered” and that they were “regrouping their forces in order to completely close off the Srebrenica enclave”.<sup>5085</sup> On 5 July, it was reported that the “grouping of forces [...] was carried out”.<sup>5086</sup> The Main Staff report to Karadžić on 6 July,

<sup>5080</sup> See *supra*, paras. 1638–1639.

<sup>5081</sup> *Ibid.*

<sup>5082</sup> Manojlo Milovanović, T. 12311 (31 May 2007). T. 12188–12189 (29 May 2007). See also *supra*, para. 1637.

<sup>5083</sup> See *supra*, para. 242.

<sup>5084</sup> Ex. P02889, “VRS Main Staff Report, type-signed Miletić, 2 July 1995”, p. 3 (“[u]nengaged forces are being prepared for forthcoming combat operations”); Ex. P02890, “VRS Main Staff Report, type-signed Miletić, 3 July 1995”, p. 4 (“[f]orces that are not engaged are carrying out preparations for forthcoming combat operations”).

<sup>5085</sup> Ex. P03164, “VRS Main Staff situation report, type-signed Miletić, 4 July 1995”, p. 3 (“Corps units are at the level of combat readiness that was ordered, they are firmly holding on to the lines reaches, regrouping their forces in order to completely close off the Srebrenica enclave”).

<sup>5086</sup> Ex. P03166, “VRS Main Staff Situation Report, type-signed Miletić, 5 July 1995”, p. 3.



type-signed **Miletić**, states that the Drina Corps was prepared for active combat in the areas of Srebrenica and Žepa.<sup>5087</sup>

b. 7–11 July 1995

1665. **Miletić** submits that he was in Belgrade between 7 and 11 July 1995.<sup>5088</sup> The Prosecution is not “contesting in any real way General Miletić’s quasi-alibi of being in Belgrade from the 7th through the 11th”.<sup>5089</sup> The Trial Chamber is of the view that it has not been established that **Miletić** was at the Main Staff during this period.<sup>5090</sup>

1666. On 9 July, Krstić reported from the Drina Corps IKM to the Main Staff and Drina Corps Command, that the units had “created conditions for extending the attack toward Srebrenica”.<sup>5091</sup> That same day, Karadžić issued an order authorising the capture of Srebrenica town.<sup>5092</sup> At 11:50 p.m., Tolimir sent a telegram to the Commander of the Drina Corps stating that Karadžić had “been informed of successful combat operations around Srebrenica” and “agreed with the continuation of operations for the take over of Srebrenica, disarming of Muslim terrorists gangs and complete demilitarisation of the Srebrenica enclave”.<sup>5093</sup> The Main Staff report of 9 July, type-signed **Miletić**, reported that the forces conducting active combat operations around the Srebrenica enclave were advancing according to plan.<sup>5094</sup> Further, the Main Staff report of 11 July, type-signed **Miletić**, states that VRS forces had entered the town of Srebrenica and that an interim report would

<sup>5087</sup> Ex. P02895, “VRS Main Staff Situation Report, type-signed Miletić, 6 July 1995”, p. 4.

<sup>5088</sup> Miletić Final Brief, paras. 450–451.

<sup>5089</sup> Prosecution Closing Argument, T. 34072 (2 Sept 2009). The Prosecution submits that **Miletić** would have been briefed while in Belgrade, or at least upon his return to Crna Rijeka. *Ibid.*, T. 34072–34073 (2 Sept 2009).

<sup>5090</sup> The Trial Chamber is satisfied that on Saturday 8 July **Miletić** was in Belgrade to celebrate his daughter’s birthday and his recent promotion to the rank of General. Maja Spiroski, T. 29414–29419 (9 Dec 2008); Zoran Matejić, Ex. 5D01393, “92 *ter* statement”, pp. 1–2 (30 May 2008); Ivan Đokić, Ex. 5D01392 “92 *ter* statement” (29 May 2008), p. 1; Ranko Klacar, T. 29430–29431, 29437–29438 (9 Dec 2008).

<sup>5091</sup> Ex. 7D00762, “Interim Combat Report from the Drina Corps Forward Command Post signed by Radislav Krstić, 9 July 1995”, para. 2.

<sup>5092</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 101. *See also* Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”; Miroslav Deronjić, Ex. P03139a, “confidential – 92 *quater* statement”, BT. 6132 (19 Jan 2004).

<sup>5093</sup> Ex. P00033, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995”, paras. 1–2. Through the telegram, Karadžić ordered that during the continued operations members of UNPROFOR and the Muslim civilian population be fully protected (para. 3). *See also* Prosecution Adjudicated Facts Decision, Annex, Fact 101.

<sup>5094</sup> Ex. P03170, “VRS Main Staff Situation report, signed by Miletić, 9 July 1995”. The report does not refer to the details mentioned in Ex. 7D00762, “Interim Combat Report from the Drina Corps Forward Command Post signed by Radislav Krstić, 9 July 1995”, although according to the stamps on these documents, Ex. P03170 was received after the Drina Corps interim report. The Trial Chamber is satisfied that the information in the Drina Corps interim combat report reached the Main Staff. In light of its finding that **Miletić** was absent from the Main Staff at that time, the Trial Chamber considers it of less relevance whether the information reached the officers of the Administration for Operations and Training who drafted the Main Staff report to Karadžić on this day or whether, as **Miletić** argues, it was received by or transmitted to Tolimir directly. As found *infra*, the Trial Chamber is convinced **Miletić** was briefed upon his return to the Main Staff.

be issued later.<sup>5095</sup> It has not been established **Miletić** was at the Main Staff when these reports were issued. Therefore, it cannot be assumed **Miletić** had knowledge of the content of the above documents at the time they were issued.

c. 12 July 1995

1667. On 12 July in the morning, **Miletić** was collected in Belgrade and returned to the Main Staff in Crna Rijeka.<sup>5096</sup> Upon his return, it would be impossible for **Miletić** to effectively carry out his functions as Chief of Operations and Training, and any tasks undertaken for the Chief of Staff, without being fully informed of recent developments and the current state of key military actions. Of these, the attack on and the fall of Srebrenica would have been one of the most important at that time. The Trial Chamber is therefore satisfied **Miletić** was briefed in detail about all the developments and the situation in Srebrenica as soon as he arrived back at Crna Rijeka.<sup>5097</sup>

1668. As will be detailed below, following his return to the Main Staff and in the absence of Milovanović, **Miletić** continued to be in charge of receiving daily and interim (combat) reports and drafting daily Main Staff reports updating the President on the events. The information included details on the situation at the front, the transportation of the civilian population out of Srebrenica and Žepa, and the taking of POWs. **Miletić** furthermore played a role in monitoring the movement of the column of Bosnian Muslims.

1669. In the evening of 12 July, the VRS Main Staff report, type-signed **Miletić**, informed the President with regard to the Srebrenica enclave that “the enemy tried to pull out together with the women and children towards Ravni Buljin and Konjević Polje”.<sup>5098</sup> The report further states that in the “[e]ngagement of units in the execution of the *Krivaja-95* tasks: all the combat tasks are going ahead as planned. During the day, they liberated Potočari, and they continue advancing in order to liberate all of the settlements in the Srebrenica enclave. [...] part of our units and MUP units have organised ambushes in order to destroy Muslim extremists who have not surrendered and who are attempting to break out from the enclave in the direction of Tuzla.”<sup>5099</sup> The 12 July report also states that “[i]n the area of responsibility of the Drina Corps, the population is being taken by

<sup>5095</sup> Ex. P03019, “VRS Main Staff report, situation on the battlefield, type-signed by Miletić, 11 July 1995”, pp. 3–4.

<sup>5096</sup> Maja Spiroski, T. 29416 (9 Dec 2008). See also Zoran Matejić, Ex. 5D01393, “92 *ter* statement”, p. 2 (30 May 2008); Velo Pajić, T. 28793–28794 (25 Nov 2008).

<sup>5097</sup> **Miletić** was duty-bound to brief Milovanović during his absence and upon his return to the VRS Main Staff. Manojlo Milovanović, T. 12303 (31 May 2007). See also Dragiša Masal, T. 29068 (1 Dec 2008); Ex. 5D01278, “Summary of intercepted conversation involving Milovanović and Miletić, 18 April 1995, 09:46 hours,” (a conversation during which **Miletić** updated Milovanović on the situation on the fronts). The Trial Chamber is satisfied that in order to do so, **Miletić** had to be fully briefed himself.

<sup>5098</sup> Exs. P00044, P02748, “VRS Main Staff Daily Combat Report, 12 July 1995”, p. 3.

<sup>5099</sup> *Ibid.*, p. 4.

organised transport from Srebrenica towards Kladanj. During the day, about 10,000 Muslims are estimated for transport.”<sup>5100</sup> The information contained in the report was well-known at the Main Staff.<sup>5101</sup>

d. 13 July 1995

1670. On 13 July, Krstić gave an order to commence the military operation against the Žepa enclave.<sup>5102</sup> In the Main Staff daily report to the President, type-signed **Miletić**, it was reported that “[c]ombat groups from other Corps units are in the final stages of preparations aimed at settling the issue of the Žepa enclave”.<sup>5103</sup> The report also addresses the situation in Srebrenica. It states that the “enemy from the former enclave of Srebrenica is in a state of total disarray, and the troops are surrendering in large numbers to the VRS. A 200 to 300-strong group of soldiers managed to break through to the general sector of Mt. Urdč, from where they are trying to break through to the territory under Muslim control.”<sup>5104</sup> It was further reported that there was “organised and planned transfer of the population from Srebrenica to the territory under Muslim control”.<sup>5105</sup>

1671. Also on 13 July, around 3 p.m., Tolimir issued an order to the Command of the Military Police Battalion of the Protection Regiment, which included proposals on the procedure for POWs. Mladić and **Gvero** were copied.<sup>5106</sup> In the last paragraph, the order states that once the Commander of the Military Police Battalion received the order, “he shall contact General Miletić and receive from him additional orders and verify if the proposal has been approved by [Mladić]”.<sup>5107</sup> Later that day, Mladić issued an order which included a number of Tolimir’s proposals.<sup>5108</sup>

<sup>5100</sup> Exs. P00044, P02748, “VRS Main Staff Daily Combat Report, 12 July 1995”, p. 4.

<sup>5101</sup> Nedeljko Trkulja, T. 15096–15098 (10 Sept 2007).

<sup>5102</sup> Ex. P00114, “Drina Corps Order signed by Krstić, 13 July 1995”, p. 1.

<sup>5103</sup> Ex. P00047, “VRS Main Staff daily combat report, type-signed Miletić, 13 July 1995”, p. 3. See also Ex. P00049, “VRS Main Staff daily combat report, type-signed Miletić, 15 July 1995”, p. 3; Ex. P00050, “VRS Main Staff daily combat report, type-signed Miletić, 16 July 1995”, p. 4 (“Part of the Corps units continue with offensive combat operations around the Žepa enclave, which will be described in the forthcoming interim report”); Ex. P03057, “VRS Main Staff daily combat report, signed by Miletić, 17 July 1995”, p. 4 (“main forces are carrying out combat operations in sector Žepa”); Ex. P03061, “VRS Main Staff daily combat report, signed by Miletić, 18 July 1995”, p. 6 (“parts of the troops have been carrying out in the Žepa sector, scouring the terrain, blocking and destroying the broken-up Muslim formations”).

<sup>5104</sup> Ex. P00047, “VRS Main Staff daily combat report, type-signed Miletić, 13 July 1995”, p.3.

<sup>5105</sup> *Ibid.* On the same day, the Drina Corps reported that “[s]o far the transport of 15,000 Muslims from Potočari to Kladanj has been organised”. Ex. P00136, “Drina Corps regular combat report, signed by Krstić, 13 July 1995”, p. 1.

<sup>5106</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995”.

<sup>5107</sup> *Ibid.*, p. 2. Savčić did not remember drafting the report and did not believe he did as the lay-out is not correct. He testified that he was not in a position to send proposals to Mladić (he wondered why the report did not go out in Tolimir’s name as it concerned his proposals); the heading reads “Borike” and he did not set up the command post at Borike; and the document was not dated. Savčić however did not exclude the possibility he drafted the document dictated by Tolimir. Milomir Savčić, T. 15262–15263 (12 Sept 2007). Simić testified, based on the handwritten notes on the document, that it had been dispatched (although it did not carry a stamp). However, based on the

1672. **Miletić**'s role with regard to the order from Tolimir was that of intermediary, follow up with Mladić and transmit his decision on the proposals.<sup>5109</sup> The Trial Chamber notes that **Miletić** was personally mentioned in the order as the person to be contacted. The Trial Chamber finds that this shows his vital coordinating role at the Main Staff in the flow of information.

e. 14 July 1995

1673. On 14 July, Tolimir sent a request to the Main Staff, addressed personally to **Miletić**, stating that in order to monitor combat activities around Žepa and have a complete review of the Drina Corps Command radio network with brigade commands, it was necessary to incorporate the VRS Main Staff in the work plan of the Drina Corps communications system with radio and encryption equipment.<sup>5110</sup> Tolimir sent the request to **Miletić** as he was standing in for Milovanović with regard to organising work at the command post; since the Armoured Units, which included the communications officers, were directly subordinate to Milovanović, in his absence, **Miletić** conveyed tasks and was responsible for discipline and order in these Units.<sup>5111</sup>

1674. That same day at 10:27 p.m., a conversation was intercepted, in which a person identified as "Vilotić" called Palma<sup>5112</sup> and asked for Obrenović.<sup>5113</sup> As Obrenović was in the field, Vilotić asked for the duty officer and was transferred to Jokić. In the conversation, Jokić confirmed that his Chief was in the field as there were problems at Perunica with "a large group going this way towards [...] the asphalt".<sup>5114</sup> Jokić further stated that they had been promised reinforcements from "the blues", which had not yet arrived.<sup>5115</sup> Vilotić responded "Well, see /about it/ with that Vasić, fuck him..."

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document alone he could not conclude if **Miletić** was aware the VRS had at least 1,000 prisoners under its control. Novica Simić, T. 28726–28727 (24 Nov 2008).

<sup>5108</sup> Ex. 5DP00035, "VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995".

<sup>5109</sup> Petar Skrbić, T. 15616–15617 (19 Sept 2007); Novica Simić, T. 28726–28728 (24 Nov 2008); Milomir Savčić, T. 15313 (13 Sept 2007).

<sup>5110</sup> Ex. P00183, "1st PLPBR document regarding communications device to VRS Main Staff, Miletić, type-signed by Zdravko Tolimir, 14 July 1995". Babić testified he was at the Main Staff in July 1995 and that the network was not formed. Vojislav Babić, T. 29190 (3 Dec 2008). He further testified that Ex. P00183 contained several technical irregularities. During cross-examination, the Prosecution put to Babić what it called an "original" from the Drina Corps collection, and Babić confirmed it also had a number of technical irregularities. He admitted that in war regulations sometimes would be overlooked. *Ibid.*, T. 29190–29192, 29214–29218 (3 Dec 2008). Pajić also testified he was in Crna Rijeka in July 1995 but he did not remember any order on the forming of such a network and to his knowledge it was not formed. Velo Pajić, T. 28787, 28790 (25 Nov 2008). The Trial Chamber does not consider Babić and Pajić's testimony to affect the credibility of the document. Further, for purposes of assessing **Miletić**'s involvement, the Trial Chamber considers it of limited relevance whether the radio network was formed. **Miletić** was not responsible for deciding the request. **Miletić**'s role was to forward the information to the relevant person and provide advice, enabling the receiver to make an informed final decision.

<sup>5111</sup> Ljubomir Obradović, T. 28374–28375 (18 Nov 2008).

<sup>5112</sup> "Palma" was the code name for the Zvornik Brigade. Prosecution Adjudicated Facts Decision, Annex, Fact 87.

<sup>5113</sup> Ex. P01166a, "Intercept 14 July 1995, 22:27 hours", p. 1; PW-168, T. 15998–15999 (28 Sept 2007).

<sup>5114</sup> Ex. P01166a, "Intercept 14 July 1995, 22:27 hours", p. 1.

<sup>5115</sup> *Ibid.*

everything available should be gathered...you must raise them all, Jokić, sound the alert down there in the town” and “[e]veryone who can carry a rifle should go up”.<sup>5116</sup> After that, he stated “[c]arry out my order immediately”.<sup>5117</sup> Jokić told Vilotić that Obrenović was really “engaged to the hilt”, to which Vilotić responded “All right, don’t /tell/ me that.”<sup>5118</sup> Vilotić then told Jokić to get in touch with Vasić and to block the group.<sup>5119</sup> From the context of events that were occurring on 14 July and the reference made to Obrenović, the Trial Chamber is satisfied that the Jokić referred to in the conversation is Dragan Jokić, Duty Officer of the Zvornik Brigade, and that Vasić is Dragomir Vasić, Head of the Zvornik SJB. The Trial Chamber is also satisfied that “Vilotić” in the conversation is the Accused **Miletić**.<sup>5120</sup>

1675. The VRS Main Staff report of 14 July to the President, type-signed **Miletić**, refers to “a major concentration of the enemy forces” whose objective was “most probably” joining the forces pulling out of Srebrenica. The same report states that large numbers of Bosnian Muslim fugitives were surrendering.<sup>5121</sup>

f. 15 July 1995

1676. On 15 July, Mladić was in Belgrade in negotiations with Smith.<sup>5122</sup> **Miletić** was present at the VRS Main Staff.

1677. Dragan Obrenović, Chief of Staff and Deputy Commander of the Zvornik Brigade, called **Miletić**, through extension 155, and requested his permission to open the VRS defence lines in order for the column of Bosnian Muslims to pass.<sup>5123</sup> **Miletić** denied the request and ordered that all the available equipment and manpower be used to fight the column and destroy it.<sup>5124</sup> The Trial Chamber is satisfied that this further evidences that **Miletić** had knowledge of the column and

<sup>5116</sup> Ex. P01166a, “Intercept 14 July 1995, 22:27 hours”, p. 1.

<sup>5117</sup> *Ibid.*

<sup>5118</sup> *Ibid.*, pp. 1–2.

<sup>5119</sup> *Ibid.*, p. 2.

<sup>5120</sup> See PW-168 T. 15997 (closed session) (28 Sept 2007) (testifying that he was not familiar with any VRS General named Vilotić nor had he ever heard of anyone named Vilotić); Richard Butler, T. 19973–19974 (18 Jan 2008) (testifying that when he first saw the intercept and recognized the name, he went back to the VRS materials to determine whether there existed a General Vilotić. He could not find anyone called Vilotić.).

<sup>5121</sup> Ex. P00048, “VRS Main Staff Daily Combat Report, type-signed Miletić, 14 July 1995”, p. 3.

<sup>5122</sup> Ex. P02942, “Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milošević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan”, p. 1.

<sup>5123</sup> See *supra*, para. 553; PW-168, T. 15873 (closed session) (26 Sept 2007).

<sup>5124</sup> PW-168, T. 15874 (closed session) (26 Sept 2007). According to PW-168, **Miletić** asked at the end of the conversation why Obrenović used unsecure equipment and slammed the phone down. PW-168 agreed with the Defence that this was a strange comment as the Zvornik Brigade did not have a secure phone line which **Miletić** should have known as Chief of Operations. PW-168 further testified he had understood the conversation as **Miletić** giving Obrenović an order on behalf of Mladić. *Ibid.*, T. 16643–16644 (19 Oct 2007).

monitored its movement. The Trial Chamber considers it a clear example of his position and authority and his involvement with the events on the ground.

1678. In the evening of the same day, a conversation between Baki and an unidentified person was intercepted, during which they discussed “equipment” “and what goes with it” “that General Miletić ordered” to be sent to Pandurević.<sup>5125</sup> Another conversation was intercepted a few minutes later, in which reference was again made to Miletić and that “he insisted that it must go during the night, to get to Vinko”.<sup>5126</sup> Although the nature of the equipment referred to in the conversation has not been established, the Trial Chamber is satisfied that the conversation refers to the Accused **Miletić** and **Pandurević**. The Trial Chamber also considers these intercepts as evidence of the coordinating role **Miletić** played at the Main Staff and the direct contact he had with the Zvornik Brigade.

1679. The 15 July VRS Main Staff daily combat report to the President, type-signed **Miletić**, again reported on combat activities and the movement of the column in the area of the Drina Corps. The report also states that during the course of the day several enemy groups surrendered.<sup>5127</sup>

g. 16 July 1995

1680. On 16 July, **Pandurević** reported to the Drina Corps Command that he had opened up a corridor for Bosnian Muslim civilians to pass through and that he was still fighting the 28th Division.<sup>5128</sup> This was reported up the chain of command and reached the Main Staff as well as the President.<sup>5129</sup> It is evident that **Miletić** received this information since he ordered Nedeljko Trkulja and Bogdan Sladojević to visit the Headquarters of the Zvornik Brigade—the Standard Barracks—to investigate the opening of the corridor.<sup>5130</sup> Upon return to Crna Rijeka on 18 July, Trkulja reported orally to **Miletić** about the opening of the corridor.<sup>5131</sup>

h. 17–24 July 1995

<sup>5125</sup> Ex. P02367c, “Intercept, 15 July 1995, 22:26 hours” (the same conversation is captured in Ex. P01182a, “Intercept, 15 July 1995, 22:25 hours”, pp. 2–3). PW-168 testified “[w]e had received a multiple rocket launcher, and maybe that had something to do with this conversation. I think that is the combat asset that we see referred to here.” He however was not sure. PW-168, T. 16004 (closed session) (28 Sept 2007).

<sup>5126</sup> Ex. P02368c, “Intercept, 15 July 1995, 22:28 hours” (this conversation is also captured in Ex. P01182a, “Intercept, 15 July 1995, 22:25 hours”, p. 3).

<sup>5127</sup> Ex. P00049, “VRS Main Staff daily combat report, type-signed Miletić, 15 July 1995”, p. 3.

<sup>5128</sup> PW-168, T. 16013 (closed session) (28 Sept 2007); Ex. P01188a, “Intercept, 16 July 1995, 13:55 hours”.

<sup>5129</sup> Ex. P00050, “VRS Main Staff Daily Combat Report, type-signed Miletić, 16 July 1995”, p. 4. *See also* Ex. P01195a, “Intercept 16 July 1995, 16:15 hours” (which recorded a conversation between a VRS Main Staff duty officer and Mladić mentioning that the President had been informed by Karišik that Pandurević had arranged passage for the Bosnian Muslims).

<sup>5130</sup> Nedeljko Trkulja, T. 15114-15116 (10 Sept 2007); Bogdan Sladojević, T. 14366–14368 (27 Aug 2007) *See also supra*, paras. 559–561.

<sup>5131</sup> Nedeljko Trkulja, T. 15114-15117 (10 Sept 2007); Bogdan Sladojević, T. 14379 (27 Aug 2007).

1681. During the operation in Žepa, **Miletić** continued to provide daily VRS Main Staff reports to the President of RS of the combat situations in Žepa.<sup>5132</sup> The reports were drafted by **Miletić** personally, Obradović or possibly Krsto Đerić, if present.<sup>5133</sup> **Miletić** received information about the front at Žepa through the reporting system and the Administration of Operations and Training's role in the Žepa negotiations consisted of forwarding information to involved persons.<sup>5134</sup> During the Žepa Operation, **Miletić** also issued instructions to units in the field and coordinated between the Main Staff and the field.

1682. At around 8 p.m. on 17 July, during an intercepted conversation, Mladić told Krstić "I didn't accept the Turks' conditions". He told Krstić "full steam ahead" and to "get in touch with Miletić on the secure line, full steam ahead".<sup>5135</sup> Given the context of the events taking place and the participants in the conversation, the Trial Chamber is satisfied that the conversation refers to Žepa and that the Miletić referred to is the Accused **Miletić**. The intercept furthermore shows again **Miletić**'s vital coordinating role at the Main Staff, including between Krstić and Mladić during the Žepa operation.

1683. Also on 17 July, a conversation was intercepted between Trivić and Colonel Janković. Trivić called Badem<sup>5136</sup> and asked for Janković. He told Janković that **Miletić** had said he (Janković) should write down what he wanted to do and send it urgently by code up to Tolimir. The Commander would then decide with Tolimir and send his reply to Janković.<sup>5137</sup>

1684. On 19 July, a VRS Main Staff order was issued regarding the transport of people and the pull-out of war booty from Žepa. According to the order, Colonel Milisav Jovanović—Chief of the Quarter Master's Department in the Logistics Sector of the VRS Main Staff<sup>5138</sup>—was in charge of the collection and pulling out of the war booty. If need be, Jovanović was to secure a police unit through **Miletić**.<sup>5139</sup>

<sup>5132</sup> See, e.g., Ex. P00050, "VRS Main Staff Daily Report type-signed Miletić, 16 July 1995"; Ex. P03057, "VRS Main Staff Situation Report signed by Miletić, 17 July 1995"; Ex. P03061, "VRS Main Staff Situation Report signed by Miletić, 18 July 1995".

<sup>5133</sup> Ljubomir Obradović, T. 28270 (14 Nov 2008), T. 28290 (17 Nov 2008).

<sup>5134</sup> *Ibid.*, T. 28270 (14 Nov 2008), T. 28290–28292 (17 Nov 2008), T. 28367, 28393–28394 (18 Nov 2008).

<sup>5135</sup> Ex. P01231a, "Intercept, 17 July 1995 at 19:50 hours".

<sup>5136</sup> "Badem" was the code name for the Bratunac Brigade. Prosecution Adjudicated Facts Decision, Annex, Fact 87. See also PW-168, T. 15993 (28 Sept 2007); PW-131, T. 4634 (27 Nov 2006).

<sup>5137</sup> Ex. P01237a, "Intercept, 17 July 1995 at 20:55 hours". Considering the circumstances and context of this conversation, the Trial Chamber is satisfied that Janković in the conversation is Radislav Janković of the Main Staff Intelligence Administration and that the conversation concerns the evacuation of MSF Staff from Srebrenica.

<sup>5138</sup> Ratko Miljanović, T. 28939 (27 Nov 2008).

<sup>5139</sup> Ex. 5D01113, "VRS Main Staff document, regarding transport of civilians from Žepa, signature illegible, 19 July 1995". Ratko Miljanović, T. 28938–28939 (27 Nov 2008), T. 28985 (28 Nov 2008).

1685. On 20 July, Krstić sent a request to **Miletić** “personally”, requesting the engagement of the VRS Main Staff Military Police Battalion headed by Major Malinić for the collection of war booty and prevention of looting in the Žepa enclave.<sup>5140</sup>

1686. During the Žepa operation, both the Drina Corps and Tolimir, who was an Assistant Commander of the Main Staff and in rank above **Miletić**, sent their requests and reports addressed to **Miletić** personally.<sup>5141</sup> This shows that it was well-known and accepted that **Miletić** played the role of focal point at the VRS Main Staff for all incoming information and made sure that the relevant persons were informed. On 21 July, Tolimir reported to the VRS Main Staff, addressed to **Miletić** personally, regarding the situation in Žepa.<sup>5142</sup> The report states, *inter alia*, “[w]e believe that we would be in a more advantageous position for direct negotiations after we inflict los[s]es on the enemy's manpower” and “[t]he most convenient means for [the enemy's] destruction would be usage of chemical weapons or aerosol grenades and bombs. Using these means we would accelerate the surrender of Muslims and fall of Žepa.”<sup>5143</sup> The report concludes “[w]e believe that we could force Muslims to surrender sooner if we would destroy groups of Muslims [*sic*] refugees fleeing from the direction of Stublić, Radava and Brloška Planina”.<sup>5144</sup>

1687. That same day, 21 July, the Main Staff report, type-signed **Miletić**, informed the President that forces of the Drina Corps continued their offensive operations carrying out combat tasks around the Žepa enclave.<sup>5145</sup>

<sup>5140</sup> Ex. P03015, “Drina Corps Command document requesting the engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995”. Considering the reference to Malinić, the Trial Chamber is satisfied the request referred to the Military Police Battalion of the 65th Protection Regiment, which was commanded by Zoran Malinić.

<sup>5141</sup> See, e.g., Ex. P03015, “Drina Corps Command document requesting the engagement of VRS Main Staff Military Police Battalion, type-signed by Krstić, 20 July 1995”; Ex. P02794, “Rogatica Brigade document, to Miletić personally, ‘Situation in Žepa’, type-signed Tolimir, 21 July 1995”. Milovanović testified this report was “completely legal”. It was sent to **Miletić** since Tolimir was not able to get in touch with the Commander of the VRS Main Staff, while he knew **Miletić** would be at the VRS Main Staff and could communicate the information to Mladić, who would make a decision. **Miletić** was not asked to answer but only served as an intermediary between Tolimir and the Commander. Manojlo Milovanović, T. 12378, 12386–12387, 12390 (1 June 2007).

<sup>5142</sup> Ex. P02794, “Rogatica Brigade document, to Miletić personally, ‘Situation in Žepa’, type-signed Tolimir, 21 July 1995”. Obradović testified that the report arrived at the VRS Main Staff addressed to **Miletić** and that the report is on the situation in Žepa, but that he did not understand why it was addressed to **Miletić**. He admitted a possible explanation could be that **Miletić** had more authority on 21 July than he normally had (as other officers were in the field); however, he considered it not logical for an Assistant Commander to act as subordinated to **Miletić**. Ljubomir Obradović, T. 28391–28392 (19 Nov 2008).

<sup>5143</sup> Ex. P02794, “Rogatica Brigade document, to Miletić personally, ‘Situation in Žepa’, type-signed Tolimir, 21 July 1995”.

<sup>5144</sup> *Ibid.* The Trial Chamber has no evidence suggesting that Tolimir’s proposal to use chemical weapons was considered or implemented. The Trial Chamber however considers this to be of limited relevance with regard to **Miletić**’s role as intermediary. **Miletić** was not responsible for deciding on the request. His role was to ensure information reached the relevant persons to enable them to make informed decisions.

<sup>5145</sup> Ex. P03020, “VRS Main Staff situation report, type-signed Miletić, 21 July 1995”.



1688. On 23 July, a conversation between **Miletić** and an unidentified caller was intercepted.<sup>5146</sup> The caller greeted **Miletić** saying “Hi Mićo” and then informed him “it’s open”.<sup>5147</sup> The caller asked if everything was all right and whether “Tošo” had come. **Miletić** informed the caller that “Tošo” was waiting for him at the agreed place. The caller asked **Miletić** if there was anything that needed to be signed to which **Miletić** responded some things had come in but it all could wait. **Miletić** was subsequently instructed to wait for the caller at “272” and to bring the caller’s suitcase.<sup>5148</sup> Considering the context, content and circumstances of the conversation and that **Miletić** was clearly speaking to someone superior to him in the chain of command, the Trial Chamber is satisfied that **Miletić** was speaking to Mladić; and that “Tošo” is Tolimir. The Trial Chamber considers the intercept as further evidence of **Miletić**’s coordinating role. It also evidences that **Miletić** was in direct contact with Mladić and that he was referred to as “Mićo”.

1689. On 24 July, a conversation was intercepted between “General” and Tolimir.<sup>5149</sup> Tolimir told the General “he is asking whether you’ll be coming here”.<sup>5150</sup> The General responded he would not be coming but to tell “(Dinko?) to be on standby with the unit, they are not to move without my order”.<sup>5151</sup> Tolimir confirmed he understood but that “Miletić told [him] that [he] would have to go down there to regulate this thing tomorrow, strictly that all those who are supposed to go through to Goražde can go through, because there have been a lot of problems today about that, but we have resolved them” and that he had to “regulate it down there with them about the convoys”.<sup>5152</sup> The General responded to Tolimir “[y]ou have nothing to do with that” and that Tolimir was “completely taking over from [him] in the command here”.<sup>5153</sup> Taking into account the events at the time, the subject of the conversation, and the reference to “General”, the Trial Chamber is satisfied that this concerns a conversation between Mladić and Tolimir and refers to the removal of Bosnian Muslims from Žepa. The Trial Chamber further considers the intercept shows **Miletić**’s authority conveying instructions to Tolimir and coordinating from the Main Staff the different sections of the VRS.

<sup>5146</sup> Ex. P01315a, “Intercept, 23 July 1995, 13:59 hours”.

<sup>5147</sup> *Ibid.*

<sup>5148</sup> *Ibid.*

<sup>5149</sup> Ex. P01327a, “Intercept, 24 July 1995, 19:24 hours”.

<sup>5150</sup> *Ibid.*

<sup>5151</sup> *Ibid.*

<sup>5152</sup> *Ibid.*

<sup>5153</sup> *Ibid.*

i. 25 July 1995

1690. On 25 July, Tolimir, who was involved in the Žepa negotiation representing the VRS, issued a report on the agreement on disarmament of Žepa to the Main Staff, to either **Miletić** or **Gvero** personally.<sup>5154</sup> The report, *inter alia*, suggests that the text of the agreement be sent to the State Commission for Exchange of War Prisoners. It states the Bosnian Muslims in Žepa had accepted the agreement and agreed to the status of POW until all VRS POWs were exchanged. It recommends the Commission demand all VRS POWs be released between 25 and 28 July as the Bosnian Muslims could take advantage of the signed agreement “under pressure from Sarajevo”. It was the Commission’s duty to submit the list of POWs the VRS was demanding and to tell its counterpart that all other issues were within the competences of the VRS negotiators and Žepa representatives.<sup>5155</sup>

1691. On the evening of 25 July, General Smith met with Mladić and Torlak, President of the Executive Board in Žepa, and a member of the Žepa War Presidency.<sup>5156</sup> On the same evening, the RS Exchange Commission attended a meeting with the Bosnian Muslim side at Sarajevo Airport. Following the meeting, the Main Staff was updated and informed by telephone that the Bosnian Muslim Government accepted the “proposed (signed) agreement in its entirety on condition that both civilians and able-bodied men are evacuated together from the enclave of Žepa”, and it

<sup>5154</sup> Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”. According to Milovanović, the document was addressed “personally to General Gvero or General Miletić”, since Tolimir did not know which of them was at the VRS Main Staff and he was sending the document to the VRS Main Staff to be handed to whomever the messenger would find. Manojlo Milovanović, T. 12377 (1 June 2007). Jovanović testified he had never seen the document before. He stated the document was possibly addressed to **Gvero** or **Miletić** because they were the only officers present in the Operations Centre at the VRS Main Staff, which he based on the document’s first sentence “[w]e send you this to forward to another corps command to the Sarajevo Romanija Corps”, giving them a “courier’s task”. Sasa Jovanović, T. 33949 (6 July 2009). According to Obradović, the role of the person to whom the document was addressed was to pass it on, not to make any decisions as the agreement had already been reached on the ground. When asked if the tasks in the document were in accordance with **Miletić**’s tasks standing in for Milovanović, Obradović responded **Miletić** “would have to act on this document if it reached him, or he would take it to the commander or ask for the approval of the person who is replacing the commander, deputising for him, and he would inform him, and then he would do what the document asks him to do.” He did not recollect any efforts of the Operations Department to avoid having General Smith going to Žepa. He also did not draw up requests to UNPROFOR. Colonel Miloš Đurđić was in charge of contacts with UNPROFOR concerning convoys requests and **Miletić** worked on this with him. He did not know who worked on this specific issue. Ljubomir Obradović, T. 28397–28400 (18 Nov 2008), T. 28463–28465 (19 Nov 2008). There is a hand-written note on the document which reads “received”. Obradović did not recognise the hand-writing. *Ibid.*, T. 28477 (19 Nov 2008). The Trial Chamber considers that the fact **Miletić** was mentioned as the addressee of this document, next to **Gvero**, one of the Assistant Commanders, shows again that his authority and coordinating role at the Main Staff were well-known and accepted. *See also* Ex. P01328a, “Intercept, 25 July 1995, 07:09 hours” (a conversation between “Ljubo” and an unidentified person X. In the course of the conversation, X told Ljubo “they’ve sort of accepted that agreement and signed it [...] I sent the text of the agreement last night [...] it’s over at Milic’s, and a subsequently a telegram this morning.....Miletić or Gvero with regard to UNPROFOR and the ICRC, so have Miloš go there to fetch it and have them inform you about the telegram”). The Trial Chamber considers the intercept as evidence that **Miletić** was kept fully informed of the developments in Žepa.

<sup>5155</sup> Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”.

emphasised that it was important that civilians, disarmed soldiers and able-bodied men were evacuated together from Žepa, demanding guarantees that they would not be killed.<sup>5157</sup> During the same phone call, **Miletić** and Lieutenant Colonel Jovica Karanović from the Sector for Intelligence and Security at the Main Staff spoke with Bulajić, the President of the Commission for the exchange of POWs.<sup>5158</sup> They discussed the details of the agreement and **Miletić** and Karanović insisted the VRS would not vary from the signed agreement of the 24 July.<sup>5159</sup>

1692. Again later that day, the Main Staff daily report, type-signed **Miletić**, relayed to the President that “[o]perations around Žepa have ceased for the moment as an agreement was signed on the surrender of the Muslims”.<sup>5160</sup>

j. 26 July–1 August 1995

1693. On 26 July, the VRS Main Staff daily report, type-signed **Miletić**, informed the President that “[u]nits engaged in Žepa are securing the evacuation of the Muslim population”.<sup>5161</sup>

1694. On 28 July, a conversation was intercepted between an unidentified caller and Dragan.<sup>5162</sup> During the conversation, Dragan told the other interlocutor that “General Miletić was looking for you, he was asking why it hasn’t started yet”, to which the other person responded “[t]ell him it’ll start in half an hour because a part of the unit has not arrived” and “[t]hey’re leaving at six [...] that’s what they should tell the guys up there”.<sup>5163</sup> According to PW-168, it concerned a conversation between Dragan Obrenović and the duty officer of the Drina Corps, discussing the dispatch of a unit from the Zvornik Brigade to the 2nd Krajina Corps following an order from the VRS Main Staff.<sup>5164</sup> Based on the evidence before it and the time and content of the intercept, the Trial Chamber is satisfied the intercept is a conversation between Dragan Obrenović and the duty officer of the Drina Corps Command and that the Miletić referred to is the Accused **Miletić**. The Trial Chamber is convinced that the conversation refers to the dispatch of a unit from the Zvornik

<sup>5156</sup> Ex. 6D00108, “UN document re situation in Žepa by Col. Baxter”, p. 3.

<sup>5157</sup> Ex. P00190, “VRS Main Staff Intelligence and Security Report, type-signed Jovica Karanović, 25 July 1995”.

<sup>5158</sup> *Ibid.*; Ex. 6D00007, “Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the UN and International Humanitarian Organisations, signed by Karadžić, 14 March 1995”, p. 3, Art. 2(4) (appointing Dragan Bulajić as the President of the Commission for the exchange of POWs).

<sup>5159</sup> Ex. P00190, “VRS Main Staff Intelligence and Security Report, type-signed Jovica Karanović, 25 July 1995”.

<sup>5160</sup> Ex. P03021, “VRS Main Staff situation report, type-signed Miletić, 25 July 1995”, p. 3.

<sup>5161</sup> Ex. P03022, “VRS Main Staff situation report, type-signed Miletić, 26 July 1995, p. 4.

<sup>5162</sup> Ex. P01370c, “Intercept, 28 July 1995, 17:30 hours”; PW-168, T. 16025 (28 Sept 2007).

<sup>5163</sup> Ex. P01370c, “Intercept, 28 July 1995, 17:30 hours”.

<sup>5164</sup> See PW-168, T. 16025–16026 (closed session) (28 Sept 2007); Ex. P03078, “Order to form a brigade and dispatch it as assistance from the VRS Main Staff signed by Ratko Mladić, 26 July 1995”. See also Ex. P03077, “Drina Corps Order to form a light infantry brigade and dispatch it on a combat mission, signed Radislav Krstić, 20 July 1995”; Ex. 7DP00351, “Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 28 July 1995”.

Brigade to the 2nd Krajina Corps. The Trial Chamber considers the intercept as evidence of **Miletić**'s authority and his involvement in following up on the reassignment of units.

1695. On 29 July, the VRS Main Staff received a report from the Rogatica Brigade, stating that it had "unconfirmed information that the elements of the Muslim military forces from the former enclave of Žepa are trying to break through on the right bank of the Drina River, in the area of the village of Jagoštica and the village of Zemljice probably with intention to surrender to the forces of the Serbian MUP".<sup>5165</sup> Measures were taken to verify the information.<sup>5166</sup> In the daily Main Staff report to the President that day, type-signed **Miletić**, it was written that "[f]rom the Žepa enclave, [the enemy] tried a breakthrough in the village of Donje Štitarevo sector, intending to get to the territory of [...] Federal Republic of Yugoslavia. This formation was encircled, routed and then destroyed."<sup>5167</sup> Units of the Drina Corps were "setting up ambushes to prevent passage of enemy groups from the former enclaves of Žepa and Srebrenica and linking up with the forces on the front".<sup>5168</sup>

1696. On 30 July, a conversation was intercepted around 10:15 p.m.<sup>5169</sup> The first part of the intercept concerned a conversation between Savo and Rajko. Rajko stated: "Our flag is up there on 'Ž', [...] but it is not over yet". Rajko further informed Savo of the request of UNPROFOR General Smith for a meeting the next day regarding Žepa, Sarajevo, and the use of "Rapid Reaction Forces". Rajko told Savo that he would transfer the caller to Mićo so that Savo will "tell him everything".<sup>5170</sup> Subsequently, Mićo came on the line and told Savo all it's going well and "that thing is mainly going over there, where the boss, Mladić, used to be, today it came...and we are slowly putting it into the pocket and I'm hoping to be, today it will finally be finished".<sup>5171</sup> Subsequently, Savo put Mladić through to Mićo, who greeted Mićo by saying "any news, buddy?" Mićo responded "this thing where you were yesterday, it is going well". Mladić asked if the flag was where he ordered it to be, which Mićo confirmed. Mladić then told Mićo to "[f]ollow the situation, step it up over there, the situation is changing as I want it to", and "[y]ou know what is needed over there". Mićo confirmed and told Mladić "[h]e is asking to meet you tomorrow" concerning Žepa, Sarajevo, and the use of rapid reaction forces. Mladić then told Mićo to tell "him" he [Mladić] would wait for

<sup>5165</sup> Ex. P02792, "Rogatica Brigade report to the VRS Main Staff regarding a meeting with UNPROFOR concerning evacuation of civilians from Žepa, type-signed Dragomir Pećanac, 29 July 1995", p. 2.

<sup>5166</sup> Ex. P02792, "Rogatica Brigade report to the VRS Main Staff regarding a meeting with UNPROFOR concerning evacuation of civilians from Žepa, type-signed Dragomir Pećanac, 29 July 1995", p. 3.

<sup>5167</sup> Ex. P03023, "VRS Main Staff situation report, type-signed Miletić, 29 July 1995", p. 4.

<sup>5168</sup> *Ibid.*, pp. 4–5.

<sup>5169</sup> Ex. P01376d, "Intercept, 30 July 1995, 22:15 hours".

<sup>5170</sup> *Ibid.*, p. 1.

<sup>5171</sup> *Ibid.*, p. 1.

“him” at 12 p.m. at Mrkonjić Grad and to tell “him” to come by helicopter.<sup>5172</sup> In the context of the events taking place on and around 30 July, the Trial Chamber is convinced that Mićo is **Miletić** updating Mladić. The conversation shows the close cooperation between Mladić and **Miletić** and that **Miletić** was coordinating and relaying information between different sections of the VRS. The Trial Chamber is further satisfied that the meeting Mladić asked **Miletić** to arrange concerned a meeting between Mladić and Smith.

1697. Again on 31 July, the daily Main Staff report, type-signed **Miletić**, updated the President on the escape attempts of Bosnian Muslims. The report states that information had been received that “the enemy [was] building rafts in the Crni Potok sector”, which is close to Žepa,<sup>5173</sup> and trying to escape across the Drina to Serbia.<sup>5174</sup> The report further informed the President that Drina Corps forces were setting up ambushes for groups from the Srebrenica and Žepa enclaves and searching the terrain in the Žepa enclave.<sup>5175</sup>

1698. On 1 August 1995, Captain Carkić, the Chief of Security for the Rogatica Brigade, issued a report on the movement of “routed enemy groups in the Žepa enclave” to the Main Staff, addressed to **Miletić** personally.<sup>5176</sup> He reported that “around 25 persons from Žepa surrendered [to the VRS and MUP]. During the night and today, this number increased to 53. Another 100 balija are expected in Bajina Bašta today. At the same time, the largest group of balija was registered (around 1,000 men) in the general area of Crni Potok. They all seem to be attempting to cross over to the right bank. [...] the number of balija will remain in hiding in the general area of Žepa, especially in the area of the former Žepa – Srebrenica “corridor”.”<sup>5177</sup>

1699. On 2 August, a conversation was intercepted between Krstić and **Popović**. **Popović** informed Krstić that **Beara** had just called and told him that he had come back “from there” that morning. **Popović** further told Krstić that **Beara** had “said he reported to Miletić” and “[t]here are about 500-600 of them over there”.<sup>5178</sup> The Trial Chamber considers this intercept as evidence that **Miletić** was kept fully informed on the situation of the Bosnian Muslim men fleeing from Žepa and that **Miletić** was the person to whom information about this issue was reported.

<sup>5172</sup> Ex. P01166a, “Intercept 14 July 1995, 22:27 hours”, p. 2.

<sup>5173</sup> PW-111, T. 7012 (7 Feb 2007).

<sup>5174</sup> Ex. P03024, “VRS Main Staff situation report, type-signed Miletić, 31 July 1995”, p. 4.

<sup>5175</sup> *Ibid.*

<sup>5176</sup> Ex. P03036, “Document to VRS Main Staff, Miletić, Krstić, and Drina Corps concerning movement of enemy groups in the Žepa enclave, type-signed Zoran Carkić, 1 August 1995”. Carkić reported that “the Muslim forces in Žepa [...] have been broken up into a number of small or large groups which are now trying to break out of the encirclement along various routes”. He specified which directions enemy groups were expected and along which axes Sarajevo had recently suggested a breakthrough by the army. *Ibid.*, p. 2.

<sup>5177</sup> *Ibid.*, p. 2.

<sup>5178</sup> Ex. P01395c, “Intercept, 2 August 1995, 13:00 hours”.

(e) Findings

1700. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Participation in the Joint Criminal Enterprise to Forcibly Removea. First Category Joint Criminal Enterprisei. Prosecution's Allegations

1701. It is the Prosecution's position that **Miletić** contributed to the JCE to Forcibly Remove by drafting Directive 7 and by taking part in the implementation of the Directive.<sup>5179</sup> The Prosecution alleges that **Miletić** played a key role in organising and implementing "the policy set out in Directive 7 to restrict humanitarian aid to the Muslim populations of Srebrenica and Žepa" by signing convoy approval notifications to subordinate units, which allegedly included detailed instructions and carried the force of orders.<sup>5180</sup>

1702. The Prosecution also submits that **Miletić** contributed to the JCE to Forcibly Remove by monitoring the state of the Muslim forces and their surrender, and the activities of the VRS units in the enclaves.<sup>5181</sup> Additionally, **Miletić** acted in furtherance of the JCE by monitoring the transfer of the civilian population, and the VRS' efforts to search and clear Žepa of remaining Bosnian Muslims.<sup>5182</sup> **Miletić** was allegedly also "kept informed of the flight of the Bosnian Muslim men from Žepa to Serbia".<sup>5183</sup> According to the Prosecution, **Miletić** passed all information he gained to Mladić, Karadžić, and others.<sup>5184</sup> Allegedly, **Miletić's** acts constituted crucial components of and contributions to the JCE to Forcibly Remove the Bosnian Muslim population from the enclaves. His knowledge, as transferred to Mladić, Karadžić, and other members of the JCE, allowed them to make informed decisions in carrying out the operation and policy to forcibly remove the Bosnian Muslims from the enclaves.<sup>5185</sup>

1703. The Trial Chamber has already found there was a JCE with a common purpose to forcibly remove the civilian population from the Srebrenica and Žepa enclaves, and that in accordance with

<sup>5179</sup> Indictment, paras. 75(a)(i)–75(a)(ii); Prosecution Final Brief, paras. 1663, 1669–1685.

<sup>5180</sup> Indictment, para. 75(a)(ii); Prosecution Final Brief, paras. 219, 222, 1680.

<sup>5181</sup> Indictment, paras. 75(b)(i)–75(b)(iii).

<sup>5182</sup> *Ibid.*, paras. 75(c)(i)–75(c)(ii).

<sup>5183</sup> *Ibid.*, para. 75(c)(iii).

<sup>5184</sup> *Ibid.*, paras. 75(b)(i)–75(b)(iii), 75(c)(i)–75(c)(ii).

<sup>5185</sup> Prosecution Final Brief, para. 1687.

this plan thousands of Bosnian Muslim civilians were forcibly removed from the enclaves in July and August 1995.<sup>5186</sup> It further found that the plan to forcibly remove the civilian population from the Srebrenica and Žepa enclaves was set out in Directive 7.<sup>5187</sup>

ii. Drafting of Directives

1704. The Trial Chamber has already found that **Miletić** drafted Directive 7 and that he relied on his broad knowledge of the larger political and military context of the conflict and the goals and strategies of RS, in the process. The Trial Chamber also found **Miletić** was well-acquainted with the Directive's final text, including the incriminatory parts.<sup>5188</sup> **Miletić** not only drafted the Directive, but also kept a copy in his "strong box" at the Main Staff.<sup>5189</sup> **Miletić** furthermore drafted Directive 7/1, a final copy of which was also available at the Main Staff.<sup>5190</sup> The Trial Chamber is therefore convinced that from the early stages **Miletić** had full knowledge of the common plan to forcibly remove the Bosnian Muslim civilian population from the Srebrenica and Žepa enclaves as set out in Directive 7.

1705. In Directive 7, **Miletić** elaborated the role of the VRS in implementing its strategic objectives. The Directive was addressed, and through the Main Staff sent, to all the Corps. Thus, regardless of whether he physically drafted the Directive or inserted the words in the criminal parts,<sup>5191</sup> by his central role in the drafting process, **Miletić** provided the addressees with an overview of the political leadership's broader vision, upon the authority of the Supreme Commander. This also included the goals for the Srebrenica and Žepa enclaves and how these were to be achieved. In other words, **Miletić** informed the addressees of the plan. The Trial Chamber is satisfied that in doing so, **Miletić** contributed to the JCE to Forcibly Remove.

1706. Main Staff Directive 7/1 was a continuation of the policy and goals set out in Directive 7, regardless of whether it repeated the criminal language of Directive 7.<sup>5192</sup> Directive 7/1, referring to Directive 7, elaborated on and specified the operations regarding the Srebrenica and Žepa enclaves, which operations were to include, to **Miletić**'s knowledge, the unlawful removal of its Bosnian Muslim inhabitants. Therefore, by drafting this Directive, **Miletić** made a further contribution to the plan to remove the Bosnian Muslims from the enclaves.

<sup>5186</sup> See *supra*, Chapter V, Section B.2; Chapter IV, Section G.2.

<sup>5187</sup> See *supra*, paras. 1085–1086.

<sup>5188</sup> See *supra*, para. 1653.

<sup>5189</sup> See *supra*, para. 200.

<sup>5190</sup> See *supra*, para. 1654.

<sup>5191</sup> See *supra*, paras. 199, 762, 1651.

<sup>5192</sup> See *supra*, paras. 763–765.

iii. Restriction of Humanitarian Aid and UNPROFOR Re-Supply

1707. As one of the means to achieve the goal to forcibly remove the civilian population, Directive 7 provided that logistical support to UNPROFOR and supply of material resources for the Muslim population in the enclaves be reduced and limited “through the planned and unobtrusively restrictive issuing of permits”.<sup>5193</sup> The Trial Chamber has already found that the VRS deliberately restricted humanitarian aid to the enclaves and resupply of UNPROFOR in implementation of the plan set out in Directive 7, thereby creating a very dire situation for the Bosnian Muslim population in the enclaves and incapacitating UNPROFOR.<sup>5194</sup>

1708. The Trial Chamber recalls that on a few days in April, **Miletić** initialled UNPROFOR convoy requests, indicating approval or denial.<sup>5195</sup> **Miletić** furthermore signed a significant amount of notifications to UNPROFOR and to subordinate units between January and July 1995, which included instructions on approved convoys as well as, occasionally, items that were denied.<sup>5196</sup> The notifications were of a mandatory nature—without prior notification no convoy was allowed passage—which was known to **Miletić**.<sup>5197</sup>

1709. The Trial Chamber has found that over the period of March to July 1995, particularly in the latter stages, the instruction in Directive 7 to “reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population” “through the planned and unobtrusively restrictive issuing of permits”,<sup>5198</sup> was implemented.<sup>5199</sup> The Trial Chamber is satisfied that the relevant authorities, including those in the VRS, gradually restricted humanitarian aid to the population and denied UNPROFOR supplies and personnel. As described previously, the processes in place for convoy approvals for humanitarian organisations and UNPROFOR were complex and implicated various civilian and military authorities and personnel.<sup>5200</sup> From the evidence before it as described above, the Trial Chamber is satisfied that **Miletić** was one of the authorities who had a role in the convoy approval and notification procedure. Further, the Trial Chamber finds that **Miletić**, through his involvement in this process, implemented the instructions of Directive 7 regarding humanitarian aid and UNPROFOR with full knowledge as to the overall aim of these restrictions. By example, the Trial Chamber notes two notifications signed by **Miletić** and sent just prior to the start of the military attack on Srebrenica,

<sup>5193</sup> See *supra*, paras. 199, 766.

<sup>5194</sup> See *supra*, para. 767.

<sup>5195</sup> See *supra*, para. 1657.

<sup>5196</sup> See *supra*, para. 1660.

<sup>5197</sup> See *supra*, paras. 214–215, 227, 222.

<sup>5198</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, para. 6.1.

<sup>5199</sup> See *supra*, para. 767.

<sup>5200</sup> See *supra*, Chapter III, Sections C.4.(a)–(c).



which notified the subordinate units that the departure of certain UNPROFOR personnel was approved, whereas their return was not approved.<sup>5201</sup>

1710. On this basis the Trial Chamber finds that **Miletić**'s involvement in, and use of the convoy approval and notification procedure to create the conditions for forcible transfer, constituted an additional contribution to the common purpose of the JCE.

#### iv. Monitoring and Coordination

1711. As Chief of Operations and Training and, at the time relevant to the Indictment, taking over certain tasks from Milovanović, **Miletić** played an essential role at the Main Staff before, during, and after the attack on Srebrenica and Žepa. The Trial Chamber will however not assess **Miletić**'s criminal liability on the basis of his title, but based on the actions he carried out in this capacity.

1712. The Trial Chamber is convinced that considering the scale and scope of the military attack and the operations to forcibly remove the Bosnian Muslim civilian population from the Srebrenica and Žepa enclaves, coordination from the Main Staff level was essential. **Miletić**, with his in-depth knowledge of the strategies and goals of the VRS, was at the centre of this coordination.

1713. **Miletić** received and read all reports from the Corps and the 65th Protection Regiment.<sup>5202</sup> He was in direct contact with the forces in the field. He was kept abreast of all developments in the field and the implementation of Mladić's orders, and more specifically of the progress of the operation.<sup>5203</sup> The Trial Chamber is satisfied that **Miletić** forwarded the knowledge he gained to Mladić, Karadžić and others, and that this enabled them to take informed decisions.

1714. During the Main Staff morning briefings, **Miletić** updated Mladić and the present Assistant Commanders. He furthermore kept the President of RS informed through daily Main Staff reports.<sup>5204</sup> The updates **Miletić** provided were comprehensive and included details on the situation at the front, the transportation of the civilian population out of Srebrenica and Žepa, and the taking of POWs.<sup>5205</sup> Based on the information provided by **Miletić**, the Assistant Commanders and Chiefs of Administrations would study the issues pointed out and provide proposals to Mladić in their

<sup>5201</sup> Ex. P02556, "VRS Main Staff Notification re UNPROFOR convoys to the Drina Corps, signed by Miletić, 3 July 1995"; Ex. P02558, "VRS Main Staff notification re UNPROFOR convoys to Military Posts 7598 and 7111, 5 July 1995 signed by Miletić".

<sup>5202</sup> See *supra*, paras. 1625, 1635–1636, 1639.

<sup>5203</sup> *Ibid.*

<sup>5204</sup> See *supra*, paras. 1635, 1638.

<sup>5205</sup> See *supra*, para. 1638. See also *supra*, Chapter V, Section B.7.(d)(iii).

respective fields of expertise.<sup>5206</sup> Because of his comprehensive knowledge, **Miletić** was a key advisor to Milovanović, and in the latter's absence, **Miletić** advised Mladić directly.<sup>5207</sup> At the same time, **Miletić** was the person responsible for forwarding Mladić's decision and orders to the relevant units and thereby he ensured the flow of information from the Main Staff to the subordinate units. **Miletić** was the "soul of the Main Staff of the VRS",<sup>5208</sup> and the person "best informed on the situation in various theatres of the war".<sup>5209</sup>

1715. Based on the evidence adduced, the Trial Chamber is satisfied that in the exercise of his functions, **Miletić** had an important impact on the functioning and operation of the Main Staff and the VRS as a whole. The Trial Chamber is convinced that **Miletić** had full knowledge of the situation in the Srebrenica and Žepa enclaves before, during, and after the attack. The Trial Chamber accepts that **Miletić** was away from the Main Staff during the heart of the attack on the Srebrenica enclave. However, considering the evidence cumulatively, the Trial Chamber finds that this does not diminish his coordinating role throughout the implementation of the plan—from March through August—to unlawfully remove the Bosnian Muslims from the enclaves. The Trial Chamber is satisfied that through these acts, **Miletić** contributed again to the forcible transfer of the Bosnian Muslims from the Srebrenica and Žepa enclaves.

#### v. Conclusion

1716. The evidence before the Trial Chamber establishes beyond reasonable doubt that from inception, through implementation to fruition, **Miletić** played a pivotal role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa. **Miletić** made continuous contributions at all stages. He drafted Directive 7, which set out the common plan. He participated in the processes by which the enclaves were incrementally deprived of sufficient humanitarian aid and through which the supplies and the forces of DutchBat were depleted, creating an untenable situation for the population and incapacitating UNPROFOR.<sup>5210</sup> Furthermore, **Miletić** was at the heart of the Main Staff and served as a "hub" for information. He played the key role in receiving and distributing information from and to the relevant actors, both superior and subordinate including the RS President. Thus, in the lead up to the attack on Srebrenica,<sup>5211</sup> on critical days when the population was physically moved from there, and during the Žepa campaign, **Miletić** skilfully and efficiently

<sup>5206</sup> See *supra*, para. 1637.

<sup>5207</sup> See *supra*, paras. 1625, 1627–1628, 1630, 1636–1637.

<sup>5208</sup> Manojlo Milovanović, T. 12309 (31 May 2007).

<sup>5209</sup> *Ibid.*, T. 12311 (31 May 2007).

<sup>5210</sup> See *supra*, Chapter III, Section C.5.

<sup>5211</sup> The Trial Chamber notes **Miletić**'s absence from the Main Staff from 7 to 11 July 1995. However, the Trial Chamber is satisfied that this does not affect its finding on **Miletić**'s overall role.

used his unique position of knowledge to inform and advise. Through this function he enabled the decisions taken to successfully implement the plan, resulting in the forced removal of thousands of Bosnian Muslims from the enclaves. Considering all the individual acts and contributions cumulatively, the Trial Chamber finds that **Miletić** made a significant contribution to the common plan.

1717. With knowledge of the plan, **Miletić** carried out his tasks in relation to the JCE to Forcibly Remove efficiently and effectively and during different phases of the plan. The Trial Chamber is of the view that the only reasonable inference from this and all the evidence before it is that **Miletić** shared the common intent of the JCE.

1718. In conclusion, the Trial Chamber finds that **Miletić** participated in the JCE to Forcibly Remove the Bosnian Muslim civilians from the Srebrenica and Žepa enclaves, that cumulatively his acts amount to a significant contribution, and that he shared the common criminal intent with the other members of the JCE.

(ii) The Knowledge Requirement for a Crime under Article 5 of the Statute

1719. **Miletić** is responsible for a crime against humanity under Article 5 of the Statute if his acts were part of the widespread and systematic attack against the civilian population and if at the time he knew of that attack and that his crimes comprised a part thereof.<sup>5212</sup> As already outlined, **Miletić** was well familiar with the attack on the civilian population in the enclaves from its inception and he had a broad overview of it so as to be fully aware of its widespread and systematic nature.<sup>5213</sup> Further, **Miletić**'s acts, which constituted a contribution to the JCE, were clearly tied to the attack and were such in nature that **Miletić** could not but know that they contributed to and formed part of that attack on a civilian population. Therefore, the Trial Chamber concludes that **Miletić** knew of the widespread and systematic attack against the civilian populations of Srebrenica and Žepa and he further knew that his acts formed part of that attack. As such, the Trial Chamber finds that **Miletić** meets the knowledge requirement for commission of a crime under Article 5 of the Statute.

<sup>5212</sup> See *supra*, paras. 751, 757–758.

<sup>5213</sup> As set out in Chapter IV, Section B.2.(b), the attack started with Directive 7 and comprised several elements, *inter alia*, restrictions of humanitarian aid and re-supply of UNPROFOR, the military attack on the enclaves, and the busing out of the civilians from Potočari and Žepa. As elaborated above, **Miletić** had full knowledge of these elements: he drafted Directive 7, he was the focal point at the Main Staff for any information concerning the attack on Srebrenica and Žepa and monitored the busing out of the civilian population from the enclaves. See *supra*, paras. 1649, 1661–1699.

(iii) Count 7: Inhumane Acts (Forcible Transfer)

1720. The Trial Chamber has already found that thousands of Bosnian Muslims were forcibly transferred from Srebrenica and Žepa.<sup>5214</sup> The Trial Chamber has also found that the forcible transfer amounts to “other inhumane acts” and constitutes a crime against humanity.<sup>5215</sup>

1721. **Miletić** was an active participant in the JCE to Forcibly Remove and meets the knowledge requirement for crime against humanity.<sup>5216</sup> The Trial Chamber finds that, through his participation in the JCE to Forcibly Remove, **Miletić** committed forcible transfer, an inhumane act, as a crime against humanity punishable under Article 5(i) of the Statute.

1722. The Trial Chamber further finds that **Miletić** planned forcible transfer with regard to the Bosnian Muslims from Srebrenica and Žepa. However, the Trial Chamber is of the view that his conduct is most appropriately described as the commission of inhumane acts (forcible transfer) through his participation in the JCE to Forcibly Remove.

(iv) Count 8: Deportation

1723. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute the crime of deportation. **Miletić** can thus not be held responsible for deportation as a crime against humanity. Accordingly, the Trial Chamber finds **Miletić** not guilty of the crime of deportation.

(v) Counts 4 and 5: Murder

1724. The Prosecution alleges that pursuant to the third category of liability through participation in the JCE to Forcibly Remove, it was foreseeable to **Miletić** that certain individual “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of the JCE to Forcibly Remove.<sup>5217</sup>

1725. The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.<sup>5218</sup> The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.<sup>5219</sup> The Trial Chamber has found that these “opportunistic” killings constitute murder both as a crime against humanity and a violation of the laws and customs of war.<sup>5220</sup> The Trial

<sup>5214</sup> See *supra*, paras. 936, 962. But see Judge Kwon’s Dissenting Opinion, *infra*, paras. 2–20.

<sup>5215</sup> See *supra*, paras. 937, 962.

<sup>5216</sup> See *supra*, para. 1719.

<sup>5217</sup> Indictment, paras. 31, 48, 83.

<sup>5218</sup> See *supra*, paras. 359, 361, 455, 457, 463, 497.

<sup>5219</sup> See *supra*, para. 449; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

<sup>5220</sup> See *supra*, para. 796.

Chamber has also found, by majority, Judge Kwon dissenting, that the “opportunistic” killings in Potočari were a natural and foreseeable consequence of the JCE to Forcibly Remove.<sup>5221</sup>

1726. The Trial Chamber recalls its finding that **Miletić** was an active participant in the JCE to Forcibly Remove.<sup>5222</sup> **Miletić** was one of the most knowledgeable persons in the Main Staff when it came to the VRS operations and that included this operation to forcibly remove. He also held a key coordinating role. The Trial Chamber, by majority, Judge Kwon dissenting, finds that as a result of **Miletić**’s level of involvement, his broad overview of this massive scale operation, and knowledge of events as described above, he—probably above everyone—was in a position to foresee that this large scale forced movement of the population would result in “opportunistic” killings in Potočari.

1727. Therefore, the Trial Chamber, by majority, Judge Kwon dissenting, is convinced beyond reasonable doubt that it was foreseeable to **Miletić** that “opportunistic” killings would be perpetrated in Potočari by members of the VRS in the course of the forcible transfer operation, and that by participating in the JCE, he willingly took this risk. **Miletić** also meets the knowledge requirement for crimes against humanity.<sup>5223</sup> As such, the Trial Chamber, by majority, Judge Kwon dissenting, concludes that **Miletić** is criminally responsible for murder as a crime against humanity pursuant to third category JCE.<sup>5224</sup> The Trial Chamber notes that **Miletić** is also charged with murder as a war crime. The Trial Chamber however considers that in the circumstances of “opportunistic” killings arising from a JCE to Forcibly Remove—encompassing forcible transfer as other inhumane acts constituting a crime against humanity—his criminal responsibility is for murder as a crime against humanity and not as a war crime.

(vi) Count 6: Persecution

1728. The Trial Chamber has found that persecution was committed, *inter alia*, through the forcible transfer of thousands of Bosnian Muslims from Srebrenica and Žepa, cruel and inhumane treatment, and terrorising Bosnian Muslim civilians, and that these acts amount to crimes against humanity.<sup>5225</sup> The Trial Chamber has also found that these acts formed an intrinsic part of the common plan to forcibly remove the Bosnian Muslim population from the enclaves.<sup>5226</sup>

1729. The Trial Chamber has already found that **Miletić** shared the common purpose and was an active member of the JCE to Forcibly Remove. The Trial Chamber has also found that **Miletić**

<sup>5221</sup> See *supra*, para. 1088; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–26.

<sup>5222</sup> See *supra*, paras. 1716–1718.

<sup>5223</sup> See *supra*, para. 1719.

<sup>5224</sup> See Judge Kwon’s Dissenting Opinion, *infra*, paras. 27–28.

<sup>5225</sup> See *supra*, paras. 994–995, 998–999, 1002–1003.

<sup>5226</sup> See *supra*, paras. 1086–1087.

committed forcible transfer through his participation in the JCE to Forcibly Remove. However, in order to be criminally responsible for persecution, **Miletić** needs to have acted with the specific intent to discriminate on political, racial or religious grounds.<sup>5227</sup> The Trial Chamber is satisfied that **Miletić** possessed such specific intent with reference to forcible transfer. The operation to remove the populations from Srebrenica and Žepa was specifically directed at the Bosnian Muslim population. This was clearly set out in the plan as laid down in Directive 7. As found above, **Miletić** had full knowledge of this Directive, the plan it encompassed and who was targeted. Based on this and all other evidence before it, the Trial Chamber finds that **Miletić** carried out his acts relating to forcible transfer with the specific intent to discriminate on political, racial or religious grounds.

1730. The Trial Chamber also finds that through his participation in the JCE to Forcibly Remove, **Miletić** committed acts of cruel and inhumane treatment and terrorising civilians. As set out above, the crimes agreed in the common plan were specifically directed at the Bosnian Muslim population of the enclaves. As such, the Trial Chamber is satisfied that **Miletić** possessed the required persecutory intent in relation to the cruel and inhumane treatment and terrorising civilians.

1731. The Trial Chamber has already found that **Miletić** meets the knowledge requirement for crimes against humanity. The Trial Chamber accordingly finds that **Miletić** planned and committed, through participation in the JCE to Forcibly Remove, persecution through forcible transfer, cruel and inhumane treatment, and terrorising Bosnian Muslim civilians. However, the Trial Chamber is of the view that his conduct is most appropriately described as committing persecution through the underlying acts of forcible transfer, cruel and inhumane treatment, and terrorising civilians, committed through his participation in the JCE to Forcibly Remove with persecutory intent. As the Trial Chamber has assessed the charges against **Miletić** of persecution, other than through “opportunistic” killings, pursuant to first category JCE liability,<sup>5228</sup> it is not necessary to address these acts in relation to the third category of JCE.

1732. The Trial Chamber will now address persecution through “opportunistic” killings. As there is no evidence **Miletić** planned, instigated, or ordered persecution through “opportunistic” killings, the Trial Chamber will consider whether **Miletić** can be found criminally responsible for these acts pursuant to third category JCE.

1733. At the outset, the Trial Chamber holds that for an accused to be found criminally responsible pursuant to third category JCE for a specific intent crime, the accused need not have the specific

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<sup>5227</sup> See *supra*, paras. 964, 968–969.

<sup>5228</sup> See *supra*, paras. 1728–1730.

intent for the extended crime.<sup>5229</sup> What the Prosecution needs to establish is that it was reasonably foreseeable to the accused that the extended crime would be committed and that it would be committed with the required specific intent.<sup>5230</sup>

1734. The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.<sup>5231</sup> The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.<sup>5232</sup> The Trial Chamber has found that these “opportunistic” killings constitute persecution as a crime against humanity.<sup>5233</sup> The Trial Chamber has also found, by majority, Judge Kwon dissenting, that the “opportunistic” killings in Potočari were a natural and foreseeable consequence of the JCE to Forcibly Remove.<sup>5234</sup>

1735. The Trial Chamber, by majority, Judge Kwon dissenting, has already found that it was foreseeable to **Miletić** that “opportunistic” killings would be perpetrated in Potočari by members of the VRS in the course of the forcible transfer operation and that he willingly took this risk.<sup>5235</sup> The Trial Chamber, by majority, Judge Kwon dissenting, is further satisfied that it was foreseeable to **Miletić** that these would be carried out with persecutory intent. By participating in the JCE, **Miletić** willingly took this risk. The Trial Chamber has already found that **Miletić** meets the knowledge requirement for crimes against humanity. Therefore, the Trial Chamber finds by majority, Judge Kwon dissenting,<sup>5236</sup> that **Miletić** is responsible for persecution through “opportunistic” killings as a crime against humanity pursuant to third category JCE.

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<sup>5229</sup> See *supra*, para. 1031.

<sup>5230</sup> See *supra*, paras. 1030–1031.

<sup>5231</sup> See *supra*, paras. 359, 361, 455, 457, 463, 497.

<sup>5232</sup> See *supra*, para. 449; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

<sup>5233</sup> See *supra*, para. 991.

<sup>5234</sup> See *supra*, paras. 1088; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–26.

<sup>5235</sup> See *supra*, para. 1727; see Judge Kwon’s Dissenting Opinion, *infra*, paras. 21–26.

<sup>5236</sup> See Judge Kwon’s Dissenting Opinion, *infra*, paras. 27–28.

8. Milan Gvero(a) The Case against Gvero

1736. The Prosecution alleges that **Milan Gvero** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of murder, persecution, inhumane acts (forcible transfer), and deportation.<sup>5237</sup> Specifically, the Prosecution alleges that **Gvero** was a member of a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).<sup>5238</sup>

1737. The Prosecution alleges that **Gvero** assisted in the attack on Srebrenica knowing that one of its main objectives was to force the Muslim population to leave the enclave.<sup>5239</sup> As the person responsible within the VRS Main Staff for propaganda, self-protection and co-operation with UNPROFOR, he released false statements concerning the attacks on the enclaves to the media, the international organisations and the public, in order to assist in the take-over of Srebrenica enclave;<sup>5240</sup> and he kept Karadžić informed about his communication with the international forces.<sup>5241</sup>

1738. It is further alleged that **Gvero** acted to prevent and control outside international protection of the enclaves by denying access to international organisations and providing assistance in restricting the supplies and humanitarian aid convoys to the population of Srebrenica and Žepa.<sup>5242</sup> He threatened and pressured UNPROFOR in order to stop air strikes during the operation.<sup>5243</sup>

1739. The Prosecution alleges that **Gvero** actively participated in and exercised control over the movement of people out of the enclaves by organising and coordinating the capture and detention of Muslim men from Srebrenica and by facilitating the movement of wounded Muslims from the enclave.<sup>5244</sup>

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<sup>5237</sup> Indictment, paras. 46–47, 48, 49–71, 76, 83, 84, 88. **Gvero** is charged under Counts 4 and 5 with murder, as both a crime against humanity punishable under Article 5(a) of the Statute and a violation of the laws or customs of war punishable under Article 3 of the Statute; under Count 6 with persecutions, a crime against humanity punishable under Article 5(h) of the Statute; under Count 7 with inhumane acts (forcible transfer), as a crime against humanity punishable under Article 5(i); and finally under Count 8 with deportation as a crime against humanity punishable under Article 5(d) of the Statute.

<sup>5238</sup> Indictment, para. 76.

<sup>5239</sup> *Ibid.*, paras. 76(a)(ii), 76(b)(i); Prosecution Final Brief, paras. 1770–1777.

<sup>5240</sup> Indictment, paras. 76(a)(i), 76(b)(i); Prosecution Final Brief, paras. 1778–1780.

<sup>5241</sup> Indictment, para. 76(b)(ii); Prosecution Final Brief, para. 1789.

<sup>5242</sup> Indictment, para. 76(c)(ii); Prosecution Final Brief, paras. 1765–1769.

<sup>5243</sup> Indictment, para. 76(c)(i); Prosecution Final Brief, paras. 1781–1793.

<sup>5244</sup> Indictment, paras. 76(d)(i) and (ii); Prosecution Final Brief, paras. 1794–1816.



(b) Preliminary Issues

1740. **Gvero** submits that during the course of this trial, the evidence presented in relation to his alleged role in Žepa has changed and expanded the case against him to a significant degree. As a result, the Prosecution has greatly expanded the ambit of its allegations.<sup>5245</sup>

1741. The Trial Chamber recalls its “Decision on Prosecution Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal”, 8 May 2009 (“Decision”), which admitted evidence concerning **Gvero**’s presence in Žepa during the time relevant to the Indictment, stating that “this piece of evidence does not expand the charges against **Gvero**” as he is already charged with, *inter alia*, being a member of the JCE to Forcibly Remove as alleged in the Indictment.<sup>5246</sup> On 15 May 2009, **Gvero** requested the Trial Chamber to grant certification to appeal the Decision;<sup>5247</sup> but this was denied.<sup>5248</sup> Consequently, the Trial Chamber finds the issue of **Gvero**’s alleged expanded role in Žepa has already been considered and dismisses **Gvero**’s argument.

1742. **Gvero** also contends that the allegation of his role in restricting UN humanitarian aid to Srebrenica and Žepa is not properly pleaded and that he therefore was not put on notice of it.<sup>5249</sup>

1743. The Trial Chamber finds that this allegation falls within the frame of **Gvero**’s charges as set forth in the Indictment, particularly “[p]reventing and controlling outside international protection of the enclaves, including air strikes and international monitoring.”<sup>5250</sup> The Trial Chamber further notes that **Gvero**’s relationship with UNPROFOR and his assistance in the restriction of humanitarian aid was addressed in the Prosecution Pre-Trial Brief.<sup>5251</sup> Therefore, **Gvero** was put on notice of this allegation. Accordingly, the Trial Chamber dismisses **Gvero**’s argument.

1744. **Gvero** further contends that his purported knowledge of and steps towards implementing the Strategic Goals and Directive 4 prior to 8 March 1995 constitute an example of “prejudicial surprise”, since these allegations are absent from the Indictment, the Prosecution’s Pre-Trial Brief and Opening Statements. **Gvero** submits that these matters should only be considered relevant for

<sup>5245</sup> Gvero Final Brief, para. 399.

<sup>5246</sup> Decision, para. 78. *See also* Indictment, para. 76.

<sup>5247</sup> *See* Motion on Behalf of Milan Gvero Seeking Certification to Appeal the Decision on the Prosecution’s Second Motion to Reopen its Case, 15 May 2009.

<sup>5248</sup> *See* Decision on Gvero Motion Seeking Certification to Appeal the Decision on the Prosecution’s Second Motion to Reopen its Case, 3 June 2009.

<sup>5249</sup> Gvero Closing Arguments, T. 34702 (11 Sept 2009).

<sup>5250</sup> Indictment, para. 76(c).

<sup>5251</sup> Prosecution Pre-Trial Brief, para. 279.

background and context to the allegations in the Indictment, as they fall outside its temporal scope.<sup>5252</sup>

1745. The Trial Chamber concurs with the jurisprudence of this Tribunal, according to which the Prosecution is under an obligation to state the material facts underpinning the charges in the Indictment, while no such requirement exists for the evidence proffered to prove such facts.<sup>5253</sup> In determining whether material facts have been pleaded, the Indictment must be read in its entirety.<sup>5254</sup> **Gvero** is charged with being a member of a JCE to Forcibly Remove the Muslim population from Srebrenica and Žepa, from about 8 March 1995 through the end of August 1995.<sup>5255</sup> The common purpose is a material fact concerning the existence of a JCE and, as such, must be pleaded in the Indictment.<sup>5256</sup>

1746. In the present case, the common purpose of the JCE was clearly set out in paragraph 49 of the Indictment. The existence of the Strategic Goals and Directive 4, of 1992, constitutes evidence relevant to the alleged JCE and to the Accused's knowledge of its common purpose. As such, it did not need to be pleaded.<sup>5257</sup>

(c) Position and Function

(i) Role of the Assistant Commander for Morale, Legal and Religious Affairs

1747. During the time relevant to the Indictment, **Milan Gvero** was the Assistant Commander for Morale, Legal and Religious Affairs of the Main Staff of the VRS ("Assistant Commander for Morale").<sup>5258</sup> **Gvero** held this position from April 1992 throughout the war.<sup>5259</sup> He was directly subordinated to the Commander of the VRS Main Staff, Mladić.<sup>5260</sup> The Sector for Morale, Legal and Religious Affairs ("Sector for Morale") was based in Han Pijesak; however, **Gvero** was

<sup>5252</sup> Gvero Closing Arguments, T. 34702–34703 (11 Sept 2009).

<sup>5253</sup> *Stakić* Appeal Judgement, para. 116. *See also Kupreškić* Appeal Judgement, para. 88 (stating that "the question whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence").

<sup>5254</sup> *Stakić* Appeal Judgement, para. 117. *See also Kupreškić* Appeal Judgement, para. 89 (stating that "the materiality of a particular fact cannot be decided in the abstract. It is dependent on the Prosecution case. A decisive factor in determining the degree of specificity with which the Prosecution is required to particularise the facts of its case in the indictment is the nature of the alleged criminal conduct charged to the accused").

<sup>5255</sup> Indictment, paras. 49, 76.

<sup>5256</sup> *See Stakić* Appeal Judgement, para. 118; *Kvočka* Appeal Judgement, para. 42.

<sup>5257</sup> *See further discussion, supra*, paras. 1607–1609.

<sup>5258</sup> Manojlo Milovanović, T. 12242 (30 May 2007); Božo Momčilović, T. 14081, 14087 (22 Aug 2007). **Gvero** was appointed Assistant Commander for Morale, Legal and Religious Affairs on 25 April 1992. Ex. P02739, "Information regarding appointments of Mladić and Gvero by Decree of 25 April 1992", p. 1.

<sup>5259</sup> Gvero Opening Statement, T. 615 (23 Aug 2006); Ex. P02739, "Information regarding appointments of Mladić and Gvero by Decree of 25 April 1992".

<sup>5260</sup> Manojlo Milovanović, T. 12152–12154 (29 May 2007), T. 12304–12305 (31 May 2007); Novica Simić, T. 28593 (21 Nov 2008).

travelling on a regular basis to Crna Rijeka, where the VRS Main Staff headquarters was located.<sup>5261</sup>

1748. In terms of authority, generally assistant commanders had input in the decision-making process within the VRS Main Staff by presenting proposals, positions or opinions; however, they were not able to issue combat orders to subordinate units, unless authorised by Mladić.<sup>5262</sup> As the Assistant Commander for Morale, **Gvero** only had the authority to issue executive orders within the purview of his Sector.<sup>5263</sup>

1749. The Prosecution alleges that **Gvero** was “controlling the Main Staff Information Centre” headed by Milovan Milutinović.<sup>5264</sup> **Gvero** contends that the Prosecution has erroneously conflated the “Morale Sector’s sub-department for Information and Political Propaganda Activities” overseen by **Gvero** and the “VRS Main Staff Information Centre” headed by Milutinović and falling directly under Mladić’s authority. **Gvero** argues these were two separate organs.<sup>5265</sup> In light of all the evidence presented, the Trial Chamber is satisfied that the Sector for Morale had a sub-department for information and political propaganda activities (“Centre for Information and Propaganda”) that was headed by Milovan Milutinović.<sup>5266</sup>

<sup>5261</sup> Bogdan Sladojević, T. 14404 (27 Aug 2007); Nedeljko Trkulja, T. 15082-15085 (10 Sept 2007).

<sup>5262</sup> Manojlo Milovanović, T. 12242-12243, 12249 (30 May 2007), T. 12304 (31 May 2007); Nedeljko Trkulja, T. 15141 (10 Sept 2007). *See also* Novica Simić, T. 28593, 28596-28599 (21 Nov 2008). *See also supra*, para. 107.

<sup>5263</sup> Novica Simić, T. 28598-28599 (21 Nov 2008). Simić testified that the Sector for Morale had five to six staff. *Ibid.* Manojlo Milovanović, T. 12242-12243, 12249 (30 May 2007), T. 12304 (31 May 2007). Several witnesses testified that **Gvero** was never in command of any military unit and he did not have any say in how units were used by the Main Staff. Nedeljko Trkulja, T. 15141-15142 (10 Sept 2007); Slavko Čulić, T. 33875 (2 July 2009); Petar Skrbić, T. 15638 (19 Sept 2007).

<sup>5264</sup> Prosecution Final Brief, para. 1750.

<sup>5265</sup> Gvero Closing Arguments, T. 34730-34731 (11 Sept 2009).

<sup>5266</sup> Slobodan Kosovac, T. 30386-30387 (20 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, pp. 18-19; Nedeljko Trkulja, T. 15140 (10 Sept 2007). In addition to the testimony heard in support of the conclusion that **Gvero**’s Sector for Morale had a sub-department for information and propaganda activities, several documents support such finding. *See* Ex. P03178, “VRS Main Staff Personnel Employment Records”, pp. 11-12 (listing a centre for information and propaganda activities as a sub-department of **Gvero**’s Sector for Morale, headed by Milovan Milutinović); Ex. P03179, “Report on the state of morale in the VRS to Drina Corps, signed by Gvero, 8 Feb 1993” (in which **Gvero** refers to the “Information and Psychological Propaganda Activities / centre”); Ex. P04154, “Drina Corps Command proposal to the Assistant Commander for Morale, Religious and Legal Affairs, concerning ‘Correctness of informing the public about the carrying out of combat operations’, signed by Živanović, 8 July 1995” (where Živanović is telling **Gvero** to “more immediately engage the Press Center of the Main Staff VRS”); Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995 (referring to the VRS Main Staff “Press Centre”; the Sector for Morale is among the recipients of this order); Ex. P03097, “‘Ninth Circle of Information Hell’, Article by Gvero on book written by Milovan Milutinović, ‘How I Led the Media War’”, pp. 6-7 (in which **Gvero** stated that Milovan Milutinović was the head of the Main Staff “Information Service and Information and Propaganda Centre” since 1992). *See also* Ex. P02788, “Order regarding transportation of loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Tolimir, 15 July 1995” (stating that Milovan Milutinović was the head of the “Centre for Information and Propaganda Activities” of the VRS Main Staff). The Trial Chamber notes there is a certain inconsistency in the terminology used in the aforementioned documents, in relation to the department for information and propaganda falling under **Gvero**’s purview. For reasons of clarity, the Trial Chamber will refer to the “Centre for Information and Propaganda” throughout this Judgement. The Trial Chamber was also presented

1750. **Gvero** was primarily responsible for building up and monitoring the state of morale of the VRS troops, which was an important part of combat readiness.<sup>5267</sup> It was **Gvero**'s duty to assess the various factors by which morale was affected, in order to make sure that the fighting spirit was kept at a maximum level.<sup>5268</sup> This involved, *inter alia*, monitoring the situation within units, including the mental and physical stress to which they were exposed, losses of men and equipment, and the influence of such losses on combat morale. Further, it was among **Gvero**'s tasks to participate in the combat decision-making process by proposing moral guidance and psychological security measures to unit commanders, in order to maintain combat morale of units and individuals.<sup>5269</sup>

1751. **Gvero** was also, at times, dispatched to the field to assess the situation in the units and to raise morale. For instance, pursuant to an order from Mladić on 12 May 1995, "in order to ensure a more efficient execution of tasks from directive no 7/1 for 1995 and the realisation of the planned *Spreča-95* and *Plamen-95* operations", three teams composed of VRS Main Staff officers had to be formed and "engaged in providing help, in uniting combat operations and establishing the situation" in the Bratunac Brigade.<sup>5270</sup> **Gvero** was part of one of these teams tasked, *inter alia*, to "assess the situation in the units engaged pursuant to plan *Plamen-95*, and provide the necessary support to extend the operation".<sup>5271</sup>

1752. As the Assistant Commander for Morale, one of **Gvero**'s tasks was the dissemination of information and propaganda for the troops in support of the aims of the war, in the preparation for and during the course of combat operations. This involved analysing the international political

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with evidence that may suggest that there was another centre for information falling directly under the Main Staff Commander. *See* Novica Simić, T. 28585–28586 (20 Nov 2008) (testifying that there was a "centre for information of VRS", which was a separate organ of the VRS Main Staff, directly falling under the Main Staff Commander; and that it was not part of the Sector for Morale). However, when giving such testimony, Simić was being questioned by **Gvero** about Ex. P03178, "VRS Main Staff Personnel Employment Records". As stated above, the Trial Chamber is satisfied—even taking Simić's testimony into account—that Ex. P03178 indicates that the Sector for Morale's sub-department for information and propaganda activities was headed by Milovan Milutinović. Therefore, the Trial Chamber considers this evidence unresponsive of a finding that there was another centre for information and propaganda within the VRS Main Staff; and it is satisfied this evidence does not affect the finding that the Centre for Information and Propaganda headed by Milutinović fell under **Gvero**.

<sup>5267</sup> Manojlo Milovanović, T. 12245–12246 (30 May 2007); Novica Simić, T. 28591, 28593 (21 Nov 2008). *See, e.g.*, Ex. P03179, "Report on the state of morale in the VRS to Drina Corps, signed by Gvero, 8 February 1993"; Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić".

<sup>5268</sup> Novica Simić, T. 28699 (24 Nov 2008). *See also* Ex. P03182, "VRS Main Staff Report, signed by Gvero, 4 August 1995"; Ex. P03184, "Report on the characteristics of the combat situation in the western part of RS, signed by Gvero, 21 September 1995".

<sup>5269</sup> *See* Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić", p. 4. *See also* Ex. P03182, "VRS Main Staff Report, signed by Gvero, 4 August 1995"; Ex. P03184, "Report on the characteristics of the combat situation in the western part of RS, signed by Gvero, 21 September 1995".

<sup>5270</sup> Ex. 5D00714, "VRS Main Staff order, signed by Mladić, 12 May 1995".

<sup>5271</sup> *Ibid.*, pp. 1–2. *See also* Slavko Čulić, T. 33865–33868 (2 July 2009) (testifying that on 27 July 1995, **Gvero** went to the headquarters and IKM of the Šipovo Brigade, of which Čulić was the Commander, to monitor the situation within the unit, the level of combat morale, activities, issues to be resolved with the civilian authorities, and other issues of importance for the unit).

context in which the Bosnian Serb political and military leaders were making their decisions.<sup>5272</sup> Such information would be passed down the chain of command and explained to the soldiers by the respective commanders and assistants for morale at the corps level.<sup>5273</sup> For example, in the 2 July *Krivaja-95* combat order, in the section titled “Morale-psychological preparation of the men for the execution of the task”, the Drina Corps Command instructed the brigade commanders to: “[p]ut the emphasis on the boosting [of] combat morale, stressing the success of our units in crushing the enemy offensive during the last month. Point out the significance of dividing and reducing in size the Srebrenica enclave for the safety of Serbian villages and civilians in central Podrinje. Supply the units as well as possible with military equipment for executing this task.”<sup>5274</sup>

1753. In relation to external propaganda, a component of **Gvero**’s role was to remain attuned to the perception of the VRS in the international media.<sup>5275</sup> Evidence however suggests that, in practice, **Gvero** was limited in what he could actually do in relation to the media, since the media outlets and resources of RS were controlled by the state leadership.<sup>5276</sup> During the war, there was an

<sup>5272</sup> Petar Skrbić, T. 15567–15571 (18 Sept 2007); Ex. P04208, “Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić”; Ex. P03097, “‘Ninth Circle of Information Hell’, Article by Gvero on book written by Milovan Milutinović, ‘How I Led the Media War’”, pp. 3–4; Ex. P02764, “Expert Report on VRS Main Staff Command Responsibility, by R. Butler, 9 June 2006”, paras. 2.10–2.11; Slobodan Kosovac, T. 30386–30389 (20 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, pp. 18–19. *See, e.g.*, Ex. P03180, “Article entitled ‘Gvero describes the just struggle waged by the Serbs in Bosnia’, published in Srpska Vojska, 15 July 1993”. Simić testified that he would receive such information concerning the international situation through reports sent from **Gvero**, and then he would include this information in the combat order, “so that soldiers would understand the circumstances within which [they] were acting”. Novica Simić, T. 28695–28698 (24 Nov 2008). *See* Ex. 5D00974, “Order from the East Bosnian Corps Command, 25 March 1995”, pp. 5–6.

<sup>5273</sup> Ex. P04208, “Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić” Novica Simić, T. 28697–28698 (24 Nov 2008). *See, e.g.*, Ex. P03179, “Report on the state of morale in the VRS to Drina Corps, signed by Gvero, 8 February 1993”, p. 11; Ex. P03184, “Report on the characteristics of the combat situation in the western part of RS, signed by Gvero, 21 September 1995”; Ex. P03182, “VRS Main Staff Report, signed by Gvero, 4 August 1995”. *See also* Ex. 5D00974, “Order from the East Bosnian Corps Command, 25 March 1995”, pp. 5–6 (stating under “Moral and psychological preparations” that, before the commencement of operations, all members of the participating commands and units were to be informed by the relevant organ at the corps level about “the objective, importance and tasks of the operation”, focusing in particular on the international situation in which the operation was being carried out; the situation on the RS front; the political, economic, and military importance of this area for RS; the forces and resources involved in the operation and the command and control system; and other measures undertaken to motivate and boost the combat morale).

<sup>5274</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja-95, 2 July 1995”, p. 8. Other combat orders had a similar section concerning moral and psychological preparation for the execution of tasks. *See, e.g.*, Ex. 1D01294, “Order for active combat operations, sent by the Bratunac Brigade Command to Commands of the 1st, 2nd, 3rd and the 4th Infantry Battalion, signed by Blagojević, 5 July 1995”, p. 6.

<sup>5275</sup> *See, e.g.*, Ex. 6D00129, “VRS Main Staff document regarding prevention of reprisal and treatment of journalists and representatives of international organisations, 20 June 1992”. *See also* Ex. P03097, “‘Ninth Circle of Information Hell’, Article by Gvero on book written by Milovan Milutinović, ‘How I Led the Media War’”; Ex. P04148, “Drina Corps Command – Request to VRS Main Staff, Morale, Religious and Legal Affairs Section, signed by Živanović, 13 April 1993”.

<sup>5276</sup> Milomir Savčić, T. 15341 (13 Sept 2007); Petar Skrbić, T. 15555–15556 (18 Sept 2007).

International Press Centre, headed by Karadžić's daughter and based in Pale, which had control over the media.<sup>5277</sup>

1754. **Gvero's** responsibility for legal affairs was mainly administrative.<sup>5278</sup> **Gvero** also had some responsibility in relation to military courts, the Military Prosecutor's Office and the Military Disciplinary Court.<sup>5279</sup> Additionally, religious affairs fell within **Gvero's** remit.<sup>5280</sup>

1755. There is evidence indicating that, among **Gvero's** duties was cooperation with international organisations.<sup>5281</sup> In July 1995, **Gvero** had various contacts with UNPROFOR, ICRC and UNHCR, concerning the situation in the Srebrenica enclave, prisoners of war, and the transport of wounded and sick people.<sup>5282</sup> However, the Trial Chamber finds that maintaining contacts with UNPROFOR and international humanitarian organisations did not fall directly within **Gvero's** responsibilities in his capacity as the Assistant Commander for Morale; rather, it was a higher level function of Mladić and Milovanović, who would specifically authorise **Gvero**, or other generals, to engage in contact

<sup>5277</sup> Branimir Grulović, T. 23766, 23791–23793 (22 July 2008); Petar Skrbić, T. 15556 (18 Sept 2007); Ex. P03540, "Intercept between Sonja Karadžić and Colonel Stevanović, 5 August 1995, 18.30 hours", p. 2 (recording Sonja Karadžić saying that, pursuant to an order by the President of RS, permits for the passage of journalists could be issued only by the International Press Centre).

<sup>5278</sup> Manojlo Milovanović, T. 12247 (30 May 2007) (testifying that **Gvero's** role covered deficiencies in the army that were not subject to prosecution, such as violations of discipline amongst the units, to the extent that they were relevant for their morale); Richard Butler, T. 19607 (14 Jan 2008). *See also* Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić", p. 4 (stating, under section 2. c), that among the duties of the Assistant Commander for Morale was "fast and energetic reaction to occurrences of lack of organisation, failure to respect the chain of command, lack of discipline, panic, etc., and taking appropriate measures").

<sup>5279</sup> Manojlo Milovanović, T. 12246–12247 (30 May 2007). Milovanović testified that from the beginning of the war, military courts were supposed to be under the Ministry of Defence; but they were not, in practice, because the Ministry of Defence was not equipped for that. *See also* Richard Butler, T. 19607 (14 Jan 2008). *See also supra*, para. 108.

<sup>5280</sup> Manojlo Milovanović, T. 12246–12247 (30 May 2007); Ex. P04208, "Plan of moral and psychological support of the operation, signed by Gvero and approved by Mladić", p. 7. *See also* Ex. 6DP02516, VRS Main Staff, Sector for Moral, Religious and Legal Affairs – Celebration of Saint Vid's day - Request for analysis, signed by Gvero, 16 July 1995." **Gvero's** tasks included establishing contacts with religious communities and proposing measures and activities for the celebration of religious holidays. *Ibid.*

<sup>5281</sup> Novica Simić, T. 28606 (21 Nov 2008); Milenko Jevđević, T. 29797 (16 Dec 2008); Petar Skrbić, T. 15568–15571 (18 Sept 2007).

<sup>5282</sup> *See* Novica Simić, T. 28605–28606 (21 Nov 2008); Cornelis Nicolai, T. 18448 (29 Nov 2007), T. 18550 (30 Nov 2007). *See also, e.g.,* Ex. P02906, "Notes of telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours"; Ex. P02968, "Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours"; Ex. P02907, Notes of telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours"; Ex. P02947, "UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995", p. 1; Ex. P04156, "ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995", p. 3; Ex. P04157, "ICRC interview to Deutsche Welle, 20 July 1995"; Ex. P02942, "Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milosević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan"; Ex. P02978, "Notes of a telephone conversation between Nicolai and Marković, 16 July 1995, 15:00 hours".

with such organisations.<sup>5283</sup> There were also occasions in which **Gvero** would accompany Mladić or other VRS officers to attend meetings with DutchBat.<sup>5284</sup>

1756. In the absence of Mladić and Milovanović from the VRS Main Staff, the other assistant commanders reported to “the most senior officer” present.<sup>5285</sup> **Gvero** would at times be the most senior officer present at the VRS Main Staff; and in such circumstances he could—upon authorisation from Mladić—play a role falling outside his normal responsibilities.<sup>5286</sup> For example, on 13 July 1995, an order type-signed **Gvero** was issued from the VRS Main Staff concerning the prevention of passage of Bosnian Muslims towards Tuzla and Kladanj;<sup>5287</sup> **Gvero** also received two proposals from Tolimir concerning treatment and accommodation of prisoners of war, and an order from Mladić on the prevention of leakage of military secrets in relation to prisoners of war, addressed to him at the VRS Main Staff.<sup>5288</sup> On 19 July, Milovanović—VRS Chief of Staff—upon arrival at the VRS Main Staff in Crna Rijeka reported directly to **Gvero**.<sup>5289</sup> On 25 July 1995, Tolimir sent a document to **Gvero** or **Miletić** at the VRS Main Staff, proposing to request UNPROFOR to send a colonel rather than a general to Žepa.<sup>5290</sup> This evidence shows **Gvero** acting

<sup>5283</sup> Slobodan Kosovac, 30436–30437 (21 Jan 2009); Milomir Savčić, T. 15356 (13 Sept 2007); Manojlo Milovanović, T. 12248 (30 May 2007). See Ex. P02947, “UNPROFOR Report re Meeting between Smith and Mladić, 31 July 1995”, p. 1 (stating that “Mladić has appointed General Gvero to be responsible for managing the humanitarian and refugee problem”). See also Ex. P02936, “UNPROFOR Report re Meetings in Sarajevo and Pale, 20 April 1995, 22 April 1995”; Ex. P02950, “UNPROFOR Report re Meeting between Smith and Mladić, 25 August 95”.

<sup>5284</sup> See Ex. P02936, “UNPROFOR Report re Meetings in Sarajevo and Pale, 20 April 1995, 22 April 1995”; Ex. P02950, “UNPROFOR Report re Meeting between Smith and Mladić, 25 August 95”.

<sup>5285</sup> Manojlo Milovanović, T. 12305 (30 May 2007). See also *ibid.*, T. 12367–12372 (1 June 2007). See also *supra*, para. 106.

<sup>5286</sup> Manojlo Milovanović, T. 12203–12205 (29 May 2007), T. 12305 (30 May 2007). Without specifying a timeframe, Trkulja said that as **Gvero** was the oldest in the Main Staff, he would sign orders drafted by **Miletić** on the basis of instructions from the Commander at the Forward Command Post. Nedeljko Trkulja, T. 15098–15101 (10 Sept 2007), T. 15151, 15183–15184 (11 Sept 2007).

<sup>5287</sup> Ex. P00045, “VRS Main Staff Order to the Drina Corps to prevent the passage of Muslim groups towards Tuzla and Kladanj, type-signed Gvero, 13 July 1995”. Trkulja testified that **Gvero** did not possess the skills and knowledge required to draft a very complex combat order, such as this. Trkulja stated that **Gvero** did not draft “anything remotely similar” to this order and that **Gvero** did not have experience in dealing with such documents. Therefore, **Gvero** was not even in part responsible for this order and someone else could have signed on behalf of him. According to Trkulja, this order would have been drafted by **Miletić**. Nedeljko Trkulja, T. 15150–15154, 15182–15185 (11 Sept 2007). See also Manojlo Milovanović, T. 12371–12372 (1 June 2007) (testifying that the issuing of the combat order in itself would not be in keeping with the law unless Mladić previously authorised **Gvero** to sign the executive order). In the circumstances, the Trial Chamber is satisfied that whether or not drafted by **Gvero**, this order was issued under Mladić’s authority and **Gvero** knew of its content.

<sup>5288</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995” (this document was addressed to **Gvero** “for his information”); Ex. P00131, “Information regarding accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”; Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995” (this order was addressed, *inter alia*, to the Sector for Morale). In relation to Ex. P00131, Milovanović testified that seemingly, **Gvero** received this document because he was the “most senior general” at the command post on that day. Manojlo Milovanović, T. 12367–12369 (1 June 2007).

<sup>5289</sup> Manojlo Milovanović, T. 12203–12205 (29 May 2007). Milovanović stated that on that occasion, “as a disciplined soldier” he reported directly to **Gvero** because he was the most senior officer present at the VRS Main Staff. *Ibid.*

<sup>5290</sup> Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, p. 2. According to Milovanović, the document was addressed “personally to General Gvero or General Miletić”, since Tolimir did not know which of them was at the VRS Main Staff and he was sending the

beyond his normal tasks of Assistant Commander for Morale. The Trial Chamber therefore concludes that **Gvero** was the most senior officer present at the VRS Main Staff headquarters for at least part of 13 July, 19 July and 25 July 1995.

1757. **Gvero** was one of the four founding generals of the VRS; he was the oldest officer in the VRS Main Staff and very well respected.<sup>5291</sup> **Gvero** was considered a “nostalgic of the former Yugoslavia”, an advocate of “brotherhood and unity”. However, **Gvero** had a conflict with Karadžić, which escalated throughout the war.<sup>5292</sup> Karadžić thought of **Gvero** as a communist and called him “a red plague, the devil of the Main Staff, somebody who was stalling the work of the Main Staff.”<sup>5293</sup>

(d) Acts and Conduct

(i) Knowledge of Strategic Objectives and Directives

1758. The Strategic Objectives were adopted by the Assembly of the Serbian People in BiH in May 1992.<sup>5294</sup> The Trial Chamber does not have evidence that **Gvero** was present on that occasion. However, on 2 September 1992, **Gvero** addressed a meeting held in Bijeljina where these “strategic objectives of the war were put forth.”<sup>5295</sup> The meeting was attended by, *inter alia*, Karadžić,

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document to the VRS Main Staff to be handed to whomever the messenger would find. Manojlo Milovanović, T. 12377 (1 June 2007). Jovanović testified he had never seen the document before. He stated the document was possibly addressed to **Gvero** or **Miletić** because they were the only officers present in the Operations Centre at the VRS Main Staff, which he based on the document’s first sentence “we send you this to forward to another corps command to the Sarajevo Romanija Corps”, thus giving them a “courier’s task”. Sasa Jovanović, T. 33948–33949 (6 July 2009).

<sup>5291</sup> Novica Simić, T. 28600 (21 Nov 2008), T. 28691 (24 Nov 2008); Nedeljko Trkulja, T. 15098 (10 Sept 2007); Manojlo Milovanović, T. 12152 (29 May 2007); Ex. P03938 (confidential).

<sup>5292</sup> Milomir Savčić, T. 15346–15347 (13 Sept 2007). *See also* Ex. 6D00137, Letter from Karadžić to **Gvero**, 18 December 1994” (where Karadžić is telling **Gvero** that his behaviour is a confirmation that he has “no respect whatsoever for the institution of the President of the Republic and Supreme Commander”); Ex. P02756, “Letter from the President of RS to Gvero, 17 July 1995” (where Karadžić is warning **Gvero** that he acted contrary to some of his directives concerning contacts with international organisations and that he took decisions outside his competence, in relation to the sick and injured). *See infra*, para. 1797.

<sup>5293</sup> Petar Skrbić, T. 15555 (18 Sept 2007). On 14 July 1995, during a meeting, Karadžić said to Skrbić that “he was not an old lady and that he would certainly remove” **Gvero**. *Ibid.*, T. 15487 (17 Sept 2007). According to Skrbić, as a result of these ongoing disputes between **Gvero** and Karadžić, Mladić “marginalised, sidelined, General Gvero, to protect him from that unpleasantness, so that General Gvero did not perform but a part of the duties that were actually in his purview”. Skrbić also testified that **Gvero** was moved from Crna Rijeka to Han Pijesak at one point. Furthermore, Skrbić testified that **Gvero** mentioned his resignation to him, but Skrbić warned him that a general could not resign. *Ibid.*, T. 15562–15564 (18 Sept 2007). Savčić also testified that **Gvero** was probably removed from his post once or even more. Milomir Savčić, T. 15346–15347 (13 Sept 2007). *See also* Manojlo Milovanović, T. 12255–12256 (30 May 2007) (generally testifying that in April 1995, there was an open conflict between the VRS Main Staff and the Supreme Command, though he was not aware of whether **Gvero** personally came into conflict with Karadžić).

<sup>5294</sup> *See supra*, para. 89.

<sup>5295</sup> Novica Simić, T. 28649–28654 (21 Nov 2008); Ex. P03927, “War Diary of Novica Simić, Jan 1992 to Jan 1993”, p. 35.



Krajišnik and Mladić.<sup>5296</sup> As for Directive 4, no evidence was presented concerning **Gvero**'s involvement in its issuance. However, **Gvero** was present at a military and political seminar held in Zvornik on Mladić's order, a few days after Directive 4 was issued, during which some of the tasks for the Drina Corps pursuant to this Directive were discussed.<sup>5297</sup>

1759. At the beginning of 1995, **Gvero** attended and addressed the Briefing on Combat Readiness where the "future political and military goals and strategies of conducting the war and peace negotiations" were discussed; more specifically, political and military priorities of RS, the "already adopted strategic goals", and "the most important tasks [of the VRS] in 1995".<sup>5298</sup> The Trial Chamber finds that by participating in the combat readiness briefing, **Gvero** gained a wide and substantive knowledge of the strategies and goals of the political leadership of RS.

1760. The combat readiness briefing of January resulted in Directive 7.<sup>5299</sup> Directive 7, dated 8 March, which was drafted pursuant to the "full-method",<sup>5300</sup> includes a section for "Moral and Psychological Support"—under the heading "Support for Combat Actions"—stating in relevant part that:

[e]xternally a more aggressive propaganda and information presence should be maintained, aimed at gaining allies, deepening discord in the coalition, unmasking the biased and hostile activities of certain individuals and parts of UNPROFOR and some humanitarian organisations and undermining the enemy's fighting morale. This is to be achieved through planned and organised information and propaganda activities coordinated from State level.<sup>5301</sup>

It further reads that:

State and military organs responsible for work with UNPROFOR and humanitarian organisations shall, through the planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the

<sup>5296</sup> Novica Simić, T. 28649–28654 (21 Nov 2008).

<sup>5297</sup> Ex. P04402, "Extract of notebook seized by NATO forces during a search of residences of the family of Radovan Karadžić on 25-26 May 2005", p. 1; Ex. P04221, "VRS Main Staff Order to Drina Corps Command, signed by Mladić, 20 November 1992"; Ex. P04222, "Timetable for a Military and Political Seminar in the Drina Corps for 23 November 1992, approved by Mladić, signed by Milovanović" (stating that the "situation, results, further tasks and capabilities" of the Drina Corps in the areas of, *inter alia*, Višegrad, Goražde, Bratunac and Zvornik were discussed at the seminar); Vinko Pandurević, T. 32073–32080 (25 Feb 2009).

<sup>5298</sup> Ex. 5D00967, "Schedule briefing on Combat Readiness in 1994, 29 and 30 January 1995, signed by Mladić".

<sup>5299</sup> *See supra*, para. 1648.

<sup>5300</sup> *See supra*, para. 1649. Kosovac testified that this section of Directive 7 was not attributable to the Sector for Morale. He stated that: "There are some sentences that might be sentences used by this department, but most of the sentences are sentences that would be attributed to the commander and government or the government of Republika Srpska." Slobodan Kosovac, T. 30377–30379 (20 Jan 2009). However, when questioned by **Gvero**, Kosovac could not confirm that it was "not indispensable" for the Assistant Commander for Morale, Religious and Legal Affairs to participate in the preparation of Directive 7, because "to do so would be to disparage a very important sector". *Ibid.*, T. 30241-30242 (16 Jan 2009). Kosovac concluded that, based on the events that had taken place and the details in the diary of Karadžić's secretary, the meeting in President Karadžić's office on 16 March 1995 was held with every person who was essential for the preparation of Directive 7; but "if there had been more people it would not have been amiss." *Ibid.*; Ex. 5D01322, "Diary of the Radovan Karadžić's secretary for the year 1995", p. 31. *See also* Slobodan Kosovac, T. 30086–30087 (14 Jan 2009).

<sup>5301</sup> Ex. P00005, "RS Supreme Command Directive 7, 8 March 1995", p. 14, para. 6.1.

Muslim population, making them dependent on our good will while at the same time avoiding condemnation by the international community and international public opinion.<sup>5302</sup>

1761. Directive 7/1, which was issued at the end of March reads—in the section for “Moral and Psychological Support”—in relevant part that:

[t]hrough planned and coordinated informative and propaganda activities with state organs and media institutions, expose the bias of UNPROFOR and the international community, which are allowing the enemy to arm freely and continually attack Serbian defensive positions from the “protected zone” of Tuzla.<sup>5303</sup>

It continues:

[c]oordinate giving information to the public about combat actions in the operation and psychological and propaganda activities directed against the enemy through the Centre for Information and Propaganda Activities of the VRS Main Staff.<sup>5304</sup>

(ii) Involvement in the Procedures for the Passage of Convoys

1762. Towards the end of 1994 and at the beginning of 1995, **Gvero** was involved, in some instances, in the procedures for the passage of UNPROFOR and humanitarian convoys throughout the territory of RS.<sup>5305</sup> For example, on 8 December 1994, **Gvero** notified the Drina Corps Command that the passage of a MSF team along the route Belgrade-Zvornik-Bratunac-Srebrenica and back was approved.<sup>5306</sup> With regard to several notifications of approval for the passage of UNPROFOR convoys or helicopter missions, between January and April 1995, the Trial Chamber is satisfied each of them bears **Gvero**'s handwritten initials.<sup>5307</sup>

1763. The Trial Chamber has not been presented with evidence of **Gvero**'s involvement in the approval of UNPROFOR or humanitarian convoys after April 1995. However, there is evidence indicating that on 20 April 1995, during a meeting attended by Karadžić, Koljević, Krajišnik, **Gvero**, Akashi and Smith, Smith complained to **Gvero** about fuel restrictions. **Gvero** replied that he had intelligence that UNPROFOR and, in particular, UNPROFOR troops in Srebrenica were

<sup>5302</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 14, para. 6.1.

<sup>5303</sup> Ex. 5D00361, “VRS Main Staff Directive 7/1, signed by Mladić, 31 March 1995”, para. 6.1.

<sup>5304</sup> *Ibid.*

<sup>5305</sup> *See supra*, paras. 214–226.

<sup>5306</sup> Ex. P04153, “VRS Main Staff – Information re approval on carrying out the Coordinating Body’s approval for helicopter sortie, sent to the Drina Corps Command, type-signed Gvero, 8 December 1994”.

<sup>5307</sup> Ex. P04039, VRS Main Staff, Authorisation to UNPROFOR for medical evacuation, signed by Miletić, 4 February 1995”; Ex. P03999, “VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 22 February 1995” (containing 15 approvals, each bearing **Gvero**'s handwritten signature); Ex. P04040, “VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 21 April 1995” (containing 11 approvals, each bearing **Gvero**'s handwritten signature). *See also* Ex. P04036, “VRS Main Staff - Information sent to UNPROFOR in Sarajevo re approved helicopter missions, signed by Milovanović, 6 January 1995”, p. 4; Ex. P04028, “UNPROFOR Request for a helicopter mission to VRS Main Staff, signed by Gen. Brinkman, 20 January 1995”, p. 7 (although **Gvero**'s handwritten signature is not visible, on both these documents there is a handwritten note by an unidentified person, indicating that “Gvero and Tošo” should see them).

supplying the ABiH with fuel. **Gvero** further maintained that he knew UNPROFOR had sufficient reserves.<sup>5308</sup>

(iii) Involvement in Srebrenica

1764. In April 1995, Živanović requested **Gvero** and “his bodies” to “engage themselves with projecting information to the Muslims of Srebrenica on the means of their safe evacuation from the combat zone”, drawing **Gvero**’s attention to the situation of enemy forces in Srebrenica and the large number of civilians who had fled there.<sup>5309</sup> On 8 July 1995, while the attack on Srebrenica was ongoing,<sup>5310</sup> Živanović sent a proposal to **Gvero** at the VRS Main Staff to “more immediately engage” the Centre for Information and Propaganda and to place the Milići and Bratunac radio stations under its jurisdiction, because the events connected to Srebrenica deserved “propaganda coverage of the highest possible level”.<sup>5311</sup> Živanović further stated that “[t]he Muslim population in the Srebrenica enclave is attentively following both the above-mentioned radio stations, which is a good opportunity to, from our side, work on this enclave by the media.”<sup>5312</sup> The Trial Chamber notes that no further evidence was presented concerning the VRS Main Staff’s actual use of these radio stations during operation *Krivaja-95*.

1765. On 9 July 1995, around noon, **Gvero** went to the Drina Corps IKM at Pribićevac, accompanied by Trišić—the Assistant Commander for Logistics of the Bratunac Brigade—where **Gvero** had an informal exchange with Momčilović—who was Trišić’s subordinate—and with Davidović—the President of the Executive Council of Bratunac.<sup>5313</sup> Some evidence suggests that **Gvero** passed by the IKM to check the situation in the troops and to distribute newspapers, during a trip to or from Belgrade.<sup>5314</sup>

<sup>5308</sup> Ex. P02936, “UNPROFOR Report re Meetings in Sarajevo and Pale-20 Apr 1995, 22 April 1995”, para. 9; Rupert Smith, T. 17492–17493 (5 Nov 2007).

<sup>5309</sup> Ex. P04148, “Drina Corps Command – Request to VRS Main Staff, Morale, Religious and Legal Affairs Section, signed by Živanović, 13 April 1993”.

<sup>5310</sup> See *supra*, paras. 249–250.

<sup>5311</sup> Ex. P04154, “Drina Corps Command proposal to the Assistant Commander for Morale, Religious and Legal Affairs, concerning ‘Correctness of informing the public about the carrying out of combat operations’, signed by Živanović, 8 July 1995”.

<sup>5312</sup> Ex. P04154, “Drina Corps Command proposal to the Assistant Commander for Morale, Religious and Legal Affairs, concerning ‘Correctness of informing the public about the carrying out of combat operations’, signed by Živanović, 8 July 1995”.

<sup>5313</sup> Božo Momčilović, T. 14080–14082, 14095 (22 Aug 2007); PW-162, T. 9184 (private session) (21 Mar 2007), T. 9194–9196 (private session) (22 Mar 2007), T. 9332 (23 Mar 2007); Milenko Jevđević, T. 29701–29702 (15 Dec 2008); Dragoslav Trišić, T. 27116–27119, 27138–27139 (21 Oct 2008). When **Gvero** arrived at Pribićevac, which is a village located at about 20 kilometres from Bratunac, he first went in the rear logistics sector of the 3rd Battalion of the Bratunac Brigade, where he sat down for coffee with Dragoslav Trišić and Srbišlav Davidović. **Gvero** was then accompanied by Trišić to the Drina Corps IKM, which was about 250 to 300 metres away. Dragoslav Trišić, T. 27116–27119 (21 Oct 2008); PW-162, T. 9332 (23 Mar 2007).

<sup>5314</sup> See Božo Momčilović, T. 14093–14094 (22 Aug 2007) (testifying that, presumably, **Gvero** had arrived from Belgrade since he brought magazines and daily newspapers that were easily found there and that were later

1766. **Gvero**, Trišić and Davidović went to see Krstić.<sup>5315</sup> The Trial Chamber has heard conflicting evidence about the actual place where the encounter between **Gvero** and Krstić took place;<sup>5316</sup> and it is not satisfied that **Gvero** went to the observation post with Krstić to observe the combat action. Shortly after, **Gvero**, Krstić, Trišić, Davidović, Colonel Vukota<sup>5317</sup> and Jevđević<sup>5318</sup> sat together at a table for about an hour and a half.<sup>5319</sup> According to Trišić, they were talking about “military activities that were underway at that time”, though “there wasn’t much talk about the Srebrenica operation”.<sup>5320</sup> Even though the specific details of the conversation are unknown, the Trial Chamber is satisfied that the only reasonable inference is that the military activities concerning Srebrenica were discussed, considering the date, location and participants of this meeting. After the meeting, **Gvero**, Trišić and Davidović left towards Bratunac.<sup>5321</sup>

1767. Late on 9 July, Karadžić issued an order authorising the VRS to capture Srebrenica town, which was sent by Tolimir from the Main Staff to the IKM in Pribićevec, by way of a telegram addressed to **Gvero** and Krstić personally.<sup>5322</sup> Evidence has been presented suggesting that **Gvero** had left the IKM at the time the telegram arrived.<sup>5323</sup> Whether **Gvero** received the telegram or not at the IKM does not affect the fact that it was personally addressed to him, which the Trial Chamber is of the view shows that informing **Gvero** was of importance and that Tolimir knew of **Gvero**’s whereabouts.

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distributed to the troops at the IKM); PW-162, T. 9332 (23 Mar 2007) (testifying that Gvero was on his way to or from Belgrade and that he dropped by the IKM to see Krstić and to visit the brigade or the battalion); Nedeljko Zoranović, T. 33902–33906 (3 July 2009) (testifying that he drove Gvero to and from Belgrade on one occasion and that, on the way back, he stopped somewhere between Zvornik and Vlasenica; he conceded that it might have been on 9 July 1995).

<sup>5315</sup> Božo Momčilović, T. 14083 (22 Aug 2007); Milenko Jevđević, T. 29701 (15 Dec 2008).

<sup>5316</sup> Jevđević testified that **Gvero** went to see Krstić at the observation post, from where the combat action from Zeleni Jadar towards the Bojna feature could be observed. Milenko Jevđević, T. 29701 (15 Dec 2008). *But see* Božo Momčilović, T. 14094 (22 Aug 2007), testifying that, while at the IKM **Gvero** did not go to the elevation points to observe Srebrenica. *See also* Dragoslav Trišić, T. 27118 (21 Oct 2008), testifying that they “were in one place the whole time and that’s where this conversation took place.”

<sup>5317</sup> Vukota was a colonel in the Skelani Brigade. Momir Nikolić, T. 33269 (27 Apr 2009); Mirko Trivić, T. 11803 (18 May 2007).

<sup>5318</sup> Jevđević was the Commander of the Signals Battalion of the Drina Corps. Milenko Jevđević, T. 29480 (10 Dec 2008).

<sup>5319</sup> Božo Momčilović, T. 14083–14084, 14095–14096 (22 Aug 2007); PW-162, T. 9332 (23 Mar 2007).

<sup>5320</sup> Dragoslav Trišić, T. 27117–27119, 27138–27139 (21 Oct 2008).

<sup>5321</sup> Božo Momčilović, T. 14083–14084 (22 Aug 2007); Dragoslav Trišić, T. 27118 (21 Oct 2008).

<sup>5322</sup> Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995” (stating that Karadžić “has agreed with the continuation of operations for the takeover of Srebrenica, disarming of Muslim terrorist gangs and complete demilitarisation of the Srebrenica enclave”). *See also supra*, para. 252.

<sup>5323</sup> Exs. P00033, P00849, “VRS Main Staff communication to the Drina Corps Command, regarding combat operations around Srebrenica, signed by Tolimir, 9 July 1995” (indicating that the document was received at 23:50 hours). *See* Božo Momčilović, T. 14133 (22 Aug 2007), testifying that the communication must have been received at the IKM after **Gvero** had left. Milovanović also testified that, as the document was addressed personally to **Gvero** and Krstić, Tolimir knew that they were at the IKM, because if Tolimir had thought they were at the Main Staff, it would have been addressed to there instead. However, Milovanović was not able to state whether **Gvero** actually was at the IKM when the document arrived. Manojlo Milovanović, T. 12362–12363 (31 May 2007).

1768. On 10 July, while the VRS was advancing on Srebrenica town, Nicolai notified the VRS that as a response to their attacks, NATO air support was approved.<sup>5324</sup> On the same day, a *communiqué* released from the VRS Main Staff reported that **Gvero**, “on the occasion of the recent events around Srebrenica” had stated: “[o]ur combat activities at the moment are directed towards simply neutralising the Muslim terrorists, and are in no way directed against civilians or members of UNPROFOR. [...] The civilians from Srebrenica who wish to do so can in an organised and safe manner leave the settlement. All in all, there is no reason for the media and foreigners to get involved in the Muslim war propaganda.”<sup>5325</sup>

1769. On the morning of 11 July, following the shelling of Bravo Company Compound, DutchBat sent urgent requests for NATO air support to defend Srebrenica town, but no assistance was forthcoming until around 2:30 p.m. on 11 July, when NATO bombed the VRS tanks advancing towards Srebrenica town.<sup>5326</sup> Soon after the air support had started, Franken heard a message from one of his officers held in custody by the VRS, over a radio of a DutchBat APC in Bratunac, that air support had to stop immediately, otherwise the VRS would shell DutchBat positions, including areas where refugees were, and the captured soldiers would be killed.<sup>5327</sup>

1770. Later that afternoon, **Gvero** called the UNPROFOR headquarters in Sarajevo, saying that unless the air support stopped immediately, “General Nicolai, in the capacity of the Commander’s deputy, would be held responsible for all further developments and the destiny of his men and the civilian population in Srebrenica”.<sup>5328</sup> During the phone call, **Gvero** denied attacking DutchBat,

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Jevdević testified that the telegram arrived while they were all probably asleep; it could also have arrived on 10 July. Milenko Jevdević, T. 29704 (15 Dec 2008).

<sup>5324</sup> Joseph Kingori, T. 19233–19235 (13 Dec 2007); Robert Franken, T. 2473–2474 (16 Oct 2006); Cornelis Nicolai, T. 18482–18485 (29 Nov 2007); Ex. P02976, “Notes of a telephone conversation between Nicolai and VRS HQ, 10 July 1995 at 19:20 hours”. UNMO reported that from morning until 12:30 p.m., over 100 detonations were confirmed in Srebrenica; and from 12:50 p.m. to 1:53 p.m., 49 shells were also recorded. Additionally, at 11 a.m., two heavy shells, probably 155mm artillery shells, hit the direct surrounding of the hospital where 2,000 civilians had gathered for refuge, and six of them were killed. Ex. P00505, “UNMO Report, 10 July 95”, p. 3; Ex. P00501, “UNMO Report, 10 July 95, 10:25”; Prosecution Adjudicated Facts Decision, Annex, Fact 106.

<sup>5325</sup> Ex. P02753, “‘Srebrenica–The Muslim War Trump Card’, statement by Gvero, 10 July 1995”, p. 2. See Milenko Jevdević, T. 29687 (15 Dec 2008), testifying that he was aware that some UNPROFOR soldiers had surrendered and they were being treated correctly by the VRS, as described in Ex. 6D00022, “Document from the Drina Corps IKM, to the Main Staff, 9 July 1995”.

<sup>5326</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 113. See also *supra*, para. 253.

<sup>5327</sup> Robert Franken, T. 2845–2846 (16 Oct 2006); Prosecution Adjudicated Facts Decision, Annex, Fact 95; Pieter Boering, T 1920 (19 Sept 2009).

<sup>5328</sup> Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours”; Ex. P02374a (confidential); Cornelis Nicolai, T. 18486–18488, 18512 (29 Nov 2007). According to Nicolai, **Gvero**’s message meant that unless the air support stopped, the DutchBat compound in Potočari and surrounding areas would be shelled. In cross-examination, Nicolai confirmed that notes of the telephone conversation between **Gvero** and himself did not reflect that the compound in Potočari was to be shelled; however, he maintained his position stating that “at the moment of this conversation, when General Gvero pointed out the consequences, I took that as being the threat of shelling the compound”. Nicolai further testified that this threat was taken very seriously at the headquarters in Sarajevo. Cornelis Nicolai, T. 18486–18487, 18509–18517 (29 Nov 2007). Butler testified

instead claiming that it was the ABiH that was attacking UNPROFOR positions; and that he therefore could not have done anything to stop the fighting, because neither UNPROFOR nor the civilian population in Srebrenica was being attacked by the VRS.<sup>5329</sup>

1771. Approximately an hour after this conversation, at about 5:30 p.m., **Gvero** issued a “Warning on treatment of UNPROFOR personnel in the enclave of Srebrenica” from the VRS Main Staff, addressed to the Drina Corps. The document stated that, “[i]n relation to the total situation in the enclave of Srebrenica [...] the attitude of the [VRS] personnel towards UNPROFOR personnel and units in the area of Srebrenica is in the focus of attention. To that end, the Drina Corps Command, acting through its subordinate commands, will ensure utmost decency in the attitude towards UNPROFOR personnel [...] and prevent any actions and provocations directed against UNPROFOR units in the enclave.”<sup>5330</sup>

1772. Immediately after the phone call between **Gvero** and Nicolai in the afternoon of 11 July, two other conversations were intercepted from the VRS Main Staff, during which only one interlocutor can be heard,<sup>5331</sup> and the Trial Chamber is satisfied this is **Gvero**.

1773. During the first conversation, which took place at 16.23 hours, **Gvero** reiterated what he had just told Nicolai, that the VRS had not attacked UNPROFOR, but “if they were fired on at all, then they were fired on by those who they [were] protecting: the Muslims”; and he further reported that he had asked Nicolai to “stop the operation immediately and get those planes out of our sky”.<sup>5332</sup> At the end of the phone call, **Gvero** stated: “[e]verything is going according to plan, don’t worry.”<sup>5333</sup>

1774. In the second intercepted conversation, which was recorded 20 minutes later, **Gvero** stated: “President, Serbian silver, the Serbian church, the Serbian flag. [...] They are in the air again. They are setting us up again, like before.”<sup>5334</sup>

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that he did not expect that anyone below Mladić would have the authority to make such a threat. Richard Butler, T. 19801 (16 Jan 2008).

<sup>5329</sup> Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995 at 16:15 hours”; Ex. P02374a (confidential); Cornelis Nicolai, T. 18488 (29 Nov 2007).

<sup>5330</sup> Ex. 6D00207, “VRS Main Staff, Warning on treatment of UNPROFOR personnel in the Srebrenica enclave, to the Drina Corps Command and IKM, signed by Gvero, 11 July 1995”.

<sup>5331</sup> Ex. P01096a (confidential); Ex. P02375a (confidential). Ex. P02375a indicates that **Gvero** was the “only one present at the Supreme Command Headquarters”. The Trial Chamber considers the reference to “Supreme Command Headquarters” is a reference to the Main Staff headquarters instead. *See* PW-145, T. 7268–7270 (19 Feb 2007), testifying that what is written on the document might have been a mistake.

<sup>5332</sup> Ex. P01096a (confidential). *See also* Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours”; Ex. P02374a (confidential).

<sup>5333</sup> Ex. P01096a (confidential).

<sup>5334</sup> Ex. P02375a (confidential).

1775. **Gvero** challenges the Prosecution's allegation that the other interlocutor in these two conversations was Karadžić.<sup>5335</sup> In support, he notes the poor relationship between him and Karadžić at the time, which was inconsistent with the tone and content of the conversation, as well as the fact that there were various individuals whom **Gvero** might refer to as "President".<sup>5336</sup> The Trial Chamber has carefully considered the two intercepts in terms of their content and in the context of the other relevant evidence. The Trial Chamber<sup>5337</sup> is satisfied that these two conversations were between Karadžić and **Gvero**.<sup>5338</sup> In so finding, the Trial Chamber notes its assessment that the conversations do not evidence a friendly exchange but rather a respectful one. Whatever the relationship issues may have been between **Gvero** and Karadžić at the time, such a respectful tone was appropriate for a conversation with the President; and **Gvero** evidenced a similar respect even when responding to Karadžić's harsh criticism of him over the removal of the wounded and sick.<sup>5339</sup> While there is evidence as to a plurality of individuals whom, at the time, may properly have been addressed as "President",<sup>5340</sup> the references in these intercepts cannot be read isolated from the content and context of the conversations. These calls follow almost directly

<sup>5335</sup> Gvero Final Brief, pp. 193–202, paras. 260–279.

<sup>5336</sup> Gvero Final Brief, pp. 193–196, paras. 260–265. When questioned in relation to Ex. P01096a (confidential), Skrbčić agreed with **Gvero** that "this friendly exchange and the relationship full of respect between the collocutors would not reflect the relationship that General Gvero and President Karadžić [had] in July". Petar Skrbčić, T. 15565–15566 (18 Sept 2007). *But see* PW-145, T. 7239–7241 (9 Feb 2007), testifying that, though he could not identify Karadžić as one of the participants in the conversation, from the way **Gvero** was addressing the other interlocutor he assumed and concluded that it was, in fact, Karadžić.

<sup>5337</sup> **Judge Kwon's Separate Opinion:** I respectfully disagree with the majority's finding that **Gvero** was reporting to Karadžić in the intercepted conversations of 11 July 1995. I note that only **Gvero** could be heard at the time when the conversations were intercepted, and that the name "Karadžić" was not mentioned during these conversations. PW-145 testified that he concluded that **Gvero** was addressing Karadžić based on the tone of his language and the fact that he said "President". *PW-145, T. 7239-7241 (9 Feb 2007)*. However, I find this to be speculative. The Trial Chamber actually listened to the audio recording of these conversations during the hearing. *PW-145, T. 7263–7264 (19 Feb 2007)*. The mood of the conversations seemed quite relaxed and some laughter was heard at one point. Recalling the Trial Chamber's finding that **Gvero** and Karadžić had a personal conflict and their relationship deteriorated throughout the war, *see supra, para. 1757*, I rely on Skrbčić's testimony that the "friendly exchange" in the intercepted conversations does not reflect the difficult relationship between **Gvero** and Karadžić in July 1995. *See supra, fn. 5336; Petar Skrbčić, T. 11556 (18 Sept 2007)*. Furthermore, Karadžić was not the only one who could have been addressed as "President" in the territory of RS in July 1995. There is evidence before the Trial Chamber that **Gvero** addressed other persons as "President" in intercepted conversations. *See Ex. 6D00043, "Intercept Gvero – Krajišnik, 28 April 2004"; Ex. 6D00021, "Document dated 14 October 1994, handover to the International Tribunal, including intercept"*. In light of the foregoing, I am not satisfied that in the above intercepted conversations **Gvero** was talking to Karadžić. However, my conclusion does not change the nature of the dialogue, namely a report to somebody at a higher echelon. As such, it will not affect the Trial Chamber's finding with regard to **Gvero**'s participation in the JCE to Forcibly Remove.

<sup>5338</sup> Ex. P01096a (confidential); Ex. P02375a (confidential). The Trial Chamber unanimously finds there is sufficient evidence connecting the first conversation (Ex. P01096a) to the second one (Ex. P02375a), to be satisfied that they took place between the same persons. In reaching its conclusion, the Trial Chamber has considered that on Ex. P02375a it is stated that "[t]wenty minutes later a new conversation started between the same persons. We again only heard **Gvero**, while Karadžić could not be heard". The Trial Chamber further notes that, in both intercepts **Gvero** refers to "President".

<sup>5339</sup> *See infra, para. 1797; Ex. P02757, "Letter to the President of the RS, signed by Gvero, 18 July 1995"*.

<sup>5340</sup> *See* Petar Skrbčić, T. 15564–15565 (18 Sept 2007); Momčilo Krajišnik, T. 21581 (2 June 2008); Ex. 6D00007, "Official Gazette of RS, Year IV, Number 3, Decision on Forming a State Committee for Cooperation with the United Nations and International Humanitarian Organisations, signed by Karadzic, 14 March 1995" (indicating that

after an important exchange between **Gvero** and General Nicolai, UNPROFOR Chief of Staff, regarding the situation in Srebrenica and the NATO air strikes. **Gvero** describes the essence of the conversation and the message conveyed to Nicolai regarding the cessation of air strikes. Given the timing of the calls, the content of the conversations and the fact that Karadžić is the only President directly implicated in the Srebrenica campaign so as to require information of this nature on an immediate basis, the Trial Chamber<sup>5341</sup> is satisfied that **Gvero** was talking to Karadžić about his conversation with UNPROFOR. Further, the Trial Chamber is satisfied that **Gvero** was referring to the plan to take-over the Srebrenica enclave and to forcibly remove the civilian population when he stated “[e]verything is going according to plan, don’t worry”.<sup>5342</sup> Again in the context of the conversations, the Trial Chamber is satisfied this is the only reasonable inference to draw in the circumstances.

1776. In the evening of 11 July, **Gvero** spoke on the phone to General Gobillard at UNPROFOR headquarters.<sup>5343</sup> **Gvero** reiterated that the VRS had not attacked UNPROFOR or civilians, but it had only responded to attacks by Muslim “armed terrorists who should have been disarmed according to the Agreement concluded by the parties under the auspices of UNPROFOR”.<sup>5344</sup> **Gvero** further claimed that a large number of UN vehicles had been stolen by the ABiH and were used against the VRS.<sup>5345</sup> **Gvero** promised he would do “everything to keep the situation under control”; he ensured Gobillard that steps would be taken “to establish contact with the commander of the UN unit and reach agreement on further actions”; and he guaranteed the safety of UN soldiers and Muslim civilians in the enclave.<sup>5346</sup> In ending this conversation, **Gvero** stated he would have full insight into the situation in Srebrenica the following morning; he suggested to Gobillard that another telephone conversation be conducted at that time and that meanwhile no air power be used.<sup>5347</sup> During this conversation, Gobillard drew **Gvero**’s attention to the fact that, as they were speaking, there were no aircrafts over the region of Srebrenica. **Gvero** further stated that the

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Nikola Koljević was appointed President of the State Committee for Cooperation with the UN). *See also* Gvero Final Brief, paras. 262–264.

<sup>5341</sup> *But see* Judge Kwon’s Separate Opinion, *supra*, fn. 5337.

<sup>5342</sup> *See supra*, para. 1773; Ex. P01096a (confidential).

<sup>5343</sup> Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 1; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”. Fortin testified that on 11 July, General Gobillard had called the Main Staff in order to speak to Mladić, but he was told that the only person available was **Gvero**. Louis Fortin, T. 18427, 18384 (28 Nov 2007).

<sup>5344</sup> Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 1; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”. *See also* Louis Fortin, T. 18254–18256 (26 Nov 2007).

<sup>5345</sup> Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”. According to Fortin, this was not true as the vehicles were in use at blocking positions by DutchBat soldiers. Louis Fortin, T. 18256–18257 (26 Nov 2007), T. 18426 (28 Nov 2007).

<sup>5346</sup> Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”; Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2.



decision to call in the planes was “irrational in both military and human terms. However, the order to stop the bombings was rational”.<sup>5348</sup>

1777. During the night of 11 to 12 July, a column of Bosnian Muslim men left the Srebrenica enclave attempting to break through the defence lines of the VRS in the Bratunac area towards Tuzla.<sup>5349</sup> On 13 July, VRS orders to block the column in the areas of responsibility of Bratunac, Zvornik and Vlasenica were issued.<sup>5350</sup> One of these orders was type-signed **Gvero** and instructed the Commands of the Drina Corps, the Zvornik Brigade, the Birač Brigade, and the Vlasenica Brigade, to prevent the passage of Bosnian Muslims towards Tuzla and Kladanj.<sup>5351</sup> As the Assistant Commander for Morale, **Gvero** could not issue orders to subordinate units, unless authorised by the Commander of the VRS Main Staff.<sup>5352</sup> This order began by stating that, “[b]ased on the instructions received, and following defeat in the Srebrenica enclave, the men from the enclave fit for military service were tasked with crossing over to Tuzla and Kladanj in groups and carrying weapons.” The units were then ordered to “detect, block, disarm and capture detected Muslim groups and prevent them from crossing over to the Muslim territory”.<sup>5353</sup> These instructions were passed down the chain of command.<sup>5354</sup>

1778. In the early afternoon of 13 July, Tolimir issued an order to the Command of the Military Police Battalion of the Protection Regiment, which included proposals on the procedure for prisoners of war. Mladić and **Gvero** were copied.<sup>5355</sup> This order included the prohibition of filming prisoners and an instruction to place the prisoners “indoors or in the area protected from sighting from the ground or the air”.<sup>5356</sup> In the evening of 13 July, at around 10:30 p.m., Tolimir sent another document regarding “accommodation of prisoners of war”, to **Gvero** personally at the Main Staff.<sup>5357</sup> Tolimir was informing **Gvero** that, in case he was unable to find adequate accommodation

<sup>5347</sup> Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2; Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”; Louis Fortin, T. 18260 (27 Nov 2007).

<sup>5348</sup> Ex. P02379c, “Intercept 11 July 1995, 18:00 hours”; Ex. P02968, “Notes of telephone conversation between Gobillard and Gvero, 11 July 1995, 18:10 hours”, p. 2. *See also* Louis Fortin, T. 18260 (27 Nov 2007).

<sup>5349</sup> *See supra*, para. 268.

<sup>5350</sup> *See supra*, para. 379.

<sup>5351</sup> Ex. P00045, “VRS Main Staff Order to the Drina Corps to prevent the passage of Muslim groups towards Tuzla and Kladanj, type-signed Gvero, 13 July 1995”. *See also* Ex. P00686, “Srebrenica Military Narrative (Revised) – Operation Krivaja 95, 1 November 2002”, p. 120.

<sup>5352</sup> *See supra*, para. 1748. *See also supra*, para. 107.

<sup>5353</sup> Ex. P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed Gvero, 13 July 1995”, p. 1.

<sup>5354</sup> *See, e.g.*, Ex. P00117, “Drina Corps Order preventing passage of Muslim groups to Tuzla and Kladanj, signed by Živanović, 13 July 1995”. The Drina Corps order reiterates the language of Ex. P00045, “VRS Main Staff Order to prevent the passage of Muslim groups towards Tuzla and Kladanj, sent to the Drina Corps, type-signed Gvero, 13 July 1995”.

<sup>5355</sup> Ex. P00192, “Procedure on treatment of POWs, addressed to Mladić and Gvero, type-signed Savčić, 13 July 1995”.

<sup>5356</sup> *Ibid.*

for all the prisoners of war from Srebrenica, space had “been arranged for 800 prisoners of war in the [Rogatica Brigade] in Sjemeč”.<sup>5358</sup>

1779. Later that night, Mladić issued an order to the Drina Corps in line with Tolimir’s proposal and instructed that certain measures be taken in order to “prevent the leakage of confidential information classified as military secrets”.<sup>5359</sup> It directed to refrain from giving information on prisoners of war and evacuated civilians; and to prevent the entry of all local and foreign journalists, except those of the Centre for Information and Propaganda.<sup>5360</sup> Among the recipients of the order was the Sector for Morale.<sup>5361</sup> **Gvero** was therefore well aware of it.

(iv) Involvement in Žepa

1780. On 19 July 1995, when Milovanović arrived at the VSR Main Staff in Crna Rijeka, sometime close to dark, he enquired with **Gvero** about Mladić’s whereabouts; and **Gvero** told him that “Mladić was negotiating with somebody about Žepa and it was most likely that [Bosnian] Serb forces would also go into Žepa”.<sup>5362</sup>

1781. The following day, **Gvero** was at the Jela Restaurant, to celebrate the retirement of Živanović and the promotion of Krstić to Drina Corps Commander.<sup>5363</sup> During the luncheon, Mirko Trivić—the Commander of the Romanija Brigade—asked **Gvero** to intervene and cooperate with Krstić on the issue of replacement of troops within his unit, since it had a bearing on morale and therefore fell within **Gvero**’s purview.<sup>5364</sup>

1782. On the same day, 20 July, in the Žepa enclave, loudspeakers were broadcasting a message that there was no chance for the Bosnian Muslim population and that the area was now controlled

<sup>5357</sup> Ex. P00131, “Information on accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”. See also Manojlo Milovanović, T. 12368 (1 June 2007).

<sup>5358</sup> Ex. P00131, “Information on accommodation for prisoners of war, from Tolimir to Gvero personally, 13 July 1995”, p. 1.

<sup>5359</sup> Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

<sup>5360</sup> *Ibid.*, paras. 4–5. See *supra*, fn. 5266.

<sup>5361</sup> Ex. 5DP00035, “VRS Main Staff order on prevention of leakage of military secrets, type-signed Mladić, 13 July 1995”.

<sup>5362</sup> Manojlo Milovanović, T. 12203–12205 (29 May 2007).

<sup>5363</sup> *Ibid.*, T. 12204 (29 May 2007); Mirko Trivić, T. 11874–11875, 11878–11879 (21 May 2007).

<sup>5364</sup> Mirko Trivić, T. 11870, 11872, 11879 (21 May 2007), T. 11900 (22 May 2007). Trivić testified this was the only time he saw and talked to **Gvero** during the Žepa operation. *Ibid.* The Trial Chamber notes that there is inconsistency in Trivić’s evidence with regard to when this conversation took place. Trivić first stated that the conversation took place after the “truce had been agreed upon”, five or six days after 19 July 1995. He then said that it occurred on 20 or 21 July 1995. *Ibid.*, T. 11870–11872 (21 May 2007). On examination-in-chief by the Prosecution, Trivić testified that he did not remember where the conversation was held, but on cross-examination he agreed that he possibly talked to **Gvero** and Krstić during the luncheon at the Jela Restaurant celebrating the retirement of Živanović and the promotion of Krstić to Corps Commander, on 20 July 1995. *Ibid.*, T. 11872, 11878–11879 (21 May 2007).

by Mladić.<sup>5365</sup> A few days before, on 15 July, Tolimir had issued an order to the Security Department of the 1st Krajina Corps, to transport a 5,000 Watt loudspeaker to the Rogatica Garrison.<sup>5366</sup> The arrangements were to be made between Captain Boško Guduraš from the Press Centre of the 1st Krajina Corps and Milovan Milutinović, the Chief of the Centre for Information and Propaganda overseen by **Gvero**.<sup>5367</sup>

1783. On 23 July, UNPROFOR Colonel Baxter called **Gvero** and asked him to set up a meeting between Smith and Mladić as soon as possible, in order to discuss the situation in Žepa.<sup>5368</sup> **Gvero** agreed that “such a meeting would be useful and [he] suppose[d] it could take place, unless some extraordinary events occur during that time”, such as “groundless and irrational bombing, attack on [the VRS] forces, support to the Muslims and similar”.<sup>5369</sup> This meeting subsequently took place, on 25 July at the Jela Restaurant, and it will be discussed below.

1784. In the early hours of 25 July, following the 24 July 1995 Agreement,<sup>5370</sup> Tolimir sent a report on the agreement on disarmament of Žepa to the VRS Main Staff, addressed to either **Gvero** or **Miletić**, proposing to request UNPROFOR to send a colonel rather than a general to Žepa, to avoid a scenario similar to when General Morillon went to Srebrenica in 1993.<sup>5371</sup> In the document, Tolimir further addressed the risk that Bosnian Muslims could “take advantage of the signed agreement, under the pressure from Sarajevo, which they have already tried to do so by bringing up the issue of prisoners from Srebrenica”.<sup>5372</sup> During the same morning, in an intercepted conversation with a certain “Šubara”, **Gvero** stated—from the VRS Main Staff headquarters<sup>5373</sup>—that “we’re going to allow everything”, in relation to an agreement signed on the previous night.<sup>5374</sup>

<sup>5365</sup> See *supra*, para. 943.

<sup>5366</sup> Ex. P02788, “Order regarding transportation of loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Tolimir, 15 July 1995”.

<sup>5367</sup> Ex. P02788, “Order regarding transportation of loudspeakers from Krajina Corps Press Centre to Rogatica Garrison, type-signed Tolimir, 15 July 1995”; Slobodan Kosovac, T. 30386–30387 (20 Jan 2009); Ex. 5D00759, “Report on Functioning of the VRS, by S. Kosovac, 2008”, pp. 18–19. See *supra*, para. 1749.

<sup>5368</sup> Ex. P01320d, “Intercept, 23 July 1995, 21:20 hours”, p. 1.

<sup>5369</sup> *Ibid.*, pp. 1–2.

<sup>5370</sup> Ex. 6D00030, “Agreement on disarmament of the military-able population in the enclave of Žepa, 24 July 1995”. See *supra*, para. 771.

<sup>5371</sup> Ex. P00191, “Document re Agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, p. 2. See also Ex. P01328a, Intercept, 25 July 1995, 07:09 hours”, p. 2 (indicating that by the morning of 25 July, **Gvero** had received the text of the Agreement); Ex. 6D00030, “Agreement on disarmament of the military-able population in the enclave of Žepa, 24 July 1995”.

<sup>5372</sup> Ex. P00191, “Document re agreement on disarmament of Žepa, sent to Gvero or Miletić, type-signed Tolimir, 25 July 1995”, p. 1.

<sup>5373</sup> Ex. P01334a (confidential). The Trial Chamber notes this intercepted conversation was recorded on frequency “836.000 MHz”, which is the same frequency on which the conversations between **Gvero** and Nicolai, and between **Gvero** and Gobillard were recorded on 11 July, when **Gvero** was at the VRS Main Staff headquarters. Ex. P02374a (confidential); Ex. P02379c, Intercept 11 July 1995, 18:00 hours”. See *supra*, paras. 1770, 1776. The Trial Chamber is therefore satisfied **Gvero** was at the VRS Main Staff headquarters when he was speaking to “Šubara” on 25 July 1995.

<sup>5374</sup> Ex. P01334a (confidential).

He further stated that “those of military age won’t be able to go. They’ll go to reception centres and they’ll be registered. We’re doing everything in compliance with International Laws of War.”<sup>5375</sup>

The Trial Chamber is satisfied that **Gvero** was present at the VRS Main Staff for parts of 25 July 1995 as the most senior officer.

1785. At 12:30 p.m. on 25 July, Smith, Mladić, **Gvero** and Tolimir met at the Jela Restaurant in Han Pijesak, to discuss the situation in Žepa. **Gvero** accompanied Mladić at this meeting and said little.<sup>5376</sup> Afterwards, Smith and Mladić travelled separately to Žepa.<sup>5377</sup> **Gvero** did not go to Žepa on that day.<sup>5378</sup>

1786. On 26 July, the convoys with Bosnian Muslim civilians leaving Žepa town stopped at the UNPROFOR check-point at Bokšanica, where Mladić boarded each bus.<sup>5379</sup> **Gvero** went there to get approval from Mladić to travel to Krajina.<sup>5380</sup> At the check-point, **Pandurević**, **Krstić**, Tolimir, and Bosnian Muslim representatives were also present.<sup>5381</sup> After Mladić had finished inspecting the buses, he had a “rather heated” conversation with **Gvero**.<sup>5382</sup> Eventually, Mladić gave **Gvero** his oral approval to go to Krajina.<sup>5383</sup>

<sup>5375</sup> Ex. P01334a (confidential).

<sup>5376</sup> Ex. P02747, “UN Report of Meeting between Smith and Mladić, 25 July 1995”, p. 1; Rupert Smith, T. 17544–17545 (6 Nov 2007), T. 17722 (8 Nov 2007); Emma Sayer, T. 21081, 21117, 21119 (6 Feb 2008). Smith’s interpreter Sayer was also present at the meeting. *Ibid.*, T. 21081, 21116 (6 Feb 2008). *See also* Ex. 6D00108, “UN document re situation in Žepa by Col. Baxter”, p. 2; Sasa Jovanović, T. 33948 (6 July 2009); Ex. P01339a, “Intercept, 25 July 1995, 10:44 hours” (where “X” is telling “Y” to “[t]ell **Gvero** to be at the place where he is supposed to receive[sic.] Smith at 1130”).

<sup>5377</sup> Rupert Smith, T. 17545 (6 Nov 2007); Emma Sayer, T. 21083 (6 Feb 2008).

<sup>5378</sup> *See* Nedeljko Zoranović, T. 33890 (3 July 2009).

<sup>5379</sup> Hamdija Torlak, T. 9747 (30 Mar 2007). *See supra*, para. 717.

<sup>5380</sup> 6DPW-02, T. 33844 (2 July 2009); Sasa Jovanović, T. 33917 (3 July 2009); Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”. **Gvero** set off from Han Pijesak around noon and the journey took approximately one hour. Nedeljko Zoranović, T. 33891 (3 July 2009); 6DPW-02, T. 33844 (2 July 2009). Once at the checkpoint, **Gvero** had to wait as Mladić was boarding buses and talking to the passengers. Sasa Jovanović, T. 33919 (3 July 2009). Jovanović testified that **Gvero** had to wait in a room for Mladić to finish “urgent business”, before he could talk to him. He also stated that **Gvero** had been trying to get in touch with Mladić for several days, but Mladić was avoiding contacts with any officers that were not working on “the Bokšanica thing”. *Ibid.*, T. 33919–33920 (3 July 2009). *See also* 6DPW-02, T. 33850, 33858 (2 July 2009); Milenko Jevđević, T. 29696–29699 (15 Dec 2008); Ex. P01311a, “Intercept, 23 July 1995, 08:29 hours”.

<sup>5381</sup> Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”; Ex. P02491 (confidential). *See also* Sasa Jovanović, T. 33917 (3 July 2009).

<sup>5382</sup> Sasa Jovanović, T. 33920 (3 July 2009); 6DPW-02, T. 33850 (2 July 2009). **Gvero** had been aware of the crisis at the Krajina front-line for a couple of days, but he could not leave the Main Staff without Mladić’s approval, so he asked Mladić to let him go to Mrkonjić Grad; at one point, **Gvero** said “I am wasting time here with 10 or 12 Muslim villages, and at the same time two towns with the greatest majority of Serbs” “were falling”. Mladić was angry after the conversation. Sasa Jovanović, T. 33920–33921 (3 July 2009), T. 33928–33929 (6 July 2009). Jovanović further testified that “the events in Krajina became increasingly more dramatic and alarming, and [**Gvero**] decided to personally go to that part of RS to be able to analyse the situation, the developments, and to do something to recapture those two towns.” *Ibid.*, T. 33921 (3 July 2009).

<sup>5383</sup> Sasa Jovanović, T. 33921 (3 July 2009). Mladić said to **Gvero**: “Pack yourself and go and report to Milovanović”. *Ibid.*

1787. **Gvero** left immediately towards Han Pijesak, with his driver and his escort,<sup>5384</sup> where he stayed very briefly and then departed towards Banja Luka.<sup>5385</sup> During the journey, **Gvero** dropped by the Drina Corps headquarters at Vlasenica.<sup>5386</sup> **Gvero** remained in Banja Luka for 15 to 20 days.<sup>5387</sup>

1788. The Trial Chamber notes there is some conflicting evidence in relation to **Gvero**'s presence in Žepa. Smith testified that, on 27 July after meeting with Mladić, he left Bokšanica and driving into Žepa he encountered **Gvero**.<sup>5388</sup> **Gvero** told Smith that he [**Gvero**] was now in charge of Žepa.<sup>5389</sup> Smith's alleged encounter with **Gvero** is partly supported by Sayer's testimony.<sup>5390</sup>

1789. Given the consistency between Smith and Sayer's testimonies, and based on all the evidence presented,<sup>5391</sup> the Trial Chamber believes an encounter between Smith and **Gvero** did take place, though it considers the evidence insufficient to determine the date of this meeting and the content of the conversation. Thus, the Trial Chamber is not satisfied that **Gvero** was present in Žepa on 27 July 1995.

(v) Involvement in the Transport of the Wounded and Sick out of RS

1790. On 11 July 1995, DutchBat officers moved some of the Bosnian Muslim wounded and sick from the hospital in Srebrenica to Potočari.<sup>5392</sup> Members of the VRS threatened to kill the wounded

<sup>5384</sup> Nedeljko Zoranović, T. 33892–33893, 33897 (3 July 2009); Sasa Jovanović, T. 33921 (3 July 2009).

<sup>5385</sup> Nedeljko Zoranović, T. 33893 (3 July 2009). Zoranović testified the journey lasted about three to four hours; and **Gvero** reached Banja Luka in the afternoon. *Ibid.*, T. 33894 (3 July 2009). *But see* 6DPW-02, testifying that the journey lasted six to eight hours and they reached Banja Luka late at night. 6DPW-02, T. 33850–33851 (2 July 2009). The Trial Chamber does not consider that this discrepancy affects its finding that **Gvero** went to Banja Luka on 26 July.

<sup>5386</sup> Nedeljko Zoranović, T. 33893–33894 (3 July 2009); Ex. 6D00346, "Records of transfer of vehicle, 26 July 1995"; 6DPW-02, T. 33850, 33855 (2 July 2009).

<sup>5387</sup> Nedeljko Zoranović, T. 33894 (3 July 2009); 6DPW-02, T. 33851 (2 July 2009).

<sup>5388</sup> Rupert Smith, T. 17556–17557 (6 Nov 2007).

<sup>5389</sup> *Ibid.*, T. 17556–17557 (6 Nov 2007), T. 17827 (9 Nov 2007). Smith further stated that this conversation took place through an interpreter. *Ibid.*

<sup>5390</sup> Emma Sayer, T. 21133, 21137–21138 (6 Feb 2008). Sayer testified that she recalled meeting **Gvero** at the entrance to Žepa and that Smith and herself were on their way back to Sarajevo, while Colonel Coiffet and Captain Dibb stayed. She however did not recall **Gvero** saying that he was in command or in charge of the Žepa operation. She had the impression **Gvero** was going to see Colonel Coiffet and Captain Dibb and that "he was going to see what was left, you know, what was going on, what the situation was at that time in Žepa", which she understood to mean that he was going to see whether any UNPROFOR personnel was left in the enclave. *Ibid.*, T. 21089, 21091 (6 Feb 2008).

<sup>5391</sup> *See* Nedeljko Zoranović, T. 33892–33893, 33899 (3 July 2009); Sasa Jovanović, T. 33921–33923 (3 July 2009). *See also* Petar Skrbic, T. 15594 (18 Sept 2007) (testifying that on 27 July he went towards the western part of RS and **Gvero** was already there); Slavko Čulić, T. 33866–33868 (2 July 2009) (testifying that on 27 July he saw **Gvero** in Krajina).

<sup>5392</sup> Robert Franken, T. 2628–2629 (18 Oct 2006); Vincent Egbers, T. 2717–2718 (18 Oct 2006), T. 2918, 2929 (20 Oct 2006); Pieter Boering, T. 1940 (21 Sept 2006); Joseph Kingori, T. 19265 (14 Dec 2007). Kingori also testified that some of the wounded in Srebrenica were taken directly to Bratunac, "but that was much later". *Ibid.*

and sick that remained in the Srebrenica hospital unless UNMO moved them.<sup>5393</sup> In the early afternoon of 12 July, DutchBat General Nicolai contacted the VRS Main Staff.<sup>5394</sup> Nicolai talked with **Gvero**, informing him of a meeting held that morning at the Hotel Fontana, between the DutchBat Commander and Mladić, on the matter of the “evacuation of the refugees” from Srebrenica.<sup>5395</sup>

1791. Nicolai and **Gvero** had a disagreement about transporting the wounded by air.<sup>5396</sup> Nicolai stated that a formal request to send helicopters into Srebrenica would be forwarded to the VRS headquarters and he sought **Gvero**’s cooperation in this matter.<sup>5397</sup> **Gvero** stated that the use of helicopters in that zone was not permissible or justifiable as the safety could not be guaranteed to any aircraft. **Gvero** suggested that all further action be consistent with what had been agreed between the DutchBat Commander and Mladić in Srebrenica.<sup>5398</sup> The Trial Chamber considers that **Gvero** was referring to the third Hotel Fontana meeting, held on 12 July at around 10 a.m.<sup>5399</sup> At this meeting it was agreed that the evacuation of the Bosnian Muslim civilian population would be carried out by the VRS and RS police, under UNPROFOR’s supervision and escort; however, the “wounded and sick” were not specifically mentioned. **Gvero** reiterated that the offer was for the wounded to be treated in “our hospitals”; he suggested that evacuation be carried out by land and ensured that it would be safe.<sup>5400</sup> At the end of this conversation, **Gvero** told Nicolai that his further request for a fuel/food convoy into Srebrenica would be taken into consideration.<sup>5401</sup>

1792. On 15 July, a meeting was held in Belgrade attended by, *inter alia*, Smith, Milošević and Mladić, during which the situation in the Srebrenica enclave was discussed.<sup>5402</sup> Towards the end of

<sup>5393</sup> Joseph Kingori, T. 19264–19266, 19269–19270 (14 Dec 2007). Kingori also testified that on 13 July, there were still some wounded and sick in the Srebrenica hospital. *Ibid.*, T. 19269 (14 Dec 2007).

<sup>5394</sup> Cornelis Nicolai, T. 18493 (29 Nov 2007); Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a, (confidential).

<sup>5395</sup> Cornelis Nicolai, T. 18494–18495 (29 Nov 2007); Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential).

<sup>5396</sup> Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential); Cornelis Nicolai, T. 18554 (30 Nov 2007).

<sup>5397</sup> Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential).

<sup>5398</sup> Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1; Ex. P01119a (confidential); Cornelis Nicolai, T. 18554 (30 Nov 2007).

<sup>5399</sup> *See supra*, para. 289.

<sup>5400</sup> Ex. P01119a (confidential); Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 1.

<sup>5401</sup> Ex. P02907 “Notes of a telephone conversation between Nicolai and Gvero, 12 July 1995, 14:45 hours”, p. 2.

<sup>5402</sup> Ex. P02942, “Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milošević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan”, pp. 1–2; Rupert Smith, T. 17530–17532 (6 Nov 2007).

the meeting, it was decided that **Gvero** would meet with UNHCR the following day, at noon, at the Jahorina Hotel, to discuss the transport of wounded Bosnian Muslims.<sup>5403</sup>

1793. On 16 July, it was orally agreed between **Gvero** and representatives of the ICRC and UNHCR, that some of the wounded and sick in Potočari were to be transported by DutchBat to Bratunac in the morning of 17 July, with vehicles provided by UNHCR and ICRC. It was further agreed that on 17 July, ICRC teams would carry out evacuation of about 100 wounded Muslims from Bratunac to Tuzla,<sup>5404</sup> but that men fit for military service would be separated from the group and kept in hospitals in RS.<sup>5405</sup> **Gvero** also ensured ICRC representatives that “the ICRC would be given access to all detainees once security conditions in the area allowed”.<sup>5406</sup>

1794. On 17 July, UNMO and DutchBat officer Franken met with Colonel Radislav Janković—an intelligence officer of the Main Staff—Momir Nikolić and Miroslav Deronjić, to discuss the issue of wounded Bosnian Muslims who remained in the DutchBat compound in Potočari and in the Bratunac Hospital.<sup>5407</sup> The Bosnian Serb delegation told Franken to hand over the wounded to them; however, Franken did not think it was a good idea.<sup>5408</sup> It was decided that the wounded had to be checked before they would be transported.<sup>5409</sup> Momir Nikolić insisted on accompanying the

<sup>5403</sup> Ex. P02942, “Outgoing Code Cable – Meeting in Belgrade between UNPROFOR, Milosević, Mladić and Smith on 15 July 1995; Meeting between Gvero and UNHCR at Jahorina Hotel on 16 July 1995 – sent from UNPROFOR HQ Zagreb to Annan”, p. 3. Smith believed that such a meeting took place. Rupert Smith, T. 17533 (6 Nov 2007). Nicolai instead testified that he did not receive information that **Gvero** had actually met with the UNHCR on or about 16 July 1995. Cornelis Nicolai, T. 18498–18499 (29 Nov 2007). *But see* Ex. P02978, “Notes of a telephone conversation between Nicolai and Marković, 16 July 1995, 15:00 hours” (indicating that Marković told Nicolai that **Gvero** was having a meeting with UNHCR on that day); Ex. P01191a (confidential) (indicating that **Gvero** was at the meeting with UNHCR representatives concerning the evacuation agreement).

<sup>5404</sup> Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”. *See also* Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995”, p. 1 (stating that an oral agreement was reached with **Gvero** early that week, in Pale); Ex. P04156, “ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995”, p. 3 (stating that there was a meeting on 16 July with Bosnian Serb military authorities in Jahorina). The Trial Chamber is satisfied the aforementioned documents refer to the meeting at the Jahorina hotel on 16 July, between **Gvero**, UNHCR and ICRC. *See also* Ex. 6D00320, “ICRC notification to the State Committee for Cooperation with International Organisations, 16 July 1995”; Ex. P01200a, “Intercept, 16 July 1995, 19.48 hours”.

<sup>5405</sup> Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”, p. 1.

<sup>5406</sup> Ex. P04156, “ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995”, p. 3. *See* Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995” (in which the spokesman of the ICRC Belgrade Office said that, during a meeting held at Pale a few days before, an oral agreement was reached with **Gvero**, according to which the ICRC delegates were “in principle authorised” to visit the Bosnian Muslims from Srebrenica who were being detained by the VRS. He further stated that **Gvero** “agreed with the usual conditions for ICRC visits to detention centres”).

<sup>5407</sup> Prosecution Adjudicated Facts Decision, Annex, Fact 224; Robert Franken, T. 2514-2515 (16 Oct 2006). Franken stated that Janković was the head of the Bosnian Serb delegation. *Ibid.* *See also* Ex. P00453, “Declaration signed by Franken, Deronjić and Mandžić on 17 July 1995, p. 2.

<sup>5408</sup> Robert Franken, T. 2515 (16 Oct 2006).

<sup>5409</sup> Ex. P00524, “UNMO Sit Report, 17 July 1995”.

ICRC members to the infirmary in the DutchBat compound in Potočari,<sup>5410</sup> as he believed there were war criminals among the wounded.<sup>5411</sup>

1795. In the afternoon of 17 July, a second meeting was held to discuss the details of the transport of the wounded.<sup>5412</sup> In addition to the participants in the first meeting, MSF and ICRC representatives were present.<sup>5413</sup> It was decided that after being checked, the wounded from the DutchBat compound in Potočari would be taken to Bratunac; and from there, seven wounded males would stay in Bratunac hospital, while the rest of the wounded would be taken by ICRC to Tuzla.<sup>5414</sup>

1796. In a report of 17 July 1995, the ICRC referred to approximately 100 wounded and sick in Potočari and Bratunac that “must be transferred as a matter of urgency”.<sup>5415</sup> The transfers were carried out.<sup>5416</sup> The ICRC communicated in a press release that 88 wounded people had been evacuated from Bratunac and Potočari to Tuzla on 17 and 18 July, by three medical teams, with the agreement of **Gvero**, and that some of them were in “very serious condition”.<sup>5417</sup> Further, according to the ICRC, the Bosnian Serbs refused 23 wounded men of military age authorization to leave. They were kept in the Bratunac hospital and the ICRC considered them prisoners of war.<sup>5418</sup>

1797. On 17 July, Karadžić warned **Gvero** that he had acted contrary to some of his directives concerning contacts with international organisations and he “made decisions about the evacuation of sick and injured, for which the State Committee for Cooperation with the UN and International Humanitarian Organisations [was] in charge of.”<sup>5419</sup> In response to this warning, the following day **Gvero** wrote a letter to Karadžić, stating that: “I have carried out all the activities mentioned in your document as ordered by my immediate superior”—the Commander of the Main Staff. “All the activities were carried out and motivated by the need for the fight of the Serbian people and army to

<sup>5410</sup> Robert Franken, T. 2516 (16 Oct 2006). Franken testified that they went to the “hospital”. Franken also testified that DutchBat officers accompanied Nikolić during the checks. *Ibid.* The Trial Chamber finds that Franken was referring to the hospital in Potočari.

<sup>5411</sup> Robert Franken, T. 2516 (16 Oct 2006).

<sup>5412</sup> Ex. P00524, “UNMO Sit Report, 17 July 1995”.

<sup>5413</sup> *Ibid.*

<sup>5414</sup> *Ibid.*, p. 1 (also stating that the wounded were checked before they were allowed to leave, in the presence of UNMO and a representative of the ICRC).

<sup>5415</sup> Ex. P04156, “ICRC Update No. 9 on activities in the former Yugoslavia, 17 July 1995”, p. 2. *See also* Ex. 6D00320, “ICRC notification to the RS State Committee for Cooperation with International Organisations, 16 July 1995”.

<sup>5416</sup> Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995”, p. 2. *See also* Ex. P02570, “VRS Main Staff order regarding movement of international humanitarian organizations, signed by Miletić, 18 July 1995” (referring to an UNHCR team travelling to Bratunac on 19 July “to monitor medical evacuation”).

<sup>5417</sup> Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995”; Ex. P04157, “ICRC interview to Deutsche Welle, 20 July 1995”, p. 2 (referring to 87 wounded people “evacuated” with the agreement of **Gvero**). *See also supra*, para. 349.

<sup>5418</sup> Ex. P00536, “ICRC Communication to the press No. 95/32, 18 July 1995”; Ex. P02567, “VRS Main Staff document concerning medical evacuation, type-signed Miletić, 16 July 1995”.



be successful, as can be seen from the successes of the VRS in Srebrenica, Žepa and on other fronts.”<sup>5420</sup>

1798. On 19 July, an agreement signed between Smith and Mladić stated, *inter alia*, that ICRC representatives would be granted access to reception points by the end of 20 July.<sup>5421</sup> On 26 July 1995, prisoners at Batković were registered by the ICRC, which had no restrictions on access to the detention centre.<sup>5422</sup>

(e) Findings

1799. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Joint Criminal Enterprise to Forcibly Remove

1800. The Trial Chamber notes that the centrepiece of the Prosecution’s case against **Gvero** is his commission of crimes through participation in the JCE to Forcibly Remove, as alleged in the Indictment.<sup>5423</sup> The Trial Chamber will therefore begin with an examination of **Gvero**’s alleged participation in this JCE.

a. Knowledge of the Plan

1801. The Trial Chamber is satisfied that **Gvero** had knowledge of the Strategic Objectives and Directive 4 and thereby understood the plans of the RS leadership, aimed at the creation of a separate State for the Serbian people in BiH. Through Directive 4 specifically, **Gvero** knew of the tasks for the VRS in order to achieve these goals: primarily, to defeat the Bosnian Muslim forces and to remove the civilian population from the Srebrenica and Žepa enclaves.<sup>5424</sup>

1802. Directive 7 elaborated on those tasks. The Trial Chamber has found above that Directive 7 set out a joint plan to forcibly remove the civilian population from Srebrenica and Žepa.<sup>5425</sup> Directive 7/1 articulated the VRS’s role in implementing that plan.<sup>5426</sup> It has not been established that **Gvero**, or his Sector, provided the actual text for parts of Directive 7. However the Trial

<sup>5419</sup> Ex. P02756, “Letter from the President of RS to Gvero, 17 July 1995.”

<sup>5420</sup> Ex. P02757, “Letter to the President of the RS, signed by Gvero, 18 July 1995”.

<sup>5421</sup> Ex. P02265, “Agreement between Smith and Mladić, 19 July 1995”.

<sup>5422</sup> Ex. 2D00522, “ICRC update on ICRC activities in the former Yugoslavia”; Ahmo Hasić, T. 1282–1283 (7 Sept 2006); Ljubomir Mitrović, T. 23646 (11 July 2008); Novica Simić, T. 28568–28569 (20 Nov 2008); PW-139, T. 3687 (7 Nov 2006). *See also supra*, para. 595.

<sup>5423</sup> Indictment, para. 76.

<sup>5424</sup> *See supra*, paras. 89, 91.

<sup>5425</sup> *See supra*, para. 1085.

Chamber is satisfied that, with his background knowledge of the strategies since 1992 and through the full-method according to which Directive 7 was drafted, **Gvero** provided input in relation to his area of responsibility.<sup>5427</sup> On the totality of the evidence, the Trial Chamber is satisfied that the only reasonable inference is that **Gvero** was well aware of Directive 7 and its content. In reaching this conclusion, the Trial Chamber has taken into consideration the importance of Directive 7, being a main policy document, and **Gvero**'s previous knowledge of and involvement in the strategies of RS. Further, as the Assistant Commander for Morale, **Gvero** was responsible for implementing the objectives set out in Directive 7 in relation to "Moral and Psychological Support".<sup>5428</sup>

1803. In light of the foregoing, the Trial Chamber is satisfied that **Gvero** knew of the plan to forcibly remove the populations from Srebrenica and Žepa from its inception. **Gvero** thereby understood and knew of the role of the VRS in implementing this policy, as well as of the methods agreed, such as the restrictions in access to humanitarian aid and the military attack on the enclaves.

#### b. Participation in the Joint Criminal Enterprise

##### i. General Role

1804. Before considering the specific Prosecution's allegations as to **Gvero**'s contribution to JCE, it is important to consider the overall role played by **Gvero** within the VRS Main Staff during the course of the *Krivaja-95* and Žepa operations.

1805. According to Directive 7, the implementation of the strategy to forcibly remove the population from the Srebrenica and Žepa enclaves was heavily dependant on the participation of the VRS. Further, the nature of the VRS' role was such that members of the Main Staff had a crucial role in overseeing that implementation. **Gvero** was amongst the most senior officers in the VRS Main Staff and there is evidence that he played an important role in that respect. **Gvero**'s involvement is noticeable throughout the *Krivaja-95* and Žepa operations: he was provided with crucial information and was involved at critical junctures. As an example, **Gvero** was personally present at the IKM in Pribićevec on 9 July 1995 with Krstić, the then Commander of the Drina Corps, who was leading the VRS' advances on Srebrenica.<sup>5429</sup>

<sup>5426</sup> See *supra*, para. 1086.

<sup>5427</sup> See *supra*, paras. 1758–1760. See also *supra*, para. 116.

<sup>5428</sup> See *supra*, para. 1760. See also *supra*, para. 116.

<sup>5429</sup> See *supra*, paras. 1765–1766.

1806. As the Assistant Commander for Morale, **Gvero** had an important role to play in VRS' operations: the *Krivaja-95* and the *Žepa* operations were no exception. To properly carry out his functions, **Gvero** had to be informed of the major developments in the campaign so that he would be in a position to intervene, as might be necessary, if issues of morale arose or dissemination of information might be needed. The evidence clearly indicates that **Gvero** was a specific recipient of key documents and was generally informed as to the progress of the military action. For example, on 9 July, Tolimir's telegram forwarding Karadžić's order to capture Srebrenica town was sent to Krstić and **Gvero** at the IKM. Whether **Gvero** received it or not, this evidences that Tolimir, the Assistant Commander for Security and Intelligence, considered it important for **Gvero** to be aware of a key development of this nature. Similarly on 13 July, Tolimir and Mladić sent instructions concerning prisoners of war, personally addressed to **Gvero** at the VRS Main Staff.<sup>5430</sup> In relation to *Žepa*, **Gvero** received timely information on the progress of the negotiations.<sup>5431</sup>

1807. The need for **Gvero** to be kept up to date on central aspects of the campaigns and any related policy decisions was enhanced by the fact that, in addition to his regular responsibilities, on some occasions **Gvero** was present at the VRS Main Staff as the most senior officer.<sup>5432</sup> In that capacity, the other assistant commanders would report to him and he could be called upon to intervene directly in the ongoing military action. Specifically, for parts of the day on 13, 19 and 25 July 1995, **Gvero** was present at the VRS Main Staff as the most senior officer. For example, on 13 July an order type-signed **Gvero** was issued from the Main Staff, calling for the capture of men from the column. While not directly relevant to the forcible transfer operation,<sup>5433</sup> this evidences the important role **Gvero** was entrusted with in the VRS Main Staff.

1808. With these general considerations in mind, the Trial Chamber will now consider the specific allegations of the Prosecution as to **Gvero**'s contribution to the JCE.

#### ii. Restrictions of Humanitarian Aid

1809. The Prosecution alleges that **Gvero** participated in the JCE to Forcibly Remove by blocking the UN's and other international organisations' access into Srebrenica.<sup>5434</sup> The Trial Chamber has found above that the VRS restricted access of humanitarian aid to the enclaves, pursuant to a policy

<sup>5430</sup> See *supra*, paras. 1778–1779.

<sup>5431</sup> See *supra*, paras. 1780, 1783–1785.

<sup>5432</sup> See *supra*, para. 1756.

<sup>5433</sup> It has been found above that the transfer of the detained Bosnian Muslim men separated in Potočari or surrendered and/or captured from the column did not constitute forcible transfer. See *supra*, para. 934.

<sup>5434</sup> Indictment, para. 76(c)(ii).

set out in Directive 7.<sup>5435</sup> The evidence before the Trial Chamber demonstrates that **Gvero** had some role in the process of approving humanitarian convoys.<sup>5436</sup> However, there is little evidence before the Trial Chamber to establish that he had any substantive role after the issuance of Directive 7. Further, there is no evidence that he contributed in any way to the restrictions, incrementally or otherwise, since the only document initialled by **Gvero** after Directive 7 contains approvals for the passage of convoys.<sup>5437</sup> In these particular circumstances, the Trial Chamber is not satisfied that **Gvero**'s involvement in the overall process for humanitarian aid contributed to the JCE significantly or otherwise.

### iii. Transport of the Wounded and Sick out of RS

1810. The Prosecution also alleges that **Gvero** was involved in facilitating and overseeing the transport of the wounded as part of the JCE to Forcibly Remove the Bosnian Muslim populations out of the enclaves.<sup>5438</sup> The Trial Chamber has found that **Gvero** was involved in and facilitated the transfer of a group of wounded and sick from Srebrenica to Tuzla on 17 and 18 July 1995.<sup>5439</sup> This group of wounded and sick consisted of civilians, since the able-bodied men were separated by the VRS and kept in RS hospital.<sup>5440</sup> The Geneva Conventions protect civilians against forcible removal.<sup>5441</sup> Wounded and sick, whether civilians or not, are in addition afforded special consideration.<sup>5442</sup> However, wounded and sick can lawfully be transferred without their consent on

<sup>5435</sup> See *supra*, para. 767.

<sup>5436</sup> See *supra*, paras. 1762–1763.

<sup>5437</sup> Ex. P04040, “VRS Main Staff Notification of convoy approvals, type-signed Milovanović, 21 April 1995”. See *supra*, para. 1762.

<sup>5438</sup> See Indictment, para. 76(d)(ii).

<sup>5439</sup> See *supra*, paras. 1790–1798.

<sup>5440</sup> See *supra*, paras. 1793–1796.

<sup>5441</sup> Geneva Convention IV, Articles 49, 147; Additional Protocol II, Article 17.

<sup>5442</sup> Article 3 Common to the Geneva Conventions (stating at para. 2 that “[t]he wounded and sick shall be collected and cared for”); Additional Protocol II, Article 7 (stating at para. 1 that “[a]ll the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected”). The Commentary to Additional Protocol II explains with regard to Article 7(1) that “[t]he concepts of respect and protection are taken from the [Geneva] Conventions, the first concept having been introduced in the 1906 revision and the second concept in 1929. The verb ‘to respect’ means to spare, ‘not to attack’; it is an obligation to abstain from any hostile act, to which is added the duty to protect. ‘To protect’ means ‘to come to someone’s defence, to lend help and support’.[...] This implies taking measures to remove the wounded, sick and shipwrecked, if possible, from the scene of combat and shelter them, and to ensure that they are effectively respected, i.e. that no one takes advantage of their weakness in order to mistreat them, steal their belongings, or harm them in any other way. The duty to respect and protect is incumbent on everyone, both on the members of the armed forces or armed groups and on the civilian population.” Commentary on Additional Protocols, para. 4635. Furthermore, the Commentary states that “[n]o distinction is made between members of the armed forces and civilians or according to whether they belong to the one party or the other concerned; the obligation to respect and protect is general and absolute.” *Ibid.*, para. 4642. Para. 2 of Article 7 states that “[i]n all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.” See also Additional Protocol I, Article 10. The Commentary to Additional Protocol II explains with regard to Article 7(2) that “[h]umane treatment is a general principle which applies at all times and in all places; it follows from respect

medical grounds, but no distinction may be made on any other ground.<sup>5443</sup> Accordingly, it is for the Prosecution to demonstrate that, in the present circumstances the transfer of the wounded and sick was unlawful, by proving that it was conducted for reasons other than medical necessity.

1811. The transportation of wounded and sick civilians was carried out by ICRC during 17 and 18 July, through an agreement with **Gvero**.<sup>5444</sup> The Trial Chamber has considered the context in which this transfer was conducted; the involvement of the international organisations in carrying out the transfer; the ICRC reports stating it had to be carried out for urgent reasons as some of the casualties were seriously injured; and the absence of other evidence relating to the reasons for this transfer. In light of this, the Trial Chamber finds that that the Prosecution has not proven that the transfer of wounded and sick civilians to Tuzla was motivated by reasons other than medical and was therefore unlawful. No evidence was presented on the fate of the wounded and sick that may have remained in the hospitals in Srebrenica and Bratunac, and in the DutchBat compound in Potočari. In addition, **Gvero**'s suggestion to Nicolai on 12 July that the medical evacuation be carried out by land instead of through the air can be interpreted in several ways.<sup>5445</sup> The Prosecution argues that it was aimed at or assisted in blocking international organisations' access into the enclave.<sup>5446</sup> The Chamber is of the view that the statement can be interpreted as an action to block access by international organisations, but another reasonable inference is that air evacuations were at the time not safe and therefore could not be approved, as **Gvero** said to Nicolai during the same conversation. The Trial Chamber notes that the transfer of civilians from Potočari on 12 and 13 July was conducted with DutchBat present on the spot. The argument that blocking further international organisations access to the area furthered or facilitated the forcible transfer is therefore tenuous and speculative. In these circumstances, the Trial Chamber considers **Gvero**'s involvement with the wounded and sick did not constitute a contribution to the JCE to Forcibly Remove.

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and protection. This is a reaffirmation in this particular context of the principle already contained in Article 4 (Fundamental guarantees), paragraph 1." Commentary on Additional Protocols, para. 4644.

<sup>5443</sup> See Article 3 Common to the Geneva Conventions; Additional Protocol II, Articles 7, 17. Article 17(1) reads: "[t]he displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition." The Commentary to Additional Protocol II explains with regard to Article 7(2) that "[t]he only factors allowed for giving priority in medical care and attention are matters of urgency and medical ethics." Commentary on Additional Protocols, para. 4647.

<sup>5444</sup> See *supra*, para. 1796.

<sup>5445</sup> See *supra*, para. 1791.

<sup>5446</sup> Indictment, para. 76(c)(ii); Prosecution Final Brief, para. 1808.

iv. War Propaganda, Misleading Information and Threats

1812. The Prosecution has made allegations relating to **Gvero**'s role in disseminating false information to the media and directly to international organisations.<sup>5447</sup> In addition, the Prosecution alleges that **Gvero** threatened and pressured UNPROFOR Commander Nicolai in an effort to stop NATO bombings.<sup>5448</sup> While framed as individual contributions, the Trial Chamber will consider these particular allegations together, given their interrelationship.

1813. Whether it was amongst his regular responsibilities or not,<sup>5449</sup> the evidence illustrates clearly that during the *Krivaja-95* and *Žepa* operations, **Gvero** was entrusted with key functions related to external propaganda and interaction with international organisations, aimed at supporting the plan to forcibly transfer the populations of Srebrenica and *Žepa*.

1814. On 10 July 1995—after the VRS had launched a military assault on the enclave, taken over UN OP's and moved to capture Srebrenica town itself—**Gvero** issued a statement to the media, concerning the attack on the enclave, in which he explained that the VRS' combat activity was directed towards neutralising Muslim terrorists and was not directed against civilians or members of UNPROFOR. His conclusion was that “there is no reason for the media and foreigners to get involved in the Muslim war propaganda.”<sup>5450</sup>

1815. Considering that **Gvero** knew of the plan to take-over the Srebrenica enclave and to forcibly remove the civilian population, and the action which had been taken to implement it, this was unquestionably a misleading press release. While of course the release of false information to the media and international authorities does not constitute a criminal act, the purpose of the release was not an innocent one. The only reasonable inference as to the goal behind this *communiqué* is that it was intended to mislead, in particular the international authorities concerned with protecting the enclave, with a view to delaying any action on their part which might thwart the VRS' military efforts.

1816. The next day, after NATO had initiated air strikes against the VRS forces advancing on the town, **Gvero** formed part of a concerted response from the VRS to stop the bombing. **Gvero** called UNPROFOR headquarters in Sarajevo and spoke with General Nicolai. He adopted his earlier tactic of falsely asserting that this was only the VRS responding to attacks.<sup>5451</sup> At this time, **Gvero** had the

<sup>5447</sup> Indictment, paras. 76(a)(i), 76(b)(i).

<sup>5448</sup> *Ibid.*, para. 76(c)(i).

<sup>5449</sup> *See supra*, paras. 1747–1757.

<sup>5450</sup> Ex. P02753, “‘Srebrenica—The Muslim War Trump Card’, statement by Gvero, 10 July 1995”, p. 2. *See supra*, para. 1768.

<sup>5451</sup> *See supra*, para. 1770.

additional knowledge that the VRS had already taken-over Srebrenica town and that Bosnian Muslims had fled into the DutchBat compound in Potočari.<sup>5452</sup> Armed with this information, **Gvero** told Nicolai that unless air support stopped immediately, Nicolai “would be held responsible for all further developments and the destiny of his men and the civilian population in Srebrenica.”<sup>5453</sup> It is true that no overt threatening language was used nor were possible reprisals against the people gathered in Potočari specifically referenced. Nevertheless, Nicolai interpreted and understood this to be a threat with respect to the UNPROFOR members and the civilian population gathered in Potočari. Given all the circumstances, especially the timing of the call, the knowledge of **Gvero** as to the situation on the ground and the related VRS’ efforts to stop the bombing, the Trial Chamber is satisfied that this was intended as and constituted a threat. In essence, **Gvero** was warning that failure to stop the NATO air strikes could result in dire consequences for UNPROFOR and the civilians in Potočari; and the responsibility for those people would fall on Nicolai.

1817. Strategically, soon after this conversation **Gvero** issued a warning to VRS personnel about the treatment of UNPROFOR personnel.<sup>5454</sup> The Trial Chamber is satisfied, from the timing and content of the document, that it was designed to ensure that no further actions were taken in relation to UNPROFOR that might provoke a response and interfere with efforts to end the NATO air strikes.

1818. The Trial Chamber is unable to conclude that **Gvero**’s discussion with Nicolai constituted a determinative factor in the NATO decision to suspend air support, since there had been prior attempts by the VRS to stop the bombing.<sup>5455</sup> Nevertheless, the Trial Chamber is satisfied that this was precisely **Gvero**’s aim. Moreover, the Trial Chamber considers that at this stage of the military assault, with the ABiH forces no longer a factor and UNPROFOR overrun, NATO air strikes were essentially the only means by which the VRS’ advance towards and capture of the enclave could be halted. From the VRS’ perspective, this was the last significant obstacle to the completion of the plan to take over the Srebrenica enclave and forcibly remove its inhabitants.

1819. Further evidence as to the significance of **Gvero**’s actions comes from the intercepted conversations between **Gvero** and Karadžić<sup>5456</sup>, which followed shortly after **Gvero**’s

<sup>5452</sup> See *supra*, paras. 253–255, 263.

<sup>5453</sup> Ex. P02906, “Notes of a telephone conversation between Nicolai and Gvero, 11 July 1995, 16:15 hours”. See *supra*, para. 1770.

<sup>5454</sup> See *supra*, para. 1771.

<sup>5455</sup> See *supra*, para 1770. See also Louis Fortin, T. 18261 (27 Nov 2007) (testifying that, “if [he] remembered correctly” air support was suspended because the VRS threatened to kill some of the DutchBat soldiers in their custody).

<sup>5456</sup> *But see* Judge Kwon’s Separate Opinion, *supra*, fn. 5337.

communication with Nicolai.<sup>5457</sup> **Gvero** recounts the essence of his discussion with the UNPROFOR Chief of Staff and assures the President that “[e]verything is going according to plan, don’t worry.”<sup>5458</sup> As the evidence before the Trial Chamber does not establish that **Gvero** had general responsibility for communications with Karadžić, this conversation demonstrates that the content of his discussions with Nicolai was of sufficient import to be specifically relayed to the President of RS.

1820. On the basis of these acts taken in combination, the Trial Chamber is satisfied that **Gvero** played a limited but important role in supporting the VRS’ military action, which was essential to the success of the plan to forcibly transfer. As a senior assistant commander, cloaked with authority from the highest echelons, **Gvero** took steps to block protective action in favour of the enclave by international authorities, notably UNPROFOR and NATO. The Trial Chamber is satisfied that by disseminating false information and issuing a serious threat, whether effective or not in the end, **Gvero** made a contribution to the JCE which by its nature cannot be classified as other than significant.

1821. In relation to the Žepa operation, the Trial Chamber is satisfied that **Gvero** knew of the VRS’ advance towards Žepa and of the negotiations taking place with Bosnian Muslim representatives and he was aware of the busing out of the women, children and the elderly from the enclave.<sup>5459</sup> The Trial Chamber infers this from **Gvero**’s conversation with Milovanović on 19 July;<sup>5460</sup> from **Gvero**’s receipt of the 24 July Agreement;<sup>5461</sup> from the intercepted conversation between **Gvero** and “Šubara” on 25 July;<sup>5462</sup> and from **Gvero**’s presence at the meeting at the Jela Restaurant on 25 July and at the Bokšanica checkpoint on 26 July.<sup>5463</sup> However, having considered the evidence in its totality, while **Gvero** was clearly knowledgeable and informed as to the illegal purpose of and developments in the Žepa campaign throughout, there is no evidence before the Trial Chamber of any actions on his part which contributed directly to it.

<sup>5457</sup> See *supra*, paras. 1772–1775.

<sup>5458</sup> See *supra*, para. 1773; Ex. P01096a (confidential).

<sup>5459</sup> See *supra*, Chapter III, Section K.

<sup>5460</sup> See *supra*, para. 1789.

<sup>5461</sup> See *supra*, para. 1784.

<sup>5462</sup> *Ibid.*

<sup>5463</sup> See *supra*, paras. 1785–1786. The Trial Chamber considers the evidence relating to the use of loudspeakers is not sufficient to establish that the 5,000 Watt loudspeaker was ever transported and used in the enclave or that **Gvero** had knowledge of it. See *supra*, para. 1782.



v. Conclusion

1822. The Trial Chamber is of the view that **Gvero**, with his detailed knowledge of the strategic aim to remove the Bosnian Muslim population from the enclaves, made a significant contribution to the common purpose of the JCE, through his efforts to delay and block international protective intervention. The Trial Chamber further notes that, as evidenced by his actions and the forceful manner in which they were carried out, the only reasonable inference is that **Gvero** also shared the intent. In addition, **Gvero**'s own words in the intercepted conversations—“[e]verything is going according to plan, don't worry”—make his intentions clear, evidencing not just knowledge but a shared intent.<sup>5464</sup> Therefore, the Trial Chamber finds **Gvero** is a participant in the JCE to Forcibly Remove.

(ii) The Knowledge Requirement for a Crime under Article 5 of the Statute

1823. **Gvero** is responsible for a crime against humanity under Article 5 of the Statute if his acts were part of the widespread and systematic attack against the civilian population and if at the time, he knew of that attack and that his crimes comprised a part thereof.<sup>5465</sup>

1824. The Trial Chamber has already found that there was a widespread and systematic attack directed against a civilian population with several components, culminating in the military action against Srebrenica.<sup>5466</sup> As established above, **Gvero** knew of Directive 7, which sets out the attack as part of the joint plan to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>5467</sup> Therefore, **Gvero** knew of the attack against the civilian population. Further, **Gvero**'s acts and conduct as described above are clearly tied to the attacks on Srebrenica and Žepa, and **Gvero**—with his overview of the forcible transfer operation from its inception—knew that this was the case. The Trial Chamber finds that **Gvero** meets the knowledge requirement for crimes against humanity under Article 5 of the Statute.

(iii) Count 7: Inhumane Acts (Forcible Transfer)

1825. It has been found that forcible transfer of the women, children and elderly from Srebrenica and Žepa was committed by the VRS in July 1995.<sup>5468</sup> **Gvero** was found to be a participant in the JCE to Forcibly Remove.<sup>5469</sup> Further, as found above, **Gvero** meets the knowledge requirement for

<sup>5464</sup> Ex. P01096a (confidential). *See supra*, para. 1773.

<sup>5465</sup> *See supra*, paras. 757–758.

<sup>5466</sup> *See supra*, para. 760.

<sup>5467</sup> *See supra*, paras. 1802–1803, 1805–1807.

<sup>5468</sup> *See supra*, Chapter IV, Section G.2.(a)(i), (iv) and (b)(ii), (iv).

<sup>5469</sup> *See supra*, para. 1822.

Article 5.<sup>5470</sup> The Trial Chamber therefore finds **Gvero** criminally responsible for the commission of the forcible transfer of the Bosnian Muslims from Srebrenica and Žepa,<sup>5471</sup> through his participation in the JCE to Forcibly Remove.<sup>5472</sup>

1826. The Trial Chamber finds **Gvero** guilty of inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i) of the Statute.

(iv) Count 8: Deportation

1827. The Trial Chamber has found that the elements of the crime of deportation are not met.<sup>5473</sup> Therefore, **Gvero** cannot be held liable and is found not guilty of deportation as a crime against humanity punishable under Article 5(d) of the Statute.

(v) Counts 4 and 5: Murder

1828. The Prosecution alleges that **Gvero** committed murder through “opportunistic” killings in Potočari, Bratunac, the Kravica Supermarket, and the Petkovci School between 12 and 15 July 1995, pursuant to the third category of JCE by his participation in the JCE to Forcibly Remove.<sup>5474</sup>

1829. The Trial Chamber has already found that “opportunistic” killings occurred in Potočari, Bratunac, and the Petkovci School between 12 and 15 July 1995.<sup>5475</sup> The Trial Chamber has found, by majority, Judge Kwon dissenting, that “opportunistic” killings also occurred at the Kravica Supermarket.<sup>5476</sup> The Trial Chamber has found these “opportunistic” killings constitute murder both as a crime against humanity and a violation of the laws and customs of war.<sup>5477</sup> The Trial Chamber has also found, by majority, Judge Kwon dissenting, that the “opportunistic” killings in Potočari were a natural and foreseeable consequence of the JCE to Forcibly Remove.<sup>5478</sup>

1830. **Gvero** was found to be a participant in the JCE to Forcibly Remove from its inception.<sup>5479</sup> However, it has not been demonstrated that **Gvero** was involved in any of the logistical aspects of the forcible transfer operation, neither that he was present in Potočari to see the conditions there.

<sup>5470</sup> See *supra*, para. 1824.

<sup>5471</sup> The Trial Chamber notes that, although it was found above (in para. 1821) that **Gvero** did not directly contribute to the forcible transfer operation in Žepa, through his participation in the JCE to Forcibly Remove he is criminally responsible for the forcible transfer operations in Srebrenica and in Žepa.

<sup>5472</sup> See *supra*, Chapter V, Section B.8.(e)(i)b.

<sup>5473</sup> See *supra*, para. 962.

<sup>5474</sup> Indictment, paras. 31, 46–47, 83. The Indictment further clarifies that the term “opportunistic” is intended to describe “killings and other criminal acts carried out by individual soldiers, acting on their own, likely without orders from superior officers”. *Ibid.* para. 83.

<sup>5475</sup> See *supra*, paras. 359, 361, 455, 457, 463, 497.

<sup>5476</sup> See *supra*, para. 449. See Judge Kwon’s Dissenting Opinion, *infra*, paras. 40–46.

<sup>5477</sup> See *supra*, para. 796.

<sup>5478</sup> See *supra*, para. 1088. See Judge Kwon’s Dissenting Opinion, *infra*, para. 21–26.

His acts evidence that he was involved in the JCE in the planning and development stages and subsequently, through his role as the Main Staff most senior officer and through his interventions with international organisations and entities. Thus, the Trial Chamber is not satisfied the only reasonable inference is that **Gvero**, through his knowledge and through the level of his involvement in the forcible transfer operation would foresee that “opportunistic” killings would be perpetrated by members of the VRS in the course of the forcible transfer. Therefore the Trial Chamber is also not satisfied that in this particular circumstance he willingly took the risk.

1831. The Trial Chamber finds **Gvero** not guilty for murder as a crime against humanity punishable under Article 5(a) of the Statute and murder as a violation of the laws or customs of war punishable under Article 3 of the Statute.

(vi) Count 6: Persecution

1832. The Trial Chamber has found that persecution as a crime against humanity was committed, *inter alia*, through the forcible transfer of thousands of Bosnian Muslims from Srebrenica and Žepa, through cruel and inhumane treatment and through the terrorising of Bosnian Muslim civilians.<sup>5480</sup> The Chamber has also found that these acts formed part of the common purpose of the JCE to Forcibly Remove.<sup>5481</sup>

1833. It has been found above that **Gvero** was a participant in the JCE to Forcibly Remove and that he meets the knowledge requirement for crimes against humanity.<sup>5482</sup> However, in order for **Gvero** to be held criminally responsible for persecution, it must be proved that he acted with the specific intent to discriminate on political, racial or religious grounds.<sup>5483</sup> The Trial Chamber is satisfied **Gvero** possessed such specific intent. The operation to remove the populations from Srebrenica and Žepa and the crimes agreed in the common plan were specifically directed at the Bosnian Muslim populations of the enclaves. This was clearly set out in the plan as laid down in Directive 7. As found above, **Gvero** had full knowledge of this Directive, the strategy it encompassed and the people targeted.<sup>5484</sup> Based on this and on the totality of the evidence before it, the Trial Chamber is satisfied that **Gvero** carried out his acts with the specific intent to discriminate on political, racial or religious grounds. The Trial Chamber therefore finds **Gvero** criminally responsible for committing persecution through the underlying acts of forcible transfer, cruel and

<sup>5479</sup> See *supra*, Chapter V, Section B.8.(e)(i).

<sup>5480</sup> See *supra*, paras. 992–999, 1002–1003.

<sup>5481</sup> See *supra*, paras. 1086–1087.

<sup>5482</sup> See *supra*, para. 1822, 1824.

<sup>5483</sup> See *supra*, paras 968–969.

<sup>5484</sup> See *supra*, paras. 1802–1803.

inhumane treatment and terrorising civilians, committed through his participation in the JCE to Forcibly Remove with persecutory intent.<sup>5485</sup>

1834. In relation to “opportunistic” killings, the Trial Chamber recalls its finding in the context of murder, that it was not foreseeable to **Gvero** that “opportunistic” killings would be a probable consequence of the JCE to Forcibly Remove.<sup>5486</sup> Accordingly, the Trial Chamber finds **Gvero** cannot be held accountable for persecution through “opportunistic” killings as a crime against humanity.

1835. The Prosecution also alleges that pursuant to the third category of liability through participation in the JCE to Forcibly Remove, it was foreseeable to **Gvero** that certain “persecutory acts” would be carried out by the Bosnian Serb Forces as part of the JCE to Forcibly Remove.<sup>5487</sup> As the Trial Chamber has assessed these charges of persecution—other than through “opportunistic” killings—pursuant to the first category JCE liability, it is not necessary to address **Gvero**’s alleged responsibility for “persecutory acts” under the third category of JCE.

1836. The Trial Chamber finds **Gvero** guilty for persecution as a crime against humanity punishable under Article 5(h) of the Statute.

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<sup>5485</sup> See *supra*, Chapter V, Section B.8.(e)(i)b.

<sup>5486</sup> See *supra*, para. 1830.

<sup>5487</sup> Indictment, para. 83.

9. Vinko Pandurević(a) The Case against Pandurević

1837. The Prosecution alleges that **Pandurević** is responsible under Article 7(1) of the Statute for planning, instigating, ordering, committing, and otherwise aiding and abetting the crimes of genocide, conspiracy to commit genocide, extermination, murder, persecution, forcible transfer and deportation.<sup>5488</sup> Specifically, the Prosecution alleges that **Pandurević** was a member of a joint criminal enterprise to summarily execute and bury the able-bodied Bosnian Muslim males from Srebrenica (the “JCE to Murder”) and a joint criminal enterprise to forcibly transfer and deport the Bosnian Muslim populations of Srebrenica and Žepa (the “JCE to Forcibly Remove”).<sup>5489</sup>

1838. **Pandurević** is also charged as a commander for the acts of his subordinates, with the same crimes referred to above, pursuant to Article 7(3) of the Statute.<sup>5490</sup>

(b) Position and Function

1839. **Vinko Pandurević** was born on 25 June 1959 in the village of Jasik, in the Sokolac municipality in BiH.<sup>5491</sup> In July 1982, upon graduation from the military academy, **Pandurević** became a second lieutenant and was sent to serve as a platoon commander in the School of Reserve Officers in Ljubljana, Slovenia.<sup>5492</sup> In 1989, **Pandurević** received a master’s degree in Humanities from the School of Sociology, Political Sciences, and Journalism in Slovenia.<sup>5493</sup> From June to late December 1992, **Pandurević** was Commander of the Višegrad Brigade.<sup>5494</sup> **Pandurević** assumed command of the Zvornik Brigade in December 1992, although he was not formally appointed as commander of the Brigade until October 1993.<sup>5495</sup> On 7 January 1993, **Pandurević** achieved the rank of major. On 23 June 1994, he was promoted to the rank of lieutenant colonel and in

<sup>5488</sup> Indictment, paras. 26–37, 39, 45–71, 77, 83–84, 88–91. **Pandurević** is charged under Count 1 of the Indictment with the crime of genocide punishable under Article 4(3)(a); under Count 2 with conspiracy to commit genocide punishable under Article 4(3)(b); under Count 3 with extermination as a crime against humanity punishable under Article 5(b); under Counts 4 and 5 with murder, as respectively a crime against humanity punishable under Article 5(a) and a violation of the laws or customs of war punishable under Article 3; under Count 6 with persecution as a crime against humanity punishable under Article 5(h); under Count 7 with inhumane acts (forcible transfer) as a crime against humanity punishable under Article 5(i); and under Count 8 with deportation as a crime against humanity punishable under Article 5(d).

<sup>5489</sup> Indictment, paras. 39, 77.

<sup>5490</sup> *Ibid.*, paras. 93, 94. **Pandurević** is charged with responsibility for the criminal acts of his subordinates described in paragraphs 30.6-30.15, 31.4, 32, 39, 42, 44, 54, 67, 77, 80, and 82 of the Indictment. *See* Indictment, para. 94.

<sup>5491</sup> Vinko Pandurević, T. 30662 (27 Jan 2009).

<sup>5492</sup> *Ibid.*, T. 30667–30668 (27 Jan 2009).

<sup>5493</sup> *Ibid.*

<sup>5494</sup> *Ibid.*, T. 30678–30679 (27 Jan 2009).

<sup>5495</sup> Ex. 7DP00372, “Detail of Professional Military Personnel for Vinko Pandurević”, pp. 4, 14–15; Vinko Pandurević, T. 30693–30694 (27 Jan 2009).

December 1995, to the rank of colonel. In June 1997, he received the rank of major general in the VRS and in March 2001, was appointed to the rank of general in the Army of Yugoslavia.<sup>5496</sup>

1840. **Pandurević** left the Zvornik Brigade in April 1996.<sup>5497</sup> He was then assigned to the position of Deputy Chief of the Operations Department of the Administration for Operations and Training in the Main Staff.<sup>5498</sup> **Pandurević** remained in this position for one month and then received permission to take leave to study and subsequently spent most of his time thereafter in Belgrade where he stayed until November 1996 as he pursued his PhD.<sup>5499</sup> In November 1996, **Pandurević** was informed by President Biljana Plavšić at a meeting in Pale that he had been selected for the position of “Assistant for Morale and Legal and Religious Affairs” of the General Staff (the Main Staff having been renamed General Staff).<sup>5500</sup> Shortly thereafter, however, **Pandurević** was reassigned and appointed “Deputy Chief of the General Staff”.<sup>5501</sup> **Pandurević** remained in this position until September 1997 when he left to attend the National Defence School in Belgrade, from which he graduated in early 1999.<sup>5502</sup> **Pandurević** retired from the Army of Yugoslavia in 2002.<sup>5503</sup>

1841. During the time relevant to the Indictment, **Pandurević** was Commander of the Zvornik Brigade.<sup>5504</sup>

(c) Acts and Whereabouts

(i) 1–10 July 1995

1842. On 1 July 1995, **Pandurević** was first briefed about the *Krivaja-95* operation<sup>5505</sup> during a meeting with several brigade commanders called by Krstić in Pribićevec, where the Drina Corps IKM was located.<sup>5506</sup> Later on 1 July, **Pandurević** presided over a meeting at the Standard Barracks

<sup>5496</sup> Ex. 7DP00372, “Detail of Professional Military Personnel for Vinko Pandurević”; Vinko Pandurević, T. 30669 (27 Jan 2009); Vinko Pandurević, T. 30669 (27 Jan 2009). **Pandurević** was promoted in July 1983 to the rank of lieutenant; in 1987 to the rank of captain; and in 1991 to the rank of captain first class. Vinko Pandurević, T. 30668–30669 (27 Jan 2009).

<sup>5497</sup> Vinko Pandurević, T. 31247 (11 Feb 2009).

<sup>5498</sup> *Ibid.*

<sup>5499</sup> *Ibid.*, T. 31248–31249 (11 Feb 2009).

<sup>5500</sup> Vinko Pandurević, T. 31250–31252 (11 Feb 2009); Bogdan Sladojević, T. 14411 (27 Aug 2007).

<sup>5501</sup> *Ibid.*, T. 31255 (11 Feb 2009).

<sup>5502</sup> *Ibid.*, T. 31255–31259 (11 Feb 2009). **Pandurević** acquired the rank of Major General in the VRS on 28 June 1997. Vinko Pandurević, T. 30669 (27 Jan 2009).

<sup>5503</sup> Vinko Pandurević, T. 31259 (11 Feb 2009).

<sup>5504</sup> *See infra*, paras. 2027–2031. *But see* Judge Kwon’s Separate Opinion, *infra*, paras. 47–59.

<sup>5505</sup> *See supra*, paras. 242–245.

<sup>5506</sup> Vinko Pandurević, T. 30839–30840 (29 Jan 2009). Apart from **Pandurević**, the Commanders of the Birač Brigade (or Šekovići Brigade), Milići Brigade, Sokolac Brigade, Goražde Brigade, Vlasenica Brigade and Bratunac Brigade attended the meeting. Milenko Lazić, T. 21728, 21748–21749 (4 June 2008) (describing how the Brigade Commanders were informed about the operation but not providing specific dates). After arriving in Pribićevec, Krstić, **Pandurević**, and the other brigade commanders visited several areas from which they carried out reconnaissance for the *Krivaja-95* operation. Vinko Pandurević, T. 30839–30841 (29 Jan 2009). Around this time

during which **Pandurević** said that he was going to Srebrenica with a certain number of troops and that during his absence Obrenović would be in charge.<sup>5507</sup>

1843. On 2 July, **Pandurević** received the *Krivaja-95* Orders.<sup>5508</sup> Additionally, on 2 July, pursuant to the *Krivaja-95* Operation, **Pandurević** was given an oral order by Krstić to command TG-1,<sup>5509</sup> which was to be ready to depart on 4 July.<sup>5510</sup> The deputy commander of TG-1 was Milan Jolović, who was known by the nickname “Legenda” and commanded the Drina Wolves, members of which were part of TG-1.<sup>5511</sup>

1844. On 4 July, **Pandurević** and approximately 400 men comprising TG-1 set off from the Standard Barracks.<sup>5512</sup> TG-1’s 1st and 2nd echelons, or the infantry segment, led by **Pandurević** marched on the Zvornik-Bratunac-Bjelovac-Skelani-Zeleni Jadar axis, while its 3rd echelon, which

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in 1995, about 955 soldiers had already been engaged outside the Zvornik Brigade’s zone of responsibility. Vinko Pandurević, T. 30840 (29 Jan 2009); Ex. 5D00351, “Regular Combat Report from 1st Zvornik Infantry Brigade to the Drina Corps Command, signed by Pandurević, 20 June 1995”. Given that, **Pandurević** did not expect that he would be asked to extend the brigade’s resources even further. Vinko Pandurević, T. 30840 (29 Jan 2009). Additionally, the regular combat report dated 1 July instructed that the Brigade should form a company to be sent to the area of Glamoc in the 2nd Krajina Corps where combat was taking place, thus **Pandurević** did not consider it “probable” that a new task would be given on 1 July. Vinko Pandurević, T. 30842–30843 (29 Jan 2009); Ex. 7D01022, “Regular Combat Report from the 1st Zvornik Infantry Brigade to the Drina Corps Command signed by Pandurević, 1 July 1995”, para. 2. Given that reconnaissance occurred only one day prior to the operation, **Pandurević** also said that the *Krivaja-95* operation appeared to be an “ad hoc” operation; such a short reconnaissance period usually occurred only at the level of a battalion or company. Vinko Pandurević, T. 30841–30842 (29 Jan 2009).

<sup>5507</sup> Lazar Ristić, T. 10041–10042 (16 Apr 2007). *See also* Milan Marić, Ex. P03138, BT. 11559 (6 July 2004).

<sup>5508</sup> Vinko Pandurević, T. 30843–30844 (29 Jan 2009); PW-168, T. 15807 (closed session) (26 Sept 2007); Ex. 5DP00106, “Drina Corps Order No. 01/04-156-1 Preparatory Order No. 1, type-signed Milenko Živanović, 2 July 1995”; Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja 95, 2 July 1995”. *See also supra*, paras. 244–245.

<sup>5509</sup> Vinko Pandurević, T. 31441–31443 (13 Feb 2009). Obrenović was called back to the Brigade from sick leave to assist in setting up the TG-1. Miodrag Dragutinović, T. 12671 (15 June 2007); PW-168, T. 15794–15795 (closed session) (25 Sept 2007).

<sup>5510</sup> Ex. P00318, “Zvornik Brigade Order to the Chief of Security signed by Pandurević, 2 July 1995”, para. 3. *See also* Vinko Pandurević, T. 30846 (29 Jan 2009); Lazar Ristić, T. 10041 (16 Apr 2007). *See also* Miodrag Dragutinović, T. 12575 (13 June 2007), T. 12671 (15 June 2007); PW-168, T. 15807 (26 Sept 2007).

<sup>5511</sup> Vinko Pandurević, T. 30848 (29 Jan 2009); PW-168, T. 15807–15808 (closed session) (26 Sept 2007); Ex. P00318, “Zvornik Brigade Order to the Chief of Security signed by Pandurević, 2 July 1995”, para. 2.1. In July 1995, one part of the Drina Wolves was engaged in the *Krivaja-95* operation as a component of TG-1, while another part was engaged in the Sarajevo theatre of war. Miodrag Dragutinović, T. 12673–12674 (15 June 2007); PW-168, T. 15807–15808 (26 Sept 2007); Ex. P00318, “Zvornik Brigade Order to the Chief of Security signed by Pandurević, 2 July 1995”, para. 2.2.

<sup>5512</sup> Vinko Pandurević, T. 30851 (29 Jan 2009); PW-168, T. 15810 (closed session) (26 Sept 2007); Miodrag Dragutinović, T. 12671–12672 (15 June 2007). *See also* Ex. 7D00242, “Marching Order from the Tactical Group from the Zvornik Brigade, signed by Pandurević, 3 July 1995”. **Pandurević** was accompanied by team of about four people, including probably two policeman and two drivers. PW-168, T. 16430 (closed session) (16 Oct 2007). One of his drivers between 4 and 15 July 1995 was likely Dragan Stević. PW-168, T. 16430 (closed session) (16 Oct 2007). **Pandurević** also took his operations officer, Miodrag Dragutinović, with him. PW-168, T. 16430–16431 (closed session) (16 Oct 2007). In court, Dragutinović drew the route taken by TG-1. Miodrag Dragutinović, T. 12675–12678 (15 June 2007); Ex. 7DIC00123, “Map 7D64 marked by the witness, 15 June 2007”; Ex. 7DIC00126, “Map 7D624 marked by the witness”. PW-168 confirmed the route drawn by Miodrag Dragutinović on Map 7D64. PW-168, T. 16433–16434 (closed session) (16 Oct 2007). *See also* Ostoja Stanišić, T. 11598–11599 (16 May 2007), T. 11710–11711 (17 May 2007).

was the armoured mechanised company, led by Major Milutinović, went along the Zvornik-Bratunac-Bjelovac-Pribićevec route.<sup>5513</sup>

1845. On 5 July, the 1st and 2nd echelons of TG-1 deployed next to the Zeleni Jadar River.<sup>5514</sup> **Pandurević**, along with other commanders, reported to Krstić at the Drina Corps IKM in the Pribićevec area, where they received their specific orders for the *Krivaja-95* operation.<sup>5515</sup> On 5 July, **Pandurević** used the RU-1 radio relay equipment at the Drina Corps IKM in Pribićevec to contact the Zvornik Brigade command to request that missing grenades be supplied to the “tank company”.<sup>5516</sup>

1846. On 6 July, the attack on Srebrenica started in the early morning before dawn.<sup>5517</sup> TG-1 was unable to make any progress that day as the forces of the 28th Division put up a strong resistance.<sup>5518</sup> On 7 July, **Pandurević** called the Zvornik Brigade Command to request that some teaching materials be photocopied and delivered to the students of the School of Technology.<sup>5519</sup>

<sup>5513</sup> Vinko Pandurević, T. 30852–30853 (29 Jan 2009). *See also* Miodrag Dragutinović, T. 12675–12678 (15 June 2007). According to **Pandurević**, Ex. 7D01058 accurately depicts the movement of TG-1 from 4 to 14 July, while Ex. 7D01059 accurately depicts the movements of **Pandurević** himself from 4 to 14 July. Vinko Pandurević, T. 30918–30919 (30 Jan 2009); Ex. 7D01058, “Video of movement of TG-1 in Operation Krivaja 95 and Stupčanica 95 (Appendix 12 to Military Expert Report 7D00891)”; Ex. 7D01059, “Video of movement of the commander of the Zvornik Infantry Brigade from 4 to 17 July 1995 (Appendix 13 to Military Expert Report 7D00891)”. *See also* Ex. 7D01066, “Map of Engagement of TG-1 in actions (Appendix 20 to Military Expert Report 7D00891)”. According to **Pandurević**, on the map (Ex. 7D01066), the yellow arrows indicate the starting positions of the units planned to be used in the *Krivaja-95* operation. Vinko Pandurević, T. 30853 (29 Jan 2009). Pink arrows indicate movement of the units. Vinko Pandurević, T. 30853 (29 Jan 2009). Blue arrows indicate positions of the ABiH 28th Division forces. Vinko Pandurević, T. 30853 (29 Jan 2009). Orange arrows represent break through in depth by VRS forces northwest of Srebrenica. Vinko Pandurević, T. 30853 (29 Jan 2009).

<sup>5514</sup> Vinko Pandurević, T. 30852 (29 Jan 2009). *See also* Mirko Trivić, T. 11800–11801 (18 May 2007).

<sup>5515</sup> Mirko Trivić, T. 11801–11803, 11809 (18 May 2007). At the IKM in Pribićevec that day, Trivić recalled seeing Lieutenant-Colonel Kosorić, who briefed them about the situation and gave an estimate of the enemies’ strength according to their intelligence, and Colonel Vičić, the operations person, who assigned them their tasks. Mirko Trivić, T. 11808 (18 May 2007), T. 11930 (22 May 2007). Vičić did not issue any orders as he was an operations officer and could only convey orders that had been issued by the commander. Mirko Trivić, T. 11930 (22 May 2007).

<sup>5516</sup> Vinko Pandurević, T. 30919–30920 (30 Jan 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 96 (noting rounds of tank ammunition); Ex. 7D01075, “Duty Operations Officer Diary 4–7 July 1995, translation”, p. 1 (showing that at 5 p.m. **Pandurević** called and asked for ammunition). **Pandurević** said that when he called the brigade command while he was outside the brigade’s defence zone, he called the operations duty officer because he always knew that person would be there, whereas he never knew whether the Chief of Staff would be present. Vinko Pandurević, T. 31457 (13 Feb 2009).

<sup>5517</sup> Vinko Pandurević, T. 30855 (29 Jan 2009); ; Miodrag Dragutinović, T. 12679 (15 June 2007); Lazar Ristić, T. 10042 (16 Apr 2007). *See also supra*, para. 249.

<sup>5518</sup> Vinko Pandurević, T. 30856 (29 Jan 2009); Ex. 7D00761, “Interim Combat Report from the Drina Corps Forward Command Post, signed by Radislav Krstić, 6 July 1995”.

<sup>5519</sup> Vinko Pandurević, T. 30919, 30921–30922 (30 Jan 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 101 (showing **Pandurević** called from Zeleni Jadar and discussed materials to be taken to the faculty); *cf.* Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”, p. 84. During the period of 4 to 14 July 1995, while he was away from Zvornik, **Pandurević** made two calls to the Zvornik Brigade Command, including this 7 July call as well as one on 5 July. Vinko Pandurević, T. 30919 (30 Jan 2009). Other than these two calls, **Pandurević** had no contact with the Zvornik Brigade Command. Vinko Pandurević, T. 30922–30923 (30 Jan 2009).



1847. Combat continued on 8 July, and TG-1 successfully took the Biljeg and Tri Sise features, on which positions of the 28th Division were located.<sup>5520</sup> An UNPROFOR OP was also located on the Biljeg feature.<sup>5521</sup> **Pandurević** was personally present at the Biljeg OP, where he encountered some DutchBat soldiers inside the OP.<sup>5522</sup> The Dutchbat soldiers were told to go in the direction of Bratunac and were escorted there.<sup>5523</sup> **Pandurević**'s forces also encountered UNPROFOR personnel in the Zeleni Jadar sector and told them to leave in the direction of Bratunac.<sup>5524</sup>

1848. On 9 July, combat continued, and two more features were taken and TG-1 reached the planned line,<sup>5525</sup> thus the VRS was able to fully control the boundaries of the enclave and prevent any communication between Srebrenica and Žepa.<sup>5526</sup> As a result, **Pandurević** believed that TG-1 had completed its assigned task under the Krivaja 95 operation.<sup>5527</sup>

1849. On 10 July, some of the fighting occurred in the village of Pustumulići and smoke could be seen coming from the houses.<sup>5528</sup> On that day, while **Pandurević** and TG-1 were gathered in the area of Bojna village,<sup>5529</sup> Krstić ordered the forces to proceed with the attack and take the town of Srebrenica the next day.<sup>5530</sup> This order from Krstić was in accordance with the order issued earlier

<sup>5520</sup> Vinko Pandurević, T. 30856–30857 (29 Jan 2009).

<sup>5521</sup> *Ibid.*, T. 30857–30858 (29 Jan 2009). *See also* Miodrag Dragutinović, T. 12687 (15 June 2007). Dragutinović testified that “Fire was never opened at the Dutch Battalion, but in light of the fact that the units of the 28th Division were positioned so close to the Dutch Battalion, they may have gotten the impression that fire was opened at them but no shell, no round, caused any damage to the structures of the Dutch Battalion”. Miodrag Dragutinović, T. 12687–12688 (15 June 2007). *See also* Vinko Pandurević, T. 30857 (29 Jan 2009) (testifying that the positions of the 28th Division were in line with the UNPROFOR OP); Milenko Jevđević, T. 29605–29606 (12 Dec 2008) (stating that “Krstić did not find it in his interest to have the complications—to have complications regarding the UNPROFOR situation, so he ordered his commanders to go around them, to bypass them by every possible means, both with infantry and everything else. But the commanders complained that the formations of the 28th Division, which were defending themselves in that area, had infiltrated into the improvised shelters of UNPROFOR and were firing from there on our units. And this complicated the combat situation significantly”).

<sup>5522</sup> Vinko Pandurević, T. 30858 (29 Jan 2009).

<sup>5523</sup> Vinko Pandurević, T. 30857–30858 (29 Jan 2009). *See also* Miodrag Dragutinović, T. 12688 (15 June 2007). Pursuant to Krstić's order, UNPROFOR forces were to be instructed to go in the direction of Bratunac. Vinko Pandurević, T. 30858 (29 Jan 2009). According to **Pandurević**, he ordered that the DutchBat soldiers be escorted and no UNPROFOR property was to be taken by his soldiers. Vinko Pandurević, T. 30858 (29 Jan 2009).

<sup>5524</sup> Vinko Pandurević, T. 30857–30858 (29 Jan 2009). According to **Pandurević**, the Drina Wolves forces of TG-1, including Legenda, reported that there were [DutchBat] soldiers at that point, “and the order was conveyed for them to go first to Pribičevac and from there to proceed towards Bratunac”. Vinko Pandurević, T. 30858 (29 Jan 2009). According to Dragutinović, after the positions of the 28th Division in the sector of Biljeg and Three Teats were taken, “the soldiers who were the first to reach the defence lines of the 28th Division established a contact with the soldiers of the Dutch Battalion” and “a proposal was made to [the DutchBat soldiers] to withdraw with their unit along the Zeleni Jadar-Pribičevac axis” and that the VRS forces “would make it possible for them to go back via Pribičevac and Sase to their base in Potočari”. Miodrag Dragutinović, T. 12688 (15 June 2007).

<sup>5525</sup> Vinko Pandurević, T. 30858–30859 (29 Jan 2009); Ex. 7D00762, “Interim Combat Report from the Drina Corps IKM signed by Krstić, 9 July 1995”, para. 2.

<sup>5526</sup> Vinko Pandurević, T. 30859 (29 Jan 2009).

<sup>5527</sup> *Ibid.*, T. 30860 (29 Jan 2009).

<sup>5528</sup> *Ibid.*, T. 30864 (29 Jan 2009).

<sup>5529</sup> Bojna borders Srebrenica town to the south. Ex. P02116, “Map Krivaja 95–Srebrenica and Bratunac”.

<sup>5530</sup> Miodrag Dragutinović, T. 12573, 12577 (13 June 2007), T. 12686–12687, 12689 (15 June 2007). *See also* Vinko Pandurević, T. 30866 (29 Jan 2009).

by Karadžić on 9 July authorising the VRS to capture Srebrenica town.<sup>5531</sup> **Pandurević** relayed to the TG-1 forces an order by Krstić not to destroy or damage any buildings in the Srebrenica area.<sup>5532</sup>

(ii) 11 July 1995

1850. On the morning of 11 July, **Pandurević** was orally given specific tasks by Krstić for further advancement towards the Srebrenica town.<sup>5533</sup> On 11 July at the Bojna feature when Krstić was assigning tasks, **Pandurević** first observed the presence of soldiers from the 10th Sabotage Detachment.<sup>5534</sup> Pursuant to Krstić's order, **Pandurević** and TG-1 prepared to continue their attack and to enter Srebrenica town from the axis of Bojna village, around the Zeleni Jadar-Srebrenica road.<sup>5535</sup> According to **Pandurević**, his task was to continue operations along the road, reach the town, and capture the surrounding hills.<sup>5536</sup> **Pandurević** considered that it was important to capture the hill positions surrounding the town of Srebrenica in order to ensure that the 28th Division could not launch an attack on his forces from those features once TG-1 entered the town. At around 4 p.m., TG-1 took control of these features.<sup>5537</sup>

1851. Around 4 p.m. on 11 July 1995, **Pandurević** and TG-1 entered Srebrenica town and based its command at the police station.<sup>5538</sup> In the afternoon, when Mladić, Krstić and other VRS officers, including **Popović**, walked though the empty streets of Srebrenica,<sup>5539</sup> **Pandurević** met with them or accompanied them along part of the way.<sup>5540</sup> After seeing Mladić, **Pandurević** deployed his

<sup>5531</sup> See *supra*, para. 252.

<sup>5532</sup> Miodrag Dragutinović, T. 12688 (15 June 2007).

<sup>5533</sup> Vinko Pandurević, T. 30867 (29 Jan 2009), T. 30874–30875 (30 Jan 2009). **Pandurević** was not sure whether he received the order on the evening of 10 July; but he was certain that all units involved received details about the attack on the morning of 11 July. Vinko Pandurević, T. 30866 (29 Jan 2009). See also Miodrag Dragutinović, T. 12577 (13 June 2007) (testifying that the order was issued on 10 July but that missions were given to the units on 11 July).

<sup>5534</sup> Vinko Pandurević, T. 30867 (29 Jan 2009), T. 30880 (30 Jan 2009).

<sup>5535</sup> Miodrag Dragutinović, T. 12577 (13 June 2007), T. 12689 (15 June 2007); Vinko Pandurević, T. 30866–30867 (29 Jan 2009).

<sup>5536</sup> Vinko Pandurević, T. 30867 (29 Jan 2009). **Pandurević** stated that those parts of the town which could be observed from TG-1's positions were completely empty. Vinko Pandurević, T. 30867–30868 (29 Jan 2009). According to **Pandurević**, radio communications indicated that the 28th Division was retreating and leaving the town towards the north. Vinko Pandurević, T. 30867–30868 (29 Jan 2009).

<sup>5537</sup> Vinko Pandurević, T. 30875–30876 (30 Jan 2009).

<sup>5538</sup> *Ibid.*, T. 30879 (30 Jan 2009); Mirko Trivić, T. 11995–11996 (23 May 2007); Miodrag Dragutinović, T. 12689 (15 June 2007); Ex. P01577, "Srebrenica Trial Video", 00:30:36, 00:31:12–00:31:15.

<sup>5539</sup> Mirko Trivić, T. 11825–11826 (21 May 2007); PW-109, T. 14883–14585 (closed session) (31 Aug 2007); Jean-René Ruez, T. 1326-1327 (7 Sept 2006); Ex. P02047, "Srebrenica Trial Video", 00:20:30-00:20:33, 00:25:02; Ex. P02047, "Srebrenica Trial Video", 00:18:35-00:33:15.

<sup>5540</sup> Ex. P02047, "Srebrenica Trial Video", 00:30:36, 00:31:12–00:31:15; Jean-René Ruez, T. 1330 (8 Sept 2006). Ex. P02047, "Srebrenica Trial Video", 00:31:13. See also Mirko Trivić, T. 11996 (23 May 2007); PW-109, T. 14584–14585 (closed session) (31 Aug 2007); Vinko Pandurević, T. 30876–30879 (30 Jan 2009).

troops in keeping with the tactical situation and continued moving through the town to its centre.<sup>5541</sup>

**Pandurević** spent the night of 11 July at the police station in Srebrenica.<sup>5542</sup>

(iii) 12 July 1995

1852. There is contradictory evidence regarding an alleged meeting between **Pandurević** and Obrenović on the morning of 12 July. According to PW-168, early in the morning of 12 July around 7:45 a.m., **Pandurević** briefly “dropped by” the Zvornik Brigade Command, “coming from somewhere”.<sup>5543</sup> While he was there, according to PW-168, Obrenović and **Pandurević** had an exchange in the corridor during which Obrenović briefed **Pandurević** regarding the situation with the 28th Division breaking through the Zvornik Brigade lines.<sup>5544</sup> However, according to

<sup>5541</sup> Vinko **Pandurević**, T. 30882 (30 Jan 2009). **Pandurević** did not see any civilians in the town except for some elderly people at the UNPROFOR base. Vinko **Pandurević**, T. 30882 (30 Jan 2009).

<sup>5542</sup> Miodrag Dragutinović, T. 12689–12690 (15 June 2007); Vinko **Pandurević**, T. 30885, 30888 (30 Jan 2009).

<sup>5543</sup> PW-168, T. 15984–15986 (closed session) (28 Sept 2007), T. 16461 (closed session) (17 Oct 2007). PW-168 gave this testimony when presented with an intercept from 12 July in which there is reference to the “commander” being present at the Standard Barracks. See Ex. P01102a, “Intercept, 12 July 1995, 07:40 hours”. In the intercept (between two people who are not clearly identified), the first person says “Obrenović...” and then asks “Where is your commander?” In response, the second person states “As far I know, he’s here”. Subsequently, the first person says “He’s not, he isn’t answering. Listen, please tell him that I called, that Mane, Laco’s deputy, will call him, that the police in Konjević Polje have been told to do the same as the Engineering Battalion are doing, and that he can give orders to them through the commander of the Engineering Battalion,” to which the second person responds “OK.” Ex. P01102a, “Intercept, 12 July 1995, 07:40 hours”. PW-168 identified this conversation as being between Obrenović and the duty officer from the Corps Command. PW-168, T. 16458–16460 (closed session) (17 Oct 2007). With reference to the intercept, PW-168 testified that after the Duty Officer from the Corps Command had called, Obrenović, who knew from someone at the Zvornik Brigade (possibly the duty officer or a courier) that **Pandurević** was around, looked for him, found him on the ground level of the brigade command and conveyed to him what he had been told, and **Pandurević** said that he would deal with the problem. PW-168, T. 15986 (closed session) (28 Sept 2007) (testifying that the Zvornik Brigade duty officer told Obrenović that **Pandurević** was at the Standard Barracks), T. 16461, 16471, 16476–16477 (closed session) (17 Oct 2007) (later testifying that he could not recall who exactly informed Obrenović that **Pandurević** was there), T. 16824–16825 (closed session) (23 October 2007) (repeating that he did not remember who told Obrenović about **Pandurević**’s presence at the command on 12 July). **Pandurević**, however, interpreted the intercepted conversation from 7:40 a.m. on the morning of 12 July to mean that an unidentified caller dialled Obrenović’s number at the brigade command, which was answered by the duty operations officer because Obrenović was not present and the reference to the “commander” thus refers here to Obrenović. Vinko **Pandurević**, T. 30894–30895 (30 Jan 2009); Ex. P01102a, “Intercept, 12 July 1995, 07:40 hours”. Additionally, in contrast to PW-168’s account, there is no mention or record of **Pandurević** being present at the Zvornik Brigade Command on 12 July in the Zvornik Brigade Duty Officer notebook, logbook, or the Zvornik Brigade war diary. See Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 113–119; Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”; Ex. 7DP00384, “Zvornik Brigade War Diary, 12 May– 15 October 1995”, pp. 3-4. Mihajlo Galić, the Assistant Chief of Staff for Personnel for the Brigade, testified that he did not see **Pandurević** in the Zvornik area during the period of 4 to 15 July and that he had not heard of **Pandurević**’s presence there from anyone else there during that period. Mihajlo Galić, T. 10579–10580, 10626 (26 Apr 2007). Milan Marić and Ljubo Bojanović, who were duty officers that day, were both present at the Standard Barracks but neither mentioned having seen **Pandurević** there on 12 July. See Ljubo Bojanović, Ex. P03135, “confidential – 92 quater transcript”, BT. 11688–11689 (8 July 2004). On 12 July, between 8 and 9 a.m., Milan Marić took over as duty operations officer in the presence of Obrenović. Milan Marić, Ex. P03138, “92 quater transcript”, BT. 11561, 11565 (6 July 2004); see also Ljubo Bojanović, Ex. P03135, “confidential – 92 quater transcript”, BT. 11689 (8 July 2004) (stating that he believed that Marić was the Duty Officer on 12 July).

<sup>5544</sup> PW-168, T. 16472, 16475 (closed session) (17 Oct 2007). According to PW-168, Obrenović did not express his concern about the 28th Division because Mladić, the Corps Commander and all the other commanders were “up there” and they “knew what they were doing”. PW-168, T. 15986 (closed session) (28 Sept 2007), T. 16471–16472, 16475 (closed session) (17 Oct 2007).

**Pandurević**, he was not present at the Standard Barracks on the morning of 12 July and he did not speak to Obrenović that day.<sup>5545</sup> According to **Pandurević**, at 7:55 a.m. that morning, he was in Srebrenica.<sup>5546</sup> In light of the conflicting evidence and given the burden of proof, the Trial Chamber finds that the evidence is insufficient to establish that **Pandurević** went to the Standard Barracks and met with Obrenović on 12 July.

1853. On 12 July, **Pandurević** reported to Bojna, where he attended a meeting convened by Krstić at approximately 9 a.m.<sup>5547</sup> Colonel Vičić, Colonel Andrić and Colonel Trivić were also present at the meeting.<sup>5548</sup> Krstić ordered the units to head towards the Srebrenica-Viogor-Suceska axis, search the terrain for evidence of the whereabouts of the 28th Division along that axis, and then gradually move towards Žepa.<sup>5549</sup>

1854. Around 6 p.m. on 12 July, **Pandurević** met with Krstić when he arrived to inspect the units.<sup>5550</sup> Krstić indicated that TG-1 should prepare for combat activities in the Žepa sector and instructed **Pandurević** to continue marching the next day and that he would receive more concrete tasks for combat operations with regard to Žepa.<sup>5551</sup>

1855. Later in the evening of 12 July 1995, **Pandurević** attended a meeting with Mladić, Krstić Živanović and other VRS commanders at the Bratunac Brigade Headquarters.<sup>5552</sup> At the meeting, Mladić ordered the units to proceed towards Žepa the following day.<sup>5553</sup> During the meeting, Trivić

<sup>5545</sup> Vinko Pandurević, T. 30896–30897 (30 Jan 2009).

<sup>5546</sup> *Ibid.*, T. 30896 (30 Jan 2009).

<sup>5547</sup> Mirko Trivić, T. 11832–11836 (21 May 2007); Vinko Pandurević, T. 30897 (30 Jan 2009) (testifying that he was called to report to Bojna “just before the meeting”).

<sup>5548</sup> Vinko Pandurević, T. 30896–30897 (30 Jan 2009); Mirko Trivić, T. 11835 (21 May 2007). On 12 July 1995, Mirko Trivić was the Commander of the Romanija Brigade. Mirko Trivić, T. 11795 (18 May 2007). On 12 July 1995, Svetozar Andrić was the Commander of the Birač Brigade. Ex. P00692, “Diagram showing Main Staff VRS Structure–July 1995”. On 12 July 1995, Obrad Vičić was the Chief of Operations and Training of the Drina Corps. Ex. P00692, “Diagram showing Main Staff VRS Structure–July 1995”. **Pandurević** did not remember whether Colonel Blagojević was present. Vinko Pandurević, T. 30897 (30 Jan 2009).

<sup>5549</sup> Vinko Pandurević, T. 30898–30899 (30 Jan 2009); Mirko Trivić, T. 11835–11836 (21 May 2007). According to Pandurević, by the afternoon of 12 July, his units had left the area of Srebrenica, advancing as planned towards Žepa and making it to the area of Viogor and Mount Jahorina. Vinko Pandurević, T. 30899–30901 (30 Jan 2009). See also Ex. P00886, “Zvornik CJB document to Republika Srpska MUP Office of the Minister, Pale, Bijeljina Public Security Department, Bijeljina Police Forces Headquarters, signed by Dragomir Vasić, 13 July 1995”.

<sup>5550</sup> Vinko Pandurević, T. 30901 (30 Jan 2009); Miodrag Dragutinović, T. 12583 (13 June 2007); PW-109, T. 14593–14594 (closed session) (31 Aug 2007) (testifying that around 4 or 5 p.m. on 12 July, he took Krstić to “some point on a hill-side between Bratunac and Srebrenica” where Krstić met and addressed some subordinate brigade commanders, including Pandurević); Mirko Trivić, T. 11836–11837 (21 May 2007) (testifying that in the afternoon of 12 July he “received an assignment from Krstić in the area of Viogor village” to go to the Bratunac Brigade Command that evening for a meeting).

<sup>5551</sup> Miodrag Dragutinović, T. 12583 (13 June 2007); Vinko Pandurević, T. 30904 (30 Jan 2009). According to Dragutinović, however, no concrete orders were conveyed on the evening of 12 July. Miodrag Dragutinović, T. 12584 (13 June 2007).

<sup>5552</sup> See *supra*, para. 376.

<sup>5553</sup> Milenko Jevdević, T. 29607–29608 (12 Dec 2008); Mirko Trivić, T. 11841–11842 (21 May 2007); Vinko Pandurević, T. 30884–30885 (30 Jan 2009). See also Mirko Trivić, T. 11876–11877 (21 May 2007); Ex. P04309, “Personal diary of Mirko Trivić”, p. 29. **Pandurević** described the meeting as more of a “monologue by one man

and **Pandurević** requested a replacement of the troops to carry out the Žepa operation, as their troops needed rest, but Mladić denied the request.<sup>5554</sup> **Pandurević** also expressed to Mladić that they should establish contact with the 28th Division as soon as possible and assign forces to engage in combat with it, while the rest of the forces should remain in Srebrenica and Bratunac to stabilise the situation on the ground.<sup>5555</sup> According to **Pandurević**, Mladić simply responded, “You heard the order, you heard what the tasks are, prepare units, and proceed towards Žepa ASAP”.<sup>5556</sup>

(iv) 13 July 1995

1856. On the morning of 13 July, Mladić and Krstić went to Viogor where Mladić addressed the units and commanders, including **Pandurević** and Trivić.<sup>5557</sup> Mladić ordered the tactical groups to be ready to march towards Žepa pursuant to the task of taking the Žepa enclave.<sup>5558</sup>

1857. On the same day, **Pandurević** and TG-1 marched along the designated route towards Žepa and encountered problems in the road, including anti-tank mines.<sup>5559</sup> **Pandurević** and his forces stopped to refuel in Vlasenica around midnight, then continued moving towards Han Pijesak, and

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[Mladić] and issuing task[s]”, and that it did not last long. Vinko Pandurević, T. 30884 (30 Jan 2009). **Pandurević** testified that there was no mention or discussion at the meeting about prisoners or a plan to kill able-bodied Muslim men. Vinko Pandurević, T. 30888 (30 Jan 2009), T. 31855 (20 Feb 2009). *See also* Mirko Trivić, T. 11848 (21 May 2007).

<sup>5554</sup> Mirko Trivić, T. 11842–11843 (21 May 2007).

<sup>5555</sup> Vinko Pandurević, T. 30885 (30 Jan 2009). *See also* Milenko Jevđević, T. 29608 (12 Dec 2008).

<sup>5556</sup> *Ibid.*

<sup>5557</sup> Vinko Pandurević, T. 30904–30905 (30 Jan 2009); Mirko Trivić, T. 11853–11854 (21 May 2007); Miodrag Dragutinović, T. 12586–12588 (13 June 2007).

<sup>5558</sup> Miodrag Dragutinović, T. 12587 (13 June 2007). *See also* Ex. P04309, “Personal diary of Mirko Trivić” p. 31 (“General Mladić addressed the soldiers – the task is clear – liberate Žepa”). *See also* Ex. 7D00941, “Order to March No. 4 from the command of the 1st Zvornik Infantry Brigade, signed by Vinko Pandurević, 13 July 1995”, pp. 1–2. **Pandurević** testified that he issued his order orally and saw the written order prepared by Dragutinović for the first time in court. This exhibit also contains **Pandurević**’s signature but he testified that he did not think that he had signed it. Vinko Pandurević, T. 30906–30907 (30 Jan 2009). *See also* Mirko Trivić, T. 11862–11863 (21 May 2007) (testifying that on the morning of 13 July 1995, he had already been given the assignment to act as a backup force to elements of the Zvornik Brigade that were under the command of **Pandurević** in the Žepa operation).

<sup>5559</sup> Vinko Pandurević, T. 30907–30908 (30 Jan 2009); PW-168, T. 15994 (closed session) (28 Sept 2007); Mirko Trivić, T. 11862–11863 (21 May 2007). Prior to going to Snagovo, on 13 July, PW-168 had no information about the whereabouts of **Pandurević**. In the early evening of 13 July, PW-168 knew that **Pandurević** and his forces were moving towards Žepa but did not know their exact location. PW-168, T. 15754 (closed session) (25 Sept 2007), T. 15825, 15841 (closed session) (26 Sept 2007), T. 15993–15994 (closed session) (28 Sept 2007); Ex. 7D00091, “Vehicle work log for Nisan for July 1995”. **Pandurević** explained the entries in Ex. 7D00091 for the dates of 11 through 14 July, saying that his driver, Stević, sometimes registered the actual routes and “sometimes he just filled it in in order to justify the mileage he made in the course of a day”. Thus, according to **Pandurević**, these entries reflect the actual route he took only “to a very low extent”. He did not travel from Srebrenica to Bratunac on 13 July, and he did not travel from Srebrenica to Han Pijesak on 14 July. Vinko Pandurević, T. 30912–30913 (30 Jan 2009).

stopped at around 2 a.m. on 14 July in the village of Rijeka, where they spent the night.<sup>5560</sup> During the entire night, **Pandurević** had no contact with the Zvornik Brigade.<sup>5561</sup>

(v) 14 July 1995

1858. On 14 July around 10 a.m., **Pandurević** reported to Krstić at the Drina Corps IKM at Krivače and received the combat order pursuant to *Stupčanica-95*.<sup>5562</sup> **Pandurević**'s task pursuant to this order was to attack the enemy and advance towards Žepa.<sup>5563</sup> Pursuant to the order, **Pandurević** deployed his units and launched an attack, with his lines about 10 kilometres from the village of Žepa.<sup>5564</sup> The fighting was sporadic that day and the positions did not change.<sup>5565</sup>

(vi) 15 July 1995

1859. On the morning of 15 July, **Pandurević** ordered the units of TG-1 to proceed with combat activities in support of the *Stupčanica-95* operation.<sup>5566</sup> **Pandurević**, who at the time was in the vicinity of Podžeplje, was called by Milenko Jevđević to report to Krstić at the Drina Corps IKM at Krivače.<sup>5567</sup> In light of reported problems on the combat lines of the Zvornik Brigade and Obrenović's urgent request for reinforcements,<sup>5568</sup> Krstić ordered **Pandurević** and his forces to return to the Zvornik Brigade area of responsibility to block or crush the column, "prevent the consequences of a possible attack on Zvornik",<sup>5569</sup> and prevent the column from joining up with the forces of the ABiH 2nd Corps.<sup>5570</sup>

<sup>5560</sup> Vinko Pandurević, 30907–30908, 30911 (30 Jan 2009); Miodrag Dragutinović, T. 12589 (13 June 2007); Ex. 7D00091, "Vehicle work log for Nisan for July 1995".

<sup>5561</sup> Miodrag Dragutinović, T. 12590 (13 June 2007).

<sup>5562</sup> Vinko Pandurević, T. 30913 (30 Jan 2009); Miodrag Dragutinović, T. 12591–12592 (13 June 2007); Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995". See also, para. 682.

<sup>5563</sup> Vinko Pandurević, T. 30914 (30 Jan 2009). See also Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995". According to **Pandurević**, he understood that his task was to neutralise or destroy the Žepa Brigade of the ABiH but that neither civilians nor UNPROFOR were his targets. Vinko Pandurević, T. 30915–30917 (30 Jan 2009); Ex. P00114, "Order from Drina Corps Command regarding Žepa, signed by Krstić, 13 July 1995", para. 9(c). See also Miodrag Dragutinović, T. 12592 (13 June 2007). See also *supra*, para. 682.

<sup>5564</sup> Vinko Pandurević, T. 30917–30918 (30 Jan 2009); Miodrag Dragutinović, T. 12592 (13 June 2007).

<sup>5565</sup> Vinko Pandurević, T. 30918 (30 Jan 2009). See also Miodrag Dragutinović, T. 12592–12593 (13 June 2007).

<sup>5566</sup> Vinko Pandurević, T. 30940 (30 Jan 2009).

<sup>5567</sup> *Ibid.*, T. 30940–30941 (30 Jan 2009), T. 30947–30948 (2 Feb 2009); Milenko Jevđević, T. 29620 (12 Dec 2008). **Pandurević** left for the Drina Corps IKM at 8:00 a.m. and came back at 9:00 a.m. Miodrag Dragutinović, T. 12596–12597 (14 June 2007).

<sup>5568</sup> See *supra*, para. 551. Krstić told **Pandurević** that "it seemed that Obrenović was in too much of a panic for no reason." Vinko Pandurević, T. 31483 (16 Feb 2009). **Pandurević** said that Krstić believed that the enemy forces were there and presented a danger, but believed that Obrenović was blowing the threat out of proportion because he was "fear-stricken". Vinko Pandurević, T. 31483 (16 Feb 2009).

<sup>5569</sup> Ex. 5D7D00686, "Order to return elements of Zvornik Brigade, signed by Krstić, 15 July 1995".

<sup>5570</sup> *Ibid.*; Vinko Pandurević, T. 30942–30943 (30 Jan 2009), T. 30947, 30952–30954, 30961 (2 Feb 2009), T. 31481–31483 (16 Feb 2009); Milenko Jevđević, T. 29620 (12 Dec 2008). See *supra*, para. 551. According to **Pandurević**, Krstić gave him the same task that the Corps Command had previously given to Obrenović, to stop, block, disarm, capture, or destroy the column. Vinko Pandurević, T. 31482–31483 (16 Feb 2009); see also Ex. 5D7D00686,

1860. Shortly after meeting with Krstić, **Pandurević** contacted the Zvornik Brigade command at 8:55 a.m. and again at 9:10 a.m. and spoke to Sreten Milošević, the Assistant Commander for Logistics in the Zvornik Brigade, and Miladin Mijatović, another member of the Zvornik Brigade Logistics Organ,<sup>5571</sup> about the combat situation in the area.<sup>5572</sup> Around the same time on the morning of 15 July, while at the Drina Corps IKM, **Pandurević** was informed that Šemso Muminović, Commander of the 24th Division of the ABiH 2nd Corps in Nežuk, had tried to contact him and had left a frequency upon which they could communicate.<sup>5573</sup>

1861. After meeting with Krstić, **Pandurević** proceeded to Zvornik with his TG-1 unit and arrived at the Standard Barracks around noon.<sup>5574</sup> Upon his arrival at the Standard Barracks on 15 July, **Pandurević** had a brief conversation with Obrenović in the corridor.<sup>5575</sup> At this point, Obrenović informed **Pandurević** that pursuant to Mladić's order, **Beara** and **Popović** had brought a large number of prisoners from Bratunac to the Zvornik sector, where they were executing them and that, according to Jokić, there were enormous problems with the guarding, execution, and burial of

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"Order to return elements of Zvornik Brigade, signed by Krstić, 15 July 1995". According to PW-168, Obrenović had been ordered by Živanović to stop the column. PW-168, T. 15840–15841 (closed session) (26 Sept 2007).

<sup>5571</sup> PW-168, T. 15999–16000 (closed session) (28 Sept 2007); Zvonko Bajagić, T. 32487–32488 (9 Mar 2009) (stating that Mijatović was a "logistics man" and that as far as he knew Mijatović was "with the Zvornik Brigade").

<sup>5572</sup> Ex. P01172c, "Intercept, 15 July 1995, 08:55 hours" (recording conversation in which **Pandurević** speaks with Milošević and then with Mijatović); Ex. P01174c, "Intercept, 15 July 1995, 09.10 hours" (recording the conversation between **Pandurević** and Mijatović); Vinko Pandurević, T. 30949–30950 (2 Feb 2009), T. 31485–31486 (16 Feb 2009), T. 31820–31822 (19 Feb 2009); PW-168, T. 15999 (closed session) (28 Sept 2007). During the first conversation at 8:55 a.m., Milošević reported to **Pandurević** that there was an attack that morning at 5:00 a.m., but the situation was "now good", but indicated there were problems in the area where Obrenović was located and thus handed the conversation on to Mijatović who had more information on that situation. Mijatović then reported to **Pandurević** that they had some men missing and some injured and that there were no major problems on the line, but indicated their men who were setting up ambushes encountered some problems. Mijatović also informed **Pandurević** that they had information that indicated that "Naser came in from Križeviči with a group" and was "now heading to meet the ones coming from Srebrenica". In response to this information, **Pandurević** instructed Mijatović to check the situation and report back. Ex. P01172c, "Intercept, 15 July 1995, 0855 hours". Shortly thereafter, **Pandurević** called back and was connected to Mijatović by Jokić. Ex. P01174c, "Intercept, 15 July 1995, 0910 hours". Mijatović informed **Pandurević** that everything was in order and stable on the line and that he had talked to the "Chief" who told Mijatović that "they have huge forces; the estimate is 4,000–5,000 here in the surroundings" and suggested that their "men return if they can". Ex. P01174c, "Intercept, 15 July 1995, 09.10 hours". Mijatović also reported to **Pandurević** that there was "a huge column of Turks" there in "the area of Snagovo, Planinci and Dovedova/all the way to Vedova/glava" and again that Naser was in Križeviči with one group. Ex. P01174c, "Intercept, 15 July 1995, 09:10 hours".

<sup>5573</sup> Vinko Pandurević, T. 30948–30949 (30 Jan 2009), T. 30976–30977 (2 Feb 2009). See also Ex. P01171c, "Intercept, 15 July 1995, 08:34 hours" (recording an entry at 8:34 a.m. stating "Šemso Muminović is asking for V. Pandurević to call him on 144. 985 MHz."). This same information was given to **Pandurević** when he arrived later that day at the brigade IKM. Vinko Pandurević, T. 30976–30977 (2 Feb 2009).

<sup>5574</sup> PW-168, T. 15886 (closed session) (27 Sept 2007); Vinko Pandurević, T. 30954–30955 (2 Feb 2009). At 9:39 a.m., the Duty Officer at the Drina Corps Headquarters informed Dragan Jokić, Duty Officer at the Standard Barracks, that **Pandurević** and his TG-1 units were returning to the Standard Barracks from Žepa. Ex. P01176a "Intercept, 15 July 1995, 09:39 hours"; Vinko Pandurević, T. 30956–30957 (2 Feb 2009); PW-168, T. 15869 (26 Sept 2007). See also Miodrag Dragutinović, T. 12599 (14 June 2007); Mirko Trivić, T. 11863 (21 May 2007).

<sup>5575</sup> PW-168, T. 15879 (closed session) (26 Sept 2007). The Trial Chamber notes that there is conflicting evidence on the occurrence of a conversation between Obrenović and **Pandurević** in the corridor around noon on 15 July. Having considered all evidence relevant to this issue, the Trial Chamber has found *infra* that this conversation occurred as described by PW-168. See *infra*, paras. 1934–1959.

prisoners.<sup>5576</sup> **Pandurević** then asked why the civilian protection was not performing the burials.<sup>5577</sup> Obrenović did not know about that and just shrugged in response.<sup>5578</sup> **Pandurević** then inquired about what had happened with the 4th and 7th Battalions, and Obrenović updated him about the combat situation.<sup>5579</sup> Obrenović told him that the two battalions were in place, that the forces of the 28th Division were at a strength of up to 10.000 men, in two columns, which were “meshing everything that stands before them”, and had already entered the defence sector of the two battalions.<sup>5580</sup> After briefing **Pandurević**, Obrenović then told him that **Borovčanin** and Vasić were waiting in Obrenović’s office with some other officers.<sup>5581</sup>

1862. Subsequently, in the office of the Chief of Staff, **Pandurević** met with Obrenović, **Borovčanin**, Vasić, Danilo Zoljić, and Miloš Stupar.<sup>5582</sup> During the meeting, **Pandurević** requested information about the situation on the front, and Obrenović informed him that the 28th Division intended to continue moving across Crni Vrh and Planinci and come out at Nezuk.<sup>5583</sup> Obrenović described that his orders from the Corps Command were to stop the advance of the column.<sup>5584</sup> During the meeting, **Borovčanin** also briefed **Pandurević** on the state and disposition of his MUP units.<sup>5585</sup>

1863. During the meeting, the suggestion was made to allow the forces of the 28th Division in the column to pass through.<sup>5586</sup> **Pandurević** rejected the proposal as he believed that he needed further

<sup>5576</sup> PW-168, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007), T. 16538–16539 (closed session) (18 Oct 2007). PW-168 testified that earlier on the morning of 15 July, upon returning to Standard Barracks around 11 a.m., Obrenović was stopped by Dragan Jokić while en route to his office at which time Jokić told Obrenović that **Beara** and **Popović** had brought in prisoners “from Bratunac, and from up there Bratunac and Srebrenica, in order to shoot them there”, that “there were huge problems with guarding and burying the prisoners”, and that **Beara**, **Popović** and **Nikolić** “were taking whomever wherever they wanted”. PW-168, T. 15868–15871 (closed session) (26 Sept 2007), T. 16517–16518 (closed session) (17 Oct 2007). Jokić also told Obrenović that **Popović** ordered Jokić not to write down or report anything concerning these events. PW-168, T.15871 (closed session) (26 Sept 2007). *See also* PW-168, T. 16551 (closed session) (18 Oct 2007).

<sup>5577</sup> PW-168, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007).

<sup>5578</sup> *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

<sup>5579</sup> *Ibid.*

<sup>5580</sup> PW-168, T. 15879 (closed session) (26 Sept 2007), T. 16535 (closed session) (18 Oct 2007).

<sup>5581</sup> *Ibid.*, T. 15879–15880 (closed session) (26 Sept 2007).

<sup>5582</sup> Vinko Pandurević, T. 30959 (2 Feb 2009), T. 31486 (16 Feb 2009); PW-168, T. 15872–15873, 15878–15880 (closed session) (26 Sept 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 50, 102–103, 105. PW-168 did not remember whether Danilo Zoljić was at the meeting, but mentioned that a captain nicknamed “Zlaja” was present. PW-168, T. 16523–16524 (closed session) (17 Oct 2007). **Pandurević** and **Borovčanin** did not mention a person named “Zlaja” being present at the meeting.

<sup>5583</sup> Vinko Pandurević, T. 30959–30960 (2 Feb 2009); PW-168, T. 15883–15884 (closed session) (27 Sept 2007).

<sup>5584</sup> Vinko Pandurević, T. 31487–31488 (16 Feb 2009). According to PW-168, it was evident that **Pandurević** had received orders from the Drina Corps or the Main Staff to block the column. PW-168, T. 15883 (closed session) (27 Sept 2007), T. 16532, 16541, 16542 (closed session) (18 Oct 2007).

<sup>5585</sup> Vinko Pandurević, T. 30962 (2 Feb 2009). According to PW-168, **Pandurević** asked **Borovčanin** if he was going to let his units participate in combat with the 28th Division. **Borovčanin** answered that he had authorisation for his units to participate in the fighting, and that “he had a detachment there and that one was on the way from either Janja or Bijeljina.” PW-168, T. 15883–15884 (closed session) (27 Sept 2007).

<sup>5586</sup> Vinko Pandurević, T. 30963 (2 Feb 2009), T. 31486 (16 Feb 2009); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–105; PW-168, T. 15883–15884 (closed session) (27 Sept 2007).



information on the combat situation. Pursuant to the order from Krstić, he therefore ordered the forces to cut off the column in order to neutralise the forces of the 28th Division.<sup>5587</sup> According to **Pandurević**, the meeting had a sense of urgency to it and lasted approximately 20 minutes.<sup>5588</sup> At the conclusion of the meeting, **Pandurević** ordered Obrenović to take command of the forces of the 4th Battalion in Baljkovica, while **Borovčanin** took his units to the Parlog and Baljkovica area, and **Pandurević** went to the Kitovnice IKM.<sup>5589</sup> **Pandurević** also ordered how the Drina Wolves and “the two police detachments”<sup>5590</sup> should be used, and he issued assignments.<sup>5591</sup>

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2007). The suggestion was supported by Obrenović, Vasić, and **Borovčanin**. PW-168, T. 15873–15874 (closed session) (26 Sept 2007), T. 15883–15884 (closed session) (27 Sept 2007); Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 March 2002”, pp. 102–105.

<sup>5587</sup> Vinko Pandurević, T. 30962–30963 (2 Feb 2009), T. 31498–31499 (16 Feb 2009); PW-168, T. 15883–15884 (closed session) (27 Sept 2007); Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 March 2002”, pp. 104–105. According to **Pandurević**, “[t]he overall plan was to strengthen the forward defence line or, rather, the positions of the 4th and 7th Battalions and prevent at any cost a break-through by the forces from the front, and then by cutting off the forces of the 28th Division, both from the flank and across, to neutralise the forces of the 28th Division.” Vinko Pandurević, T. 30962 (2 Feb 2009).

<sup>5588</sup> Vinko Pandurević, T. 31980 (23 Feb 2009); PW-168, T. 15883–15884 (closed session) (27 Sept 2007). According to **Pandurević**, at no time during the meeting on 15 July did anyone mention POWs, and at no time did Obrenović mention that he had tasked any of the brigade’s military police to **Nikolić**. Vinko Pandurević, T. 30964 (2 Feb 2009), T. 31486, 31494 (16 Feb 2009). **Pandurević** could not explain why Obrenović did not say anything to him at that time about the prisoners. Vinko Pandurević, T. 32058–32059 (25 Feb 2009).

<sup>5589</sup> Vinko Pandurević, T. 30964 (2 Feb 2009). *See also* PW-168, T. 16541–16542 (closed session) (18 Oct 2007). According to PW-168, **Pandurević** told Obrenović that he was going to be commanding from the Kitovnice IKM and ordered Obrenović to command the 4th Battalion from its *ad hoc* command post in Baljkovica. Later in the afternoon, when **Pandurević** was still at the Kitovnice IKM and Obrenović at Baljkovica, they discussed the communications devices. PW-168, T. 16541–16542 (closed session) (18 Oct 2007). The Kitovnice IKM was 15 kilometres from the Standard Barracks, in the direction of the village of Orahovac. Milorad Birčaković, T. 11013 (7 May 2007); Lazar Ristić, T. 10167 (17 Apr 2007), marking Ex. 3DIC00087, “Map 3D94 marked by the witness, 18 Apr 2007” (showing the location of the Kitovnice IKM). On 15 July at around noon, to reach Kitovnice from the Standard Barracks, **Pandurević** did not go through Orahovac because the road was not safe and instead took the Zvornik–Jardan–Cer–Kitovnice route as it was more secure at the time. Vinko Pandurević, T. 30965 (2 Feb 2009); Ex. P02232, “Draft English Translations covering 11 to 20 July 1995–Tactical Intercepts Notebook for 1 July to 24 Nov 1995”, p. 12 (recording that men should not be sent via Križeviči, which is near Orahovac).

<sup>5590</sup> This is likely a reference to the 1st PJP Company from Zvornik and the SBP 2nd Šekovići Detachment, which were engaged in fighting the 28th Division in Baljkovica. *See* Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002”, p. 106; PW-160, T. 8706 (13 Mar 2007); Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995”, p. 4 (“In the afternoon [of 15 July], an offensive MUP combat group comprising the 2nd and 4th Special Police Detachments with one tank, one praga and a BOV (20/3), a mortar platoon and the 1st Company of the Zvornik PJP was sent in the direction of Donja Baljkovica and Crni Vrh to block the area and prevent a break through towards Zvornik by a strong enemy column coming from the direction of Cerska.”).

<sup>5591</sup> PW-168, T. 15883 (closed session) (27 Sept 2007). *See also* Ex. P02853, “Transcript of OTP Interview of Borovčanin, 11 and 12 March 2002”, p. 105 (stating that **Pandurević** “said that they should continue as they were ordered to” and subsequently **Borovčanin** went to the field); Ex. 4D00510, “Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995”, p. 4 (reporting that on the afternoon of 15 July an “offensive MUP combat group” was sent in the direction of Baljkovica and Crni Vrh to block the area and prevent the enemy column from breaking through towards Zvornik).

1864. **Pandurević** arrived at the Kitovnice IKM at around 1 p.m. or a little later on 15 July.<sup>5592</sup> Upon arriving at the IKM, **Pandurević** went to the OP about 300 metres from the IKM from where he could observe the entire area of combat operations.<sup>5593</sup>

1865. At around 2 p.m. in the afternoon of 15 July, Branko Grujić, the President of the SDS party in Zvornik, visited **Pandurević** at the IKM.<sup>5594</sup> According to **Pandurević**, Grujić did not stay long but asked **Pandurević**, “how come there were prisoners in some schools on the territory of [the] Zvornik municipality,” mentioning the schools in Petkovci and Pilica.<sup>5595</sup> Grujić also said that “his party activists in the local communes had conveyed this information to him and that there was concern in the local community where these people were situated.”<sup>5596</sup> **Pandurević** responded that he “did not have any specific information about this” and that he “would check to see what it was all about.”<sup>5597</sup>

1866. No one present at the IKM was able to provide **Pandurević** with any information about the prisoners, thus he asked Major Ljubo Bojanović, an officer from the Zvornik Brigade Operations Organ, when Bojanović arrived sometime later that day.<sup>5598</sup> According to **Pandurević**, Bojanović stated that “he knew that some buses with prisoners had passed by the command and that they had gone in the direction of Bijeljina” but that he did not know “whether they stopped in some schools in the Zvornik area or not” and that “he didn’t know that the command of the Zvornik Brigade had received any task concerning prisoners of war.”<sup>5599</sup>

<sup>5592</sup> Vinko Pandurević, T. 30968 (2 Feb 2009).

<sup>5593</sup> *Ibid.* Ljubo Bojanović testified that he believed that the assistant commander for security, the assistant chief of staff for communications, as well as the officer for intelligence and reconnaissance information, Mica Petković, were also present at the IKM with **Pandurević**. Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11723 (8 July 2004)

<sup>5594</sup> Vinko Pandurević, T. 30983 (2 Feb 2009). *See also* PW-168, T. 16552–16553 (18 Oct 2007); Miodrag Dragutinović, T. 12805 (18 June 2007). Dragutinović learned about the conversation between **Pandurević** and Grujić on 15 July from Ljubo Bojanović, who had been at the IKM with **Pandurević** on 15 July, after Bojanović returned to the Standard Barracks. Miodrag Dragutinović, T. 12805 (18 June 2007). According to Dragutinović’s source, Bojanović, **Pandurević** was notified about prisoners being held in various schools in the area of Zvornik and the number of those prisoners by Grujić at the IKM on 15 July. Miodrag Dragutinović, T. 12806 (18 June 2007).

<sup>5595</sup> Vinko Pandurević, T. 30983 (2 Feb 2009). **Pandurević** testified that he thought that Grujić mentioned the school in Petkovci and the school in Pilica. *Ibid.*, T. 30983 (2 Feb 2009), T. 31521 (16 Feb 2009).

<sup>5596</sup> Vinko Pandurević, T. 30983 (2 Feb 2009).

<sup>5597</sup> *Ibid.*, T. 30983–30984 (2 Feb 2009). According to **Pandurević**, Grujić then asked “questions about the situation on the ground, because his native village was Baljkovica, and then he left.” Vinko Pandurević, T. 30984 (2 Feb 2009).

<sup>5598</sup> Vinko Pandurević, T. 30984 (2 Feb 2009). **Pandurević** conceded that, although he could have, he did not attempt to contact anyone else to get information before Bojanović arrived at the IKM. Vinko Pandurević, T. 31567 (16 Feb 2009). *See also* Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11716, 11724 (8 July 2004) (testifying that he carried out duties in cooperation with the duty operations officer that had been established prior to **Pandurević**’s departure and that he went to the Kitovnice IKM on the afternoon of 15 July).

<sup>5599</sup> Vinko Pandurević, T. 30984 (2 Feb 2009).

1867. In the afternoon on 15 July, **Pandurević** contacted Muminović to determine why Muminović had tried to reach him earlier that morning.<sup>5600</sup> Muminović wanted **Pandurević** to let the whole column of the 28th Division pass through in the area of Nežuk.<sup>5601</sup> **Pandurević** responded that he was willing to discuss the situation and to let civilians and unarmed men in the column pass, but that those who were armed must surrender.<sup>5602</sup> According to **Pandurević**, Muminović refused.<sup>5603</sup> Shortly thereafter, **Pandurević** again called Muminović and suggested that he should designate a place for the civilians to gather so they could pass through, and that those who were armed could pass as well, but only after they laid down their weapons.<sup>5604</sup> **Pandurević** believed that this course of action would accomplish the orders he had been given from the Corps Command because it would neutralise the 28th Division.<sup>5605</sup> Muminović refused and ended the conversation.<sup>5606</sup>

1868. **Pandurević** issued an interim combat report at around 7:25 p.m. on 15 July.<sup>5607</sup> **Pandurević** dictated the report to Bojanović at the Kitovnice IKM's OP.<sup>5608</sup>

1869. In the first three paragraphs of the report, **Pandurević** provided an overview of the status of the enemy forces, efforts by Brigade forces to secure the area, the intensity of the enemy attacks, and casualties suffered by the Brigade.<sup>5609</sup>

<sup>5600</sup> Vinko Pandurević, T. 30977 (2 Feb 2009). Due to Muminović's earlier attempt to contact him, **Pandurević** believed that Muminović had something to offer and that the situation could potentially be resolved without fighting. *Ibid.*, T. 30974 (2 Feb 2009).

<sup>5601</sup> *Ibid.*, T. 30977 (2 Feb 2009).

<sup>5602</sup> *Ibid.*, T. 30978 (2 Feb 2009); Ex. 7D00656, "Recorded conversation between Šemso Muminović and Vinko Pandurević on 15 July 1995".

<sup>5603</sup> Vinko Pandurević, T. 30978 (2 Feb 2009).

<sup>5604</sup> *Ibid.*, T. 30978 (2 Feb 2009); Ex. 7D00656, "Recorded conversation between Šemso Muminović and Vinko Pandurević on 15 July 1995".

<sup>5605</sup> Vinko Pandurević, T. 30979 (2 Feb 2009). **Pandurević** described his reason for making this offer to Muminović as follows: "I would have been able to carry out the task in this way while saving many lives, or I could carry out the task using fire-power. I opted for this version, this possibility, and I knew that Šemso knew well that the greater the pressure of his forces from the front line, the more fierce would be my firing on the blocked forces of the 28th Division, and that this was what led him to ask for a conversation with me". Vinko Pandurević, T. 30981–30982 (2 Feb 2009). **Pandurević** said that he had done similar things before, notably in 1993. Vinko Pandurević, T. 30982 (2 Feb 2009), T. 32094–32097 (25 Feb 2009) (describing an occasion in which a corridor was opened to permit passage of Muslim civilians in 1993). *See also* Ex. P04229, "Regular Combat Report from 1st Zvornik Infantry Brigade to the Drina Corps Command, signed by Pandurević, 31 Jan 1993".

<sup>5606</sup> Vinko Pandurević, T. 30978 (2 Feb 2009). In all, **Pandurević** said that he had five or six radio conversations with Muminović on 15 July, and the audio recording of Ex. 7D00656 is a recording of the third conversation. Vinko Pandurević, T. 30979–30980 (2 Feb 2009).

<sup>5607</sup> Ex. P00329, "Zvornik Brigade Daily Interim Combat Report, signed by Vinko Pandurević, 15 July 1995"; Vinko Pandurević, T. 30986–30990 (2 Feb 2009); PW-168, T. 16551 (closed session) (18 Oct 2007).

<sup>5608</sup> Vinko Pandurević, T. 30985 (2 Feb 2009); Ljubo Bojanović, Ex. P03135, "confidential – 92 *quater* transcript", BT. 11725–11726, 11728 (8 July 2004). *See also* Mihajlo Galić, T. 10503 (25 Apr 2007) (testifying that he recognised the signature on the report as the "short version" of **Pandurević**'s signature and the handwriting on the report as that of Ljubo Bojanović). **Pandurević** testified that he did not read the report after he dictated it, but simply initialled it and sent it to the communications centre at Zvornik to be encrypted and sent to the Corps Command. Vinko Pandurević, T. 30986 (2 Feb 2009).

1870. Subsequently, in the fourth and fifth paragraphs of the report, **Pandurević** stated:

An additional burden for us is the large number of prisoners distributed throughout schools in the brigade area, as well as obligations of security and restoration of the terrain.

This command cannot take care of these problems any longer, as it has neither the material nor other resources. If no one takes on this responsibility I will be forced to let them go.<sup>5610</sup>

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1871. In the early morning hours of 16 July, the ABiH 2nd Corps attacked the positions of the 4th, 6th, and 7th Battalions of the Zvornik Brigade which were deployed on the front line in the area of Baljkovica.<sup>5611</sup> At 7:06 a.m. from the Kitovnice IKM, **Pandurević** informed an unidentified person that there had been fighting all morning.<sup>5612</sup>

<sup>5609</sup> Ex. P00329, "Zvornik Brigade Daily Interim Combat Report, signed by Vinko Pandurević, 15 July 1995". The report portrays a rather intense picture of the combat situation, with the Brigade's forces under heavy attack by the enemy and all Brigade forces being fully engaged. By some accounts, the description in these paragraphs accurately reflected the situation on the ground at the time. *See, e.g.*, Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", pp. 138–142 (some entries noting heavy attacks or requests for reinforcements); Eileen Gilleece, T. 6730–6731 (1 Feb 2007); Ex. P02408, "Investigative notes of an interview with Milenko Živanović and Vinko Pandurević, 2 October 2001", p. 4; PW-168, T. 15837 (closed session), 15840–15841 (closed session), 15864–15866 (closed session) (26 Sept 2007), T. 15994–15995 (closed session) (28 Sept 2007); Ex. P01150a (confidential); Ex. P01166d, "Intercept, 14 July 1995, 22:27 hours". *See also* Prosecution Final Brief, para. 1428. In support of this position, the Prosecution points to other reports coming out of the Zvornik Brigade during this time period, intercepts, the Duty Operation Officer Notebook, and the testimony of various witnesses including that of PW-168. Additionally, the reference to killed and wounded soldiers in the report is confirmed by the Zvornik Brigade Regular Combat Report for 15 July and the Duty Operations Officer Notebook, which record the names of five soldiers who were killed that day. *See* Ex. 5DP00328, "Zvornik Brigade Daily Combat Report 06-217"; Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", pp. 137, 140, 142, 144. However, according to **Pandurević**, portions of the report were inaccurate as to the actual military situation faced by the Zvornik Brigade. Vinko Pandurević, T. 30968–30969, 30988 (2 Feb 2009) (also testifying that the combat situation on 15 July was in fact calm and there was little combat taking place) *See also* some entries in Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", pp. 136–143 (entries where the situation is noted as normal or under control). According to **Pandurević**, in the report, he significantly downplayed the numbers of the column. *See also* Pandurević Final Brief, para. 11.2.5. Obrenović gave **Pandurević** a higher number than 3,000 during the meeting held earlier in the day, but **Pandurević** reduced that estimate for the report. Vinko Pandurević, T. 30987 (2 Feb 2009). According to **Pandurević**, the information in paragraph 3 of the report accurately reflected the military situation as it was known to him. Vinko Pandurević, T. 30990–30991 (2 Feb 2009).

<sup>5610</sup> Ex. P00329, "Zvornik Brigade Daily Interim Combat Report, signed by Vinko Pandurević, 15 July 1995". *See infra*, paras. 1943–1948, 1962–1964. With respect to the translation of this report, CLSS made a clarification in relation to "throughout the schools" and "obligations of security and restoration of the terrain". The BCS phrase translated as "throughout the schools" could be paraphrased as "in various schools" or "in several schools", but gives no indication of whether or not this refers to all the schools in that area. In the phrase "obligations of security and restoration of the terrain", it is impossible to ascertain whether "security" refers to the terrain, the prisoners mentioned previously, or something else entirely; the term "restoration" relates directly to the terrain. Internal Memorandum re. Opinion on Exhibit P00329, 11 September 2009.

<sup>5611</sup> Vinko Pandurević, T. 31012 (2 Feb 2009), T. 31022–31023 (3 Feb 2009); Lazar Ristić, T. 10097 (16 Apr 2007); PW-168, T. 15891 (closed session) (27 Sept 2007) (testifying that the fighting escalated around that time on 16 July). PW-168 testified that the Zvornik Brigade forces were surrounded and could not send their wounded anywhere and around the same time, one Bratunac Brigade company of about 60 soldiers had simply vanished. PW-168, T. 15891 (closed session) (27 Sept 2007), T. 16833 (closed session) (23 Oct 2007). According to PW-168, that morning, the ABiH 2nd Corps used anything to attack the Zvornik Brigade forces, causing surrounding villages to come under fire, and at one point, only 30 meters separated the two combating forces. PW-168,

1872. Between 9 and 10 a.m. on 16 July, Obrenović, who was in the area of the command post of the 4th Battalion, contacted **Pandurević** to inform him that a wounded officer from the 28th Division, Semsudin Salihović, had provided information about the 28th Division, specifying that its situation was very grave.<sup>5613</sup> Salihović indicated that his forces included 7,000 soldiers, with 3,000 under arms, but that he had lost a real count during the fighting.<sup>5614</sup> On **Pandurević**'s order, Salihović was permitted to return to the 28th Division and communicate to the 28th Division that **Pandurević** would establish contact in order to negotiate passage of the column.<sup>5615</sup> However, once Salihović returned to his forces, the 28th Division mounted another attack.<sup>5616</sup>

1873. Around 10 a.m. **Pandurević** established contact with Šemso Muminović, and ultimately sometime between noon and 1 p.m., they agreed to open a corridor to allow passage of the column through the Zvornik Brigade territory to the territory held by the ABiH 2nd Corps.<sup>5617</sup> Additionally, it was agreed that some members of the ABiH 2nd Corps could enter the corridor and assist in evacuating the wounded.<sup>5618</sup> The agreement was implemented around 1 or 2 p.m. on 16 July, and the passage of the 28th Division continued until nightfall.<sup>5619</sup> During this time, **Pandurević** was in

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T. 15891 (closed session) (27 Sept 2007). According to **Pandurević**, the attacks that day did not break the defence lines of the Brigade's battalions. Vinko Pandurević, T. 31030 (3 Feb 2009).

<sup>5612</sup> Ex. P01183c, "Intercept, 16 July 1995, 07:06 hours"; PW-168, T. 16012–16013 (28 Sept 2007). During this conversation, Pandurević informed the unidentified person ("X") they had most of the enemy forces surrounded in the Baljkovica sector. **Pandurević** also stated that "when the mass poured forward" deep in the rear of the Zvornik-held territory, the VRS troops fled, enabling the enemy forces to take two self-propelled guns. Ex. P01183c, "Intercept, 16 July 1995, 07:06 hours". In addition, **Pandurević** mentioned that he had some wounded men "down there" and was not able to get them out of there; "X" subsequently informed **Pandurević** that help would be arriving for him from the west and that he should use it as he sees fit. Ex. P01183c, "Intercept, 16 July 1995, 07:06 hours".

<sup>5613</sup> Vinko Pandurević, T. 31031–31032 (3 Feb 2009); PW-168, T. 15890–15893 (closed session), 15897 (closed session) (27 Sept 2007); Lazar Ristić, T. 10155–10156 (17 Apr 2007).

<sup>5614</sup> PW-168, T. 15892 (closed session) (27 Sept 2007). According to PW-168's estimate, 28th Division's forces numbered between 7,000 and 10,000, with half of them armed. PW-168, T. 15897 (closed session) (27 Sept 2007).

<sup>5615</sup> Vinko Pandurević, T. 31031 (3 Feb 2009); PW-168, T. 15892 (closed session) (27 Sept 2007), T. 16565–16566 (18 Oct 2007); Lazar Ristić, T. 10155–10156 (17 Apr 2007).

<sup>5616</sup> PW-168, T. 15892 (closed session) (27 Sept 2007). See also Lazar Ristić, T. 10156 (17 Apr 2007).

<sup>5617</sup> Vinko Pandurević, T. 31031–31032, 31034 (3 Feb 2009); Miodrag Dragutinović, T. 12707–12708 (15 June 2007); PW-168, T. 15893–15894 (closed session) (27 Sept 2007); Ex. 4D00510, "Borovčanin Report on MUP forces engagement in Operation Srebrenica 95, 5 Sept 1995", p. 5 ("At 1300 hours, the Commander of the Zvornik Brigade, **Vinko Pandurević**, and the Commander of the Muslim side, Šemso Muminović, agreed to open a one-kilometre wide corridor in the areas of Parlog and Baljkovica to allow all Muslim soldiers to get out."). The column of the 28th Division was allowed to pass with all that they carried and were permitted to choose the point at which to pass through the lines. PW-168, T. 16542–16543 (closed session), 16563 (closed session) (18 Oct 2007).

<sup>5618</sup> Vinko Pandurević, T. 31034 (3 Feb 2009).

<sup>5619</sup> *Ibid.*, T. 31034–31035 (3 Feb 2009); PW-168 15894 (closed session) (27 Sept 2007). See also Lazar Ristić, T. 10157 (17 Apr 2007). Implementation of the agreement was supervised by both sides who had agreed that should one party violate the agreement, fighting could resume. The initial 24-hour period in which the corridor was opened was extended until around 5 or 6 p.m. on 17 July in order for all the Bosnian Muslims present in the area to pass through. Vinko Pandurević, T. 31034–31035 (3 Feb 2009); T. 31088, 31093 (9 Feb 2009); PW-168, T. 15904–15905 (closed session) (27 Sept 2007), T. 16543 (closed session) (18 Oct 2007). See also Ostojica Stanišić, T. 11719 (17 May 2007) (confirming that a ceasefire, that lasted about 32 hours, had been agreed upon to allow the column to pass). Thereafter, the defence lines were re-established. Vinko Pandurević, T. 31093–31094 (9 Feb 2009). According to **Pandurević**, it was necessary to open the corridor "in order to save human lives", but at the time, opening the corridor was not his only military option. Vinko Pandurević, T. 31041 (3 Feb 2009). For

almost constant contact with Muminović.<sup>5620</sup> **Pandurević** personally witnessed the column moving through the corridor and estimated that 5,000 to 6,000 people passed through,<sup>5621</sup> while PW-168 estimated that around 7,000 to 10,000 people passed through the corridor, half of whom were armed.<sup>5622</sup>

1874. The agreement to open the corridor for the passage of the column countered the orders that **Pandurević** had received from his superiors,<sup>5623</sup> and **Pandurević** initially did not attempt to contact anyone from his superior command regarding this agreement.<sup>5624</sup> At 1:55 p.m. on 16 July, **Pandurević** communicated to the Drina Corps Command that he had set up a corridor for Bosnian Muslim civilians to pass through and that he was still fighting the 28th Division.<sup>5625</sup> During the afternoon of 16 July, the Main Staff and the Drina Corps Command made several unsuccessful attempts to communicate with **Pandurević**.<sup>5626</sup> However, **Pandurević** did not send a report to the Drina Corps Command until later that evening.<sup>5627</sup>

1875. At 4:40 p.m., the Zvornik Brigade Duty Officers Notebook records a message from Zlatar that **Popović** must go to **Pandurević** in the field.<sup>5628</sup> Additionally, in an intercepted conversation on 16 July at 4:43 p.m., an unidentified speaker says that the “boss” wants either **Popović** or Drago

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example, alternatively, he could have “betrayed the agreement”, waited until people were in the corridor, and then opened fire. Vinko Pandurević, T. 31041 (3 Feb 2009).

<sup>5620</sup> Vinko Pandurević, T. 31042 (3 Feb 2009).

<sup>5621</sup> *Ibid.*, T. 31075 (3 Feb 2009). **Pandurević** testified that those passing through the corridor included some people “wearing uniforms, some [who] were wearing civilian clothes, some were armed, some were unarmed”. Vinko Pandurević, T. 31075 (3 Feb 2009).

<sup>5622</sup> PW-168, T. 15897 (closed session) (27 Sept 2007).

<sup>5623</sup> *See supra*, para. 1859.

<sup>5624</sup> Vinko Pandurević, T. 31044 (3 Feb 2009). According to **Pandurević**, he did not call Krstić first to seek permission to open the corridor because Krstić had given him a clear task and he would not have gotten permission. Vinko Pandurević, T. 32023–32024, 32026 (23 Feb 2009).

<sup>5625</sup> PW-168, T. 16012–16014 (closed session) (28 Sept 2007); Ex. P01188a, “Intercept, 16 July 1995, 13:55 hours” (communication between **Pandurević** (“Palma 1”) and the Drina Corps Command (“Zlatar 1”)). During the intercepted conversation, **Pandurević** informs the Drina Corps Command that they “made a small corridor so that the civilians could pull out” and that the VRS was still fighting. Ex. P01188a, “Intercept, 16 July 1995, 13:55 hours” PW-168 explained that these statements by **Pandurević** were lies because at this point in time not only were civilians passing through the corridor, but the army was not engaged in fighting with the 28th Division. PW-168, T. 16014–16015 (closed session) (28 Sept 2007). According to PW-168, **Pandurević** made these misrepresentations in order to appease the Superior Command because **Pandurević** had been ordered to stop the column and destroy it. PW-168, T. 16014–16015 (closed session) (28 Sept 2007).

<sup>5626</sup> Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, pp. 148–149 (entry at 1525 hours showing request from Zlatar (Drina Corps Command) for **Pandurević** to call or send a report; similar entries at 1620, 1640, and 1705 hours); Ex. P01192b, “Intercept, 16 July 1995, 15:29 hours” (showing similar communication from the Main Staff); Ex. P01194a, “Intercept, 16 July 1995, 16:02 hours” (showing Krstić being told that **Pandurević** could not be reached); Ex. P01195a (confidential); Vinko Pandurević, T. 31044–31046, T. 31048–31050 (3 Feb 2009), T. 31085 (9 Feb 2009). **Pandurević** knew that the Drina Corps Command and the Main Staff had requested him to report that afternoon; however, he did not respond. Vinko Pandurević, T. 31044, 31047 (3 Feb 2009). *See also* PW-168, T. 16544, 16546–16547 (closed session) (18 Oct 2007) (indicating that **Pandurević** initially tried to avoid contact with the superior command because opening the corridor was in contravention of the orders he had been given).

<sup>5627</sup> Ex. 7DP00330, “Zvornik Brigade Interim Combat Report, signed by Vinko Pandurević, 16 July 1995; Vinko Pandurević, T. 31051–31062 (3 Feb 2009).

Nikolić to go visit “Vinko” to see “what’s going on there”.<sup>5629</sup> Later, in an intercepted conversation at 9:16 p.m., **Popović** indicates that he did in fact visit **Pandurević** earlier that day, saying that he “was just up there” and “was with the boss personally”.<sup>5630</sup> **Popović** also says to Rašić that he, Rašić, “got his interim report”.<sup>5631</sup> With respect to this intercepted conversation, **Pandurević** agreed that **Popović** was possibly speaking about his interim combat report of 16 July and that **Popović**’s mention of the “boss” was probably a reference to him.<sup>5632</sup> **Pandurević** however denied that he saw and met with **Popović** on 16 July.<sup>5633</sup> Despite his denial, the Trial Chamber is satisfied that based on the evidence the only reasonable inference that can be drawn is that **Popović** visited **Pandurević** in the late afternoon of 16 July.

1876. **Pandurević** dictated the interim combat report for 16 July to Captain Milisav Petrović, Chief of Communications, at approximately 5 p.m.<sup>5634</sup> Although it was prepared by 6:10 p.m., it was not actually sent before 8 p.m.<sup>5635</sup> In the report, **Pandurević** stated that, in light of the situation, he decided “to open a corridor [...] for the civilian population – about 5,000 of them [...] It is likely that a certain number of soldiers got out among the civilians, but all who passed, passed through unarmed.”<sup>5636</sup> It concludes with the sentence, “I consider that the Krivaja 95 operation is not complete as long as a single enemy soldier or civilian remains behind the front line”.<sup>5637</sup>

1877. According to **Pandurević**, the interim combat report did not fully reflect the events that took place and was deliberately written inaccurately by him in many respects.<sup>5638</sup> In particular, **Pandurević** wrote that “all who passed, passed through unarmed”.<sup>5639</sup> According to **Pandurević**, this was inaccurate because those who were passing through the corridor included persons who were armed, and this was his personal attempt to protect himself because opening the corridor was contrary to the orders which he had received on 15 July and he wanted to avoid punishment for his actions.<sup>5640</sup> Additionally, he portrayed the combat situation inaccurately “in such a way that [he]

<sup>5628</sup> Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995”, p. 149.

<sup>5629</sup> Ex. P01225f, “Intercept of conversation between X and Y, 16 July 1995, 16:43 hours”.

<sup>5630</sup> Ex. P01201a, “Intercept, 16 July 1995, 21:16 hours” (conversation between **Popović** and Ljubo Rakić, a Drina Corps duty officer); Ljubo Rakić, T. 22187–22188 (16 June 2008) (testifying that he had understood **Popović** to mean that he had visited **Pandurević** in the Baljkovica area of combat). See also Richard Butler, T. 20019–20022 (18 Jan 2008).

<sup>5631</sup> Ex. P01201a, “Intercept, 16 July 1995, 21:16 hours”.

<sup>5632</sup> Vinko Pandurević, T. 32244 (27 Feb 2009).

<sup>5633</sup> *Ibid.*, T. 31050 (3 Feb 2009). See also Pandurević Final Brief, para. 830.

<sup>5634</sup> Vinko Pandurević, T. 31051–31052, 31064 (3 Feb 2009). Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Vinko Pandurević, 16 July 1995”.

<sup>5635</sup> Vinko Pandurević, T. 31052 (3 Feb 2009).

<sup>5636</sup> Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Vinko Pandurević, 16 July 1995”.

<sup>5637</sup> *Ibid.*,

<sup>5638</sup> Vinko Pandurević, T. 31055–31059 (3 Feb 2009); Ex. 7DP00330, “Zvornik Brigade Interim Combat report, signed by Vinko Pandurević, 16 July 1995”.

<sup>5639</sup> Vinko Pandurević, T. 31059 (3 Feb 2009).

<sup>5640</sup> *Ibid.*, T. 31059–31060 (3 Feb 2009).

could represent to the [Drina] [C]orps [C]ommand through the report that the situation was more dramatic and more grave than it really was, hoping that they would understand [his] actions in putting a stop to the fighting and opening up the corridor”.<sup>5641</sup> Similarly, PW-168 testified that when **Pandurević** reported to the Drina Corps on the opening of the corridor, he exaggerated the loss of trenches in order to justify his decision to open the corridor and lied about the fact that the corridor was also open for those who were armed.<sup>5642</sup>

1878. **Pandurević** had not seen Obrenović on 16 July prior to dictating the combat report for that day because Obrenović was engaged in combat operations.<sup>5643</sup> Around 6 p.m. on 16 July, pursuant to **Pandurević**’s order, Obrenović reported to **Pandurević** at the Kitovnice IKM, along with Milan Jolović, “Legenda”.<sup>5644</sup>

1879. According to **Pandurević**, after reporting the situation on the ground, Obrenović had a conversation with him, in which **Pandurević** asked about POWs in Zvornik relating to the information he had received from Grujić.<sup>5645</sup> According to **Pandurević**, Obrenović said that on the evening of 13 July, **Drago Nikolić** passed on information from the Security Organ that pursuant to an order of the VRS Main Staff, prisoners were to be transferred to Zvornik to be screened and the prisoners who were suspected of war crimes would be sent to Batković and the rest would be exchanged.<sup>5646</sup> Obrenović told **Pandurević** that **Nikolić** had said that it was his, **Nikolić**’s, obligation to wait for the arrival of these prisoners and that these prisoners would come under security escort.<sup>5647</sup> **Nikolić** said that he needed Obrenović to provide him with a number of military policemen, thus Obrenović placed Jasikovac and five or six policemen at **Nikolić**’s disposal.<sup>5648</sup> According to **Pandurević**, Obrenović said nothing about **Nikolić** mentioning executions.<sup>5649</sup>

1880. During this conversation on 16 July as alleged by **Pandurević**, Obrenović also said that on the evening of 14 July Dragan Jokić told him that **Beara** and some other men had been in the brigade command and had requested from representatives “of the authorities” some machinery to bury the people who were shot at Orahovac.<sup>5650</sup> Jokić said that some machines had been mobilised

<sup>5641</sup> Vinko Pandurević, T. 31059 (3 Feb 2009).

<sup>5642</sup> PW-168, T. 15898–15900 (closed session) (27 Sept 2007).

<sup>5643</sup> Vinko Pandurević, T. 31064 (3 Feb 2009).

<sup>5644</sup> *Ibid.*, T. 31064 (3 Feb 2009), T. 31375 (12 Feb 2009). At this time, Obrenović was “with Legenda somewhere along the corridor”. *Ibid.*, T. 31375–31376 (12 Feb 2009).

<sup>5645</sup> *Ibid.*, T. 31065 (3 Feb 2009).

<sup>5646</sup> Vinko Pandurević, T. 31066–31067 (3 Feb 2009), T. 32362 (2 Mar 2009).

<sup>5647</sup> *Ibid.*, T. 31067 (3 Feb 2009).

<sup>5648</sup> *Ibid.*, T. 31067 (3 Feb 2009), T. 31307 (11 Feb 2009).

<sup>5649</sup> *Ibid.*, T. 31380 (12 Feb 2009).

<sup>5650</sup> *Ibid.*, T. 31067–31068 (3 Feb 2009). **Pandurević** said that Obrenović did not say anything about prisoners still being held at the school in Orahovac. *Ibid.*, T. 31520 (16 Feb 2009).



and used to bury the dead.<sup>5651</sup> Obrenović also asked Jokić at that time about the two engineers who had been withdrawn from the field to operate the machines.<sup>5652</sup> **Pandurević** asked Obrenović whether he had informed anyone else of this and Obrenović said he had not, in light of what he heard from **Nikolić** and that this had happened pursuant to an order of the Main Staff.<sup>5653</sup> **Pandurević** asked Obrenović whether any member of the Zvornik Brigade had participated in what happened at Orahovac, and Obrenović said that he had no information that any member, including **Nikolić**, had participated in the executions.<sup>5654</sup> **Pandurević** testified that he did not call **Nikolić** for information about the prisoners because he had sent Obrenović for information and placed more trust in what Obrenović, rather than **Nikolić**, had to say.<sup>5655</sup>

1881. Obrenović also mentioned to **Pandurević** that earlier on 16 July, while Obrenović was with the 6th Battalion, Ostoja Stanisić, the Commander of the Battalion, told him that prisoners had been held in the school in Petkovci and these men were executed at the Crveni Mulj dam and in the vicinity of the school itself.<sup>5656</sup> Obrenović said that Stanisić told him that no members of the 6th Battalion took part in the executions but that—at the villagers’ request—some members of the 6<sup>th</sup> Battalion collected bodies from around the school and drove them to the dam.<sup>5657</sup> According to

<sup>5651</sup> Vinko Pandurević, T. 31068 (3 Feb 2009).

<sup>5652</sup> *Ibid.*, T. 31383 (12 Feb 2009).

<sup>5653</sup> *Ibid.*, T. 31068 (3 Feb 2009).

<sup>5654</sup> *Ibid.*, T. 31068 (3 Feb 2009).

<sup>5655</sup> Vinko Pandurević, T. 31542 (16 Feb 2009). **Pandurević** did not attempt to call **Drago Nikolić** himself for information, although he conceded that he could have ordered **Nikolić** to report to him to discuss the situation. Vinko Pandurević, T. 31539–31540 (16 Feb 2009). He also said that if **Nikolić** knew about prisoners, he did not need to wait for **Pandurević**’s order to report, but should have reported to **Pandurević** on his own. Vinko Pandurević, T. 31541 (16 Feb 2009). He said that that was because his information was that the operation had been conducted “from the highest level” and that he could not have “conducted a selective investigation in order to establish what an x, y, z policeman had done without establishing at the same time what **Nikolić**, Trbić, and others did, and under whose orders they had done what they did.” Vinko Pandurević, T. 31543 (16 Feb 2009). When asked if he issued “any order to ensure that members of [his] military police company would not be involved in guarding or any other manner with the prisoners”, **Pandurević** stated that he did not issue any such order. Vinko Pandurević, T. 31543 (16 Feb 2009). **Pandurević** further stated that he did not order Jasikovac to report him with information because “according to the information that [he] had on the 16th in the evening, things had already taken place at those locations, and [he] fully believe[d] that those policemen in question were no longer engaged anywhere.” Vinko Pandurević, T. 31543 (16 Feb 2009). Additionally, **Pandurević** stated that at that point in time “[a]ccording to [his] information, no member of the Zvornik Brigade had participated in the executions.” Vinko Pandurević, T. 31544 (16 Feb 2009). **Pandurević** also stated that on the morning of 18 July, he met with Jokić and asked him about the use of the engineering resources in burials. Vinko Pandurević, T. 31544 (16 Feb 2009).

<sup>5656</sup> Vinko Pandurević, T. 31069–31070 (3 Feb 2009), T. 31521 (16 Feb 2009).

<sup>5657</sup> *Ibid.*, T. 31069–31070 (3 Feb 2009), T. 31521–31522 (16 Feb 2009). **Pandurević** admitted that he did not call the 1st Battalion to inform them not to be involved or participate in any executions at Pilica, even though he knew at that point there had been executions at other places where prisoners were held. *Ibid.*, T. 31534–31535 (16 Feb 2009). He also said that he did not call Stanisić at the 6th Battalion even though he knew from Obrenović that members of the 6th Battalion had helped move bodies. *Ibid.*, T. 31536–31537 (16 Feb 2009). He insisted he did not contact the 6th Battalion because whatever had happened in Petkovci was “over”. *Ibid.*, T. 31538 (16 Feb 2009). Asked to clarify his answer as to whether he might have thought at that time that some prisoners at Petkovci might still be alive, **Pandurević** said that after Stanisić spoke to Obrenović on 16 July, **Pandurević** “knew that there were none left, no one was alive.” *Ibid.*, T. 31539 (16 Feb 2009)

**Pandurević**, following this alleged conversation at the Kitovnice IKM, he sent Obrenović to the Zvornik Brigade headquarters to gather more information about the killings.<sup>5658</sup>

1882. The Trial Chamber has considered **Pandurević**'s evidence as to the occurrence and content of this conversation between himself and Obrenović on the evening of 16 July. [REDACTED] As the Trial Chamber has found *infra*,<sup>5659</sup> **Pandurević**'s account of this conversation on 16 July does not raise a reasonable doubt that he was first informed of the murder operation by Obrenović on 15 July. In light of this finding, the Trial Chamber does not accept **Pandurević**'s recounting of what Obrenović told him about his conversation with **Nikolić**, specifically that there was no mention of executions. Further, the Trial Chamber does not find credible **Pandurević**'s assertion that Obrenović specifically denied involvement on the part of the Zvornik Brigade and **Nikolić** in the executions at Orahovac. However, the Trial Chamber otherwise accepts that **Pandurević** had a conversation with Obrenović on 16 July and that at this point **Pandurević** acquired additional information about the operation, as he described.<sup>5660</sup>

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1883. According to **Pandurević**, on 17 July between 5 and 5:30 a.m., Obrenović came to the IKM.<sup>5661</sup> At this point, Obrenović told **Pandurević** that he had met with Trbić, the Duty Officer, who "confirmed the killings in Orahovac and Petkovci" and said that prisoners were accommodated in the schools in Pilica and Ročević and had been executed there.<sup>5662</sup> Trbić said that **Beara** had been in the area and "was in charge of that business."<sup>5663</sup> Trbić also told Obrenović that he had seen **Popović** in Zvornik.<sup>5664</sup>

<sup>5658</sup> Vinko Pandurević, T. 31070 (3 Feb 2009).

<sup>5659</sup> See *infra*, para. 1958.

<sup>5660</sup> See also *infra*, fn. 5875.

<sup>5661</sup> Vinko Pandurević, T. 31083 (9 Feb 2009). The Trial Chamber notes that there is contradictory evidence on whether Obrenović or, alternatively, Pandurević spent the night of 16 July at the IKM. According to PW-168, Obrenović had spent the night of 16 July at the Kitovnice IKM whereas **Pandurević** went home that night and returned to the IKM the morning of 17 July. PW-168, T. 15901 (closed session) (27 Sept 2007). Contrary to PW-168's account, however, **Pandurević** testified that he stayed at the IKM on the night 16 July and that Obrenović left the IKM around 7 p.m. that evening. Vinko Pandurević, T. 31071, 31077 (3 Feb 2009). Other evidence also indicates that Obrenović did not spend the night of the 16 July at the IKM and instead had left the IKM and was engaged with a resubordinated unit from the Krajina some distance away from the IKM on the evening of 16 July, while **Pandurević** was present throughout the night at the IKM. Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", pp. 151, 153, 154. The Zvornik Duty Officers notebook also recorded that Obrenović was at home that night and had to be woken up at 4:30 a.m. on the morning of 17 July. Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", p. 154. In light of the evidence, the Trial Chamber is of the view that PW-168 was mistaken on this issue. However the Trial Chamber notes that the issue of whether it was Obrenović or **Pandurević** who slept at the IKM is generally not significant or relevant. See also *supra*, para. 33.

<sup>5662</sup> Vinko Pandurević, T. 31084 (9 Feb 2009), T. 31548–31549 (16 Feb 2009).

<sup>5663</sup> Vinko Pandurević, T. 31084 (9 Feb 2009).

<sup>5664</sup> *Ibid.*, T. 31701 (18 Feb 2009). Obrenović also heard from Jokić that **Popović** had been at the Standard Barracks. *Ibid.*, T. 31700–31701 (18 Feb 2009).

1884. According to **Pandurević**, Obrenović also mentioned in that conversation that some machinery from the Zvornik Brigade's engineering company had been used to bury dead bodies and that executions had taken place "in the vicinity of Drina, of those from Ročević, and that those from Pilica had been executed at Branjevo" and "that the executions had been carried out by the soldiers from the 10th Sabotage Detachment and some soldiers who had arrived from Bratunac".<sup>5665</sup>

1885. Further, according to **Pandurević's** account, Obrenović also informed him that there had been a number of calls to the brigade command from the Corps Command and VRS Main Staff, and that even the President had shown interest in the opening of the corridor and the passing of the column.<sup>5666</sup> **Pandurević** told Obrenović that they would resume the conversation about prisoners and executions after the column had finished passing.<sup>5667</sup>

1886. The Trial Chamber has considered **Pandurević's** account of the above-described conversation between Obrenović and himself on the morning of 17 July.<sup>5668</sup> Ultimately, whether or not he received this information from Obrenović at this point as described by **Pandurević**, the Trial Chamber is satisfied that by 17 July he had this further knowledge about the murder operation in the area of Zvornik as well as knowledge of the involvement of the Zvornik Brigade.

1887. At 8:45 a.m. on 17 July, three officers from the VRS Main Staff, Colonel Nedeljko Trkulja, Colonel Bogdan Sladojević, and Colonel Milovan Stanković met with **Pandurević** at the Kitovnice IKM.<sup>5669</sup> The VRS Main Staff officers discussed with **Pandurević** the combat situation, why the corridor had been opened, and whether the VRS forces would be able to defend themselves if the ABiH 2nd Corps attacked the following day.<sup>5670</sup> The purpose of the Main Staff officers' visit was to investigate and review **Pandurević's** actions in opening the corridor for the passage of the

<sup>5665</sup> Vinko Pandurević, T. 31084 (9 Feb 2009), T. 31549, 31552–31553 (16 Feb 2009).

<sup>5666</sup> Vinko Pandurević, T. 31085 (9 Feb 2009).

<sup>5667</sup> *Ibid.*, T. 31085–31086 (9 Feb 2009).

<sup>5668</sup> [REDACTED]

<sup>5669</sup> Vinko Pandurević, T. 31090–31092 (9 Feb 2009), T. 31555–31556 (16 Feb 2009); Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996", p. 4 ("0845 hrs – A group of commanding officers led by Colonel Trkulja came to the Brigade's IKM in order to review the conditions in new situation and they returned at 1500 hrs."); Miodrag Dragutinović, T. 12709–12710 (15 June 2007); Bogdan Sladojević, T. 14369–14370, 14372–14373 (27 Aug 2007). *See also* Ex. P00927, "Main Staff Order no. 03/4-1670, re integration of operations to crush lagging Muslim forces, signed by Mladić, 17 July 1995", para. 1 (stating that three officers from the Main Staff, Colonels Nedo Trkulja, Milovan Stanković, and Bogdan Sladojević, were to be sent). These men were sent to investigate the opening of the corridor for the passage of the Bosnian Muslim column. *See supra*, paras. 560–561.

<sup>5670</sup> PW-168, T. 15910–15911 (closed session) (27 Sept 2007). Obrenović also explained to these Main Staff officers that the morale amongst the troops was very low, and that they were tired, had sustained a lot of losses, and would not be able to defend themselves. PW-168, T. 15911 (closed session) (27 Sept 2007). During the officers' visit, **Pandurević** also told Stanković that he was "establishing contact with the Muslim side in order to deal with the problem of casualties". Bogdan Sladojević, T. 14375–14376 (27 Aug 2007); *see also* Vinko Pandurević, T. 31092 (9 Feb 2009).

column.<sup>5671</sup> Sladojević and Trkulja left the IKM in the afternoon of 17 July 1995, between 3 and 4 p.m.<sup>5672</sup> **Pandurević** was never disciplined for his actions in letting the column pass.<sup>5673</sup>

1888. On 17 July, **Pandurević** was again in contact with Šemso Muminović, and they agreed that the opening of the corridor should be extended until 6 p.m.<sup>5674</sup> Thus, the process of the column passing through the corridor continued that day.<sup>5675</sup> **Pandurević** also ordered Miladin Mijatović to use loudspeakers to call members of the 28th Division and direct them to the corridor, as Muminović had lost contact with most of them.<sup>5676</sup>

1889. There is evidence that later that day on 17 July, Obrenović and **Pandurević** drove from the Zvornik Brigade IKM to Orahovac.<sup>5677</sup> While driving through the Orahovac sector, they passed a meadow where there were about ten bodies of people who had been killed.<sup>5678</sup> At this point, Obrenović told **Pandurević** that on 15 July “a man”<sup>5679</sup> in Baljkovica had told him that **Nikolić** had been in Orahovac and took part in the “shooting” there.<sup>5680</sup> **Pandurević** said nothing in response.<sup>5681</sup> Then, one of the soldiers who was travelling with Obrenović and **Pandurević** in the car commented that up in Konjević Polje, where he had come from, “there was even more fierce fighting and around the road there was such scenes which were even more horrible than what we had just seen.”<sup>5682</sup> **Pandurević** however denied that he drove through Orahovac with Obrenović on 17 July and that Obrenović at such a point told him about **Nikolić**’s involvement in executions at

<sup>5671</sup> Vinko Pandurević, T. 31091 (9 Feb 2009); PW-168, T. 15911–15912 (closed session) (27 Sept 2007), T. 16543–16544 (closed session) (18 Oct 2007); Bogdan Sladojević, T. 14373, 14406–14407 (27 Aug 2007).

<sup>5672</sup> Bogdan Sladojević, T. 14377–14378 (27 Aug 2007).

<sup>5673</sup> Vinko Pandurević, T. 31950 (23 Feb 2009); PW-168, T. 16659 (closed session) (19 Oct 2007) (testifying that neither Obrenović nor **Pandurević** was ever sanctioned for having opened the corridor). **Pandurević** testified that from the statement of Colonel Sladojević, who was one of the three colonels to visit the IKM to investigate on 17 July, he later learned that there was a proposal to remove him from his post but nothing came of it. Vinko Pandurević, T. 31950 (23 Feb 2009). Although he was never formally punished, he was “hindered” later in his career “due to the ban on education and appointment to appropriate positions imposed by my superior in the army”. Vinko Pandurević, T. 31950 (23 Feb 2009).

<sup>5674</sup> Vinko Pandurević, T. 31088, 31093 (9 Feb 2009). During his contact with Muminović over the radio on 17 July, **Pandurević** also discussed prisoner exchanges. Vinko Pandurević, T. 31136–31137 (9 Feb 2009); PW-168, T. 15901 (closed session) (27 Sept 2007). *See also* Miodrag Dragutinović, T. 12712 (15 June 2007).

<sup>5675</sup> Vinko Pandurević, T. 31085 (9 Feb 2009).

<sup>5676</sup> *Ibid.*, T. 31089 (9 Feb 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 156.

<sup>5677</sup> PW-168, T. 15902 (closed session) (27 Sept 2007). According to PW-168, since Obrenović had lost his vehicle during combat, **Pandurević** dropped Obrenović at Orahovac, where Obrenović was to gather the units who had been sent to help them and put together a battalion: “to break through the road of the Crni Vrh-Šekovići direction because that whole area was practically cut off”. *Ibid.*, T. 15902 (27 Sept 2007).

<sup>5678</sup> *Ibid.*, T. 15902–15903 (closed session) (27 Sept 2007).

<sup>5679</sup> According to PW-168, on 15 July 1995, late in the afternoon, as Obrenović was standing in front of the command of the 4th Battalion in Baljkovica, an elderly soldier who was “probably a member of the logistics who were assisting there”, asked Obrenović about “the prisoners that had been brought to the centre of the village [Orahovac]”. *Ibid.*, T. 15888–15889 (closed session), 15902 (closed session) (27 Sept 2007), T. 17001 (closed session) (26 Oct 2007).

<sup>5680</sup> *Ibid.*, T. 15902 (closed session) (27 Sept 2007).

<sup>5681</sup> PW-168, T. 15903 (closed session) (27 Sept 2007).

<sup>5682</sup> PW-168, T. 15902 (27 Sept 2007).

Orahovac.<sup>5683</sup> According to **Pandurević**, instead, on the evening of 17 July he drove through Orahovac and observed disturbed earth next to the road at a point between the villages of Križeviči and Orahovac.<sup>5684</sup> 1890. Despite **Pandurević**'s denial, having assessed the evidence on the drive through Orahovac, the Trial Chamber is satisfied that on 17 July Obrenović and **Pandurević** drove through Orahovac at which point he was given the information as described in the account above.<sup>5685</sup>

1891. Despite the request from the Corps for an interim combat report, **Pandurević** decided not to send one on 17 July.<sup>5686</sup> On the evening of 17 July at the IKM, **Pandurević** discussed with Obrenović sending an interim combat report the next day, and they concluded that the report should include their knowledge of the executions in the Zvornik area.<sup>5687</sup>

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1892. After the corridor was closed, on 18 July and during the subsequent few days, elements of the Zvornik Brigade participated in searching the terrain for ABiH soldiers.<sup>5688</sup> During these searches, some ABiH soldiers were killed and others were captured.<sup>5689</sup> Pursuant to an order by **Pandurević**, during this period, Bosnian Muslim soldiers who surrendered were to be handed over

<sup>5683</sup> Vinko Pandurević, T. 31368–31369 (private session) (12 Feb 2009).

<sup>5684</sup> *Ibid.*, T. 31113 (9 Feb 2009), T. 31369–31370 (private session) (12 Feb 2009). *But see* Ex. 7D00091, “Vehicle work log, Nisan for July 95”, p. 2 (which appears to note two trips on 17 July between 7 a.m. and 11 p.m.).

<sup>5685</sup> However, **Pandurević** admitted and the Trial Chamber is satisfied that while travelling through Orahovac after leaving the IKM on the evening of 17 July, **Pandurević** saw that the ground had been disturbed next to the road. Vinko Pandurević, T. 31113 (9 Feb 2009). According to **Pandurević**, when he saw this, he “understood that what Obrenović had told [him about the executions] was actually true”. Vinko Pandurević, T. 32434 (3 Mar 2009). Additionally, **Pandurević** testified that with respect to Obrenović telling him that prisoners had been executed at Orahovac, he understood it the way Obrenović told him and that Obrenović had explained that it took place on the evening of 14 July. Vinko Pandurević, T. 32434 (3 Mar 2009). **Pandurević** further testified that regarding the likely fate of all the prisoners, his conclusion was that “all these unfortunate men had their fate sealed.” Vinko Pandurević, T. 32434 (3 Mar 2009).

<sup>5686</sup> Vinko Pandurević, T. 31089–31090 (9 Feb 2009).

<sup>5687</sup> *Ibid.*, T. 31095 (9 Feb 2009).

<sup>5688</sup> *Ibid.*, T. 31099, 31133–31134 (9 Feb 2009) (stating that the Podrinje Detachment, the East Bosnia Corps, and the 4th and 7th Battalions and their intervention platoons were amongst the units that participated); Ex. 7D00093, “Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 20 July 1995”; PW-168, T. 15905 (closed session) (27 Sept 2007) (testifying that in the first three or four days after the closing of the corridor, the Zvornik Brigade intensively “combed” the terrain in order to cleanse it of straggler enemy forces that presented a danger for the units); Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11734–11735 (8 July 2004). *See also* Miodrag Dragutinović, T. 12603–12604 (14 June 2007). Dragutinović said that “[q]uite a few armed soldiers of the 28th Division were left behind and they constantly tried to break through.” Miodrag Dragutinović, T. 12710–12711 (15 June 2007).

<sup>5689</sup> Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 164 (stating that “[a]nother 28 were liquidated and three were captured”); Vinko Pandurević, T. 31130 (9 Feb 2009). According to **Pandurević**, additional groups from the column were also allowed to pass through on 18 July. Vinko Pandurević, T. 31097–31098 (9 Feb 2009).

to the Zvornik Brigade Military Police.<sup>5690</sup> The Military Police detained the prisoners in the military prison of the Standard Barracks, pending their transfer to Batković.<sup>5691</sup>

1893. During the day of 18 July, **Pandurević** was at the temporary location of the 4th Battalion Command, between Parlog and Baljkovica.<sup>5692</sup> On the morning of 18 July, **Pandurević** had brief meetings with Obrenović and Jokić in Baljkovica. Jokić confirmed for **Pandurević** “the engagement of the engineering machinery BGH-700 and one machine from the Birač holding enterprise and one machine from the stone quarry from Jasanica” in the burial of bodies.<sup>5693</sup>

1894. Following the meetings with Obrenović and Jokić, **Pandurević** wrote the interim combat report of 18 July.<sup>5694</sup> The report was dictated to Miomir Tinović at the Standard Barracks at approximately noon and issued at 1:17 p.m.<sup>5695</sup>

1895. Paragraph four of this report stated:

During the last ten days or so the municipality of Zvornik has been swamped with Srebrenica Turks. It is inconceivable to me that someone brought in 3,000 Turks of military age<sup>5696</sup> and placed them in schools in the municipality, in addition to the 7,000 or so who have fled into the forests. This has created an extremely complex situation and the possibility of the total occupation of Zvornik in conjunction with the forces at the front. These actions<sup>5697</sup> have stirred up great discontent among the people and the general opinion is that Zvornik is to pay the price for the taking of Srebrenica.<sup>5698</sup>

<sup>5690</sup> Vinko Pandurević, T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007). *See also supra*, para. 592.

<sup>5691</sup> Miodrag Dragutinović, T. 12711–12712, 12740 (15 June 2007), T. 12818 (18 June 2007). *See also* Vinko Pandurević, T. 31818 (19 Feb 2009). *See also supra*, para. 592.

<sup>5692</sup> Vinko Pandurević, T. 31097 (9 Feb 2009). *See also Ibid.*, T. 31039–31040 (3 Feb 2009), T. 31080 (9 Feb 2009) (regarding the temporary location of the 4th Battalion Command).

<sup>5693</sup> *Ibid.*, T. 31099, 31110–31112 (9 Feb 2009).

<sup>5694</sup> *Ibid.*, T. 31099 (9 Feb 2009); Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”.

<sup>5695</sup> Vinko Pandurević, T. 31101, 31122 (9 Feb 2009) ); Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”. *See also* Miodrag Dragutinović, T. 12603 (14 June 2007) (testifying that he saw **Pandurević** at the command).

<sup>5696</sup> **Pandurević** testified that the reference to “3,000 Turks of military age” placed in schools in the municipality was, although deliberately cryptic, explicit enough for the Corps Command to know to what he was referring. Vinko Pandurević, T. 31104–31105 (9 Feb 2009), T. 32206 (27 Feb 2009).

<sup>5697</sup> According to **Pandurević**, the reference to “these actions” was a reference to the Bosnian Muslim men being killed in Zvornik. Vinko Pandurević, T. 32205–32206 (27 Feb 2009).

<sup>5698</sup> Ex. P00334, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995”, para. 4. According to **Pandurević**, when he dictated the report, he believed that Krstić was in possession of “certain information” regarding the killings, but **Pandurević** did not know the extent of Krstić’s knowledge. Vinko Pandurević, T. 31106, 31111 (9 Feb 2009). **Pandurević** testified that with respect to his knowledge at this time of the treatment of prisoners in Zvornik, he had knowledge of that which Obrenović had previously told him. He knew that the POWs were prisoners of the Main Staff, and that their transport to Zvornik had been organised by the Security Organs. He knew “that the prisoners had been accommodated in the facilities which were not military facilities, i.e., facilities which were not within the jurisdiction of the Zvornik Brigade”; and he further knew “that there would be no execution on the spot, that there would be the screening followed by an exchange”, and “that the execution or shootings started out of the blue”. Vinko Pandurević, T. 31109–31111 (9 Feb 2009). According to **Pandurević**, it would have been pointless for him to report to the Security Organ any suspected criminal act regarding the prisoners because the Superior Commands of the Security Organs were involved. Vinko Pandurević, T. 31111–

1896. According to PW-168, **Pandurević**'s reference to "the great discontent" was an understatement as many people and troops in the Zvornik area could not understand why "those people" had been brought to their area and had been killed, or why they had been brought to populated areas.<sup>5699</sup> Additionally, according to PW-168, after opening the corridor, **Pandurević** was in "a state of disgrace", and that he likely coloured the aforementioned report accordingly.<sup>5700</sup>

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1897. **Pandurević** was at the Standard Barracks throughout 19 July.<sup>5701</sup> A combat report, type-signed **Pandurević**, dated 19 July, sent to the Drina Corps Command, stated that during the search of the terrain two Bosnian Muslim soldiers had been captured and 13 had been eliminated.<sup>5702</sup> Additionally, an entry for 19 July in the Duty Officer's Notebook states that "[a]nother 28 were liquidated and three were captured."<sup>5703</sup> According to **Pandurević**, this entry indicates that during the scouring of the terrain there was combat, with 28 enemy soldiers killed and three captured.<sup>5704</sup>

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1898. The terrain was still being scoured for ABiH soldiers on 20 July,<sup>5705</sup> and **Pandurević** was again at the Standard Barracks.<sup>5706</sup> The regular combat report for 20 July noted that the R Battalion was providing traffic protection along the Orahovac-Crni Vhr road, and units of the Drina Wolves, the 4th and 7th Battalions, the 16th Company of the Krajina Brigade, together with PJP units from the Zvornik CJB under the command of Dragomir Vasić, were searching the terrain.<sup>5707</sup> During this period, according to **Pandurević**, there was a clear order in effect that all prisoners captured during the searching of the terrain "should be brought to Standard alive".<sup>5708</sup> By 20 July, the brigade already had a number of prisoners and **Pandurević** sought to have them exchanged.<sup>5709</sup>

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31112 (9 Feb 2009). Thus, his only option was to inform the Corps Commander and he believed that the interim combat report of 18 July sufficiently reported on this matter to Krstić. Vinko Pandurević, T. 31112 (9 Feb 2009).

<sup>5699</sup> PW-168, T. 15951–15952 (closed session) (27 Sept 2007).

<sup>5700</sup> *Ibid.*, T. 15952 (closed session) (27 Sept 2007).

<sup>5701</sup> Vinko Pandurević, T. 31131 (9 Feb 2009).

<sup>5702</sup> Ex. P00336, "Zvornik Brigade Daily Combat Report, type-signed Vinko Pandurević, 19 July 1995", para. 2.

<sup>5703</sup> Vinko Pandurević, T. 31130 (9 Feb 2009); Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995", p. 164.

<sup>5704</sup> Vinko Pandurević, T. 31130 (9 Feb 2009). According to PW-168, from 17 to 29 July 1995, every day, but also during the night, there would be attacks by the ABiH 2nd Corps in coordination with people trying to get out of the Zvornik Brigade terrain. PW-168, T. 15905 (closed session) (27 Sept 2007).

<sup>5705</sup> Vinko Pandurević, T. 31133 (9 Feb 2009); PW-168, T. 15905 (closed session) (27 Sept 2007).

<sup>5706</sup> Vinko Pandurević, T. 31134 (9 Feb 2009).

<sup>5707</sup> *Ibid.*, T. 31981–31982 (23 Feb 2009); Ex. 7D00093, "Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 20 July 1995". See also Ex. 4D00652, "Order from the Zvornik CJB Crime Police Department signed by Commander of the Zvornik CJB Staff, 19 July 1995", para. 2; Vinko Pandurević, T. 31134 (9 Feb 2009).

<sup>5708</sup> Vinko Pandurević, T. 32258 (27 Feb 2009). See also Vinko Pandurević, T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711, 12740 (15 June 2007); *supra*, para. 1892. **Pandurević** testified that this order was

1899. Around 20 July, ten wounded Bosnian Muslim prisoners were transferred from the Zvornik Hospital to the clinic of the Zvornik Brigade.<sup>5710</sup> The presence of these wounded Bosnian Muslim prisoners at the Zvornik Brigade created problems because wounded Serbs were also present in the infirmary.<sup>5711</sup> Informed of the potential problems faced by the wounded Bosnian Muslim men, **Pandurević** ordered Obrenović to put measures in place to prevent any possible problems and ordered that the Zvornik Brigade troops not be allowed to enter the infirmary.<sup>5712</sup>

1900. Pursuant to **Pandurević**'s order, Obrenović inspected the security situation with respect to the wounded Bosnian Muslims and instructed Dr. Begović that nobody should enter the prisoners' room, aside from the medical personnel.<sup>5713</sup> The wounded Bosnian Muslim men were also guarded by Zvornik Military Police.<sup>5714</sup>

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followed and he had no knowledge of any actions to the contrary. Vinko Pandurević, T. 32258–32259 (27 Feb 2009). After the corridor was closed, on one occasion some of the soldiers of the 28th Division who handed themselves over to the Zvornik Brigade forces set off a bomb killing some of the Zvornik Brigade soldiers. PW-168, T. 15906 (closed session), 15908 (closed session) (27 September 2007). As a result of this incident, according to PW-168, **Pandurević** issued an order that “nothing should be risked” when confronting such straggler soldiers. PW-168, T. 15906 (closed session), 15908 (closed session) (27 Sept 2007). PW-168 indicated that thereafter while some units would take prisoners, others would just fire at “everything that they saw” when sweeping the terrain, resulting in killings without justification. PW-168, T. 15906 (closed session), 15908 (closed session) (27 Sept 2007). Subsequently, on 20 or 21 July 1995, **Pandurević** insisted that prisoners be captured according to proper procedure. PW-168, T. 15909 (closed session) (27 Sept 2007). After that order, those units combing the terrain “had a little bit more prisoners than before”. PW-168, T. 15909 (closed session) (27 Sept 2007).

<sup>5709</sup> Vinko Pandurević, T. 31137 (9 Feb 2009); Ex. 7D00969, “Interim report regarding exchange by the Command of the 1st Zvornik Infantry Brigade sent to the Command of the Drina Corps, 20 July 1995”; *see also* Miodrag Dragutinović, T. 12817–12818 (18 June 2007). *See also supra*, para. 592.

<sup>5710</sup> *See supra*, paras. 570–572. PW-168 testified that around 20 July 1995, a group of Bosnian Muslims was transferred from Zvornik Medical Centre to the Zvornik Brigade Outpatient Clinic. PW-168, T. 15913 (closed session) (27 Sept 2007). According to **Pandurević**, he learned of the existence of wounded POWs transferred from Milići Hospital to the Brigade when he returned from the IKM, either on 18 or 19 July. Vinko Pandurević, T. 31169 (10 Feb 2009). According to Dr. Begović, **Pandurević** did not come to the medical centre of the Brigade while wounded prisoners were there, and Begović saw Pandurević for the first time only sometime after the ten wounded men had been removed. Zoran Begović, Ex. P02481, “92 *ter* statement” (2 Apr 2003), p. 3; Zoran Begović, T. 9135–9136 (21 March 2007).

<sup>5711</sup> PW-168, T. 15913–15914 (closed session) (27 Sept 2007).

<sup>5712</sup> PW-168, T. 15912–15914 (closed session) (27 Sept 2007). Additionally, according to **Pandurević**, he also instructed that the wounded Bosnian Muslims be treated in the same way as any other wounded person. Vinko Pandurević, T. 31169 (10 Feb 2009).

<sup>5713</sup> Vinko Pandurević T. 31169 (10 Feb 2009); PW-168, T. 15914 (closed session) (27 Sept 2007); Zoran Begović, T. 9134 (21 Mar 2007), Ex. P02481, “92 *ter* statement” (2 Apr 2003), pp. 2–3. Additionally, a guard was stationed at the door. PW-168, T. 15914 (closed session) (27 Sept 2007). Obrenović also informed Dr. Begović that it was not necessary to register the patients in the logbook and that any medical records that were created would travel with the prisoners once they left the infirmary at the Standard Barracks. Zoran Begović, T. 9144, 9155–9156 (21 Mar 2007). According to **Pandurević**, he did not give the order that the wounded prisoners should not be registered and that was done on Obrenović's own initiative. Vinko Pandurević, T. 31713 (18 Feb 2009). Other evidence suggests that Obrenović may not have raised the issue of registering the patients with Begović. PW-168, T. 16737–16738 (closed session) (22 Oct 2007). **Pandurević** said that the whole arrangement with the wounded Muslims was unusual and that if Obrenović did tell Begović—as per Begović's testimony—not to enter the Muslim's names in the registry, this would have been inappropriate “direct meddling” with “procedure and professional conduct”. Vinko Pandurević, T. 31710–31713 (18 Feb 2009).

<sup>5714</sup> Zoran Begović, T. 9140 (21 Mar 2007); PW-168, T. 15914 (closed session) (27 Sept 2007). *See supra*, para. 572.



1901. Following the arrival of the wounded Bosnian Muslim prisoners, **Pandurević** communicated with the Superior Command requesting that they resolve the problem of the wounded prisoners because the Brigade was not equipped for looking after and guarding them.<sup>5715</sup>

1902. By 22 July, the detention facility for prisoners at the Standard Barracks was full and **Pandurević** wanted an exchange to occur and the prisoners to be transported away from the Brigade.<sup>5716</sup> In an interim combat report from 22 July, **Pandurević** informed the Drina Corps Command that the Brigade had captured 23 Bosnian Muslim soldiers and requested instructions as to what should be done with the prisoners and that the Exchange Commission start work as soon as possible.<sup>5717</sup>

1903. On 23 July 1995, the Zvornik Brigade was still scouring the terrain.<sup>5718</sup> At 8 a.m. on 23 July, **Pandurević** informed Colonel Cerović, Assistant for Moral, Legal and Religious Affairs of the Drina Corps, that he was “still catching Turks”.<sup>5719</sup> During the conversation, **Pandurević** also raised the issue of prisoners and where they should be sent.<sup>5720</sup> Specifically, **Pandurević** told

<sup>5715</sup> PW-168, T. 15914 (closed session) (27 Sept 2007). *See also* Vinko Pandurević, T. 31137 (9 Feb 2009) (testifying that by 20 July the brigade had a number of prisoners and he was seeking a way to have them exchanged). PW-168 testified that shortly after the arrival of the prisoners, “[f]or a few days after that, the commander would talk to the superior command asking them to resolve the problem of the wounded. His explanation was just as I’ve told you, that the brigade was not equipped for looking after the wounded or guarding the prisoners. We would hear about that at the morning briefings. One of the two of us were supposed to report to the superior command, and when he was there, he would be the one who would report to them obviously.” PW-168, T. 15914 (27 Sept 2007).

<sup>5716</sup> Vinko Pandurević, T. 31141–31142, 31144–31146 (9 Feb 2009). *See also supra*, para. 592. On the morning of 23 July, Ljubo Bojanović, the Zvornik Brigade Duty Officer that day, told Krstić that the Brigade’s detention facility was full. Ex. P01307a, “Intercept, 23 July 1995, 06:40 hours”. *See also* Ex. 7DP00340, “Zvornik Brigade Interim Combat Report No. 06-229, signed by Pandurević, 22 July 1995”.

<sup>5717</sup> Vinko Pandurević, T. 31142, 31146 (9 Feb 2009); Ex. 7DP00340, “Zvornik Brigade Interim Combat Report, signed by Pandurević, 22 July 1995”, para. 3; Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 176. *See also supra*, para. 592. Dragutinović confirmed that the report was in his own handwriting and that although it was “the commander’s document”, it was written by him (Dragutinović). Miodrag Dragutinović, T. 12712 (15 June 2007). With respect to the reference to a prisoner exchange in the report, Dragutinović testified that during the “combat operations in the area of Baljkovica, Memici, some of our soldiers went missing, some were captured. From the communications between the enemy and our command, through Muminović and **Pandurević**, there were some indications that they were in favour of direct exchange for some of their soldiers who had been captured and who they knew to be still on our side. As for our soldiers who had been captured and were on the other side, their families found out about it somehow and pressured us a great deal to accept the exchange. However, we had no authorisation to do that. Therefore, we asked the corps command to hand down some instructions or to send a commission for exchange if they thought that was the best thing to do. Otherwise, we needed them to tell us what to do with the prisoners, to wait for the commission or to send them on to Batkovići.” Miodrag Dragutinović, T. 12712–12713 (15 June 2007). With regard to the reference to the “commission of exchange” in the report, **Pandurević** explained that “we had a certain number of prisoners of war and we were already thinking and seeking a way to have them exchanged or to allocate a location where they would be sent.” Vinko Pandurević, T. 31137 (9 Feb 2009). With respect to the combat situation, on 21 July at 5 a.m., the ABiH 2nd Corps attacked and the ABiH forces engaged on the front were much stronger that day than they had been on 16 July. Vinko Pandurević, T. 31138 (9 Feb 2009). The attack on 21 July lasted until noon and the Brigade’s defence lines were held. Vinko Pandurević, T. 31139 (9 Feb 2009). On 22 July, more attacks occurred. Vinko Pandurević, T. 31140–31141 (9 Feb 2009).

<sup>5718</sup> PW-168, T. 16023 (closed session) (28 Sept 2007).

<sup>5719</sup> Vinko Pandurević, T. 31131, 31146 (9 Feb 2009); PW-168, T. 16016 (closed session), 16023 (closed session) (28 Sept 2007); Ex. P01309a, “Intercept, 23 July 1995, 08:00 a.m.”.

<sup>5720</sup> Ex. P01309a, “Intercept, 23 July 1995, 8:00 a.m.” *See also* Vinko Pandurević, T. 31170 (10 Feb 2009).

Colonel Cerović that the Brigade had some prisoners, including some wounded ones, and that he did not know what to do with them.<sup>5721</sup> **Pandurević** inquired into whether the prisoners could be exchanged for some 100 prisoners from the Eastern Bosnian Corps who were captured by the ABiH 2nd Corps at Lisaca, and raised the possibility of sending the prisoners to Batković.<sup>5722</sup>

1904. During the conversation, **Pandurević** also told Cerović that he had received a letter instructing that the wounded prisoners be sent to Zvornik Hospital but expressed that there was a problem with that and thus requested a solution to the matter.<sup>5723</sup> A few minutes after this conversation, Cerović called back and instructed Ljubo Bojanović, the Zvornik Brigade Duty Officer, to pass on the following message to **Pandurević**: “What Vinko and I were just talking about will arrive at your place by 1700 hrs. The boss, Lt. Col. **Popović** will arrive and say what needs to be done regarding the work we talked about.”<sup>5724</sup> On the same day, 23 July, the vehicle log for a car assigned to **Popović** recorded that this car travelled from Vlasenica to Zvornik.<sup>5725</sup>

1905. Sometime thereafter, Obrenović learned from the Zvornik Brigade duty officer that very early in the morning, the wounded prisoners were driven away.<sup>5726</sup> According to PW-168, later on the same day that Obrenović learned that the prisoners had been taken away, Obrenović asked **Pandurević** about the matter of the wounded prisoners.<sup>5727</sup> **Pandurević** replied that **Popović** had arrived with an order from Mladić that the prisoners be “liquidated”, and that the wounded were taken from **Nikolić** and driven away.<sup>5728</sup> According to PW-168, this conversation between

<sup>5721</sup> Ex. P01309a, “Intercept, 23 July 1995, 8:00 a.m.”

<sup>5722</sup> *Ibid.* See also PW-168, T. 16024–16025 (closed session) (28 Sept 2007).

<sup>5723</sup> Ex. P01309a, “Intercept, 23 July 1995, 8:00 a.m.”.

<sup>5724</sup> *Ibid.* See also Ex. P00377, “Zvornik Brigade Duty Officers Notebook, 29 May–27 July 1995”, p. 177 (stating “0830 hrs. – Lieutenant Colonel Cerović relayed a message for commander that LTC **Popović** will arrive by 17:00 hours”); Vinko Pandurević, T. 32262–32263 (27 Feb 2009), PW-168, T. 15915 (closed session) (27 Sept 2007).

<sup>5725</sup> Ex. P00197, “Vehicle log for VW GOLF P-7065 assigned to Vujadin Popović from 1 to 31 July 1995”, p. 4.

<sup>5726</sup> PW-168, T. 15914–15916 (closed session) (27 Sept 2007). See also Zoran Begović, Ex. P02481, “92 ter statement” (2 Apr 2003), p. 3; Zoran Begović, T. 9134–9135, 9147 (21 Mar 2007) (testifying that the men were taken away early in the morning without being escorted by any medical staff, which was contrary to the standard practice for the transfer of a patient and that their medical records were also left behind at the infirmary). The Trial Chamber notes that the exact date on which the wounded prisoners removed from the Brigade is unclear, but it is clear that they were taken away very early in the morning.

<sup>5727</sup> PW-168, T. 15915 (closed session) (27 Sept 2007).

<sup>5728</sup> PW-168, T. 15915–15916 (closed session) (27 Sept 2007). The Trial Chamber has found that the ten wounded Bosnian Muslim men were killed. See *supra*, para. 577. PW-168 testified that the men were taken “from Drago Nikolić and driven away”. PW-168, T. 15915 (closed session) (27 Sept 2007). It is unclear whether this is a mistake in the transcript and that it should read “by Drago Nikolić”, or whether the prisoners were in the care of **Nikolić** and were handed over to **Popović**. In a memo from CLSS, it was confirmed that the English interpretation “from Drago Nikolić” is correct, but CLSS also stated that the original in BCS is ambiguous and could also be construed to mean “[...] that the wounded were taken by Drago Nikolić”. Internal Memorandum re. Verification of accuracy of interpretation in case no. IT-05-88-T, hearing of 27 September 2007, confidential, 4 December 2009.

Obrenović and **Pandurević** about **Popović** coming to deal with the wounded prisoners took place only after the wounded men had already been taken away from the Brigade.<sup>5729</sup>

1906. **Pandurević** did not remember receiving the message that **Popović** would come to the Standard Barracks and did not see him there on 23 July.<sup>5730</sup> **Pandurević** also denied ever having authorised the execution of the Bosnian Muslim prisoners.<sup>5731</sup> According to **Pandurević**, on the morning of 24 July 1995, Obrenović reported that the wounded Bosnian Muslim men were taken with other prisoners to the Batković detention centre in Bijeljina.<sup>5732</sup>

1907. The Trial Chamber is convinced that on 23 July **Pandurević** was informed that **Popović** would come later that day to take care of the situation of the wounded prisoners who were being held at the Zvornik Brigade. In reaching this conclusion, the Trial Chamber finds particularly relevant the evidence of the intercepts showing a sequence of conversations as well as the related entry in the Duty Officer Notebook. Additionally, in light of the importance of the message that **Popović** would come to deal with the wounded prisoners, the Trial Chamber is convinced that the message was in fact conveyed to **Pandurević** that day.

1908. At 10 a.m. on 23 July, **Pandurević** held a briefing at the Standard Barracks attended by Obrenović, Dragutinović, and Brigade battalion and division commanders.<sup>5733</sup> At the briefing, **Pandurević** demanded that “part of the prisoners who were held in [the Zvornik Brigade] detention be evacuated as soon as possible to Batković”.<sup>5734</sup> The briefing lasted at least one hour, and

<sup>5729</sup> PW-168, T. 15915 (closed session) (27 Sept 2007).

<sup>5730</sup> **Pandurević** testified that he knew transport of the wounded had been approved but did not remember receiving Cerović’s message about **Popović** arriving from Ljubo Bojanović. Vinko Pandurević, T. 31148–31149 (9 Feb 2009), T. 32262–32264 (27 Feb 2009). **Pandurević** testified that he did not see **Popović** at the Standard Barracks on 23 July nor did he know if **Popović** took the prisoners. Vinko Pandurević, T. 31149 (9 Feb 2009), T. 32265–32269 (27 Feb 2009). However, by 23 July, **Pandurević** was aware that **Popović** was in the area and that **Popović** was involved in executing prisoners. Vinko Pandurević, T. 32261–32262 (27 Feb 2009).

<sup>5731</sup> Vinko Pandurević, T. 31170 (10 Feb 2009). According to **Pandurević**, at the morning briefing of 23 July, he heard that “the first group of prisoners” was sent to Batković. Vinko Pandurević, T. 31160 (10 Feb 2009). According to **Pandurević**, prisoners brought to the Standard Barracks were recorded in Brigade records; the number of prisoners was noted in regular combat reports on a daily basis and in the duty operation officer’s notebook; and prisoners were duly transferred to Batković. *See* Pandurević Final Brief, para. 861.

<sup>5732</sup> Vinko Pandurević, T. 31170 (10 Feb 2009). Novaković learned from a soldier at the Standard Barracks that the Bosnian Muslim men had been taken for exchange near Patkovača in Bijeljina. Radivoje Novaković, Ex. P02480, “92 *ter* statement” (6 Mar 2003), p. 3. According to Begović, Obrenović had told him that the men would be exchanged in Bijeljina, and Begović learned from a military police officer that the men had left by bus, but did not know in what circumstances. Zoran Begović, Ex. P02481 “92 *ter* statement” (2 Apr 2003), p. 3; Zoran Begović, T. 9134, 9144, 9164–9165 (21 Mar 2007). According to Begović’s account, another group of four or five wounded Muslim prisoners arrived and they, too, were treated and then sent for exchange to Bijeljina soon thereafter. Zoran Begović, T. 9136, 9148–9149 (21 Mar 2007). The men’s names do not appear on the list of persons exchanged at the Batković Detention Centre. *See* Ex. P03522 (confidential). *See also supra*, para. 576.

<sup>5733</sup> PW-168, T. 16592–16593 (closed session) (18 Oct 2007); Miodrag Dragutinović, T. 12740 (15 June 2007); Vinko Pandurević, T. 31149–31150 (9 Feb 2009); Ex. P00377, “Zvornik Brigade Duty Officers Notebook”, p. 177.

<sup>5734</sup> Miodrag Dragutinović, T. 12740 (15 June 2007) (also adding that **Pandurević** “demanded that from the corps command”).

afterwards, **Pandurević** and Obrenović had a discussion in **Pandurević**'s office about recent events and, in particular, about the murder operation that had been carried out in the area of Zvornik.<sup>5735</sup>

1909. **Pandurević** described this conversation between himself and Obrenović that evening as follows. **Pandurević** and Obrenović discussed why no one from the corps command had requested further information on the prisoners, and why none of the battalion commanders mentioned prisoners or executions at the briefing.<sup>5736</sup> Obrenović had no more information about these issues than in their previous discussions. Obrenović also said that he did not understand what had happened.<sup>5737</sup> During the conversation, **Pandurević** expressed that he was surprised that no one from the corps had reacted, and the two of them agreed "at that point in time that was all that we could do."<sup>5738</sup> **Pandurević** also told Obrenović that he was expecting to return any day to Žepa and to talk to Krstić personally about this matter.<sup>5739</sup> Additionally, at this point, the two discussed whether to conduct an investigation, according to **Pandurević**'s account, but decided that his 18 July interim combat report was "the most that [they] were able to do", and that after he met personally with Krstić, they would know if something more should be done.<sup>5740</sup> According to **Pandurević**, their reasons for those conclusions were that they understood that it would be illusory to conduct an investigation in the usual way and that "sometimes the truth, if it comes too early, can have more negative consequences than if it were to be a bit delayed."<sup>5741</sup>

<sup>5735</sup> Vinko Pandurević, T. 31151–31153 (9 Feb 2009); PW-168, T. 15948 (closed session) (27 Sept 2007), T. 16593–16594 (closed session) (18 Oct 2007) (testifying that after the meeting Obrenović talked with **Pandurević** about the execution of prisoners in schools in the municipality of Zvornik).

<sup>5736</sup> Vinko Pandurević, T. 31151–31152 (9 Feb 2009). According to **Pandurević**, this was the third or fourth conversation between them since 18 July that related to the prisoners and their fate. Vinko Pandurević, T. 31153 (9 Feb 2009). With respect to his mood at the time of his conversation with Obrenović on 23 July, **Pandurević** said it was difficult to describe "the anger, the rage, the nausea a person feels at a time like that". Vinko Pandurević, T. 31153 (9 Feb 2009). **Pandurević** further stated "what sort of a brain could have decided something like that, but according to the information that we had, we knew that the order had come from General Mladić." Vinko Pandurević, T. 31154 (9 Feb 2009). According to Pandurević, during the conversation that day, he expressed this rage by saying something to the effect of, "[W]ho put this in our laps? Who placed this in Zvornik because if something like this happens in the area of Zvornik, everybody would logically assume that this was something that was committed by the Zvornik Brigade, leaving aside the gravity of the crime itself". Vinko Pandurević, T. 31154 (9 Feb 2009).

<sup>5737</sup> Vinko Pandurević, T. 31153 (9 Feb 2009).

<sup>5738</sup> *Ibid.*

<sup>5739</sup> *Ibid.* Beginning on 23 July, Cerović would tell **Pandurević** every day to be ready to return to the Žepa area. Vinko Pandurević, T. 31175 (10 Feb 2009); Ex. 7D00604, "Intercept 2006 hours Cerović – General Krstić?". However, on 26 July, **Pandurević** was told by Major Jevđević that he would probably not have to go to Žepa "since the guns have been silent for two days already". Vinko Pandurević, T. 31175–31176 (10 Feb 2009); Ex. P01353a, "Intercept, 26 July 1995 at 08.00 hours".

<sup>5740</sup> Vinko Pandurević, T. 31154 (9 Feb 2009).

<sup>5741</sup> *Ibid.* **Pandurević** testified that it was a deliberate choice not to raise the prisoners or killings at the briefing with the assembled commanders. **Pandurević** stated that he had not received any information back from the corps command (in response to his 18 July interim combat report), and that he "wasn't able to launch or initiate such a major issue in front of such a large number of people for a number of reasons; one of them being that matters like that when the concealment of evidence is possible and other kinds of actions are possible, should not be then launched other than in a much smaller circle and in a different way". Vinko Pandurević, T. 31155 (9 Feb 2009).

1910. PW-168 also provided an account of this conversation between **Pandurević** and Obrenović on 23 July. According to PW-168, at one point, Obrenović asked **Pandurević** why the prisoners were brought to Zvornik, and “what were we in that sense where these people were shot? What were we supposed to do?”<sup>5742</sup> **Pandurević** responded that he had written “an interim report”<sup>5743</sup> and also said that “[i]t's known Mladić ordered this. Those who did it are known, and whoever reads the reports, it would be clear to them.”<sup>5744</sup> Obrenović then said, “[w]ell, still, it was all happening here at our area”,<sup>5745</sup> to which **Pandurević** replied, “[i]t's all the Drina Corps area and it's also the area of the Main Staff. What is more he ordered they did it. Whoever reads the report, it will be clear to them.”<sup>5746</sup> **Pandurević** ended with the remark, “with Mladić up there, we are all doomed.”<sup>5747</sup>

1911. Having considered the evidence, the Trial Chamber is satisfied that the conversation between Obrenović and **Pandurević** took place and that it covered the topics of their frustration and lack of understanding as to why the prisoners were brought to Zvornik, what they should have done and should do in response to the situation of the prisoners and executions, and **Pandurević**'s 18 July interim report. In essence, the Trial Chamber is satisfied that both accounts of the 23 July conversation, as described above, are accurate.

1912. On 23 July 1995, four Bosnian Muslim men who had survived the execution at Branjevo Military Farm and later surrendered to a Serbian soldier were brought to the Standard Barracks detention facility after having been arrested by the 1st Battalion of the Zvornik Brigade.<sup>5748</sup> At the Standard Barracks, Jeremić took statements from three of the Muslim prisoners,<sup>5749</sup> and Jeremić's colleague in the Crime Prevention Service, Čedo Jović, took a statement from the fourth prisoner, Fuad Đozić.<sup>5750</sup> The four Muslims revealed they had received help from two VRS soldiers.<sup>5751</sup>

<sup>5742</sup> PW-168, T. 15949 (closed session) (27 Sept 2007).

<sup>5743</sup> *Ibid.*

<sup>5744</sup> *Ibid.*, T. 15949–15950 (closed session) (27 Sept 2007). According to PW-168, when **Pandurević** was talking about “the reports”, he told Obrenović that he had ordered that “the orders” be copied into “the war diary, and he was thinking of the interim reports that he was sending out in those days, the 15th, the 16th, up until the 18th” of July 1995. *Ibid.*, T. 15950 (closed session) (27 Sept 2007).

<sup>5745</sup> *Ibid.*, T. 15950 (closed session) (27 Sept 2007).

<sup>5746</sup> *Ibid.*

<sup>5747</sup> *Ibid.* At 8 p.m. on 23 July, **Pandurević** left the Standard Barracks for the day. Vinko Pandurević, T. 31159 (10 Feb 2009). According to **Pandurević**, Obrenović stayed behind, with instructions from **Pandurević** to begin resolving the transport of the prisoners to Batković with the corps command. Vinko Pandurević, T. 31160 (10 Feb 2009).

<sup>5748</sup> PW-168, T. 15916–15917. (closed session) (27 Sept 2007); Ex. P00392, “Zvornik Military Police document, statement of Almir Halilović”, pp. 1–2; Ex. P00389, “Zvornik Military Police document, statement of Kivirić, Sakib”, p. 1; Ex. P00390, “Zvornik Military Police document, statement of Mustafić, Emin”, p. 1; Ex. P00391, “Zvornik Military Police document, statement of Đozić, Fuad”, p. 1. *See supra*, paras. 584–586. According to **Pandurević**, he did not know about the capture of these four Muslims by the 1st Battalion of the Zvornik Brigade, but he only heard about it from the testimony of PW-168. Vinko Pandurević, T. 32324–32325 (2 Mar 2009).

<sup>5749</sup> Nebojša Jeremić, T. 10430–10433 (24 Apr 2007); Ex. P00392, “Zvornik Military Police document, statement of Almir Halilović”; Ex. P00389, “Zvornik Military Police document, statement of Sakib Kivirić”; Ex. P00390, “Zvornik Military Police document, statement of Emin Mustafić”; Ex. P00391, “Zvornik Military Police document, statement of Fuad Đozić”. *See supra*, para. 586.

<sup>5750</sup> Nebojša Jeremić, T. 10418–10419, 10433 (24 Apr 2007). *See supra*, para. 586.

There is evidence that **Nikolić** discussed the situation of the four Muslims with **Pandurević**, telling **Pandurević** that they had escaped from an execution site.<sup>5752</sup> **Pandurević** then responded that **Nikolić** should stay on after the briefing.<sup>5753</sup> According to **Pandurević**, however, this conversation between himself and **Nikolić** never took place.<sup>5754</sup> A couple of days later, the four Muslims “just disappeared”.<sup>5755</sup> The Trial Chamber has assessed the evidence and despite **Pandurević**’s denial, is satisfied that the exchange between **Nikolić** and **Pandurević** about the four men occurred as described by PW-168.

1913. From 23 to 26 July, between 140 and 150 POWs who had been captured by the Zvornik Brigade were transferred to Batković.<sup>5756</sup>

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1914. On 26 July 1995, **Pandurević** and Legenda went to Bokšanica to receive an order from Mladić to go to a different part of the front-line.<sup>5757</sup> In addition to Mladić, **Gvero**, Krstić, Tolimir, and Hamdija Torlak were also present at the Bokšanica checkpoint on 26 July.<sup>5758</sup> At that time, the front-line was somewhere between Grahovo and Drvar, and Mladić ordered them to head to that

<sup>5751</sup> PW-168, T. 15916–15917 (closed session) (27 Sept 2007).

<sup>5752</sup> *Ibid.*, T. 15916–15917, 15925 (closed session) (27 Sept 2007). According to PW-168, the discussion took place after the corridor was closed on 17 July 1995. PW-168, T. 15916 (closed session) (27 Sept 2007).

<sup>5753</sup> PW-168, T. 15916–15917, 15925 (closed session) (27 Sept 2007).

<sup>5754</sup> Vinko Pandurević, T. 32347 (2 Mar 2009). **Pandurević** further stated that there were many more enemy soldiers in the detention unit of the Zvornik Brigade and they were all transported to the Batković camp. “There was no reason to treat these ones here in a different way. While I was studying the materials, I did see criminal charges that were brought by Drago Nikolić, I saw the statements of these men. One can’t see that they had survived execution. One can only see that they were lost and were captured. I didn’t have any reason to treat them any differently than anybody else.” Vinko Pandurević, T. 32324–32325 (2 Mar 2009).

<sup>5755</sup> PW-168, T. 15916–15917 (closed session) (27 Sept 2007). PW-168 stated that he learned this information around the time that it happened, however he did not testify as to how he learned this. The four Bosnian Muslims were reported missing following the fall of Srebrenica and have not yet been identified or confirmed dead through DNA analysis. Ex. P03159a (confidential), pp. 39, 52, 93, 126; Ex. P02413, “Updated Report by Helge Brunborg – Missing and Dead from Srebrenica: The 2005 Report and List”, p. 1. The Trial Chamber is satisfied beyond a reasonable doubt that these four Bosnian Muslim men were killed sometime after 23 July 1995. *See supra*, para. 589.

<sup>5756</sup> Vinko Pandurević, T. 31163–31169 (10 Feb 2009); T. 32325 (2 Mar 2009); Ex. P03522 (confidential); Ex. 3DP00344, “Regular Combat Report Zvornik Brigade Command to the Drina Corps Command signed by Commander Lieutenant Colonel Vinko Pandurević, 25 July 1995”, para. 3; Ex. 3DP00346, “Zvornik Brigade Regular Combat Report, type-signed Pandurević, 26 July 1995”, para. 2. *See also supra*, para. 593. According to **Pandurević**, prior to transfer, these POWs were all treated fairly. Vinko Pandurević, T. 31168–31169 (10 Feb 2009).

<sup>5757</sup> Sasa Jovanović, T. 33915, 33918–33919 (3 July 2009). *See also* Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”. *See also* **Pandurević**’s vehicle log which records a trip from Zvornik to Rogatica (near Žepa) on 26 July, Ex. 7D00091, “Vehicle work log Nisan for July 95”, p. 4. On 26 July, Jovanović saw **Gvero** as well as Krstić, Tolimir, **Pandurević**, and Legenda. Sasa Jovanović, T. 33917 (3 July 2009). This was the only occasion Jovanović saw **Pandurević** at Bokšanica. Sasa Jovanović, T. 33925 (3 July 2009).

<sup>5758</sup> Sasa Jovanović, T. 33915, 33917–33918 (3 July 2009); Ex. P04537, “Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995”.

area.<sup>5759</sup> While **Pandurević** was present at the Bokšanica checkpoint, buses were arriving containing Muslims from Žepa.<sup>5760</sup>

1915. On 27 July, **Pandurević** went to the IKM at Godjenje and met with Krstić, pursuant to an order he received on the previous day.<sup>5761</sup> **Pandurević** wanted to discuss with Krstić an order for the Zvornik Brigade to allocate forces to a unit from the Drina Corps to be sent to the 2nd Krajina Corps.<sup>5762</sup> He also viewed the meeting as an opportunity to discuss with Krstić the Zvornik Brigade interim combat reports of 15, 16, and 18 July.<sup>5763</sup> During the visit to the IKM, **Pandurević** had a private conversation with Krstić in which he referred to his interim combat reports and asked Krstić if he had any more specific information relating to prisoners executed in the Zvornik area.<sup>5764</sup> According to **Pandurević**, Krstić essentially told him that it was not something that should be his concern and that he would deal with the problem in the appropriate way.<sup>5765</sup>

1916. From 29 July onwards, **Pandurević** was engaged in touring and inspecting the Brigade Battalions in preparation for sending some men from the Brigade to the area of the 2nd Krajina Corps pursuant to an order of the Drina Corps.<sup>5766</sup> **Pandurević** remained in the defence area of the Zvornik Brigade until 31 July or 1 August.<sup>5767</sup>

<sup>5759</sup> Sasa Jovanović, T. 33919 (3 July 2009). Jovanović testified that he could hear snippets of Mladić's orders. Sasa Jovanović, T. 33919 (3 July 2009). Since there was a crisis at the part of the front-line facing Drvar in the Bosnian Krajina, Mladić ordered **Pandurević** and Legenda to move elements of the Zvornik Brigade to stop an advance by the Croatian Army and to recapture Grahovo. Sasa Jovanović, T. 33919 (3 July 2009). *See also* Vinko Pandurević, T. 31186 (10 Feb 2009).

<sup>5760</sup> Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995", 14:24, 14:50. In the footage, **Pandurević** can be seen at the UN checkpoint at Bokšanica on 26 July with Mladić, Krstić, and Gvero immediately prior to and during part of the transfer of Muslim civilians through the checkpoint. Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995". During the footage, Mladić announced: "The Turks are coming, come over here boys". Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995". Subsequently, Mladić, **Gvero**, Krstić, and **Pandurević** lined up alongside the road through the checkpoint, and several seconds later, busses containing Muslims from Žepa pass by them. Ex. P04537, "Bokšanica Footage – Video containing footage of Mladić, Gvero, Krstić, Pandurević, Hamdija Torlak and refugees from Žepa at the UN checkpoint at Bokšanica, 26 July 1995", 14:24, 14:50. According to **Pandurević**, there were no combat actions in Žepa at this time, and he thought that the evacuation of civilian population from Žepa was underway at that time but did not have specific information about the manner in which this evacuation was being executed. Vinko Pandurević, T. 31180 (10 Feb 2009).

<sup>5761</sup> Vinko Pandurević, T. 31172–31173, 31176–31177 (10 Feb 2009). *See also* Ex. 7D00609, "Intercept 23.20, Pandurević – DKZO – Palma – Zlatar – Uran – IKM DK".

<sup>5762</sup> Vinko Pandurević, T. 31177 (10 Feb 2009).

<sup>5763</sup> *Ibid.*

<sup>5764</sup> *Ibid.*, T. 31178–31179 (10 Feb 2009).

<sup>5765</sup> *Ibid.*, T. 31179 (10 Feb 2009).

<sup>5766</sup> *Ibid.*, T. 31186 (10 Feb 2009); Ex. 7DP00124, "Drina Corps Order, signed by Krstić, 29 July 1995" ("very urgent" order for preparing units of the corps for "full combat readiness"). **Pandurević** explained that there was a critical situation requiring this urgent order for combat readiness because of attacks by the Croatian Army against the RS during Operation Storm. Vinko Pandurević, T. 31186 (10 Feb 2009). *See* Ex. 7D00729, "Marching Order from the Zvornik Brigade Command, signed by Pandurević, 28 July 1995".

<sup>5767</sup> Miodrag Dragutinović, T. 12605–12607 (14 June 2007).

(xiii) 3 August–15 September 1995

1917. On 3 August 1995, **Pandurević** was appointed the Commander of a brigade tasked with going to Krajina.<sup>5768</sup> For the absence of **Pandurević**, Obrenović was appointed acting Brigade Commander for the Zvornik Brigade, which was documented in a formal order issued by Krstić on 8 August.<sup>5769</sup> From 3 to 7 August, **Pandurević** was engaged in forming and preparing the 2nd Drina Brigade which was to go to the Krajina.<sup>5770</sup>

1918. On 7 August, **Pandurević** left from Kozluk with the new brigade for the 2<sup>nd</sup> Krajina Corps zone in Drvar, some 600 to 700 kilometres away from the Zvornik Brigade.<sup>5771</sup> He was engaged in combat operations until 16 September, when he and his new brigade returned to Zvornik.<sup>5772</sup> During this period, **Pandurević** called the Zvornik Brigade several times to report losses and describe the events in the Krajina.<sup>5773</sup> **Pandurević** also had contact with the Drina Corps; however, according to **Pandurević**, during this time, he never heard about any plan to exhume and rebury bodies in Zvornik, nor did have notice of the provision of fuel to the Zvornik Brigade on 14 September.<sup>5774</sup>

<sup>5768</sup> Vinko Pandurević, T. 31187 (10 Feb 2009); Ex. 7D00615, “Order from the Drina Corps Command, signed by Krstić, 3 Aug 1995”.

<sup>5769</sup> PW-168, T. 15923–15924 (closed session) (27 Sept 2007); T. 16621–16622 (19 Oct 2007); Vinko Pandurević, T. 31191–31193 (10 Feb 2009); Ex. 5D00452 (confidential). According to PW-168, when Obrenović was standing in for the Brigade Commander during the period of 7 August 1995 and 26 September 1995, he practically was the Brigade Commander. PW-168, T. 15924 (closed session) (27 Sept 2007), T. 16053–16054 (closed session) (9 Oct 2007), T.16176 (closed session), 16189–16190 (closed session) (10 Oct 2007), T. 16596 (closed session) (18 Oct 2007).

<sup>5770</sup> Vinko Pandurević, T. 31188 (10 Feb 2009); Ex. 7D00611, “Document from Zvornik Brigade Command on Preparation of Units and commands to form the 2nd Drina Light Infantry Brigade, signed by Pandurević, 3 August 1995”.

<sup>5771</sup> Vinko Pandurević, T. 31196–31197 (10 Feb 2009); PW-168, T. 15923 (closed session) (27 Sept 2007), T.16053–16054 (closed session) (9 Oct 2007), T. 16175–16178 (closed session) (10 Oct 2007), T. 16596 (closed session) (18 Oct 2007), T. 17193–17194 (closed session) (31 Oct 2007); Miodrag Dragutinović, T. 12613–12614 (14 June 2007), T. 12721–12722 (15 June 2007); Milomir Savčić T. 15348–15349 (13 Sept 2007). *See also* Damjan Lazarević, T. 14526 (30 Aug 2007); Ex. 7D00252, “Drina Corps Order, type-signed Pandurević, 6 Aug 1995”.

<sup>5772</sup> The Prosecution suggests that **Pandurević** returned to Zvornik from the Krajina on the evening of 15 September. Prosecution Final Brief, para. 1520 (relying on an entry in a vehicle log for **Pandurević** which indicates his car travelled to Zvornik on 15 September, *see* Ex. 7D00770, “Vehicle Log for Nisan T-2175 for Sept 1995”, p. 3). However, the Trial Chamber is not satisfied that **Pandurević** returned to Zvornik before 16 July based on the following evidence: *See* Vinko Pandurević, T. 31202 (10 Feb 2009); Ex. 7DP00379, “Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995”, p. 119 (recording on 16 Sept “Vinko **Pandurević** came back at 1130 hrs”); Miodrag Dragutinović, T. 12722–12724, 12727–12728 (15 June 2007); Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”, pp. 121–122 (containing an entry for 16 September 1995 stating “Today at 1130 hrs the 2nd DB/Drina Brigade/ led by Lieutenant Colonel **Vinko Pandurević** returned to Zvornik from the area of responsibility of the 2nd KK/Krajina Corps/.”); PW-168, T. 15921–15923 (closed session) (27 Sept 2007), T. 17190–17191 (closed session) (31 Oct 2007). *See also* Ex. 7D00439, “Report, signed by Pandurević, 23 Oct 1995” (for details of his movements during the period he commanded the unit in the Krajina).

<sup>5773</sup> Vinko Pandurević, T. 31203 (10 Feb 2009).

<sup>5774</sup> *Ibid.*, T. 31204–31206 (10 Feb 2009). According to **Pandurević**, on 14 September, he was “in the village of Velagići at the intersection of the roads between Bosanski Petrovac and Ključ” about 500 kilometres away from Zvornik. *Ibid.*, T. 32270 (27 Feb 2009).



(xiv) 16–17 September 1995

1919. **Pandurević** returned to the Zvornik Brigade at 11:30 a.m on 16 September.<sup>5775</sup> He was in the Zvornik Brigade for two days, during which time, he was engaged in matters pertaining to the 2nd Drina Brigade he had taken to the Krajina, including dissolving the unit, returning the equipment, and bringing the units back to their former place.<sup>5776</sup>

1920. On 16 September, **Pandurević** spoke to Krstić and they agreed that he should go to Vlasenica that day to report.<sup>5777</sup>

1921. Prior to **Pandurević**'s return to the Zvornik Brigade command, on 14 September, according to PW-168, Obrenović received information about a telegram regarding the delivery of five tonnes of fuel for Milorad Trbić.<sup>5778</sup> This was an unusual procedure as the Brigade would normally have only two tonnes of fuel reserve.<sup>5779</sup> Obrenović therefore called the duty officer at the Drina Corps to follow up but the latter "had no idea" about the matter.<sup>5780</sup> A few minutes later, Obrenović received a call from **Popović**, who asked how he knew about the fuel, to which Obrenović replied that he had heard about it from the Zvornik Brigade duty officer.<sup>5781</sup> **Popović** responded that "the duty officers messed things up and that they had no clue", after which the conversation ended.<sup>5782</sup> Later that day, the Zvornik Brigade received a Main Staff order approving 5,000 litres of D-2 Diesel for engineering works for Captain Trbić.<sup>5783</sup> There is evidence that on 16 September, Obrenović spoke

<sup>5775</sup> Ex. 7DP00379, "Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995", p. 119; Ex. 7DP00378, "Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996", pp. 121–122; PW-168, T. 15921–15923 (closed session) (27 Sept 2007), T. 17190–17191 (closed session) (31 Oct 2007); Miodrag Dragutinović, T. 12721–12723, 12727–12728 (15 June 2007); Vinko Pandurević, T. 31202 (10 Feb 2009).

<sup>5776</sup> PW-168, T. 15924 (27 Sept 2007); Vinko Pandurević, T. 31208–31209 (10 Feb 2009). **Pandurević** testified that he was not engaged with any matters of the Zvornik Brigade upon his return. Vinko Pandurević, T. 31208–31209 (10 Feb 2009). Additionally, according to **Pandurević**, on 16 September, he was not in command of the Zvornik Brigade because he was still commander of the 2nd Drina Brigade. Vinko Pandurević, T. 32302–32303 (2 Mar 2009).

<sup>5777</sup> Vinko Pandurević, T. 32273–32274 (27 Feb 2009). According to **Pandurević**, during their conversation, Krstić did not say anything about the operation to rebury the executed prisoners. Vinko Pandurević, T. 32276–32277 (27 Feb 2009).

<sup>5778</sup> PW-168, T. 15921–15922 (closed session) (27 Sept 2007), T. 17006 (closed session) (26 Oct 2007).

<sup>5779</sup> *Ibid.*, T. 15921 (closed session) (27 Sept 2007).

<sup>5780</sup> *Ibid.*, T. 15921 (closed session) (27 Sept 2007), T. 17006 (closed session) (26 Oct 2007).

<sup>5781</sup> *Ibid.*

<sup>5782</sup> *Ibid.*, T. 15921 (closed session) (27 Sept 2007).

<sup>5783</sup> *Ibid.*, T. 15921 (closed session) (27 Sept 2007), T. 17006 (closed session) (26 Oct 2007); Ex. P00041, "Main Staff Order on assignment of fuel, type-signed Mladić, 14 Sept 95"; Ex. P00042, "VRS Main Staff Order No. 10/34/2-3-701, issuing 5,000 litres of D-2 diesel fuel, type-signed Zarko Ljubojević, 14 Sept 1995". See also Ex. 3D00217, "Excerpt from exhibit P379 - Duty Officer's Notebook for 27Jul-29Oct95 - Entry for 14 Sep 95" (noting receipt of the telegrams concerning the fuel order). Although the Main Staff order (Ex. P00041) states the fuel be delivered to the Standard Barracks in Zvornik, to "Captain Milorad Trpić", PW-168 confirmed this was most likely a typographical error by the teleprinter operator and that it should read Captain Milorad Trbić. PW-168, T. 15922 (closed session) (27 Sept 2007). The Prosecution also noted a translation error on the English version of Ex. P00041: the first two lines of the order read "General Staff of the Army of Republica Srpska", where it should read "Main Staff of the Army of Republica Srpska". PW-168, T. 15922 (closed session) (27 Sept 2007).

to Pandurević and informed Pandurević about fuel order from 14 September for Milorad Trbić,<sup>5784</sup> to which **Pandurević** replied that he would look into the matter when he went to the Drina Corps Command in Vlasenica later that day.<sup>5785</sup> In accordance with this account, upon returning from the Drina Corps Command later that day, **Pandurević** told Obrenović that **Popović** “and his people” were going to carry out reburials and that the fuel was for that assignment.<sup>5786</sup> According to **Pandurević**, however, no such conversations between Obrenović and himself occurred on 16 September, nor did he go to Vlasenica that day.<sup>5787</sup> According to **Pandurević**’s account, on the evening of 16 September, he saw Obrenović at the brigade command, but Obrenović did not mention any fuel to him at that point.<sup>5788</sup> The Trial Chamber notes that there is conflicting evidence as to whether a conversation took place between Obrenović and Pandurević about the fuel order as well as to whether Pandurević went to Vlasenica on 16 July. With respect to the reburial operation, the Trial Chamber recalls its finding that reburial is not a crime under the Statute.<sup>5789</sup> In the Trial Chamber’s view, it is thus unnecessary to make a finding on whether or not these events occurred.

1922. On the morning of 17 September, **Pandurević** went to the Standard Barracks.<sup>5790</sup> According to **Pandurević**, he had planned to report to Krstić in Vlasenica that day but when he arrived at the

<sup>5784</sup> PW-168, T. 15921 (closed session) (27 September 2007).

<sup>5785</sup> *Ibid.*, T. 15921–15922 (closed session) (27 Sept 2007); T. 17006–17007 (closed session) (26 Oct 2007).

<sup>5786</sup> *Ibid.*, T. 15922 (closed session) (27 Sept 2007). *See also* Ex. 7D00770, “Vehicle log for Nisan T-2175” (recording a trip from Zvornik to Vlasenica on 16 September). In reference to this entry in the vehicle log, **Pandurević** said, “When I arrived in Zvornik on the 16th, I talked to Krstić and there was an agreement that I should go to Vlasenica that day to report to him about what the brigade had been doing and that is why the driver wrote down this route. If you look at the mileage, you will see that the 100 kilometres it would take me to travel from Zvornik to Vlasenica and back are not factored in. So I didn’t go to Vlasenica that day; if you do the calculation, you’ll see that”. Vinko Pandurević, T. 32274 (27 Feb 2009).

<sup>5787</sup> Vinko Pandurević, T. 31209–31210 (10 Feb 2009); T. 32273–32274, 32276–32277 (27 Feb 2009). **Pandurević** also asserts that Obrenović was not at the Standard Barracks when **Pandurević** returned with his unit from the Krajina as Obrenović was visiting the battalions all day. Vinko Pandurević, T. 31211, 31223 (10 Feb 2009). *See also* Miodrag Dragutinović, T. 12724 (15 June 2007); 7DP00379, “Zvornik Brigade Duty Officer Notebook for period 27-07-95 through 29-10-95”, p. 120 (recording “Obren in the 7th and headquarters support teams in the 2nd pb”); Ex. 7D00261, “Work of Vehicle, Machine and Generator Log” (recording a trip made in a Mercedes driven by Ljubiša Danojlović from Zvornik to Memići and then back to Zvornik); Ex. 7D00670 (confidential) (this Zvornik Brigade regular combat report for 16 September 1995 states that “[a] team of officers from the Brigade Command is inspecting the 2nd pb, in order to assess overall conditions in the unit, and particularly the functioning of RiK/command and control/. The Brigade Commander inspected the position of the 7th pb defence area in Staro Selo.”). In regard to this entry in the Zvornik Brigade Duty Officer Notebook, **Pandurević** stated that the “7th battalion was in Memici, and Obrenovic was also very often referred to as just Obren.” Vinko Pandurević, T. 31212 (10 Feb 2009). With respect to the vehicle log, it is noted that Ljubiša Danojlović was Obrenović’s driver during the war. PW-168, T. 16770 (closed session) (23 Oct 2007), T. 16607 (closed session) (19 Oct 2007). Interpreting the cited portion of the 16 September combat report, PW-168 confirmed that the brigade commander referred to in the cited entry was Obrenović. PW-168, T. 17191–17192 (31 Oct 2007).

<sup>5788</sup> Vinko Pandurević, T. 31209–31210 (10 Feb 2009), T. 32271 (27 Feb 2009) (private session). **Pandurević** said that he was not told anything about the fuel “because it wasn’t anything that concerned the Zvornik Brigade.” Vinko Pandurević, T. 32277 (27 Feb 2009). It appears that, according to **Pandurević**’s account, he learned of the fuel order and discussed the matter of reburials with Obrenović in November, when Obrenović returned to the Zvornik Brigade after commanding a unit in the Krajina. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32315 (2 Mar 2009).

<sup>5789</sup> *See supra*, para. 1032.

<sup>5790</sup> Vinko Pandurević, T. 31210–31211 (10 Feb 2009). *See also* PW-168, T. 15924 (closed session) (27 Sept 2007). **Pandurević** spent the night of 16 July in Celopek. Vinko Pandurević, T. 31209 (10 Feb 2009).

Standard Barracks on the morning of 17 July he was informed by the duty officer that he should call Krstić on the phone before he headed for Vlasenica.<sup>5791</sup> Subsequently, at around 9 a.m., **Pandurević** reported on the phone to Krstić and asked for ten days leave and told Krstić that if there was no pressing need for him to go to Vlasenica, he would rather not travel there.<sup>5792</sup> Krstić granted both requests.<sup>5793</sup> After the telephone conversation with Krstić, **Pandurević** went back to Čelopek, booked accommodations in Montenegro, and departed with his girlfriend the morning of 18 September.<sup>5794</sup>

(xv) 25–27 September 1995

1923. According to the Prosecution, **Pandurević** returned to the Zvornik Brigade command and resumed his duties on 25 September.<sup>5795</sup> According to this account, on 25 September, **Pandurević** went to the Drina Corps Command in Vlasenica, met with Krstić, and held a briefing with the Zvornik Brigade battalion commanders and “core members of the command”.<sup>5796</sup>

<sup>5791</sup> Vinko Pandurević, T. 31210 (10 Feb 2009). See also Ex. 7DP00379, “Zvornik Brigade Duty Officer Notebook for period 27-07-95 through 29-10-95”, p. 122 (recording “Lieutenant-Colonel **Pandurević** to not go to Vlasenica, Inform General /illegible/ not to go to Vlasenica in the afternoon”). In explaining this entry in the notebook, **Pandurević** said, “I was supposed to go to Vlasenica on the 17th to meet with the General Krstić. However, the general or somebody on his behalf, but it says here as reported by general that I should call the general before I left and that I should not go there in the afternoon, which means that although I did talk to the general, I did not meet with him face to face. I did not go to Vlasenica on that day.” Vinko Pandurević, T. 31214 (10 Feb 2009).

<sup>5792</sup> Vinko Pandurević, T. 31210–31211 (10 Feb 2009). See also PW-168, T. 15924 (closed session) (27 Sept 2007). During his telephone conversation with Krstić, **Pandurević** briefed Krstić, informing him that “the Brigade had accomplished its task, that the troops had been redistributed to their original garrisons”. Vinko Pandurević, T. 31210 (10 Feb 2009).

<sup>5793</sup> Vinko Pandurević, T. 31210 (10 Feb 2009). See also Ex. 7DP00379, “Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995”, p. 122.

<sup>5794</sup> Vinko Pandurević, T. 31211 (10 Feb 2009).

<sup>5795</sup> Prosecution Final Brief, para. 1524. PW-168 testified that **Pandurević** returned to the Zvornik Brigade on 25 September 1995. PW-168, T. 16608-16610 (closed session) (19 Oct 2007). In support of its argument regarding **Pandurević**’s return on this date, the Prosecution also points to: Ex. P02926, “Zvornik Brigade Regular Combat Report No. 06-298, type-signed Vinko Pandurević, 25 Sept 1995” (recording that the “commander” went to the Drina Corps Command and presented a report); Ex. P02929, “Intercept, 25 Sept 1995, 15:40 hours” (intercepted conversation in which **Pandurević** indicates that he physically present at the Zvornik Brigade Command). There is also an intercept, dated 23 September, in which Captain Petrović from the Zvornik Brigade advised Krstić that **Pandurević** was to return to the Zvornik Brigade on Monday evening (25 September) and Krstić ordered Petrović to tell **Pandurević** to come to see him (Krstić) at seven o’clock on Monday (25 Sept). Ex. P04294, “Intercept, 23 Sept 1995, 19:25 hours”.

<sup>5796</sup> Ex. P02926, “Regular Combat Report from the 1st Zvornik Infantry Brigade to the Drina Corps Command, signed by Pandurević, 25 Sept 1995”; PW-168 T. 16607–16608 (closed session) (19 Oct 2007) (testifying that on 25 September, Obrenović attended a briefing held by **Pandurević** at the Corps Command in Vlasenica). The regular combat report for 25 September notes that at 3 p.m., “the Brigade Commander, having returned from the Corps where he presented his report, held a meeting with the ... core members of the command”. Ex. P02926, “Regular Combat Report from the Zvornik Brigade to the Drina Corps Command, signed by Pandurević, 25 Sept 1995”. However, according to **Pandurević**, this statement in the report refers to Obrenović, who had visited Vlasenica that day. Vinko Pandurević, T. 32350 (2 Mar 2009); Ex. 7D00261, “VWL September – Danojlović Ljubiša, Mercedes” (entry for 25 September, Zvornik-Vlasenica-Zvornik); PW-168, T. 16607 (closed session) (19 Oct 2007) (confirming that Obrenović did go to Vlasenica on 25 September). The Prosecution submits that the Zvornik Brigade transportation records indicate that two vehicles from the Zvornik Brigade Command made trips to Vlasenica on 25 September. See Ex. 7D00261, “VWL September – Danojlović Ljubiša, Mercedes”; Ex. P04405, “Vehicle log for Mercedes P-4687 for 17-30 September 1995”. The Prosecution thus argues that both **Pandurević**

1924. Contrary to the Prosecution's account, **Pandurević** testified that he did not go to the Standard Barracks on 25 September and instead returned to the Standard Barracks on 26 September 1995.<sup>5797</sup> According to **Pandurević**, on 25 September, he called the Brigade Command and received a message that Krstić had ordered him to cut short his leave and return.<sup>5798</sup> After receiving the message, **Pandurević** left Montenegro and returned to Zvornik.<sup>5799</sup> In the afternoon, **Pandurević** used the telephone in a friend's apartment in Zvornik to call Krstić and was connected to Krstić through the switchboard at the Standard Barracks to give the impression that he was present at the Brigade command.<sup>5800</sup> **Pandurević** said that in this conversation, he pretended that "Legenda" was with him.<sup>5801</sup> **Pandurević** did not want to travel to Vlasenica that day, so he pretended that he was back at the Standard Barracks and busy.<sup>5802</sup>

1925. Having assessed all of the evidence, the Trial Chamber finds that **Pandurević** returned to the Standard Barracks on 25 September. In reaching this finding, the Trial Chamber finds particularly relevant the evidence that Krstić ordered **Pandurević** to return to the Brigade on 25 September as well as intercepted conversation on 25 September between **Pandurević** and Krstić. In the view of the Trial Chamber, **Pandurević** would not have lied to Krstić about his presence at the

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and Obrenović went to Vlasenica on 25 September. On 25 September, Obrenović travelled to Vlasenica in preparation of taking the command of a new unit, the 2nd Drinski Brigade. He was driven by his driver Ljubiša Danojlović. PW-168, T. 16607–16608 (closed session) (19 Oct 2007); Ex. 7D00261, "VWL September – Danojlović Ljubiša, Mercedes - BCS version".

<sup>5797</sup> Vinko Pandurević, T. 31229–31230 (10 Feb 2009). *See also* Ex. 7DP02925. "Zvornik Brigade Command Roster for Sept 1995" (with **Pandurević** listed as entry 31 in BCS version). This record of the presence of personnel in the command of the Zvornik Brigade for September 1995 records an S (free) for **Pandurević** for all the days from 17 to 25 September. Ex. 7DP02925. "Zvornik Brigade Command Roster for Sept 1995"; Vinko Pandurević, T. 31234 (11 Feb 2009). On 26 September, a cross appears in the record, denoting that **Pandurević** had returned to the command and was occupying his post. Ex. 7DP02925. "Zvornik Brigade Command Roster for Sept 1995" (with **Pandurević** listed as entry 31 in the BCS version); Vinko Pandurević, T. 31234 (11 Feb 2009). According to **Pandurević**, his pre-trial brief is erroneous to the extent it appears that he was claiming to have been in command of the Zvornik Brigade on 25 September. Vinko Pandurević, T. 32302–32303 (2 Mar 2009). In support of his account that he did not return to the command on 25 September, **Pandurević** pointed out an entry in the Duty Officer Notebook which he alleges shows him calling the Brigade Command that day after 3 p.m. from his friend's home and leaving the telephone number. Vinko Pandurević, T. 32350–32352 (2 Mar 2009); Ex. 7DP00379, "Zvornik Brigade Duty Operations Officer Notebook, covering 27 July to 29 Oct 1995", p. 137.

<sup>5798</sup> Vinko Pandurević, T. 31223 (10 Feb 2009).

<sup>5799</sup> *Ibid.*

<sup>5800</sup> *Ibid.*, T. 31225–31227 (10 Feb 2009), T. 32295–32297 (2 Mar 2009); Ex. P02929, "Intercept, 25 Sept 1995 at 15.40 hours".

<sup>5801</sup> Vinko Pandurević, T. 31229 (10 Feb 2009), T. 32297–32298 (2 Mar 2009).

<sup>5802</sup> *Ibid.*, T. 31229 (10 Feb 2009), T. 32299 (2 Mar 2009). An intercepted conversation on 23 September between Krstić and Captain Milisav Petrović, Chief of Communications at the Zvornik Brigade, shows that Krstić wanted **Pandurević** to go and see him on 25 Sept at 7:00. *Ibid.*, T. 32279–32281 (27 Feb 2009); Ex. P04294, "Intercept, 23 Sept 1995 at 19.25 hours". **Pandurević** was shown vehicle logs that the Prosecution alleged showed that he had made a trip to Vlasenica on 25 September. **Pandurević** described why that was not a correct interpretation of the vehicle logs, saying "You see that the handwriting is the same on the whole page [of the vehicle log], and this is Ljubiša Danojlović's handwriting, and you can see that this is Dragan Obrenović's signature, not mine. And nowhere in this travel log do you see Bogdan Pandurević's handwriting. He was a possible reserve. That's why his name was recorded here, as a possible reserve driver." Vinko Pandurević, T. 32301–32302 (2 Mar 2009); Ex. 7D00261, "Work of vehicle, machine and generator log"; Ex. P04405, "Vehicle log for Mercedes P-4687, 17 – 30 Sept 1995".

Brigade command. The Trial Chamber, however, notes that the date of his return to the Standard Barracks in September is of little relevance to the ultimate determination of **Pandurević's** responsibility.

1926. Around 9 a.m. on 26 September, **Pandurević** went to the Standard Barracks.<sup>5803</sup> He met briefly with Obrenović, who was preparing for his command of a new brigade.<sup>5804</sup> Obrenović left around noon on 26 September, together with the unit of the Drina Corps he was to command in the Krajina.<sup>5805</sup> Subsequently, **Pandurević** took up the regular duties as commander, including talking to the officers of the Staff and the operatives and becoming informed of the situation in the Brigade.<sup>5806</sup>

<sup>5803</sup> Vinko Pandurević, T. 31229–31230 (10 Feb 2009).

<sup>5804</sup> *Ibid.*, T. 31230 (10 Feb 2009); Ex. 7DP00378, “Zvornik Brigade Duty Officer Logbook, 12 February 1995 to 3 January 1996”, p. 127. On 26 September 1995, General Krstić ordered Obrenović to go to the Krajina. A unit of the Drina Corps was formed; Krstić designated Obrenović as its commander and sent him to the Krajina as part of the 1<sup>st</sup> Krajina Corps. PW-168, T. 15925 (closed session) (27 Sept 2007), T. 16788 (closed session) (23 Oct 2007); Ex. 7DP00158, “Drina Corps Command Order, signed by Krstić, 26 Sept 1995”.

<sup>5805</sup> Vinko Pandurević, T. 31230 (10 Feb 2009); PW-168, T. 15925 (closed session) (27 Sept 2007), T. 16610 (closed session) (19 Oct 2007), T. 17193–17195 (closed session) (31 Oct 2007); Miodrag Dragutinović, T. 12732–12734 (15 June 2007); Ex. 7DP00158, “Drina Corps Command Order, signed by Krstić, 26 Sept 1995”.

<sup>5806</sup> Vinko Pandurević, T. 31238–31240 (11 Feb 2009). Two briefings were held at the Brigade, one on the 26 September and another on 27 September. Ex. P7D00680, “Regular Combat Report from Zvornik Brigade Command to Drina Corps Command, signed by Pandurević, 26 September 1995”, para. 2 (noting that the Brigade Commander held a briefing for the Battalion Commanders and Artillery Battalion Commanders); Ex. 7DP00379, “Zvornik Brigade Duty Operations Officer Notebook, 27 July 1995 to 29 Oct 1995”, p. 140 (noting a briefing held by **Pandurević** for the Battalion Commanders and Artillery Battalion Commanders on 27 September); Vinko Pandurević, T. 31239–31240 (11 Feb 2009), T. 32304 (2 Mar 2009). *See also* Miodrag Dragutinović, T. 12733–12734 (15 June 2007). According to **Pandurević**, a few days after he returned to the Brigade on 26 September, he learned “that some trucks had passed through Zvornik and that these trucks were carrying some sort of material which left behind an unbearable stench”. Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304–32305 (2 Mar 2009). He discussed this information with Dragutinović, who told him that the trucks had probably been transporting corpses and that this had happened during the night and the local citizens were upset by this. Vinko Pandurević, T. 31242 (11 Feb 2009), T. 32304–32305 (2 Mar 2009). Dragutinović said the operation had lasted for five or six days. Vinko Pandurević, T. 31244 (11 Feb 2009), T. 32304–32305 (2 Mar 2009). **Pandurević** asked whether the brigade had been assigned any task or issued any order in relation to this transportation but Dragutinović denied any involvement of the Zvornik Brigade in this operation. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32278 (27 Feb 2009). According to Pandurević, he also asked Dragan Jokić if the Zvornik Brigade engineering unit or any other Zvornik Brigade unit was involved in the reburial, but Jokić denied that the Zvornik Brigade was involved and said that he had seen Autotransport company lorries carrying bodies. Vinko Pandurević, T. 32278 (27 Feb 2009). **Pandurević** did not discuss this issue in detail with anyone else, nor did he undertake any investigation. Vinko Pandurević, T. 31243 (11 Feb 2009). Additionally, according to **Pandurević**, after Obrenović returned from the Krajina in late October 1995, **Pandurević** asked whether him had been informed of the reburials. Vinko Pandurević, T. 31243 (11 Feb 2009). According to **Pandurević's** account, Obrenović told him that just before **Pandurević's** return from the Krajina, Obrenović had been at the Corps Command in Vlasenica and became aware that Mladić personally approved fuel for the relocation of corpses, and that the Engineers Battalion of the Drina Corps participated. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32315 (2 Mar 2009). Obrenović also told **Pandurević** that the operation “was being conducted by the very top, the highest authorities in the army and that no task had been issued to the [Brigade] in that respect”. Vinko Pandurević, T. 31243 (11 Feb 2009), T. 32315 (2 Mar 2009). **Pandurević** undertook no further investigation. Vinko Pandurević, T. 31243–31244 (11 Feb 2009). **Pandurević** testified that he thought that it was better for him not to get “mixed up in it in any way”. Vinko Pandurević, T. 31243–31244 (11 Feb 2009). **Pandurević** had no direct information as to who was in charge of the exhumation and reburials but he concluded that it was the Security Organs, because, as **Pandurević** testified, “no tasks had been issued to any of the commands for them to pass the orders down the chain of command and deal with this matter.” Vinko Pandurević, T. 31244 (11 Feb 2009).

1927. There is evidence that on 26 September, **Popović** came to the Zvornik Brigade with a large map asking for **Pandurević** and **Nikolić**.<sup>5807</sup> Obrenović confirmed their presence and **Popović** went upstairs.<sup>5808</sup> Given the timing of the visit and the fact that, according to PW-168, **Pandurević** had previously told Obrenović on 16 September that **Popović** would carry out the reburials, PW-168 assumed **Popović** was at the Zvornik Brigade Headquarters to discuss this matter.<sup>5809</sup> The Trial Chamber, however, cannot reach a conclusion as to whether **Popović** met **Pandurević** on this date and if so, what was discussed at such a meeting.

(d) Findings

1928. While specific references are provided in relation to the findings below, the Trial Chamber notes that these findings are based upon all of the relevant evidence.

(i) Murder

a. The Joint Criminal Enterprise to Murder

1929. The Trial Chamber will begin with an examination of **Pandurević**'s alleged participation in the JCE to Murder. The Trial Chamber has found that in July 1995 a plurality of persons acted in support of a common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.<sup>5810</sup> The first two elements required for a finding of liability through participation in a JCE have thus been satisfied. The Trial Chamber will now turn to the third element: participation of the accused in the common purpose.

1930. The Trial Chamber recalls that in order for **Pandurević** to incur liability pursuant to the first category of JCE, he must have participated in the common purpose of the JCE, *i.e.*, to murder the able-bodied Bosnian Muslim males from Srebrenica. In order to satisfy this element, **Pandurević** must have shared the intent with other members of the JCE to Murder to carry out the common purpose and must have significantly contributed to that common purpose.

i. Knowledge of the Common Purpose

1931. The Trial Chamber will first examine whether **Pandurević** knew of the common purpose. The Trial Chamber has found that the plan to murder the able-bodied Bosnian Muslim males from

<sup>5807</sup> PW-168, T. 15925–15926 (closed session) (27 Sept 2007).

<sup>5808</sup> *Ibid.*, T. 15926 (closed session) (27 Sept 2007).

<sup>5809</sup> *Ibid.*, T. 15921–15922 (closed session), 15926 (closed session) (27 Sept 2007).

<sup>5810</sup> *See supra*, para. 1072.

Srebrenica was in place as of the morning of 12 July 1995, and that in the days following 12 July the plan was expanded.<sup>5811</sup> On the evening of 12 July, **Pandurević** attended a meeting with Mladić, Krstić, Živanović, and other VRS commanders at the Bratunac Brigade Headquarters.<sup>5812</sup> The Prosecution alleges that at this meeting, **Pandurević** would have learned of the plan to kill the able-bodied Bosnian Muslim males who had been separated in Potočari and were detained in Bratunac.<sup>5813</sup> However, there is insufficient evidence for the Trial Chamber to find that the murder operation was discussed or mentioned at the meeting.<sup>5814</sup> In addition, there is no evidence that the murder plan was otherwise communicated to **Pandurević** at this time. Therefore, the Prosecution has failed to establish that **Pandurević** became aware of the common purpose at the meeting on 12 July.

1932. The Prosecution further alleges that by the evening of 13 July, **Pandurević** knew that the murder plan included thousands of Bosnian Muslim men who had been taken prisoner by that time.<sup>5815</sup> This allegation is based on a telephone conversation on the evening of 13 July, during the course of which **Nikolić** indicated to Obrenović that **Pandurević** was already informed about the plan to bring a large number of Bosnian Muslim prisoners to Zvornik, where they would be executed pursuant to an order from Mladić.<sup>5816</sup> There is no other evidence which indicates that **Pandurević** was aware of the plan at this time. The Trial Chamber finds that the several layers of hearsay underlying this statement make it insufficiently reliable to establish that, by this point, **Pandurević** knew of the common plan to murder.

1933. On the morning of 15 July at the Krivače IKM, **Pandurević** met with Krstić, who ordered **Pandurević** to return to Zvornik.<sup>5817</sup> The Prosecution alleges that at this meeting, Krstić would have informed **Pandurević** that the murder operation was being carried out in the Zvornik area by, *inter alia*, elements of the Zvornik Brigade.<sup>5818</sup> The Prosecution argues that at this time Krstić knew of the murder operation and knew that prisoners had been brought to Zvornik to be executed.<sup>5819</sup> According to the Prosecution, in briefing **Pandurević** on the situation faced by the Zvornik Brigade, Krstić thus would not only have informed him of the threat posed by the Bosnian Muslim column but also of the “security threat and the demand of the Zvornik Brigade’s resources—both in

<sup>5811</sup> See *supra*, paras. 1051–1052.

<sup>5812</sup> See *supra*, para. 1855.

<sup>5813</sup> Prosecution Final Brief, paras. 1355-1356, 1387-1388. Generally, the only evidence presented on the content of the meeting was that at this time Mladić praised his commanders on the success in Srebrenica and ordered the units to proceed towards Žepa. See *supra*, para. 1855.

<sup>5814</sup> See *supra*, para. 1855.

<sup>5815</sup> See Prosecution Final Brief, paras. 1389-1392.

<sup>5816</sup> *Supra*, paras. 470, 1345. See also Prosecution Final Brief, para. 1390.

<sup>5817</sup> *Supra*, para. 1859.

<sup>5818</sup> Prosecution Final Brief, paras. 1393-1404.

<sup>5819</sup> Prosecution Final Brief, paras. 1393, 1403-1404.

men and materials—caused by the murder operation.”<sup>5820</sup> While **Pandurević** agreed that at the time of their meeting on 15 July, Krstić probably knew about the execution of the Bosnian Muslim prisoners, he denied that Krstić said anything to him regarding the prisoners.<sup>5821</sup> While the timing of and the participants in this meeting support a reasonable inference that the killings were discussed, this is not the only possible reasonable inference. Given the urgent circumstances concerning the column, the conversation may well have been limited to the military action. This is what **Pandurević** asserted in his testimony.<sup>5822</sup> In light of the totality of the evidence, including his testimony, the Trial Chamber is not satisfied that **Pandurević** acquired knowledge of the common purpose at this meeting on 15 July.

1934. There is conflicting evidence as to whether a conversation between **Pandurević** and Obrenović occurred upon **Pandurević**'s return to the Standard Barracks around 12 p.m. on 15 July. The Trial Chamber has considered the evidence before it as to what, if anything, Obrenović told **Pandurević** on 15 July regarding the guarding, execution, and burial of prisoners in the Zvornik municipality. It is a significant question as it directly relates to the knowledge that **Pandurević** had on 15 July about the execution of prisoners. Several pieces of evidence are relevant to this question, including the two versions of events testified to by PW-168 and **Pandurević**, the Borovčanin Statement, the evidence of Eileen Gillece and her investigative note to file, the 92 *quater* evidence of Ljubo Bojanović, and **Pandurević**'s 15 July Interim Combat Report. The Trial Chamber has carefully examined the evidence in its totality keeping in mind that the burden of proof rests on the Prosecution and that **Pandurević** need only raise a reasonable doubt as to his knowledge.

1935. The evidence of PW-168 and **Pandurević** is in direct conflict. According to PW-168, upon **Pandurević**'s arrival at the Standard Barracks, Obrenović received a call from the Zvornik Brigade reception area informing him that **Pandurević** had entered the building.<sup>5823</sup> Obrenović then stepped out of his office, where the meeting between him and other officers was already underway, and intercepted **Pandurević** in the corridor of the first floor.<sup>5824</sup> They greeted each other and talked halfway down the corridor, opposite the operations office.<sup>5825</sup> Obrenović first conveyed to **Pandurević** that pursuant to Mladić's order, **Beara** and **Popović** had brought a large number of

<sup>5820</sup> Prosecution Final Brief, para. 1398.

<sup>5821</sup> Vinko Pandurević, T. 31476–31477 (13 Feb 2009), T. 32194 (26 Feb 2009). In reference to this meeting with Krstić, **Pandurević** further stated that at that point there was no tactical or military reason for him to be informed of such activities which were unconnected to the combat operations. *Ibid.*, T. 32195–32196 (26 Feb 2009).

<sup>5822</sup> See Vinko Pandurević, T. 31476–31477 (13 Feb 2009), T. 32194–32196 (26 Feb 2009).

<sup>5823</sup> PW-168, T. 15878–15879 (closed session) (26 Sept 2007).

<sup>5824</sup> *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

<sup>5825</sup> *Ibid.*, T. 15879 (closed session) (26 Sept 2007).



prisoners from Bratunac to the Zvornik sector, where they were executing them.<sup>5826</sup> Obrenović also told **Pandurević** that earlier, when Obrenović came back from the field, Jokić had informed him that there were enormous problems with the guarding, execution, and burial of prisoners.<sup>5827</sup> **Pandurević** then asked why the Civilian Protection was not performing the burials.<sup>5828</sup> Obrenović did not know about that and just shrugged in response.<sup>5829</sup> Obrenović then told **Pandurević** that **Borovčanin** and Vasić were waiting in Obrenović's office with some other officers, so instead of going to **Pandurević**'s office they went to Obrenović's office.<sup>5830</sup>

1936. Contrary to PW-168's account, however, **Pandurević** denied that any such conversation occurred in the hallway.<sup>5831</sup> According to **Pandurević**, when he arrived at Standard Barracks on 15 July, he instead went immediately to the office of the Chief of Staff, Obrenović, and did not see or speak to Obrenović in the corridor.<sup>5832</sup>

1937. Additionally, although no evidence was given as to the subject matter of the discussion, according to the evidence of Bojanović, admitted under Rule 92 *quater*, a conversation between Obrenović and **Pandurević** took place on 15 July at the Kitovnice IKM, just prior to the drafting of the Interim Combat Report.<sup>5833</sup> However, both **Pandurević** and Obrenović denied such a meeting or conversation<sup>5834</sup> and there is no corroborative evidence of Bojanović's untested evidence on the point. As an explanation, **Pandurević** indicated that the conversation with Obrenović at the IKM actually took place on 16 July and Bojanović must have been confused as to the date.<sup>5835</sup> **Pandurević** testified that it was at this time – on the evening of 16 July – that he and Obrenović first had a conversation about the prisoners and executions.<sup>5836</sup> However **Pandurević**'s recounting

<sup>5826</sup> PW-168, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007), T. 16538–16539 (closed session) (18 Oct 2007).

<sup>5827</sup> *Ibid.*, T. 15879 (closed session) (26 Sept 2007), T. 15886 (closed session) (27 Sept 2007), T. 16538–16539 (closed session) (18 Oct 2007).

<sup>5828</sup> *Ibid.*, T. 15879 (closed session) (26 Sept 2007).

<sup>5829</sup> *Ibid.*

<sup>5830</sup> *Ibid.*, T. 15879–15880 (closed session) (26 Sept 2007).

<sup>5831</sup> Vinko Pandurević, T. 31366–31367 (12 Feb 2009). **Pandurević** testified that when he arrived at Standard Barracks he “immediately went up to the first floor where [his] office was and also the office of the Chief of Staff.” Vinko Pandurević, T. 30958 (2 Feb 2009). **Pandurević** further described his arrival as follows: “In front of me was my escort, the soldier escorting me, and at the steps in front of the office of the operations duty officer, he stopped and I went on down the corridor towards my office [...] There was nobody else in the corridor at that point in time [...] Since my job was urgent, I went straight to the office of the Chief of Staff.” *Ibid.*, T. 30958 (2 Feb 2009).

<sup>5832</sup> Vinko Pandurević, T. 30958, 30964 (2 Feb 2009), T. 31486 (16 Feb 2009).

<sup>5833</sup> See Ljubo Bojanović, Ex. P03135, “confidential – 92 *quater* transcript”, BT. 11724, 11728 (8 July 2004) (first testifying that the conversation between **Pandurević** and Obrenović lasted 30 to 45 minutes, and later changing it to 45 minutes to one hour).

<sup>5834</sup> See Vinko Pandurević, T. 31586–31587 (17 Feb 2009) (explaining that Bojanović was elderly, liked to drink, and just got the date of the conversation wrong); PW-168, T. 17002–17004 (closed session) (26 Oct 2007) (testifying that Bojanović was mistaken and that on the afternoon and evening of 15 July, Obrenović was at the command post of the 4th Battalion in Baljkovica and was not at the IKM).

<sup>5835</sup> Vinko Pandurević, T. 31586–31587 (17 Feb 2009).

<sup>5836</sup> *Ibid.*, T. 31375 (12 Feb 2009).

of the content of that discussion varies considerably from what PW-168 alleged that Obrenović told **Pandurević** on 15 July.<sup>5837</sup>

1938. Bearing in mind the burden of proof, the Trial Chamber considers first the Prosecution case on this issue of **Pandurević**'s knowledge of the prisoners in the area of Zvornik on 15 July, which rests significantly on the evidence of PW-168.

1939. [REDACTED]<sup>5838 5839 5840</sup>

1940. Contextually, PW-168's account of the conversation and its timing is plausible in the circumstances, given that the information was important because of the security implications for the Zvornik Brigade. It is difficult to conceive that an experienced Chief of Staff such as Obrenović would fail to immediately mention the detention and execution of prisoners to the Commander upon his return from a period of absence, even when the Security Branch was in charge of the operation. Even if the column of the ABiH 28th Division was the central priority and the involvement of the Zvornik Brigade with the prisoners was limited, the security threat alone posed by those prisoners, destined for execution, was a matter requiring the Commander's urgent attention and awareness. **Pandurević** himself in his 15 July Interim Combat Report corroborates this in so far as he alludes to issues arising from the detention of prisoners in the Zvornik area.<sup>5841</sup>

1941. **Pandurević** challenged PW-168 with statements from other purported<sup>5842</sup> participants in the 15 July meeting who did not describe Obrenović leaving the office to meet **Pandurević** in the corridor upon his return to the Standard Barracks around 12 p.m. that day. PW-168, however, repeatedly and firmly maintained his account of what happened.<sup>5843</sup> None of the witnesses whose

<sup>5837</sup> See *supra*, paras. 1879–1881. Specifically, according to PW-168's account, on 15 July, Obrenović gave **Pandurević** only brief information, particularly informing him that prisoners had been brought to the area pursuant to Mladić's order in order to be executed and that there were problems with the detention, execution, and burial of these prisoners. By contrast, according to **Pandurević**'s account of the 16 July conversation, Obrenović provided him with several pieces of information about the murder operation, including details about a few locations where he had heard that prisoners had been held and executed, some involvement of the Zvornik Brigade in burials, and **Nikolić**'s request for military police to assist him in waiting for the arrival of prisoners on the evening of 13 July. Additionally, according to **Pandurević**'s account, Obrenović specifically told him that he had no knowledge that any member of the Zvornik Brigade had participated in the executions. See *supra*, paras. 1879–1881.

<sup>5838</sup> [REDACTED]

<sup>5839</sup> [REDACTED]

<sup>5840</sup> [REDACTED]

<sup>5841</sup> The Trial Chamber is satisfied that in the first part of the sentence of the fourth paragraph of the report, the statement “[a]n additional burden for us is the large number of prisoners distributed throughout schools in the brigade area” refers to the security issues arising from the detention of prisoners. See Ex. P00329, “Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995”.

<sup>5842</sup> While PW-168 confirmed Vasić's presence at the meeting, he did not remember whether Zoljić was present. PW-168, T. 15872 (closed session) (26 Sept 2007), T. 16523–16524 (closed session) (17 Oct 2007). **Borovčanin** did indicate that Zoljić was present. Ex. P02853, “Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 Mar 2002”, p. 105.

<sup>5843</sup> See PW-168, T. 16528–16538 (closed session) (18 Oct 2007).

statements were put to PW-168 were called *vive voce* before the Trial Chamber, nor were their statements or transcripts tendered pursuant to Rule 92 *bis*.<sup>5844</sup> The Trial Chamber has also considered **Borovčanin**'s account as contained in his interview but finds it to be vague and ambivalent on the matter at issue.<sup>5845</sup> In these combined circumstances, the Trial Chamber does not consider that there is evidence before it which raises a reasonable doubt as to PW-168's assertion that Obrenović met with **Pandurević** in the corridor before they both entered the general meeting underway in Obrenović's office.

1942. The Trial Chamber also notes that there are two key pieces of evidence which corroborate PW-168's evidence that critical information about the prisoners and the executions was conveyed to **Pandurević** by Obrenović on 15 July prior to the writing of the Interim Combat Report. These two pieces of evidence include **Pandurević**'s 15 July Interim Combat Report itself and the evidence of Eileen Gilleece.

1943. The Trial Chamber has reviewed the 15 July Interim Combat Report in detail, paragraph by paragraph, and in its totality. The Trial Chamber has also considered the evidence of the various witnesses who have commented on it, including **Pandurević** himself.

1944. In the fourth paragraph of the 15 July Interim Combat Report, **Pandurević** states: "An additional burden for us is the large number of prisoners distributed throughout the schools in the brigade area, as well as obligations of security and restoration of the terrain."<sup>5846</sup> The Prosecution submits that the "additional burden" referred to by **Pandurević** in this paragraph includes, first, the burden of guarding or securing the prisoners at the schools ("obligations of security") and, second, the burden of burying the dead prisoners ("restoration of the terrain" or "*asanacija terena*").<sup>5847</sup>

1945. **Pandurević** denied that this was the meaning of the Interim Combat Report and proffered an alternative explanation for the content of his report. **Pandurević** argues that the mention of the "additional burden" with respect to prisoners placed in schools throughout the area does not relate to the subsequent mention of "obligations of security and restoration of the terrain" and thus that

<sup>5844</sup> See Ex. 7D00699 (confidential); Ex. 7D00693 (confidential).

<sup>5845</sup> See Ex. P02853, "Transcript of OTP Interview of Ljubomir Borovčanin, 11 and 12 Mar 2002", pp. 103, 104. **Borovčanin** explained that on 15 July, he, Vasić, Obrenović and some Zvornik Brigade officers were present at a meeting at the Standard Barracks. According to **Borovčanin**, during the meeting, he and the others "asked [Obrenović] whether he was in a position to contact the person who gave him such order [regarding the column] in order to present [...] the situation better and maybe change that, and [Obrenović] telephoned someone and [Borovčanin] heard him [...] presenting [their proposal] and [Obrenović] returned and said 'I have exact orders to close this line,' and during that conversation Lieutenant Colonel Pandurević arrived." *Ibid.*, p. 103. **Borovčanin** also later stated that **Pandurević** "appeared" during the meeting. *Ibid.*, p. 104. The Trial Chamber considers these statements from **Borovčanin**'s interview to be unclear and vague on the specific point as to whether Obrenović left the room at any time and whether he did so to greet Pandurević.

<sup>5846</sup> Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

this paragraph does not refer to the burden of guarding and burying of prisoners.<sup>5848</sup> According to **Pandurević**, the reference to “additional burden” refers to the fact that the local Serb population were concerned by the presence of prisoners in their midst and may contact the soldiers on the lines.<sup>5849</sup> Further, **Pandurević** argued that there is a grammatical link between the word “*obezbedjenje*” and the word “*terena*” and thus in the report it must be read as “*obezbedjenje terena*”, thus describing an operation in the field not guarding of prisoners.<sup>5850</sup> According to **Pandurević**, in using this term in the 15 July Interim Combat Report, he was referring to the “extra personnel required for the operations of clearing up the battle field and the support and protection of his units in the field.”<sup>5851</sup> Additionally, according to **Pandurević**, the term “*asanacija*” is used in the report to refer, not to the burying of prisoners, but to the obligation to protect and sanitize the combat area, which would include “the rescue and removal of wounded during combat, the removal of dead bodies during combat, as well as the removal of dead and wounded once the battle is over, and the clearing up of harmful and hazardous waste.”<sup>5852</sup> According to **Pandurević**, this term thus refers to such activities in connection to the combat situation with respect to the Muslim column in the area of Baljkovica at the time.<sup>5853</sup>

1946. The Trial Chamber has assessed this evidence being vigilant to the fundamental principle that **Pandurević** need only raise another reasonable interpretation and that the burden of proof rests with the Prosecution.

1947. The Trial Chamber accepts, as argued by **Pandurević**, that the linguistic evidence adduced establishes that the last phrase of paragraph four—transcribed in English as “obligations of security”—should be read together in interpretation of the word “*asanacija*” with the result that “obligations of security” and “restoration” both relate to the word “terrain”. In accordance with this construction, the entire phrase “obligations of security and restoration of the terrain” thus describes an activity related to the terrain or ground. While accepting this grammatical construction of this sentence in paragraph four, the Trial Chamber does not accept that this phrase, “obligations of security and restoration of the terrain”, as it is used in the context of the report is a reference to operations related to the battlefield as submitted by **Pandurević**.

<sup>5847</sup> Prosecution Final Brief, paras. 1434–1436.

<sup>5848</sup> Vinko Pandurević, T. 30992 (2 Feb 2009), T. 32208–33209 (27 Feb 2009).

<sup>5849</sup> *Ibid.*

<sup>5850</sup> Pandurević Final Brief, paras. 763–764.

<sup>5851</sup> *Ibid.*, para. 765. **Pandurević** submits that the use of the term “obligations of security” of the terrain in the report referred specifically to such combat activities undertaken by the R Battalion, not to securing prisoners. Vinko Pandurević, T. 31008 (2 Feb 2009). *See also* Pandurević Final Brief, paras. 766–771.

<sup>5852</sup> Pandurević Final Brief, paras. 752, 756. *See also* Vinko Pandurević, T. 30994 (2 Feb 2009).

<sup>5853</sup> Pandurević Final Brief, paras. 753–756. *See also* Vinko Pandurević, T. 30994 (2 Feb 2009). In this respect, **Pandurević** also expressed that evacuating wounded soldiers from the battlefield required “at least two or three

1948. The Trial Chamber is satisfied that the fourth paragraph of the 15 July Interim Combat Report is a self-contained section dedicated to the subject of the prisoners. In the view of the Trial Chamber, there is no other reasonable interpretation of this paragraph. Paragraphs three and four are completely distinct, dealing with two separate subject matters—the battle situation with the column (paragraph 3) and the prisoners (paragraph four). Even according to the most favourable translation of paragraph four to the benefit of the Accused, it is simply not reasonable to conclude that a paragraph which begins with reference to the additional burden of prisoners somehow reverts—in mid sentence—to security obligations and the need for restoration of the terrain connected to the combat situation. The Trial Chamber finds that in the first part of the sentence of paragraph four of the 15 July Interim Combat Report, **Pandurević** is cryptically referring to the additional burden for the Brigade of guarding prisoners as well as the security concerns caused by the presence of those prisoners in Zvornik.<sup>5854</sup> The Trial Chamber further finds that in the second part of the sentence of that paragraph, **Pandurević** is referring to the burden to the Brigade of assisting with the burial of the prisoners who had been brought by others to the Zvornik area for execution.<sup>5855</sup> The 15 July Interim Combat Report alone, on its face, is thus strong evidence that on 15 July, **Pandurević** was aware not only of prisoners but also of executions in the Zvornik area.

1949. In the view of the Trial Chamber, the 15 July Interim Combat Report not only evidences **Pandurević**'s knowledge but also corroborates PW-168's evidence as to the information that Obrenović conveyed to **Pandurević** on 15 July. According to PW-168, Obrenović recounted that prisoners had been brought to the Zvornik area for execution and that Jokić, Chief of Engineering for the Zvornik Brigade, had reported that there were problems with securing and burying them. This parallels the main points in paragraph 4 of the 15 July Interim Combat Report, with the exception of the reference to the schools, and is consistent with Obrenović being the main, though not exclusive, source of information for the critical paragraph. In so far as the schools are concerned, according to PW-168, this did not come from Obrenović.<sup>5856</sup> On this point, **Pandurević** and PW-168 appear to agree that this particular piece of information came from another source—

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soldiers who are fit to take him to the field hospital and therefore you have fewer men to be used in fighting, so this is certainly a burden." *Ibid.*, T. 30994–30995 (2 Feb 2009).

<sup>5854</sup> See Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995" ("An additional burden for us is the large number of prisoners distributed throughout the schools in the brigade area [...]").

<sup>5855</sup> See Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995" ("[...] as well as obligations of security and restoration of the terrain").

<sup>5856</sup> PW-168, T. 16552 (18 Oct 2007).

specifically, according to **Pandurević**, from Branko Grujić, the President of the SDS party in Zvornik, when Grujić visited him at the IKM in the afternoon of 15 July.<sup>5857</sup>

1950. In addition to the 15 July Interim Combat Report, there is the evidence of Eileen Gilleece. It is evident that the interview conducted by Gilleece was irregular in nature and did not conform to appropriate rules of procedure in many respects.<sup>5858</sup> In this respect, the Trial Chamber notes that the interview was not recorded on audio or video tape, that there were possible difficulties with respect to the interpreter and proper translations during the interview, and that **Pandurević** was never offered the opportunity to read, comment on, correct, or sign Gilleece's notes, either at the time of the interview or at the time of its conversion into the investigative note to file ("Gilleece Investigative Note").<sup>5859</sup> Additionally, in the Gilleece Investigative Note, there are clear instances of mistakes in the terminology used, the way in which some matters are described, and mistakes in relation to dates.<sup>5860</sup> As a result, every statement contained therein must be carefully scrutinized in the context of the surrounding circumstances of the interview.

1951. However, the striking reality remains that Gilleece knew virtually nothing of the factual circumstances surrounding the Srebrenica investigation.<sup>5861</sup> She claimed no knowledge of the key individuals within the VRS or the Zvornik Brigade at that time, their positions or relationships. It is this complete lack of knowledge which makes the following sentence in the Gilleece Investigative Note so compelling in its probative value: "On the 15th of July, Pandurević received information from the Chief of Staff that a number of POWs were put in Zvornik Municipality by the Supreme Command and Corps."<sup>5862</sup>

1952. [REDACTED]<sup>5863 5864</sup>

<sup>5857</sup> Vinko Pandurević, T. 30983 (2 Feb 2009). *See also* PW-168, T. 16552–16553 (18 Oct 2007); Miodrag Dragutinović, T. 12805 (18 June 2007). In particular, Grujić during this visit asked **Pandurević** "how come there were prisoners in some schools on the territory of Zvornik municipality," mentioning the schools in Petkovci and Pilica. Vinko Pandurević, T. 30983 (2 Feb 2009); *see supra*, para. 1865.

<sup>5858</sup> *See* Vinko Pandurević, T. 31268–31270, 31282–31283 (11 Feb 2009); Eileen Gilleece, T. 6736, 6744, 6748, 6751–6752 (1 Feb 2007).

<sup>5859</sup> *See* Vinko Pandurević, T. 31268–31271, 31282–31283 (11 Feb 2009). The Investigative Note was prepared by Gilleece based on handwritten notes, taken contemporaneously by Gilleece and military analyst Robert Cooper during the meeting with Živanović and **Pandurević**. Eileen Gilleece, T. 6736–6737 (1 Feb 2007).

<sup>5860</sup> *See* Eileen Gilleece, T. 6755–6757 (1 Feb 2007). *See also* Vinko Pandurević, T. 31274–31279, 31382, 31285–31287 (11 Feb 2009). Apparent inaccuracies and mistakes in her note include, for example, that she notes that **Pandurević** described **Beara** as "Head of Security for the Supreme Headquarters of the Corps" and she attributes **Pandurević** with saying "the zone of intelligence has no other zone of attack", although this is clearly nonsensical. Ex. 7D01154a, "Investigative notes of an interview with Milenko Živanović and Vinko Pandurević (redacted)", pp. 3–4.

<sup>5861</sup> *See* Eileen Gilleece, T. 6726, 6744 (1 Feb 2007).

<sup>5862</sup> Ex. 7D01154a, "Investigative notes of an interview with Milenko Živanović and Vinko Pandurević (redacted)", p. 3.

<sup>5863</sup> [REDACTED]

<sup>5864</sup> [REDACTED]

1953. Those pieces of evidence, along with PW-168 direct testimony, taken together, satisfy the Trial Chamber as to **Pandurević**'s knowledge on 15 July. **Pandurević**'s testimony to the contrary, as will be discussed below, under close scrutiny, fails to raise a reasonable doubt in this regard.

1954. Through his testimony, **Pandurević** has proffered an alternative version of events.<sup>5865</sup> The Trial Chamber has carefully considered this evidence bearing in mind the burden of proof. For the reasons detailed below, the Trial Chamber finds significant problems with **Pandurević**'s evidence which—taken together—prevent it from raising a reasonable doubt as to his knowledge.

1955. First, there is his testimony as to the source and nature of the information upon which **Pandurević** based paragraph four of the 15 July Interim Combat Report. It is **Pandurević**'s position that he first learned of the presence of prisoners in schools from Grujić on the afternoon of 15 July.<sup>5866</sup> Even affording the most favourable interpretation to him in terms of a translation,<sup>5867</sup> the Trial Chamber notes that **Pandurević** recounts more information in the report than what he allegedly received from Grujić. According to **Pandurević**'s account, however, Grujić was essentially his only source for the information referenced in the 15 July Interim Combat Report. **Pandurević** also testified that later on 15 July, he also spoke to Bojanović about the prisoners, approximately one hour before the report was drafted.<sup>5868</sup> In the view of the Trial Chamber, even accepting this account by **Pandurević**, Bojanović ultimately added nothing to what Grujić had said, other than corroborating that buses with prisoners had at least passed through the Zvornik area.<sup>5869</sup>

1956. According to **Pandurević**, Grujić said that he had learnt from his party activists in the local communes that there were prisoners in some schools on the territory of the Zvornik municipality and this had created concerns in the local communities.<sup>5870</sup> However, there was no mention by Grujić of numbers other than a reference to two schools,<sup>5871</sup> thus, raising the question as to where the reference in the 15 July Interim Combat Report to a “large number of prisoners” came from. Further, Grujić was a local politician, a civilian, with no first hand knowledge, relating minimal information obtained from others about “prisoners” in the area. He provided no details as to the circumstances of the detention of these prisoners and, most significantly, he apparently said nothing

<sup>5865</sup> See *supra*, paras. 1936–1937.

<sup>5866</sup> See *Pandurević* Final Brief, para. 114.

<sup>5867</sup> See *supra*, fn. 5610.

<sup>5868</sup> See *supra*, para. 1866.

<sup>5869</sup> See *supra*, para. 1866.

<sup>5870</sup> See *supra*, para. 1865. When asked about his understanding regarding the presence of prisoners in schools, **Pandurević** stated, “I knew about their presence in schools based on what I had been told by Mr. Grujic, and I understood this to be a temporary place for them, especially when Ljubo Bojanović provided additional information, saying that he knew that buses passed by the barracks but that the Zvornik Brigade had not been given any task relating to them.” Vinko Pandurević, T. 32433–32434 (3 Mar 2009).

<sup>5871</sup> According to **Pandurević**, Grujić mentioned schools in Petkovci and Pilica. See *supra*, para. 1865.

about the role of the Zvornik Brigade with respect to them. Thus, based on the limited information from Grujić and Bojanović, how then does **Pandurević** conclude, as referenced in his report, that these prisoners constitute an “additional burden” to him and his troops.<sup>5872</sup>

1957. Furthermore, the Trial Chamber notes that **Pandurević** is a seasoned, intelligent army commander, well disciplined and familiar with his duties to his superior command. His 15 July Interim Combat Report, by his own account, was a brave act and, together with his 18 July Interim Combat Report, it was the sole instance up to that point of anyone bold enough to include a reference in writing to the prisoners.<sup>5873</sup> The tone of the fourth paragraph in the 15 July Interim Combat Report is strong and critical. In light of these considerations, in the view of the Trial Chamber, it thus strains credulity to accept that **Pandurević** would challenge his superiors in such a fashion on the basis of a single hearsay report, devoid of detail, conveyed to him by a civilian authority such as Grujić. Further, according to **Pandurević**’s own evidence, he would have known only that some prisoners were detained at schools in the area of Zvornik. The words and tone of the report—on every interpretation—convey a much more significant concern about security and the drain on resources than that which could be triggered by such limited information. Therefore, the Trial Chamber concludes that **Pandurević**’s evidence, considered in reference to the 15 July Interim Combat Report itself, is insufficient to raise a reasonable doubt as to source or nature of his knowledge on 15 July.

1958. [REDACTED]<sup>5874 5875</sup>

1959. Assessing the evidence cumulatively, the Trial Chamber is ultimately satisfied beyond all reasonable doubt that on 15 July **Pandurević** was told by Obrenović about the detention, execution, and burial of prisoners in the Zvornik area as described by PW-168.

1960. Based on the information conveyed to him by Obrenović, **Pandurević** thus knew that pursuant to Mladić’s order, **Beara** and **Popović** had brought a large number of prisoners from Bratunac to Zvornik where they were being executed, and that according to Jokić, there were

<sup>5872</sup> The opening part of the paragraph about the situation of the prisoners reads an additional burden “for us”, which the Trial Chamber concludes refers thus to **Pandurević** and his Brigade. See Ex. P00329, “Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995”.

<sup>5873</sup> See Pandurević Final Brief, paras. 804–806. The Trial Chamber recalls that PW-168 testified that Jokić had told Obrenović that **Popović** had ordered that nothing be written down or reported on the subject of the prisoners. PW-168, T. 16550–16551 (closed session) (18 Oct 2007), T. 15871 (26 Sept 2007). See also Richard Butler, T. 20819 (31 Jan 2008) (in reference to **Pandurević**’s 15 and 18 July Interim Combat Reports, stating “they’re extremely explicit documents in what they describe with respect to the prisoners” and confirming that he had not found any other written reports, made before 23 July 1995, which refer so explicitly to the prisoners as these two reports by **Pandurević**).

<sup>5874</sup> [REDACTED]

<sup>5875</sup> [REDACTED]



enormous problems with the guarding, execution and burial of these prisoners.<sup>5876</sup> In light of this knowledge on the part of **Pandurević**, the Trial Chamber therefore finds that at this point on 15 July he knew of the plan to murder the able-bodied Bosnian Muslim males from Srebrenica.

1961. With regard to the conversation between Obrenović and **Pandurević** on 15 July, the Trial Chamber notes that according to PW-168's account, in response to Obrenović's information about the murder operation, **Pandurević** asked him why the Civilian Protection was not performing the burials.<sup>5877</sup> The Prosecution submits that this response by **Pandurević** demonstrates that **Pandurević** already had knowledge of the murder operation prior to his return to Zvornik on 15 July.<sup>5878</sup> However, the Trial Chamber is not satisfied that there are no other reasonable inferences that can be drawn from this response by **Pandurević** and therefore will not infer such prior knowledge on the part of **Pandurević** based on his response to Obrenović.

1962. The Prosecution also alleges that **Pandurević**'s statement "I will be forced to let them go"<sup>5879</sup> in the 15 July Interim Combat Report indicates that on 15 July he knew that some of the Bosnian Muslim prisoners in the area of Zvornik were still alive and that he "had the ability and opportunity to save them, but deliberately chose not to."<sup>5880</sup> According to **Pandurević**, however, his reference in the report to being forced to "let them go" meant the column of the ABiH 28th Division, and the terms "these problems" and "this responsibility" referred only to the column, and not to prisoners.<sup>5881</sup>

1963. Having considered the 15 July Interim Combat Report and evidence relevant to it, the Trial Chamber finds that the reference to "let them go" in **Pandurević**'s report refers to the column of the ABiH 28th Division and not the prisoners.<sup>5882</sup> In reaching this finding, the Trial Chamber notes that this sentence is found in paragraph five of the report, separate from the self-contained comments in paragraph four, which the Trial Chamber has found refer to the situation of the prisoners. Paragraph five begins with a reference to the inability of the Command to take care of these "problems" anymore.<sup>5883</sup> In the view of the Trial Chamber, this is a summary sentence referring to all of the

<sup>5876</sup> See *supra*, para. 1861.

<sup>5877</sup> See *supra*, para. 1861.

<sup>5878</sup> Prosecution Final Brief, para. 1415.

<sup>5879</sup> In the 15 July Interim Combat Report, paragraph five states "This command cannot take care of these problems any longer as it has neither the material nor other resources. If no one takes on this responsibility I will be forced to let them go." Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

<sup>5880</sup> Prosecution Final Brief, para. 1442. See also Prosecution Final Brief, paras. 1421, 1423.

<sup>5881</sup> Vinko Pandurević, T. 31009–30010 (2 Feb 2009); see also *ibid.*, T. 32213–32214 (27 Feb 2009). **Pandurević** also testified that at the time he wrote the Interim Combat Report, he did not know the number of prisoners nor how many schools they were at. *Ibid.*, T. 31010 (2 Feb 2009).

<sup>5882</sup> See *supra*, para. 1870.

<sup>5883</sup> Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995".

information conveyed above, most of which relates to the combat situation and the column. Additionally, the statement “I will be forced to let them go” in paragraph five is directly followed, in paragraph six, by a sentence on the subject of **Pandurević** having made an offer to Muminović concerning the column.<sup>5884</sup> In the view of the Trial Chamber, the sentence containing the reference to “let them go” is thus linked to and must be read in conjunction with this following sentence which clearly references the column.

1964. Furthermore, whatever **Pandurević**’s responsibilities may have been with respect to the prisoners, the evidence is abundant that another part of the VRS—the Security Branch—had brought them to the Zvornik area, leaving **Pandurević** with limited direct control over the prisoners. This is in stark contrast to the circumstances of the combat situation and the column. The Trial Chamber also recalls **Pandurević**’s testimony that “the tone of [his] entire report was set so as to enable [him] to say at the end that [he] would be forced to let the column go especially after the conversation that [he] had had with Semso Muminović.”<sup>5885</sup> Having assessed the 15 July Interim Combat Report in its totality, the Trial Chamber is of the view that **Pandurević**’s intention in the report was to build a case to justify his plan to open a corridor for the safe passage of the column. In these circumstances, the mention of ‘letting them go’ is a logical statement with reference to the column. Based on all of these considerations, the Trial Chamber is satisfied that paragraph five refers to the column and not to the prisoners. In light of this finding, the Trial Chamber therefore rejects the Prosecution’s allegation with regard to **Pandurević**’s alleged knowledge, based on the statement in this paragraph of the 15 July Interim Combat Report.

1965. In the days following his return on 15 July, **Pandurević** received additional information from individuals, including Obrenović and Jokić, about the events that had transpired in the Zvornik area with respect to the detention, execution, and burial of the Bosnian Muslim prisoners and the involvement of elements of the Zvornik Brigade in those events.<sup>5886</sup> Based on the information that was conveyed to him in this period, **Pandurević** came to know about detentions, executions, and burials in Pilica, Petkovci, Ročević, Orahovac, and Branjevo Military Farm.<sup>5887</sup> At the latest by late afternoon of 18 July, **Pandurević** also possessed greater knowledge of the scale of the murder operation, as illustrated by his reference to 3,000 Bosnian Muslim men that had been brought to the

<sup>5884</sup> In the 15 July Interim Combat Report, paragraph six states: “I made an offer to the commander of the other side to separate out the civilians and have the others surrender, but he refused asking that they should all be released together.” Ex. P00329, “Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995”.

<sup>5885</sup> Vinko Pandurević, T. 31011 (2 Feb 2009) (making this statement in explanation of why, in his report, he threatened to let the ABiH 28th Division go).

<sup>5886</sup> See *supra*, paras. 1879–1884, 1889, 1893.

<sup>5887</sup> See *supra*, paras. 1879–1881, 1883–1884, 1889.

area of Zvornik and allusion to their execution there in the 18 July Interim Combat Report.<sup>5888</sup> Ultimately, considering the extent of the information known by **Pandurević** by this time, the Trial Chamber is satisfied that on 18 July he was aware of the scale of the murder operation. The Trial Chamber notes that the extent of his knowledge of the murder operation is further confirmed by the content of his subsequent discussion with Obrenović on 23 July.<sup>5889</sup>

## ii. Intent to Carry Out the Common Purpose

1966. Having found that **Pandurević** was aware of the common purpose of the JCE to Murder, the Trial Chamber will now consider whether **Pandurević** possessed the requisite intent to carry out this common purpose. The Trial Chamber finds that there is simply no evidence to establish that **Pandurević** shared the intent, with other participants of the JCE, to commit the crimes that formed the object of the JCE. Not only is there an absence of acts or omissions by **Pandurević** or other evidence from which intent could be inferred, but there is also evidence which tends to negate the suggestion of any such intent on the part of **Pandurević** to carry out the common purpose. In particular, the Trial Chamber considers **Pandurević**'s opening of the corridor for the passage of the Bosnian Muslim column at Baljkovica, in contravention of the order from the Superior Command, and his efforts to send captured prisoners to the Batković detention centre or to have these prisoners exchanged, as acts which contradict the existence of any such intent.<sup>5890</sup>

1967. Although the Trial Chamber finds that **Pandurević** lacked the intent to carry out the common purpose of the JCE, the Trial Chamber will nevertheless briefly address the issue of any alleged contribution by **Pandurević** to that purpose.

## iii. Contribution to the Common Purpose

1968. With respect to **Pandurević**'s contribution to the common purpose, the Prosecution submits that upon his return to Zvornik on 15 July he was fully informed about the participation of members of his brigade in the detention, guarding, transport, murder, and burial of the Bosnian Muslim prisoners in the area of Zvornik.<sup>5891</sup> The Prosecution thus alleges that having this information, **Pandurević** authorised the further participation of elements of the Zvornik Brigade in the murder operation in the following days.<sup>5892</sup> The Prosecution also submits that **Pandurević** contributed to

<sup>5888</sup> See *supra*, para. 1895.

<sup>5889</sup> See *supra*, paras. 1908–1911.

<sup>5890</sup> See *supra*, paras. 1873–1874, 1892, 1898, 1902–1903, 1913.

<sup>5891</sup> Prosecution Final Brief, paras. 1413, 1415, 1421.

<sup>5892</sup> Prosecution Final Brief, paras. 1480, 1494. See also *ibid.*, paras. 1423, 1489–1491, 1495, 1496–1497.

the common purpose through the murder of a group of Muslims near Nezuk by a unit of the 16th Krajina Corps under his command, his role in the murder of the wounded prisoners from Milići Hospital, and his complicity in the murder of the four Branjevo Military Farm survivors.<sup>5893</sup>

1969. The Trial Chamber recalls that **Pandurević** was absent from Zvornik from 4 to 15 July. During this period, Obrenović was deputising for him and received orders from the Corps Command and acted upon them as well as issued orders to units of the Zvornik Brigade, without seeking the approval of, or consulting with, **Pandurević**.<sup>5894</sup> During his absence from Zvornik, **Pandurević** had minimal contact with the Brigade and there is no evidence that he was aware of the events transpiring in the Zvornik area, including the murder operation, let alone that he contributed to them.<sup>5895</sup>

1970. For the period of 15 to 23 July, after **Pandurević** had returned to the Zvornik Brigade and during which the vast majority of the remaining victims were executed and buried, there is no evidence before the Trial Chamber that **Pandurević** himself participated or that he ordered, authorised or otherwise approved the participation of his subordinates in the murder operation.

1971. The Prosecution submits that because of his knowledge of the murder operation and the involvement of his Brigade on 15 July, **Pandurević** can be considered to have “authorised” the continued participation of his troops and that this constituted a significant contribution to the JCE.<sup>5896</sup> The Trial Chamber has considered this argument. According to the jurisprudence, such authorisation can arise from commission or omission.<sup>5897</sup> As there is no evidence of any positive acts to authorise his troops’ involvement, the Trial Chamber has assessed the argument from the perspective of whether **Pandurević**’s knowledge and lack of action constitutes commission by omission in terms of a contribution to the JCE.

1972. The Trial Chamber recalls that **Pandurević** returned to the Zvornik Brigade headquarters on 15 July at noon, at which point he acquired some knowledge of the murder operation.<sup>5898</sup> Specifically, he was made aware that members of the VRS Security Organ had brought a large number of prisoners into the area to be executed. He was also informed obliquely of some

<sup>5893</sup> *Ibid.*, paras. 1498-1515. See also Indictment, paras. 30.13-30.15, 39(c).

<sup>5894</sup> PW-168, T. 16185–16186 (closed session) (10 Oct 2007). See also Miodrag Dragutinović, T. 12702 (15 June 2007) (testifying that while away from the Zvornik Brigade and commanding TG-1, **Pandurević** did not issue any orders to the Zvornik Brigade, nor was he notified of orders given by the superior command to the Zvornik Brigade); PW-168, T. 16049 (closed session) (9 Oct 2007), T. 16191–16193 (10 Oct 2007) (testifying that during **Pandurević**’s absence, Obrenović bore full responsibility for the units of the Zvornik that remained in its standard positions, *i.e.*, in the defence area in Zvornik). See also *supra*, paras. 1842, 1844, 1861.

<sup>5895</sup> See *supra*, paras. 1845–1846, 1960.

<sup>5896</sup> See Prosecution Final Brief, paras. 1468, 1480, 1494, 1540.

<sup>5897</sup> See *Blaškić* Appeal Judgement, paras. 663-664.

<sup>5898</sup> See *supra*, para. 1861.

involvement on the part of the Zvornik Brigade. However, having considered the precise information provided by Obrenović on 15 July, the Trial Chamber is not convinced that it was sufficient in itself or in combination with the information provided by Grujić, to find that at this point **Pandurević** knew that members of the Zvornik Brigade were committing or aiding and abetting crimes. Notably, he was neither told nor did he seek any specifics as to the involvement of the Zvornik Brigade in the murder operation, Brigade members' knowledge of the executions, or the particular responsibilities of his Chief of Security in the operation. While undoubtedly the information triggered his obligations under superior responsibility as will be discussed later, for the purposes of assessing his participation in the crimes and contribution to the JCE, the Trial Chamber is not satisfied that the knowledge requirement for commission by omission has been met. In essence, it cannot be said that at this point **Pandurević** knew that his men were committing crimes and he tacitly authorised their continuing participation.

1973. The Trial Chamber notes that, by his own account, on the evening of 16 July, during a conversation with Obrenović at the Kitovnice IKM, **Pandurević** became aware that members of the Zvornik Brigade had participated in guarding prisoners who had been detained in the Zvornik area and had participated in the burials of the executed prisoners.<sup>5899</sup> However, by the time at which **Pandurević** acquired this knowledge on the evening of 16 July, members of the Zvornik Brigade were no longer engaged in activities connected to the detention and execution of the prisoners in the area of Zvornik.<sup>5900</sup>

1974. With respect to the murder of the four Bosnian Muslim men near Nezuk on 19 July, the Trial Chamber has previously found that there is insufficient evidence to establish beyond reasonable doubt that members of the 16th Krajina Brigade, who were resubordinated to the Zvornik Brigade, were involved in the killings of the four men.<sup>5901</sup> Furthermore, there is no evidence that **Pandurević** had knowledge of these killings or in any way planned, instigated, ordered or otherwise aided and abetted in the planning, preparation or execution of the murder of the four men at Nezuk.

1975. With regard to the four Branjevo Military Farm survivors, the Trial Chamber recalls that it has found that **Nikolić** informed **Pandurević** of the capture of these four men and the fact that they

<sup>5899</sup> See *supra*, paras. 1879–1882. The Trial Chamber recalls that it has accepted **Pandurević**'s account of the occurrence and content of a conversation between himself and Obrenović on the evening of 16 July and has found that at this time, he acquired additional information, building upon the information he received previously on 15 July, about the murder operation carried out in Zvornik.

<sup>5900</sup> See *supra*, paras. 475–534.

<sup>5901</sup> See *supra*, para. 569.

were survivors of executions.<sup>5902</sup> Additionally, the Trial Chamber is satisfied that **Pandurević** and **Nikolić** met after the briefing to discuss these prisoners.<sup>5903</sup> However, as in the case of **Nikolić**, in the absence of evidence as to the content of their subsequent conversation or as to any actions by **Pandurević**, there is more than one possible inference that can be drawn as to **Pandurević**'s involvement in the killings.<sup>5904</sup> Thus, while the Trial Chamber has found that the four Branjevo Military Farm survivors were murdered,<sup>5905</sup> it is not satisfied beyond reasonable doubt that **Pandurević** was involved in their murder.

1976. The Trial Chamber has found *infra*, by majority, Judge Kwon dissenting, that **Pandurević** is responsible for aiding and abetting by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital around 23 July. The Trial Chamber has found **Pandurević** responsible due to his failure to take measures to prevent **Popović** from taking the prisoners away with the knowledge that **Popović** was involved in the murder operation and that the prisoners would thus probably be killed.<sup>5906</sup> The Trial Chamber, however, does not consider **Pandurević**'s omission in this respect to amount to a significant contribution by him to the common purpose of the JCE.

1977. With respect to **Pandurević**'s alleged contribution to the common purpose of the JCE, the Trial Chamber also recalls its finding that reburial is not a crime under the Statute. Moreover, in the case of **Pandurević** specifically, the evidence is insufficient to support a finding that he was involved in the reburial operation that was conducted in September and October 1995.<sup>5907</sup>

1978. Considering his lack of involvement in the murder operation, the Trial Chamber therefore finds that **Pandurević** did not significantly contribute to the common purpose to murder the able-bodied Bosnian Muslim males from Srebrenica.

<sup>5902</sup> See *supra*, para. 1912.

<sup>5903</sup> See *supra*, para. 1912.

<sup>5904</sup> See *supra*, para. 1912. The Trial Chamber in this regard also notes that there is no evidence linking **Pandurević** to the disciplinary measures initiated against the two men, Neško and Slobodan Đokić, who helped the four Bosnian Muslim men. With respect to such disciplinary measures, the Trial Chamber recalls that these two men were brought to the Standard Barracks to be interrogated in connection with their assistance to the four prisoners, and later **Nikolić** ordered Jeremić to draft an order on behalf of the Brigade Commander imposing a penalty of 60 days military imprisonment for the two men. See *supra*, para. 587. There is also a document signed by **Nikolić** for the detention of Neško and Slobodan Đokić for three days from 24 July 1995. See Ex. P00385, "Judgment against Neško and Slobodan Đokić (for aiding four Bosnian Muslim males)". However, there is no documentation directly linking the arrest and disciplinary measures to **Pandurević**. Additionally, with regard to **Nikolić**'s authority to issue such a detention, according to **Pandurević**, "[t]he security organ, acting *ex officio* and in compliance with their obligations according to the rules, estimated that this constituted cooperation with the enemy and punished these two men by imposing three days of -- in detention, and then submitted a criminal charge to the prosecutors. This did not require any authorisations either from the commander or from someone else." Vinko Pandurević, T. 32333 (2 Mar 2009). **Pandurević** further stated, "I don't remember at all punishing anyone for cooperating with the enemy. If there is any such order, I would really like to see it, but I don't remember doing any such thing." *Ibid.*

<sup>5905</sup> See *supra*, para. 589.

<sup>5906</sup> See *infra*, paras. 1988–1991.

<sup>5907</sup> See *supra*, paras. 1921, 1927, fn. 5806.

iv. Conclusion

1979. In light of **Pandurević**'s lack of intent to further the common purpose of the JCE and lack of significant contribution, the Trial Chamber finds that **Pandurević** was not a participant in the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica.

b. Other Modes of Liability

1980. The Prosecution also alleges that **Pandurević** committed, planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.<sup>5908</sup> The Trial Chamber has found that **Pandurević** had no intent to murder. In addition, there is no evidence before the Trial Chamber of any acts or omissions on his part that would constitute other Article 7(1) forms of responsibility, except for aiding and abetting which is discussed below, in relation to the crime of murder.

c. Aiding and Abetting the Murder of the Wounded Prisoners from Milići Hospital

1981. The Prosecution submits that **Pandurević** assisted in the execution of the ten wounded Bosnian Muslim prisoners from Milići Hospital, alleging that the removal of these prisoners from the Zvornik Brigade infirmary and their subsequent summary execution around 23 July were done with the knowledge and under the authority of **Pandurević**.<sup>5909</sup> In particular, the Prosecution argues that **Pandurević** failed to take measures to prevent these wounded prisoners in his custody from being taken away by **Popović**, although **Pandurević** knew that their lives were in danger in light of his knowledge that **Popović** had been involved in the murder operation.<sup>5910</sup> The Prosecution submits that **Pandurević** intentionally breached his duty to protect these wounded prisoners and was "compliant" with the orders to kill them.<sup>5911</sup>

1982. The Trial Chamber recalls that during the period in which members of the Zvornik Brigade were searching the terrain on 18 July and during the subsequent few days, **Pandurević** made arrangements for the transfer or exchange of prisoners taken into custody by his troops.<sup>5912</sup> On 23 July, **Pandurević** was in contact with the Drina Corps requesting instructions as to where to send or

<sup>5908</sup> Indictment, paras. 88–90.

<sup>5909</sup> Indictment, paras. 30.15, 39(c)(vi).

<sup>5910</sup> Prosecution Final Brief, paras. 1507–1508.

<sup>5911</sup> *Ibid.*, para. 1511.

<sup>5912</sup> *See supra*, paras. 1892, 1898, 1902–1903, 1913.

what to do with the wounded Bosnian Muslim prisoners in his custody.<sup>5913</sup> The Trial Chamber has previously concluded that **Pandurević** was informed later that day that **Popović** would come to take care of the situation of the wounded prisoners who were being held at the Zvornik Brigade.<sup>5914</sup> As previously found, the Trial Chamber is also satisfied that the wounded men were placed in the custody of **Popović** on 23 July and that **Popović** was responsible for the death of these ten men.<sup>5915</sup>

1983. Having considered the evidence of **Pandurević**'s conduct prior to the removal of the wounded prisoners, the Trial Chamber is satisfied that in requesting instructions and assistance with respect to these wounded prisoners, **Pandurević**'s intent was to arrange for them to be exchanged or transported to a camp in the same manner as other prisoners. Nothing in the circumstances surrounding his request—in particular the open way in which he dealt with the matter—suggests that he sought assistance in arranging for the murder of these prisoners. In reaching this conclusion, the Trial Chamber finds particularly relevant the evidence of **Pandurević**'s inquiry with the Drina Corps Command whether these prisoners could be exchanged or transferred to **Batković**.<sup>5916</sup> The Trial Chamber is thus not satisfied that **Pandurević** possessed the intent to murder the ten wounded Bosnian Muslim prisoners.

1984. In light of his lack of intent in this respect, the Trial Chamber will now turn to the issue of whether **Pandurević** aided and abetted the murder of the ten wounded Bosnian Muslim prisoners. In the case of **Pandurević**, there is no evidence before the Trial Chamber of any positive acts on his part that may have aided or abetted the murder of the wounded men. The Trial Chamber notes that nothing in the evidence shows that he was present at the clinic when the prisoners were taken away, or that he ordered their release into the custody of **Popović**.<sup>5917</sup> In fact, the evidence before the Trial Chamber is devoid of any detail as to the circumstances under which these men were removed from the Zvornik Brigade. However, the Trial Chamber must also consider if **Pandurević**'s conduct can properly constitute aiding and abetting by omission.

1985. The Trial Chamber recalls the jurisprudence that provides for aiding and abetting by omission.<sup>5918</sup> Specifically, where a person fails to discharge a legal duty and by this failure assists, encourages or lends moral support to the perpetration of a crime and has a substantial effect on the commission of that crime, he or she may be held criminally responsible.<sup>5919</sup> The person must have

<sup>5913</sup> See *supra*, paras. 1903–1904.

<sup>5914</sup> See *supra*, para. 1907.

<sup>5915</sup> See *supra*, para. 1156.

<sup>5916</sup> See *supra*, para. 1903.

<sup>5917</sup> See *supra*, paras. 1899–1901, 1903–1905.

<sup>5918</sup> See *supra*, para. 1019.

<sup>5919</sup> See *supra*, para. 1019.



the ability to act and must know the essential elements of the crime and that his or her omission assists the commission of the crime.<sup>5920</sup>

1986. The Trial Chamber will first address whether **Pandurević** had a legal duty to protect the ten wounded prisoners. As discussed earlier, around 20 July, the ten men were transferred to the clinic of the Zvornik Brigade, of which **Pandurević** was informed, and were held at the Brigade for several days.<sup>5921</sup> The Trial Chamber also recalls that following the arrival of these prisoners, **Pandurević** ordered Obrenović to inspect the security situation with respect to the prisoners and to put measures in place to secure them.<sup>5922</sup> Additionally, in the days they were held at the Brigade, the wounded prisoners were also guarded by Zvornik Brigade Military Police.<sup>5923</sup> Based on these facts, the Trial Chamber is thus satisfied that on 23 July the Zvornik Brigade had custody and control of the ten wounded prisoners from Milići Hospital who were being held at the Brigade. The Trial Chamber recalls that, in accordance with the laws and customs of war, all state agents who have custody of prisoners owe them a duty of protection.<sup>5924</sup> The Trial Chamber further notes that the duty to protect does not end with the transfer of custody to other units as an agent charged with the responsibility of prisoners has an ongoing duty in any hand-over to assure himself or herself that the prisoners will not be harmed.<sup>5925</sup> As the Commander of the Zvornik Brigade, **Pandurević** therefore had a duty to protect these prisoners and to treat them humanely and that duty did not end with their transfer into **Popović**'s custody.<sup>5926</sup>

1987. The Trial Chamber will now consider whether in the circumstances, **Pandurević** had an ability to act, such that there were means available to him to fulfill this duty. In the view of the Trial Chamber, upon learning that **Popović** was coming to deal with the prisoners, **Pandurević** could have intervened to protect them. Several options were open to him. Prior to **Popović**'s arrival, **Pandurević** could have arranged for the transfer of the prisoners himself and had them transported to a POW camp or another location for exchange. He could even have moved them temporarily to another facility in order to be able to advise **Popović** that they were no longer at the Brigade. **Pandurević** could also have taken the step of calling in the ICRC to register the men. **Pandurević** was present at the Standard Barracks throughout the day of 23 July, and thus he could have instructed the military police to inform him of **Popović**'s arrival. At that point, he could have told

<sup>5920</sup> See *supra*, paras. 1019–1020. See also *Ntagerura et al.* Appeal Judgement, para. 335.

<sup>5921</sup> See *supra*, paras. 1899, 1905.

<sup>5922</sup> See *supra*, para. 1899.

<sup>5923</sup> See *supra*, para. 1900.

<sup>5924</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 73. The Trial Chamber also recalls that breach of the duty to protect prisoners of war as imposed by the laws and customs of war may give rise to individual criminal responsibility. *Mrkšić and Šljivančanin* Appeal Judgement, para. 151. See also *supra*, para. 1019.

<sup>5925</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 74.

<sup>5926</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 74.

**Popović** that the men were no longer there or he could have simply exercised his power and authority as brigade commander to prevent **Popović** from taking custody of them. Based on these considerations, the Trial Chamber finds that **Pandurević** had the means to fulfil his duty towards the prisoners in his custody.

1988. The Trial Chamber finds that despite his ability to do so, **Pandurević** took no action to fulfill his duty towards the wounded prisoners on 23 July. By failing to act, upon learning of **Popović**'s impending arrival, and thus making it possible for **Popović** to take the prisoners, **Pandurević** assisted in the subsequent murder of the prisoners by **Popović**. The Trial Chamber therefore finds that **Pandurević**'s failure to discharge his legal duty to protect the wounded prisoners assisted in and substantially contributed to the murder of the ten men. The Trial Chamber is therefore satisfied that the requisite elements for the *actus reus* of aiding and abetting by omission have been met.

1989. The Trial Chamber will now consider whether **Pandurević** had the requisite *mens rea* for aiding and abetting the murder of the ten wounded prisoners. To incur criminal responsibility by way of aiding and abetting by omission, **Pandurević** had to know the essential elements of the crime to be committed and that his failure to act would assist the commission of that crime.<sup>5927</sup> By 23 July, he had knowledge of **Popović**'s key role in the execution of the Bosnian Muslim men who had been detained in the area of Zvornik. **Pandurević** had received information to this effect from Obrenović on 15 and 17 July.<sup>5928</sup> In light of **Pandurević**'s knowledge of **Popović**'s involvement in the murder operation, the Trial Chamber, by majority, Judge Kwon dissenting, finds that, upon learning that he would come to resolve the issue of the prisoners, **Pandurević** knew it was probable that the wounded prisoners would be murdered once they were transferred into **Popović**'s custody.

1990. Additionally, knowing that the killing of the prisoners was the probable outcome of their being taken into **Popović**'s custody, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Pandurević** must have also realised that, given his responsibility for the prisoners, if he failed to take action to ensure their continued protection, he would be assisting **Popović** to carry out the murders. The Trial Chamber, by majority, Judge Kwon dissenting, thus finds that the only reasonable inference is that **Pandurević** knew that it was probable the prisoners would be killed and that if he failed to act, his omission would assist in the murder of the prisoners. Accordingly, the requisite elements for the *mens rea* of aiding and abetting have been met.

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<sup>5927</sup> See *supra*, para. 1019.

<sup>5928</sup> See *supra*, paras. 1861, 1883.

1991. In light of the foregoing, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.

(ii) Forcible Transfer

a. The Joint Criminal Enterprise to Forcibly Remove

1992. The Trial Chamber will begin with an examination of **Pandurević**'s alleged participation in the joint criminal enterprise to forcibly remove. The Trial Chamber has found that there was a JCE to Forcibly Remove the Bosnian Muslim populations from Srebrenica and Žepa.<sup>5929</sup>

i. Knowledge of the Common Purpose

1993. The Trial Chamber will first assess whether **Pandurević** knew of the common purpose to forcibly remove the Bosnian Muslim populations from both enclaves. **Pandurević** knew of the 20 March 1995 Order from Živanović which was addressed to the Drina Corps Brigade Commands, including specifically that of the Zvornik Brigade.<sup>5930</sup> The 20 March Order reiterated the criminal objective described in Directive 7, stating “[b]y planned and well-thought out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica and Žepa”.<sup>5931</sup>

1994. Additionally, as Commander of TG-1, **Pandurević** received and read the two *Krivaja-95* Orders, which were issued to the brigade commands and defined the objectives and general tasks of the unit he was to command pursuant to the *Krivaja-95* operation.<sup>5932</sup> These orders expressly referred to Directive 7 and Directive 7/1 in outlining the tasks of the combat groups participating in the operation.<sup>5933</sup> Moreover, the *Krivaja-95* combat order specified that one of the objectives of the operation was “to create conditions for the elimination of the enclaves”,<sup>5934</sup> which the Trial Chamber has previously found refers to the goal expressed in Directive 7 to forcibly remove the civilian populations from the enclaves by creating a situation “with no hope of further survival or

<sup>5929</sup> See *supra*, para. 1087.

<sup>5930</sup> Vinko Pandurević, T. 30822 (29 Jan 2009). See also *supra*, para. 201.

<sup>5931</sup> Ex. P00203, “Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995”, p. 6. See also Vinko Pandurević, T. 30822 (29 Jan 2009) (confirming that in the spring of 1995 he received the Drina Corps order). Whether or not **Pandurević** knew earlier in 1992 or 1993 of Directive 4, the Trial Chamber is satisfied the relevant issue is whether he knew of the operation as of March 1995.

<sup>5932</sup> See *supra*, para. 1843.

<sup>5933</sup> See *supra*, paras. 244–245.

<sup>5934</sup> Ex. P00107, “Drina Corps Command Order 04/156-2, Operations Order No. 1 Krivaja 95, 2 July 1995”, para. 4.

life for the inhabitants of Srebrenica and Žepa.”<sup>5935</sup> Thus, although **Pandurević** may not have been specifically familiar with Directive 7 and its contents, it can be concluded that he nevertheless was aware of the criminal objective described in this document by virtue of his knowledge of the 20 March 1995 Order as well as the *Krivaja-95* Orders.

1995. Based on the aforementioned evidence, the Trial Chamber is satisfied that **Pandurević** had knowledge of the plan to forcibly remove the Bosnian Muslim population from the Srebrenica and Žepa enclaves.

ii. Intent to Carry Out the Common Purpose

1996. Having found that **Pandurević** had knowledge of the common purpose of the JCE, the Trial Chamber will now consider whether **Pandurević** shared the intent, with the other participants of the JCE, to carry out the common purpose to remove the Bosnian Muslim populations from Srebrenica and Žepa. The Trial Chamber will first address whether **Pandurević**'s intent to carry out the common purpose can be inferred from his participation in the attack on the enclaves. In assessing his intent, the Trial Chamber must be cognizant of the dual purpose of the *Krivaja-95* Operation as well as the military context in which **Pandurević** acted pursuant to the operation directed against Srebrenica. On one hand, the *Krivaja-95* Operation partly implemented the common plan of the JCE by creating circumstances that led to the forcible displacement of the Bosnian Muslim population of Srebrenica. However, the operation also had the legitimate military objective to secure the demilitarisation of the enclave. Thus, **Pandurević**'s actions during the attack were part of an operation that included a legitimate military aim, while at the same time supporting the plan to forcibly remove the Bosnian Muslim populations from the two enclaves.

1997. The Trial Chamber will now consider **Pandurević**'s acts with a view to assessing his intent. The Trial Chamber recalls that in the beginning of July 1995, **Pandurević** commanded TG-1 in the military attack on Srebrenica pursuant to the *Krivaja-95* Orders.<sup>5936</sup> During this combat operation, in the days leading up to the taking of the enclave, **Pandurević** and his TG-1 units took several features in the area around Srebrenica, thus assisting the VRS to control the boundaries of the enclave and prevent any communication between Srebrenica and Žepa.<sup>5937</sup> Additionally, during the course of these events, the forces under **Pandurević**'s command removed UNPROFOR soldiers from their OPs, including those at the Biljeg OP and another in the Zeleni Jadar sector.<sup>5938</sup> The Trial

<sup>5935</sup> Ex. P00005, “RS Supreme Command Directive 7, 8 March 1995”, p. 10.

<sup>5936</sup> See *supra*, paras. 1843–1851.

<sup>5937</sup> See *supra*, paras. 1847–1848.

<sup>5938</sup> See *supra*, para. 1847.

Chamber finds that the disabling of these UNPROFOR OPs was a further step towards enabling the VRS to take over the Srebrenica enclave and remove the civilian population of Srebrenica.

1998. On 10 and 11 July, **Pandurević** was ordered by Krstić to advance towards and take control of Srebrenica town, and pursuant to these orders, **Pandurević** and TG-1 continued their attack and captured features on the hills immediately surrounding Srebrenica town.<sup>5939</sup> Although the VRS forces shelled civilian targets in the town of Srebrenica during this period,<sup>5940</sup> there is no evidence before the Trial Chamber to attribute responsibility for the indiscriminate shelling of civilians specifically to **Pandurević**'s units.<sup>5941</sup> Ultimately, in the afternoon of 11 July, **Pandurević** and TG-1 entered Srebrenica town, and **Pandurević** walked through the town, which was empty at the time because the population had left, and there he would have seen the town as it presented itself.<sup>5942</sup>

1999. With respect to the military operation against Žepa, on 12 July, **Pandurević** was instructed to advance towards Žepa.<sup>5943</sup> On 13 July, while addressing the soldiers, Mladić ordered that the forces, including those of **Pandurević**, were to take the Žepa enclave.<sup>5944</sup> On 14 July, pursuant to the order from Krstić for *Stupčanica-95*, the military operation against the Žepa enclave, **Pandurević** and his forces launched an attack against the enemy forces several kilometres away from the village of Žepa.<sup>5945</sup> These combat activities continued the next morning.<sup>5946</sup> However, later in the morning of 15 July, **Pandurević** was ordered by Krstić to return to Zvornik, and thus he and his troops withdrew from the area, ceasing their involvement in the Žepa operation.<sup>5947</sup> In this respect, **Pandurević**'s participation in the attack on Žepa was very limited.

2000. Considering the acts described above cumulatively, one reasonable inference is that **Pandurević** participated in the military operation against Srebrenica in order to further the common purpose of forcibly removing the Bosnian Muslim population of the Srebrenica enclave. However, taking into account the legitimate military aspect of the *Krivaja-95* operation, an equally reasonable inference is that **Pandurević**, as a commander at the tactical level, carried out his orders and undertook the actions described above with the intent to achieve the military objective of defeating the ABiH 28th Division forces in both enclaves. To that end, the disabling of the OPs, while illegal, could potentially be considered to have been reasonably necessary for the legitimate military aim of

<sup>5939</sup> See *supra*, paras. 1849–1850.

<sup>5940</sup> See *supra*, paras. 253, 255, 257.

<sup>5941</sup> The Trial Chamber, however, is satisfied that from his position, **Pandurević** would have been aware of the shelling of the town and the extent of the shelling.

<sup>5942</sup> See *supra*, para. 1851.

<sup>5943</sup> See *supra*, paras. 1853–1855.

<sup>5944</sup> See *supra*, para. 1856.

<sup>5945</sup> See *supra*, para. 1858.

<sup>5946</sup> See *supra*, para. 1859.

<sup>5947</sup> See *supra*, para. 1859.

the operation.<sup>5948</sup> In this context, the Trial Chamber also notes that the majority of **Pandurević**'s military activities pursuant to the *Krivaja-95* Operation occurred prior to Karadžić's order for the VRS forces to take the town of Srebrenica.<sup>5949</sup> In light of these considerations, the Trial Chamber therefore finds that intent to carry out the common purpose cannot be inferred from **Pandurević**'s participation in the *Krivaja-95* Operation.

2001. Besides these military acts during the operation, as described above, there are no other acts by **Pandurević** from which to infer intent on his part to further the common purpose to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa. In particular, the Trial Chamber recalls that there is no evidence that **Pandurević** was involved in the planning to forcibly remove the Bosnian Muslim populations from the enclaves. The Trial Chamber also notes that there is no evidence that **Pandurević** and his TG-1 forces were involved in specifically targeting civilians during their participation in the attack on Srebrenica. Furthermore, **Pandurević** was not involved in the actual transfer of the Bosnian Muslim people from Potočari. There is also insufficient evidence that soldiers from TG-1 under **Pandurević**'s command participated in the transfer operation in Potočari. Several witnesses testified that they saw soldiers from the Drina Wolves in Potočari on 12 July.<sup>5950</sup> However, the only evidence before the Trial Chamber that suggests that these soldiers were involved in tasks in Potočari related to the "transportation of the women and children to Kladanj and the separation and detention of the able-bodied Muslim men"<sup>5951</sup> comes from Momir Nikolić.<sup>5952</sup> In light of the fact that his testimony on this point is uncorroborated and quite vague, the Trial Chamber is of the view that such evidence is insufficient to find that members of the Drina Wolves assisted in the separation and transportation of the Bosnian Muslims in Potočari.

2002. Besides arguing that his criminal intent can be inferred from his actions, the Prosecution also points to a report from April 1995 signed by **Pandurević** as additional evidence that he shared

<sup>5948</sup> The Trial Chamber recalls that there is evidence that the ABiH forces were positioned in the immediate vicinity or directly next to the UN OPs. *See supra*, fn. 5521.

<sup>5949</sup> *See supra*, paras. 252, 1846–1848.

<sup>5950</sup> *See* Momir Nikolić, T. 33012–33013 (22 Apr 2009); Ex. P02853, "Transcript of OTP Interview of Borovčanin, 11 and 12 Mar 2002", p. 18 (stating that he saw some of the Drina Wolves but had the impression they were passing through and later he found out that they had an assignment elsewhere); PW-100, T. 14810–14811 (5 Sept 2007) (stating that he saw members of the Drina Wolves at the DutchBat compound and on the left arm of the Drina Wolves' uniforms there was an insignia of a wolf's head); Dragoslav Trišić, T. 27069 (20 Oct 2008), T. 27110, 27119–27120 (21 Oct 2008) (stating that from the patches on the sleeves depicting the words "The Army of the Republika Srpska" with the insignia of the Drina Wolves, he concluded that a small number of soldiers were from the Zvornik Brigade. Shown Ex. 7D00063, "Photography of Military Insignia", he however could not recognise the insignia on the document).

<sup>5951</sup> Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", p. 2. *See also* Momir Nikolić, T. 33012 (22 Apr 2009).

<sup>5952</sup> *See supra*, fn. 1156.

the intent of the RS and VRS leadership to forcibly remove the Bosnian Muslim population from parts of eastern Bosnia.<sup>5953</sup> The relevant portions of the report are as follows:

The moment has come when the issue of liberating the Serbian lands from the *poturice*<sup>5954</sup> [...] will be finally resolved in the area by a resolute and successful action of our forces. [...] One should not be short-sighted and fail to see that precisely by doing this they have given us a unique chance to push them away from us for all time [...] The adequate response of our forces meant that we realised that there would be no peace and security in Semberija and Donje Podrinje until the *poturice* were completely defeated and driven out of this area. In the fight for a single Serbian territory, our response to the enemy offensive, enemy combat operations have been going on for one month in our Brigade's zone of responsibility. [...] Therefore, let us gather our strength with determination and focus it on the most important goal at the moment driving the enemy away from this area forever and defeating him.<sup>5955</sup>

2003. Although **Pandurević** admitted that he signed the document, he also testified that it was written by Nenad Simić, the Zvornik Brigade's Assistant Commander for Morale, Religious and Legal Affairs.<sup>5956</sup> According to **Pandurević**, he did not read the entire document but only glanced at it before signing it.<sup>5957</sup> **Pandurević** explained that he only glanced at the document because this was the practice for documents which were not directly related to combat activities.<sup>5958</sup> Ultimately, responsibility for this document lies in a formal sense with **Pandurević** as the signatory of the document and generally as the Commander of the Brigade from which it was produced.<sup>5959</sup> However, in the absence of additional information, **Pandurević** raised a reasonable doubt as to whether the document was in fact written by him and thus specifically reflected his own personal views. In addition, the Trial Chamber views the report as a propaganda document written for the purpose of strengthening the morale of the troops and thus finds the report to be unconvincing as evidence of **Pandurević**'s alleged intent in this respect. Accordingly, for the purposes of evaluating criminal responsibility, the Trial Chamber considers the report to be an insufficient basis on which to conclude that **Pandurević** possessed the necessary criminal intent to carry out the common purpose.

2004. The Prosecution also argues that **Pandurević**'s acts prior to July 1995 further evidence his intent to carry out the common purpose of the JCE.<sup>5960</sup> In this regard, the Prosecution has made submissions on the opening of a corridor by **Pandurević** for the passage of civilians in Kamenica in

<sup>5953</sup> See Ex. P02920, "Zvornik Brigade report, signed by Vinko Pandurević, 25 April 1995"; Prosecution Final Brief, paras. 1320-1322.

<sup>5954</sup> *Poturice* is a derogatory term for Slavic Muslims.

<sup>5955</sup> Ex. P02920, "Zvornik Brigade report, signed by Vinko Pandurević, 25 April 1995", pp. 1, 3.

<sup>5956</sup> Vinko Pandurević, T. 30832 (29 Jan 2009).

<sup>5957</sup> *Ibid.*, T. 30833 (29 Jan 2009). During his testimony, **Pandurević** also stated that it should never have been written and that he should not have signed it because "there are certain parts and sections that, as they are, should never have been included in this kind of report." *Ibid.*

<sup>5958</sup> Vinko Pandurević, T. 32046 (25 Feb 2009).

<sup>5959</sup> See *ibid.*, T. 32046-32047 (25 Feb 2009) ("Since my signature is here, I am responsible. [...] The commander is responsible in principle [for the content of the document]").

<sup>5960</sup> See Prosecution Final Brief, paras. 1281, 1285-1306, 1317-1319.

February 1993,<sup>5961</sup> the alleged shelling of civilians by **Pandurević**'s forces in 1993,<sup>5962</sup> the alleged destruction of a mosque in Konjević Polje<sup>5963</sup> and participation in the burning of houses by

<sup>5961</sup> Prosecution Final Brief, paras. 1285-1288. The Prosecution maintains that in early 1993, **Pandurević** participated in the VRS military operations in the Kamenica, Cerska and Konjević Polje areas pursuant to Directive 4 and the 24 November 1992 order. Prosecution Final Brief, para. 77. *See also* Ex. P04226, "Drina Corps Command Combat Order for the liberation of Kamenica, Cerska and Konjević Polje, signed by Živanović, 11 February 1993"; Ex. P03029, "Decision for further operations from the Drina Corps to Zvornik Light Infantry Brigade signed by Živanović, 24 November 1992"; Milenko Lazić, T. 21831 (5 June 2008) (testifying that "[i]t is obvious that the contents of item 1, one would say, stem out of the directive"); Richard Butler, T. 19681 (15 Jan 2008). The Prosecution further asserts that "[t]his campaign started with an attack at Kamenica, where a corridor was opened to facilitate the removal of the Muslim civilian population" and that opening the corridor helped implement Directive 4 and the 24 November 1992 order. Prosecution Final Brief, paras. 77, 1287. On 1 February 1993, during combat operations, **Pandurević** conveyed an offer to the Muslim forces to permit the civilian population in Kamenica to freely leave the area of combat, and after this message was conveyed, a large number of civilians left the area of combat activities. Ex. 7D01006, "Zvornik Light Infantry Brigade Regular Combat Report signed by Major Vinko Pandurević, 1 February 1993", para. 2; Vinko Pandurević, T. 30794 (28 Jan 2009), T. 30799 (29 Jan 2009); Milenko Jevđević, T. 29892 (17 Dec 2008). *See also* Ex. P04253, "1st Zvornik Infantry Brigade Regular Combat Report signed by Vinko Pandurević, 2 February 1993". The Prosecution asserts that at the time the decision was taken to open the corridor, the VRS knew that the Bosnian Muslim population in this area was suffering from lack of food, "the impossibility of prompt delivery of humanitarian aid; and the impossibility of normal living conditions due to the constant firing of [the VRS] artillery." Prosecution Final Brief, para. 1286. *See* Ex. P04226, "Drina Corps Command Combat Order for the liberation of Kamenica, Cerska and Konjević Polje, signed by Živanović, 11 February 1993", para. 1. *See also* Ex. P04232, "Drina Corps Regular Combat Report, signed by Milenko Živanović, 1 February 1993", para. 3. The Prosecution thus argues that in these circumstances and in light of Directive 4 and the 24 November 1992 Order, the corridor at Kamenica was opened "as part of the coordinated campaign to forcibly remove the Muslim civilian population." Prosecution Final Brief, para. 1286. According to **Pandurević**, however, the purpose of this proposal to open a corridor for the passage of civilians was humanitarian, and he had no orders to cause the civilian population to move out of Kamenica. Vinko Pandurević, T. 30799 (29 Jan 2009), T. 32096-32097 (25 Feb 2009). *See also* Milenko Jevđević, T. 29892-29893 (17 Dec 2008). *See also* Pandurević Closing Arguments, T. 34768 (14 Sept 2009) (arguing that the Prosecution has "fundamentally misunderstood" Kamenica).

<sup>5962</sup> Prosecution Final Brief, paras. 1289-1297. On 12 March 1993, UNPROFOR reported shelling by VRS forces of Muslim civilians and UNPROFOR forces in Konjević Polje, and at 2:24 p.m. on that day, a UN officer in Konjević Polje requested that "Maj Pandorović (the local BSA Commander at Zvornik GR CQ4816) be urged to stop shelling as civilians were being caught in the fire." Ex. P04252, "UNPROFOR HQ BH Command (Main) Kiseljak, SitRep for 12 March 1993", p. 2. *See also* Ex. P00486, "UN Economic and Social Counsel Report No. E/CN.4/1994/3, by Tadeusz Mazowiecki, Special Rapporteur, 5 May 1993", paras. 21-24. Shortly thereafter, another round landed, reportedly killing two civilians and injuring three children, and although later that afternoon the UN command received information that the VRS was "in the process of checking fire", more rounds were fired, damaging a UN vehicle and in another instance killing ten civilians. Ex. P04252, "UNPROFOR HQ BH Command (Main) Kiseljak, SitRep for 12 March 1993", p. 2. The Prosecution maintains that **Pandurević** was aware of and involved in this attack on Muslim civilians on 12 March. Prosecution Final Brief, para. 1296-1297. **Pandurević**, however, denied that the Zvornik Brigade was responsible for this shelling of the Muslim population and UNPROFOR soldiers in Konjević Polje. Vinko Pandurević, T. 32125-32126 (26 Feb 2009). In response to the UN report about the shelling on 12 March 1993, **Pandurević** stated, "[t]he artillery of the Zvornik Brigade could not observe its own fire from the positions where it was and we never fired randomly. [...] We never fired without observing, and we were simply unable to observe that location. So I'm not aware of these details." *Ibid.*, T. 32125 (26 Feb 2009). *See also* *Ibid.*, T. 32126 (26 Feb 2009) (rejecting the Prosecution's assertion that the artillery was deliberately designed to drop on civilians, explaining, "[n]o, it is not deliberately designed because how could I know where people are in that broad space if I can't see that space and have no information. [...] And, at that time I didn't receive any protests from [the UN]").

<sup>5963</sup> Prosecution Final Brief, para. 1305-1306. In 1993, the Konjević Polje mosque was destroyed several days after VRS units under **Pandurević**'s command entered that area. Vinko Pandurević, T. 32129 (26 Feb 2009). Almost one year later, in February 1994, pursuant to a Drina Corps order, the Zvornik Brigade Engineering Company removed the rubble of the destroyed mosque. Ex. P04288, "Order on Removal of remains of destroyed mosque in Konjević Polje from Drina Corps Command signed by Chief of Staff Colonel Milutin Skočajić, 24 February 1994"; Ex. P04291, "Zvornik Brigade Regular Combat Report, type-signed Maj. Vinko Pandurević, 28 February 1994", para. 9; Vinko Pandurević, T. 32132-32134 (26 Feb 2009) (also explaining that the Drina Corps "believed that the Zvornik Brigade had more machinery at their disposal and for that reason they assigned this task to [the Brigade]"). **Pandurević** denies that he and his forces were responsible for destroying the mosque. Vinko Pandurević, T. 32129



**Pandurević's** forces in the spring of 1993,<sup>5964</sup> and the alleged participation of **Pandurević's** brigade in restricting humanitarian aid convoys in April 1995.<sup>5965</sup>

2005. With respect to these arguments by the Prosecution, the Trial Chamber first notes that **Pandurević's** acts in 1993 have little, if any, bearing on the assessment of his intent in 1995 in the period relevant to the Indictment. However, the Trial Chamber has considered and evaluated the evidence and submissions of both the Prosecution and **Pandurević** on each of these issues.

2006. With regard to the opening of a corridor at Kamenica, the Trial Chamber considers that this event is not particularly useful in assessing **Pandurević's** intent in light of the differing positions on the motivations underlying the decision to allow the passage of the civilians and the limited evidence in general on this matter. The Trial Chamber also finds that there is insufficient evidence to conclude that **Pandurević** was responsible for shelling civilians in April 1993, as alleged by the

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(26 Feb 2009). The Prosecution concedes that the identity of the individuals who destroyed the mosque is unknown, but maintains that the destruction of the mosque in Konjević Polje and the subsequent "removal of its remains to a site for 'waste material' is emblematic of the VRS's intention to permanently remove the Muslim civilian population from this area and **Pandurević's** knowledge of, and involvement in, the process." Prosecution Final Brief, paras. 83, 1306.

<sup>5964</sup> Prosecution Final Brief, paras. 1298-1304. The Prosecution submits that **Pandurević** knew of, and participated in, the strategy of burning Muslim houses and villages evidenced by information contained in Zvornik Brigade combat reports in early 1993, including specifically reports for 4 and 10 March 1993. Prosecution Final Brief, paras. 82, 1298, 1302-1303. *See* Ex. P04245, "1st Zvornik Infantry Brigade Regular Combat Report signed by Vinko Pandurević, 4 March 1993", p. 1 (stating "Duga Njiva and Glodi have been taken and facilities in Glodi burnt."); Ex. P04247, "1st Zvornik Infantry Brigade Regular Combat Report signed by Vinko Pandurević, 10 March 1993" (stating "[w]e propose that houses should not be torched when taking control of Konjevića Polje, but that they be inhabited by people from Tuzla and other areas"). In regard to the March report, the Prosecution argues that a "plain reading of this report indicates that up to that point, **Pandurević's** units had been burning villages after the Muslim population had fled." Prosecution Final Brief, para. 82. **Pandurević**, however, denied that civilian homes were burned in Muslim villages by forces under his command. Vinko Pandurević, T. 32114, 32117-32120 (26 Feb 2009) (further stating that, "[u]nless there was fire coming from certain fortified buildings they might have been burned or set on fire by fire from weapons, and in that context, I do not rule out the possibility of any house being actually burned". *Ibid.* T. 32120 (26 Feb 2009)). In regard to the suggestion he made in the March report, that houses should not be torched, **Pandurević** explained that he made this suggestion not because his forces had been burning houses prior to that, but because he noticed that houses had been burned by returning local Serb civilians at the place where he emerged with his forces. *Ibid.*, T. 32121-32122 (26 Feb 2009).

<sup>5965</sup> Prosecution Final Brief, paras. 1317-1319. The Prosecution argues that the Zvornik Brigade, under **Pandurević's** command, implemented the policy laid out in Directive 7 to restrict humanitarian aid convoys. *See ibid.*, paras. 1317-1319. According to the Prosecution, while "**Pandurević** may not have been obstructing the passage of convoys purely on 'his own initiative,' **Pandurević** would have known that the orders above were designed to restrict aid to the enclaves and facilitate that unlawful objective." *Ibid.*, para. 1319. *See* Ex. 5D00320, "Zvornik Brigade Regular Combat Report to the Drina Corps, signed by Pandurević, 2 April 1995", p. 2 (reporting that the Zvornik Brigade confiscated a "veld steriliser" from an UNPROFOR convoy en route to Srebrenica); Ex. 5D00321, "1st Zvornik PBR Infantry Brigade Regular Combat Report, signed by Vinko Pandurević, 4 April 1995", para. 10 (reporting that the Brigade confiscated from an MFS convoy four tonnes of laundry detergent, 1,500 bottles of floor detergent, 744 litres of hair shampoo, towels, alcohol beverages, coffee and cigarettes, lighters, and rolling papers). Regarding these confiscated materials, **Pandurević** testified that his brigade had received orders to confiscate them. Vinko Pandurević, T. 32142 (26 Feb 2009). With respect to convoys generally, **Pandurević** stated that "pursuant to the orders received from superior commands and the usual procedure, the contents of these convoys were examined in accordance with the documents that they carried with them" and that the "brigade didn't have any powers to either allow or reject the passage of convoys" and "if certain commodities or other items were detected that were not permissible to be transported in that way, then the superior command would be advised, and they would tell us what to do in that situation." *Ibid.*, T. 30809-30810 (29 Jan 2009).

Prosecution.<sup>5966</sup> With respect to the destruction of the mosque, the Trial Chamber does not find the Prosecution's arguments convincing, or even relevant, and notes that there is no evidence to indicate that **Pandurević**'s forces were involved in its destruction. With regard to the burning of civilian houses, the Trial Chamber finds that the evidence is not sufficient to prove that houses were burned in Glodi, especially in consideration of **Pandurević**'s explanation of the information contained in the report.<sup>5967</sup> Additionally, the Trial Chamber finds that the evidence cited by the Prosecution with respect to other similar incidents fails to demonstrate that **Pandurević** and his forces engaged in such activities, but rather simply indicates that generally some houses had been burnt. Finally, in the view of the Trial Chamber, the evidence regarding the alleged restriction of humanitarian aid convoys by the Zvornik Brigade is not particularly significant or relevant as evidence of acts from which to infer **Pandurević**'s alleged intent to carry out the common purpose of the JCE.

### iii. Conclusion

2007. Overall, the Trial Chamber finds that there is insufficient evidence to conclude beyond reasonable doubt that **Pandurević** intended to carry out the common purpose to forcibly remove the Bosnian Muslim populations of Srebrenica and Žepa. Thus, it has not been established that **Pandurević** was a participant in the JCE to Forcibly Remove.

### b. Other Modes of Liability

2008. The Prosecution also alleges that **Pandurević** committed, planned, instigated, ordered and otherwise aided and abetted the planning, preparation and execution of the alleged crimes.<sup>5968</sup> The Trial Chamber has found that **Pandurević** had no intent to forcibly transfer. In addition, there is no evidence before the Trial Chamber of any acts or omissions on his part that would constitute other Article 7(1) forms of responsibility, except for aiding and abetting which is discussed below, in relation to the crime of forcible transfer.

<sup>5966</sup> The Trial Chamber also specifically notes that it is not evident from the available evidence that **Pandurević** actually received the request from the UN officer. Therefore, there is insufficient evidence to demonstrate that **Pandurević** knew that civilians were being shelled and thus the inference cannot be made that he intended such a result.

<sup>5967</sup> **Pandurević** testified that houses in Glodi were not burned, and in reference to the statement in the report, commented that he did not "know which facilities they are referring to as being burnt." Vinko Pandurević, T. 32118–32119 (26 Feb 2009). **Pandurević** further explained that "when you'll speak about facility in military terms, that involves firing positions and cover. Whereas a house is a house. That's how it is called. When it is called in military terms, it's a facility. It could be a bunker, a shelter, and there were such facilities in Glodjansko Brdo and Glodi." *Ibid.*, T. 32119 (26 Feb 2009).

<sup>5968</sup> Indictment, paras. 88–89, 91.

c. Aiding and Abetting Forcible Transfer

2009. Having found that **Pandurević** lacked the intent to further the common purpose of the JCE, the Trial Chamber will now address his contribution to the forcible transfer solely in the context of aiding and abetting. At the outset, the Trial Chamber recalls that **Pandurević**'s participation in the military attack on the Žepa enclave was very limited, in light of the fact that he was ordered to return to Zvornik on 15 July.<sup>5969</sup> In light of his minimal participation in this attack, the Trial Chamber considers that such participation does not constitute a substantial contribution to the forcible transfer and therefore finds that **Pandurević** did not aid and abet the forcible transfer of the Bosnian Muslim population from Žepa.

2010. The Trial Chamber will now consider whether **Pandurević** is responsible for aiding and abetting forcible transfer through his participation in the military attack on, and takeover of, the Srebrenica enclave. The Trial Chamber recalls that **Pandurević** had knowledge of the common plan to forcibly remove the civilian populations from the enclaves. The Trial Chamber has previously found that **Pandurević** had knowledge of this criminal objective by virtue of his knowledge of the 20 March 1995 Order as well as the *Krivaja-95* Orders. The Trial Chamber is thus convinced that at the time when **Pandurević** participated in the attack on Srebrenica pursuant to the *Krivaja-95* Operation, he knew that such participation assisted in the commission of the forcible transfer of the Bosnian Muslim population of the Srebrenica enclave.

2011. The Trial Chamber recalls that **Pandurević** and his forces not only disabled two OPs in the area surrounding the enclave but were also involved in taking over the enclave itself. These actions pursuant to the military operation enabled the VRS to exert control over the enclave and thus remove its civilian population. Although **Pandurević**'s intent may have been to pursue the legitimate military objectives of the operation, the Trial Chamber is satisfied that his actions nonetheless had a substantial effect in the realisation of the forcible transfer and that he knew that his participation in the attack on the enclave assisted in the commission of this crime. The Trial Chamber is therefore satisfied that **Pandurević**'s participation in the military attack and takeover of the Srebrenica enclave substantially contributed to the forcible transfer of the civilian population from Srebrenica.

2012. In light of these findings, the Trial Chamber therefore finds that **Pandurević** aided and abetted the crime of forcible transfer.

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<sup>5969</sup> See *supra*, paras. 1858–1859.

(iii) “Opportunistic” Killings

2013. The Prosecution alleges that pursuant to the third category of liability through participation in a JCE, it was foreseeable to **Pandurević** that certain “opportunistic” killings would be carried out by the Bosnian Serb Forces as part of both the JCE to Murder and the JCE to Forcibly Remove.<sup>5970</sup> As **Pandurević** was not a member of the JCE to Murder or the JCE to Forcibly Remove, he cannot be found responsible under third category JCE liability for the “opportunistic” killings.<sup>5971</sup>

(iv) Superior Responsibility

2014. The Prosecution also, or alternatively, alleges that **Pandurević** is criminally responsible as a superior under Article 7(3) of the Statute, for failing to take necessary and reasonable measures to prevent and/or punish the crimes committed by his subordinates.<sup>5972</sup>

2015. The Trial Chamber will first address the underlying criminal acts for which the Prosecution alleges that **Pandurević** had a duty to prevent and/or punish pursuant to his superior responsibility. The Trial Chamber will then assess whether the other requisite elements for superior responsibility have been established to determine whether **Pandurević** is criminally responsible under Article 7(3) of the Statute. Specifically, in this respect, the Trial Chamber will examine whether there existed a superior-subordinate relationship between **Pandurević** and the said perpetrators at the relevant time. If such a relationship is established, the Trial Chamber will determine whether **Pandurević** knew or had reason to know of the commission of the crimes by his subordinates, and if so, whether he took any necessary and reasonable measures to prevent or punish the crimes in question.

a. Crimes Committed by Subordinates

2016. By virtue of superior responsibility pursuant to Article 7(3) of the Statute, the Prosecution alleges that **Pandurević** is liable for crimes committed by members of the Zvornik Brigade during the murder operation in the area of Zvornik.<sup>5973</sup> Specifically, these crimes include their participation in the detention, execution, and burial of the Bosnian Muslim prisoners from 13 to 17 July, the execution of the four Branjevo Military Farm survivors around 23 July, the execution of the wounded Bosnian Muslim prisoners from Milići Hospital around 23 July, and the reburial operation

<sup>5970</sup> Indictment, paras. 31, 37. These “opportunistic” killings are alleged at places in Potočari, places in Bratunac, the Kravica Supermarket and the Petkovci School. *Ibid.*

<sup>5971</sup> *See supra*, paras. 1979, 2007.

<sup>5972</sup> Indictment, para. 93; Prosecution Final Brief, paras. 1238, 1631-1633.

<sup>5973</sup> *See* Indictment, paras. 93, 94.

carried out between August and November 1995.<sup>5974</sup> Additionally, the Prosecution alleges that **Pandurević** incurs liability for the involvement of members of the 16th Krajina Brigade in the execution of four Bosnian Muslim men near Nezuk on 19 July.<sup>5975</sup>

2017. The Trial Chamber has found that, in the period between 13 July and the morning of 16 July, members of the Zvornik Brigade participated in guarding the detained Bosnian Muslim prisoners and in transporting the prisoners to execution sites in the area of Zvornik.<sup>5976</sup> Based on the totality of the evidence regarding their participation, the Trial Chamber is satisfied that during this period, members of the Zvornik Brigade provided practical assistance that had a substantial effect on the commission of the executions of the prisoners. These acts of assistance specifically included guarding prisoners held at Grbavci School in Orahovac, Kula School, and Ročević School as well as transporting and escorting prisoners to the execution sites in Orahovac and Kozluk.<sup>5977</sup> The Trial Chamber has also found that at least one member of the Zvornik Brigade participated in shooting the prisoners on 14 July at the execution site in Orahovac<sup>5978</sup> and that at least one member of the Zvornik Brigade participated in shooting the prisoners at the execution site in Kozluk on 15 July.<sup>5979</sup> Therefore, the Trial Chamber finds that there is sufficient evidence to establish that at least two members of the Zvornik Brigade committed murder and that members of the Zvornik Brigade aided and abetted the murder of Bosnian Muslim prisoners who were brought from Bratunac to the Zvornik area and executed between 14 and 16 July. The Trial Chamber further recalls its findings as to **Nikolić's** involvement in the murder operation.<sup>5980</sup>

2018. The Trial Chamber has also found that Zvornik Brigade personnel and resources were mobilised for the digging of graves and the burying of bodies during the period of 14 to 17 July.<sup>5981</sup> The Trial Chamber recalls its earlier finding that on the afternoon of 14 July, members of the

<sup>5974</sup> Indictment, paras. 30.6-30.12, 30.14-30.15, 31.4, 32, 39, 42, 44, 80, 82, 94. With respect to reburials, the Trial Chamber reiterates that during closing arguments, the Prosecution conceded that reburial itself does not constitute a crime punishable pursuant to the Statute. Prosecution Closing Arguments, T. 34279 (4 Sept 2009). The Prosecution also alleges that the reburial operation was a natural and foreseeable consequence of the JCE to Murder the able-bodied Bosnian Muslim males from Srebrenica. Indictment, para. 32. The Trial Chamber, however, has found that as reburial is not a crime under the Statute, none of the Accused may be held criminally responsible for it under the third category of joint criminal enterprise. *See supra*, para. 1032.

<sup>5975</sup> Indictment, paras. 30.13, 94. The Prosecution also alleges that **Pandurević** is liable under Article 7(3) for the criminal conduct of the TG-1 forces under his command in the attacks on the Srebrenica and Žepa enclaves, and the participation of his subordinates in the forcible transfer. *Ibid.*, paras. 54, 67, 77, 80, 82, 94. The Trial Chamber however finds that as it has found **Pandurević** responsible for aiding and abetting forcible transfer under Article 7(1), it need not consider his responsibility under Article 7(3) in this regard. *See supra*, para. 2012. Further, the Trial Chamber has already found, by majority, Judge Kwon dissenting, **Pandurević** to be criminally responsible for the murder of the ten wounded prisoners from Milići Hospital under Article 7(1). *See supra*, para. 1991. *See* Judge Kwon's Dissenting Opinion, *infra*, paras. 60–66.

<sup>5976</sup> *See supra*, paras. 476–478, 481, 483, 514–520, 522, 527–528, 531, 534.

<sup>5977</sup> *See supra*, paras. 476–478, 481, 483, 514–520, 522, 527–528, 531, 534.

<sup>5978</sup> *See supra*, para. 484.

<sup>5979</sup> *See supra*, para. 519.

<sup>5980</sup> *See supra*, paras. 1389–1392, 1415, 1420, 1422, 1426.

Zvornik Brigade Engineering Company participated in digging a large pit at the field near the Grbavci School in Orahovac and continued to dig graves throughout the afternoon and into the evening, while the killings took place there that day.<sup>5982</sup> Based on the totality of the evidence of their participation, the Trial Chamber is satisfied that these members of the Zvornik Brigade provided practical assistance that had a substantial effect on the commission of the executions at Orahovac and thus that these Zvornik Brigade members aided and abetted the murder of the Bosnian Muslim prisoners executed at Orahovac on 14 July.

2019. With respect to the murder of the four Bosnian Muslim men near Nezuk on 19 July, the Trial Chamber has previously found that there is insufficient evidence to establish beyond reasonable doubt that members of the 16th Krajina Brigade were involved in the killing of the four men.<sup>5983</sup> The Trial Chamber also recalls its finding that there is insufficient evidence to find **Nikolić** responsible beyond reasonable doubt for the murder of the four Branjevo Military Farm survivors and the ten wounded Bosnian Muslim prisoners from Milići Hospital.<sup>5984</sup> Accordingly, for these murders, **Pandurević** cannot bear responsibility under Article 7(3) as it has not been proven that such crimes were committed by subordinates of **Pandurević**.

2020. In light of these findings, the Trial Chamber therefore limits its consideration to **Pandurević**'s alleged superior responsibility only for those crimes committed by members of the Zvornik Brigade during the murder operation between 13 and 16 July 1995, as identified and found above.<sup>5985</sup>

#### b. Superior-Subordinate Relationship

2021. For **Pandurević** to be held individually responsible pursuant to Article 7(3) of the Statute, it must first be established that a superior-subordinate relationship existed at the time between **Pandurević** and the perpetrators. The Trial Chamber will now examine whether such a relationship existed between **Pandurević** and members of the Zvornik Brigade at the time of the commission of their crimes during the murder operation.

2022. The jurisprudence of the Tribunal places emphasis on the existence of effective control to establish superior responsibility under Article 7(3) of the Statute. The Trial Chamber notes that effective control is assessed in this context in order to determine the existence of a superior-

<sup>5981</sup> See *supra*, paras. 479, 489–490, 501, 521–522, 542–543, 545–547..

<sup>5982</sup> See *supra*, para. 489.

<sup>5983</sup> See *supra*, para. 569.

<sup>5984</sup> See *supra*, paras. 1379–1380.

<sup>5985</sup> See *supra*, paras. 2017–2018.

subordinate relationship between the relevant individuals. As the Appeals Chamber has held, “[t]he basis of the superior-subordinate relationship is the power of the superior to control the actions of his subordinates.”<sup>5986</sup>

2023. Thus, the test of effective control relates to the relationship between the individuals and is not limited to a consideration of whether actual control is being exercised at any given moment. Otherwise the responsibility would be significantly narrowed – restricted to those who were in control and not reaching those who could have taken that control to prevent these crimes or punish them. Thus, in assessing effective control for these purposes, the issue is not whether the superior was in command or exercising control at any given moment but rather whether he or she had the material ability to prevent or punish the perpetrators of the crimes. It is this ability that evidences a superior-subordinate relationship. As stated by the Appeals Chamber even more specifically, “it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences.”<sup>5987</sup>

2024. In addition, the Trial Chamber notes that while the three components—superior-subordinate relationship; knowledge or reason to know; and failure to take measures—should be considered individually, there are factors that may be relevant to all of these. The physical location of a superior, responsibilities at the time, the information flow, and communication facilities with subordinates are all considerations which may affect the ability to control, knowledge and what is a reasonable measure available at the critical time. However, in considering such factors in relation to effective control, the issue is not solely whether these factors affect the ability to control, but rather whether they did so in a manner or to such an extent so as to alter an existing superior or subordinate relationship between the relevant parties.

2025. It is also necessary to distinguish the military concept of the “singleness of command” from the assessment of effective control. For the proper functioning of an army, there can be only one individual in command of any particular unit at one time. However, as the test for the superior-subordinate relationship rests on the ability to effectively control—as opposed to the exercise of that control—there is no exclusivity to a determination of effective control. It is clear from the jurisprudence that the superior-subordinate relationship may be direct or indirect. Thus “what is required is the establishment of the superior’s effective control over the subordinate, whether that subordinate is immediately answerable to that superior or more remotely under his command.”<sup>5988</sup>

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<sup>5986</sup> *Kordić and Čerkez* Appeal Judgement, para. 840.

<sup>5987</sup> *Čelebići* Trial Judgement, para. 378.

<sup>5988</sup> *Halilović* Trial Judgement, para. 63.

Similarly, in *Strugar* it was recognized that the test of effective control implies that “more than one person may be held responsible for the same crime committed by a subordinate”.<sup>5989</sup> Clearly, therefore, effective control is not limited at any point in time to one individual.

2026. In addition, given the underlying purpose of the law relating to superior responsibility, a superior cannot rely on a principle of singleness of command, designed to ensure army efficiency, in order to escape responsibilities which relate to the suppression of the gravest of crimes. In essence, for it to be effective, that responsibility cannot be reserved exclusively for those who were exercising control or were “in command” and thereby could prevent or punish, but must also extend to those who had the material ability to do so.

2027. The Trial Chamber will now analyse the issue of **Pandurević**’s superior responsibility, beginning with the issue of his superior-subordinate relationship. The Trial Chamber finds<sup>5990</sup> that throughout the relevant period in July 1995, including the period from 4 to 15 July, **Pandurević** was the Commander of the Zvornik Brigade, in title and in substance. There was no order replacing him on either a temporary or a permanent basis. While **Pandurević** was absent and assigned another military task from 4 to 15 July, his effective control of the Zvornik Brigade was not affected. Although Obrenović was “in command” of those parts of the Zvornik Brigade which remained in the Zvornik area, he assumed command functions in the absence of the Commander in the role of the Deputy Commander, as would be the case during any other temporary absence.<sup>5991</sup> Notably, in contrast to the situation of **Pandurević**’s absence in August 1995, no formal order was issued in July appointing Obrenović as acting Brigade Commander for the Zvornik Brigade.<sup>5992</sup> Additionally, an individual was designated to serve as the acting Chief of Staff of the Brigade in August 1995 during the period when Obrenović was the acting Brigade Commander and thus could not fulfil his normal duties as Chief of Staff.<sup>5993</sup> By contrast, an acting Chief of Staff was not

<sup>5989</sup> *Strugar* Trial Judgement, para. 365. *Accord Blaškić* Trial Judgement, para 303, referring to *Aleksovski* Trial Judgement, para. 106.

<sup>5990</sup> *But see* Judge Kwon’s Separate Opinion, *infra*, paras. 47–59.

<sup>5991</sup> PW-168 testified that “as a Chief of Staff and a deputy, when the commander left from the command post [Obrenović] automatically became deputy commander.” PW-168, T. 15810 (closed session) (26 Sept 2007). “In July 1995, [...] [Obrenović] was not in command of the brigade. [He] was the Chief of Staff and the Deputy, and [he] commanded some of the units of the Zvornik Brigade which were in the defence area in Zvornik.” PW-168, T. 16049 (closed session) (9 Oct 2007). According to PW-168, “The practical commander by appointment was Lieutenant Colonel Vinko Pandurević. He was the commander. [Obrenović] was the Chief of Staff. And the practical situation was that the commander had gone to Srebrenica on the 4th with the unit, and [Obrenović] as the Chief of Staff was commanding a part of the Zvornik Brigade, or the part of the Zvornik Brigade that remained in its Standard positions”. PW-168, T. 16467–16468 (closed session) (17 Oct 2007). *See also* Miodrag Dragutinović, T. 12701 (15 June 2007) (confirming that Obrenović was in command of the Zvornik Brigade during **Pandurević**’s absence from 4 to 15 July 1995), T. 12612–12613 (14 June 2007) (testifying that in the absence of the Commander, the Chief of Staff as Deputy Commander would take over and report to the Superior Command).

<sup>5992</sup> *See supra*, para. 1917.

<sup>5993</sup> *See* Ex. 5D00452 (confidential).



appointed for the period of July.<sup>5994</sup> Furthermore, **Pandurević** himself acknowledged that he remained formally the Commander of the Zvornik Brigade throughout this period.<sup>5995</sup> The Trial Chamber is thus satisfied<sup>5996</sup> that throughout July 1995, **Pandurević** possessed *de jure* authority over members of the Zvornik Brigade.

2028. The Trial Chamber, however, recalls that while the possession of *de jure* powers may suggest a material ability to prevent or punish the criminal acts of subordinates, such authority, without more, provides only some evidence of such effective control.<sup>5997</sup> The Trial Chamber therefore must also consider whether **Pandurević** had *de facto* authority over the Zvornik Brigade during this period. The Trial Chamber is satisfied that on a general basis, throughout his tenure as the Brigade Commander, **Pandurević** had clear *de facto* authority which accompanied his position as Commander. While he had arrived to an undisciplined brigade, which demonstrated a distinct lack of respect for authority, under his command and, certainly by 1995, the Zvornik Brigade was under the clear authority of **Pandurević**.<sup>5998</sup>

2029. The Trial Chamber turns then to the specific circumstances of July 1995, notably the period of 4 to 15 July, when **Pandurević** was physically absent from the Zvornik area and occupied with command functions in Srebrenica and Žepa. The Trial Chamber is satisfied<sup>5999</sup> that while this absence clearly limited what **Pandurević** knew about the actions of his Brigade and to some extent narrowed the reasonable measures available to him, it did not in any way alter his ability to control the Brigade in terms of a superior-subordinate relationship. Whether physically at Standard Barracks or elsewhere, **Pandurević**, at all times, retained the ability to exercise control over the Zvornik Brigade. Whether he chose to do so or whether there may have been communication problems in no way changed the superior-subordinate relationship that existed. Specifically, while his contact with the Brigade during his absence was very limited and the subject matter discussed marginal, that contact evidences that he did not hesitate to continue to assert his authority with respect to the Brigade when he deemed it necessary to do so.<sup>6000</sup>

2030. The Trial Chamber has also found that during the same time period, Obrenović, as Deputy Commander, was in command of the Zvornik Brigade, with respect to those units which remained

<sup>5994</sup> See PW-168, T. 16617 (closed session) (19 Oct 2007).

<sup>5995</sup> See Vinko Pandurević, T. 31437 (13 Feb 2009).

<sup>5996</sup> But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

<sup>5997</sup> See *supra*, para. 1038.

<sup>5998</sup> See for example Vinko Pandurević, T. 30706–30708 (27 Jan 2009); PW-168, T. 15740–15743 (closed session) (25 Sept 2007), T. 16060–16063, 16071–16073, 16083–16084 (closed session) (9 Oct 2007). See also Pandurević Final Brief, paras. 339–344, 353.

<sup>5999</sup> But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

<sup>6000</sup> See *supra*, paras. 1845–1846.

in the Zvornik area at that time.<sup>6001</sup> However, the Trial Chamber further finds<sup>6002</sup> that this situation did not interfere with **Pandurević**'s relationship to members of the Brigade, including Obrenović himself. As noted above, Obrenović assumed command as Deputy Commander, just as he would do on any other occasion. In fulfilling his command functions, Obrenović gave orders and received commands without contacting **Pandurević** and without any intervention from him. However, this evidences only that Obrenović was in command at that point in time and responsible for the actions of the troops under his command. But this does not change the fact that Obrenović was still a subordinate of **Pandurević**, as were all members of the Zvornik Brigade. [REDACTED]<sup>6003</sup>

2031. It was open to **Pandurević** to retake command at any point as he so clearly did upon his return on 15 July. While the Trial Chamber finds that there was no substantive contact between **Pandurević** and the brigade during his absence,<sup>6004</sup> it was still open to him to assert his authority as commander at any time. In so doing, he would have to take into consideration the singleness of command principle, but this does not alter his overall authority and control over his troops. Albeit reluctantly, **Pandurević** himself acknowledged this point to a degree during cross examination by the Prosecution when he indicated that he "could have issued orders" to the Zvornik Brigade members he spoke with on the telephone on the morning of 15 July, prior to his return to the Standard Barracks.<sup>6005</sup> According to **Pandurević**, he nevertheless did not issue orders at that time prior to his return because he "was not in command of the brigade" as that "would amount to dual command, not single authority because Dragan Obrenović had already issued them tasks, and they were in the process of carrying [them] out and that would only create confusion."<sup>6006</sup> While it was open to him to refrain from giving orders in those particular circumstances in deference to singleness of command, it would not have been had the information he received at that time alerted him to criminal activity on the part of his Brigade. In essence, whether or not **Pandurević** chose to exercise control over his Brigade, the Trial Chamber is satisfied<sup>6007</sup> that **Pandurević** always maintained *de facto* and *de jure* authority during the period of 4 to 15 July.

2032. One final argument needs to be addressed regarding the issue of effective control. **Pandurević** argues that during the period of the murder operation in July, he no longer had effective control, at least with reference to **Nikolić**, because of the lead role being played by the Security Branch in the murder operation. **Pandurević** accepts that in general, as the Commander of

<sup>6001</sup> See *supra*, para. 2027.

<sup>6002</sup> But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

<sup>6003</sup> [REDACTED]

<sup>6004</sup> See *supra*, paras. 1844–1860, 1969.

<sup>6005</sup> Vinko Pandurević, T. 31438 (13 Feb 2009).

<sup>6006</sup> *Ibid.*

<sup>6007</sup> But see Judge Kwon's Separate Opinion, *infra*, paras. 47–59.

the Zvornik Brigade, he possessed *de jure* authority over **Nikolić**.<sup>6008</sup> However, **Pandurević** argues that as a matter of practical reality and in light of the functional chain of command of the Security Organ, his ability to effectively control the Brigade's Security Organ and **Nikolić** specifically was limited in certain situations, including in particular during the murder operation in July 1995.<sup>6009</sup>

2033. There is no evidence before the Trial Chamber to support a finding that because of the role of the Security Branch and the Superior Command, **Pandurević** lost *de facto* control over **Nikolić** or any other members of the Zvornik Brigade. In this respect, the Trial Chamber notes that at the commencement of his involvement in the murder operation, **Nikolić** still recognised and abided by the chain of command in the Zvornik Brigade. On the night of 13 July, he sought Obrenović's authorisation not only with regard to his brigade task at the time—his responsibility as the Duty Officer—but also with reference to the use of military police to assist him. Also, when it comes to **Pandurević** himself, while he may have been unable to control the actions of **Popović** and **Beara** who were not his subordinates, there is no evidence that he lost that capacity with reference to **Nikolić**. The Trial Chamber is satisfied that the involvement of the Security Branch and the Superior Command did not alter **Pandurević's** *de facto* control of **Nikolić** or any other member of the Zvornik Brigade.<sup>6010</sup>

2034. The Trial Chamber is therefore satisfied<sup>6011</sup> that during July of 1995, there existed at all times a superior-subordinate relationship between **Pandurević** and members of the Zvornik Brigade. On this basis, the Trial Chamber finds<sup>6012</sup> that during July 1995, including from 4 to 15 July when he was physically absent, the first element of superior responsibility has been established with respect to **Pandurević** and the members of the Zvornik Brigade.

2035. From August to mid-September of 1995, **Pandurević** was temporarily replaced as Commander of the Zvornik Brigade while absent on assignment in the Krajina.<sup>6013</sup> Specifically, Obrenović was named Acting Commander for this period.<sup>6014</sup> The Trial Chamber therefore finds that **Pandurević** did not possess *de jure* or *de facto* authority over members of the Zvornik Brigade during this period.<sup>6015</sup>

<sup>6008</sup> Pandurević Final Brief, para. 272.

<sup>6009</sup> *Ibid.*, paras. 272, 275-277, 315.

<sup>6010</sup> *But see* Judge Kwon's Separate Opinion, *infra*, paras. 47-59.

<sup>6011</sup> *But see* Judge Kwon's Separate Opinion, *infra*, paras. 47-59.

<sup>6012</sup> *Ibid.*

<sup>6013</sup> *See supra*, paras. 1917-1918.

<sup>6014</sup> *See supra*, para. 1917.

<sup>6015</sup> The Trial Chamber also notes, however, that during the period of this absence, no crimes are alleged to have been committed by members of the Zvornik Brigade such that possible superior responsibility could be triggered.

c. Knowledge or “Reason to Know”

2036. Having determined that **Pandurević** had effective control over the members of the Zvornik Brigade at the time relevant to the Indictment, the Trial Chamber will now address whether **Pandurević** had the requisite *mens rea* as to trigger his duty to prevent and/or punish under Article 7(3) of the Statute. In order to hold a superior responsible under Article 7(3), it must be established that he or she knew or had reason to know that his or her subordinates were committing or were about to commit crimes within the jurisdiction of the Tribunal.<sup>6016</sup> At the outset, the Trial Chamber recalls that a superior can be found to have reason to know only if information was available to him or her which would have put the superior on notice of offences committed by his or her subordinates.<sup>6017</sup> The Trial Chamber also recalls that the information required to put a superior on notice need not be specific, but rather it must put that superior on notice of possible unlawful acts by his or her subordinates.<sup>6018</sup>

2037. The Trial Chamber finds that there is insufficient evidence that prior to his return to the Standard Barracks on 15 July, **Pandurević** knew or had reason to know that his subordinates had committed or were committing crimes in relation to the detention, execution, and burial of the Bosnian Muslim prisoners in the area of Zvornik. The Trial Chamber therefore finds that the knowledge requirement for superior responsibility under Article 7(3) has not been met for the period prior to 12 p.m. on 15 July. The Trial Chamber, however, has previously found that upon **Pandurević**'s return to Standard Barracks at around 12 p.m. on 15 July, Obrenović informed him about the murder operation that was being carried out in the area of Zvornik. Specifically, at this point, **Pandurević** was told that pursuant to Mladić's order, **Beara** and **Popović** had brought a large number of prisoners from Bratunac to the Zvornik sector where they were executing them, and that Jokić had informed Obrenović that there were enormous problems with the guarding, execution, and burial of the prisoners.<sup>6019</sup> Based on this evidence, the Trial Chamber has also previously found that **Pandurević** knew of the murder operation in the area of Zvornik.<sup>6020</sup>

2038. In the view of the Trial Chamber, the information conveyed by Obrenović was also sufficient to alert **Pandurević** to the possibility that members of the Zvornik Brigade were providing practical assistance to the murder operation, such as through guarding and burying prisoners, and thus to put **Pandurević** on notice of possible crimes committed by his subordinates. In reaching this conclusion, the Trial Chamber finds particularly relevant the fact that **Pandurević**

<sup>6016</sup> See *supra*, para. 1040.

<sup>6017</sup> See *supra*, para. 1041.

<sup>6018</sup> See *supra*, para. 1042.

<sup>6019</sup> See *supra*, para. 1861.

<sup>6020</sup> See *supra*, para. 1960.

was specifically told that it was Jokić who informed Obrenović that there were problems with the guarding, executions, and burial of the prisoners. The mere fact that the source of the information was Jokić, the Chief of Engineering of the Zvornik Brigade, was sufficient to put **Pandurević** on notice of the possible involvement of Zvornik Brigade members in those criminal activities. Another factor considered by the Trial Chamber is that Obrenović, the Chief of Staff of the Brigade, intercepted **Pandurević** in the hallway immediately upon his return to the Standard Barracks to convey this information even while other urgent matters, such as the presence of the ABiH 28th Division near Zvornik, required **Pandurević**'s immediate attention. In the view of the Trial Chamber, under these particular circumstances, this would have put **Pandurević** on notice of the likelihood that members of the Brigade, not simply individuals from outside the Brigade, were involved in the murder operation and thus were engaged in illegal acts so as to justify further inquiry on his part to ascertain whether such acts had been or were indeed being committed.

2039. The Trial Chamber also notes that **Pandurević**'s reference to the "additional burden for us" in his 15 July Interim Combat Report indicates that at the time he wrote this report on 15 July he had some notice or awareness of involvement of the Zvornik Brigade in the securing of prisoners detained in the area of Zvornik.<sup>6021</sup>

2040. Based on the totality of the evidence, the Trial Chamber is thus satisfied that at around noon on 15 July, **Pandurević** possessed sufficiently alarming information to put him on notice of the risk that crimes had been or were about to be committed by his subordinates so as to justify further inquiry or the taking of measures. The Trial Chamber therefore finds beyond reasonable doubt that by around noon on 15 July, **Pandurević** had reason to know that his subordinates had committed, were committing or about to commit crimes in relation to the detention, execution, and burial of the Bosnian Muslim prisoners in the area of Zvornik.

d. Failure to Take Necessary and Reasonable Measures

2041. Having found that **Pandurević** had reason to know that his subordinates were about to commit or had committed crimes against Bosnian Muslim prisoners in the area of Zvornik, the Trial Chamber will now determine whether **Pandurević** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

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<sup>6021</sup> Ex. P00329, "Zvornik Brigade Daily Interim Combat Report signed by Vinko Pandurević, 15 July 1995". See also *supra*, para. 1870.

i. Duty to Prevent

2042. The Trial Chamber will first consider whether **Pandurević** failed to take measures that were necessary and reasonable to prevent the commission of crimes by his subordinates during the murder operation in the area of Zvornik. The Trial Chamber has found that **Pandurević** acquired reason to know of the criminal conduct of his subordinates upon his return to Standard Barracks at around 12 p.m. on 15 July when Obrenović informed him of the situation of the prisoners in Zvornik. **Pandurević**'s duty to prevent the commission of criminal acts by his subordinates thus arose from the moment he received this information from Obrenović on 15 July.

2043. The Trial Chamber recalls its findings that on the afternoon of 15 July, members of the Zvornik Brigade assisted in transporting and escorting prisoners detained at Ročević School to the execution site at the gravel pit near Kozluk, and during the executions at that site, at least one member of the Zvornik Brigade participated in the shooting.<sup>6022</sup> Additionally, the Trial Chamber has found that on 15 and 16 July, members of the Zvornik Brigade guarded prisoners at the Kula School, who were then executed at Branjevo Military Farm.<sup>6023</sup> Thus, in the period after **Pandurević** acquired reason to know so as to trigger his duty to prevent, the Trial Chamber has found that members of the Zvornik Brigade aided and abetted murder and at least one member of the Brigade committed murder.

2044. There is no evidence before the Trial Chamber to indicate that in the afternoon of 15 July or during the day of 16 July **Pandurević** took any steps to prevent or stop the participation of members of the Zvornik Brigade in the detention, execution, and burial of the prisoners. In particular, when Obrenović conveyed the information to him in the corridor on 15 July, there is no evidence that **Pandurević** at that point asked Obrenović whether members of the Zvornik Brigade were involved. Instead, **Pandurević** asked Obrenović why the civilian authorities were not performing the burials. Nor is there evidence that **Pandurević** attempted to inquire with anyone else about the involvement of the Zvornik Brigade in the murder operation while he was present at Standard Barracks on 15 July.

2045. The Trial Chamber recalls **Pandurević**'s account that in the late afternoon of 15 July when Bojanović arrived at the IKM, he asked Bojanović if he had any information about the situation of the prisoners who had been brought to the area of Zvornik.<sup>6024</sup> According to **Pandurević**, Bojanović "didn't know that the command of the Zvornik Brigade had received any task concerning prisoners

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<sup>6022</sup> See *supra*, paras. 518–520.

<sup>6023</sup> See *supra*, paras. 531, 534.

<sup>6024</sup> See *supra*, para. 1866.

of war.”<sup>6025</sup> **Pandurević** conceded that, although he could have, he did not attempt to contact anyone else to get information about the prisoners before Bojanović arrived at the IKM on 15 July.<sup>6026</sup> Additionally, **Pandurević** testified that he did not ask the brigade duty officer, who was **Nikolić** at the time, for any information regarding the prisoners.<sup>6027</sup>

2046. To follow up on the alarming information that he received from Obrenović, **Pandurević** in the least, as an initial step, could have inquired and attempted to ascertain whether members of the Zvornik Brigade were involved in the murder operation. The evidence establishes that **Pandurević** did not make any such inquiry on 15 July, except for his conversation with Bojanović in the late afternoon. The Trial Chamber however finds this attempt by **Pandurević** to inquire further into the matter was wholly insufficient with respect to his duty to prevent pursuant to Article 7(3). The Trial Chamber considers that, at the very least, it was incumbent upon **Pandurević** to immediately make inquiries once he had received the information from Obrenović on 15 July, including particularly to react at that time by asking Obrenović further questions about any involvement by members of the Brigade in the operation. Furthermore, **Pandurević** could and should have questioned Jokić, in addition to Obrenović, that day in light of the specific information that **Pandurević** received.

2047. According to **Pandurević**'s account, in the evening of 16 July, he asked Obrenović whether any members of the Zvornik Brigade had participated in what had happened in the area of Zvornik and then requested that Obrenović gather more information for him on the killings that had occurred in the area.<sup>6028</sup> However, this action by **Pandurević** took place only after the crimes committed by his subordinates, as found by the Trial Chamber, were complete, and thus such action is not pertinent to the consideration of measures taken by **Pandurević** to satisfy his duty to prevent under Article 7(3).

2048. Beyond inquiry, even if **Pandurević** did not know the precise details as to the exact acts of his subordinates or the extent of their participation in the murder operation on 15 July, he nonetheless could have taken steps to ensure that no member of the Brigade assisted or participated in the crimes. For instance, on 15 July, **Pandurević** could and should have immediately issued orders to the Zvornik Brigade Battalion Commanders to the effect that all Zvornik Brigade members cease or refrain from participation in any aspect of the executions occurring in the area. In the view of the Trial Chamber, such a withdrawal of his forces was a necessary and reasonable measure that was clearly within **Pandurević**'s power and a measure that he could have taken in

<sup>6025</sup> See *supra*, para. 1866.

<sup>6026</sup> See *supra*, fn. 5598.

<sup>6027</sup> Vinko Pandurević, T. 31574 (17 Feb 2009).

<sup>6028</sup> See *supra*, paras. 1880–1881.

order to effectively prevent the commission of crimes by his subordinates with respect to the murder operation.

2049. Ultimately, the Trial Chamber recalls that a superior must use every means within his or her material ability, based on the circumstances prevailing at the time the superior acquires the requisite knowledge or has reason to know of the commission of crimes by his or her subordinates.<sup>6029</sup>

**Pandurević** did not meet this standard. The evidence before the Trial Chamber shows that **Pandurević** did not genuinely attempt to take any measures within his material powers in order to prevent any future or continued participation of his subordinates in the murder operation.

2050. The Trial Chamber further notes that as the Commander of the Zvornik Brigade, **Pandurević** had the requisite authority and ability to order members of the Brigade not to participate in the murder operation. Moreover, at the time that he acquired the necessary knowledge to trigger his duty to prevent under Article 7(3), **Pandurević** was physically present at the Standard Barracks. Consequently, he was clearly in a position to effectively communicate with his staff, acquire further information about the whereabouts and acts of the members of the Zvornik Brigade, and order the members of the Brigade to withdraw and return to the Standard Barracks. In light of these considerations, the Trial Chamber therefore considers that such measures as discussed above were within his material ability at the time he acquired knowledge on 15 July. **Pandurević**, however, failed to take such measures or any other necessary and reasonable measures within his material ability to prevent the commission of crimes by members of the Zvornik Brigade during the murder operation on the afternoon of 15 July and on 16 July.

2051. The Trial Chamber acknowledges and recognises that **Pandurević** undoubtedly had urgent matters to address when he returned to Zvornik on 15 July in light of the combat situation in the area of Baljkovica.<sup>6030</sup> However, regardless of other matters that required his attention, **Pandurević**, as a superior within the meaning of Article 7(3), had a legal obligation to take action to prevent his subordinates from engaging in criminal conduct. Moreover, as outlined above, the Trial Chamber

<sup>6029</sup> *Blaškić* Appeal Judgement, paras. 72, 417, 499. See also *Bagilishema* Appeal Judgement, para. 35.

<sup>6030</sup> In relation to this issue, the Trial Chamber notes the following testimony of **Pandurević**: “What you have to understand [...] is that we are talking about two separate operations that were taking place in the area of Zvornik. One operation or one task, rather, was the one under my direct authority for which I had been sent back to Zvornik and this was fighting the 28th Division, and that was the main task of the Zvornik Brigade. The second activity or operation that could have been taking place in any other place without me knowing anything about it beyond my influence was the operation to bring in, incarcerate, and kill prisoners of war. The fact that the area where those people were brought to and killed was close to the area of responsibility of the Zvornik Brigade does not impose my obligation or responsibility to take care of that. That’s why it was not my concern because I had other priorities. I had my priority task for which I had been brought back.” Vinko Pandurević, T. 31577 (17 Feb 2009). See also *Ibid.*, T. 31011–31012 (2 Feb 2009) (explaining one of the reasons why he did not try and find out more about the prisoners Grujić had told him about on 15 July: “First of all, General Krstić had sent me back with a clear task. He did not give me any alternative information or information of any other kind. All he gave me was a combat task.”).



finds that there were necessary and reasonable measures that could have been immediately taken by **Pandurević** in order to prevent the commission of the crimes by his subordinates when he initially received the alarming information from Obrenović. The Trial Chamber further notes that the measures available to **Pandurević**, as outlined above, would not have entailed a lengthy or substantial undertaking on his part such that it would have prevented or impeded him from carrying out his other duties. He also had the option of delegating the responsibility to investigate or take immediate action to a subordinate. The Trial Chamber therefore finds that **Pandurević** failed to take the necessary and reasonable measures to prevent the criminal acts committed by members of the Zvornik Brigade on the afternoon of 15 July and on 16 July.

ii. Duty to Punish

2052. The Trial Chamber has found that on 15 July **Pandurević** acquired reason to know of possible criminal conduct by his subordinates during the murder operation. The Trial Chamber will now examine whether, after this point in time, **Pandurević** took measures that were necessary and reasonable to punish the criminal conduct of those subordinates as to satisfy his obligation under Article 7(3).

2053. There is no evidence before the Trial Chamber that **Pandurević** punished or took any disciplinary measures against any of his subordinates for their criminal conduct in relation to the detention and execution of Bosnian Muslim males in the area of Zvornik in July 1995.<sup>6031</sup> The Trial Chamber also recalls **Pandurević**'s own testimony that he did not punish any of his subordinates for acts against Bosnian Muslims during the war.<sup>6032</sup> However, a superior is not required to dispense punishment personally but may discharge his or her duty to punish by initiating an investigation and reporting the matter to the competent authorities.<sup>6033</sup>

2054. There is no evidence to indicate that **Pandurević** requested the Military Prosecutor's Office to conduct an investigation or that he instructed the Zvornik Brigade Crime Prevention Service to conduct an investigation and forward on to the Military Prosecutor a report on potential criminal

<sup>6031</sup> The Trial Chamber recalls that Lazar Ristić testified that he never witnessed an investigation within his battalion or at the Zvornik Brigade level concerning the events in Orahovac on 14 July 1995 nor was he aware of an order issued by **Pandurević** investigating the events or instigating any disciplinary action with respect to any soldier involved in the events. Lazar Ristić, T. 10203–10204 (18 Apr 2007). [REDACTED] Nebojša Jeremić also testified that he was not aware of anyone in the Zvornik Brigade requesting the Military Prosecutor's Office to conduct an investigation into the rumoured executions at Orahovac and Pilica and as far as he knew, neither he nor anyone in the Crime Prevention Service was ever instructed to conduct an investigation into those executions. Nebojša Jeremić, T. 10439–10440 (24 Apr 2007).

<sup>6032</sup> Vinko Pandurević, T. 32066 (25 February 2009).

<sup>6033</sup> *Boškoski and Tarčulovski* Appeal Judgement, para. 230; *Hadžihasanović and Kubura* Appeal Judgement, para. 154. See also *supra*, para. 1045.

offences committed by brigade members. However, **Pandurević** submits that he nevertheless discharged his duty to punish through his reporting of the matter in his interim combat reports for 15 and 18 July as well as in his meeting with Krstić on 27 July.<sup>6034</sup> According to **Pandurević**, through this reporting to his superiors, he thus “delegated his responsibility to punish the crimes.”<sup>6035</sup> He further submits that, under the circumstances of the case, he “did all that was reasonable to discharge his duty to report matters” and that “[t]o expect him to report the matter beyond his immediate superior, when he believes that the organs of the Corps and Main Staff are involved in the commission of crimes, is unrealistic.”<sup>6036</sup>

2055. At the outset, the Trial Chamber notes that, in general, reporting to the Military Prosecutor is a reasonable and necessary measure to be undertaken by a superior if he or she learns or suspects that a crime has been committed. Under the applicable law governing military courts, when a brigade commander discovers that a crime has been committed, the commander has a duty to report it to the Military Prosecutor or the Brigade’s Security Organ.<sup>6037</sup> Generally, the responsibility for investigating criminal acts within the structure of a brigade of the VRS fell within the authority of the Security Organ and Military Police.<sup>6038</sup> In the Zvornik Brigade, the Crime Prevention Service, within the Military Police Company of the Brigade, had the responsibility to conduct investigations into serious offences, gather documentation, and then forward such information on to the Military Prosecutor.<sup>6039</sup> According to Nebojša Jeremić, who worked in the Service during the relevant period, if the Crime Prevention Service had been ordered to conduct an investigation, such as into the murder operation, it was **Nikolić**, the Chief of Security in the Zvornik Brigade, who normally would issue such an order.<sup>6040</sup>

<sup>6034</sup> Pandurević Final Brief, para. 1101.

<sup>6035</sup> *Ibid.*, para. 1102.

<sup>6036</sup> Pandurević Final Brief, para. 1104.

<sup>6037</sup> Branislav Ristivojević, T. 28078 (12 Nov 2008).

<sup>6038</sup> *Ibid.*, T. 28075 (12 Nov 2008).

<sup>6039</sup> Nebojša Jeremić, T. 10419–10420, T. 10471–10472 (24 Apr 2007), T. 10485 (25 Apr 2007). With regard to the general procedure for such an investigation, Jeremić testified that members of the Crime Prevention Service gathered documentation that must accompany criminal reports, such as statements from soldiers of the Zvornik Brigade and witnesses. If the criminal act in question was more serious, such as murder, the members of the Service worked in cooperation with the civilian police. The Crime Prevention Service would then send all the documentation to the Military Prosecutor’s Office in Bijeljina, together with a criminal report. Nebojša Jeremić, T. 10420–10420 (24 Apr 2007). When there was suspicion of the commission of criminal offence, there were no disciplinary proceedings within the framework of the Zvornik Brigade. If the Brigade had already instituted disciplinary procedures, then they would be suspended upon a suspicion that a criminal act had been committed and the case would be forwarded to the responsible Military Prosecutor’s Office. *Ibid.*, T. 10471 (24 Apr 2007). The Military Prosecutor’s Office or the Military Court would be informed of potential criminal offences committed by Zvornik Brigade soldiers through notification in the form of reports by the Crime Prevention Service. Nebojša *Ibid.*, T. 10485 (25 Apr 2007). The Crime Prevention Service passed criminal complaints in their possession to the Military Prosecutor’s Office, along with statements and other relevant material. *Ibid.*, T. 10471–10472 (24 Apr 2007).

<sup>6040</sup> Nebojša Jeremić, T. 10440 (24 Apr 2007). **Nikolić** was the immediate superior of Jeremić within the Crime Prevention Service. *Ibid.*, T. 10447 (24 Apr 2007).

2056. Given that **Pandurević** had information about **Nikolić's** involvement in the murder operation,<sup>6041</sup> the Trial Chamber finds that it was unreasonable under the circumstances for him to report the matter to the Security Organ. Alternatively, **Pandurević** potentially could have issued the order for an investigation directly to the Crime Prevention Service himself. However, the Trial Chamber considers that while technically this was an option available to him, in reality, this was not a practical option under the prevailing circumstances of the time, particularly considering that the Crime Prevention Service fell within the purview of the Security Organ.

2057. The remaining option available to **Pandurević** at the time thus was to report the matter directly to the Military Prosecutor himself. In the case at hand, however, very little evidence was presented on the VRS Military Prosecutor and its functioning during the relevant period in 1995, particularly in regard to the issue of its functional relationship with, and independence from, the Main Staff. There is some evidence to show that the Military Prosecutor was in fact not independent from the Main Staff.<sup>6042</sup> Ultimately, there is insufficient evidence before the Trial Chamber to demonstrate that the Military Prosecutor was independent and that a report to this body represented a realistic option for **Pandurević** when this was a Main Staff operation authorised by Mladić.<sup>6043</sup>

<sup>6041</sup> See *supra*, paras. 1879, 1889.

<sup>6042</sup> According to Butler, in 1992, the military prosecutor's office was under the administration of the VRS, and **Gvero** in particular. Richard Butler, T. 19607–19608 (14 Jan 2008). Later in the war, in 1993 or 1994, the Ministry of Defense took over responsibility for the military courts. *Ibid.*, T. 20209–20210 (22 Jan 2008). However, there is evidence that **Gvero** retained some degree of control or monitoring power over the work of the military courts even after 1993. See Manojlo Milovanović, T.12246-12247 (30 May 2007) (testifying that **Gvero** “was to monitor the work of military courts in contact with an appropriate section in the Ministry of Defence.”).

<sup>6043</sup> The Trial Chamber also notes that in March and April 1996, Karadžić ordered investigations to be carried out into crimes that may have been committed during the war. In March 1996, Karadžić ordered the VRS Main Staff and the Ministry of the Interior to “form a mixed expert commission of three members each to fully investigate and determine the facts regarding the alleged discovery of two decomposed bodies at the scene of earlier battles with the Muslim side in the Pilica area, Zvornik Municipality.” Ex. P00022, “Order from the Main Staff of the VRS signed by Radovan Karadžić, 23 March 1996” (the order further indicated that the commission should produce a written report on its findings to be sent to Karadžić). See also Richard Butler, T. 20959–20960 (1 Feb 2008) (testifying that Karadžić initiated an investigation involving the events of Srebrenica either late 1995 or early 1996 and that there was also an investigation initiated by the military prosecutor's office at approximately March or April of 1996. The two investigations may have been under the umbrella of the one investigation.) Additionally, in April 1996, Karadžić ordered a “detailed investigation to be carried out of the locations where victims of armed conflict in and around Srebrenica” were to be found with a view to determining “whether any intentional murder of civilians, of wounded or of prisoners of war occurred or whether any crime was committed representing breaches of The Hague or Geneva Conventions”. Ex. P00021, “Order from the President of the Republic and the Commander in Chief of the Armed Forces Dr. Radovan Karadžić, 1 April 1996” (the order further noted that “[t]he perpetrators of any such crime should be identified so that legal criminal proceedings against such perpetrators could be initiated without any delay”). The order was to be implemented by “the Main Staff of the Republika Srpska Army; the Ministers of Defence, of the Interior and of the Justice and Administration; the Supreme Court; the Supreme Military Court; the Public Prosecutor of the Republika Srpska and the Military Prosecutor of the Republika Srpska Army.” Ex. P00021, “Order from the President of the Republic and the Commander in Chief of the Armed forces Dr. Radovan Karadžić, 1 April 1996”. In September 1996, the MUP issued a report on the results of its investigation in response to Karadžić's April 1996 order, and essentially concluded that, in “the period when Srebrenica was liberated”, it was the Muslim army that was responsible for murders of other Muslims and that other deaths were suicides. Ex. P00023, “Report from the Ministry of Interior with information concerning the period when Srebrenica was liberated signed by Minister Dragan Kijac, 23 September 1996”. See also Richard Butler, T. 20960 (1 Feb 2008). The Trial Chamber considers that this evidence tends to indicate that an investigation by the Military Prosecutor would not have produced a genuine result and thus that it is unlikely that

Having considered the available evidence and giving the benefit to the Accused, the Trial Chamber therefore finds that the Prosecution has failed to demonstrate that reporting to the Military Prosecutor was a practical option available to **Pandurević** at the time.

2058. In assessing the actions taken by **Pandurević**, the Trial Chamber emphasizes that a superior is not obliged to perform the impossible<sup>6044</sup> and that the measures required of the superior are limited to those which are feasible under the circumstances and are within his or her power.<sup>6045</sup> Nevertheless, a superior still must use every means within his or her material ability under the circumstances prevailing at the time when the superior has reason to know of criminal acts committed by his or her subordinates.<sup>6046</sup>

2059. According to **Pandurević**'s own account, on the evening of 16 July at the IKM, **Pandurević** asked Obrenović about the situation of the prisoners in the Zvornik area. At this point, Obrenović provided him with more detailed information regarding the murder operation and involvement of the members of the Zvornik Brigade in guarding and burial tasks.<sup>6047</sup> Following this conversation, he sent Obrenović to the Zvornik Brigade headquarters to gather more information about the killings.<sup>6048</sup> Additionally, on the morning of 18 July, **Pandurević** had brief meetings with Obrenović and Jokić in Baljkovica, during which Jokić confirmed for **Pandurević** that engineering machinery belonging to the Zvornik Brigade was used in the burial of bodies of executed prisoners.<sup>6049</sup> In the view of the Trial Chamber, in these ways, **Pandurević** took some measures to investigate and gather further information about the crimes that occurred in the area of Zvornik and any involvement of his subordinates in the commission of those crimes.

2060. As discussed previously, **Pandurević**'s interim combat reports for 15 and 18 July allude to the detention and executions of the Bosnian Muslim prisoners who had been brought to the Zvornik area.<sup>6050</sup> According to **Pandurević**, when he dictated the 18 July Interim Combat Report in particular, he believed that Krstić was in possession of certain information regarding the killings, but **Pandurević** did not know the extent of his knowledge.<sup>6051</sup> Further, in **Pandurević**'s view, it

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an effort by **Pandurević** to report to the Military Prosecutor would have led to the investigation or punishment of members of the Zvornik Brigade for their involvement in the murder operation.

<sup>6044</sup> *Blaškić* Appeal Judgement, para. 417.

<sup>6045</sup> *See Krnojelac* Trial Judgement, para. 95.

<sup>6046</sup> *Blaškić* Appeal Judgement, paras. 72, 417, 499. *See also Bagilishema* Appeal Judgement, para. 35.

<sup>6047</sup> *See supra*, paras. 1879–1881.

<sup>6048</sup> *See supra*, para. 1881.

<sup>6049</sup> *See supra*, para. 1893.

<sup>6050</sup> *See supra*, paras. 1870, 1895, 1948, 1965.

<sup>6051</sup> Vinko Pandurević, T. 31106, 31111 (9 Feb 2009). **Pandurević** further testified that he believed that the 18 July Interim Combat Report sufficiently reported on this matter to Krstić. *Ibid.*, T. 31112 (9 Feb 2009). With regard to the reporting to his superiors in the 18 July Report, **Pandurević** also explained: "I [...] sent a report to the Corps in which I mentioned POWs, and I expected that if the Corps did not know anything about this, they would ask for

was pointless for him to report to the Security Organ any suspected criminal act regarding the prisoners because he knew that “the Superior Commands of the Security Organs” were involved, and his only option therefore was to inform the Corps Commander of the matter.<sup>6052</sup> The Trial Chamber also recalls PW-168’s account that **Pandurević**, in a revealing and striking comment, expressed to Obrenović that “with Mladić up there, we are all doomed.”<sup>6053</sup>

2061. During Obrenović’s and **Pandurević**’s conversation on 23 July, when they spoke about the executions that had been carried out in the Zvornik area and what they should have done and should do in response to what had happened, **Pandurević** indicated that he had written his 18 July Report.<sup>6054</sup> In the view of the Trial Chamber, this conversation, viewed in conjunction with other testimony from **Pandurević**, supports the reasonable inference that **Pandurević** intended his report to be a means to convey to his superiors information about the events in Zvornik and considered it to be a means to express his disapproval and denunciation of the crimes that occurred in this respect.

2062. Having considered all of the relevant evidence, the Trial Chamber is satisfied that his 15 and 18 July Interim Combat Reports were a means—potentially the only such realistic available means—for **Pandurević** to communicate and report to the competent authorities about the crimes that were committed in the area of Zvornik.<sup>6055</sup> The Trial Chamber also recalls that **Pandurević** raised the issue of the execution of prisoners in Zvornik with Krstić in person on 27 July.<sup>6056</sup> Specifically, **Pandurević** asked Krstić if he had any more specific information about the matter, to which Krstić responded that it was not something that should be **Pandurević**’s concern and that he, Krstić, would deal with the problem in the appropriate way.<sup>6057</sup>

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some additional information or they would order me as to what to do. However, I never received any feedback from the Corps with this regard.” *Ibid.*, T. 31012 (2 Feb 2009).

<sup>6052</sup> Vinko Pandurević, T. 31111–31112 (9 Feb 2009). **Pandurević** further testified, “It was my duty as the commander, once I learned that a crime had been committed, to inform my superior and then he in turn would inform the prosecutor and the court, and I also had the option to engage the security organs -- or, rather, I knew that the security organs had instructions laid down by the military prosecutor on how to act in legal criminal matters when a crime was committed that was under the jurisdiction of the military court. It was their official duty so that they could launch and conduct an investigation. [...] I did not have the authority to investigate officers from higher commands. All I could do was to inform the corps commander and to expect him to initiate the appropriate mechanisms and to launch an investigation into these crimes.” *Ibid.*, T. 31111–31112 (9 Feb 2009).

<sup>6053</sup> PW-168, T. 15950 (closed session) (27 Sept 2007). *See supra*, para. 1910.

<sup>6054</sup> *See supra*, para. 1910.

<sup>6055</sup> The Trial Chamber specifically notes the testimony of expert Branislav Ristivojević that the law did not cover or provide direction as to whom the Brigade Commander should report in case the suspected perpetrator of the crime in question is from the Security Organ, Military Police, or Military Prosecutor. According to Ristivojević, in such a situation, the Brigade Commander would fulfil his duty by reporting the crime to his Corps Commander. Branislav Ristivojević, T. 28079–28082 (12 Nov 2008).

<sup>6056</sup> *See supra*, para. 1915.

<sup>6057</sup> *See supra*, para. 1915.

2063. The Trial Chamber has also considered the prevailing circumstances at the time that **Pandurević** had reason to know of the participation of members of the Zvornik Brigade in the murder operation. Specifically, the Trial Chamber is convinced that, as reflected in his conversations with Obrenović on 15, 16, and 23 July, **Pandurević** had knowledge that the detention, execution, and burial of the Bosnian Muslim men in the area of Zvornik had been conducted pursuant to orders of the Main Staff, particularly Mladić and the Security Branch. In light of this fact, the Trial Chamber considers that **Pandurević** had limited options in terms of reasonable means available to him and within his material ability in order to discharge his duty to punish crimes committed during that operation. The normal avenues open to a Commander were effectively unrealistic in his situation. In particular, it is evident that referring the matter to the Security Organ, to his direct superior or even to the Commander of the VRS for investigation and punishment in the usual manner was not possible when all of them were implicated in planning, ordering and executing these horrific crimes.

2064. As recounted above, there is no evidence of an alternative independent avenue being open to him. Despite these obvious limitations, **Pandurević** did take some measures to address the crimes that had occurred through his Interim Combat Reports of 15 and 18 July and by raising the issue with Krstić in person on 27 July. In most instances, such action would be insufficient to fulfil the obligation on a superior to punish. However, the Trial Chamber is satisfied that, in these very particular and extraordinary circumstances, there were no other reasonable means available to **Pandurević** and within his material ability to pursue punishment for the crimes committed in the murder operation. Furthermore, there is no evidence before the Trial Chamber that this situation significantly changed later during **Pandurević's** remaining time as Commander of the Zvornik Brigade so as to provide him with other options in terms of necessary and reasonable measures.

2065. In light of the foregoing, the Trial Chamber is not satisfied that the Prosecution has proven beyond reasonable doubt that **Pandurević** failed to take the necessary and reasonable measures to punish his subordinates required to discharge his duty under Article 7(3) of the Statute.

e. Conclusion

2066. Based on these findings, the Trial Chamber therefore finds that **Pandurević** had reason to know that crimes were being committed by his subordinates during the murder operation. As a superior within the meaning of Article 7(3), **Pandurević** was therefore legally obligated to take the necessary and reasonable measures to prevent the commission of the crimes by the members of the Zvornik Brigade. **Pandurević**, however, took no such measures to prevent their crimes of murder

and aiding and abetting murder.<sup>6058</sup> The Trial Chamber therefore finds beyond reasonable doubt that **Pandurević** is criminally responsible under Article 7(3) of the Statute.

(v) Counts

a. The Knowledge Requirement for a Crime under Article 5 of the Statute

2067. **Pandurević** is responsible for a crime against humanity under Article 5 of the Statute if his acts were part of the widespread and systematic attack against the civilian population, and if at the time he knew of that attack and that his acts comprise a part thereof.<sup>6059</sup>

2068. The Trial Chamber has found that there was a widespread and systematic attack directed against a civilian population with several components culminating in the military action against Srebrenica.<sup>6060</sup> As established previously, **Pandurević** had knowledge of the 20 March Drina Corps Order,<sup>6061</sup> through which the plan for the transfer of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves was to be implemented.<sup>6062</sup> Additionally, **Pandurević** participated in the *Krivaja-95* Operation and the takeover of the Srebrenica enclave and thus knew of the military attack on Srebrenica, a protected civilian enclave. In these circumstances, it is clear that he knew that his acts constituted part of the attack.

2069. With respect to the wounded Bosnian Muslim prisoners from Milići Hospital, the Trial Chamber has found that these men were wounded as a result of the attack on Srebrenica.<sup>6063</sup> **Pandurević** was aware that these men, who were brought to the Zvornik Brigade, were Bosnian Muslim and that they had been wounded. Given the timing of these events, the Trial Chamber is satisfied that **Pandurević** knew that these wounded prisoners from Milići Hospital were victims of the attack against the protected enclave.

2070. Based on the evidence, the Trial Chamber is satisfied that **Pandurević**'s acts and omission were tied to the attack on Srebrenica and that **Pandurević** knew that this was the case. The Trial Chamber therefore finds that the knowledge requirement for the commission of a crime under Article 5 of the Statute has been met.

<sup>6058</sup> See *supra*, para. 2043.

<sup>6059</sup> See *supra*, para. 758.

<sup>6060</sup> See *supra*, para. 785.

<sup>6061</sup> Ex. P00203, "Drina Corps Order for defence and active combat operations, Operative No. 7, signed by Milenko Živanović, 20 March 1995".

<sup>6062</sup> See *supra*, para. 1993.

<sup>6063</sup> See *supra*, para. 577.

b. Counts 4 and 5: Murder

2071. The Trial Chamber has found that during the period of 12 to 27 July 1995 Bosnian Serb Forces killed thousands of Bosnian Muslims from Srebrenica and that these killings constitute murder both as a crime against humanity and a violation of the laws or customs of war.<sup>6064</sup> The Trial Chamber has also found that these murders were committed as part of the common purpose of the JCE to Murder or as a natural and foreseeable consequence of it.<sup>6065</sup>

2072. The Trial Chamber has found that **Pandurević** was not a participant in the JCE to Murder. However, the Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.<sup>6066</sup> He also knew at the time of his omission that the victims were taking no active part in the hostilities. **Pandurević** had the knowledge required for a crime against humanity and for a war crime.<sup>6067</sup> Therefore, the Trial Chamber, by majority, Judge Kwon dissenting, finds that **Pandurević** is criminally responsible for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.

2073. In addition, the Trial Chamber has also found that, as superior within the meaning of Article 7(3) of the Statute, **Pandurević** failed to take the necessary and reasonable measures required to prevent members of the Zvornik Brigade from participating in the murder of Bosnian Muslim prisoners in the area of Zvornik on 15 and 16 July.<sup>6068</sup> **Pandurević** is therefore criminally responsible, pursuant to Article 7(3), for murder as a crime against humanity as well as for murder as a violation of the laws or customs of war.

c. Count 3: Extermination

2074. The Trial Chamber has found that the large-scale murders of men and boys from Srebrenica amounted to extermination as a crime against humanity punishable under Article 5. These murders were either within the common purpose of the JCE to Murder or were a natural and foreseeable consequence of it.

2075. The Trial Chamber has found that **Pandurević** was not a participant in the JCE to Murder based on his lack of intent and lack of significant contribution to the common purpose. There is no evidence to suggest that **Pandurević** committed, planned, instigated, or ordered the large-scale

<sup>6064</sup> See *supra*, paras. 744–748, 759–789.

<sup>6065</sup> See *supra*, paras. 1050, 1082.

<sup>6066</sup> See *supra*, para. 1991.

<sup>6067</sup> See *supra*, paras. 748, 2068–2070.



murders of the men and boys from Srebrenica, nor is there sufficient evidence from which to conclude that **Pandurević** possessed the requisite *mens rea* for the crime of extermination.

2076. The Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.<sup>6069</sup> In the view of the Trial Chamber, there is sufficient evidence to conclude that **Pandurević** knew that the crime of extermination was being committed at the time of his failure to act on 23 July with respect to the ten wounded prisoners. Upon his return to Zvornik on 15 July, **Pandurević** learned that a large number of prisoners had been brought from Bratunac to Zvornik and were being executed pursuant to an order by Mladić.<sup>6070</sup> Later, in his 18 July Interim Combat Report, **Pandurević** makes reference to 3,000 Bosnian Muslim males having been brought to and executed in the area of Zvornik.<sup>6071</sup> Based on this report, the Trial Chamber is therefore satisfied that by at least 18 July, **Pandurević** had knowledge of the large-scale murders of the men and boys from Srebrenica.

2077. The murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital was an appalling and inexcusable criminal act. **Pandurević**'s responsibility for these murders, albeit through aiding and abetting by omission, can only be condemned without reservation. However, **Pandurević**'s responsibility for the murder of the prisoners from Milići Hospital must be considered and decided upon strictly within the context of extermination as it occurred in this case. Under this count, **Pandurević** is not being charged for these murders in isolation, but within the context and for the purpose of extermination. It is precisely within this context that his responsibility must be assessed.

2078. The Trial Chamber emphasises that each human life is precious and the murder of ten persons is of the utmost gravity under any circumstance. However, for the purpose of this Count, the Trial Chamber must decide if in aiding and abetting by omission the murder of these ten Bosnian Muslims, **Pandurević** substantially contributed to the commission of extermination. It does not follow that every additional killing automatically amounts to a substantial contribution to the extermination. The Trial Chamber does not consider this issue to be a mere numerical one. One has to consider all of the circumstances surrounding the extermination and the effect of the alleged murders within that context. The evidence shows that on 23 July the mass-killing operation was substantially over and extermination was already a reality. The murder of the ten wounded Bosnian

<sup>6068</sup> See *supra*, para. 2051.

<sup>6069</sup> See *supra*, para. 1991.

<sup>6070</sup> See *supra*, para. 1861.

<sup>6071</sup> See Ex. P00334, "Zvornik Brigade Interim Combat Report, signed by Pandurević, 18 July 1995", para. 4. See also *supra*, paras. 1895, 1965.

Muslim prisoners obviously added another ten victims to the thousands of Bosnian Muslim men and boys who had already been killed. However, as such, given the other circumstances, it cannot be said to be a substantial contribution to the extermination in this case which had already materialised. The Trial Chamber is not satisfied that **Pandurević**'s contribution by omission that resulted in the murder of ten more Bosnian Muslims amounts to a substantial contribution to the commission of extermination. Accordingly, the Trial Chamber finds that **Pandurević** did not aid and abet the crime of extermination.

2079. The Trial Chamber therefore finds that **Pandurević** is not criminally responsible for extermination as a crime against humanity. Further, the Trial Chamber recalls its finding that **Pandurević** is responsible pursuant to Article 7(3) for murder with respect to the murder of Bosnian Muslim prisoners in the area of Zvornik on 15 and 16 July. Given the finding that he had "reason to know" and thus the obvious limitations of his knowledge, as well as the fact that his Article 7(3) responsibility was triggered at a late stage in the murder operation, the Trial Chamber is not satisfied that **Pandurević** is responsible pursuant to Article 7(3) for the crime of extermination.

d. Count 1: Genocide

2080. The Trial Chamber has found that genocide was committed by members of the VRS Main Staff and the VRS Security Organ, including **Beara** and **Popović**, in relation to the Muslims of Eastern Bosnia, as part of the Bosnian Muslims.<sup>6072</sup> The Trial Chamber has also found that the genocide was committed through the killings and infliction of serious bodily and mental harm caused in the course of, and by, the murder operation.<sup>6073</sup>

2081. The Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital.<sup>6074</sup> As such, **Pandurević** aided and abetted the underlying act of murdering members of the group, as articulated in Article 4(2)(a) of the Statute. The Trial Chamber will therefore now examine whether **Pandurević** aided and abetted murder with genocidal intent.

2082. The Prosecution submits that **Pandurević**'s genocidal intent is evidenced by the existence of a genocidal plan and his involvement in it, including specifically his participation in the attack on

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<sup>6072</sup> See *supra*, para. 863.

<sup>6073</sup> See *supra*, para. 861.

<sup>6074</sup> See *supra*, para. 1991.

the Srebrenica and Žepa enclaves as well as his acts and omissions with respect to the murder operation carried out in the area of Zvornik.<sup>6075</sup>

2083. As further evidence of **Pandurević**'s genocidal intent, the Prosecution submits that "**Pandurević** clearly indicated that he was aware of the genocidal plan to murder the Muslim men" when he "expressed his irritation that the civil protection units were not performing the burials" during his conversation with Obrenović on 15 July.<sup>6076</sup> The Trial Chamber however has found that an inference as to **Pandurević**'s knowledge cannot be drawn from this response by **Pandurević**. Accordingly, the Trial Chamber finds that the evidence of **Pandurević**'s response is insufficient evidence from which to conclude that **Pandurević** had knowledge of the genocidal plan and from which to infer genocidal intent on his part.<sup>6077</sup>

2084. The Prosecution also alleges that **Pandurević**'s reference to "let them go" in his 15 July Interim Combat Report indicates that **Pandurević** knew that some of the Bosnian Muslim prisoners in the area of Zvornik were still alive and that he "had the ability and opportunity to save them but deliberately chose not to."<sup>6078</sup> According to the Prosecution, "[b]y consciously choosing not to release those prisoners and instead asking for someone else to come and take over the murder operation so that he could concentrate his resources on fighting the Muslim column, **Pandurević** confirmed his intent to destroy those Muslim men."<sup>6079</sup> The Trial Chamber, however, has previously found that the reference to "let them go" in **Pandurević**'s 15 July Report refers to the column of the ABiH 28th Division and not the prisoners,<sup>6080</sup> and thus accordingly rejects the Prosecution's submission with respect to **Pandurević**'s alleged genocidal intent.

2085. The Prosecution also submits that **Pandurević**'s genocidal intent may be inferred from the language used by **Pandurević** in his brigade reports and documents.<sup>6081</sup> In particular, the Prosecution argues that frequent use of derogatory terms, such as "*poturice*", and expressions of rhetoric contained in his reports further support the conclusion that **Pandurević** advocated and shared the goal of the RS and VRS leadership to remove the Muslim population from Eastern Bosnia.<sup>6082</sup> The Prosecution submits that overall, **Pandurević**'s habitual use of derogatory language for Muslims, as evidenced by their regular use in official documents and reports and in other communications between April and July 1995, constitutes further evidence of his ethnic bias against

<sup>6075</sup> Prosecution Final Brief, paras. 1545–1551.

<sup>6076</sup> *Ibid.*, para. 1549.

<sup>6077</sup> *See supra*, paras. 1861, 1961.

<sup>6078</sup> Prosecution Final Brief, para. 1442. *See also ibid.*, paras. 1421, 1423.

<sup>6079</sup> *Ibid.*, para. 1550.

<sup>6080</sup> *See supra*, paras. 1963–1964.

<sup>6081</sup> *See* Prosecution Final Brief, paras. 1553–1567.

<sup>6082</sup> *Ibid.*, paras. 1554–1559, 1561–1567.

Muslims.<sup>6083</sup> Additionally, the Prosecution notes that **Pandurević**'s use of an ethnically derogatory term such as "Turks" to refer to murder victims in his 18 July Interim Combat Report, "is a clear and unmistakable sign" of **Pandurević**'s ethnic hatred "not just towards all Muslims; but specifically towards the one who [were] murdered with his knowledge and involvement."<sup>6084</sup>

2086. The Trial Chamber finds that while **Pandurević** may not have been sympathetic towards Bosnian Muslims, the use of derogatory language and rhetoric in brigade documents or the existence of a culture of ethnic bias against Muslims within the Zvornik Brigade<sup>6085</sup> is in no way determinative of his alleged specific intent to commit genocide. Particularly, in light of the absence of other evidence such as acts from which to infer such intent, the Trial Chamber finds that the mere use of such language in itself is not sufficient evidence to establish that **Pandurević** possessed the requisite genocidal intent.

2087. Ultimately, considering the evidence of **Pandurević**'s acts, omissions, words and conduct, individually and cumulatively, the Trial Chamber finds that there is simply no evidence before it of genocidal intent on his part.

2088. The Trial Chamber also finds that the Prosecution has not proven beyond reasonable doubt that at the time of his omission, **Pandurević** had knowledge that other members of the VRS had the requisite specific intent to commit genocide. The Trial Chamber has found that **Pandurević** had knowledge of the common purpose of the JCE to Murder on 15 July and by at least 18 July was aware of the large-scale murders of Bosnian Muslim prisoners in the area of Zvornik pursuant to the orders and direction of the VRS Main Staff and the Security Branch, including **Popović**. **Pandurević** also had sufficient information from which to infer the discriminatory intent on their part against Bosnian Muslims. However, there is no evidence before the Trial Chamber that during the relevant period he learnt of the separations in Potočari, the capture of the men along the Bratunac–Konjević Polje Road, the large component of civilians amongst the prisoners, the details of the executions or the systematic nature of the operation or the other *indicia* of genocide which surrounded the murder operation. In these circumstances, while **Pandurević** was clearly aware of the murderous intent of other members of the VRS, the Trial Chamber is not satisfied beyond reasonable doubt that he possessed sufficient information to be aware of their specific intent to destroy the Bosnian Muslim population of Eastern Bosnia as such.

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<sup>6083</sup> Prosecution Final Brief, paras. 1564–1567.

<sup>6084</sup> *Ibid.*, para. 1566.

<sup>6085</sup> See Prosecution Final Brief, paras. 1568–1576.

2089. Moreover, the Trial Chamber finds that **Pandurević**'s omission with respect to the ten wounded prisoners from Milići Hospital did not substantially contribute to the commission of genocide. In the view of the Trial Chamber, his failure to fulfil his duty to protect the wounded prisoners does not constitute a substantial contribution in light of the scale of the genocidal operation and the stage of near completion that it had reached at the time of his omission on 23 July.

2090. The Trial Chamber finds that there is no evidence to support the conclusion that **Pandurević** aided and abetted murder with genocidal intent. Additionally, the Trial Chamber also cannot find that **Pandurević** aided and abetted genocide through his omission with respect to the wounded prisoners because his omission did not constitute a substantial contribution to the commission of genocide and there is insufficient evidence of his knowledge of the genocidal intent of **Popović** and others. The Trial Chamber therefore finds that **Pandurević** is not criminally responsible for genocide.

e. Count 2: Conspiracy to Commit Genocide

2091. Conspiracy to commit genocide punishable under Article 4(3) of the Statute is defined as an agreement between two or more persons to commit the crime of genocide;<sup>6086</sup> and to be found guilty, one must possess the same specific intent required for the commission of genocide, namely, the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.<sup>6087</sup>

2092. There is no evidence that **Pandurević** entered into an agreement to commit genocide, and as discussed above, the Trial Chamber has found that he did not possess the requisite specific intent to commit genocide. The Trial Chamber therefore finds that **Pandurević** is not criminally responsible for conspiracy to commit genocide.

f. Count 6: Persecution

2093. The Trial Chamber has found that persecution, a crime against humanity, was committed through murder, cruel and inhumane treatment, terrorising civilians, and forcible transfer.<sup>6088</sup>

<sup>6086</sup> *Musema* Trial Judgement, para. 191. See also *Nahimana et al.* Trial Judgement, para. 1041; *Kajelijeli* Trial Judgement, para. 787; *Ntagerura et al.* Trial Judgement, para. 70; *Niyitegeka* Trial Judgement, para. 423; *Ntakirutimana and Ntakirutimana* Trial Judgement, para. 798.

<sup>6087</sup> *Nahimana et al.* Appeal Judgement, para. 894; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192; *Ntakirutimana and Ntakirutimana* Trial Judgement, paras. 799(i)–(ii). See also *supra*, para. 820.

<sup>6088</sup> See *supra*, paras. 991–1003.

2094. The Trial Chamber has found that **Pandurević** was not a participant in either of the JCEs. However, the Trial Chamber has found, by majority, Judge Kwon dissenting, that **Pandurević** aided and abetted by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital and aided and abetted the forcible transfer of the Bosnian Muslim population from Srebrenica.<sup>6089</sup> Having considered all the evidence relevant to his intent, the Trial Chamber finds that there is insufficient evidence that **Pandurević** assisted in the commission of either of these underlying crimes with discriminatory intent.

2095. The Trial Chamber notes in this context that the Prosecution has alleged that **Pandurević**'s frequent use of derogatory language towards Muslims, such as in brigade reports, provides clear evidence of his ethnic bias against Muslims.<sup>6090</sup> However, in the view of the Trial Chamber, the use of derogatory terms is not sufficient evidence to establish that **Pandurević** possessed discriminatory intent, especially when viewed in consideration of the lack of other evidence to substantiate his alleged intent. The Trial Chamber finds that there is insufficient evidence of acts committed or behaviour demonstrated by **Pandurević** from which to infer his discriminatory intent on his part. The Trial Chamber in this respect also recalls its previous findings that **Pandurević** did not significantly contribute to the common purpose of the JCE to Murder as well as lacked the intent to carry out the common purposes of the JCE to Murder and JCE to Forcibly Remove. Furthermore, in the view of the Trial Chamber, **Pandurević**'s act of opening the corridor for passage of the Bosnian Muslim column, an act that ultimately spared many Bosnian Muslim lives, evidences a lack of persecutory intent on his part.

2096. In light of the insufficient evidence of his discriminatory intent, the Trial Chamber is therefore not satisfied that **Pandurević** aided and abetted the crime of murder and forcible transfer with the specific intent to discriminate on political, racial or religious grounds. Therefore, the Trial Chamber finds that **Pandurević** did not commit persecution.

2097. The Trial Chamber will now address whether **Pandurević** aided and abetted persecution. The Trial Chamber recalls that Judge Kwon is of the view that **Pandurević** is not responsible for aiding and abetting by omission the murder of the ten wounded prisoners from Milići Hospital because he lacked the requisite *mens rea*.<sup>6091</sup> Judge Prost is of the opinion that **Pandurević**'s omission does not constitute a substantial contribution to the crime of persecution.<sup>6092</sup> As such, the

<sup>6089</sup> The Trial Chamber finds that there is no evidence that **Pandurević** was involved in cruel and inhumane treatment or terrorising of the civilian population.

<sup>6090</sup> Prosecution Final Brief, paras. 1560–1567.

<sup>6091</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 60–66. See also *supra*, paras. 1989–1991.

<sup>6092</sup> See Judge Prost's Separate Opinion, *infra*, paras 1–4.

Trial Chamber is not satisfied that **Pandurević** aided and abetted persecution through aiding and abetting by omission the murder of the ten wounded prisoners from Milići Hospital.

2098. With respect to forcible transfer, the Trial Chamber is satisfied that **Pandurević** had knowledge of the discriminatory intent with which the forcible transfer was committed at the time he participated in the military attack and takeover of the Srebrenica enclave. In reaching this conclusion, the Trial Chamber recalls that **Pandurević** had knowledge of the common purpose of the JCE to Forcibly Remove and as a participant in the takeover of Srebrenica, was aware of the indiscriminate attack on the Bosnian Muslim population of the Srebrenica enclave.<sup>6093</sup> By participating in the attack on the enclave, **Pandurević** also knew that he was thus assisting in the commission of persecution. The Trial Chamber further notes that the military attack on the enclave was specifically directed towards the creation of the conditions and circumstances necessary for the removal of the Bosnian Muslim population from the Srebrenica enclave. In this context, **Pandurević**'s acts pursuant to the military operation clearly assisted in the targeting of the Bosnian Muslim population. The Trial Chamber therefore is satisfied that his acts in aiding and abetting the forcible transfer substantially contributed to the commission of persecution.

2099. Therefore, the Trial Chamber is satisfied that he aided and abetted persecution through aiding and abetting the forcible transfer of the Bosnian Muslim civilian population from the Srebrenica enclave. The Trial Chamber therefore finds that **Pandurević** is criminally responsible for persecution as a crime against humanity.

2100. Having found **Pandurević** responsible pursuant to Article 7(1) for persecution with respect to forcible transfer, the Trial Chamber finds it unnecessary to consider his responsibility under Article 7(3). With respect to the underlying act of murder, given the limited nature of **Pandurević**'s knowledge as to possible crimes and the involvement of his subordinates, the Trial Chamber is not satisfied that he had reason to know that crimes would be committed with discriminatory intent. In these circumstances, the Trial Chamber is not satisfied that **Pandurević** is responsible for the crime of persecution pursuant to Article 7(3).

g. Count 7: Inhumane Acts (Forcible Transfer)

2101. The Trial Chamber has found that **Pandurević** did not participate in the JCE to Forcibly Remove as he lacked the intent to carry out the common purpose.<sup>6094</sup> Overall, there is no evidence that **Pandurević** committed, planned, instigated, or ordered forcible transfer. However, the Trial

<sup>6093</sup> See *supra*, paras. 1995, 1997–1998.

Chamber has found that **Pandurević** aided and abetted the forcible transfer of the Bosnian Muslim civilian population from Srebrenica through his participation in the military attack on and takeover over of the enclave.<sup>6095</sup> The Trial Chamber therefore finds that **Pandurević** is criminally responsible for forcible transfer as a crime against humanity.

h. Count 8: Deportation

2102. The Trial Chamber has found that the departure of the Bosnian Muslim men to Serbia did not constitute deportation. Since the departure of the Bosnian Muslim men to Serbia is the only alleged basis for the charge of deportation in the Indictment, **Pandurević** is not criminally responsible for deportation as a crime against humanity.

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<sup>6094</sup> *See supra*, para. 2007.

<sup>6095</sup> *See supra*, para. 2012.



## VI. FINDINGS OF THE TRIAL CHAMBER

2103. The Trial Chamber will first set out each count and then its findings, in relation to each of the Accused.

### A. Charges against Vujadin Popović

2104. In relation to the charges brought against **Vujadin Popović**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a) and 7(1) of the Statute, through (a) killings members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and (d) imposing measures intended to prevent births within the group

**Vujadin Popović** is **guilty** of planning, ordering and committing genocide pursuant to Articles 4(3)(a) and 7(1) of the Statute, through killings members of the group, and causing serious bodily or mental harm to members of the group.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b) and 7(1) of the Statute

**Vujadin Popović** is **guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute

**Vujadin Popović** is **guilty** of planning, ordering and committing extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

**Vujadin Popović** is **guilty** of planning, ordering and committing murder, as a crime against humanity and as a violation of the laws and customs of war.<sup>6096</sup>

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<sup>6096</sup> The Trial Chamber recalls its finding that the murders in paragraphs 30.3.1 and 31.2.b of the Indictment were not proven, and the murders in paragraphs 31.1.b. and 31.1.c. of the Indictment were withdrawn.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Vujadin Popović** is **guilty** of planning, ordering and committing persecution, a crime against humanity, through murder, and cruel and inhumane treatment.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

**Vujadin Popović** is **not guilty** of inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

**Vujadin Popović** is **not guilty** of deportation, a crime against humanity.

#### **B. Charges against Ljubiša Beara**

2105. In relation to the charges brought against **Ljubiša Beara**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a) and 7(1) of the Statute, through (a) killings members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and (d) imposing measures intended to prevent births within the group

**Ljubiša Beara** is **guilty** of planning, ordering and committing genocide pursuant to Articles 4(3)(a) and 7(1) of the Statute, through killings members of the group, and causing serious bodily or mental harm to members of the group.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b) and 7(1) of the Statute

**Ljubiša Beara** is **guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute

**Ljubiša Beara** is **guilty** of planning, ordering and committing extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

**Ljubiša Beara** is **guilty** of planning, ordering and committing murder, as a crime against humanity and as a violation of the laws and customs of war.<sup>6097</sup>

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Ljubiša Beara** is **guilty** of planning, ordering and committing persecution, a crime against humanity, through murder, and cruel and inhumane treatment.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

**Ljubiša Beara** is **not guilty** of inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

**Ljubiša Beara** is **not guilty** of deportation, a crime against humanity.

### **C. Charges against Drago Nikolić**

2106. In relation to the charges brought against **Drago Nikolić**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a) and 7(1) of the Statute, through (a) killings members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its

physical destruction in whole or in part, and (d) imposing measures intended to prevent births within the group

**Drago Nikolić** is **guilty** of aiding and abetting genocide pursuant to Articles 4(3)(a) and 7(1) of the Statute, through killings members of the group, and causing serious bodily or mental harm to members of the group.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b) and 7(1) of the Statute

**Drago Nikolić** is **not guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b) and 7(1) of the Statute

**Drago Nikolić** is **guilty** of planning, ordering and committing extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

**Drago Nikolić** is **guilty** of planning, ordering and committing murder, as a crime against humanity and as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Drago Nikolić** is **guilty** of planning, ordering and committing persecution, a crime against humanity, through murder, and cruel and inhumane treatment.

<sup>6097</sup> The Trial Chamber recalls its finding that the murders in paragraphs 30.3.1 and 31.2.b. of the Indictment were not proven, and the murders 31.1.b. and 31.1.c. of the Indictment were withdrawn.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

**Drago Nikolić** is **not guilty** of inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

**Drago Nikolić** is **not guilty** of deportation, a crime against humanity.

#### **D. Charges against Ljubomir Borovčanin**

2107. In relation to the charges brought against **Ljubomir Borovčanin**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a), 7(1) and 7(3) of the Statute, through (a) killings members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and (d) imposing measures intended to prevent births within the group

**Ljubomir Borovčanin** is **not guilty** of genocide.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b), 7(1) and 7(3) of the Statute

**Ljubomir Borovčanin** is **not guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b), 7(1) and 7(3) of the Statute

**Ljubomir Borovčanin** is **guilty** of aiding and abetting extermination, a crime against humanity.

- **Count 4: Murder**, charged pursuant to Articles 5(a), 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3, 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

**Ljubomir Borovčanin** is **guilty** of aiding and abetting murder, as a crime against humanity and as a violation of the laws and customs of war.<sup>6098</sup>

<sup>6098</sup> The factual allegation underlying the murder is that as alleged in paragraph 30.4 of the Indictment. *See also supra*, paras. 1559, 1561–1563.

**Ljubomir Borovčanin** is **guilty** of murder pursuant to Art. 7(3) of the Statute, as a crime against humanity and as a violation of the laws and customs of war.<sup>6099</sup>

- **Count 6: Persecution**, charged pursuant to Articles 5(h), 7(1) and 7(3) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Ljubomir Borovčanin** is **guilty** of aiding and abetting persecution, a crime against humanity, through aiding and abetting murder, and aiding and abetting forcible transfer.<sup>6100</sup>

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i), 7(1) and 7(3) of the Statute

**Ljubomir Borovčanin**, by majority, Judge Kwon dissenting, is **guilty** of aiding and abetting inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d), 7(1) and 7(3) of the Statute

**Ljubomir Borovčanin** is **not guilty** of deportation, a crime against humanity.

#### E. Charges against Radivoje Miletić

2108. In relation to the charges brought against **Radivoje Miletić**, the Trial Chamber finds:

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

**Radivoje Miletić**, by majority, Judge Kwon dissenting, is **guilty** of committing murder, a crime against humanity.

- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

<sup>6099</sup> The factual allegation underlying the murder is that as alleged in paragraph 30.4 of the Indictment. *See also supra*, paras. 1526, 1571, and 1576.

<sup>6100</sup> *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 29–35.

**Radivoje Miletić** is **not guilty** of committing murder, as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder, as alleged in paragraph 31 of the Indictment, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Radivoje Miletić** is **guilty** of committing and planning persecution, a crime against humanity, through forcible transfer, cruel and inhumane treatment, terrorising civilians, and murder<sup>6101</sup>.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

**Radivoje Miletić** is **guilty** of committing and planning inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

**Radivoje Miletić** is **not guilty** of deportation, a crime against humanity.

#### F. Charges against Milan Gvero

2109. In relation to the charges brought against **Milan Gvero**, the Trial Chamber finds:

- **Count 4: Murder**, charged pursuant to Articles 5(a) and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

**Milan Gvero** is **not guilty** of murder, as a crime against humanity.

- **Count 5: Murder**, charged pursuant to Articles 3 and 7(1) of the Statute, as alleged in paragraph 31 of the Indictment

**Milan Gvero** is **not guilty** of murder, as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder, as alleged in paragraph 31 of the Indictment, (b) cruel and inhumane treatment

of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Milan Gvero** is **guilty** of committing persecution, a crime against humanity, through forcible transfer, cruel and inhumane treatment, and terrorising civilians.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i) and 7(1) of the Statute

**Milan Gvero** is **guilty** of committing inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

**Milan Gvero** is **not guilty** of deportation, a crime against humanity.

#### **G. Charges against Vinko Pandurević**

2110. In relation to the charges brought against **Vinko Pandurević**, the Trial Chamber finds:

- **Count 1: Genocide**, charged pursuant to Articles 4(3)(a), 7(1) and 7(3) of the Statute, through (a) killings members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and (d) imposing measures intended to prevent births within the group

**Vinko Pandurević** is **not guilty** of genocide.

- **Count 2: Conspiracy to Commit Genocide**, charged pursuant to Articles 4(3)(b), 7(1) and 7(3) of the Statute

**Vinko Pandurević** is **not guilty** of conspiracy to commit genocide.

- **Count 3: Extermination**, charged pursuant to Articles 5(b), 7(1) and 7(3) of the Statute

**Vinko Pandurević** is **not guilty** of extermination, a crime against humanity.

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<sup>6101</sup> *But see* Judge Kwon's Dissenting Opinion, *infra*, paras. 27–28.



- **Count 4: Murder**, charged pursuant to Articles 5(a), 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment
- **Count 5: Murder**, charged pursuant to Articles 3, 7(1) and 7(3) of the Statute, as alleged in paragraphs 30 to 31 of the Indictment

**Vinko Pandurević**, by majority, Judge Kwon dissenting, is **guilty** of aiding and abetting murder, as a crime against humanity and as a violation of the laws and customs of war.<sup>6102</sup>

**Vinko Pandurević** is **guilty** of murder pursuant to Art. 7(3) of the Statute, as a crime against humanity and as a violation of the laws and customs of war.

- **Count 6: Persecution**, charged pursuant to Articles 5(h) and 7(1) of the Statute, through (a) murder of thousands of Bosnian Muslim civilians, (b) cruel and inhumane treatment of Bosnian Muslim civilians, (c) terrorising of Bosnian Muslim civilians, (d) destruction of personal property and effects belonging to the Bosnian Muslims, and (e) forcible transfer of Bosnian Muslims from Srebrenica and Žepa and deportation of the Bosnian Muslim men from Žepa

**Vinko Pandurević** is **guilty** of aiding and abetting persecution, a crime against humanity, through aiding and abetting forcible transfer.

- **Count 7: Inhumane Acts (Forcible Transfer)**, charged pursuant to Articles 5(i), 7(1) and 7(3) of the Statute

**Vinko Pandurević** is **guilty** of aiding and abetting inhumane acts (forcible transfer), a crime against humanity.

- **Count 8: Deportation**, charged pursuant to Articles 5(d) and 7(1) of the Statute

**Vinko Pandurević** is **not guilty** of deportation, a crime against humanity.

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<sup>6102</sup> The factual allegation underlying the murder is that as alleged in paragraph 30.15 of the Indictment.

## VII. CUMULATIVE CONVICTIONS

2111. Cumulative convictions are multiple convictions entered under different statutory provisions in relation to the same conduct. Under the Tribunal's case law, they are permissible if each statutory provision involved has a materially distinct element not contained in the other (the "Čelebići test").<sup>6103</sup> An element is materially distinct from another if it requires proof of a fact not required by the other element.<sup>6104</sup> Where this test is not met, a conviction will be entered only under the more specific provision. The more specific offence subsumes the less specific one because the commission of the former necessarily entails the commission of the latter.<sup>6105</sup>

2112. Convictions for the same conduct under Article 3 and Article 5 are permissible.<sup>6106</sup> Article 3 requires a close link between the acts of the accused and the armed conflict; this element is not required by Article 5. On the other hand, Article 5 requires proof that the act occurred as part of a widespread or systematic attack against any civilian population; that element is not required by Article 3.<sup>6107</sup> Therefore, cumulative convictions for murder as a violation of the laws or customs of war punishable under Article 3 (Count 5) on the one hand, and for murder as a crime against humanity punishable under Article 5(a) (Count 4); extermination as a crime against humanity punishable under Article 5(b) (Count 3); and persecution as a crime against humanity with the underlying act of murder under Article 5(h) (Count 6) on the other, are permissible.

2113. A conviction for persecution, a crime against humanity pursuant to Article 5(h) of the Statute, and another crime under Article 5 of the Statute, on the basis of the same acts, is not impermissibly cumulative.<sup>6108</sup> Therefore, cumulative convictions for persecution as a crime against humanity (Count 6) on the one hand, and for the crimes against humanity of extermination (Count 3), murder (Count 4), and forcible transfer as other inhumane acts (Count 7), on the other hand, are permissible.<sup>6109</sup>

2114. However, convictions for murder as a crime against humanity under Article 5(a) (Count 4) and extermination as a crime against humanity under Article 5(b) (Count 3) based on the same act are impermissibly cumulative. These crimes do not contain materially distinct elements: each

<sup>6103</sup> *Kordić and Čerkez* Appeal Judgement, para. 1033; *Krstić* Appeal Judgement, para. 218; *Čelebići* Appeal Judgement, para. 412.

<sup>6104</sup> *Krstić* Appeal Judgement, para. 218; *Čelebići* Appeal Judgement, para. 412.

<sup>6105</sup> *Galić* Appeal Judgement, para. 163; *Krstić* Appeal Judgement, para. 218.

<sup>6106</sup> *Galić* Appeal Judgement, para. 165; *Kordić and Čerkez* Appeal Judgement, para. 1036; *Kunarac et al.* Appeal Judgement, para. 176; *Jelišić* Appeal Judgement, para. 82.

<sup>6107</sup> *Galić* Appeal Judgement, para. 165; *Kordić and Čerkez* Appeal Judgement, para. 1036; *Jelišić* Appeal Judgement, para. 82.

<sup>6108</sup> *Naletilić and Martinović* Appeal Judgement, para. 589.

<sup>6109</sup> *Krajišnik* Appeal Judgement, para. 391; *Naletilić and Martinović* Appeal Judgement, para. 589; *Stakić* Appeal Judgement, paras. 359–364; *Kordić and Čerkez* Appeal Judgement, paras. 1041–1042.

involves killing within the context of a widespread and systematic attack against a civilian population, and the only element that distinguishes these offences is that extermination requires that the killings occur on a large scale.<sup>6110</sup>

2115. A conviction for genocide under Article 4(3)(a) of the Statute (Count 1) is not impermissibly cumulative with a conviction for a crime against humanity under Article 5 of the Statute (Counts 3, 4, 6, and 7) as each has materially distinct elements from the other. While a conviction for genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, a conviction for crimes against humanity requires proof of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.<sup>6111</sup>

2116. The Trial Chamber finds that it follows that a conviction for genocide under Article 4(3)(a) (Count 1) is not impermissibly cumulative with a conviction for murder as a violation of the laws or customs of war punishable under Article 3 (Count 5). While a conviction for genocide requires proof of the special intent noted above, this is not required for a conviction under Article 3. Article 3 requires proof of a close link between the acts of the accused and the armed conflict, which is not a requirement under Article 4.<sup>6112</sup>

2117. Further, as the requisite intent for conspiracy to commit genocide under Article 4(3)(b) (Count 2) is the same as that for genocide under Article 4(3)(a),<sup>6113</sup> the Chamber also finds that it is not impermissibly cumulative to enter a conviction for conspiracy to commit genocide with a conviction for either Article 3 (Count 5) or Article 5 (Counts 3, 4, 6, and 7) crimes.

2118. The Trial Chamber recalls that *Čelebići* test applies when – arising from the same act or omission – there are possible convictions for more than one crime under the Statute. In the case of conspiracy to commit genocide and genocide, the *Čelebići* test has no application since the underlying acts or omissions of the two crimes will always be completely distinct. The separate nature of the two crimes is apparent from the acts of the Accused in the present case<sup>6114</sup> as well as from the Statute: the *actus reus* of conspiracy to commit genocide is the act of entering into an

<sup>6110</sup> *Stakić* Appeal Judgement, para. 366. See also *Ntakirutimana and Ntakirutimana* Appeal Judgement, para. 542.

<sup>6111</sup> *Krstić* Appeal Judgement, paras. 222–223, 226–227. See also *Nahimana et al.* Appeal Judgement, para. 1029; *Ntagerura et al.* Appeal Judgement, para. 426; *Semanza* Appeal Judgement, para. 318; *Musema* Appeal Judgement, paras. 366–367.

<sup>6112</sup> *Krstić* Trial Judgement, para. 681.

<sup>6113</sup> *Nahimana et al.* Appeal Judgement, para. 894; *Bagosora et al.* Trial Judgement, para. 2087; *Niyitegeka* Trial Judgement, para. 423; *Musema* Trial Judgement, para. 192.

<sup>6114</sup> See *supra*, paras. 1310, 1322, 1175, 1184.

agreement to commit genocide,<sup>6115</sup> whereas the *actus reus* of genocide is the commission of one of the enumerated acts in Article 4(2).<sup>6116</sup>

2119. Consequently, the *Čelebići* test for determining the permissibility of entering multiple convictions is not applicable. Although it would typically follow that multiple convictions are permissible, the Trial Chamber is of the view that due to the unique nature of the offence of conspiracy, reasons of fairness dictate that it consider whether these convictions should be cumulatively entered in this case.

2120. The ICTY has not directly examined whether an accused may be convicted for both genocide and conspiracy to commit genocide. The ICTR has considered the issue twice. In *Musema*, the Trial Chamber found that convictions for both genocide and conspiracy to commit genocide could not stand:

In the instant case, the Chamber has adopted the definition of conspiracy most favourable to *Musema*, whereby an accused cannot be convicted of both genocide and conspiracy to commit genocide on the basis of the same acts. Such a definition is in keeping with the intention of the Genocide Convention. Indeed, the “*Travaux Préparatoires*” show that the crime of conspiracy was included to punish acts which, in and of themselves, did not constitute genocide. The converse implication of this is that no purpose would be served in convicting an accused, who has already been found guilty of genocide, for conspiracy to commit genocide, on the basis of the same acts.<sup>6117</sup>

In *Nahimana*, however, the Trial Chamber found that cumulative convictions for genocide and conspiracy to commit genocide were permissible.<sup>6118</sup> The issue was not discussed in either the *Musema* or *Nahimana* Appeal Judgements.<sup>6119</sup> Other ICTR cases have either failed to or declined to address the issue.<sup>6120</sup>

2121. The ICTR jurisprudence is therefore equivocal. Further, while the *travaux préparatoires* of the Genocide Convention do lend some support to the assertion in the *Musema* Trial Judgement that

<sup>6115</sup> *Seromba* Appeal Judgement, para. 221; *Nahimana et al.* Appeal Judgement, paras. 894, 896; *Bagosora et al.* Trial Judgement, para. 2087.

<sup>6116</sup> *Krstić* Appeal Judgement, para. 6. See also *Nahimana et al.* Appeal Judgement, para. 492.

<sup>6117</sup> *Musema* Trial Judgement, para. 198. The Trial Chamber notes that the finding was made before the *Čelebići* Appeal Judgement was issued on 20 February 2001.

<sup>6118</sup> *Nahimana et al.* Trial Judgement, para. 1043.

<sup>6119</sup> See generally *Musema* Appeal Judgement; *Nahimana et al.* Appeal Judgement, paras. 912, 1023 (reversing *Nahimana*, Barayagwiza and Ngeze’s convictions for conspiracy to commit genocide and therefore finding the question of cumulatively convicting to be moot).

<sup>6120</sup> See *Kambanda* Trial Judgement, para. 3; *Kambanda* Appeal Judgement (Kambanda plead guilty to conspiracy to commit genocide and genocide; the issue of cumulatively convicting was addressed neither at trial nor on appeal); *Niyitegeka* Trial Judgement, paras. 420, 429, 480; *Niyitegeka* Appeal Judgement (Niyitegeka was convicted for both genocide and conspiracy to commit genocide, but the issue of cumulatively convicting was neither addressed at trial nor on appeal); *Kajelijeli* Trial Judgement, paras. 789–793 (Kajelijeli was found guilty of genocide, but not guilty of conspiracy to commit genocide; consequently, with respect to cumulative convictions, the Trial Chamber stated that “in the particular circumstances of the case here under consideration, we do not feel called upon to express a preference regarding which of the *Musema* or *Niyitegeka* approach [*sic*] to follow.”).

convictions for conspiracy to commit genocide and the substantive offence of genocide were not intended to be entered together, the issue does not appear to have been discussed directly.<sup>6121</sup>

2122. Additionally, the Trial Chamber notes that the Genocide Convention defined conspiracy in accordance with the common law notion of the term.<sup>6122</sup> In most common law countries, convictions may be entered for both conspiracy and the underlying substantive offence,<sup>6123</sup> but this stance has been roundly criticised.<sup>6124</sup> The Trial Chamber also notes that in civil law countries, convicting for both conspiracy and the underlying offence is not possible.<sup>6125</sup> Given the variety of approaches,<sup>6126</sup> the Trial Chamber finds resort to national jurisprudence to be of limited utility.<sup>6127</sup>

2123. The pertinent authority on the question is therefore ambiguous. However, first principles offer some guidance. Although the Trial Chamber has found that the *Čelebići* test is not applicable, it recalls that the fundamental principle animating the concern regarding multiple convictions for

<sup>6121</sup> See UN Doc. E/794. In a meeting of the *ad hoc* committee, a proposal for a “preparatory acts” provision was debated. A problem of definition arose during the debates, and as a solution it was noted that: “in the most serious cases where it would be desirable to punish the authors of preparatory acts, that could be effected either under the clause “conspiracy to commit genocide” or the clause “complicity”. If the construction of crematory ovens or the adaptation of motor-cars to the purpose of killing the occupants with noxious gases were at issue, such acts requiring the co-operation of a certain number of persons, would accordingly come under the heading of “conspiracy to commit genocide” even if genocide were not finally committed, and under the heading of “complicity” if genocide were committed.” This indicates that conspiracy was envisioned as applicable when genocide was not actually committed, and when genocide was committed, complicity was the proper charge. See also UN Doc. A/C.6/SR.87. Here, the *ad hoc* commission debated the issue of complicity in genocide. At one point the Yugoslav representative posited a hypothetical concerning attempted murder to illustrate his point that, as the Convention was drafted at that time, an accomplice would not be liable if the murder was not completed. In response, the Iranian representative stated that “punishment of complicity should be limited to the act of genocide so-called.” In his opinion, “the provisions relating to conspiracy to commit genocide [] would ensure punishment in the case mentioned by the Yugoslav representative”; that is, where the act of genocide was not actually committed. It seems that conspiracy’s usefulness was envisioned with respect to instances where there has been no conviction of the substantive act of genocide.

<sup>6122</sup> See *supra*, para. 873.

<sup>6123</sup> See, e.g., *Pinkerton v. U.S.*, 328 U.S. 640, 643–644 (1946) (U.S. Supreme Court); *Sheppe v. The Queen*, [1980] 2 S.C.R. 22 (Canadian Supreme Court); *Verrier v DPP* [1967] 2 AC 195, [1966] 3 All ER 568 (House of Lords).

<sup>6124</sup> In the U.S., see, e.g., P. Johnson, *The Unnecessary Crime of Conspiracy*, 61 Cal. L. Rev. 1137 (1973); Model Penal Code §1.07(1)(b) (model statutory text promulgated by the American Law Institute prohibits conviction for both the inchoate conspiracy offence and the substantive offence which is its object); *ibid.* at 5.05(1) (limiting punishment for conspiracy to no higher than the punishment for substantive offence). In Canada, see, e.g., Don Stuart, *Canadian Criminal Law: A Treatise*, 4th ed., (2001), pp. 698–700 (since conspiracy is a preventative and incomplete offence, “it inexorably follows that once the completed offence has been committed there is no justification for also punishing the incomplete one”). In the U.K., see, e.g., C.M.V. Clarkson and H.M. Keating, *Criminal Law: Text and Materials*, 4th ed. (1998), p. 512, fn. 97 (convictions for both conspiracy and the underlying offence viewed as “bad practice”); Andrew Ashworth, *Principles of Criminal Law*, 2nd ed. (1997), pp. 455–456, fn. 54.

<sup>6125</sup> *Musema* Trial Judgement, para. 196.

<sup>6126</sup> See *Čelebići* Appeal Judgement, para. 406 (“National approaches vary with respect to cumulative convictions. Some countries allow such convictions, letting the record reflect fully each violation that occurred, and preferring to address any allegations of unfairness in the manner of sentencing. Other countries reserve such convictions for acts resulting in the most severe of crimes, whereas still others require differing statutory elements before cumulative criminal convictions may be imposed.”).

<sup>6127</sup> See *Čelebići* Appeal Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, para. 20 (“[T]o have resort to national jurisdictions is also highly problematic in light of the lack of a uniform approach to this issue, which is complex even in well developed national jurisdictions, requiring solutions

the same act is one of fairness to the accused.<sup>6128</sup> The Trial Chamber notes the real risk of prejudice which lies in allowing cumulative convictions, including the punishment and social stigma inherent in being convicted of a crime, as well as the potential impact on a sentence ultimately served.<sup>6129</sup>

2124. The Trial Chamber also finds the unique nature of the offence of conspiracy to be particularly important in this context. The purpose of criminalising an inchoate offence such as conspiracy is to prevent the commission of the substantive offence.<sup>6130</sup> Once the substantive offence is committed, the justification for punishing the prior conspiracy is less compelling.<sup>6131</sup> This is particularly true when proof of the substantive offence is the main piece of evidence from which an inference of a prior illegal agreement is drawn and upon which the conspiracy conviction is based.

2125. These are the circumstances in the instant case. The Accused's participation in the JCE to Murder, with genocidal intent, forms the basis for the conviction for genocide. Similarly, the Accused's participation, along with others, in the JCE to Murder, with the same genocidal intent, are the bases from which an inference was drawn that an agreement to commit genocide was formed. In other words, the basis for both convictions is the Accused's participation in an agreement to murder with the requisite intent.

2126. In these circumstances particularly, the Trial Chamber finds that entering a conviction for the substantive offence of genocide renders redundant a conviction for conspiracy. The Trial Chamber is aware that the framers of the Genocide Convention considered conspiracy to commit genocide to be sufficiently serious as to warrant criminalising the mere agreement without preparatory acts, and as a distinct offence from genocide itself.<sup>6132</sup> However, finding that

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peculiar to a specific national system. No clear, useful, *common* principle can be gleaned from the major legal systems of the world." (emphasis in original).

<sup>6128</sup> *Kunarac et al.* Appeal Judgement, para. 173 (stating that the Appeals Chamber would scrutinise multiple convictions, guided by "the considerations of justice for the accused"); *Čelebići* Appeal Judgement, para. 412.

<sup>6129</sup> See *Kunarac et al.* Appeal Judgement, para. 169 ("Care, however, is needed in applying the *Čelebići* test for [...] cumulative convictions create 'a very real risk of [...] prejudice' to the accused."), quoting *Čelebići* Appeal Judgement, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, para. 23.

<sup>6130</sup> See *Nahimana et al.* Appeal Judgement, para. 678 (discussing the inchoate offence of direct and public incitement to commit genocide, the Appeals Chamber noted that the intention of the drafters of the Genocide Convention was to forestall genocide from being committed); *Kalimanzira* Trial Judgement, para. 510 (discussing the inchoate offence of direct and public incitement to commit genocide, the Trial Chamber noted that "[t]he inchoate nature of the crime allows intervention at an earlier stage, with the goal of preventing the occurrence of genocidal acts."). See also UN Doc. A/C.6/SR.85, UN Doc. A/C.6/SR.84 (*travaux préparatoires* of the Genocide Convention state that "the aim of the Convention is to prevent genocide, rather than punish it.").

<sup>6131</sup> See, e.g., Don Stuart, *Canadian Criminal Law: A Treatise*, 4th ed., (2001), pp. 698–700 (since conspiracy is a preventative and incomplete offence, "it inexorably follows that once the completed offence has been committed there is no justification for also punishing the incomplete one"); Model Penal Code §1.07(1)(b) (model statutory text prohibits convictions for both conspiracy and the underlying substantive crime); Mark Kelman, *Interpretive Construction in the Substantive Criminal Law*, 33 Stan. L. Rev. 591 (1981), pp. 656–658 (supporting merger of the conspiracy offence with the substantive offence when both are committed).

<sup>6132</sup> See, e.g., UN Doc. E/AC.25/W.4.

convictions may not stand for both crimes does not change this consideration, nor does it lessen the deterrent effect of criminalising conspiracy to commit genocide.

2127. The Trial Chamber favours the approach adopted in the *Musema* Trial Judgement that the position most favourable to the accused must be paramount. The Trial Chamber considers that the full criminality of the Accused is accounted for by a conviction for genocide and finds that a further conviction for the inchoate crime of conspiracy would be duplicative and unfair to the accused.

## VIII. SENTENCING

### A. Purpose of Punishment

2128. Retribution and deterrence are the primary purposes of sentencing for crimes falling under the jurisdiction of the Tribunal.<sup>6133</sup> Retribution is not a desire for revenge but an expression of the outrage of the international community at these crimes.<sup>6134</sup> Accordingly it should be seen as

an objective, reasoned and measured determination of an appropriate punishment which properly reflects the [...] culpability of the offender, having regard to the international risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.<sup>6135</sup>

2129. As to deterrence, it aims at both individual and general deterrence.<sup>6136</sup> While the penalties imposed by the Tribunal should be adequate to deter the convicted person from committing any future violation, it must also have the effect of discouraging other potential perpetrators from committing the same or similar crimes.<sup>6137</sup> The Appeals Chamber has held that deterrence should however not be given "undue prominence" in determining a sentence.<sup>6138</sup>

2130. Another sentencing purpose is rehabilitation.<sup>6139</sup> In light of the serious nature of the crimes committed under the Tribunal's jurisdiction, it has not played a predominant role in sentencing.<sup>6140</sup>

### B. Applicable Law

2131. Sentencing is governed by Articles 23 and 24 of the Statute and Rules 87(C) and 100 to 106 of the Rules. Article 24(1) of the Statute limits the penalty upon conviction to imprisonment and Rule 101(A) of the Rules states that a convicted person may be sentenced to imprisonment for a maximum term of life. Rule 87(C) of the Rules grants discretion to the Trial Chamber either to impose a sentence in respect of each finding of guilt and indicate whether such sentences shall be

<sup>6133</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 415; *Krajišnik* Appeal Judgement, para. 803; *Čelebići* Appeal Judgement, para. 806; *Aleksovski* Appeal Judgement, para. 185.

<sup>6134</sup> *Krajišnik* Appeal Judgement, para. 804; *Kordić and Čerkez* Appeal Judgement, para. 1075.

<sup>6135</sup> *Kordić and Čerkez* Appeal Judgement, para. 1075 (referring to Supreme Court of Canada judgement *R. v. M. (C.A.)* [1996] 1 S.C.R. 500, para. 80 (emphasis in original)).

<sup>6136</sup> *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, para. 1076.

<sup>6137</sup> *Krajišnik* Appeal Judgement, para. 805; *Kordić and Čerkez* Appeal Judgement, paras. 1077–1078.

<sup>6138</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 415; *Krajišnik* Appeal Judgement, para. 805; *Čelebići* Appeal Judgement, para. 801.

<sup>6139</sup> *Krajišnik* Appeal Judgement, paras. 802, 806; *Stakić* Appeal Judgement, para. 402. The *Krajišnik* Appeal Judgement has also held that "individual and general affirmative prevention and public reprobation and stigmatisation by the international community should also be purposes of sentencing." *Krajišnik* Appeal Judgement, paras. 802, 807.

<sup>6140</sup> *Krajišnik* Appeal Judgement, para. 806; *Čelebići* Appeal Judgement, para. 806.



served consecutively or concurrently, or to impose a single sentence reflecting the totality of the criminal conduct of the accused.<sup>6141</sup>

2132. In imposing a sentence, a Trial Chamber is to take the following factors into account: (1) the gravity of the offence;<sup>6142</sup> (2) the individual circumstances of the convicted person, including aggravating and mitigating circumstances;<sup>6143</sup> (3) the general practice regarding prison sentences in the courts of the former Yugoslavia;<sup>6144</sup> (4) the extent to which any penalty imposed by a court of any State on the convicted person for the same act has already been served,<sup>6145</sup> and (5) the credit to be given for any time spent in detention pending surrender to the Tribunal or pending trial.<sup>6146</sup> This list is however not exhaustive and a Trial Chamber is vested with broad discretion in determining an appropriate sentence.<sup>6147</sup>

2133. While sentencing decisions in other Tribunal cases may serve as guidance to the Trial Chamber if they relate to the same offence and were committed in substantially similar circumstances, this guidance is limited as the Trial Chamber has an overriding obligation to impose a penalty reflecting the gravity of the crime and the individual circumstances of the convicted person.<sup>6148</sup> As a result, the sentencing practice of the Tribunal is but one factor which a Trial Chamber must take into account when determining a sentence without being bound by it.<sup>6149</sup>

#### 1. Gravity of the Offence

2134. The primary consideration in determining the appropriate sentence is the gravity of the offence which has been regarded as the “litmus test.”<sup>6150</sup> When assessing the gravity of the offence, the inherent gravity of the crime and the criminal conduct of the convicted person must be considered in the light of the particular circumstances of the case and the form and degree of participation of the convicted person.<sup>6151</sup> The relevant factors to consider in assessing the gravity of

<sup>6141</sup> Rule 87(C).

<sup>6142</sup> Article 24(2) of the Statute.

<sup>6143</sup> Article 24(2) of the Statute; Rule 101(B)(i)–(ii).

<sup>6144</sup> Article 24(1) of the Statute; Rule 101(B)(iii).

<sup>6145</sup> Rule 101(B)(iv).

<sup>6146</sup> Rule 101(C).

<sup>6147</sup> *Strugar* Appeal Judgement, para. 336; *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Limaj-et al.* Appeal Judgement, paras. 127.

<sup>6148</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 376; *Strugar* Appeal Judgement, para. 348; *Blagojević and Jokić* Appeal Judgement, para. 333; *Momir Nikolić* Judgement on Sentencing Appeal, para. 38.

<sup>6149</sup> *Milošević* Appeal Judgement, para. 326; *Strugar* Appeal Judgement, paras. 348–349; *Krstić* Appeal Judgement, para. 248; *Čelebići* Appeal Judgement, para. 757.

<sup>6150</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 375; *Galić* Appeal Judgement, para. 442; *Momir Nikolić* Sentencing Appeal Judgement, para. 11; *Blaškić* Appeal Judgement, para. 683; *Kupreškić et al.* Appeal Judgement, para. 442; *Čelebići* Appeal Judgement, para. 731; *Aleksovski* Appeal Judgement, para. 182.

<sup>6151</sup> *Mrkšić and Šljivančanin* Appeal Judgement, paras. 375, 407; *Martić* Appeal Judgement, para. 350; *Galić* Appeal Judgement, para. 409; *Blaškić* Appeal Judgement, para. 683; *Čelebići* Appeal Judgement, para. 731.

the crime include the nature of the offences<sup>6152</sup> — war crimes are not inherently less serious than crimes against humanity,<sup>6153</sup> the scale and brutality of the crimes,<sup>6154</sup> the number of victims and the effect of the crimes upon the broader targeted group,<sup>6155</sup> the consequences of the crimes upon the victims directly injured, that is “the extent of the long-term physical, psychological and emotional suffering of the victim,”<sup>6156</sup> the effect on the immediate victim’s relatives,<sup>6157</sup> the vulnerability of the victims,<sup>6158</sup> and the convicted person’s position of authority.<sup>6159</sup>

2135. With regard to the gravity of offences committed under Article 7(3) of the Statute, the Appeals Chamber has held that, in addition to the gravity of the convicted person’s own conduct in failing to prevent or punish the underlying crime, the gravity of the underlying crime committed by the convicted person’s subordinates must be taken into consideration.<sup>6160</sup>

## 2. Aggravating and Mitigating Circumstances

2136. As a Trial Chamber is required to individualise a penalty for each convicted person, the individual circumstances of the convicted person must be considered in the light of any aggravating and mitigating circumstances.<sup>6161</sup> Neither the Statute nor the Rules exhaustively define the factors which may constitute aggravating or mitigating circumstances, although any substantial co-operation of the convicted person with the Prosecution is to be considered as a mitigating factor.<sup>6162</sup> The Trial Chamber has discretion to decide which factors are aggravating and mitigating circumstances as well as the weight to be given to such factors.<sup>6163</sup> Where an aggravating factor for the purposes of sentencing is at the same time an element of the crime, it cannot also be considered in aggravation of sentence.<sup>6164</sup>

2137. Only circumstances which have been put specifically before the Trial Chamber, whether in the Indictment or during the trial, may be considered in aggravation,<sup>6165</sup> whereas in mitigation,

<sup>6152</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 400; *Bošković and Tarčulovski* Trial Judgement, para. 588; *Orić* Trial Judgement, para. 729; *Rajić* Sentencing Judgement, para. 83.

<sup>6153</sup> *Kunarac et al.* Appeal Judgement, para. 171; *Tadić* Sentencing Appeal Judgement, para. 69.

<sup>6154</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 400.

<sup>6155</sup> *Ibid.*, para. 411. See also *Galić* Appeal Judgement, para. 410.

<sup>6156</sup> *Ibid.*, para. 400; *Blaškić* Appeal Judgement, para. 683.

<sup>6157</sup> *Blaškić* Appeal Judgement, para. 683; *Krnjelac* Appeal Judgement, para. 260.

<sup>6158</sup> *Mrkšić and Šljivančanin* Appeal Judgement, para. 400; *Kunarac et al.* Appeal Judgement, para. 352.

<sup>6159</sup> *Strugar* Appeal Judgement, para. 353; *Naletilić and Martinović* Appeal Judgement, paras. 609–613, 625–626.

<sup>6160</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 313; *Čelebići* Appeal Judgement, paras. 732, 741.

<sup>6161</sup> *Čelebići* Appeal Judgement, para. 717.

<sup>6162</sup> Rule 101(B)(ii). See also *Momir Nikolić* Sentencing Appeal Judgement, para. 96.

<sup>6163</sup> *Milošević* Appeal Judgement, para. 297; *Mrkšić and Šljivančanin* Appeal Judgement, para. 352; *Zelenović* Sentencing Appeal Judgement, para. 11; *Brdanin* Appeal Judgement, para. 500; *Čelebići* Appeal Judgement, para. 780.

<sup>6164</sup> *Blaškić* Appeal Judgement, para. 693; *Vasiljević* Appeal Judgement, paras. 172–173.

<sup>6165</sup> *Simba* Appeal Judgement, para. 82; *Čelebići* Appeal Judgement, paras. 763, 789.

factors not directly related to the crime may be included.<sup>6166</sup> Furthermore, in contrast to mitigating circumstances which only need to be proven on a balance of probabilities,<sup>6167</sup> the existence of aggravating circumstances must be proven beyond reasonable doubt.<sup>6168</sup>

2138. The Trial Chamber has the discretion to decide whether to consider certain factors as contributing to the gravity of the crime or as aggravating circumstances.<sup>6169</sup> However, factors taken into account when evaluating the gravity of the crime cannot be reconsidered as separate aggravating (or mitigating) circumstances and *vice versa*.<sup>6170</sup>

2139. Aggravating circumstances identified in the jurisprudence have included the abuse of the convicted person's superior position of leadership,<sup>6171</sup> the duration of the criminal conduct,<sup>6172</sup> the active and direct criminal participation under Article 7(1) of the Statute if linked to a high-ranking position of command,<sup>6173</sup> the active participation of a superior in the criminal acts of subordinates in the context of Article 7(3) of the Statute,<sup>6174</sup> premeditation and motive,<sup>6175</sup> the enthusiasm with which a crime was committed,<sup>6176</sup> a discriminatory state of mind where discrimination is not an element of the offence,<sup>6177</sup> the vulnerability of the victims<sup>6178</sup>—women, young, elderly,<sup>6179</sup> confined or wounded persons,<sup>6180</sup> the number of the victims,<sup>6181</sup> their status,<sup>6182</sup> and the effect of the crimes upon them,<sup>6183</sup> the systemic nature of the crime,<sup>6184</sup> the intimidation of witnesses,<sup>6185</sup> and the

<sup>6166</sup> *Milutinović et al.* Trial Judgement, Vol. 3, para. 1150; *Stakić* Trial Judgement, para. 920; *Kunarac et al.* Trial Judgement, para. 850.

<sup>6167</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 302; *Zelenović* Sentencing Appeal Judgement, para. 11; *Brao* Sentencing Appeal Judgement, para. 8; *Blaškić* Appeal Judgement, para. 697.

<sup>6168</sup> *Blaškić* Appeal Judgement, para. 686; *Čelebići* Appeal Judgement, para. 763.

<sup>6169</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 317. *See also Vasiljević* Appeal Judgement, para. 157.

<sup>6170</sup> *Milošević* Appeal Judgement, paras. 306, 309; *Limaj et al.* Appeal Judgement, para. 143; *Momir Nikolić* Sentencing Appeal Judgement, para. 58; *Deronjić* Sentencing Appeal Judgement, para. 106.

<sup>6171</sup> *Milošević* Appeal Judgement, paras. 302–303; *Hadžihasanović and Kubura* Appeal Judgement, para. 320; *Blagojević and Jokić* Appeal Judgement, para. 324; *Galić* Appeal Judgement, para. 412; *Stakić* Appeal Judgement, para. 411; *Babić* Sentencing Appeal Judgement, para. 80.

<sup>6172</sup> *Milošević* Appeal Judgement para. 304; *Krajišnik* Appeal Judgement, para. 814; *Blaškić* Appeal Judgement, para. 686; *Kunarac et al.* Appeal Judgement, para. 356.

<sup>6173</sup> *Blaškić* Appeal Judgement, para. 686.

<sup>6174</sup> *Ibid.*, para. 686; *Čelebići* Appeal Judgement, paras. 736–737; *Aleksovski* Appeal Judgement, para. 183.

<sup>6175</sup> *Blaškić* Appeal Judgement, para. 686, 694. *See also Krstić* Appeal Judgement, para. 258.

<sup>6176</sup> *Blaškić* Appeal Judgement, para. 686; *Jelisić* Appeal Judgement, para. 86; *Kayishema and Ruzindana* Appeal Judgement, para. 351.

<sup>6177</sup> *Vasiljević* Appeal Judgement, paras. 172–173; *Kunarac et al.* Appeal Judgement, para. 357.

<sup>6178</sup> *Krajišnik* Appeal Judgement, para. 814; *Blaškić* Appeal Judgement, para. 686.

<sup>6179</sup> *Krajišnik* Appeal Judgement, para. 815; *Kunarac et al.* Appeal Judgement, para. 355.

<sup>6180</sup> *Orić* Trial Judgement, para. 732; *Blagojević and Jokić* Trial Judgement, para. 844.

<sup>6181</sup> *Krajišnik* Appeal Judgement, para. 814–815; *Hadžihasanović and Kubura* Appeal Judgement, paras. 310, 317; *Blaškić* Appeal Judgement, para. 686. *But see. Blagojević and Jokić* Trial Judgement, para. 841 (stating that the number of victims is already reflected in the crimes for which each accused has been convicted, specifically complicity in genocide and extermination, respectively).

<sup>6182</sup> *Blaškić* Appeal Judgement, para. 686; *Milutinović et al.* Trial Judgement, Vol. 3, para. 1151. *But see. Blagojević and Jokić* Trial Judgement, para. 843 (stating that the status of the victim, that is, predominantly civilian including women, children and elderly, as part of the definition of the crimes of which the accused have been convicted).

<sup>6183</sup> *Blaškić* Appeal Judgement, para. 686.

<sup>6184</sup> *Hadžihasanović and Kubura* Appeal Judgement, paras 349–353.

circumstances of the crimes generally.<sup>6186</sup> The absence of a mitigating factor does not itself serve as an aggravating factor.<sup>6187</sup> Furthermore, an accused's decision to exercise the right to remain silent may not be considered an aggravating circumstance.<sup>6188</sup>

2140. On the other hand, the following circumstances have been identified as mitigating factors: co-operation with the Prosecution,<sup>6189</sup> the admission of guilt or a guilty plea,<sup>6190</sup> the expression of sincere remorse,<sup>6191</sup> sympathy, compassion or sorrow for the victims of the crimes,<sup>6192</sup> voluntary surrender,<sup>6193</sup> good behaviour while in detention,<sup>6194</sup> the personal and family circumstances of the convicted person,<sup>6195</sup> the post-conflict conduct of the convicted person,<sup>6196</sup> the duress under which he acted,<sup>6197</sup> indirect or limited participation in the commission of the crime,<sup>6198</sup> diminished mental responsibility,<sup>6199</sup> age,<sup>6200</sup> assistance to victims,<sup>6201</sup> fully complying with certain obligations, such as the terms and conditions of provisional release,<sup>6202</sup> and preventing others from committing crimes.<sup>6203</sup> Ill-health of the convicted person is to be considered as a mitigating factor only in

<sup>6185</sup> *Čelebići* Appeal Judgement, para. 789.

<sup>6186</sup> *Blaškić* Appeal Judgement, para. 686.

<sup>6187</sup> *Ibid.*, para. 687.

<sup>6188</sup> *Čelebići* Appeal Judgement, para. 783.

<sup>6189</sup> Rule 101(B)(ii); *Blagojević and Jokić* Appeal Judgement, para. 344. The accused making himself available to the Prosecution for the interview may be viewed as substantial co-operation. *Lukić and Lukić* Trial Judgement, para. 1054. With regard to the assessment of the co-operation, the Appeals Chamber has held that the Trial Chamber should consider the Prosecution's view on it. If the Trial Chamber ultimately disagrees with the Prosecution's assessment, sufficient reasons should be provided for its divergence. *Momir Nikolić* Sentencing Appeal Judgement, para. 96.

<sup>6190</sup> *Jelisić* Appeal Judgement, para. See also *Dragan Nikolić* Sentencing Appeal Judgement, para. 51 (stating that this factor should not be given undue weight).

<sup>6191</sup> *Lukić and Lukić* Trial Judgement, para. 1053; *Milutinović et al.* Trial Judgement, Vol. 3, para. 1152; *Jokić* Sentencing Judgement, para. 89; *Banović* Sentencing Judgement, para. 71; *Erdemović* Sentencing Judgement, para. 16(iii). Although the convicted person can express sincere regrets without admitting his participation in the crimes, remorse requires acceptance of some moral blameworthiness for personal wrongdoing. *Strugar* Appeal Judgement, para. 365.

<sup>6192</sup> *Strugar* Appeal Judgement, para. 366.

<sup>6193</sup> *Blaškić* Appeal Judgement, para. 696

<sup>6194</sup> *Krajišnik* Appeal Judgement, para. 816; *Blaškić* Appeal Judgement, para. 696.

<sup>6195</sup> *Krajišnik* Appeal Judgement, para. 816; *Blaškić* Appeal Judgement, para. 696; *Kunarac et al.* Appeal Judgement, paras. 362, 408.

<sup>6196</sup> *Jokić* Sentencing Judgement, paras. 90–91,103; *Plavšić* Sentencing Judgement, para. 94 (stating that significant weight has been given). See also *Blagojević and Jokić* Appeal Judgement, para. 330 (stating that the conduct of an accused that promotes reconciliation in the former Yugoslavia has been considered as a mitigating circumstance regardless of its direct connection to the harm caused by the accused).

<sup>6197</sup> *Blaškić* Appeal Judgement, para. 696; *Erdemović* Sentencing Judgement, para. 17 (stating that duress "may be taken into account only by way of mitigation").

<sup>6198</sup> *Blaškić* Appeal Judgement, para. 696; *Krstić* Appeal Judgement, para. 273.

<sup>6199</sup> *Blaškić* Appeal Judgement, para. 696; *Čelebići* Appeal Judgement, para. 590.

<sup>6200</sup> *Krajišnik* Appeal Judgement, para. 816; *Blaškić* Appeal Judgement, para. 696.

<sup>6201</sup> *Krajišnik* Appeal Judgement, paras. 816–817.

<sup>6202</sup> *Blagojević and Jokić* Appeal Judgement, para. 342. See also *Jokić* Sentencing Appeal Judgement, para. 82.

<sup>6203</sup> *Blagojević and Jokić* Appeal Judgement, para. 342. See also *Kupreškić et al.* Appeal Judgement, para. 430.

exceptional cases.<sup>6204</sup> Furthermore, the comparatively low level of the convicted person in the overall command structure need not necessarily lead to a low sentence.<sup>6205</sup>

2141. Whether certain factors related to the character of the convicted person are considered an aggravating or a mitigating circumstance for sentencing purposes depends largely upon the circumstances of each case.<sup>6206</sup> While in some cases the good character of the convicted person, including lack of prior criminal record, may be considered a mitigating circumstance,<sup>6207</sup> in other cases it may serve to demonstrate the particularly heinous nature of the crimes committed.<sup>6208</sup> Likewise, intelligence and good education may constitute either aggravating or mitigating circumstances.<sup>6209</sup> Good conduct or inappropriate behaviour during trial proceedings have also been considered respectively as a mitigating and aggravating circumstance.<sup>6210</sup>

### 3. General Practice Regarding the Prison Sentences in the Courts of the Former Yugoslavia

2142. A Trial Chamber is not bound by the sentencing practices in the former Yugoslavia although such practices must be taken into account when determining the appropriate sentence to be given.<sup>6211</sup> The relevant sources to be looked at include not only the case law of the former Yugoslavia but also pertinent statutory law in force at the time of the commission of the crimes in question.<sup>6212</sup>

<sup>6204</sup> *Babić* Sentencing Appeal Judgement, para. 43; *Simić* Sentencing Judgement, para. 98. See also *Strugar* Appeal Judgement, para. 392 (stating that post-trial deteriorated health of the convicted person was considered a mitigating circumstance).

<sup>6205</sup> *Čelebići* Appeal Judgement, para. 847; *Aleksovski* Appeal Judgement, para. 184.

<sup>6206</sup> *Hadžihasanović and Kubura* Appeal Judgement, para. 328; *Babić* Sentencing Appeal Judgement, para. 49.

<sup>6207</sup> *Krajišnik* Appeal Judgement, para. 816. See also *Hadžihasanović and Kubura* Appeal Judgement, paras. 325–326 (stating that it this is a potential for rehabilitation); *Furundžija* Trial Judgement, para. 284 (stating that this did not have significant weight).

<sup>6208</sup> *Lukić and Lukić* Trial Judgement, para. 1056; *Simić* Sentencing Judgement, paras. 103–105; *Tadić* First Sentencing Judgement, para. 59. See also *Babić* Judgement on Sentencing Appeal, para. 51 (stating that the convicted person's prior good character was not considered as a mitigating circumstance).

<sup>6209</sup> *Hadžihasanović and Kubura* Appeal Judgement, paras. 328–329 (also finding that this was a mitigating circumstance); *Stakić* Appeal Judgement, para. 416 (stating that the convicted person's professional background was not regarded as an aggravating factor); *Milutinović et al.* Trial Judgement, Vol. 3, para. 1151 (stating that these were considered to be possible aggravating factors); *Brdanin* Trial Judgement, para. 1114 (stating this was an aggravating factor, however without giving it undue weight).

<sup>6210</sup> *Čelebići* Appeal Judgement, para. 788.

<sup>6211</sup> Article 24(1); Rule 101(B)(iii). See *Krstić* Appeal Judgement, para. 260; *Kunarac et al.* Appeal Judgement, paras. 348–349; *Čelebići* Appeal Judgement, para. 813.

<sup>6212</sup> *Milutinović et al.* Trial Judgement, Vol. 3, para. 1154. See also *Dragan Nikolić* Sentencing Appeal Judgement, para. 85; *Krstić* Appeal Judgement, para. 261 (stating that in addition to the relevant law of the former Yugoslavia in force when the crime was committed, the Trial Chamber was entitled to consider how the law evolved subsequently).

2143. Following the break-up of SFRY, Republika Srpska adopted the former SFRY Criminal Code, including the provisions on crimes against humanity without any substantial amendments.<sup>6213</sup> This law was in force at the time of the commission of the crimes alleged in the Indictment.<sup>6214</sup>

2144. Chapter XVI of the SFRY Criminal Code covered the section “Criminal Acts Against Humanity and International Law.” Article 141 on genocide provided as follows:

Whoever, with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, orders killings or serious bodily harm to or gravely impairs the physical and mental health of members of the group or forcibly deports the population, or inflicts on the group conditions of life calculated to bring about its extermination in whole or in part, or imposes measures intended to prevent births within the group, or forcibly transfers children of the group to another group, or whoever with the same intent commits any of the aforementioned offences, shall be punished by no less than five years in prison or by death penalty.<sup>6215</sup>

2145. Furthermore, Article 142(1) on war crimes provided as follows:

Whoever, in violation of international law in time of war, armed conflict or occupation, orders an attack on the civilian population, settlement, individual civilians or persons *hors de combat*, as the consequence of which death has occurred or serious bodily harm or grave impairment of health; indiscriminate attack affecting civilian population; or killings, tortures or inhumane treatment of the civilian population, [...] causing great suffering or serious injury to body and health; unlawful deportation, transfers, [...] rape; use of measures of intimidation and terror, taking of hostages, collective punishment, unlawful taking to the concentration camps and other unlawful confinements, deprivation of rights to a fair and impartial trial; compelling to serve in the armed forces of an enemy power, in its intelligence service or administration; compelling to compulsory labour, exposing of the population to starvation, confiscation of property, pillage of the civilians' property, unlawful and arbitrary destruction or large-scale appropriation of property not justified by military needs, imposition of unlawful and disproportionately large contribution and requisitions, devaluation of domestic currency or unlawful printing or minting or currency, or whoever commits any of the aforementioned offences shall be punished by no less than five years in prison or by death penalty.<sup>6216</sup>

2146. In addition, Article 38(2) of the SFRY Criminal Code provided for a sentence of 20 years in prison instead of the death penalty. In 1998, the Federation of BiH abolished the death penalty and replaced it with imprisonment of 20–40 years for the gravest criminal offences. Meanwhile, in October 2000, Republika Srpska also replaced the death penalty with life imprisonment.

<sup>6213</sup> Exs. P00419, 4D00375, “Law on Amendments to the Criminal Code of the SFRY” (stating that it was re-named “The Criminal Code of Republic of Srpska”); Ex. P00411, “SFRY Criminal Code, Chapter XVI”; Branislav Ristovojević, T. 27916–27919 (5 Nov 2008); Ex 4D00503, “Report by Branislav Ristovojević”, paras. 3.3–3.4. *See also* Ex P00028 “Military Prosecutor’s Office, VRS Main Staff, Guidelines for Determining the Criteria for Criminal Punishment”, para. 3; Ex. P00409, “Regulations on the Application of the Rules of International Law of War in the Armed Forces of the SFRY 1988.”, paras. 19–22.

<sup>6214</sup> Richard Butler T. 19605 (14 Jan 2008) (stating that this law was applicable to the members of the VRS insofar as these officials and soldiers were governed by the laws of the RS generally). *See also* Branislav Ristovojević, T. 28059–28068, 28083–28088, 28097–28098 (12 Nov 2008) (stating that the law of Republika Srpska obligated the VRS and the MUP to abide by the rules of international laws of war and the general principles of the international laws of war in armed conflict); Ex 4D00503, “Report by Branislav Ristovojević”, paras. 4.1–4.2, 4.8.

<sup>6215</sup> Ex. P00411, “SFRY Criminal Code, Chapter XVI,” Article 141.

<sup>6216</sup> Ex. P00411, “SFRY Criminal Code, Chapter XVI,” Article 142(1).

### C. Determination of Sentences

2147. In determining the sentences to be imposed in this case, the Trial Chamber has examined the evidence on the trial record and the submissions of the Prosecution and the Accused. The Prosecution has requested a sentence of life imprisonment for each of the Accused—recommending that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** serve 46 years in custody before becoming eligible for early release, and that **Miletić** and **Gvero** serve a minimum of 30 years in custody before becoming eligible for early release.<sup>6217</sup>

#### 1. Gravity of the Crimes

2148. The calculated destruction of the Bosnian Muslims of Srebrenica in July 1995 stands out as one of the worst crimes committed in Europe after the Second World War. The extermination of the Bosnian Muslim males from Srebrenica, accompanied by the forcible transfer and persecution of the Bosnian Muslim populations from the Srebrenica and Žepa enclaves all together encompass the gravest of crimes under international criminal law.

2149. The genocide, extermination, murder and persecution were executed with systematic and cold brutality. Victims were forced to endure dire and inhumane conditions during their transportation and detention, often for extended periods of time.<sup>6218</sup> During the mass executions, soldiers fired into over-crowded rooms,<sup>6219</sup> fired at prisoners—some of whom were blind-folded and had their hands tied behind their backs<sup>6220</sup>—for hours on end<sup>6221</sup> or called out the wounded prisoners only to identify and kill them.<sup>6222</sup> The forcible transfer of the Bosnian Muslims from Potočari and Žepa was a massive operation, involving the removal of tens of thousands of people over a few days.<sup>6223</sup> The Trial Chamber recalls the heart-wrenching evidence of the “screening” in Potočari, where hundreds of husbands, fathers, sons and brothers were separated from their families.<sup>6224</sup>

2150. The campaign of persecution on the basis of the ethnicity of the victims was massive in scale and was the underlying motif of both joint criminal enterprises. The manifold persecutory acts that were committed with discriminatory intent<sup>6225</sup> were not random or isolated incidents; these

<sup>6217</sup> Prosecution Final Brief, pp. 850–851, paras. 2837–2838, 2841.

<sup>6218</sup> See *supra*, paras 309–315, 325–331, 383–407, 475–478, 495–497, 516, 518, 529–531.

<sup>6219</sup> See *supra*, paras 427–431, 435.

<sup>6220</sup> See *supra*, paras. 481, 499, 500, 518, 534, 537, 539.

<sup>6221</sup> See *supra*, paras. 536–539.

<sup>6222</sup> See *supra*, paras. 436, 537–539.

<sup>6223</sup> See *supra*, paras. 341, 342, 719.

<sup>6224</sup> See *supra*, paras. 316–324.

<sup>6225</sup> The Trial Chamber recalls that the crime of persecution is “particularly grave because it incorporates manifold acts committed with discriminatory intent”. See *Blagojević* Trial Judgement, para. 834.

were crimes committed in a pattern on a large scale accompanied by brutality. These factors increase the gravity of the crimes.

2151. The gravity of these crimes is further demonstrated by their terrible impact on the victims and their relatives. For the thousands who lost their lives at the many execution sites, the consequences were absolute. Those few who survived the executions underwent extreme suffering and severe mental and physical trauma,<sup>6226</sup> some only to be later recaptured and killed.<sup>6227</sup> Like the few survivors of the executions, the Bosnian Muslim women, children and elderly people forcibly removed from Srebrenica suffered not only their own physical and mental trauma as a result of the conditions of life in Potočari and their separation from their men,<sup>6228</sup> but also the sudden loss and disappearance of their male family members<sup>6229</sup> or the uncertainty about the fates of the men yet unaccounted for. This has been termed the “Srebrenica Syndrome.”<sup>6230</sup> Those who were forcibly removed from Srebrenica also experienced a sharp decline in their standard of life due to the loss of their homes and possessions as a result of the expulsions.<sup>6231</sup>

2152. The sheer scale and cruelty of these crimes and the continuing impact they have had and still have on so many victims and their relatives is overwhelming.<sup>6232</sup>

## 2. General Observations Applicable to All Accused

### (a) Aggravating Circumstances

2153. The victims of the crimes were particularly vulnerable. The thousands of Bosnian Muslims separated from their loved ones and forced from their homes in Potočari and Žepa were predominantly women, children and elderly people.<sup>6233</sup> The Bosnian Muslim men who were executed had been rendered helpless before they were murdered; they were unarmed, exhausted, confined and sometimes wounded.<sup>6234</sup> The Trial Chamber considers the vulnerability of the victims—both of those who survived the executions and those who did not—as an aggravating factor in sentencing.

<sup>6226</sup> See *supra*, para. 847.

<sup>6227</sup> See *supra*, 584–589.

<sup>6228</sup> See Teufika Ibrahimefendić, Ex. P02228, “92 *bis* transcript”, KT. 5816 (27 July 2000). See also, e.g., Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000), p. 3.

<sup>6229</sup> See Teufika Ibrahimefendić, Ex. P02228, “92 *bis* transcript”, KT. 5817 (27 July 2000).

<sup>6230</sup> See *Ibid.*

<sup>6231</sup> See, e.g., Hanifa Hafizović, Ex. P03230, “92 *bis* statement” (16 June 2000), p. 3; Hafiza Salchihović, Ex. P03232, “92 *bis* statement” (17 June 2000), p. 4.

<sup>6232</sup> See e.g. Teufika Ibrahimefendić, Ex. P02228, “92 *bis* transcript”, KT. 5816 (27 July 2000).

<sup>6233</sup> See *supra*, paras 316, 715–716.

<sup>6234</sup> See *eg.*, para. 518.



2154. The Prosecution further submits that the willing participation of the Accused in the crimes constitutes an aggravating factor relevant to sentencing.<sup>6235</sup> The Trial Chamber notes that willingness in the sense of voluntariness is a necessary component of the crimes and therefore does not consider it to be an aggravating factor.<sup>6236</sup>

(b) Mitigating Circumstances

2155. The Trial Chamber acknowledges that the good behaviour of the Accused during trial and at the UNDU has enhanced its ability to conduct the trial in a fair and expeditious manner. The good behaviour of the Accused during trial and while on provisional release is considered generally as a mitigating circumstance.

2156. Similarly, the fact that none of the Accused had a prior criminal record and all had been men of apparent good character before these events has also been considered generally as a mitigating factor.

3. Individual Observations

(a) Popović

(i) Nature and Extent of the Accused's Involvement

2157. **Popović** played a key role in the organisation and execution of the genocide. **Popović** knew of the plan to murder from the time of its inception, and was privy to each development: from the discussions at Bratunac before the operation began, to the capture of Bosnian Muslim men from the column, to the large scale killings at Zvornik. **Popović** had an overview of the full scale and scope of the murder operation. He visited almost all the major killing sites while prisoners were being detained and thus had visual confirmation of the thousands of individuals destined for execution. He participated vigorously in almost every step of the murder operation.<sup>6237</sup>

(ii) Aggravating Circumstances

2158. The Prosecution submits that **Popović's** senior position and his abuse of authority should be considered as aggravating circumstances.<sup>6238</sup> The Trial Chamber has found that **Popović** held a relatively senior position as Chief of Security in the Drina Corps.<sup>6239</sup> In this position of authority, he

<sup>6235</sup> Prosecution Final Brief, p. 846, para. 2826.

<sup>6236</sup> See *supra* para. 2136.

<sup>6237</sup> See *supra*, paras. 1178–1180.

<sup>6238</sup> Prosecution Final Brief, p. 845, para. 2822.

<sup>6239</sup> See *supra*, para. 1090.

participated in the JCE to Murder at a managerial level organising the killings, sourcing fuel for the operation, coordinating transport for the victims and liaising with other members of the VRS. It was the abuse of this senior position within the VRS which allowed him to utilise the resources at his disposal to orchestrate the crimes.<sup>6240</sup> The Trial Chamber considers this as an aggravating factor.<sup>6241</sup>

2159. The Prosecution argues that the zeal or enthusiasm demonstrated by the Accused while committing the crimes also constitute aggravating factors.<sup>6242</sup> **Popović** demonstrated his dedication to the murder operation through his robust participation in the mass executions of 14–17 July, and his commitment to completing the murder operation by his involvement in the execution of the patients from the Milići Hospital around 23 July. The zeal with which **Popović** committed the crimes for which he has been found guilty is also demonstrated by his enthusiastic report on the success of the murder operation, giving it a top mark.<sup>6243</sup> The Trial Chamber notes that **Popović** ordered the execution of a young boy at the field near Orahovac on 14 July 1995.<sup>6244</sup> While the order was not ultimately carried out, the giving of such an order displays that **Popović** had no compunction engaging in behaviour of brutality, regardless of the age or vulnerability of the victims involved. The Trial Chamber considers the manifest enthusiasm with which **Popović** committed the crimes to be a relevant aggravating factor.<sup>6245</sup>

(iii) Mitigating Circumstances

2160. As noted, voluntary surrender to the Tribunal may constitute a mitigating factor.<sup>6246</sup> The Prosecution submits that while **Popović** did surrender to the Tribunal, he did so two and a half years after his indictment was made public.<sup>6247</sup> In light of the significant delay in **Popović**'s surrender, the Trial Chamber gives limited weight to it as a mitigating factor.

2161. The Trial Chamber notes that **Popović** called a number of witnesses to give evidence as to his general character and demeanour throughout the conflict. These witnesses testified that **Popović** was strongly pro-Yugoslav,<sup>6248</sup> never showed signs of ethnic intolerance,<sup>6249</sup> held close personal

<sup>6240</sup> See, for example, *supra*, paras. 1118–1120, 1126–1130.

<sup>6241</sup> See *Krstić* Trial Judgement, para. 709.

<sup>6242</sup> Prosecution Final Brief, p. 847, para. 2827.

<sup>6243</sup> See *supra*, para. 1142; Ex. P01224a, “Intercept of conversation between Popović and Y, 17 July 1995, 16:22 hours” (recording that **Popović** stated “basically, that all gets an A [...] an A [...] the grade is an A, everything’s OK”).

<sup>6244</sup> See *supra*, paras. 1111–1112.

<sup>6245</sup> See *Dusko Tadić* Sentencing Judgement, 11 Nov 1999, para. 20; *Jelisić* Trial Judgement, 14 Dec 1999, para. 119.

<sup>6246</sup> See *supra*, para. 2140.

<sup>6247</sup> Prosecution Final Brief, p. 848, para. 2831.

<sup>6248</sup> Mićo Vlaisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 18; Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 8; Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) paras. 11, 17.

<sup>6249</sup> Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 8; Mićo Vlaisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 18.

friendships with Muslims and Croats,<sup>6250</sup> demonstrated numerous instances of concern and kindness for Muslim people he was familiar with,<sup>6251</sup> was a family man<sup>6252</sup> and was a highly regarded and disciplined officer.<sup>6253</sup> The Trial Chamber accepts this evidence but finds that, in light of the crimes for which **Popović** has been convicted, such factors have very little impact in mitigating the severity of his sentence.

2162. The Trial Chamber has noted above that expressions of both remorse, and sympathy for victims,<sup>6254</sup> can constitute mitigating factors.<sup>6255</sup> While **Popović** has expressed no remorse, the testimony of PW-172 indicates that there is some evidence that **Popović** was emotionally affected by the crimes which occurred at the Bišina execution site.<sup>6256</sup> However, in view of the fact that **Popović** played a significant role in orchestrating the murder operation, the Trial Chamber finds that this carries very little weight as a mitigating factor.

(b) Beara

2163. The Trial Chamber notes that **Beara** submits that in the event he is convicted the sentence should not exceed nine years.<sup>6257</sup>

(i) Nature and Extent of the Accused's Involvement

2164. **Beara** was a central figure in the organisation and execution of the genocide. As the most senior officer of the Security Branch—the entity charged with a central directing role—he had the clearest overall picture of the massive scale and scope of the killing operation. Further, from his walk through Bratunac on the night of 13 July, his visits to the various execution sights and the extensive logistical challenges he faced throughout,<sup>6258</sup> he had a very personal view of the

<sup>6250</sup> Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 7; Mićo Vlasisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 20.

<sup>6251</sup> Mićo Vlasisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 21 (noting that **Popović** helped Muslims and Croats to get passports to flee from RS); Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) paras. 8–10 (stating that when **Popović** discovered that two Muslim men from his unit had been arrested for selling arms to Muslims he ensured that no action was taken against them), 13 (stating that he facilitated the passage of a Muslim man who had worked to repair an electricity plant in Obrovac).

<sup>6252</sup> Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) para. 18; Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 6.

<sup>6253</sup> Mićo Vlasisavljević, Ex. 1D01318, “92 *bis* statement” (7 July 2008) para. 17; Boris Mažibrada, Ex. 1D01319 “92 *bis* statement” (7 July 2008) para. 19; Nermin Jusufović, Ex. 1D01317, “92 *bis* statement” (7 July 2008) para. 10.

<sup>6254</sup> *Strugar* Appeal Judgement, para. 366.

<sup>6255</sup> *Ibid.*

<sup>6256</sup> *See supra*, para. 1147 (referring to **Popović** having tears in his eyes at the Bišina execution site).

<sup>6257</sup> Beara Closing Arguments, T. 34465–34466 (8 Sept 2009).

<sup>6258</sup> *See supra*, para. 1313.

staggering number of victims destined for execution. **Beara** was a driving force behind the murder enterprise.<sup>6259</sup>

(ii) Aggravating Circumstances

2165. The Prosecution submits that **Beara** abused his senior position as Chief of Security in the VRS Main Staff, and that this abuse of authority ought to be regarded as an aggravating circumstance.<sup>6260</sup> **Beara** was a vital member of the JCE to Murder.<sup>6261</sup> As Chief of Security in the VRS Main Staff, cloaked with the authority of Mladić, he gave directions and orders to the subordinate troops who implemented the murder plan. It was the abuse of this senior position within the VRS which allowed him to utilise the resources at his disposal to orchestrate the crimes. The Trial Chamber therefore finds that **Beara** abused his position of authority, which it takes into account as an aggravating factor.

2166. The Prosecution argues that the zeal or enthusiasm demonstrated by the Accused while committing the crimes constitutes an aggravating factor.<sup>6262</sup> The Trial Chamber finds that **Beara**'s involvement in the murder operation was not characterised by a particular "zeal", but his actions were cold and calculated. Even in the early stages of the murder operation, **Beara**'s approach is demonstrated by the conversation he had with Deronjić on the night of 13 July, when he announces his intent to "kill all" the detained men, and without pause to consider or comment upon the horrific nature of his "orders" he launches into a series of heated exchanges about the best location for this reprehensible undertaking.<sup>6263</sup>

(iii) Mitigating Circumstances

2167. **Beara** submits that his good character before the war in the former Yugoslavia,<sup>6264</sup> assistance to non-Serbs during the war<sup>6265</sup> and lack of discriminatory intent towards other ethnic groups<sup>6266</sup> should each be regarded as mitigating factors. In support of these propositions, **Beara** called a number of witnesses—including members of **Beara**'s family—who testified to his character, actions and attitudes toward other ethnic groups.<sup>6267</sup> Although the Trial Chamber

<sup>6259</sup> See *supra*, para. 1314.

<sup>6260</sup> Prosecution Final Brief, p. 845, para. 2823.

<sup>6261</sup> See *supra*, para. 1318.

<sup>6262</sup> Prosecution Final Brief, p. 847, para. 2827.

<sup>6263</sup> See *supra*, para. 1264.

<sup>6264</sup> Beara Final Brief, paras. 893–894.

<sup>6265</sup> *Ibid.*, para. 896.

<sup>6266</sup> *Ibid.*, paras. 895, 897–899.

<sup>6267</sup> See 2DPW-19, T. 25633–23635, 25640 (11 Sept 2008); Mikajlo Mitrović, T. 25042, 25054 (2 Sept 2008); Milan Alaica, T. 24807–24821 (28 Aug 2008); Alajica Bosko, Ex. 2D00665, "92 *bis* statement" (15 June 2008), p. 2; Slobodan Makivić, Ex. 2D00658, "92 *bis* statement" (27 Mar 2008), p. 4; Dragan Beara, Ex. 2D00661, "92 *bis*

acknowledges this evidence, the fact remains that **Beara** has been found responsible for committing crimes of the highest level of gravity. The Trial Chamber therefore gives very limited weight to **Beara**'s purported good character as a mitigating factor.

2168. **Beara** submits that his surrender to the Tribunal ought to be considered as a mitigating factor,<sup>6268</sup> highlighting **Beara**'s plea in October 2004 to other fugitive indictees to surrender.<sup>6269</sup> The Prosecution notes that **Beara** was a fugitive from justice for almost two years<sup>6270</sup> and that, during this time, he bragged in an interview about how he would not surrender.<sup>6271</sup> The Trial Chamber acknowledges **Beara**'s surrender, but in light of the length of time for which he remained a fugitive it gives that surrender limited weight as a mitigating circumstance.

2169. **Beara** also makes brief reference to his age as a mitigating circumstance, noting that he is now 70 years old.<sup>6272</sup> The Prosecution submits that the fact of **Beara**'s advanced age is "trivial" and should not materially decrease the appropriate sentence for the crimes committed by him and the massive suffering they inflicted on thousands of people.<sup>6273</sup> The Trial Chamber acknowledges that advanced age can be considered as a mitigating factor,<sup>6274</sup> and gives some minimal weight to it.

2170. **Beara** further submits that the Prosecution in the *Blagojević* case said that **Beara** "can't hold a candle" to Blagojević, and that a "[Main] staff officer is but an empty vessel and only has the power that is given to him by his commander. Beara is nothing but [...] an empty vessel, until Mladić gives him those orders".<sup>6275</sup> For this reason, **Beara** submits that he should not receive a sentence greater than that imposed on Blagojević.<sup>6276</sup> The Trial Chamber attaches no importance to this submission considering the overwhelming evidence that the Trial Chamber has received on **Beara**'s authority and role in the events.

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statement" (15 Mar 2008), p. 1; Marina Beara, Ex. 2D00662, "92 *bis* statement" (15 Mar 2008), p. 1; Mirsad Tokić, Ex. 2D00655, "92 *bis* statement" (11 Apr 2007), p. 1; Rajko Jelusić, Ex. 2D00652, "92 *bis* statement" (14 Dec 2006), p. 2; Branimir Grulović, T. 23784 (22 July 2008); Marinko Jevđević, T. 23845 (23 July 2008).

<sup>6268</sup> Beara Final Brief, para. 901. *See also Ibid.*, Annex A.

<sup>6269</sup> *Ibid.*, para. 902.

<sup>6270</sup> Prosecution Final Brief, p. 848, para. 2831.

<sup>6271</sup> *Ibid.*, p. 849, para. 2832.

<sup>6272</sup> Beara Final Brief, para. 909.

<sup>6273</sup> Prosecution Final Brief, p. 850, para. 2835.

<sup>6274</sup> *See, e.g., Plavšić* Sentencing Judgement, paras. 95–106.

<sup>6275</sup> Beara Opening Statement, T. 554 (23 Aug 2006). *See also* Beara 98 *bis* Submission, T. 21226, 21230 (14 Feb 2008).

<sup>6276</sup> Beara Final Brief, para. 908; Beara Closing Arguments T. 34465 (8 Sept 2009).

(c) Nikolić(i) Nature and Extent of the Accused's Involvement<sup>6277</sup>

2171. The Trial Chamber has found above that **Nikolić** played an important role in the JCE to Murder in terms of planning and organising detentions and executions. His contribution can properly be described as persistent and determined; he demonstrated a resolve to carry out his assigned tasks in this murderous operation. However, the Trial Chamber has also determined that **Nikolić** did not share the genocidal intent and his role in the genocide was that of an aider and abettor.<sup>6278</sup>

(ii) Aggravating Circumstances

2172. The Prosecution submits that, although **Nikolić** held the lowest rank (second lieutenant) among the Accused, he used his senior position as Chief of Security to perpetrate heinous crimes in conscious disregard of his duty to follow army regulations and the Geneva Conventions.<sup>6279</sup> **Nikolić** argues that, as a second lieutenant, he “did not have any importance” and that he lacked the degree of authority as argued by the Prosecution.<sup>6280</sup>

2173. There is some evidence that **Nikolić** abused his authority as Chief of Security of the Zvornik Brigade.<sup>6281</sup> However, **Nikolić** was of relatively low rank and his authority was limited.<sup>6282</sup> In all the circumstances, the Trial Chamber is not satisfied that abuse of authority as an aggravating factor, as envisaged under the jurisprudence of the Tribunal, has been established in his case.<sup>6283</sup>

2174. The Prosecution also argues that the zeal or enthusiasm demonstrated by the Accused in committing the crimes constitutes an aggravating factor.<sup>6284</sup> The Trial Chamber notes that there is

<sup>6277</sup> The Trial Chamber notes that **Nikolić** requests the Trial Chamber to “recognize the very limited involvement of the Accused in what happened at the School in Orahovac on 14 July 1995 and to determine his responsibility accordingly”. **Nikolić** Final Brief, para. 1685.

<sup>6278</sup> See *supra*, paras. 1397–1415.

<sup>6279</sup> Prosecution Final Brief, pp. 845–846, paras. 2822–2823; Prosecution Closing Arguments, T. 34046–34047 (2 Sept 2009).

<sup>6280</sup> **Nikolić** Closing Arguments, T. 34541 (9 Sept 2009). **Nikolić** referred to the testimony of PW-104, who said that “I believe that a non-commissioned officer was an officer of a lower rank. And in a hierarchy, he did not have much importance”. *Ibid.*; PW-104, T. 8018 (1 Mar 2007).

<sup>6281</sup> The Trial Chamber finds that although **Nikolić** held a low rank in the VRS, he nevertheless held a *de facto* position of authority which he abused in order to commit, through his participation in the JCE to Murder, order and organise the crimes for which the Trial Chamber has found him responsible. An example is when **Nikolić** offered members of the 4th Battalion of the Zvornik Brigade new uniforms in order to stay at Orahovac to commit the executions. See *supra*, para. 1361.

<sup>6282</sup> See *supra*, para. 1412.

<sup>6283</sup> See *supra*, para. 2137.

<sup>6284</sup> Prosecution Final Brief, p. 847, para. 2827.

some evidence that **Nikolić** was disturbed by what he was asked to do.<sup>6285</sup> While the evidence shows that **Nikolić** was determined and persistent in organising, planning and executing the murder operation, the Trial Chamber does not find that **Nikolić** carried out his role with a particular enthusiasm. Accordingly, the Trial Chamber does not consider that zeal has been established as an aggravating factor.

(iii) Mitigating Circumstances

2175. During the course of this trial, **Nikolić** presented evidence of his good character.<sup>6286</sup> Several witnesses of both the Prosecution and the Defence testified that **Nikolić** was devoted and dedicated to his family, well-linked to his community, and never expressed any religious or inter-ethnic intolerance.<sup>6287</sup> Although the Trial Chamber considers **Nikolić**'s good character as a mitigating circumstance, given the gravity of the crimes for which he has been found responsible, it gives it very limited weight.

2176. **Nikolić** submits that he was a good soldier, who conscientiously discharged his duties and respected his superior officers.<sup>6288</sup> Given his active involvement in the commission of mass murder in the Zvornik area, the Trial Chamber gives no weight to this factor as a mitigating circumstance.

2177. As noted, voluntary surrender to the Tribunal may constitute a mitigating factor.<sup>6289</sup> While **Nikolić** surrendered to the Tribunal, he did so two and a half years after his indictment was made public.<sup>6290</sup> In light of the significant delay in **Nikolić**'s surrender, the Trial Chamber gives this limited weight as a mitigating factor.

2178. The Chamber notes that **Nikolić** admitted to having been "involved" in the "events" at Orahovac for which he says he bears "some responsibility".<sup>6291</sup> Although he expressed no remorse, the Chamber gives some weight to **Nikolić**'s partial acceptance of his responsibility.

<sup>6285</sup> Milorad Birčaković, T. 11015–11017 (7 May 2007). During cross-examination Birčaković confirmed that he had stated in his previous statement that when **Nikolić** came out of the meeting, he was very angry "because he was not consulted beforehand but was only ordered to find some accommodation" for people coming in for exchange. *Ibid.*, T. 11120 (8 May 2007).

<sup>6286</sup> **Nikolić** Final Brief, paras. 416–421; **Nikolić** Closing Arguments, T. 34542 (9 Sept 2009).

<sup>6287</sup> Milisav **Nikolić**, T. 25921, 25941–25942 (18 Sept 2008); Vida Vasić, T. 25936–23937 (18 Sept 2008); Božo Momčilović, T. 14125 (22 Aug 2007); Milan Atlagić, Ex. 3D00465, "92 bis statement" (18 Mar 2008, 14 Apr 2008), p. 3; Marinko Milidrag, Ex. 3D00467, "92 bis statement" (11 Apr 2008, 21 May 2008), p. 3; Dragan Milošević, T. 25942 (18 September 2008); Milisav **Nikolić**, T. 25904–25909 (17 Sept 2008), 25928 (18 Sept 2008). *See also* **Nikolić** Final Brief, paras. 416–420; **Nikolić** Closing Arguments, T. 34542 (9 Sept 2009).

<sup>6288</sup> **Nikolić** Closing Arguments, T. 34542 (9 Sept 2009). *See Krstić* Trial Judgement, para. 714 (in which the Trial Chamber considered the "keen sense for the soldiering profession" as a mitigating circumstance).

<sup>6289</sup> *See supra*, para. 2140.

<sup>6290</sup> *See* Prosecution Final Brief, p. 848, para. 2831. *See also* **Nikolić** Final Trial Brief, para. 353.

<sup>6291</sup> *See supra*, para. 1365.

(d) Borovčanin(i) Nature and Extent of the Accused's Involvementa. Forcible Transfer

2179. **Borovčanin** submits that if he is found guilty of forcible transfer, the sentence should reflect his minimal role, given he had no say in the decision to forcibly transfer the Bosnian Muslims, and no realistic capacity to prevent it.<sup>6292</sup> At the time, he submits, there seemed to be many legitimate reasons to allow his units to participate in the operation, not least because with or without his cooperation, the transfer would still have been conducted by the VRS and DutchBat.<sup>6293</sup>

2180. As previously discussed, **Borovčanin** was not a member of the JCE to Forcibly Remove and he evidenced no intent to commit it. He had no advance knowledge of the plan to forcibly remove and he did not participate in the planning, organization or the execution of the initial stages of the plan. He was brought in late into the operation, after Srebrenica had fallen and when the plan to forcibly transfer was nearing completion. When he was ordered to assist with the physical transfer it was at a point where what **Borovčanin** faced was a humanitarian catastrophe of immense magnitude over which he had no control.

2181. In convicting **Borovčanin** for aiding and abetting forcible transfer, the Trial Chamber noted the jurisprudence of the Tribunal which makes intention—even in terms of intention to assist—not a relevant consideration.<sup>6294</sup> Although **Borovčanin** has been found responsible for forcible transfer through aiding and abetting, his intent may well have been solely to assist the population gathered there.<sup>6295</sup> In this regard, the Trial Chamber also notes that, in the circumstances, the only option open to **Borovčanin** was to withdraw his unit from Potočari. While by the jurisprudence he was obliged to do so, the practical reality is that given the late stage of his involvement, withdrawal would have altered nothing in terms of the forcible transfer and it would not have alleviated the misery of the Bosnian Muslims gathered in Potočari that day. In these very unusual and particular circumstances, the Trial Chamber considers that **Borovčanin's** unique role in the forcible transfer diminishes the gravity of his involvement and is taken into account.

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<sup>6292</sup> Borovčanin Final Brief, para. 531.

<sup>6293</sup> *Ibid.*

<sup>6294</sup> *See supra*, paras. 1016–1017.

<sup>6295</sup> *See supra*, para. 1500.



b. Murder

2182. The circumstances in which **Borovčanin** aided and abetted, by omission, the murder, extermination, and persecution of at least 1, 000 Bosnian Muslim men are particularly egregious. He was present at the scene when the busload of prisoners had already been murdered, and had observed enough to know that further crimes on a horrendous scale would probably be committed. **Borovčanin**'s failure to protect the approximately 1,000 Bosnian Muslim prisoners held in the Kravica Warehouse on 13 July is especially grave because so many lives were at stake and ultimately were lost. His choice to do nothing but extricate himself and eventually his men from the crime site, contributed to the atrocity that Kravica Warehouse is now synonymous with.

2183. The crimes for which **Borovčanin** has been found responsible are particularly heinous, and were part of a widespread and systematic campaign of terror and violence. However, in terms of assessing an appropriate sentence, the Trial Chamber must focus on **Borovčanin**'s specific criminal conduct and the role which he played in the commission of these crimes.

2184. With respect to the mass killing at Kravica Warehouse, **Borovčanin** bears responsibility for aiding and abetting by omission in failing to protect prisoners who had been in his custody. While recognising that the absence of a positive act does not in and of itself reduce the seriousness of criminal conduct,<sup>6296</sup> the Trial Chamber must look at the particular omission by **Borovčanin** and the circumstances he faced.

2185. The Trial Chamber has found that **Borovčanin** lacked the intent to kill and discriminatory intent. His *mens rea* is based on knowledge of the probable intent of others.

2186. **Borovčanin** had no advance knowledge of this horrendous murder operation nor did he have any involvement in its planning or organisation.<sup>6297</sup> He and his troops had arrived just prior to these events, in order to participate in a military operation, but were suddenly cast into unexpected roles. As found by the Trial Chamber, the events at the Kravica Warehouse arose suddenly and without warning from the perspective of **Borovčanin**. The decisions at the heart of his criminal omission were taken within a very short time period under extreme conditions. He also faced the challenges of his resubordinated role and the impact that had on his ability to exercise control in the situation. While none of these circumstances justify his criminal conduct, they do diminish the gravity of his omission to some limited extent and thus the Trial Chamber has taken them into account in determining the appropriate sentence for his crime.

2187. **Borovčanin** has been found responsible as well for the initial murders—the killing of the busload of Bosnian Muslim prisoners—at Kravica Warehouse through his failure as a superior to punish his troops. Such a failure is serious particularly given the grave nature of the crimes committed. However, the Trial Chamber notes that **Borovčanin**'s criminal failure occurred after the crimes had been committed and the Trial Chamber has taken that into consideration in determining an appropriate sentence.

(ii) Aggravating Circumstances

2188. The Prosecution submits that **Borovčanin** abused his senior position as Deputy Commander of the RS MUP Special Police Brigade, and that this abuse of authority ought to be regarded as an aggravating circumstance.<sup>6298</sup> **Borovčanin** argues, however, that he had fewer than 200 men under his command on 12 and 13 July 1995, that he did not participate in any of the decisions that led to the forcible transfer or murder operations and that he had limited capacity to stop operations being directed by senior members of the VRS.<sup>6299</sup> It is clear that **Borovčanin** occupied a position of authority as a Deputy Commander of the MUP SBP and as the Commander of a joint force of MUP units. However, given the circumstances, including the role of the MUP units in the overall operation, the timing of his involvement and the nature of his acts and omissions, the Trial Chamber is not satisfied that **Borovčanin** abused his superior position in the MUP to commit crimes or encourage others to commit crimes. Thus, the Trial Chamber does not find that he abused his position and will therefore not consider this as an aggravating factor.

2189. The Prosecution submits that the period of time over which the crimes occurred should also be regarded as an aggravating factor, noting that the premeditated and systematic forcible transfer and murder operations were carried out with great speed, but over a long period of time, and with premeditation and zeal.<sup>6300</sup> On the other hand, **Borovčanin** submits that the events of 13 July 1995 happened abruptly and ended quickly.<sup>6301</sup> Having considered the nature and duration of **Borovčanin**'s involvement, the Trial Chamber rejects the Prosecution submission that **Borovčanin** committed these crimes over a long period of time.

<sup>6296</sup> See *Blaškić* Appeal Judgement, para. 663 (recognizing the perpetration of a crime by omission as a mode of liability pursuant to Art. 7(1)).

<sup>6297</sup> See *supra*, paras. 1540–1541.

<sup>6298</sup> Prosecution Final Brief, p. 845, para. 2823.

<sup>6299</sup> Borovčanin Final Brief, paras. 530–533.

<sup>6300</sup> Prosecution Final Brief, p. 847, para. 2827.

<sup>6301</sup> Borovčanin Final Brief, para. 533.

2190. With regard to eagerness or zeal, which can be a relevant aggravating factor,<sup>6302</sup> the Trial Chamber finds that nothing before it shows that **Borovčanin** participated in the crimes committed with special eagerness or zeal. As such, the Trial Chamber does not consider this an aggravating factor.

(iii) Mitigating Circumstances

2191. The Prosecution argues that **Borovčanin**'s interviews with the Prosecution as cooperation is negligible in light of the gravity of the offences charged.<sup>6303</sup> **Borovčanin** submits that his cooperation with the Prosecution ought to be regarded as a mitigating factor, noting **Borovčanin**'s interviews with the Prosecution in February and March 2002 and **Borovčanin**'s voluntary disclosure of the Petrović video footage.<sup>6304</sup> Considering the length, detail, and content of the interviews and the nature of the video footage provided, the Trial Chamber finds that **Borovčanin** provided substantial cooperation to the Prosecution, regards this cooperation as a mitigating factor, and gives it some weight.

2192. As noted above, voluntary surrender to the Tribunal may constitute a mitigating factor.<sup>6305</sup> The Prosecution submits that **Borovčanin**'s surrender to the Tribunal should not be regarded as a mitigating factor.<sup>6306</sup> The Prosecution submits further that **Borovčanin** remained a fugitive for two and a half years before finally surrendering.<sup>6307</sup> The Trial Chamber notes the relatively long period **Borovčanin** remained a fugitive before surrendering to the Tribunal and thus gives little weight to **Borovčanin**'s surrender as a mitigating factor.

2193. **Borovčanin** submits that his good character, as evidenced in part by his actions after the close of the war in BiH, including his contribution to the implementation of the Dayton Peace Accords, ought to be regarded as a mitigating factor.<sup>6308</sup> **Borovčanin** also submits that in July 1995 he was still suffering injuries from a previous mine incident and receiving intravenous infusions and that this should be taken into consideration in assessing measures or actions he could have taken

<sup>6302</sup> See *supra*, para. 2139.

<sup>6303</sup> Prosecution Final Brief, p. 848, para. 2830.

<sup>6304</sup> Borovčanin Final Brief, para. 538.

<sup>6305</sup> See *supra*, para. 2140.

<sup>6306</sup> Prosecution Final Brief, pp. 848–849, paras. 2831–2832.

<sup>6307</sup> *Ibid.* In a statement dated 20 March 2006, filed with a “Defence Application for Leave to Reply and Defence Reply to Prosecution Response to Motion Seeking Provisional Release of Accused Ljubomir Borovčanin”, **Borovčanin** stated that he had made an “utterly unreasonable decision” not to abide by the agreement to surrender on September 2002 and apologised. See Defence Application for Leave to Reply and Defence Reply to Prosecution Response to Motion Seeking Provisional Release of Accused Ljubomir Borovčanin”, 23 Mar 2006, Annex I. See also Decision on Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006, paras. 21–23 (The Pre-Trial Chamber finding that **Borovčanin** provided only “generalised, unsubstantiated and unconvincing reasons for not surrendering in September 2002 and his failure to surrender at any time between September 2002 and April 2005”).

during this period.<sup>6309</sup> A number of witnesses—both Defence and Prosecution—testified to **Borovčanin**'s good character noting that he was honest, kind, and well-respected.<sup>6310</sup> The Trial Chamber acknowledges this evidence and it has also considered the fact that **Borovčanin** was receiving intravenous infusions on 12 and 13 July. However, considering the serious nature of the crimes for which **Borovčanin** has been found guilty, the Trial Chamber will only give limited weight to **Borovčanin**'s good character as a mitigating factor and no weight to his medical condition.

2194. The Trial Chamber notes **Borovčanin**'s intent to distance himself and his men from guarding Bosnian Muslim prisoners as evidenced by the 15 July meeting at the Standard Barracks, when he expressly said that he did not wish his MUP units to guard the prisoners who were being captured or surrendering from the column.<sup>6311</sup> On 15 July, **Borovčanin** also proposed or agreed to opening the corridor in the area of Baljkovica in order to allow Bosnian Muslims to go through toward ABiH-held territory.<sup>6312</sup> The Trial Chamber takes these facts into account as a mitigating factor in sentencing.

(e) Miletić

(i) Nature and Extent of the Accused's Involvement

2195. **Miletić** played a pivotal role in the plan to forcibly remove the Bosnian Muslims from Srebrenica and Žepa, and made continuous contributions at all stages. He drafted Directive 7, which set out the common plan. He participated in the processes by which the enclaves were incrementally deprived of sufficient humanitarian aid and through which the supplies and the forces of DutchBat and UKRCoy were depleted, creating an untenable situation for the population and incapacitating UNPROFOR. **Miletić** played the key role in receiving and distributing information from and to the relevant actors, both superior and subordinate, including the RS President. Through this function he enabled the plan to be successfully implemented, resulting in the forced removal of thousands of Bosnian Muslims from the enclaves.<sup>6313</sup>

<sup>6308</sup> Borovčanin Final Brief, paras. 536–537.

<sup>6309</sup> *Ibid.*, para. 539.

<sup>6310</sup> See Momir Nikolić, T. 33202 (24 Apr 2009); Milan Stojcinović, T. 27624 (30 Oct 2008); Milomir Savčić, T. 15299 (12 Sept 2007); Predrag Čelić, T. 13512 (28 June 2007); PW-162, T. 9318 (23 Mar 2007); David Grange, Ex. 4D00556, "92 bis statement" (8 Apr 2008), pp. 3–6.

<sup>6311</sup> See *supra*, para. 1464.

<sup>6312</sup> See *supra*, para. 1463.

<sup>6313</sup> See *supra*, para. 1716.

(ii) Aggravating Circumstances

2196. The Prosecution submits that **Miletić** was a “key member” of the VRS Main Staff and perpetrated his crimes through his position “at the apex of the VRS”.<sup>6314</sup> While the Trial Chamber has found **Miletić** was not in a command position, it is satisfied that through his pivotal coordinating role at the Main Staff, **Miletić** had a significant impact on the functioning and operation of the Main Staff and the VRS as a whole.<sup>6315</sup> In this role, **Miletić** clearly occupied a central position of authority. In the case of **Miletić**, he used the authority of his position, the trust placed in him by Milovanović and Mladić and the influence that brought, to organise and carry out the criminal plan to forcibly remove the Bosnian Muslim population from the enclaves. All of **Miletić**’s acts and contributions were cloaked with the authority of his position and it was that power which made them particularly effective. In these circumstances, the Trial Chamber finds by majority, Judge Kwon dissenting, that **Miletić** abused his position of authority within the Main Staff and the VRS and considers this to be an aggravating factor.<sup>6316</sup>

2197. The Prosecution further submits that the prolonged basis of the crimes for which **Miletić** has been found guilty, as well as that they were committed systematically, with premeditation and with zeal, should be considered an aggravating factor.<sup>6317</sup> The Trial Chamber has found that **Miletić** was involved in the Srebrenica and Žepa operations from the very beginning—he drafted Directive 7, which formed the basis for the attack on the enclaves.<sup>6318</sup> Thereafter, he remained closely involved during each subsequent step of the implementation of the plan: the restrictions of humanitarian aid resulting in a catastrophic humanitarian situation in the enclaves; the strangulation of UNPROFOR forces; the lead up to and aftermath of the military attack on Srebrenica; the military attack on Žepa; the execution of the plan’s final phase, the busing out of thousands of Bosnian Muslims from the Srebrenica and Žepa enclaves; and finally, the search for any remaining Bosnian Muslims in Žepa. The Trial Chamber, by majority, Judge Kwon dissenting, finds that **Miletić**’s participation was not only prolonged but also systematic, and gives some weight to the prolonged and systematic duration of **Miletić**’s criminal conduct as an aggravating factor.<sup>6319</sup>

2198. With regard to zeal and enthusiasm as submitted by the Prosecution, the Trial Chamber has found that **Miletić** carried out his tasks as the Chief of Operations and Training with dedication.<sup>6320</sup> The Prosecution has however failed to prove that this dedication amounted to an eagerness

<sup>6314</sup> Prosecution Final Brief, p. 845, paras. 2822–2823.

<sup>6315</sup> See *supra*, paras. 1711–1715, 1628, 1635. See also *supra*, Chapter V, Section B.7(c)–(d).

<sup>6316</sup> See Judge Kwon’s Dissenting Opinion, *infra*, paras. 68–74.

<sup>6317</sup> Prosecution Final Brief, pp. 846–847, paras. 2826–2827.

<sup>6318</sup> See *supra*, paras. 199, 762, 1649.

<sup>6319</sup> See *supra*, Chapter V, Section B.7(d). See Judge Kwon’s Dissenting Opinion, *infra*, paras. 72–74.

specifically to commit the crimes **Miletić** has been found guilty of. As such, the Trial Chamber does not consider this an aggravating factor.

2199. Finally, the Trial Chamber recalls the two meetings in 1999 and 2000 at the Zvornik Brigade Headquarters, during which **Miletić** appealed to the attendees not to provide any information related to the events in Srebrenica to the ICTY.<sup>6321</sup> The Trial Chamber considers these acts were aimed at obstructing justice, and more particularly at obstructing the work of the Tribunal, and gives due weight to them as an aggravating factor in the determination of **Miletić**'s sentence.

(iii) Mitigating Circumstances

2200. **Miletić** refers to his family situation, and in particular to his wife's health, as a mitigating factor.<sup>6322</sup> The Prosecution submits that the personal circumstances of **Miletić**'s advanced age and that he has a family are "trivial" in the balance with the crimes committed and they should not substantially decrease **Miletić**'s punishment.<sup>6323</sup> The Trial Chamber acknowledges that the personal circumstances and family situation of an accused may be considered as mitigating factors.<sup>6324</sup> However, in view of the grave nature of the crimes for which **Miletić** has been found guilty, the Trial Chamber accords these circumstances only limited weight in the determination of **Miletić**'s sentence.

2201. **Miletić** furthermore called several witnesses who testified that he is a "mild" and "honourable" man, a "highly professional officer", and "never expressed intolerance towards members of other nations, races or religions."<sup>6325</sup> Given the circumstances of this case and the gravity of the crimes committed, which caused irreparable harm to thousands of Bosnian Muslims, the Trial Chamber gives very limited weight to **Miletić**'s purported good character as a mitigating factor.

2202. **Miletić** further refers to his voluntary surrender to the Tribunal as a mitigating factor,<sup>6326</sup> which is supported by an official declaration of the Serbian authorities.<sup>6327</sup> The Prosecution does not

<sup>6320</sup> See *supra*, paras. 1716–1717.

<sup>6321</sup> See Momir Nikolić, Ex. C00001, "Statement of facts and acceptance of responsibility, 6 May 2003", para. 15.

<sup>6322</sup> Ex. 5D01442 (confidential). See also Decision on Miletić Motion for Admission of Relevant Information Pursuant to Rule 85(A)(vi), 1 July 2009; Motion by General Miletić for Admission of relevant Information in Accordance with Rule 85(A)(vi) of the Rules on Procedure and Evidence, 2 June 2009, paras. 5–6.

<sup>6323</sup> Prosecution Final Brief, p. 850, para. 2835.

<sup>6324</sup> See *supra*, para. 2140.

<sup>6325</sup> Maja Spiroski, T. 29416 (9 Dec 2008); Ivan Đokić, Ex. 5D01392, "92 *ter* statement" (29 May 2008), para. 7; Zoran Matejić, Ex. 5D01393, "92 *ter* statement" (30 May 2008), para. 8.

<sup>6326</sup> Motion by General Miletić for Admission of relevant Information in Accordance with Rule 85(A)(vi) of the Rules on Procedure and Evidence, 2 June 2009, paras. 5–6.

contest that **Miletić** surrendered voluntarily. The Trial Chamber further notes that the Indictment against **Miletić** was made public on 25 February 2005<sup>6328</sup> and that **Miletić** was transferred to the Tribunal on 28 February 2005.<sup>6329</sup> The Trial Chamber is satisfied that **Miletić** voluntarily surrendered and takes this into account as a mitigating factor for the determination of his sentence.

(f) Gvero

(i) Nature and Extent of the Accused's Involvement

2203. **Gvero** had detailed knowledge of the strategic aim to remove the Bosnian Muslim population from the enclaves and, through his efforts to delay and block international protective intervention, made a significant contribution to the common purpose of the JCE to Forcibly Remove.<sup>6330</sup> However, the Trial Chamber finds that **Gvero's** contribution to the JCE was not decisive for the implementation of the common purpose. **Gvero's** contributions to the JCE were not numerous and there is no evidence of his involvement in the decision-making process with regard to any military action relating to the plan.<sup>6331</sup>

(ii) Aggravating Circumstances

2204. The Prosecution submits that **Gvero** was a "key member" of the VRS Main Staff and that he perpetrated crimes through his position "at the apex of the VRS", and this should be considered as an aggravating factor in sentencing.<sup>6332</sup> The Trial Chamber has found that, on some occasions in the relevant period, **Gvero** was the most senior officer present at the Headquarters of the VRS Main Staff. In this capacity and as an Assistant Commander, he clearly carried authority. In the case of **Gvero**, his contributions to the joint criminal enterprise, as found by the Trial Chamber, were carried out in functions which did not form a part of his normal responsibilities, albeit these acts were clearly authorized by Mladić. Even acknowledging that in these instances he had *ad hoc* authority, the extent and nature of his acts do not amount to an abuse of his authority as contemplated by the jurisprudence.<sup>6333</sup>

<sup>6327</sup> Ex. 5D01445. "Certificate that the accused Radivoje Miletić surrendered voluntarily, issued by the Office of the National Council for Cooperation with the ICTY, signed by Dušan Ignjatović, 11 Mar 2009" (according to which **Miletić** voluntarily surrendered to the RS authorities on 24 February 2005).

<sup>6328</sup> *Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*, Case No. IT-04-80-I, Decision on Motion of the Prosecutor to Further Vacate the Order for Non-Disclosure, 25 February 2005.

<sup>6329</sup> *See Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*, Case No. IT-04-80-I, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005, para. 2.

<sup>6330</sup> *See supra*, Chapter V, Section B.8(d) and (e)(i).

<sup>6331</sup> *Ibid.*

<sup>6332</sup> Prosecution Final Brief, p. 845, para. 2823.

<sup>6333</sup> *See supra*, Chapter V, Section B.8(d). *See also supra*, para. 2139.

2205. The Prosecution further argues that the prolonged duration and the systematic method of commission of the crimes should also be considered as aggravating factors.<sup>6334</sup> The Trial Chamber has found that **Gvero** had knowledge of and participated in the JCE to Forcibly Remove from its inception.<sup>6335</sup> His involvement was not limited to the initial stages of the plan, but continued throughout its implementation.<sup>6336</sup> However, particularly in light of the nature and extent of **Gvero**'s contribution to the JCE, the Trial Chamber does not consider the duration of **Gvero**'s criminal conduct as an aggravating factor in sentencing.

2206. The Prosecution also argues that zeal and enthusiasm can be relevant aggravating factors in sentencing.<sup>6337</sup> **Gvero**'s role as Assistant Commander for Morale, Legal and Religious Affairs mainly involved propaganda activities. The Trial Chamber finds there is insufficient evidence indicating that **Gvero** displayed any particular zeal or enthusiasm with reference to his criminal activity. The Trial Chamber does not consider this as an aggravating factor in sentencing.

(iii) Mitigating Circumstances

2207. **Gvero** submits that his voluntary surrender to the Tribunal should be considered a mitigating circumstance.<sup>6338</sup> The Trial Chamber has previously noted that **Gvero** voluntarily surrendered and the Prosecution does not contest this.<sup>6339</sup> The Trial Chamber therefore considers **Gvero**'s voluntary surrender as a mitigating factor in determining his sentence.

2208. **Gvero** further submits that his age combined with his deteriorating health ought to be regarded as a mitigating factor when determining his sentence.<sup>6340</sup> The Prosecution argues that the personal circumstances of **Gvero**'s age and the fact that he has a family are "trivial" when considered with reference to the crimes committed and should not materially decrease the appropriate sentence.<sup>6341</sup> While recognising that the balance must take into account the gravity of crimes, the Trial Chamber acknowledges that the personal circumstances of an accused may be considered as mitigating factors.<sup>6342</sup> The Trial Chamber has considered **Gvero**'s combined advanced age and medical conditions and accords these factors some weight in the determination of his sentence.

<sup>6334</sup> Prosecution Final Brief, p. 847, para. 2827.

<sup>6335</sup> See *supra*, Chapter V, Section B.8(e)(i).

<sup>6336</sup> See *supra*, Chapter V, Section B.8(e)(i)b.

<sup>6337</sup> Prosecution Final Brief, p. 847, para. 2827.

<sup>6338</sup> **Gvero** Closing Arguments, T. 34742–34743 (11 Sept 2009).

<sup>6339</sup> See Decision concerning motion for provisional release of Milan Gvero, 19 July 2005, para. 11; Prosecution Final Brief, paras. 2831–2832.

<sup>6340</sup> **Gvero** Closing Arguments, T. 34743 (11 Sept 2009).

<sup>6341</sup> Prosecution Final Brief, p. 850, para. 2835.

<sup>6342</sup> See *supra*, para. 2140.



2209. **Gvero** also makes reference to some evidence presented during this trial in support of his good character, professionalism and inclination towards cooperation.<sup>6343</sup> Considering the nature of the crimes **Gvero** has been found responsible for, the Trial Chamber gives very limited weight to **Gvero**'s purported good character as a mitigating factor.

(g) Pandurević

(i) Nature and Extent of the Accused's Involvement

2210. At the outset, the Trial Chamber emphasizes the serious and grave nature of the crimes for which **Pandurević** has been found responsible. These crimes are normally associated with heavy sentences. However, in more than one respect, **Pandurević**'s case presents an uncommon and extraordinary set of facts and circumstances. The Trial Chamber thus must consider the particular circumstances of the case as well as **Pandurević**'s criminal conduct generally and the specific role he played in the commission of these crimes in determining an appropriate sentence.

a. Forcible Transfer

2211. **Pandurević** was not a participant in the JCE to Forcibly Remove.<sup>6344</sup> He did not share the intent to carry out this common purpose.<sup>6345</sup> He was not present in Potočari during the transfer operation, nor was he involved in any respect in the planning and design of the operation.<sup>6346</sup> His responsibility for the crime of forcible transfer arises not from direct participation in the forcible transfer but instead from his participation in the *Krivaja-95* military operation.

2212. The Trial Chamber has found that **Pandurević** participated in the *Krivaja-95* Operation with the knowledge of the criminal plan to forcibly remove the Bosnian Muslim populations of the enclaves and with the knowledge that his acts provided practical assistance to the commission of forcible transfer of the Bosnian Muslim population of the Srebrenica enclave.<sup>6347</sup> **Pandurević**, however, participated in the military operation also with the knowledge that it had legitimate military objectives in relation to defeating the ABiH.<sup>6348</sup> In this regard, the Trial Chamber is particularly mindful of the dual purpose of the *Krivaja-95* Operation and **Pandurević**'s role as a

<sup>6343</sup> Gvero Final Brief, pp. 115–117, paras. 50–54; Gvero Closing Arguments, T. 34742 (11 Sept 2009). See Zvonko Bajagić, T. 32488–32489 (9 Mar 2009); Novica Simić, T. 28577–28578 (20 Nov 2008); Ex. 6D00312, “1st Krajina Corps Command Security Department – Report to the VRS Main Staff, Security and Intelligence Affairs or Security Administration, signed by Bogojević, 7 February 1995”, p. 1; Ex. 6D00194, “Photograph of bottle labeled Presented to Lieutenant General Milan Gvero”.

<sup>6344</sup> See *supra*, para. 2000.

<sup>6345</sup> See *supra*, paras. 2000–2007.

<sup>6346</sup> See *supra*, para. 2001.

<sup>6347</sup> See *supra*, paras. 2010–2012.

military commander, acting at a tactical level carrying out arguably justifiable military objectives. In light of these considerations, the Trial Chamber finds that the limited nature of **Pandurević**'s involvement in the forcible transfer diminishes the gravity of his criminal conduct and this has been taken into account in determining his sentence for this crime.

b. Murder

2213. **Pandurević** was not a participant in the JCE to Murder.<sup>6349</sup> He neither shared the intent to carry out its common purpose, nor did he significantly contribute to it.<sup>6350</sup> He had no advance knowledge of the heinous murder operation nor did he have any involvement in its planning or execution.<sup>6351</sup> The Trial Chamber recalls that **Pandurević** was absent from the area of the Zvornik and engaged in military operations during the first half of July and that he returned only after the murder operation being carried out in the area of Zvornik was well underway and a significant number of prisoners had already been executed.<sup>6352</sup>

2214. With regard to the crime of murder, the Trial Chamber has found, by majority, Judge Kwon dissenting, **Pandurević** responsible for his omission on one occasion.<sup>6353</sup> His responsibility for this arises not from any positive, intentional acts on his part, but instead from his failure to discharge his legal duty to protect the wounded prisoners from Milići Hospital.<sup>6354</sup> The Trial Chamber notes that a failure to fulfil a legal duty is a serious form of responsibility, particularly when it contributes, as in this case, to murder. **Pandurević**'s omission thus cannot be trivialized. However, the Trial Chamber has also taken into account the circumstances which **Pandurević** faced—including the high level authorities behind the murder operation—and the nature of his omission. In the view of the Trial Chamber, these factors diminish the gravity of his omission to some limited extent and this has been taken into account in determining his sentence for this crime.

2215. The Trial Chamber has also found that, as a superior within the meaning of Article 7(3) of the Statute, **Pandurević** failed to take the necessary and reasonable measures required to prevent his subordinates' crimes of murder and aiding and abetting murder on 15 and 16 July.<sup>6355</sup> His failure to prevent was of a very serious nature in that it related to involvement by his troops in a large scale murder operation. At the same time, the Trial Chamber notes the circumstances surrounding this

<sup>6348</sup> See *supra*, paras. 1996, 2000.

<sup>6349</sup> See *supra*, para. 1879.

<sup>6350</sup> See *supra*, paras. 1967, 1978.

<sup>6351</sup> See *supra*, paras. 1969–1970, 1972–1973.

<sup>6352</sup> See *supra*, paras. 1884, 1861, 1969.

<sup>6353</sup> See *supra*, para. 1991; Judge Kwon's Dissenting Opinion, *infra*, paras. 60–66.

<sup>6354</sup> See *supra*, paras. 1986–1990.

<sup>6355</sup> See *supra*, para. 2051.

failure, in particular his recent return to the area and the other pressing tasks he faced. The Trial Chamber has considered all these factors in determining an appropriate penalty.

(ii) Aggravating Circumstances

2216. The Prosecution submits that **Pandurević**, as Commander of the Zvornik Brigade, was in a senior command position and abused his command authority to commit the crimes with which he is charged.<sup>6356</sup> The Trial Chamber has found that **Pandurević** held a senior command position within the VRS as the Commander of the Zvornik Brigade.<sup>6357</sup> However, given the military character of his contribution in support of the forcible transfer and the nature of his responsibility with respect to murder, the evidence does not demonstrate that **Pandurević** abused his position in committing these crimes and therefore the Trial Chamber does not consider this as an aggravating factor.

2217. Additionally, the Prosecution submits that **Pandurević**'s prolonged and systematic participation in the crimes he is charged with should be considered aggravating circumstances.<sup>6358</sup> Having considered the nature and duration of **Pandurević**'s involvement in the crimes of which he has been found guilty, the Trial Chamber finds that his acts and omissions in no way constitute prolonged or systematic participation so as to be an aggravating factor.

2218. The Prosecution also argues that the zeal or enthusiasm demonstrated by the Accused in committing the crimes constitute aggravating factors.<sup>6359</sup> The Trial Chamber notes that it has found that **Pandurević** lacked the intent to carry out the common purpose of the JCE to Murder and the JCE to Forcibly Remove and that his convictions rest on his knowledge of the intent of others, his failure to protect prisoners in his custody or to prevent the criminal conduct of his subordinates.<sup>6360</sup> The Trial Chamber finds that overall there is absolutely no evidence that **Pandurević** participated in the crimes for which he has been found responsible with eagerness or zeal. Accordingly, the Trial Chamber does not consider this as an aggravating factor.

(iii) Mitigating Circumstances

a. Opening the Corridor at Baljkovica and the Interim Combat Reports

2219. In addition to the limited extent of his involvement in the crimes, the Trial Chamber also considers that **Pandurević**'s act of opening the corridor at Baljkovica on 16 July requires

<sup>6356</sup> Prosecution Final Brief, p. 845, para. 2823.

<sup>6357</sup> See *supra*, para. 1841.

<sup>6358</sup> Prosecution Final Brief, p. 847, para. 2827.

<sup>6359</sup> *Ibid.*

<sup>6360</sup> See *supra*, paras. 1979, 1991, 2007, 2012, 2066.

consideration as a mitigating factor. At a time in which other VRS members were actively hunting down, capturing, and executing Bosnian Muslim men without mercy and pursuing a genocidal plan, **Pandurević's** decision to open the corridor and enable the safe passage of thousands of Bosnian Muslim men is striking.<sup>6361</sup> In doing so, thousands of men were potentially spared. He took this decision in contravention of the orders from his superiors and with the knowledge that it would potentially put him in jeopardy.<sup>6362</sup> **Pandurević's** action in this regard stands out as an instance of courage and humanity in a period typified by human weakness, cruelty, and depravity.

2220. The Prosecution submits that **Pandurević's** decision to open a corridor to allow the column to pass was not taken on humanitarian grounds, but out of military necessity.<sup>6363</sup> However, in the view of the Trial Chamber, even if **Pandurević's** motivations in opening the corridor included military considerations and protecting Serb lives, this does not detract from the fact that objectively he saved thousands of lives. The Trial Chamber is overall convinced that **Pandurević's** action in opening the corridor was a clear and compelling instance of assistance to potential victims.

2221. In addition to his actions in Baljkovica, the Trial Chamber also considers the Interim Combat Reports for 15 and 18 July to have been brave acts on the part of **Pandurević**. As found previously, these reports represent the sole instance where a senior member of the VRS, in writing, challenged the Superior Command about the murder operation.<sup>6364</sup>

2222. Ultimately, the Trial Chamber therefore gives significant weight to these acts by **Pandurević** as mitigating factors in the determination of his sentence.

#### b. Other Mitigating Factors

2223. In addition to his conduct at Baljkovica in July 1995, **Pandurević** submits that on a number of other occasions during the war, he protected Bosnian Muslims from serious harm<sup>6365</sup> as well as

<sup>6361</sup> See *supra*, para. 1873.

<sup>6362</sup> See *supra*, paras. 1873–1874, 1885, 1887, 1896.

<sup>6363</sup> Prosecution Final Brief, paras. 1598–1607; p. 849, para. 2833.

<sup>6364</sup> See *supra*, para. 1957.

<sup>6365</sup> See for example *Pandurević Closing Arguments*, T. 34752 (14 Sept 2009) (submitting that in 1992, while stationed in Višegrad, **Pandurević** protected Muslim civilians from Serb paramilitaries and provided them with food), T. 34753 (14 Sept 2009) (submitting that shortly after becoming Commander of the Zvornik Brigade, **Pandurević** established contact with the commander of the opposing Muslim forces, Šemsudin Muminović, which resulted in regular prisoner exchanges and cease fire agreements which permitted each side to plant crops bi-annually), T. 34754–34755 (14 Sept 2009) (submitting that in January 1993 in or near Kamenica, **Pandurević** made arrangements for the daily passage of Bosnian Muslim civilians, to allow those trapped by combat to cross safely; that in 1993 at Ustiprača, **Pandurević** agreed to and ensured the evacuation of a column of Bosnian Muslim civilians from the area at Ustiprača; and that after **Pandurević** returned to the Zvornik Brigade on 15 July 1995, on 18 July 1995 he ordered that a group of seven to ten Bosnian Muslim teenaged prisoners be released and sent them back to the Muslim side). See also, e.g. Šemsudin Muminović, Ex. 7D01191, “92 *bis* statement” (11 Apr 2008), pp. 2–3 (stating that in 1993 and 1994, when he was a brigade commander in the ABiH, he and **Pandurević** agreed

acted with considerable tolerance towards Bosnian Muslims, evidencing his “lack of prejudice and general good character”.<sup>6366</sup> In regard to **Pandurević**’s submissions on his assistance to victims, the Prosecution submits that the evidence presented by him “hold zero value” and that his sentence should not be reduced based upon it.<sup>6367</sup> The Trial Chamber has considered and accepts this other evidence of **Pandurević**’s good character but gives only limited weight to it as a mitigating factor.

2224. With regard to voluntary surrender as a possible mitigating factor, the Prosecution submits **Pandurević** was a fugitive from justice for almost three and a half years.<sup>6368</sup> **Pandurević** testified that he did not surrender immediately after learning about the Indictment because he wanted to wait until his two sons had reached an age when he could explain to them the reasons why he had to leave.<sup>6369</sup> The Trial Chamber recalls that it has previously accepted that **Pandurević** voluntarily surrendered to the Tribunal.<sup>6370</sup> However, the Trial Chamber finds it necessary to also consider the circumstances of the surrender when determining the weight to be given to this factor.<sup>6371</sup> In this regard, the Trial Chamber notes the long period **Pandurević** remained at large prior to surrendering and the fact that he made his surrender conditional. The Trial Chamber further notes that **Pandurević** provided unsubstantiated and generalized reasons for not surrendering prior to 2005.<sup>6372</sup> In light of the significant delay in **Pandurević**’s surrender, the Trial Chamber gives only limited weight to it as a mitigating factor.

2225. The Prosecution further submits that the fact that **Pandurević** has a family is “trivial” in the balance with the crimes committed and should not substantially decrease **Pandurević**’s punishment.<sup>6373</sup> In view of the grave nature of the crimes for which **Pandurević** has been found

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to and arranged for the exchange of POWs and reached several truce agreements, which were each fully respected agreements such as which allowed the Bosnian Muslim civilian population to sow and harvest and were concluded without the consent of **Pandurević**’s superiors); 7DW-14, Ex. 7D01192, “confidential - 92 *ter* statement” (16 May 2008), paras. 3, 6–8, 11 (stating that **Pandurević** negotiated several prisoner exchanges with Ahmet Sjdić, an ABiH brigade commander, in 1992, and on one occasion, **Pandurević** sent a truckload of food to besieged Goražde as a gesture of good will).

<sup>6366</sup> **Pandurević** Closing Arguments, T. 34751–34755 (14 Sept 2009).

<sup>6367</sup> Prosecution Final Brief, p. 849, para. 2833.

<sup>6368</sup> *Ibid.*, p. 848, para. 2831.

<sup>6369</sup> Vinko Pandurević, T. 31260–31261 (11 Feb 2009).

<sup>6370</sup> *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević, and Milorad Trbić*, Case No. IT-05-88-PT, Decision on Pandurević’s motion for provisional release, 21 July 2008, para. 20.

<sup>6371</sup> *See Prosecutor v. Vinko Pandurević and Milorad Trbić*, Case No. IT-05-86-AR65.1, Decision on Interlocutory Appeal from Trial Chamber Decision Denying Vinko Pandurević’s Application for Provisional Release, 3 October 2005, paras. 7–8 (the Appeals Chamber holding that it was not unreasonable for the Trial Chamber, based on an assessment of the circumstances of **Pandurević**’s surrender, to discount the probative value of **Pandurević**’s surrender and give more weight to the fact that he remained at large for over three years).

<sup>6372</sup> *See Prosecutor v. Vinko Pandurević*, Case No. IT-05-86-PT, Defence’s Reply to Prosecution’s Response to Request for Provisional Release for Vinko Pandurević, 17 June 2005, para. 12 (noting that **Pandurević** submitted that he “could not surrender earlier” “due to the circumstances and caring about the security of his family”).

<sup>6373</sup> Prosecution Final Brief, para. 2835.

guilty, the Trial Chamber gives limited weight to **Pandurević**'s family situation as a mitigating circumstance.

#### 4. General Practice Regarding Prison Sentences in the Courts of the Former Yugoslavia

2226. In determining the appropriate sentences for each Accused, the Trial Chamber has taken into account the general practice regarding prison sentences in the courts of BiH at the time of the commission of the crimes alleged in the Indictment. It has also considered the statutory law applicable at the time and as subsequently developed.<sup>6374</sup>

#### 5. Life Sentence and Possibility of Early Release

2227. The Prosecution submits that, were the Trial Chamber to determine that **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** should be incarcerated for life, it should explicitly state so, in order for the intention of the Trial Chamber to be clearly understood when, eventually, the Accused may be considered for early release according to the requirements of the States' national laws.<sup>6375</sup>

2228. Rule 101(A) provides that a Trial Chamber may impose a sentence "up to and including the remainder of the convicted person's life". The Trial Chamber notes that under the Tribunal's law, eligibility for early release is dependant on the applicable law of the State in which the convicted person is imprisoned, which State shall notify the Tribunal of such eligibility. Ultimately, the President of the Tribunal determines, in consultation with the members of the Sentencing Chamber and the Bureau, whether or not early release should be granted.<sup>6376</sup> The Trial Chamber declines to make a statement, *a priori*, on any future application for early release pursuant to Article 28 of the Statute and Rule 125 of the Rules.

#### 6. Credit for Time Served in Custody

2229. Pursuant to Rule 101(C), convicted persons are entitled to credit for time spent in detention pending and during trial.

<sup>6374</sup> Article 24 of the Statute. *See Dragan Nikolić Sentencing Appeal Judgement*, paras. 84–85 (holding that "the International Tribunal, having primacy, is not bound by the law or sentencing practice of the former Yugoslavia. It has merely to take it into consideration." *Ibid.*, para. 84 (footnotes omitted)).

<sup>6375</sup> Prosecution Final Brief, p. 851, para. 2842.

<sup>6376</sup> *Dragan Nikolić Sentencing Appeal Judgement*, paras. 94–98.

## IX. DISPOSITION

Having considered all of the evidence and the arguments of the parties, and based upon the facts and legal findings as determined by the Trial Chamber in this judgement; We, Judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, decide as follows:

- **Vujadin Popović**

The Accused **Vujadin Popović** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

**Count 1:** Genocide;

**Count 3:** Extermination, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war;

**Count 6:** Persecution, as a crime against humanity.

In relation to the following counts against **Vujadin Popović**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction:

**Count 2:** Conspiracy to Commit Genocide;

**Count 4:** Murder, as a crime against humanity.

The Accused **Vujadin Popović** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity;

**Count 8:** Deportation, a crime against humanity.

Having given due weight to the mitigating factors, nonetheless, in the face of the grave nature of the crimes perpetrated and **Vujadin Popović**'s significant responsibility for them, the Trial Chamber considers that the only appropriate sentence for him is life imprisonment.

**Popović** was taken into the custody of the Tribunal in relation to this Indictment on 14 April 2005. Accordingly, he has been in custody now for 1,884 days. Pursuant to Rule 101(C), he is entitled to

credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Ljubiša Beara**

The Accused **Ljubiša Beara** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

**Count 1:** Genocide;

**Count 3:** Extermination, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war;

**Count 6:** Persecution, as a crime against humanity.

In relation to the following counts against **Ljubiša Beara**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction:

**Count 2:** Conspiracy to Commit Genocide;

**Count 4:** Murder, as a crime against humanity.

The Accused **Ljubiša Beara** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity;

**Count 8:** Deportation, a crime against humanity.

Having given due weight to the mitigating factors, nonetheless, in the face of the grave nature of the crimes perpetrated and **Ljubiša Beara's** central responsibility for them, the Trial Chamber considers that the only appropriate sentence for him is life imprisonment.

**Beara** was taken into the custody of the Tribunal in relation to this Indictment on 10 October 2004. Accordingly, he has been in custody now for 2,070 days. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.



- **Drago Nikolić**

The Accused **Drago Nikolić** is found **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following count:

**Count 1:** Genocide.

The Accused **Drago Nikolić** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

**Count 3:** Extermination, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war;

**Count 6:** Persecution, as a crime against humanity.

In relation to the following count against **Drago Nikolić**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction:

**Count 4:** Murder, as a crime against humanity.

The Accused **Drago Nikolić** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 2:** Conspiracy to Commit Genocide;

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity;

**Count 8:** Deportation, a crime against humanity.

Having given due weight to the mitigating factors, nonetheless, in the face of the grave nature of the crimes perpetrated and **Nikolić's** responsibility for them, the Trial Chamber finds that **Nikolić's** actions warrant a severe penalty. The Trial Chamber sentences **Drago Nikolić** to a sentence of 35 years of imprisonment.

**Nikolić** was taken into the custody of the Tribunal in relation to this Indictment on 17 March 2005. Accordingly, he has been in custody now for 1,912 days, including the days when he was granted custodial release. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Ljubomir Borovčanin**

The Accused **Ljubomir Borovčanin** is found **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following counts:

**Count 3:** Extermination, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war;

**Count 6:** Persecution, as a crime against humanity;

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity by majority, Judge Kwon dissenting.

The Accused **Ljubomir Borovčanin** is found **GUILTY** pursuant to Article 7(3) of the Statute, of the following counts:

**Count 4:** Murder, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war.

In relation to the following count against **Ljubomir Borovčanin**, on the basis of the principles relating to cumulative convictions, the Trial Chamber **DOES NOT** enter a conviction, pursuant to Art 7(1) of the Statute:

**Count 4:** Murder, as a crime against humanity.

The Accused **Ljubomir Borovčanin** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 1:** Genocide;

**Count 2:** Conspiracy to Commit Genocide;

**Count 8:** Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 17 years of imprisonment appropriately reflects the extent of **Ljubomir Borovčanin**'s criminal responsibility.

**Borovčanin** was taken into the custody of the Tribunal in relation to this Indictment on 1 April 2005. Accordingly, he has been in custody now for 1,897 days, including the days when he was

granted custodial release. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Radivoje Miletić**

The Accused **Radivoje Miletić** is found **GUILTY** pursuant to Article 7(1) of the Statute, through committing, of the following counts:

**Count 4:** Murder, as a crime against humanity, by majority, Judge Kwon dissenting;

**Count 6:** Persecution, as a crime against humanity;

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity.

The Accused **Radivoje Miletić** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 5:** Murder, as a violation of the laws or customs of war;

**Count 8:** Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 19 years of imprisonment appropriately reflects the extent of **Radivoje Miletić's** criminal responsibility.

**Miletić** was taken into the custody of the Tribunal in relation to this Indictment on 28 February 2005. He was granted provisional released several times.<sup>6377</sup> Accordingly, he has been in custody now for 1,489 days. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Milan Gvero**

The Accused **Milan Gvero** is found **GUILTY**, pursuant to Article 7(1) of the Statute, through committing, of the following counts:

**Count 6:** Persecution, as a crime against humanity;

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<sup>6377</sup> See *infra*, Annex II, Procedural History, paras. 12, 60.

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity.

The Accused **Milan Gvero** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 4:** Murder, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war;

**Count 8:** Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 5 years of imprisonment appropriately reflects the extent of **Milan Gvero's** criminal responsibility.

**Gvero** was taken into the custody of the Tribunal in relation to this Indictment on 24 February 2005. He was granted provisional release several times.<sup>6378</sup> Accordingly, he has been in custody now for 1,494 days. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

- **Vinko Pandurević**

The Accused **Vinko Pandurević** is found **GUILTY** pursuant to Article 7(1) of the Statute, through aiding and abetting, of the following counts:

**Count 4:** Murder, as a crime against humanity, by majority, Judge Kwon dissenting;

**Count 5:** Murder, as a violation of the laws or customs of war, by majority, Judge Kwon dissenting;

**Count 6:** Persecution, as a crime against humanity;

**Count 7:** Inhumane Acts (forcible transfer), a crime against humanity.

The Accused **Vinko Pandurević** is found **GUILTY** pursuant to Article 7(3) of the Statute, of the following counts:

**Count 4:** Murder, as a crime against humanity;

**Count 5:** Murder, as a violation of the laws or customs of war.

The Accused **Vinko Pandurević** is found **NOT GUILTY** and therefore acquitted of the following counts:

**Count 1:** Genocide;

**Count 2:** Conspiracy to Commit Genocide;

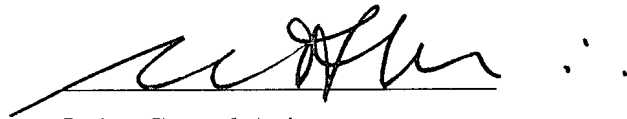
**Count 3:** Extermination, as a crime against humanity;

**Count 8:** Deportation, a crime against humanity.

Having considered all the aforementioned circumstances, the Trial Chamber finds that a sentence of 13 years of imprisonment appropriately reflects the extent of **Vinko Pandurević**'s criminal responsibility.<sup>6379</sup>

**Pandurević** was taken into the custody of the Tribunal in relation to this Indictment on 23 March 2005. Accordingly, he has been in custody now for 1,906 days, including the days when he was granted custodial release. Pursuant to Rule 101(C), he is entitled to credit for that period. Pursuant to Rule 103(A), he shall remain in the custody of the Tribunal pending the finalisation of arrangements for his transfer to the State where he shall serve his sentence.

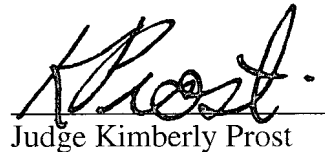
Done in English and French, the English text being authoritative.



Judge Carmel Agius  
Presiding



Judge O-Gon Kwon



Judge Kimberly Prost

Dated this tenth day of June 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]

<sup>6378</sup> See *infra*, Annex II, Procedural History, paras. 12, 60–61.

<sup>6379</sup> See Judge Kwon's Dissenting Opinion, *infra*, paras. 67, 75–81.

## X. DISSENTING AND SEPARATE OPINIONS OF JUDGE KWON

### A. Introduction

1. In addition to several miscellaneous separate opinions, which I have appended in footnotes in the relevant parts of the Judgement,<sup>6380</sup> I set out my more substantive dissenting and separate opinions here.

### B. Some Issues regarding Forcible Transfer

#### 1. Scope of the Victims of Forcible Transfer

2. The majority has included in its analysis of the charges of forcible transfer, the movement of the column of Bosnian Muslim men from Srebrenica who attempted to escape to ABiH-held territory<sup>6381</sup> and convicts **Miletić**, **Gvero**, and **Pandurević** for forcible transfer with regard to the civilian component of the column.<sup>6382</sup> The majority has also included in its analysis of the charges of forcible transfer, the able-bodied men from Žepa who swam across the Drina River to Serbia<sup>6383</sup> and convicts **Miletić** and **Gvero** for forcible transfer with regard to the movement of these men.<sup>6384</sup> I respectfully disagree with the majority on both those findings, as the movements of these men were not charged, or at least not charged with sufficient particularity in the Indictment.

3. I will first briefly set out the principles of pleading. Then, I will analyse whether the Prosecution charged the movement of the column as forcible transfer and subsequently whether it did so with regard to the men from Žepa who swam across the Drina River.

#### (a) Principles of Pleading

4. In accordance with Article 21(4)(a) of the Statute, an accused has the right “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”. The Prosecution is required to plead all the material facts underpinning the charges in the Indictment: the primary accusatory instrument.<sup>6385</sup> Whether an indictment is pleaded with sufficient particularity is dependent upon whether it sets out the material facts of the Prosecution

<sup>6380</sup> By *miscellaneous* separate opinions, I mean those separate opinions, which would not affect the overall conclusion of the Trial Chamber, while differing from the majority’s approach. *See supra*, fn. 849, 2303, 2871, 5025, 5337.

<sup>6381</sup> *See supra*, paras. 914, 926–930, 936.

<sup>6382</sup> *See supra*, paras. 1721–1722, 1825–1826, 2012.

<sup>6383</sup> *See supra* paras. 938, 952–953, 955–958, 962.

<sup>6384</sup> *See supra*, paras. 1721–1722, 1825–1826.

<sup>6385</sup> *Martić* Appeal Judgement, para. 162; *Simić* Appeal Judgement, para. 20; *Naletilić and Martinović* Appeal Judgement, para. 23; *Kupreškić et al.* Appeal Judgement, para. 88.

case with enough detail to inform a defendant clearly of the charges against him so that he may prepare his defence.<sup>6386</sup>

5. A defective indictment can in certain circumstances be “cured” if the Prosecutor provides the accused with timely, clear, and consistent information that resolves the ambiguity or clarifies the vagueness, thereby compensating for the failure of the indictment to give proper notice of the charges.<sup>6387</sup> Such information could, *inter alia* and depending on the circumstances, be supplied in the Prosecution’s pre-trial brief.<sup>6388</sup> On the other hand, a vague or imprecise indictment, which is not cured by providing the accused with timely, clear, and consistent information, causes prejudice to the accused. The defect can be deemed harmless only if it is established that the accused’s ability to prepare his defence was not materially impaired.<sup>6389</sup> Where the failure to give sufficient notice of the legal and factual reasons for the charges against the accused violates his right to a fair trial, no conviction can result.<sup>6390</sup>

6. The principle that a defect in the indictment may be cured is however not without limits.<sup>6391</sup> It should not lead to a “radical transformation” of the Prosecution’s case against the accused.<sup>6392</sup> The risk that expansion of the charges may lead to unfairness and prejudice to the accused should always be borne in mind.<sup>6393</sup> Accordingly, an omission of a charge from an indictment, as opposed to a vague or imprecise indictment, cannot be cured by the provision of timely, clear, and consistent information.<sup>6394</sup>

(b) Flight of the Men from Srebrenica in the Column

7. In my opinion, the Prosecution did not charge the movement of the column as forcible transfer in the Indictment. More specifically, the movement of the column is not mentioned in the Indictment under Count 6 (Persecutions) in the paragraph listing the acts of forcible transfer as an

<sup>6386</sup> *Simić* Appeal Judgement, para. 20; *Stakić* Appeal Judgement, para. 116; *Kupreškić et al.* Appeal Judgement, para. 88.

<sup>6387</sup> *Martić* Appeal Judgement, para. 163; *Simić* Appeal Judgement, para. 23; *Naletilić and Martinović* Appeal Judgement, para. 26; *Kvočka et al.* Appeal Judgement, paras 33–34; *Kupreškić et al.* Appeal Judgement, para. 114; *Nahimana et al.* Appeal Judgement, para. 325.

<sup>6388</sup> *Naletilić and Martinović* Appeal Judgement, para. 27; *Nahimana et al.* Appeal Judgement, para. 325; *Ntagerura et al.* Appeals Judgement, para. 130.

<sup>6389</sup> *Martić* Appeal Judgement, para. 163; *Simić* Appeal Judgement, para. 24; *Nahimana et al.* Appeal Judgement, para. 326.

<sup>6390</sup> *Naletilić and Martinović* Appeal Judgement, para. 26; *Kvočka et al.* Appeal Judgement, para. 33; *Nahimana et al.* Appeal Judgement, para. 326; *Ntagerura et al.* Appeal Judgment, para. 28.

<sup>6391</sup> *Muvunyi* Appeal Judgement, para. 20.

<sup>6392</sup> *Ibid.*, para. 20, quoting *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR 98-41-AR73, Appeals Chamber Decision on Aloys Ntabakuze’s Interlocutory Appeal on Questions of Law Raised by the 29 June 2006 Trial Chamber I Decision on Motion for Exclusion of Evidence, 18 September 2006 (“*Bagosora et al.* Appeals Chamber Decision”), para. 30.

<sup>6393</sup> *Ibid.*

underlying act of persecution.<sup>6395</sup> Under Count 7 (Forcible Transfer as Inhumane Acts), the flight of the column is mentioned in the introductory part on the JCE to Forcibly Remove the Bosnian Muslim population from Srebrenica and Žepa.<sup>6396</sup> However, it is not included in the section specifically dealing with the forcible removal of the population from Srebrenica.<sup>6397</sup> In other words, at both places where the Indictment specifically sets out the charges of forcible transfer of the Bosnian Muslim population from Srebrenica, the movement of the men in the column is omitted.

8. The absence of the movement of the column among the charges of forcible transfer in the Indictment constitutes an incurable defect in the Indictment. Thus, it is my view that including the movement of the column among the charges of forcible transfer at a later stage constitutes an expansion of the charges against the accused as pleaded in the Indictment. It results in a *de facto* amendment of the Indictment by the Trial Chamber, which is clearly unfair and prejudicial to the accused.

9. It may be argued that the references to the movement of the column contained in the Indictment include a general allegation with regard to the movement of the column as forcible transfer, lacking specificity, which could then be “cured” by adding greater detail in a consistent manner in following trial documents. However, even if it were accepted that the references to the column in the Indictment constitute such general allegations, in my view the Prosecution failed to provide timely, clear, and consistent information and thus failed to cure the Indictment.

10. The Pre-Trial Brief describes the movement of the column under the heading “The Attack on the Srebrenica Enclave and the Aftermath of Srebrenica’s Fall”.<sup>6398</sup> The movement of the column is also mentioned in the description of the operation to forcibly remove the Muslim population of Srebrenica, arguing that the men leaving Srebrenica fled towards the woods out of fear that the “Serbs would harm the able-bodied men of the enclave”.<sup>6399</sup> This may be interpreted as an attempt on the part of the Prosecution to “cure” the Indictment and include the movement of the column as an *actus reus* of forcible transfer. However, the Prosecution Final Brief leaves a different impression.

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<sup>6394</sup> *Ntagerura et al.* Appeal Judgement, para. 32. See *Muvunyi* Appeal Judgement, para. 20, quoting *Bagosora et al.* Appeals Chamber Decision, para. 30.

<sup>6395</sup> Indictment, para. 48(e).

<sup>6396</sup> *Ibid.*, para. 56.

<sup>6397</sup> *Ibid.*, paras. 61–64.

<sup>6398</sup> Prosecution Pre-Trial Brief, para. 23.

<sup>6399</sup> *Ibid.*, para 145. This is paragraph is part of the Chapter dealing with the “Summary of Evidence Regarding the Commission of Each Offence”. It is noted that the Prosecution Pre-Trial Brief mentions that the JCE’s common purpose was to forcibly transfer and deport the Bosnian Muslim women and children and elderly from the Srebrenica and Žepa enclaves. See *ibid.*, para. 27.



11. In the Prosecution Final Brief, like in the Prosecution Pre-Trial Brief, the column is referred to in the description of the fall of the Srebrenica enclave.<sup>6400</sup> Furthermore, in the section dealing with the application of facts on the crime of forcible transfer, the Prosecution Final Brief states that “[t]he able-bodied men who fled into the woods and joined the column of men or who fled from the Žepa enclave and swam across the Drina river to Serbia also did so in order to escape the VRS attack on the enclaves”.<sup>6401</sup> However, the section dealing specifically with “The forcible removal of the Muslim Population”, tellingly, only describes the separation of the men in Potočari and the forcible transfer of the women, children and elderly. It omits any reference to the column.<sup>6402</sup> Thus, in line with the Indictment, the Prosecution Final Brief does not seem to include the movement of the column as part of the charges under forcible transfer.

12. This vagueness is not only reflected in Prosecution documents; also during trial proceedings, the Prosecution issued ambiguous statements with regard to the charges concerning the column. Albeit termed as being limited to “war crimes”, the Prosecution stated that any attack against the column was “not a subject matter of the indictment”.<sup>6403</sup> The lack of clarity in the Prosecution position led my learned colleague, Judge Kimberly Prost, to question the Prosecution during the closing arguments concerning the charges with regard to the column.<sup>6404</sup> In response, the Prosecution repeated that the attack against the column was not charged but then stated its position that the members of the column were victims of forcible transfer.<sup>6405</sup> In my opinion, all this shows that until the end of the Trial the Indictment was not clear on the issue of charges concerning the members of the column. This defect cannot be cured by any statement of the Trial Attorney of the Prosecution during the closing arguments of the case.

13. On the side of the Accused, **Borovčanin** and **Nikolić** both argue that they cannot be responsible for forcibly transferring the column.<sup>6406</sup> **Nikolić** submits, more specifically, that the charge of forcible transfer does not apply to the members of the column as they were “targeted by the second joint criminal enterprise [...] to kill the able-bodied men from Srebrenica” and are “not

<sup>6400</sup> Prosecution Final Brief, para 313.

<sup>6401</sup> *Ibid.*, para. 2897.

<sup>6402</sup> *Ibid.*, paras. 341–380.

<sup>6403</sup> T. 7041 (7 Feb 2007). The Prosecution stated, after Mr. Lazarević wondered if the Prosecution was ready to stipulate “this was a military column from the very beginning and [...] it was a legitimate military target”, that the attack on the column was “not a subject matter of the indictment and I think that’s pretty clear”. *Ibid.* See also T. 3381–3382 (1 Nov 2006).

<sup>6404</sup> Prosecution Closing Arguments, T. 34260–34261, 34263 (4 Sept 2009).

<sup>6405</sup> *Ibid.*, T. 34261–34263 (4 Sept 2009).

<sup>6406</sup> The Borovčanin Final Brief states that “The allegation that Borovčanin was responsible for forcibly transferring the column of Muslim combatants out the Srebrenica enclave is logically, factually and legally nonsensical. The column’s departure from the enclave was a military decision taken by the ABiH on 11 July.” Borovčanin Final Brief, para. 82. The Nikolić Final Brief maintains the distinction of the victims of forcible transfer into the three groups identified in the Rule 98 *bis* submissions and argues that the departure of the column does not constitute an incident of forcible transfer. See Nikolić Final Brief paras. 226–231, 1018.

included in the Bosnian Muslim population allegedly forcibly transferred from Srebrenica”.<sup>6407</sup> The language of the Defence Final Briefs however suggests that the issue may have been addressed out of an abundance of caution.<sup>6408</sup>

14. In my view, the Prosecution’s position following the Indictment was vague and ambiguous and it has failed to provide clear and consistent information as to whether the movement of the column is charged as forcible transfer. As such, the Prosecution has failed to “cure” the Indictment and the column should be considered as charged with insufficient particularity. Furthermore, this lack of clarity cannot be cured by an abundance of caution from two of the Accused. In my opinion, the Accused have not been clearly informed of the charges against them with regard to the column. Therefore, including the movement of the column in the analysis of the charges under forcible transfer, as the majority has done, is prejudicial to the Accused. Accordingly, I dissent from the majority’s finding thereon, as well as its finding that **Miletić, Gvero, and Pandurević** are responsible for forcible transfer with regard to the civilian component of the column.<sup>6409</sup>

(c) Movement of the Able-Bodied Men from Žepa across the Drina River

15. In my opinion, the Prosecution did not charge the movement of the men from Žepa who swam across the Drina River as forcible transfer.

16. Under Count 7 (Forcible Transfer as Inhumane Acts), in paragraph 71, the part dealing with the forcible removal of the Bosnian Muslim population from Žepa as part of the JCE to Forcibly Remove, the Indictment refers to the flight of the Bosnian Muslim men to Serbia out of fear “they would be harmed or killed if they surrendered to the VRS”.<sup>6410</sup> This formed the basis for the majority’s conclusion that the Prosecution charged forcible transfer with the regard to the men from Žepa who fled to Serbia.<sup>6411</sup>

17. However, paragraph 84 of the Indictment, which charges the Accused with the crime of deportation states:

<sup>6407</sup> **Nikolić** submitted this argument at the Rule 98 *bis* stage of the proceedings and repeated his argument in his Final Brief. See T. 21266 (14 Feb 2008); **Nikolić** Final Brief, paras. 211–215, 228.

<sup>6408</sup> See **Nikolić** Final Brief, para. 228; **Borovčanin** Final Brief, para. 82.

<sup>6409</sup> In this regard I note that, in my view, even if it were considered that the movement of the column was charged, the majority took an inconsistent approach by distinguishing between the civilian and the military component of the column, and that I would argue that the same conclusion be reached for all members of the column, without distinguishing between the civilian and the military parts of it.

<sup>6410</sup> Indictment, para. 71, which reads: [t]he transportation of the women and children of Žepa began on 25 July 1995. On or about the same day, hundreds of mostly able-bodied Muslim men began to flee across the Drina River to Serbia where many of them were registered by the International Committee for the Red Cross (ICRC) and eventually released. The Muslim men fled to Serbia because they feared they would be harmed or killed if they surrendered to the VRS.

<sup>6411</sup> See *supra*, para. 953.

The crime of deportation was perpetrated, executed and carried out by and through the following means:

- a. the forced movement of Bosnian Muslim men from Žepa, across the Drina River to Serbia, by means of making life unbearable in the enclave by restricting aid to the enclave and instilling fear and terror in the population by shelling civilian areas and attacking the enclave, *as described in paragraph 71 of this Indictment.*<sup>6412</sup>

Accordingly, it is my view that paragraph 84 indicates that the flight of the men across the Drina River is mentioned in paragraph 71 of the Indictment simply because this is where the Indictment describes the JCE to forcibly remove, *namely to forcibly transfer and deport*, the Bosnian Muslim population from Srebrenica and Žepa.

18. This is further supported by the description of the alleged underlying acts of the crime of persecution for the events that occurred in Žepa.<sup>6413</sup> In the underlying acts, a distinction is made between the forcible transfer of the women and children and the deportation of the men:

[T]he forcible transfer of Bosnian Muslims from [...] Žepa by means of the forced busing of the women and children to Bosnian Muslim-controlled territory [...], and the deportation of the Bosnian Muslim men from Žepa who were forced to flee from their homes in Žepa to Serbia.<sup>6414</sup>

19. In my view, based on the above, it can be concluded that the Prosecution intended to only charge the movement of the men from Žepa across the Drina River as deportation. Even if the Indictment is considered ambiguous as to whether the flight of the men across the Drina River is charged as forcible transfer, this has subsequently been “cured” by the Prosecution. While the Pre-Trial Brief does not assist, the Prosecution Final Brief clearly supports the limitation of the charge of forcible transfer from Žepa to the women, children and the elderly. It submits that:

[...] the women, children and elderly Muslims from the Žepa enclave were forcibly displaced to other areas within Bosnia. These crimes should be classified as forcible transfer.

The Bosnian Muslim men who swam from Žepa across the Drina River into Serbia were forcibly displaced across a national border. As a result, these crimes constitute deportation.<sup>6415</sup>

20. Based on the foregoing, there is little doubt that the Prosecution clearly intended to charge the movement of the men from Žepa across the Drina River as deportation under Count 8 (Deportation) only. Including these men in the analysis of the charges under forcible transfer is incorrect and causes prejudice to the Accused. Accordingly, I dissent from the majority’s finding

<sup>6412</sup> Indictment, para. 84 (emphasis added).

<sup>6413</sup> *Ibid.*, para. 48 (c).

<sup>6414</sup> *Ibid.*

<sup>6415</sup> Prosecution Final Brief, paras. 2909–2910.

thereon, as well as on its finding that **Miletić** and **Gvero** are criminally responsible for forcible transfer with regard to the movement of these men.<sup>6416</sup>

## 2. Foreseeability of Opportunistic Killings and Miletić's Responsibility

21. The majority has found that the “opportunistic” killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove the Bosnian Muslim populations from the enclaves.<sup>6417</sup> Further, the majority has found that the “opportunistic” killings in Potočari were foreseeable to **Miletić** personally, and accordingly found him criminally responsible under Article 7(1) of the Statute for Count 4 (Murder) and Count 6 (Persecution through murder) as crimes against humanity pursuant to third category JCE.<sup>6418</sup>

22. The Indictment specifically distinguishes between the JCE to Murder and the JCE to Forcibly Remove. The JCE to Murder encompassed the plan to murder the able-bodied Bosnian Muslim men from Srebrenica, whereas the common purpose of the JCE to Forcibly Remove was to forcibly remove the Bosnian Muslim populations from Srebrenica and Žepa.<sup>6419</sup> The Trial Chamber has unanimously found that all the alleged “opportunistic” killings were a foreseeable and natural

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<sup>6416</sup> Even if it is to be found that the crime of forcible transfer has been charged with respect to the able-bodied men who swam across the Drina River out of the Žepa enclave, or if, as a consequence of acquittal of the crime of deportation, forcible transfer is to be analysed in relation to them, I believe that their movement cannot be qualified as a crime against humanity. In my opinion, one of the general requirements under Article 5—that the acts of the perpetrator must be part of the attack against a civilian population—has not been established with regard to the men in Žepa. As previously found by the Trial Chamber, unlike Srebrenica, the ABiH Žepa Brigade soldiers in Žepa chose to remain in the woods around Žepa town and to resist the attack of the VRS militarily. *See supra, para 955.* Although major fighting in Žepa ceased following the 24 July 1995 Agreement, some fighting still continued thereafter. *See supra, para. 724.* After the transportation of the Bosnian Muslim civilians was over, negotiations for the surrender of the able-bodied men in the woods continued until around 29 July 1995. *See supra, para. 731.* On 28 July 1995, UNPROFOR reported that approximately 1,500 ABiH soldiers had remained in the mountains surrounding the Žepa enclave. *See supra, para. 729.* The evidence demonstrates that both the VRS and the ABiH believed that the able-bodied men in the Žepa enclave were “soldiers” and both sides were negotiating prisoner exchanges on the all-for-all basis throughout the negotiations. *See supra, paras. 675–681, 689–700, 702–709, 725–731.* ABiH reports also refer to the able-bodied men in Žepa as “soldiers”. For instance, on or about 30 July 1995, the ABiH reported that approximately 700 or 800 soldiers of the ABiH Žepa Brigade set off in the direction of Poljanice in Žepa where they crossed the Drina River into Serbia and surrendered to the Serbian authorities or JNA. *See supra, para. 732.* In early August 1995, the ABiH reported that around 1,000 “soldiers” were still in the mountains around Žepa, waiting for the right moment to withdraw. *See supra, para. 736.* According to interviews of POWs conducted at the prison in Foča in mid-August 1995, after the fall of the Žepa enclave 800–1,000 ABiH Žepa Brigade soldiers decided to surrender to the JNA by crossing the Drina River, and 400–500 soldiers decided to break through the RS territory in order to link up with the ABiH. *See supra, para. 737.* These interviews also indicate that the group that crossed the Drina River into Serbia was composed “entirely of soldiers”. *See supra, para 737.* Having considered the evidence before the Trial Chamber, I am of the view that the movement of the able-bodied men in Žepa cannot be categorised as a crime against humanity, since the VRS’s acts, at the time when the fighting in Žepa and the transfer of the Bosnian Muslim civilian population from the area were over, were directed against a specific group of individuals, namely, the ABiH Žepa Brigade soldiers in Žepa. Thus, these acts were removed from the attack against the civilian population. *See Mrkšić and Šljivančanin Appeal Judgement, para. 42.* The possibility that a certain number of civilians may have been among the able-bodied men who swam across the Drina River does not change the above conclusion. Accordingly, in my opinion, one of the general requirements of Article 5, *i.e.*, the nexus requirement, has not been satisfied with regard to the men in Žepa.

<sup>6417</sup> *See supra, para. 1088.*

<sup>6418</sup> *See supra, paras. 1726–1727, 1735.*

<sup>6419</sup> Indictment, paras. 27–30, 36, 49, 72, 89–91.

consequence of the JCE to Murder.<sup>6420</sup> However, in my opinion, none of them were committed in the context and as a consequence of the JCE to Forcibly Remove and, as such, they were not a foreseeable and natural consequence of the JCE to Forcibly Remove.

23. The majority, however, “given the two JCEs alleged in this case and the Trial Chamber’s findings as to the detention of the men being part of the JCE to Murder”, has found that only the killings which occurred in Potočari were a foreseeable consequence of the forcible removal of the population, while at the same time excluding the “opportunistic” killings that took place in the Bratunac and Zvornik areas.<sup>6421</sup> In my opinion, the “opportunistic” killings that took place in Potočari were no different from other “opportunistic” killings in that they also took place only in the context of the JCE to Murder.

24. The Trial Chamber has found that, by the morning of 12 July, the plan to murder the Bosnian Muslim men was formed.<sup>6422</sup> In accordance with this plan, able-bodied men from Srebrenica who were captured or surrendered from the column were detained at various locations with the specific aim to execute them at a later stage. The same applied to the men in Potočari. These men were separated from the women and children, detained in the White House and later brought to various detention locations in Bratunac.<sup>6423</sup> As the Trial Chamber has found, these separations and detentions were part of the plan to murder the men: the men in Potočari were separated and detained with the intention to kill them.<sup>6424</sup> And thus, although the “opportunistic” killings in Potočari took place at the same location from where the forcible removal of the women, children, and the elderly of Srebrenica came to full fruition, they clearly took place in the context of the JCE to Murder. Therefore, these “opportunistic” killings cannot be considered as a natural and foreseeable consequence of the plan to forcibly remove the Bosnian Muslims from the enclaves.

25. I would have only been able to find differently if the alleged killing had occurred in the context of the forcible removal, such as, for example, killings as a consequence of indiscriminate shelling or for the purpose of terrorising the Bosnian civilian population in order to make them leave the enclave. However, considering the facts of the alleged “opportunistic” killings, I respectfully dissent from the majority finding that these were a natural and foreseeable consequence of the JCE to Forcibly Remove.

<sup>6420</sup> See *supra*, para. 1082. *But see* Judge Kwon’s Dissenting Opinion on the killings at the Kravica Supermarket. See *infra*, paras. 40–46

<sup>6421</sup> See *supra*, para. 1088.

<sup>6422</sup> See *supra*, paras. 1051–1054.

<sup>6423</sup> See *supra*, paras. 319–323, 325–331, 338–340, 399.

<sup>6424</sup> See *supra*, para. 1050.

26. The unreasonableness of the majority's finding that the "opportunistic" killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove is shown in the majority's conclusion that these "opportunistic" killings were not foreseeable to **Gvero**,<sup>6425</sup> one of the Assistant Commanders at the Main Staff of the VRS who has been found to be a member of the JCE to Forcibly Remove, even after having made a general finding that the "opportunistic" killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove.<sup>6426</sup> I respectfully submit that this inconsistency in the majority's approach is evidence that its finding that the "opportunistic" killings in Potočari were a foreseeable and natural consequence of the JCE to Forcibly Remove itself is not well-founded.

27. As set out above, in my opinion, the "opportunistic" killings did not take place in the context of the JCE to Forcibly Remove. As such, they could not have been foreseeable to **Miletić** as a member of this JCE. Furthermore, there is no evidence that **Miletić** willingly took the risk that "opportunistic" killings would take place in the course of the JCE to Forcibly Remove.

28. Therefore, I would have acquitted **Miletić** of murder as a crime against humanity. Also, I would have not found **Miletić** guilty of persecution through the underlying act of murder as a crime against humanity.

### 3. Borovčanin's Responsibility for Forcible Transfer

29. The majority finds that, while there is insufficient evidence to establish that **Borovčanin** shared the common purpose of the JCE or had the intent to forcibly remove the population of Srebrenica, upon seeing the chaotic and desperate situation in Potočari on the morning of 12 July, he came to know that a forcible transfer of the civilian population of Srebrenica was taking place.<sup>6427</sup> Based on this finding, the majority convicts **Borovčanin** of (1) aiding and abetting forcible transfer (inhumane acts) as a crime against humanity and (2) aiding and abetting persecution through forcible transfer as a crime against humanity, with reference to his act of allowing his subordinates to assist in the transfer of Bosnian Muslim women, children, and the elderly out of Potočari. I respectfully disagree with this majority's finding and consider that **Borovčanin** should not be found guilty of the above two charges.

30. The Trial Chamber has unanimously found that **Borovčanin** was neither involved in the formation of the plan to forcibly remove the Bosnian Muslim population, nor in the steps taken

<sup>6425</sup> See *supra*, para. 1830.

<sup>6426</sup> See *supra*, para. 1088.

<sup>6427</sup> See *supra*, paras. 1480–1495.

prior to 10 July 1995 to implement that plan.<sup>6428</sup> In addition, I fully agree with the statement of the majority that **Borovčanin**'s participation in the advance towards Potočari and the operation to secure the town and the DutchBat compound—both of which occurred in the early morning of 12 July—does not evidence knowledge on his part of the plan to forcibly remove, nor would the plan have become evident to **Borovčanin** from such participation.<sup>6429</sup>

31. The majority has nonetheless found that the situation on the ground in Potočari on the morning of 12 July was such that the only reasonable inference available on the evidence is that once **Borovčanin** saw the situation, he would have known that the population had been forced out of their homes and the enclave by the attack, into those desperate conditions, and their transport out of the enclave was by compulsion and not a voluntary evacuation.<sup>6430</sup> I am not satisfied that this is the only reasonable inference available on the evidence. I note that the transport out of the enclave was conducted pursuant to a request from an international body,<sup>6431</sup> the Bosnian Muslim population had expressed a desire to leave the enclave;<sup>6432</sup> and there is no evidence before the Trial Chamber of obvious physical coercion as the population boarded the buses.<sup>6433</sup> An equally reasonable inference can be made that **Borovčanin** understood this to be a voluntary evacuation of the population pursuant to an agreement reached between the parties who met at the Hotel Fontana, and it was on this basis that he ordered the Jahorina Recruits to assist. Therefore, I am not satisfied that **Borovčanin** knew on 12 July that there was a forcible transfer in progress, nor am I satisfied that his actions and those of the Jahorina Recruits evidence such knowledge.

<sup>6428</sup> See *supra*, para. 1480.

<sup>6429</sup> See *supra*, para. 1486.

<sup>6430</sup> See *supra*, paras. 1488–1495.

<sup>6431</sup> At the Hotel Fontana meeting, Karremans stated: “I had a talk with General Nicolai two hours ago, and also with the national authorities about the request on behalf of the population. It’s a request because I’m not in a position to demand anything. We... the Command in Sarajevo has said that the enclave has been lost and that I’ve been ordered by BH Command to take care of all the refugees. And are now approximately 10,000 women and children within the compound of Potočari, and the request of the BH Command is to... let’s say, to negotiate or ask for the withdrawal of the battalion and withdrawal of those refugees, and if there are possibilities to assist that withdrawal.” Ex. P02047, “Srebrenica Trial Video”, 00:46:30–00:48:21; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 19–20.

<sup>6432</sup> At the first Hotel Fontana meeting, Karremans stated that the request for withdrawal came from the BiH authorities and reported that many women had said: “We are waiting for the buses and can we leave the enclave?”, Ex. P02047, “Srebrenica Trial Video”, 00:48:00–00:48:17, 00:48:49–00:48:54; Ex. P02048, “Srebrenica Trial Video Transcript”, pp. 19–20. Further, a United Nations report also reflects the view that the transfer was being done at the request of the international community and the Bosnian Muslims were in favour of it. Ex. 5D00040, “UNPF Policy and Information for the Security Council, 11 July 1995”, p. 2 (stating “UNHCR reports that 80% to 90% of the population of Srebrenica are displaced persons who fled fighting earlier in the war, thus they do not have long-standing ties to homes and property in the enclave, and will probably be interested in leaving for Tuzla. A UNHCR local staff member in Srebrenica reported today that virtually everyone in the enclave wishes to leave”).

<sup>6433</sup> Robert Franken, T. 2651–2652 (18 Oct 2006) (testifying that, when the buses arrived in Potočari on 12 July, people were in a hurry to board and were not against transportation out of the town, and that, although some degree of force was used later in order to get such a large number of people on to the buses, no force was used as the people boarded initially); Leendert van Duijn, T. 2381 (28 Sept. 2006) (testifying that the Muslim people were eager to leave and that, other than some reports of abuse of people who wanted to board the buses, he had no information about the Bosnian Muslim people being forced to board the buses).

32. Having played no informed role in the circumstances that led to the dire conditions in Potočari, **Borovčanin** was presented with nothing short of a humanitarian catastrophe when he arrived there on 12 July. The extreme nature of these conditions is well documented elsewhere in the Judgement.<sup>6434</sup> Although some food supplies were brought in, they were merely a “drop in the sea”.<sup>6435</sup>

33. I am of the opinion that the conditions in Potočari were so desperate that the only viable solution on the ground was to evacuate the Bosnian Muslim population to ABiH-held territory as soon as possible.<sup>6436</sup> It follows that **Borovčanin** considered that the only option available to him under the circumstances was to allow his troops to assist the transfer of Bosnian Muslim women, children, and the elderly in cooperation with DutchBat. I note in this regard that the majority also found that he did not even intend to forcibly transfer.<sup>6437</sup> His act of directing his men to assist in this transportation alleviated the immediate suffering he witnessed on 12 July. I find it unacceptable that, according to the reasoning of the majority, the only way for him to have complied with the law on that day was to have stood back and done nothing. In my opinion, withdrawing his troops was not a genuine option in the circumstances, and **Borovčanin** had no other choice than to act in the way that he did.

34. **Borovčanin** returned to Potočari on 13 July and saw the result of the separations as well as the detentions at the White House. While this is very relevant in terms of **Borovčanin**'s knowledge of the JCE to Murder, in so far as the plan to forcibly remove is concerned, I do not consider that this additional knowledge of the detention of the men would lead **Borovčanin** to conclude that the transfer of the remainder of the population was a forcible one. As the Trial Chamber has unanimously found, **Borovčanin** did not know of the plan to murder and could have reasonably believed that the Bosnian Muslim men in Potočari and in Bratunac town were being detained for a lawful screening process.<sup>6438</sup> Moreover, by this time, the act relevant to his conviction by the majority—*i.e.* ordering his men to assist in the transfer of the Bosnian Muslim women children and the elderly on 12 and 13 July—was practically complete. Therefore, I find that this additional knowledge is not relevant to the forcible transfer charge.

<sup>6434</sup> See *supra*, paras. 309–315.

<sup>6435</sup> See *supra*, para. 310.

<sup>6436</sup> See Leendert van Duijn, T. 2380 (28 Sept. 2006) (“At that time, when all the refugees were gathered at the factory sites, from that moment on, there was no other solution there than to evacuate them, because [...] there was a big possibility that epidemics would break out, people had no food, no water, and the temperature was very high. So from that moment on, there was no other solution [...]).

<sup>6437</sup> See *supra*, para. 1495.

<sup>6438</sup> See *supra*, paras. 1507–1509.



35. For the foregoing reasons, I am of the opinion that **Borovčanin** should not have been found guilty of aiding and abetting forcible transfer (inhumane acts) as a crime against humanity, nor should he have been found guilty of aiding and abetting persecution through aiding and abetting forcible transfer.

### C. Scope of the JCE to Murder: Trnovo

36. The majority has found that the killing of six Bosnian Muslim men near the town of Trnovo by the Scorpions Unit falls within the scope of the common purpose of the JCE to Murder. In doing so, the majority notes the temporal proximity of the incident and the fact that the victims are from Srebrenica. The majority also observes that “[e]ven without evidence as to how the men arrived at this location or into the custody of the Scorpions, the Trial Chamber, by majority, considers it an unreasonable inference that within the same relative time period, in an adjoining area, there was a separate, distinct murder operation targeting precisely the same victims”.<sup>6439</sup> I consider this finding to be speculative.

37. The absence of any evidence adduced by the Prosecution as to the circumstances which led to this killing allows one to draw any number of inferences as to why it may have played out in the way that it did. Furthermore, the persons alleged by the Prosecution to be members of the JCE to Murder are all members of the Bosnian Serb Forces.<sup>6440</sup> The Scorpions Unit is alleged to have *participated* in the implementation of the JCE to Murder.<sup>6441</sup> However, the Indictment itself notes that this unit is unique in the context of the allegations. It states:

All of the entities referred to in the preceding five paragraphs, except Number 12, the “Scorpions” unit, were units of the VRS or the RS Ministry of Interior, all legally organised and existing under the relevant laws of the RS, and under the command of individuals lawfully appointed under the relevant laws of the RS.<sup>6442</sup>

The singling-out of the Scorpions Unit is telling in this context and, in my view, indicates that this unit was not a member of the JCE to Murder.

38. Given that the perpetrators are not members of the JCE to Murder, the issue before the Trial Chamber is whether the incident is sufficiently linked to the common purpose of the JCE so as to fall within its scope. In my opinion, the Prosecution has failed to prove any link whatsoever between the Scorpions Unit and any element of the Bosnian Serb Forces. There is no evidence before the Trial Chamber concerning how these Bosnian Muslim prisoners came to be in the

<sup>6439</sup> *See supra*, para. 1080.

<sup>6440</sup> Indictment, paras. 96–97.

<sup>6441</sup> *Ibid.*, para. 98 (also alleging that the listed units, including the Scorpions Unit, participated in the JCE to Forcibly Remove).

<sup>6442</sup> *Ibid.*, para. 112.

custody of the Scorpions. Furthermore, all of the other killings found to be within the scope of the JCE to Murder occurred in or around Bratunac and Zvornik, yet Trnovo is 150 kilometres away.<sup>6443</sup>

39. I am of the opinion that, viewed together with the other killings, the incident near Trnovo stands in stark contrast to the rest. It lacks geographic proximity, and there is no link whatsoever between the perpetrators and the participants in the JCE to Murder. Therefore, I am not satisfied beyond reasonable doubt that the incident at Trnovo falls within the scope of the JCE to Murder.

#### **D. Effect of Rule 92 bis Evidence (Kravica Supermarket)**

40. The Trial Chamber has found that the testimony of PW-116, admitted pursuant to Rule 92 bis (D),<sup>6444</sup> is the only evidence before the Trial Chamber of specific beatings and killings taking place near the Kravica Supermarket, as alleged in the Indictment.<sup>6445</sup>

41. As the Trial Chamber has unanimously stated, jurisprudence of the Tribunal has made it clear that, with regard to Rule 92 bis and 92 quater evidence,<sup>6446</sup> where the witness is not called to give the accused an adequate and proper opportunity to challenge the evidence and to question that witness, the evidence may lead to a conviction only if there is other corroborating evidence.<sup>6447</sup> Evidence which has not been the subject of cross-examination and goes to the acts and conduct of the Accused or is pivotal to the Prosecution case cannot be relied upon as the sole basis to establish a conviction.<sup>6448</sup>

42. However, the majority has gone further to state that the application of this jurisprudence must be carefully considered “*in the context of the particular crimes for which this Tribunal has jurisdiction and the nature of the allegations in the specific case*” and that persons tried before this Tribunal are accused of, and ultimately acquitted of or convicted for “*crimes against humanity, war crimes or genocide*”.<sup>6449</sup> The majority has also stated that, as in this instance, in many cases before

<sup>6443</sup> Ex. P03248, “Stipulation on Trnovo”, para. 1.

<sup>6444</sup> Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in lieu of Viva Voce Testimony Pursuant to Rule 92 bis, 12 September 2006 (granting admission of PW-116’s evidence without cross-examination).

<sup>6445</sup> See supra, para. 448. See Indictment, para. 31.3.

<sup>6446</sup> See supra, paras. 59–63.

<sup>6447</sup> Prosecutor v. Stanislav Galić, Case No. IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis(C), 7 June 2002, para. 12, n. 34, referring to, for instance, Solakov v. FYROM, Judgement of 31 Oct 2001, para. 57 (“In particular, the rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or in a decisive manner, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial.”). See also Blagojević and Jokić Appeal Judgement, paras. 316, 318.

<sup>6448</sup> Prosecutor v. Prlić et al., Case No. IT-04-74-AR73.6, Decision on Appeals against Decision Admitting Transcript of Jadranko Prlić’s Questioning in Evidence, 23 November 2007, para. 53; Prosecutor v. Martić, Case No. IT-95-11-AR73.2, Decision on Appeal against the Trial Chamber’s Decision on the Evidence of Witness Milan Babić, 14 September 2006, para. 20.

<sup>6449</sup> See supra, para. 63 (emphasis added).

this Tribunal, the underlying acts which form the basis for a count in an indictment are multiple in nature, often with several layers, such that a finding with respect to one act will not form the basis for conviction of the accused. The majority further observed that this incident near the Kravica Supermarket forms one of several allegations of “opportunistic” killings listed in the Indictment, and appropriately categorised as such, these events, described by PW-116, could never of themselves form the basis of a conviction for *genocide, crimes against humanity or war crimes* as alleged in the Indictment. Based upon this finding and observation, the majority has accordingly held that PW-116’s uncorroborated evidence, in the context of the facts of this case, cannot be classified as evidence which could form the sole or even a decisive basis for the conviction of any of the accused and finally accepted PW-116’s evidence, untested in this case, as a basis for concluding that the alleged beatings and killings have been established by the Prosecution.

43. I must respectfully disagree: the evidence should be assessed in accordance with the jurisprudence with respect to each *separate charge*<sup>6450</sup> against an accused, not in the context of each count such as crimes against humanity or war crimes as a whole, which would generally include multiple separate charges of underlying crimes. The fact that this evidence is not the sole basis for a conviction of crimes of against humanity or war crimes in this case is, in my view, beside the point.

44. The majority’s conclusion that a specific underlying crime which constitutes a separate charge in the indictment can be proven based solely on an untested Rule 92 *bis* transcript is simply unreasonable, because such a finding relies upon the coincidental circumstance of whether or not the Prosecution has successfully proven other underlying crimes which form part of the same count. However, in my view, successful proof of other underlying acts cannot be viewed as “corroborative” evidence of a specific separate charge in the indictment. Of course, the extent of corroboration required in these circumstances is a separate matter to be considered on a case by case basis. Thus, in the case of the Kravica Supermarket charge, it may have been enough corroboration, for example, if there was some forensic evidence or if there was a witness who saw the trucks parked by the side of the road in front of the Kravica Supermarket on the evening of 13–14 July 1995. However, if the reasoning of the majority is to be followed, it would be possible for an underlying crime of mass killing in this case, such as those which took place at the Kravica Warehouse or Branjevo Military Farm, to be proven on the basis of one uncorroborated, untested

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<sup>6450</sup> I consider a separate charge to be an allegation which, in a situation where all other charges fail, is capable of forming the basis for a conviction. *See, e.g., Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-PT, T. 301 (16 Dec 2009) (stating “The Trial Chamber has concluded that two of the amendments which were granted involve new charges, for which pleas are required, and specifically that is paragraph 21.15.2, which alleges the execution on or about the 23rd of July, 1995, of approximately 39 Muslim men in Bisina and paragraph 23.1 which alleges the execution and burial on or about 27th July 1995, of three Bosnian leaders from Zepa. As a result, the Trial Chamber is of the opinion that these new charges are relevant to Counts 1, 3, 4, 5, 6, and 7 of the indictment, and, therefore, I will be proceeding to enter pleas with respect to these new charges.”).

witness statement, on the ground that these are one of many allegations of mass killing. I cannot agree with such an approach.

45. The regime created under Rule 92 *bis* is a careful composition developed through international criminal jurisprudence.<sup>6451</sup> It strikes a delicate and vital balance ensuring that the trial of an accused is expeditious as well as fair. In this case, this balance would have easily been maintained by the Prosecution calling evidence to corroborate the testimony of PW-116, or simply calling the witness to give evidence *viva voce* or pursuant to Rule 92 *ter*, so that the Accused could cross-examine the witness. This balance should not be disturbed by the Trial Chamber simply to remedy the oversight or failure of the Prosecution to meet the requirements of the jurisprudence. The principle is far too important.

46. In conclusion, for the foregoing reasons, I am not satisfied that the allegation in paragraph 31.3 of the Indictment has been proven.

### **E. Two Issues regarding Pandurević**

#### **1. Effective Control over Zvornik Brigade during the Krivaja-95 Operation**

##### **(a) Introduction**

47. The majority has found that during July 1995, including from 4 to 15 July, there existed at all times a superior-subordinate relationship between **Pandurević** and members of the Zvornik Brigade.<sup>6452</sup> I agree that **Pandurević** had effective control over members of the Brigade in the period in July following his return to Zvornik on 15 July. However, I respectfully disagree with the majority's position that he exercised effective control over members of Zvornik Brigade during the period in which he was absent commanding TG-1 from 4 July until midday on 15 July.

48. On 2 July, **Pandurević** was appointed the Commander of TG-1, and on 4 July, he and TG-1 departed for Srebrenica, pursuant to the *Krivaja-95* Operation.<sup>6453</sup> Following their participation in this military operation, on 15 July, upon the order of Krstić, he and the TG-1 forces returned to Zvornik.<sup>6454</sup> The majority has found that during this period from 4 to 15 July in which he was

<sup>6451</sup> See O-Gon Kwon, "The Challenge of an International Criminal Trial as Seen from the Bench", *Journal of International Criminal Justice*, 5 (2007), pp. 361–362, in which I stated that Rule 92 *bis* of the Rules is one of the examples of what I would call the "internationalisation" of criminal procedure, in that they combine different features of the common-law and civil-law systems in a unique hybrid fashion unknown to any domestic jurisdiction in the world.

<sup>6452</sup> See *supra*, paras. 2027, 2034.

<sup>6453</sup> See *supra*, paras. 1843–1844.

<sup>6454</sup> See *supra*, paras. 1859, 1861.

engaged in the *Krivaja-95* Operation, he retained effective control over the Zvornik Brigade.<sup>6455</sup> Essentially, according to the majority position, his absence from Zvornik and separate military assignment during this period ultimately did not alter his normal relationship with the Zvornik Brigade.<sup>6456</sup> However, in my opinion, his relationship with the Brigade was fundamentally altered during this period. In this situation, namely where **Pandurević** assumed command of a separate unit and Obrenović assumed command of the Zvornik Brigade, **Pandurević** both legally and practically no longer possessed the ability to exercise effective control over the Brigade in light of the principle of unity or singleness of command.

(b) Unity/Singleness Command

49. According to the principle of unity or singleness of command, which is a general military principle, only one individual can be in command of one unit or series of units—it is not possible to have two commanders of a brigade at the same time.<sup>6457</sup> Thus within the formation of a brigade, there can be only one brigade commander and that commander has the exclusive right to command all units and members of the brigade.<sup>6458</sup> The reasoning underlying this principle is self-evident, as a brigade or military unit essentially could not function effectively where there are multiple commanders of that one unit. In my view, Obrenović's assumption of command of the Zvornik Brigade in **Pandurević**'s absence in July must be viewed within the context of this central military tenet. Accordingly, Obrenović was the sole Commander of the Brigade during this time and he possessed exclusive authority in this regard.

50. Following from the principle of unity, or singleness, of command, contrary to the majority's finding,<sup>6459</sup> it was therefore not open to **Pandurević** to retake command and assert his authority with respect to the Brigade at any point. **Pandurević** could resume command of the Zvornik Brigade only after Krstić sent him back to Zvornik on 15 July and once he had returned to the

<sup>6455</sup> See *supra*, paras. 2027, 2034.

<sup>6456</sup> See *supra*, paras. 2027–2030.

<sup>6457</sup> See Richard Butler, T. 20773 (31 Jan 2008).

<sup>6458</sup> See PW-168, T. 16622 (closed session) (19 Oct 2007), T. 16791 (closed session) (23 Oct 2007); Richard Butler, T. 20773 (31 Jan 2008); Vinko Pandurević, T. 30726–30727, 30758 (28 Jan 2009) (also stating that a brigade commander could thus not be in command of two units at the same time). This principle is embodied in Article 115 of the JNA Brigade Rules, which states “[t]he brigade commander has the exclusive right to command all brigade units and attached units.” Ex. P00694, “Brigade Rules (for Infantry, Motorised, Mountain, Alpine, Marine and Light Brigade) from the Federal Secretariat for National Defence 1984”, p. 37. See also Vinko Pandurević, T. 30726 (28 Jan 2009) (testifying that Article 115 is based on this principle); Richard Butler, T. 19619 (14 Jan 2008) (explaining that this provision in Article 115 meant that the brigade commander by law and regulation has the exclusive right to command and “[i]ndividuals from outside that formation, even if they’re higher-ranking individuals, do not have the authority to interfere with that particular commander’s right to command his own brigades”).

<sup>6459</sup> See *supra*, para. 2031.

Standard Barracks and officially resumed his functions as the Brigade Commander that day.<sup>6460</sup> Until that point, **Pandurević** was obligated to focus his attention entirely on his command of TG-1 and the *Krivaja-95* Operation and Obrenović, in the meantime, possessed and retained all of the rights and responsibilities as the acting Brigade Commander in the absence of **Pandurević**. In this situation, in accordance with the principle of unity command, **Pandurević** could not issue orders to the Brigade, make decisions, or otherwise influence the operation of the Brigade.<sup>6461</sup> I will consider below the situations on the part of **Pandurević** and Obrenović respectively in more detail.

(c) Pandurević's Situation

51. In accordance with his order from Krstić to command TG-1, **Pandurević** was obligated to concentrate on his newly assigned function as Commander of TG-1 in the *Krivaja-95* Operation. During this period, this assignment was his exclusive task, and he could not and should not have interfered with the business and affairs of the Zvornik Brigade. As stated by Dragutinović, **Pandurević** was “duty-bound to command [TG-1] and only that unit”.<sup>6462</sup> Under these circumstances, **Pandurević** was therefore prevented from carrying out his duties as Commander of the Zvornik Brigade as he was not only required to be outside of the Brigade's zone<sup>6463</sup> but also obligated to carry out other, distinct duties and responsibilities pursuant to his command of another unit. Moreover, at the time that he departed from Zvornik with TG-1, the duration of his absence was uncertain.<sup>6464</sup>

52. Furthermore, during the period in which **Pandurević** commanded TG-1 and was absent from the Brigade, he did not issue any orders to the Brigade, he was not notified of any orders that had been given to the Brigade by the higher command, and he did not contact the Brigade to receive

<sup>6460</sup> **Pandurević** testified that on 15 July, he resumed his function as Commander of the Brigade after Obrenović had completed the briefing in his office, at which point **Pandurević** announced that he was taking over the command. Vinko Pandurević, T. 31436 (13 Feb 2009). **Pandurević** explained that after he was ordered by Krstić to return to Zvornik but before he returned to Standard Barracks, he had still not yet resumed command of the Brigade. Vinko Pandurević, T. 31436 (13 Feb 2009). In this regard, in speaking on the telephone to members of the Brigade on the morning of 15 July before he had left for Zvornik, he did not issue an orders to these individuals because he was not in command of the brigade and such an action would have amounted to “dual command, not single authority because Dragan Obrenović had already issued them tasks”. Vinko Pandurević, T. 31437–31438 (13 Feb 2009).

<sup>6461</sup> See Vinko Pandurević, T. 31438 (13 Feb 2009). Furthermore, in such a situation such as that in July 1995 while **Pandurević** was absent, if Obrenović had been required to first seek **Pandurević**'s approval before acting, this essentially would have deprived the Deputy Commander position of its the basic function and role.

<sup>6462</sup> Miodrag Dragutinović, T. 12702 (15 June 2007). See also Vinko Pandurević, T. 31435–31436 (13 Feb 2009).

<sup>6463</sup> As a note, in my view, the incidental fact that **Pandurević** was not far away from the area of Zvornik does not make any difference in my assessment of his effective control during this period.

<sup>6464</sup> **Pandurević** ultimately was only absent from the Brigade for about eleven days. However, if Krstić had not ordered him to return to Zvornik on 15 July in light of the combat situation facing the Zvornik Brigade, **Pandurević**'s absence would likely have been for a more extended period.

briefings or information regarding its affairs and operations.<sup>6465</sup>

53. In my view, **Pandurević**'s limited ability in this respect is supported by evidence before the Trial Chamber. For example, on 13 July when Mladić addressed tactical groups and gave orders for them to proceed to Žepa, **Pandurević** expressed his disagreement with the mission and pointed out his concern that that the 28th Division might regroup and break through the direction of Tuzla and thus pose a serious threat to the Zvornik Brigade.<sup>6466</sup> In response, Mladić indicated to **Pandurević** that he had received his assignments, referring to his command of TG-1 and the Žepa operation, he was to carry out those orders, and he should leave the problem of the 28th Division to others.<sup>6467</sup> Thus, although **Pandurević** was concerned that the Zvornik Brigade troops were at risk, so much so that he would openly question Mladić's orders in front of others, ultimately, it was not within his own authority and volition to return to the Zvornik Brigade in order to assist in the defence of the area from the advancing enemy forces and instead he was obligated to continue the military operation in Žepa pursuant to his command of TG-1.

54. In this regard, it is also important to note that, contrary to the majority, I attach no significance to the fact that **Pandurević** contacted the Brigade on two occasions while he was commanding TG-1, once to request the supply of missing grenades for the tank company and another time to request that some teaching materials to be photocopied and delivered. These contacts clearly concerned only incidental matters unrelated to the actual affairs of the Brigade. In my view, such instances of contact do not amount to an assertion of authority by **Pandurević** with respect to the Zvornik Brigade. These two marginal communications ultimately do not affect the legal status of his relationship with Brigade at that time nor are they evidence that he was in a position to issue orders to members of the Zvornik Brigade.

(d) Obrenović's Situation

55. As **Pandurević** could not perform his duties as Commander of the Zvornik Brigade while he was commanding TG-1, Obrenović took over those duties as the acting Commander of the Zvornik Brigade during this period. In my view, Obrenović automatically became the acting

<sup>6465</sup> See Vinko Pandurević, T. 30922–30923 (30 Jan 2009); Miodrag Dragutinović, T. 12702 (15 June 2007) (further stating in this regard that there was no need for **Pandurević** to be kept informed about the situation of the Zvornik Brigade as he and TG-1 had their own specific, separate tasks).

<sup>6466</sup> Miodrag Dragutinović, T. 12587–12588 (13 June 2007).

<sup>6467</sup> Miodrag Dragutinović, T. 12588 (13 June 2007), T. 12698 (15 June 2007).

Commander in the capacity of the Deputy Commander of the Brigade, pursuant to his original order of appointment on 11 April 1993.<sup>6468</sup>

56. In its assessment of **Pandurević**'s effective control during this period, the majority noted that for the August-September period, during which he was absent and commanding a unit in the Krajina, there was an order that specifically designated Obrenović as that the acting Brigade Commander, while in the July period there was no such order. However, in my opinion, a formal order of designation was not necessary for him to assume the position of acting Commander of the Brigade.<sup>6469</sup> Such an order was a mere formality and its significance lay only in terms of the remuneration received by Obrenović.<sup>6470</sup> The absence of such an order in July therefore does not change the legal effect of Obrenović's assumption of command in **Pandurević**'s absence during this period. Additionally, although no such formal order was issued in July, there is evidence that prior to **Pandurević**'s departure from Zvornik on 4 July, a public announcement was made to the Zvornik Brigade troops to the effect that Obrenović was taking the command from **Pandurević** and that Obrenović would remain in command until **Pandurević**'s return.<sup>6471</sup> According to Marić, he understood this announcement by **Pandurević** to be an official transfer of authority.<sup>6472</sup> Ultimately, in my view, thus, there is no difference between the July period when **Pandurević** was

<sup>6468</sup> Ex. 7D00462, "Order of the Commander of the Drina Corps signed by Commander Colonel Milenko Živanović dated 11 April 1993". This order of appointment gave Obrenović the duty to act in the capacity of deputy commander assume command of the brigade and stand-in for the Commander automatically when **Pandurević** was absent. *See also* Vinko Pandurević, T. 30744–30745 (28 Jan 2009); Miodrag Dragutinović, T. 12613 (14 June 2007); PW-168, T. 16620 (closed session) (19 Oct 2007). In this respect, I also note Article 17 of the regulations of the brigade command authority in the regiment of the JNA, which states that "[i]n the absence of the Commander, the Chief of Staff or the Deputy Commander stand in for him, with all the commander's rights and duties." Ex. 7D00717, "Rules regarding Brigade Commander's Authority, 1965", p. 2. In reference to this provision, **Pandurević** explained that in the absence of the commander, he "may be replaced by the Chief of Staff or the deputy commander with all the rights and responsibilities of the commander, which means that that person acts on behalf of the commander and has to act pursuant to Article 115 of the brigade rules". Vinko Pandurević, T. 30731 (28 Jan 2009).

<sup>6469</sup> Additionally, there is evidence that suggests that there was not a consistent practice of such a formal order being issued by the Corps Command. *See, e.g.*, Vinko Pandurević, T. 30748–30749 (28 Jan 2009) (testifying that no such order was issued formally designating Obrenović's position when he assumed command of the Brigade between February and March 1995 when **Pandurević** was absent during this entire period receiving physiotherapy in Višegrad).

<sup>6470</sup> *See* Vinko Pandurević, T. 30745, 30749 (28 Jan 2009), T. 31192 (10 Feb 2009). *See also* PW-168, T. 16188 (closed session) (10 Oct 2007). Additionally, according to PW-168, one of the reasons why Obrenović was formally designated as acting Commander in an order by the Corps in August 1995, while in the July period he was not, was because in August, Obrenović himself had asked Krstić to have his status "officially regulated, to have an order sent so that it was known and that the situation [was] clear". *Ibid.*, T. 15923 (closed session) (27 Sept 2007).

<sup>6471</sup> Milan Marić, Ex. P03138, "92 *quater* transcript", BT. 11559–11560 (6 July 2004). According to Article 60 of the provisional service regulations for the VRS, "[t]he hand-over of duties by commanding officers of squads, platoons and companies (batteries) and the commanders of battalions, regiments, brigades and officers of the same rank, takes place in the form of a ceremony before the unit on parade." Ex. 7DP00417, "Provisional Service Regulations of the VRS, August 1992", p. 18.

<sup>6472</sup> Milan Marić, Ex. P03138, "92 *quater* transcript", BT. 11560 (6 July 2004).



commanding TG-1 and the August-September period when he was commanding the 2nd Drina Corps in the Krajina.<sup>6473</sup>

57. From 4 to 15 July, in **Pandurević**'s absence, Obrenović was vested with all of the rights and duties of the Brigade Commander and had *de jure* authority over the members of the Zvornik Brigade. In his capacity as acting Commander, Obrenović performed the duties of the Brigade Commander and was directly subordinate to the Corps Command, not to **Pandurević**.<sup>6474</sup> During this period, Obrenović was not simply assigning tasks to members of the Brigade in accordance with previous decisions taken by **Pandurević**. Obrenović was carrying out the orders and instructions that he received from the Corps Command and making decisions based on such orders and on his own assessment. In making such decisions and executing orders, he never consulted with nor sought the approval of **Pandurević**,<sup>6475</sup> as he did not need **Pandurević**'s authority to undertake such actions.<sup>6476</sup>

(e) Conclusion

58. Based on these considerations, I am therefore of the opinion that **Pandurević** did not possess *de jure* or *de facto* authority over members of the Zvornik Brigade during the period he was commanding TG-1 in Srebrenica and Žepa from 4 to 15 July. Formally speaking, **Pandurević** was still the Commander of the Brigade in title. However, for all intents and purposes, Obrenović during this period was the acting Commander and had assumed all of the rights and duties of the Commander and **Pandurević** did not have the authority to interfere in Obrenović's command during his absence while he was commanding TG-1. As such, in my opinion, **Pandurević** lacked the material ability to prevent or punish the acts of members of the Zvornik Brigade during this

<sup>6473</sup> The Trial Chamber has held that **Pandurević** did not possess *de jure* or *de facto* authority over members of the Zvornik Brigade during the August-September 1995 period. *See supra*, para. 2035. Accordingly, I consider that, as was the case in the August-September period, **Pandurević** did not possess *de jure* authority over members of the Zvornik Brigade from 4 to 15 July.

<sup>6474</sup> *See* Vinko Pandurević, T. 30758, 30760 (28 Jan 2009) (also testifying that when he was absent commanding TG-1, "the corps commander, General Živanović, was in command of Dragan Obrenović"), T. 30923–30924 (30 Jan 2009). *See also* Miodrag Dragutinović, T. 12613 (14 June 2007), T. 12701 (15 June 2007).

<sup>6475</sup> PW-168, T. 16185–16186 (closed session) (10 Oct 2007), T. 16790 (closed session) (23 Oct 2007); Vinko Pandurević, T. 30293 (30 Jan 2009). For example, when faced by the large number of advancing forces of the ABiH near the area of Zvornik, on 14 July, Obrenović did not contact **Pandurević** but instead contacted the Corps Command about this urgent military situation threatening the defence lines of the Brigade's forces. *See* Ex. 5DP00327, "Zvornik Brigade Interim Combat Report, dated 14 July 1995"; PW-168, T. 16655 (closed session) (19 Oct 2007) (stating that Obrenović drafted this report).

<sup>6476</sup> Otherwise, Obrenović would have been at a loss whether or not, and on which matters, to consult **Pandurević**. *See* Vinko Pandurević, T. 30924 (30 Jan 2009); Miodrag Dragutinović, T. 12613 (14 June 2007), T. 12701 (15 June 2007). *See also* PW-168, T. 16193 (closed session) (10 Oct 2007) (testifying that during his absence in the beginning of July, **Pandurević** did not have responsibility for the units that Obrenović was in command of, i.e., the units of the Zvornik Brigade in the defence area of the Brigade), T. 16788 (closed session) (23 Oct 2007) (stating that during this period in July, Obrenović commanded the units of the Zvornik Brigade who were in the area of Zvornik). [REDACTED]

period in July.

59. In conclusion, for the foregoing reasons, I am not satisfied that **Pandurević** had effective control over members of the Zvornik Brigade during the period between 4 July to midday on 15 July. Therefore, in my opinion, a superior-subordinate relationship, within the meaning of Article 7(3) of the Statute, did not exist between **Pandurević** and members of the Zvornik Brigade during this period.

## 2. Pandurević's Responsibility for Wounded Prisoners from Milići Hospital

60. The majority has found that **Pandurević** aided and abetted by omission the murder of the ten wounded prisoners from Milići Hospital.<sup>6477</sup> I agree that the Zvornik Brigade had custody and control of these wounded prisoners, that **Pandurević** thus had a legal duty to protect the prisoners, and that his duty did not end with their transfer into **Popović's** custody. However, I respectfully depart from the majority finding that **Pandurević** possessed the requisite *mens rea* for aiding and abetting by omission and thus is responsible for the murder of the ten wounded prisoners.

61. To incur criminal responsibility through aiding and abetting by omission, **Pandurević** had to know the essential elements of the crime to be committed and that his failure to act would assist the commission of that crime.<sup>6478</sup> By 23 July, **Pandurević** had knowledge that **Popović** had been involved in the murder operation carried out in the area of Zvornik based on information conveyed to him by **Obrenović** on 15 and 17 July.<sup>6479</sup> The majority has found that, in light of this knowledge on his part, the only reasonable inference is that, upon receiving the message that **Popović** would come to resolve the issue of the wounded prisoners, **Pandurević** knew it was probable that the prisoners would be killed once they were transferred into **Popović's** custody.<sup>6480</sup> However, in my view, it does not follow that, based on such knowledge alone, **Pandurević** knew that it was probable that the wounded prisoners would be murdered once they were transferred into **Popović's** custody. Specifically, in my opinion, **Pandurević's** knowledge of **Popović's** previous involvement in the murder operation was insufficient to trigger **Pandurević's** awareness of the probability of the wounded prisoners being murdered in light of particular circumstances at the time.

62. Based on the totality of the evidence of his conduct prior to the removal of the prisoners, the Trial Chamber has found that in requesting assistance with the wounded prisoners, **Pandurević's** intent was to arrange for them to be transferred to a prisoner of war camp and exchanged, not for

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<sup>6477</sup> See *supra*, para. 1991.

<sup>6478</sup> See *supra*, para. 1019.

<sup>6479</sup> See *supra*, paras. 1861, 1883.

<sup>6480</sup> See *supra*, paras. 1989–1990.

them to be murdered.<sup>6481</sup> As evident in his communications with the Corps Command on 23 July and in the preceding couple of days during the period of the searches of the terrain, **Pandurević** repeatedly requested that arrangements be made for the transfer and exchange of prisoners, including the wounded men, being held at the Zvornik Brigade during this period.<sup>6482</sup> From such efforts by **Pandurević**, a reasonable inference can thus be drawn that at this time he genuinely believed that such transfers and exchanges were to be arranged and carried out by the Corps Command according to ordinary procedures. This conclusion is also supported by the fact that there is evidence before the Trial Chamber that shows that by 18 July, the VRS in general had begun sending prisoners to the Batković prisoner of war camp.<sup>6483</sup> Furthermore, there is also evidence that during this period, Bosnian Muslim prisoners held at the Zvornik Brigade were in fact transferred to Batković.<sup>6484</sup> Additionally, there is evidence indicating that those prisoners transferred from the Zvornik Brigade to Batković during this period included, at least on one occasion, two Bosnian Muslim prisoners who were wounded and had been treated at Zvornik Hospital and then sent to the Brigade.<sup>6485</sup> These two prisoners in particular were brought to Batković on 24 July,<sup>6486</sup> exactly

<sup>6481</sup> See *supra*, para. 1983.

<sup>6482</sup> See Ex. 7D00969, "Interim report regarding exchange by the Command of the 1st Zvornik Infantry Brigade sent to the Command of the Drina Corps, 20 July 1995"; Ex. P00377, "Zvornik Brigade Duty Officers Notebook, 29 May-27 July 1995", pp. 165-166, 176; Ex. 7DP00340, "Zvornik Brigade Interim Combat Report signed by Pandurević, 22 July 1995", para. 3; Ex. P01309a, "Intercept, 23 July 1995, 8:00 a.m."; Miodrag Dragutinović, T. 12712-12713 (15 June 2007), T. 12817-12818 (18 June 2007); PW-168, T. 15914, 15924 (closed session) (27 Sept 2007), T. 16023-16025 (closed session) (28 Sept 2007); Vinko Pandurević, T. 31137, 31142, 31146 (9 Feb 2009). See also Miodrag Dragutinović, T. 12711-12712, 12740 (15 June 2007), T. 12818 (18 June 2007); Vinko Pandurević, T. 31818 (19 Feb 2009). See also *supra*, paras. 1898, 1901-1904. Additionally, the evidence not only shows that **Pandurević** was attempting to arrange for the transfer of the prisoners but that he had also specifically ordered that Bosnian Muslims captured during searches of the terrain were to be handed over to the Zvornik Brigade Military Police so as to then be detained at Standard Barracks pending their transfer to Batković. See Vinko Pandurević, T. 31818 (19 Feb 2009), T. 32438 (3 Mar 2009); Miodrag Dragutinović, T. 12711-12712, 12740 (15 June 2007). See also *supra*, paras. 592, 1892.

<sup>6483</sup> Ex. P03522 (confidential); Ex. 3D00017 (confidential); Ljubomir Mitrović, T. 23643-23644 (11 July 2008); Novica Simić, T. 28729-28730 (24 Nov 2008). See also *supra*, paras. 591, 594-596.

<sup>6484</sup> See Ex. 3DP00344, "Regular Combat Report Zvornik Brigade Command to the Drina Corps Command signed by Commander Lieutenant Colonel Vinko Pandurević, 25 July 1995", para. 3 (reporting that 25 enemy soldiers were captured and duly transferred to the Batković collection centre in Bijeljina); Ex. 3DP00346, "Zvornik Brigade Regular Combat Report, type-signed Pandurević, 26 July 1995", para. 2 (reporting that 34 ABiH soldiers were captured and sent to Batković); Vinko Pandurević, T. 31163-31166 (10 Feb 2009).

<sup>6485</sup> Specifically, there is evidence that two Bosnian Muslim men, [REDACTED], who are included in a list of prisoners exchanged in September 1995, were in the custody of the Zvornik Brigade prior to being transferred to Batković. See Ex. 1DP01891 (confidential), p. 42 (listing the names of [REDACTED] in entries 4904 and 4905 of the Zvornik Hospital patient log and recording "Standard" in the notes section for these two entries); Radivoje Novaković, Ex. P02480, "92 ter statement" (6 Mar 2003), p. 4 (in reference to the patient log, noting that he remembered these two patients and that they had been given first aid for their wounds at the hospital and were then taken to "Standard" and that the soldiers escorting the prisoners told him that the two prisoners would be exchanged soon); Radivoje Novaković, T. 9053 (20 Mar 2007) (explaining that "Standard" referred the medical ward of the Zvornik Brigade military barracks); Ex. P03522 (confidential), p. 2 (recording that [REDACTED] were brought to Batković on 24 July 1995 and noting that they were both exchanged and departed the camp on 12 September 1995). Besides these two individuals, Dr. Zoran Begović testified that after the ten wounded prisoners from Milići Hospital were taken away from the Zvornik Brigade, there was another group of five Bosnian Muslim men who came to the medical centre of the Zvornik Brigade and were then exchanged at Bijeljina very soon thereafter. Zoran Begović, T. 9149-9150, 9165-9166, 9170 (21 Mar 2007).

<sup>6486</sup> Ex. P03522 (confidential), p. 2.

around the same time that the wounded prisoners from Milići Hospital disappeared from the Brigade.

63. Beyond the evidence of **Pandurević**'s efforts to transfer and exchange the prisoners and of the actual transfers and exchanges taking place at that time, the stage of the murder operation at the time must be taken into account in assessing **Pandurević**'s *mens rea*. In particular, by the end of 16 July, the executions of Bosnian Muslim prisoners, who had been brought from Bratunac and detained in various locations in the area of Zvornik, were essentially complete.<sup>6487</sup> Although **Pandurević** acquired knowledge of this operation and **Popović**'s role in it upon his return to Zvornik, the evidence indicates that by the evening of 16 July, he had the understanding that this particular operation had come to end.<sup>6488</sup>

64. Taking into account all of these considerations, I am therefore not convinced that the mere mention of **Popović**'s name, even with **Pandurević**'s knowledge of his previous involvement in the murder operation, would have led **Pandurević** to conclude that wounded prisoners would probably be killed. Having considered the prevailing circumstances, I am of the opinion that after receiving the message on 23 July about **Popović** coming to take the prisoners, it was entirely reasonable for **Pandurević** to have believed at the time that the wounded prisoners were to be taken to a camp and or exchanged following their removal from the Brigade. Accordingly, contrary to the finding of the majority, I do not consider that the only reasonable inference to be drawn from the evidence is that **Pandurević** knew that by failing to act and thus making it possible for **Popović** to take the prisoners, he was assisting in their murder.

65. It is also important to also briefly address PW-168's account of a conversation that occurred between Obrenović and **Pandurević** at some point after the wounded prisoners were taken away from the Brigade by **Popović**. PW-168 testified that later on day that the prisoners were removed, Obrenović asked **Pandurević** about what had been done with the wounded prisoners.<sup>6489</sup> According to PW-168's account, **Pandurević** replied that **Popović** had arrived with an order from Mladić that the prisoners be "liquidated" and that the wounded were taken from **Nikolić** and driven away.<sup>6490</sup> In my view, PW-168's account of this statement by **Pandurević** does not undermine or contradict my position that he lacked the requisite *mens rea* in that he did not know that it was probable that the men would be executed upon being taken away by **Popović**. First, during his testimony, PW-168 made it clear that this conversation between Obrenović and **Pandurević** about **Popović** coming to

<sup>6487</sup> See *supra*, Chapter III, Section G.3.

<sup>6488</sup> See, e.g., Vinko Pandurević, T. 31538–31539, 31543 (16 Feb 2009), T. 32434 (3 Mar 2009). See also *supra*, paras. 1909–1910; fn. 5655, 5685.

<sup>6489</sup> PW-168, T. 15915 (closed session) (27 Sept 2007). See *supra*, para. 1905.

deal with the wounded prisoners took place only after the wounded men had been taken away from the Brigade.<sup>6491</sup> Additionally, in the statement attributed to **Pandurević** by PW-168, it is evident that **Pandurević** was describing information that he learned subsequent to the removal of the prisoners. In this regard, I note PW-168's account that **Pandurević** used the term "had arrived" with an order<sup>6492</sup> and the fact that there is no evidence that **Pandurević** was physically present when **Popović** arrived with any such an order and took the prisoners. In light of these considerations, it thus appears that **Pandurević** was conveying to Obrenović information that **Pandurević** acquired only after the prisoners had already taken away from the Brigade. Further, in my view, a reasonable inference can be drawn that after the prisoners were removed, later that morning, **Pandurević** was informed by someone, possibly a member of the Zvornik Brigade or the Corps Command, of the details regarding what had happened to the wounded men. PW-168's account of this conversation simply does not show that **Pandurević** had such knowledge or information prior to the removal of the prisoners and thus at a time when he would have been able to intervene to prevent **Popović** from taking custody of them. This evidence from PW-168 therefore does not have an impact on the evaluation of **Pandurević's** *mens rea* for the purposes of aiding and abetting the murder of the wounded men.

66. Ultimately, based on the reasons outlined above, I consider that the evidence before the Trial Chamber is insufficient to establish beyond reasonable doubt that **Pandurević** knew it was probable that the wounded prisoners would be killed once taken away from the Zvornik Brigade by **Popović** and thus that he knew that if he failed to act, his omission would assist the commission of murder. Accordingly, the *mens rea* requirement for aiding and abetting by omission has not been met and **Pandurević** therefore is not responsible for the murder of the ten wounded prisoners from Milići Hospital.

## F. On Sentencing

### 1. Reflection on My Dissenting Opinions

67. As described in the previous sections, I have dissented on the convictions of **Borovčanin**, **Miletić**, and **Pandurević** each respectively for various crimes. Accordingly, given that I would have convicted **Borovčanin**, **Miletić**, and **Pandurević** of a lesser number of crimes, I would have also imposed different sentences, in proportion to the gravity of the convictions. However, there are further issues pertaining to sentencing, with respect to **Miletić** and **Pandurević**, which I will set out

<sup>6490</sup> PW-168, T. 15915–15916 (closed session) (27 Sept 2007). *See supra*, para. 1905.

<sup>6491</sup> PW-168, T. 15915 (closed session) (27 Sept 2007).

<sup>6492</sup> *See* PW-168, T. 15915–15916 (closed session) (27 Sept 2007).

below.

## 2. Miletić: Abuse of Authority and Prolonged Participation

68. The majority has found that **Miletić** abused his position of authority within the Main Staff and the VRS and that his participation was prolonged, and has accordingly considered these factors as aggravating factors.<sup>6493</sup> I respectfully disagree.

69. The majority has found that “[**Miletić**] used the authority of his position, the trust placed in him by Milovanović and Mladić and the influence that brought, to organise and carry out the criminal plan to forcibly remove the Bosnian Muslim population from the enclaves; [a]ll of his acts and contribution were cloaked with the authority of his position and it was that power which made them particularly effective”, and thereby has concluded that he abused his position of authority within the Main Staff and VRS and this should aggravate his sentence.<sup>6494</sup>

70. I recall the jurisprudence of this Tribunal that, it is the *abuse* of the position of authority which may deserve a harsher sentence, not the position of authority taken alone. In this regard, what matters in determining this factor is the manner in which the authority is exercised.<sup>6495</sup>

71. In my view, all of **Miletić**'s acts were part of his regular responsibilities: he did not go beyond the capacity of his position, for example, by enlisting resources at his disposal to commit crimes or by inappropriately exerting influence which emanated from his position to other people in order to commit the crimes. While, as the Chief of Administration for Operations and Training, he played a central role in the drafting process of Directive 7,<sup>6496</sup> there is no evidence as to whether he initiated or inserted the words in the criminal parts of the Directive. **Miletić**'s role and contribution have already been considered in the course of examining the gravity of the crimes and the nature of his involvement, and the fact that **Miletić** fulfilled his task efficiently and effectively and thereby played a coordinating role in the JCE to Forcibly Remove<sup>6497</sup> should not be viewed as an abuse or misuse of his authority which would amount to a separate aggravating factor.

72. As regards the issue of prolonged participation, while the period of 4–5 months from the drafting of the plan until the final implementation of it cannot be characterised as short, ultimately, the crimes **Miletić** has been found guilty of were committed as part of *one* common plan to forcibly remove the Bosnian Muslims from a limited area, *i.e.*, from Srebrenica and Žepa, and the physical

<sup>6493</sup> See *supra*, paras. 2196–2197.

<sup>6494</sup> See *supra*, para. 2196.

<sup>6495</sup> *Babić* Sentencing Appeal Judgement, para. 80; *Kayishema and Ruzindana* Appeal Judgement, paras. 358–359.

<sup>6496</sup> See *supra*, paras. 1649, 1651–1652, 1704–1705.

<sup>6497</sup> See *supra*, paras. 1716–1717.

removal took place within a relatively short period of time. Therefore, in my view, his participation in the crime or the duration of the crime cannot be considered as prolonged, so that it would constitute a separate aggravating factor.

73. Furthermore, I note that neither of these circumstances (abuse of position of authority and/or prolonged participation) was considered by the Trial Chamber when it came to determining the sentence on **Gvero**, who was one of the Assistant Commanders of the VRS Main Staff and who has been found to be a member of the JCE to Forcibly Remove.<sup>6498</sup> Again, I respectfully submit that this inconsistency in the majority's approach evidences that its decision to consider these aggravating circumstances in determining **Miletić's** sentence is not well-founded.

74. Therefore, in conclusion, I am of the opinion that, in determining **Miletić's** sentence, the above factors, *i.e.*, alleged abuse of his position of authority and prolonged participation, should not have been taken into account as separate aggravating factors.

### 3. Pandurević

75. Even if **Pandurević** is to be convicted with respect to aiding and abetting by omission the murder of the ten wounded Bosnian Muslim prisoners from Milići Hospital, I am of the opinion that the sentence of 13 years of imprisonment is too harsh in light of the nature and the extent of his involvement and several mitigating factors.

76. I reiterate here the Trial Chamber's finding that the limited nature of **Pandurević's** involvement in the forcible transfer diminishes the gravity of his criminal conduct and its observation of the circumstances surrounding his failure to take the necessary and reasonable measures to prevent the criminal acts committed by members of the Zvornik Brigade, as required under Article 7(3) of the Statute, in particular **Pandurević's** recent return to the area and the other pressing tasks he faced.<sup>6499</sup>

77. As regards mitigating factors, the Trial Chamber has considered and given significant weight to **Pandurević's** act of opening the corridor at Baljkovica on 16 July as well as his Interim Combat Reports for 15 and 18 July as mitigating factors in the determination of his sentence.<sup>6500</sup> I entirely agree with the Trial Chamber's consideration and assessment of these actions by **Pandurević** in this regard. However, in my opinion, these acts warrant even greater weight in the mitigation of his sentence.

<sup>6498</sup> See *supra*, paras. 1822, 2204–2205.

<sup>6499</sup> See *supra*, paras. 2212, 2215.

<sup>6500</sup> See *supra*, paras. 2219–2222.

78. **Pandurević's** decision, against the orders of his superiors, to open the corridor at Baljkovica, allowing the passage of the column, saved the lives of thousands of Bosnian Muslims. Even under normal circumstances of combat, such an action would be considered uncommon. But, **Pandurević's** action is even more remarkable in this case in light of the particular surrounding circumstances at the time. In my opinion, this act by **Pandurević** is highly commendable.

79. Additionally, I am particularly struck by the **Pandurević's** Interim Combat Reports for 15 and 18 July. The language used by him in the 18 July report, in particular, to address the executions that had occurred is strong and defiant. It is the sole instance of a subordinate so openly challenging Mladić in relation to murder operation. I am therefore of the opinion that **Pandurević's** bravery in these reports also deserves significant recognition.

80. Overall, these actions by **Pandurević** evidence his character, namely his strength and integrity, as an individual and as a commander. Ultimately, I am of the opinion that his actions must be given much more substantial weight and should be more adequately reflected in the mitigation of his sentence.

81. The crimes for which **Pandurević** has been convicted normally carry a high sentence. However, in the case of **Pandurević**, there are several mitigating factors and circumstances that must be taken into account in the determination of an appropriate sentence for him. In my view, the sentence imposed by the majority does not adequately account for the nature and extent of his involvement and the mitigating circumstances. Therefore, in my opinion, **Pandurević's** sentence should have been further substantially reduced.

Done in English and French, the English text being authoritative.

  
O-Gon Kwon  
Judge

Dated this 10th day of June 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]



## XI. SEPARATE OPINION OF JUDGE PROST

1. The Trial Chamber, by majority, Judge Kwon dissenting, has convicted **Pandurević** for aiding and abetting by omission the murder of the wounded prisoners from Milići Hospital as a crime against humanity and a war crime.<sup>6501</sup> It is further alleged that his omission also aided and abetted the crime of persecution. Given his dissent as to *mens rea*,<sup>6502</sup> Judge Kwon also does not convict him for persecution on this basis. Judge Agius on the other hand would do so. I respectfully disagree with his conclusion on this point.

2. Aiding and abetting by omission requires both the *actus reus* of substantial contribution to the *crime* committed and the requisite *mens rea* of knowing that it was probable that the crime would be committed.<sup>6503</sup> I am satisfied that the latter requirement has been met. Just as **Pandurević** knew that it was probable wounded prisoners would be killed once in **Popović**'s custody, he also knew that it was probable **Popović** would carry out the murders with persecutory intent, thus committing persecution.

3. My disagreement, however, centers on the second component of substantial contribution. The nature of aiding and abetting is such that ultimately if convicted, the accused is found responsible for the crime itself. Because of this, in my view, the *actus reus* of substantial contribution must be to the crime as a whole for which the accused is to be convicted. At the heart of the crime of persecution is the discriminatory nature of the act and the specific intent with which it is committed. Thus, any purported contribution to that crime must be assessed in that context. It is not sufficient, in my view, that **Pandurević**, through omission, made a substantial contribution to the crime of murder knowing that the crime would probably be carried out with discriminatory intent. Rather, his contribution must similarly have been to the discriminatory nature of the crime.

4. In this case, **Pandurević** had no discriminatory intent. More significantly in this context, he had no involvement in the circumstances which led to him having custody of the ten wounded prisoners, all of whom were Bosnian Muslims. These prisoners were brought to Standard Barracks on the orders of others<sup>6504</sup> and **Pandurević** neither arranged for their selection nor for their presence there. Ultimately, **Pandurević**'s omission placed the prisoners in harms way and on this basis, he substantially contributed to their murder and has been convicted of that crime. However, I am not satisfied that his omission in any way contributed to the crime of persecution as that crime is

<sup>6501</sup> See *supra*, paras. 1991, 2072.

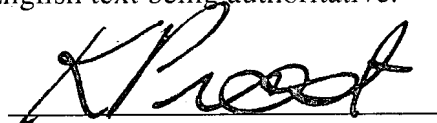
<sup>6502</sup> See *supra*, paras. 60–66.

<sup>6503</sup> See *supra*, para. 1019.

<sup>6504</sup> See PW-168, T. 15913 (closed session) (27 Sept 2007) (testifying that the wounded men were transferred to the Brigade pursuant to an order of the medical department of either the Main Staff or the Drina Corps)

defined in totality. In my view, a conviction in these circumstances renders the discriminatory component of the crime of persecution meaningless. Therefore, in these circumstances, I would acquit **Pandurević** of persecution with respect to the alleged persecutory act of murder in relation to the wounded prisoners from Milići Hospital.

Done in English and French, the English text being authoritative.

A handwritten signature in black ink, appearing to read 'K Prost', written over a horizontal line.

Kimberly Prost  
Judge

Dated this 10th day of June 2010  
At The Hague  
The Netherlands

[Seal of the Tribunal]

## ANNEX 1: GLOSSARY

### A. Filings in this Case

|                                      |  |
|--------------------------------------|--|
| Beara Final Brief                    | Defendant, Ljubiša Beara's Final Trial Brief (confidential), 30 July 2009  |
| Beara Oral Motion for Acquittal      | Ljubiša Beara's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21224-21258, 14 February 2008       |
| Beara Pre-Trial Brief                | Accused Ljubisa Beara's Rule 65 <i>ter</i> Pre-trial brief (confidential), 12 July 2006  |
| Borovčanin Final Brief               | Ljubomir Borovčanin's Final Trial Brief (public with confidential Annex), 30 July 2009   |
| Borovčanin Oral Motion for Acquittal | Ljubomir Borovčanin's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21287-21302, 14 February 2008 |
| Borovčanin Pre-Trial Brief           | Accused Borovčanin's Response to the Prosecution's Pre-Trial Brief Pursuant to Rule 65 <i>ter</i> (F)                          |
| Gvero Final Brief                    | Final Brief on Behalf of Milan Gvero (confidential), 30 July 2009  |
| Gvero Oral Motion for Acquittal      | Milan Gvero's Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21341-21371, 15 February 2008              |
| Gvero Pre-Trial Brief                | General Gvero's Pre-Trial Brief, 12 July 2006  |
| Guidelines                           | Order Concerning Guidelines on the Presentation of Evidence and the Conduct of Parties during Trial Proceedings, 14 July 2006  |
| Indictment                           | Indictment, 4 August 2006  |
| Judgement on Motions for Acquittal   | Judgement on Motions for Acquittal Pursuant to 98 <i>bis</i> , 3 March 2008  |
| July 2006 Pre-Trial Decision         | Decision on Further Amendments and Challenges to the Indictment, 13 July 2006  |
| May 2006 Pre-Trial Decision          | Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006                                   |
| Miletić Final Brief                  | Final Trial Brief of the Defence for General Miletić (confidential), 30 July 2009  |

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| Miletić Oral Motion for Acquittal      | Radivoje Miletić's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21305-21339, 15 February 2008                        |
| Miletić Pre-Trial Brief                | General Miletić Defence Pre-Trial Brief, 12 July 2006  |
| Nikolić Final Brief                    | Final Trial Brief on Behalf of Drago Nikolić (confidential), 30 July 2009  |
| Nikolić Oral Motion for Acquittal      | Drago Nikolić's Oral Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21258-21286, 14 February 2008                           |
| Nikolić Pre-Trial Brief                | Pre-trial Brief on Behalf of Drago Nikolić Pursuant to Rule 65ter (F), 12 July 2006  |
| Pandurević Final Brief                 | Defence Final Trial Brief on Behalf of Vinko Pandurević (confidential), 30 July 2009   |
| Pandurević Oral Motion for Acquittal   | Vinko Pandurević's Motion for Judgement of Acquittal Pursuant to Rule 98 <i>bis</i> , T. 21372-21381, 15 February 2008                             |
| Pandurević Pre-Trial Brief             | Defence Pre-trial Brief on Behalf of the Accused Vinko Pandurević (partly confidential), 12 July 2006  |
| Popović Adjudicated Facts Decision     | Decision on Popović's Motion for Judicial Notice of Adjudicated Facts with Annex, 2 June 2008  |
| Popović Final Brief                    | Vujadin Popović's Final Brief (confidential), 30 July 2009   |
| Popović Pre-Trial Brief                | Pre-Trial Brief of the Defence of Vujadin Popović, 12 July 2006  |
| Prosecution Pre-Trial Brief            | Prosecution's Filing of Pre-Trial Brief Pursuant to Rule 65 <i>ter</i> and List of Exhibits Pursuant to Rule 65 <i>ter</i> (E)[sic], 28 April 2006 |
| Prosecution Adjudicated Facts Decision | Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006  |
| Prosecution Final Brief                | Prosecution Filing of Final Trial Brief Pursuant to Rule 65ter (E) (confidential), 30 July 2009  |

## **B. ICTY Judgements and Decisions**

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| <i>Aleksovski</i> Appeal Judgement                             | <i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-A, Judgment, 24 March 2000  |
| <i>Aleksovski</i> Trial Judgement                              | <i>Prosecutor v. Zlatko Aleksovski</i> , Case No. IT-95-14/1-T, Judgment, 25 June 1999   |
| <i>Babić</i> Sentencing Appeal Judgement                       | <i>Prosecutor v. Milan Babić</i> , Judgement on Sentencing Appeal, Case No. IT-03-72-A, 18 July 2005   |
| <i>Banović</i> Sentencing Judgement                            | <i>Prosecutor v. Predrag Banović</i> , Case No. IT-02-65/1-S, Sentencing Judgement, 28 October 2003  |
| <i>Blagojević and Jokić</i> Appeal Judgement                   | <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-A, Judgment, 9 May 2007  |
| <i>Blagojević and Jokić</i> Trial Judgement                    | <i>Prosecutor v. Vidoje Blagojević and Dragan Jokić</i> , Case No. IT-02-60-T, Judgment, 17 January 2005   |
| <i>Blaškić</i> Appeal Judgement                                | <i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-A, Judgment, 29 July 2004   |
| <i>Blaškić</i> April 1997 Pre-Trial Decision                   | <i>Prosecutor v. Blaškić</i> , Case No. IT-95-14-PT, Decision on the Defence Motion to Dismiss the Indictment based upon Defects in the Form Thereof (Vagueness/Lack of Adequate Notice of Charges), 4 April 1997                                      |
| <i>Blaškić</i> Trial Judgement                                 | <i>Prosecutor v. Tihomir Blaškić</i> , Case No. IT-95-14-T, Judgment, 3 March 2000   |
| <i>Boškoski and Tarčulovski</i><br>May 2006 Pre-Trial Decision | <i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-PT, Decision on Prosecution's Motion to Amend the Indictment and Submission of Proposed Second Amended Indictment and Submission of Amended Pre-Trial Brief, 26 May 2006 |
| <i>Boškoski and Tarčulovski</i> Appeal Judgement               | <i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-A, Judgment, 19 May 2010   |
| <i>Boškoski and Tarčulovski</i> Trial Judgement                | <i>Prosecutor v. Ljube Boškoski and Johan Tarčulovski</i> , Case No. IT-04-82-T, Judgment, 10 July 2008  |
| <i>Bralo</i> Sentencing Appeal Judgement                       | <i>Prosecutor v. Miroslav Bralo</i> , Case No. IT-95-17-A, Judgment on Sentencing Appeal, 2 April 2007   |

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| <i>Brđanin</i> Appeal Judgement                         | <i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-A, Judgement, 3 April 2007  |
| <i>Brđanin</i> March 2004 Interlocutory Appeal Decision | <i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-A, Decision on Interlocutory Appeal, 19 March 2004  |
| <i>Brđanin</i> Trial Judgement                          | <i>Prosecutor v. Radoslav Brđanin</i> , Case No. IT-99-36-T, Judgement, 1 September 2004  |
| <i>Brđanin and Talić</i> June 2001 Pre-Trial Decision   | <i>Prosecutor v. Radoslav Brđanin and Momir Talić</i> , Case No. IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001 |
| <i>Čelebići</i> Appeal Judgement                        | <i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "PAVO"), Hazim Delić, and Esad Landžo (aka "ZENGA")</i> , Case No. IT-96-21-A, Judgement, 20 February 2001                  |
| <i>Čelebići</i> Trial Judgement                         | <i>Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "PAVO"), Hazim Delić, and Esad Landžo (aka "ZENGA")</i> , Case No. IT-96-21-T, Judgement, 16 November 1998                  |
| <i>Deronjić</i> Sentencing Appeal Judgement             | <i>Prosecutor v. Miroslav Deronjić</i> , Case No. IT-02-61-A, Judgement on Sentencing Appeal, 20 July 2005  |
| <i>Dragan Nikolić</i> Sentencing Appeal Judgement       | <i>Prosecutor v. Dragan Nikolić</i> , Case No. IT-94-2-A, Judgement on Sentencing Appeal, 4 February 2005   |
| <i>Erdemović</i> Appeal Judgement                       | <i>Prosecutor v. Dražen Erdemović</i> , IT-96-22-A, 7 October 1997  |
| <i>Erdemović</i> Sentencing Judgement                   | <i>Prosecutor v. Dražen Erdemović</i> , Case No. IT-96-22-Tbis, Sentencing Judgement, 5 March 1998  |
| <i>Furundžija</i> Appeal Judgement                      | <i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-A, Appeal Judgment, 21 July 2000   |
| <i>Furundžija</i> Trial Judgement                       | <i>Prosecutor v. Anto Furundžija</i> , Case No. IT-95-17/1-T, Judgment, 10 December 1998  |
| <i>Galić</i> Appeal Judgement                           | <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-A, Judgement, 30 November 2006   |
| <i>Galić</i> Trial Judgement                            | <i>Prosecutor v. Stanislav Galić</i> , Case No. IT-98-29-T, Judgment, 5 December 2003   |
| <i>Hadžihasanović and Kubura</i> Appeal Judgement       | <i>Prosecutor v. Enver Hadžihasanović and Amir Kubara</i> , Case No. IT-01-47-A, Appeal Judgement, 22 April 2008  |

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| <i>Hadžihasanović and Kubura</i> Trial Judgement       | <i>Prosecutor v. Enver Hadžihasanović and Amir Kubura</i> , Case No. IT-01-47-T, Judgment, 15 March 2006  |
| <i>Hadžihasanović et al.</i> July 2003 Appeal Decision | <i>Prosecutor v. Enver Hadžihasanović, Mehmed Alagić, and Amir Kubura</i> , Case No. IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility, 16 July 2003 |
| <i>Halilović</i> Appeal Judgement                      | <i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-A, Appeal Judgment, 16 October 2007  |
| <i>Halilović</i> December 2004 Pre-Trial Decision      | <i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-PT, Decision on Prosecutor's Motion Seeking Leave to Amend the Indictment, 17 December 2004  |
| <i>Halilović</i> Trial Judgement                       | <i>Prosecutor v. Sefer Halilović</i> , Case No. IT-01-48-T, Judgment, 16 November 2005  |
| <i>Jelisić</i> Appeal Judgement                        | <i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-A, Judgement, 5 July 2001  |
| <i>Jelisić</i> Trial Judgement                         | <i>Prosecutor v. Goran Jelisić</i> , Case No. IT-95-10-T, Judgement, 14 December 1999   |
| <i>Jokić</i> Sentence Appeal Judgement                 | <i>Prosecutor v. Jokić</i> , Case No. IT-01-42/1-A, Judgement on Sentencing Appeal, 30 August 2005  |
| <i>Jokić</i> Sentencing Judgement                      | <i>Prosecutor v. Miodrag Jokić</i> . Case No. IT-01-42/1-S, Sentencing Judgement, 18 March 2004   |
| <i>Kordić and Čerkez</i> Appeal Judgement              | <i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-A, Judgement, 17 December 2004   |
| <i>Kordić and Čerkez</i> Trial Judgement               | <i>Prosecutor v. Dario Kordić and Mario Čerkez</i> , Case No. IT-95-14/2-T, Judgment, 26 February 2001  |
| <i>Krajišnik</i> Appeal Judgement                      | <i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-A, Appeal Judgement, 17 March 2009   |
| <i>Krajišnik</i> Trial Judgement                       | <i>Prosecutor v. Momčilo Krajišnik</i> , Case No. IT-00-39-T, Judgement, 27 September 2006  |
| <i>Krnojelac</i> Appeal Judgement                      | <i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-A, Judgement, 17 September 2003  |
| <i>Krnojelac</i> February 1999 Pre-Trial Decision      | <i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-PT, Decision on the Defence Preliminary Motion on the Form of the Indictment, 24 February 1999   |

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| <i>Krnojelac</i> May 2000 Pre-Trial Decision | <i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-PT, Decision on Form of Second Amended Indictment, 11 May 2000   |
| <i>Krnojelac</i> Trial Judgement             | <i>Prosecutor v. Milorad Krnojelac</i> , Case No. IT-97-25-T, Judgment, 15 March 2002   |
| <i>Krstić</i> Appeal Judgement               | <i>Prosecutor v Radislav Krstić</i> , Case No. IT-98-33-A, Judgment, 19 April 2004  |
| <i>Krstić</i> Trial Judgement                | <i>Prosecutor v Radislav Krstić</i> , Case No. IT-98-33-T, Judgment, 02 August 2001   |
| <i>Kunarac et al.</i> Appeal Judgement       | <i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23&23/1-A, Judgment, 12 June 2002  |
| <i>Kunarac et al.</i> Trial Judgement        | <i>Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković</i> , Case No. IT-96-23&23/1-T, Judgment, 22 February 2001  |
| <i>Kupreškić et al.</i> Appeal Judgement     | <i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Vladimir Šantić</i> , Case No. IT-95-16-A, Appeal Judgement, 23 October 2001                                 |
| <i>Kupreškić et al.</i> Trial Judgement      | <i>Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić, also known as "VLADO"</i> , Case No. IT-95-16-T, Judgment, 14 January 2000 |
| <i>Kvočka et al.</i> Appeal Judgement        | <i>Prosecutor v. Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-A, Judgment, 28 February 2005  |
| <i>Kvočka et al.</i> Trial Judgement         | <i>Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radić, Zoran Žigić and Dragoljub Prcać</i> , Case No. IT-98-30/1-T, Judgment, 2 November 2001   |
| <i>Limaj et al.</i> Appeal Judgement         | <i>Prosecutor v. Fatmir Limaj, Haradin Bala, Isak Musliu</i> , Case No. IT-03-66-A, Judgment, 27 September 2007   |
| <i>Limaj et al.</i> Trial Judgement          | <i>Prosecutor v. Fatmir Limaj, Haradin Bala and Isak Musliu</i> , Case No. IT-03-66-T, Judgment, 30 November 2005   |
| <i>Lukić and Lukić</i> Trial Judgement       | <i>Prosecutor v. Milan Lukić and Sredoje Lukić</i> , Case No. IT-98-32/1-T, Judgment, 20 July 2009  |
| <i>Martić</i> Appeal Judgement               | <i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-A, Judgment, 8 October 2008   |



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| <i>Martić</i> Trial Judgement  | <i>Prosecutor v. Milan Martić</i> , Case No. IT-95-11-T, Judgment, 12 June 2007   |
| <i>Milošević</i> Appeal Judgement                                    | <i>Prosecutor v. Dragomir Milošević</i> , Case No. IT-98-29/1-A, Judgement, 12 November 2009  |
| <i>Milosević</i> Decision on Interlocutory Appeal of 1 November 2004 | <i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-AR73.7, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004  |
| <i>Milošević</i> Decision on Motion for Judgement of Acquittal       | <i>Prosecutor v. Slobodan Milošević</i> , Case No. IT-02-54-T, Decision on Motion for Judgement of Acquittal, 16 June 2004  |
| <i>Milutinović et al.</i> July 2005 Pre-Trial Decision               | <i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojsa Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić</i> , Case No. IT-05-87-PT, Decision on Nebojša Pavković's Preliminary Motion on Form of Indictment, 22 July 2005          |
| <i>Milutinović et al.</i> March 2006 Pre-Trial Decision              | <i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojsa Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić</i> , Case No. IT-05-87-PT, Decision on Ojdanić's Motion Challenging Jurisdiction: Indirect Co-Perpetration, 22 March 2006 |
| <i>Milutinović et al.</i> May 2003 Appeal Decision                   | <i>Prosecutor v. Milan Milutinović, Nikola Šainović, and Dragoljub Ojdanić</i> , Case No. IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction—Joint Criminal Enterprise, 21 May 2003   |
| <i>Milutinović et al.</i> Trial Judgement                            | <i>Prosecutor v. Milan Milutinović, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić</i> , Case No. IT-05-87-T, 26 February 2009   |
| <i>Momir Nikolić</i> Sentencing Appeal Judgement                     | <i>Prosecutor v. Momir Nikolić</i> , Case No. IT-02-60/1-A, Judgement on Sentencing Appeal, 8 March 2006  |
| <i>Mrkšić and Šljivančanin</i> Appeal Judgement                      | <i>Prosecutor v. Mile Mrkšić and Veselin Šljivančanin</i> , Case No. IT-95-13/1-A, Judgment, 5 May 2009   |
| <i>Mrkšić et al.</i> Trial Judgement                                 | <i>Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančanin</i> , Case No. IT-95-13/1-T, Judgment, 27 September 2007   |

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| <i>Mrkšić</i> June 2003 Pre-Trial Decision            | <i>Prosecutor v. Mile Mrkšić</i> , Case No. IT-95-13/1-PT, Decision on Form of the Indictment, 19 June 2003  |
| <i>Naletilić and Martinović</i> Trial Judgement       | <i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-T, Judgement, 31 March 2003   |
| <i>Naletilić and Martinović</i> Appeal Judgement      | <i>Prosecutor v. Mladen Naletilić and Vinko Martinović</i> , Case No. IT-98-34-A, Judgement, 3 May 2006  |
| <i>Obrenović</i> Sentencing Judgement                 | <i>Prosecutor v. Dragan Obrenović</i> , Case No. IT-02-60/2-S, Sentencing Judgement, 10 December 2003  |
| <i>Ojdanić</i> Jurisdiction Decision                  | <i>Prosecutor v. Milan Milutinović, Nikola Šainović and Dragoljub Ojdanić</i> , Case No IT-99-37-AR72, Decision on Dragoljub Ojdanić's Motion Challenging Jurisdiction—Joint Criminal Enterprise, 21 May 2003  |
| <i>Orić</i> Appeal Judgement                          | <i>Prosecutor v. Naser Orić</i> , Case No. IT-03-68-A, Judgement, 03 July 2008   |
| <i>Orić</i> Trial Judgement                           | <i>Prosecutor v Naser Orić</i> , Case No. IT-03-68-T, Judgment, 30 June 2006   |
| <i>Plavšić</i> Sentencing Judgement                   | <i>Prosecutor v. Biljana Plavšić</i> , Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003  |
| <i>Popović et al.</i> May 2006 Pre-Trial Decision     | <i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Zdravko Tolimir, Radivoje Miletić, Milan Gvero, Vinko Pandurević and Milorad Trbić</i> , Case No. IT-05-88-PT, Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006 |
| <i>Rajić</i> Sentencing Judgement                     | <i>Prosecutor v. Ivica Rajić, a. k. a. Viktor Andrić</i> , Case No. IT-95-12-S, Sentencing Judgement, 8 May 2006   |
| <i>Sikirica et al.</i> Judgement on Motions to Acquit | <i>Prosecutor v. Duško Sikirica, Damir Došen, and Dragan Kolundžija</i> , Case No. IT-95-8-T, Judgement on Defence Motions to Acquit, 3 September 2001   |
| <i>Simić</i> Appeal Judgment                          | <i>Prosecutor v. Blagoje Simić</i> , Case No. IT-95-9-A, Judgement, 28 Nov. 2006   |

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| <i>Simić</i> Sentencing Judgement         | <i>Prosecutor v. Milan Simić</i> , Case No. IT-95-9/2-S, Sentencing Judgement, 17 October 2002  |
| <i>Simić et al.</i> Trial Judgement       | <i>Prosecutor v. Blagoje Simić, Miroslav Tadić, and Simo Zarić</i> , Case No. IT-95-9-T, Judgement, 17 October 2003                                       |
| <i>Stakić</i> Appeal Judgement            | <i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-A, Judgement, 22 March 2006   |
| <i>Stakić</i> Trial Judgement             | <i>Prosecutor v. Milomir Stakić</i> , Case No. IT-97-24-T, Judgement, 31 July 2003  |
| <i>Stakić</i> October 2002 Trial Decision | <i>Prosecutor v. Stakić</i> , Case No. IT-97-24, Decision on Rule 98 <i>bis</i> Motion for Judgement of Acquittal, 31 October 2002                        |
| <i>Strugar</i> Appeal Judgement           | <i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-A, 17 July 2008  |
| <i>Strugar</i> Trial Judgement            | <i>Prosecutor v. Pavle Strugar</i> , Case No. IT-01-42-T, Trial Judgement, 31 January 2005  |
| <i>Tadić</i> Appeal Judgement             | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A, Judgement, 15 July 1999  |
| <i>Tadić</i> Jurisdiction Decision        | <i>Prosecution v. Duško Tadić</i> , Case No. IT-94-1-AR72, Appeals Chamber Decision on Jurisdiction, 20 October 1995                                      |
| <i>Tadić</i> First Sentencing Judgement   | <i>Prosecutor v. Duško Tadić a.k.a "Dule"</i> , Case No. IT-94-1-T, Sentencing Judgement, 14 July 1997  |
| <i>Tadić</i> Second Sentencing Judgement  | <i>Prosecutor v. Duško Tadić a.k.a "Dule"</i> , Case No. IT-94-1-T <i>bis</i> R117, Sentencing Judgment, 11 November 1999                                 |
| <i>Tadić</i> Sentencing Appeal Judgement  | <i>Prosecutor v. Duško Tadić</i> , Case No. IT-94-1-A and IT-94-1-Abis, Judgement in Sentencing Appeals, 26 January 2000                                  |
| <i>Tadić</i> Trial Judgement              | <i>Prosecutor v. Duško Tadić a.k.a "Dule"</i> , Case No. IT-94-1-T, Judgment, 7 May 1997  |
| <i>Trbić</i> Rule 11 <i>bis</i> Decision  | <i>Prosecutor v. Milorad Trbić</i> , Case No. IT-05-88/1-PT, Decision on referral of case under Rule 11 <i>bis</i> with confidential annex, 27 April 2007 |
| <i>Vasiljević</i> Appeal Judgement        | <i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-A, Judgement, 25 February 2004  |
| <i>Vasiljević</i> Trial Judgement         | <i>Prosecutor v. Mitar Vasiljević</i> , Case No. IT-98-32-T, Judgement, 29 November 2002  |

*Zelenović* Sentencing Appeal Judgement *Prosecutor v. Dragan Zelenović*, Case No. IT-96-23/2-A, Judgement on Sentencing Appeal, 31 October 2007

### C. ICTR Judgements and Decisions

*Akayesu* Appeal Judgement *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgment, 1 June 2001

*Akayesu* Trial Judgement *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment, 2 September 1998

*Bagilishema* Appeal Judgement *Prosecutor v. Ignance Bagilishema*, Case No. ICTR-95-1A-A, Appeal Judgement, 3 July 2002

*Bagilishema* Trial Judgement *Prosecutor v. Ignance Bagilishema*, Case No. ICTR-95-1A-T, Judgement, 7 June 2001

*Bisengimana* Sentencing Judgement *Prosecutor v. Bisengimana*, Case No. ICTR-00-60-T, Judgement and Sentence, 13 April 2006

*Bagosora et al.* Trial Judgement *Prosecutor v. Bagosora, Kabiligi, Ntabakuze, and Nsengiyumva*, Case No. ICTR-98-41-T, Judgement and Sentence, 18 December 2008

*Gacumbitsi* Appeal Judgement *Sylvestre Gacumbitsi v. Prosecutor*, Case No. ICTR-2001-64-A, Judgement, 7 July 2006

*Kajelijeli* Appeal Judgement *Juvénal Kajelijeli v. Prosecutor*, Case No. ICTR-98-44A-A, Appeal Judgement, 23 May 2005

*Kajelijeli* Trial Judgement *Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR-98-44A-T, Judgement, 1 December 2003

*Kalimanzira* Trial Judgement *Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Judgement, 22 June 2009

*Kambanda* Trial Judgement *Prosecutor v. Jean Kambanda*, Case No. ICTR-97-23-S, Judgement and Sentence, 4 September 1998

*Kamuhanda* Appeal Judgement *Jean de Dieu Kamuhanda v. Prosecutor*, Case No. ICTR-99-54A-A, Appeal Judgement, 19 September 2005

*Kamuhanda* Trial Judgement *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54A-T, Judgement and Sentence, 22 January 2004

*Karemera et al.* April 2006 Appeal Decision *Prosecutor v. Karemera, Ngirumpatse, and Nzirorera*, Case Nos. ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on

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|   | Jurisdictional Appeals: Joint Criminal Enterprise, 12 April 2006   |
| <i>Karemera et al.</i> Interlocutory Appeal Decision on Judicial Notice | <i>Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera</i> , Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 |
| <i>Karera</i> Appeal Judgement  | <i>Prosecutor v. Karera</i> , Case No. ICTR-01-74-A, Judgement, 2 Feb 2009   |
| <i>Kayishema and Ruzindana</i> Appeal Judgement                         | <i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-A, Judgement (Reasons), 1 June 2001   |
| <i>Kayishema and Ruzindana</i> Trial Judgement                          | <i>Prosecutor v. Clément Kayishema and Obed Ruzindana</i> , Case No. ICTR-95-1-T, Judgement, 21 May 1999   |
| <i>Mpambara</i> Trial Judgement   | <i>Prosecutor v. Jean Mpambara</i> , Case No. ICTR-01-65-T, Judgement, 11 September 2006   |
| <i>Muhimana</i> Appeal Judgement  | <i>Mikaeli Muhimana v. Prosecutor</i> , Case No. ICTR-95-1B-A, Judgement, 27 May 2007  |
| <i>Musema</i> Appeal Judgement  | <i>Alfred Musema v. Prosecutor</i> , Case No. ICTR-96-13-A, Appeal Judgement, 16 November 2001   |
| <i>Musema</i> Trial Judgement   | <i>Prosecutor v. Alfred Musema</i> , Case No. ICTR-96-13-T, Judgement, 27 January 2000   |
| <i>Muvunyi</i> Appeal Judgement   | <i>Tharcisse Muvunyi v. Prosecutor</i> , Case No. ICTR-2000-55A-A, Judgement, 29 August 2008   |
| <i>Muvunyi</i> Trial Judgement  | <i>Prosecutor v. Tharcisse Muvunyi</i> , Case No. ICTR-2000-55A-T, Judgement and Sentence, 12 September 2006   |
| <i>Nahimana et al.</i> Appeal Judgement                                 | <i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze</i> , Case No. ICTR-99-52-A, Appeal Judgment, 28 November 2007   |
| <i>Nahimana et al.</i> Trial Judgement                                  | <i>Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze</i> , Case No. ICTR-99-52-T, Judgment, 3 December 2003   |
| <i>Ndindabahizi</i> Appeal Judgement                                    | <i>Emmanuel Ndindabahizi v. Prosecutor</i> , ICTR-01-71-A, Judgement, 16 January 2007  |

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| <i>Ndindabahizi</i> Trial Judgement                     | <i>Prosecutor v. Emmanuel Ndindabahizi</i> , ICTR-2001-71-I, Judgement and Sentence, 15 July 2004  |
| <i>Niyitegeka</i> Appeal Judgement                      | <i>Eliezer Niyitegeka v. Prosecutor</i> , Case No. ICTR-96-14-A, Judgement, 9 July 2004  |
| <i>Niyitegeka</i> Trial Judgement                       | <i>Prosecutor v. Eliézer Niyitegekā</i> , Case No. ICTR-96-14-T, Judgment, 16 May 2003   |
| <i>Ntagerura et al.</i> Appeal Judgement                | <i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe</i> , Case No. ICTR-99-46-A, Judgement, 7 July 2006  |
| <i>Ntagerura et al.</i> Trial Judgement                 | <i>Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe</i> , Case No. ICTR-99-46-T, Judgement and Sentence, 25 February 2004  |
| <i>Ntakirutimana and Ntakirutimana</i> Appeal Judgement | <i>Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Case Nos. ICTR-96-10-A and ICTR-96-17-A, Judgement, 13 December 2004   |
| <i>Ntakirutimana and Ntakirutimana</i> Trial Judgment   | <i>Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana</i> , Case Nos. ICTR-96-10-T and ICTR-96-17-T, Judgement, 21 February 2003   |
| <i>Rutaganda</i> Appeal Judgement                       | <i>Georges Anderson Nderubumwe Rutaganda v. Prosecutor</i> , Case No. ICTR-96-3-A, Appeal Judgement, 26 May 2003   |
| <i>Rutaganda</i> Trial Judgement                        | <i>Prosecutor v. Georges Anderson Nderubumwe Rutaganda</i> , Case No. ICTR-96-3-T, Judgement, 6 December 1999  |
| <i>Rutaganira</i> Trial Judgement                       | <i>Prosecutor v. Vincent Rutaganira</i> , Case No. ICTR-95-1C-T, Judgement, 14 March 2005  |
| <i>Rwamakuba</i> October 2004 Appeal Decision           | <i>Prosecutor v. André Rwamakuba</i> , Case No. ICTR-98-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal Enterprise to the Crime of Genocide, 22 October 2004 |
| <i>Semanza</i> Appeal Judgement                         | <i>Laurent Semanza v. Prosecutor</i> , Case No. ICTR-97-20-A, Judgement, 20 May 2005   |
| <i>Semanza</i> Trial Judgement                          | <i>Prosecutor v. Laurent Semanza</i> , Case No. ICTR-97-20-T, Judgement and Sentence, 15 May 2003  |
| <i>Seromba</i> Appeal Judgement                         | <i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-2001-66-A, Judgement, 12 March 2008  |

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| <i>Seromba</i> Trial Judgement        | <i>Prosecutor v. Athanase Seromba</i> , Case No. ICTR-2001-66-I, Judgement, 13 December 2006                 |
| <i>Simba</i> Appeal Judgement         | <i>Aloys Simba v. Prosecutor</i> , Case No. ICTR-01-76-A, Judgement, 27 November 2007                        |
| <i>Simba</i> Trial Judgement          | <i>Prosecutor v. Aloys Simba</i> , Case No. ICTR-01-76-T, Judgement and Sentence, 13 December 2005           |
| <i>Zigiranyirazo</i> Appeal Judgement | <i>Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-01-73-A, Judgement, 16 November 2009              |
| <i>Zigiranyirazo</i> Trial Judgement  | <i>Prosecutor v. Protais Zigiranyirazo</i> , Case No. ICTR-01-73-T, Judgement and Sentence, 18 December 2008 |

#### **D. ICJ Judgements**

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| <i>Armed Activities-Congo</i> , ICJ Judgement                         | <i>Armed Activities on the Territory of the Congo (New Application 2002) (Democratic Republic of the Congo v. Rwanda)</i> , Judgement, 3 Feb. 2006 ( <i>Armed Activities on the Territory of the Congo</i> ) |
| ICJ Bosnia Judgement  | <i>Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)</i> , Judgement of 26 February 2007         |
| <i>Reservations to the Genocide Convention</i> , ICJ Advisory Opinion | <i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i> , Advisory Opinion (28 May 1951), 1951 ICJ Rep. 15   |

#### **E. Post-World War II Military Tribunals**

|                               |   |
|-------------------------------|---|
| <i>Pohle et al.</i> Judgement | <i>United States v. Oswald Pohl and Others</i> , Judgement of 3 November 1947, reprinted in <i>Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council No. 10</i> , Vol. 5, (1997), p 958 |
| <i>Rohde et al.</i> Judgement | <i>Trial of Werner Rohde et al.</i> , British Military Court, Wuppertal, 1 June 1946, <i>Law Reports of Trials of War Criminals</i> , Vol. V  |
| <i>Schmidt</i> Judgement      | <i>Trial of Max Schmidt</i> , United States General Military Government Court at Dachau, Germany, 19 May 1947, <i>Law Reports of Trials of War Criminals</i> , Vol. XIII  |

*Schonfeld et al.* Judgement

*Trial of Franz Schonfeld et al.*, British Military Court, Essen, 26 June 1946, Law Reports of Trials of War Criminals Vol. XI

## F. Other Jurisprudence

*Blockburger v. United States*

*Blockburger v. United States*, 284 US 299, 304 (1932)

*Eichmann* Jerusalem District Court Judgement

*Attorney-General of the Government of Israel v. Eichmann*, Judgement, 11 December 1961, reprinted in 36 *International Law Reports* 18 (1968)

## G. Table of other Authorities

### 1. Domestic Laws

SFRY Criminal Code, effective 1 July 1977

Criminal Code of the Socialist Federal Republic of Yugoslavia, adopted by the SFRJ Assembly at the session of the Federal Council on 28 September 1976; declared by a decree of the President of the Republic on 28 September 1976; published in the Official Gazette of the SFRJ No.44 of 8 October 1976; correction made in the Official Gazette, SFRJ No. 36 of 15 July 1977; effective on 1 July 1977

### 2. International Legal Instruments and Commentaries

Additional Protocol I

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, June 8, 1977

Additional Protocol II

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977

Commentary on Additional Protocols

Commentary on the Additional Protocols of 8 June 1977 to the Geneva Convention of 12 August 1949 (Yves Sandoz, Christoph Swinarski and Bruno Zimmermann, eds., 1987)

Commentary on Geneva Convention III

Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War (ICRC, Jean S. Pictet, ed., 1960).



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| Commentary on Geneva Convention IV         | Commentary: Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War ICRC (ICRC, Jean S. Pictet, ed., 1958) |
| Draft Genocide Convention, U.N. Doc. E/447 | Draft Convention on the Crime of Genocide, U.N. Doc. E/447, 26 June 1947  |
| ECHR                                       | European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 222                    |
| Geneva Convention I                        | Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in the Field, 12 August 1949                        |
| Geneva Convention III                      | Geneva Convention III, relative to the Treatment of Prisoners of War, 12 August, 1949   |
| Geneva Convention IV                       | Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, August 12, 1949                                 |
| Genocide Convention                        | Convention on the Prevention and Suppression of the Crime of Genocide of 1948, 12 January 1951, 78 U.N.T.S. 277                       |
| ICCPR                                      | International Covenant on Civil and Political Rights, 16 December 1966  |
| UDHR                                       | Universal Declaration of Human Rights, 10 December 1948   |
| ICTR Statute                               | Statute of the International Criminal Tribunal for Rwanda, established by Security Council Resolution 955                             |
| Statute                                    | The Statute of the International Tribunal for the Former Yugoslavia established by Security Council Resolution 827                    |

### 3. Select list of other Legal Authorities

|  |   |
|--|---|
| Henckaerts and Doswald-Beck, <i>Customary International Humanitarian Law, Vol. 1</i> | Customary International Humanitarian Law, Volume 1: Rules, Jean-Marie Henckaerts and Louise Doswald-Beck, ICRC, Cambridge University Press, 2005. |
| Lemkin, <i>Axis Rule in Occupied Europe</i>  | Raphaël Lemkin, <i>Axis Rule in Occupied Europe</i> 79 (1944)   |
| Robinson, <i>The Genocide Convention</i>   | Nehemiah Robinson, <i>The Genocide Convention: A Commentary</i> (1960)  |

Schabas, *Genocide in International Law*

William A. Schabas, *Genocide in International Law* (2002 [first ed. 2000])

#### 4. Reports

UN Economic and Social Council's  
1978 Genocide Study

UN Economic and Social Council, *Study on the Prevention and Punishment of the Crime of Genocide* (1978)

#### 5. UN Resolutions

United Nations General Assembly Resolution 96(I), adopted 11 December 1946

### **H. Table of Short Forms**

|                     |   |
|---------------------|---|
| 28th Division       | 28th Division of the Army of Bosnia and Herzegovina   |
| ABiH                | Army of Bosnia and Herzegovina  |
| Accused             | Vujadin Popović, Colonel Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević.               |
| a.k.a.              | also known as   |
| APC                 | Armoured Personnel Carrier  |
| BCS                 | The Bosnian-Croatian-Serbian language   |
| Beara Defence       | The accused Ljubiša Beara, and/or Counsel for Ljubiša Beara   |
| BiH                 | Bosnia and Herzegovina  |
| Birač Brigade       | Sekovici Brigade  |
| BT                  | Transcript page from hearings before the <i>Blagojević</i> Trial Chamber, <i>Prosecutor v Vidoje Blagojević and Dragan Jokić</i> , IT-02-60-T |
| Borovčanin Defence  | The accused Ljubomir Borovčanin, and/or Counsel for Ljubomir Borovčanin   |
| Bosnian Serb Forces | Includes VRS forces, MUP forces and paramilitary forces associated with the VRS and/or MUP  |
| BVP                 | Armoured Infantry Combat Vehicle  |
| CJB                 | Public Security Centre  |

|                                 |  |
|---------------------------------|--|
| CSB                             | Security Services Centre   |
| Drina Wolves                    | Podrinje Detachment or Drina Corps<br>Manoeuvre Detachment                   |
| DutchBat                        | Dutch Battalion of UNPROFOR  |
| DutchBat Bravo Company compound | Compound of the Dutch Battalion, Bravo<br>Company, of UNPROFOR at Srebrenica |
| DutchBat compound               | Compound of the Dutch Battalion of<br>UNPROFOR at Potočari                   |
| ECtHR                           | European Court of Human Rights   |
| Ex. Pxxxx                       | Prosecution exhibit  |
| Ex. 1Dxxxx                      | Defence exhibit for the accused Vujadin<br>Popović                           |
| Ex. 2Dxxxx                      | Defence exhibit for the accused Ljubiša Beara                                |
| Ex. 3Dxxxx                      | Defence exhibit for the accused Drago Nikolić                                |
| Ex. 4Dxxxx                      | Defence exhibit for the accused Ljubomir<br>Borovčanin                       |
| Ex. 5Dxxxx                      | Defence exhibit for the accused Radivoje<br>Miletić                          |
| Ex. 6Dxxxx                      | Defence exhibit for the accused Milan Gvero                                  |
| Ex. 7Dxxxx                      | Defence exhibit for the accused Vinko<br>Pandurević                          |
| fn.                             | Footnote   |
| Gvero Defence                   | The accused Milan Gvero, and/or Counsel for<br>Milan Gvero                   |
| HV                              | Croatian Army  |
| HVO                             | Croatian Defence Council   |
| ICC                             | International Criminal Court   |
| ICJ                             | International Court of Justice   |
| ICMP                            | International Commission on Missing Persons                                  |
| ICRC                            | International Committee of the Red Cross                                     |

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|-----------------|--|
| ICTR            | International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and other Such Serious Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 |
| ICTY            | International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991   |
| ILC             | International Law Commission   |
| IKM             | Forward Command Post   |
| JNA             | Yugoslav People's Army (Army of the Socialist Federal Republic of Yugoslavia)  |
| KT              | Transcript page from hearings before the <i>Krstić</i> Trial Chamber, <i>Prosecutor v Radislav Krstić</i> , IT-98-33-T   |
| LNU             | Last Name Unknown  |
| Miletić Defence | The accused Radivoje Miletić, and/or Counsel for Radivoje Miletić  |
| MSF             | Médecins sans frontières   |
| MT              | Transcript page from hearings before the <i>Slobodan Milošević</i> Trial Chamber, <i>Prosecutor v Slobodan Milošević</i> , IT-02-54-T  |
| MUP             | Ministry of the Interior in Republika Srpska   |
| Nikolić Defence | The accused Drago Nikolić, and/or Counsel for Drago Nikolić  |
| OAT.            | Transcript page from hearings before the <i>Orić</i> Appeals Chamber, <i>Prosecutor v Naser Orić</i> , IT-03-68-A  |
| OP              | Observation Post   |
| OT.             | Transcript page from hearings before the <i>Orić</i> Trial Chamber, <i>Prosecutor v Naser Orić</i> , IT-03-68-T  |

|                             |   |
|-----------------------------|---|
| OTP/Prosecution             | Office of the Prosecutor  |
| p.                          | Page  |
| pp.                         | Pages   |
| Pandurević Defence          | The accused Vinko Pandurević, and/or Counsel for Vinko Pandurević   |
| para.                       | Paragraph   |
| paras.                      | Paragraphs  |
| Parties                     | The Prosecutor and the Defence in <i>Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Miletić, Milan Gvero and Vinko Pandurević</i> |
| PJP                         | Separate Police Units   |
| Popović Defence             | The accused Vujadin Popović, and/or Counsel for Vujadin Popović   |
| POW                         | Prisoner of War   |
| RS                          | Republika Srpska  |
| Rogatica Brigade            | The 1st Podrinje Light Infantry Brigade   |
| Romanija Brigade            | 2nd Romanija Motorised Brigade  |
| Rules                       | Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia (IT/32/Rev. 39)   |
| SBP                         | Special Police Brigade  |
| SBP 2nd Sekovići Detachment | 2nd Sekovići Detachment of the RS MUP Special Police Brigade  |
| SFOR                        | Stabilisation Force (NATO-Bosnia)   |
| SFRY                        | Socialist Federal Republic of Yugoslavia  |
| SJB                         | Public Security Station   |
| Standard Barracks           | The Zvornik Brigade Headquarters  |
| T.                          | Transcript page from proceedings before the Trial Chamber in the present case.  |

|  |  |
|--|--|
| TG   | Tactical Group                                       |
| TO   | Territorial Defence forces                           |
| Tribunal                                   | See: ICTY  |
| UKRCoy                                     | Ukrainian Company of UNPROFOR                        |
| UN   | United Nations                                       |
| UNDU                                       | United Nations Detention Unit                        |
| UNHCR                                      | United Nations High Commission for Refugees          |
| UNMO                                       | United Nations Military Observer                     |
| UNPROFOR                                   | United Nations Protection Force                      |
| VRS  | Army of the Republika Srpska                         |
| VRS Soldier                                | A person serving in the Army of the Republika Srpska |
| Žepa Brigade                               | The 285th Eastern Bosnian Light Brigade of the ABiH  |
| Zvornik Brigade                            | The 1st Light Infantry Zvornik Brigade               |
| Zvornik Brigade Duty Officer's Notebook    | Zvornik Brigade Notebook                             |
| Zvornik Brigade IKM Duty Officer's Logbook | Zvornik Brigade Logbook                              |

## ANNEX 2: PROCEDURAL HISTORY

1. This case involves seven Accused, 315 witnesses in total, 5,383 exhibits in total amounting to 87,392 page numbers, and 34,915 transcript page numbers.

### A. Pre-Trial Proceedings

#### 1. Indictment and Joinder or Severance of Cases

2. The Accused in *Popović et al.* were previously indicted in six separate cases, namely, *Prosecutor v. Vujadin Popović*,<sup>1</sup> *Prosecutor v. Ljubiša Beara*,<sup>2</sup> *Prosecutor v. Drago Nikolić*,<sup>3</sup> *Prosecutor v. Ljubomir Borovčanin*,<sup>4</sup> *Prosecutor v. Zdravko Tolimir, Radivoje Miletić and Milan Gvero*<sup>5</sup> and *Prosecutor v. Vinko Pandurević and Milorad Trbić*.<sup>6</sup> On 10 June 2005, the Prosecution filed a joinder motion, seeking to join these cases into a single consolidated indictment.<sup>7</sup> On 21 September 2005, the Trial Chamber granted the joinder motion.<sup>8</sup> The Appeals Chamber

<sup>1</sup> *Prosecutor v. Popović*, Case No. IT-02-57-I, Indictment, 26 Mar 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. See *Prosecutor v. Popović*, Case No. IT-02-57-I, Order on Review of Indictment Pursuant to Article 19 of the Statute and Order for Non-Disclosure, 26 Mar 2002.

<sup>2</sup> *Prosecutor v. Beara*, Case No. IT-02-58-I, Indictment, 26 Mar 2002. The Indictment was confirmed by Judge Schomburg. See *Prosecutor v. Beara*, Case No. IT-02-58-I, Order on Review of Indictment Pursuant to Article 19 of the Statute, 26 Mar 2002.

<sup>3</sup> *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Indictment, 6 Sept 2002. The Indictment was confirmed by Judge Schomburg and placed under seal. See *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 Sept 2002.

<sup>4</sup> *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Indictment, 6 Sept 2002. The Indictment was confirmed by Judge Schomburg. See *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order Confirming Indictment Pursuant to Article 19, Order Concerning Non-disclosure, and Order Issuing Arrest Warrant, 6 Sept 2002; *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Order to Lift the Seal of Confidentiality of the Indictment, Arrest Warrant and Non-disclosure Warrant, 27 Sept 2002.

<sup>5</sup> *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-I, Indictment, 8 Feb 2005. The Indictment was confirmed by Judge Liu and placed under seal. See Decision on Review of Indictment and Order for Non-Disclosure, 10 Feb 2005.

<sup>6</sup> *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 Feb 2005. The Indictment was confirmed by Judge Liu. See Decision on Review of Indictment and Order for Non-Disclosure, 24 Mar 2005; *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Indictment, 10 Feb 2005. The Indictment was confirmed by Judge Liu. See Decision on Review of Indictment and Order for Non-Disclosure, 30 Mar 2005. The Prosecution was also ordered to withdraw the initial indictment against Pandurević, confirmed on 2 Nov 1998 by Judge Mumba in the case *Prosecutor v. Krstić, Pandurević and Blagojević*, as amended on 27 Oct 1999.

<sup>7</sup> *Prosecution v. Popović*, Case No. IT-02-57-PT, *Prosecution v. Beara*, Case No. IT-02-58-PT, *Prosecution v. Nikolić*, Case No. IT-02-63-PT, *Prosecution v. Borovčanin*, Case No. IT-02-64-PT, *Prosecution v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Joinder of Accused, 10 June 2005.

<sup>8</sup> *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Motion for Joinder, 21 Sept 2005. By order of the President, the Joinder Motion had been assigned to Trial Chamber III. See Order Referring the Joinder Motion, *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, 29 June 2005 and Corrigendum to Order Referring the Joinder Motion, 4 July 2005.

dismissed **Pandurević** and **Miletić**'s appeals against the decision.<sup>9</sup> The case was assigned to Trial Chamber II on 26 September 2005<sup>10</sup> and Judge Agius was appointed Pre-Trial Judge on 5 October 2005.<sup>11</sup>

3. On 28 June 2005, the Prosecution filed a motion to amend the indictments against the nine Accused, proposing one consolidated amended indictment.<sup>12</sup> Pursuant to a Trial Chamber order of 13 October 2005,<sup>13</sup> the Prosecution filed the Consolidated Amended Indictment under a single case number on 11 November 2005. On 7 December 2005, the Trial Chamber ordered the Accused to file any preliminary motions against the form of the Consolidated Amended Indictment by no later than 9 January 2006.<sup>14</sup> **Popović, Nikolić, Borovčanin, Miletić, Gvero, Pandurević** and **Trbić** filed motions challenging the form of the Consolidated Amended Indictment.<sup>15</sup> In March 2006, the Prosecution filed two additional motions seeking to amend the Consolidated Amended Indictment.<sup>16</sup> On 31 May 2006, the Trial Chamber granted the Accused's motions in part and the

<sup>9</sup> *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-AR73.1, Decision on Vinko Pandurević's Interlocutory Appeal Against the Trial Chamber's Decision on Joinder of Accused, 24 Jan 2006; *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-AR73.1, Decision on Radivoje Miletić's Interlocutory Appeal against the Trial Chamber's Decision on Joinder of Accused, 27 Jan 2006.

<sup>10</sup> Order Assigning a Case to a Trial Chamber, 26 Sept 2005.

<sup>11</sup> Order Designating a Pre-Trial Judge, 5 Oct 2005.

<sup>12</sup> *Prosecutor v. Popović*, Case No. IT-02-57-PT, *Prosecutor v. Beara*, Case No. IT-02-58-PT, *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, *Prosecutor v. Tolimir, Miletić and Gvero*, Case No. IT-04-80-PT, and *Prosecutor v. Pandurević and Trbić*, Case No. IT-05-86-PT, Prosecution's Motion for Amendments to the Indictments + Annex A, 28 June 2005. In the Motion the Prosecution requested, amongst others, that the charges of genocide, conspiracy to commit genocide and extermination be added in the case of Tolimir and Trbić; the charge of conspiracy to commit genocide be added against **Popović** and **Nikolić**; the charge of complicity to commit genocide be deleted with regard to **Popović, Nikolić** and **Borovčanin**; the charge of forcible transfer of the Bosnian Muslim population to include the forcible transfer of the Bosnian Muslim population from the Žepa enclave and the deportation of the Bosnian Muslim men from Žepa with regard to **Beara, Popović, Pandurević, Trbić, Borovčanin** and **Nikolić**; and to clarify that the charge of forcible transfer not only applies to the women and children, but also to the men who were forcibly bused out of Potočari and those who were captured or surrendered from the column of people fleeing the Srebrenica area. The Prosecution filed a corrigendum, *See* Corrigendum to Prosecution's Consolidated Amended Indictment, confidential, 15 July 2005.

<sup>13</sup> Order on the Consolidated Amended Indictment, 31 Oct 2005.

<sup>14</sup> Further Order on the Consolidated Amended Indictment, 7 Dec 2005, p. 3. *See* Order on the Consolidated Amended Indictment, 31 Oct 2005.

<sup>15</sup> The Motion of Vujadin Popović Objecting the Form of Consolidated Indictment, 6 Jan 2006; Defence Motion on Behalf of Drago Nikolić Alleging Defects in the Form of the Consolidated Amended Indictment, 29 Dec 2005; Ljubomir Borovčanin's Defence Preliminary Motion on the Form of the Consolidated Amended Indictment, 9 Jan 2006; Preliminary Motion of General Miletić Regarding Defects in the Form of the Indictment, 9 Jan 2006 (French original), 24 Jan 2006 (English translation); General Gvero's Preliminary Motion Challenging Jurisdiction: Indirect Co-Perpetration, 30 Dec 2005; Vinko Pandurević's Preliminary Motion on the Form of the Consolidated Amended Indictment, 5 Jan 2006; Defendant Milorad Trbić's Challenge to the Indictment Pursuant to Rule 72, 8 Jan 2006. In response the Prosecution filed a motion under Rule 72 which included a proposed amended indictment. *See* Consolidated Response to Defence Motions under Rule 72, 23 Jan 2006.

<sup>16</sup> Motion to Amend the Indictment Relating to Ljubomir Borovčanin, 22 Mar 2006; Motion to Amend the Indictment Relating to the 22 Mar 2006 Appeals Chamber Judgement in the Case of *Stakić*, 29 Mar 2006. Miletić, Nikolić, Gvero, Borovčanin and Trbić filed responses. *See* Response of General Miletić to the Prosecutor's Motion to Amend the Indictment, 11 Apr 2006; Defence Consolidated Response on behalf of Drago Nikolić to the Prosecution's Motions to Amend the Indictment dated 22 and 29 Mar 2006, 12 Apr 2006; General Gvero's Preliminary Motion Challenging Jurisdiction: Joint Criminal Enterprise with Common Purpose, 24 Apr 2006; Borovčanin Defence Notification on Joining General Gvero's Preliminary Motion Challenging Jurisdiction: Joint Criminal Enterprise with Common Purpose, 12 Apr 2006. Borovčanin further filed an additional response to



Prosecution motion to amend the Consolidated Amended Indictment in part, which became the Second Consolidated Amended Indictment.<sup>17</sup>

4. **Popović, Borovčanin and Pandurević** challenged the form of the Second Consolidated Amended Indictment.<sup>18</sup> On 13 July 2006, the Trial Chamber granted the Accused's motions in part and ordered the Prosecution to make the proposed amendments in the Second Consolidated Amended Indictment.<sup>19</sup> On 4 August 2006, the Prosecution submitted a new version of the Second Consolidated Amended Indictment.<sup>20</sup>

5. On 26 June 2006, Trbić's case was severed from the present case,<sup>21</sup> and it was referred to the BiH State Court pursuant to Rule 11 *bis*.<sup>22</sup> Tolimir's case was severed from the joint case as he remained at large when the Second Consolidated Amended Indictment became effective.<sup>23</sup> Tolimir was arrested on 31 May 2007 and transferred to the seat of the Tribunal on 1 June 2007.<sup>24</sup> The Prosecution attempted to join Tolimir's case with the present case,<sup>25</sup> but the Trial Chamber denied the motion.<sup>26</sup>

## 2. Transfer, Initial Appearance and Pleas

6. **Popović** was transferred to the Tribunal on 14 April 2005.<sup>27</sup> He made his initial appearance on 18 April 2005<sup>28</sup> and pleaded not guilty to all charges.<sup>29</sup> **Beara** was transferred to the Tribunal on

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Prosecution's Motion pertaining only to him. *See* Borovčanin Defence Submission Regarding Prosecution's Motions to Amend the Indictment, 7 Apr 2006; Defendant Milorad Trbić's Challenge, Pursuant to Rule 72, to the Proposed Indictment Dated 29 Mar 2006, 12 Apr 2006.

<sup>17</sup> Decision on Motions Challenging the Indictment Pursuant to Rule 72 of the Rules, 31 May 2006. Additionally it granted one of the Prosecution's motions to clarify the form of liability alleged against **Borovčanin** and ordered the Prosecution to amend sections of the Consolidated Amended Indictment.

<sup>18</sup> Response on Behalf of Vujadin Popović to Prosecution Submission pursuant to the Trial Chamber's Decision on the Motion Challenging Indictment pursuant to Rule 72 of the Rules, confidential, 23 June 2006; [Popović] Preliminary Motion Objecting the Form of the Second Consolidated Amended Indictment, 30 June 2006; Borovčanin Defence Preliminary Motion on the Form of the Second Consolidated Amended Indictment, 30 June 2006; Response on Behalf of the Defence of Vinko Pandurević Pursuant to Rule 72 to the Prosecution Submission of the Second Consolidated Amended Indictment, 30 June 2006.

<sup>19</sup> Decision on Further Amendments and Challenges to the Indictment, 13 July 2006.

<sup>20</sup> Submission pursuant to the Trial Chamber's Decision on Further Amendments and Challenges to the Indictment and Motion Seeking Leave to Make Additional Minor Corrections, partly confidential, 4 Aug 2006; Order on Operative Indictment and Severance of the Case against Zdravko Tolimir, 15 Aug 2006.

<sup>21</sup> Decision on Severance of Case against Milorad Trbić with Confidential and *Ex Parte* Annex, 26 June 2006.

<sup>22</sup> *Prosecutor v. Milorad Trbić*, Case No. IT-05-88/1-PT, Decision on Referral of Case under Rule 11 *bis* with Confidential Annex, 27 Apr 2007.

<sup>23</sup> Order on Operative Indictment and Severance of the Case Against Zdravko Tolimir, 15 Aug 2006.

<sup>24</sup> *See Prosecutor v. Tolimir*, Case No. IT-05-88/2-I, Order Assigning a Case to a Trial Chamber, 1 June 2007.

<sup>25</sup> Prosecution's Motion for Joinder of the Accused, 10 June 2007.

<sup>26</sup> Decision on Motion for Joinder, 20 July 2007.

<sup>27</sup> *See Prosecutor v. Popović*, Case No. IT-02-57-I, Scheduling Order for Initial Appearance, 15 Apr 2005. *See also, Prosecutor v. Popović*, Case No. IT-02-57-I, T. 2 (18 Apr 2005).

<sup>28</sup> *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 1–2 (18 Apr 2005).

<sup>29</sup> *Prosecutor v. Popović*, Case No. IT-02-57-I, T. 3–6 (18 Apr 2005).

10 October 2004.<sup>30</sup> At his initial appearance on 11 November 2004, he pleaded not guilty to all charges.<sup>31</sup> After the Indictment was amended, **Beara** entered new pleas of not guilty to the additional charges at a further appearance on 13 April 2005.<sup>32</sup> **Nikolić** surrendered on 15 March 2005 and was transferred to the Tribunal on 17 March 2005.<sup>33</sup> On 20 April 2005, he entered a plea of not guilty to all charges.<sup>34</sup> **Borovčanin** surrendered and was transferred to the Tribunal on 1 April 2005.<sup>35</sup> On 5 May 2005, **Borovčanin** entered a plea of not guilty to all charges.<sup>36</sup> **Miletić** surrendered on 24 February 2005 and was transferred to the Tribunal on 28 February 2005.<sup>37</sup> On 15 April 2005, he entered a plea of not guilty to all charges.<sup>38</sup> **Gvero** surrendered and was transferred to the Tribunal on 24 February 2005.<sup>39</sup> He pleaded not guilty to all charges.<sup>40</sup> **Pandurević** was transferred to the Tribunal on 23 March 2005.<sup>41</sup> He entered a plea of not guilty to all charges on 3 May 2005.<sup>42</sup>

7. Following joinder and consolidation of the Indictment,<sup>43</sup> **Popović**, **Beara**, **Nikolić** and **Pandurević** entered new pleas of not guilty to all charges on 4 April 2006.<sup>44</sup> **Borovčanin** entered new pleas of not guilty to all counts on 4 April 2006 and 13 July 2006, respectively.<sup>45</sup> On 6 July 2006, **Gvero** and **Miletić** entered new pleas of not guilty to all charges.<sup>46</sup>

### 3. Assignment of Counsel

8. Mr. Zoran Živanović was assigned as counsel for **Popović** as of 18 April 2005<sup>47</sup> and Ms. Julie Condon as co-counsel as of 10 July 2006.<sup>48</sup> Mr. John Ostojić was assigned as counsel for

<sup>30</sup> *Prosecutor v. Beara*, Case No. IT-02-58-I, Scheduling Order for Initial Appearance, 11 Oct 2004. *See also*, *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 1–4 (12 Oct 2004).

<sup>31</sup> *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 11–12 (11 Nov 2004).

<sup>32</sup> *Prosecutor v. Beara*, Case No. IT-02-58-I, T. 19–20 (13 Apr 2005).

<sup>33</sup> *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Scheduling Order for Initial Appearance, 21 Mar 2005.

<sup>34</sup> *Prosecutor v. Nikolić*, Case No. IT-02-63-I, T. 8 (20 Apr 2005).

<sup>35</sup> *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, Scheduling Order for Initial Appearance, 1 Apr 2005.

<sup>36</sup> *Prosecutor v. Borovčanin*, Case No. IT-02-64-I, T. 30–32 (5 May 2005).

<sup>37</sup> *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Scheduling Order for Initial Appearance, 1 Mar 2005. The Scheduling Order indicated the date incorrectly.

<sup>38</sup> *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, T. 63–64 (15 Apr 2005).

<sup>39</sup> *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Scheduling Order for Initial Appearance, 1 Mar 2005.

<sup>40</sup> *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, T. 35–36 (2 Mar 2005).

<sup>41</sup> *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, Scheduling Order for Further Initial Appearance, 20 Apr 2005.

<sup>42</sup> *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-I, T. 26–27 (3 May 2005).

<sup>43</sup> Decision on Motion for Joinder, 21 Sept 2005; Order on the Consolidated Amended Indictment, 31 Oct 2005.

<sup>44</sup> T. 99–122 (4 Apr 2006).

<sup>45</sup> T. 112–119 (4 Apr 2006), T. 281 (13 July 2006). *See also* T. 245–248 (13 July 2006) (finding that, with the exception of **Borovčanin** with regard to Counts 1 and 2, the Accused were not required to enter new pleas to the Second Consolidated Amended Indictment).

<sup>46</sup> T. 224–228 (6 July 2006).

<sup>47</sup> *Prosecutor v. Popović*, Case No. IT-02-57-I, Decision of the Deputy Registrar, 18 Apr 2005.

<sup>48</sup> Decision of the Registrar, 10 July 2006.

**Beara** as of 11 November 2004<sup>49</sup> and Mr. Christopher Meek as co-counsel as of 3 April 2006.<sup>50</sup> Ms. Jelena Nikolić was assigned counsel for **Nikolić** as of 10 May 2005<sup>51</sup> and Mr. Stephane Bourgon as co-counsel as of 24 August 2005.<sup>52</sup> Mr. Aleksandar Lazarević was assigned as counsel for **Borovčanin** as of 4 January 2006<sup>53</sup> and Mr. Miodrag Stojanović as co-counsel as of 30 May 2005.<sup>54</sup> Ms. Natacha Fauveau-Ivanović was assigned as counsel for **Miletić** as of 14 April 2005.<sup>55</sup> Mr. Dragan Krgović was assigned as counsel for **Gvero** as of 16 March 2005.<sup>56</sup> Mr. Peter Haynes was assigned as counsel for **Pandurević** as of 7 March 2006<sup>57</sup> with Mr. Đorđe Sarapa as co-counsel.<sup>58</sup>

#### 4. Pre-Trial Briefs

9. The Prosecution filed its Pre-Trial Brief on 28 April 2006.<sup>59</sup> **Borovčanin** responded to the Prosecution Pre-Trial Brief on 11 July 2006, and the other six Accused filed their Pre-Trial Briefs on 12 July 2006.<sup>60</sup>

#### 5. Pre-Trial Case Management

10. Following the joinder of the trials, the pre-Trial proceedings lasted 11 months. Four status conferences were held between 10 November 2005 and 6 July 2006.<sup>61</sup> Five Rule 65 *ter* conferences were held between 9 November 2005 and 6 July 2006.<sup>62</sup> The Pre-Trial Conference took place on 13 July 2006 and the trial commenced on 14 July 2006.<sup>63</sup>

<sup>49</sup> *Prosecutor v. Beara*, Case No. IT-05-88-PT, Decision of Deputy Registrar, 11 Nov 2004.

<sup>50</sup> *Prosecutor v. Beara*, Case No. IT-05-88-PT, Decision of Deputy Registrar, 3 Apr 2006.

<sup>51</sup> *Prosecutor v. Nikolić*, Case No. IT-02-63-I, Decision of Deputy Registrar, 10 May 2005.

<sup>52</sup> *Prosecutor v. Nikolić*, Case No. IT-02-63-PT, Decision of Deputy Registrar, 24 Aug 2005.

<sup>53</sup> Decision of Registrar, 4 Jan 2006. Mr. Lazarević replaced Mr Alan Newman as lead counsel (*Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Deputy Registrar, 9 May 2005) who in turn had succeeded Ms. Colleen Rohan (*Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Registrar, 6 Apr 2005).

<sup>54</sup> *Prosecutor v. Borovčanin*, Case No. IT-02-64-PT, Decision of Registrar, 30 May 2005.

<sup>55</sup> *Prosecutor v. Tolimir et al.*, Case No. IT-04-80-I, Decision of Deputy Registrar, 14 Apr 2005.

<sup>56</sup> *Prosecutor v. Gvero* Case No. IT-04-80-PT, Decision of the Registrar, 16 Mar 2005.

<sup>57</sup> Decision of the Deputy Registrar, 7 Mar 2006.

<sup>58</sup> Decision of the Deputy Registrar, 7 Mar 2006.

<sup>59</sup> Prosecution's Filing of Pre-Trial Brief Pursuant to Rule 65 *ter* and List of Exhibits Pursuant to Rule 65 *ter* (E) (v) [sic] Under Seal, 28 Apr 2006. On 24 May 2006, the Trial Chamber denied **Miletić** motion seeking a BCS translation of the Prosecution Pre-Trial Brief. See Decision on Joint Defence Motions Requesting the Translation of the Pre-Trial Brief and Specific Motions, 24 May 2006.

<sup>60</sup> Pre-Trial Brief of the Defence of Vujadin Popović, 12 July 2006; Accused Ljubiša Beara's Rule 65 *ter* Pre-Trial Brief, confidential and under Seal, 12 July 2006; Pre-Trial Brief on Behalf of Drago Nikolić pursuant to Rule 65 *ter* (F), 12 July 2006; Borovčanin Defence Response to Prosecution's Pre-Trial Brief, 11 July 2006; General Miletić Defence Pre-Trial Brief, confidential, 12 July 2006 (French original), 21 July 2006 (English translation); General Gvero's Pre-Trial Brief, 12 July 2006; Defence Pre-Trial Brief on Behalf of the Accused Vinko Pandurević, 12 July 2006.

<sup>61</sup> T. 1–46 (10 Nov 2005), T. 77–139 (4 Apr 2006), T. 140–174 (19 May 2006), T. 175–237 (6 July 2006).

<sup>62</sup> 7 Feb 2005, 28 Oct 2005, 9 Mar 2006 and 28 Apr 2006.

<sup>63</sup> Scheduling Order for a Status Conference and for Start of Trial, 6 June 2006. However, the opening statements were not heard until 21 August 2006.

## 6. Provisional Release

11. On 22 June 2005, **Popović** filed a motion seeking provisional release prior to the joinder of the case.<sup>64</sup> The Trial Chamber denied the motion,<sup>65</sup> and this decision was upheld on appeal.<sup>66</sup> On 7 October 2005, **Nikolić** filed a motion for provisional release,<sup>67</sup> which was denied by the Trial Chamber.<sup>68</sup> That decision was upheld on appeal.<sup>69</sup> On 2 March 2006, **Borovčanin** filed a motion for provisional release.<sup>70</sup> On 10 May 2006, the Trial Chamber denied the motion for release.<sup>71</sup> **Borovčanin**'s appeal against the decision was dismissed.<sup>72</sup>

12. In April 2005, **Miletić** and **Gvero** both filed motions for provisional release for the period before trial.<sup>73</sup> The Trial Chamber granted both motions on 19 July 2005.<sup>74</sup> The Prosecution appealed both of the Trial Chamber's decisions,<sup>75</sup> which were upheld by the Appeals Chamber.<sup>76</sup> On 6 June 2006, due to the approaching start of the trial, the Trial Chamber suspended the provisional release of both **Gvero** and **Miletić** as of 29 June 2006.<sup>77</sup> On 20 June 2006, the Trial Chamber ordered **Gvero** and **Miletić** to return to the UNDU no later than 4 July 2006.<sup>78</sup> On a joint application,<sup>79</sup> both accused were provisionally released after the pre-trial conference during the summer recess between 14 July and 14 August 2006.<sup>80</sup>

<sup>64</sup> *Prosecutor v Popović*, Case No. IT-02-57-I, The Vujadin Popović's Motion for Provisional Release, 22 June 2005.

<sup>65</sup> *Prosecutor v. Popović*, Case No. IT-02-57-PT, Decision on Motion for Provisional Release, 22 July 2005.

<sup>66</sup> *Prosecutor v. Popović*, Case No. IT-02-57-AR65.1. The Vujadin Popović's Appeal against the Decision on Provisional Release, 22 Aug 2005.

<sup>67</sup> Motion Seeking the Provisional Release of Drago Nikolić until the beginning of the Trial Phase of the Proceedings, 7 Oct 2005.

<sup>68</sup> Decision on Drago Nikolić's Request for Provisional Release, 9 Nov 2005.

<sup>69</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.1, Decision on Interlocutory Appeal of Trial Chamber Decision Denying Drago Nikolić's Motion for Provisional Release, 24 Jan 2006.

<sup>70</sup> Defence Application for Provisional Release of the Accused Ljubomir Borovčanin with Annexes I, II, III and V, and Confidential Annex IV, partly confidential, 2 Mar 2006.

<sup>71</sup> Decision on Defence Application for Provisional Release of the Accused Ljubomir Borovčanin, 10 May 2006.

<sup>72</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.2, Decision on Defence's Interlocutory Appeal of Trial Chamber's Decision Denying Ljubomir Borovčanin Provisional Release, 30 June 2006.

<sup>73</sup> *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, General Gvero's Motion for Provisional Release, 5 Apr 2005; *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Request for Provisional Release by General Miletić, partially confidential, 25 Apr 2005 (French original), 4 May 2005 (English translation).

<sup>74</sup> *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Milan Gvero, 19 July 2005, para. 19; *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-PT, Decision Concerning Motion for Provisional Release of Radivoje Miletić, 19 July 2005, para. 19.

<sup>75</sup> *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-AR65.1, Prosecution's Consolidated Appeal from the Trial Chamber's Decision Granting Provisional Release to Radivoje Miletić and Milan Gvero, 22 Aug 2005.

<sup>76</sup> *Prosecutor v. Tolimir, Miletić, and Gvero*, Case No. IT-04-80-AR65.1, Decision on Interlocutory Appeal against Trial Chamber's Decisions granting Provisional Release, 19 Oct 2005.

<sup>77</sup> Order Suspending Provisional Release, 6 June 2006.

<sup>78</sup> Decision on Joint Defence Motion for Variation of the Order suspending Provisional Release issued on 6 June 2006, 20 June 2006.

<sup>79</sup> Joint Defence Urgent Submission by the Accused Radivoje Miletić and Milan Gvero, confidential, 11 July 2006.

<sup>80</sup> Decision on Joint Motion of the Accused Miletić and Gvero for Temporary Provisional Release from 15 July 2006 until the Continuation of Trial, 13 July 2006.

13. **Pandurević** applied for provisional release on 3 June 2005.<sup>81</sup> The Trial Chamber denied the motion on 18 July 2005.<sup>82</sup> **Pandurević** submitted another motion on 30 January 2006 for release until the beginning of the trial phase of proceedings,<sup>83</sup> which was also denied.<sup>84</sup>

## 7. Assignment of a Bench

14. On 30 June 2006, by order of the President, Judge Agius (Malta, Presiding Judge), Judge Kwon (Republic of Korea), and Judge Prost (Canada) were appointed to the case.<sup>85</sup> Judge Støle (Norway) was assigned as a reserve judge.<sup>86</sup>

## **B. Trial Proceedings**

### 1. The Prosecution Case

15. The case for the Prosecution commenced on 21 August 2006<sup>87</sup> and concluded on 7 February 2008.<sup>88</sup> The Prosecution adduced evidence from 182 witnesses in total.<sup>89</sup> Ninety-five witnesses testified *viva voce*. 52 witnesses gave evidence pursuant to Rule 92 *ter*. Twelve expert witnesses testified either *viva voce* or under Rule 92 *ter*.<sup>90</sup> Five witnesses were subpoenaed pursuant to Rule 54.<sup>91</sup> Two witnesses testified by video-conference link.<sup>92</sup> Sixty-four *viva voce* and 92 *ter* witnesses were granted protective measures. The Trial Chamber admitted the evidence of 31 witnesses pursuant to Rule 92 *bis*, of whom seven were granted protective measures, and four witnesses pursuant to Rule 92 *quater*. During the Prosecution case, the Trial Chamber granted leave to the Accused to call a joint Defence intercept expert witness.<sup>93</sup>

16. A total of 2,906 Prosecution exhibits were admitted into evidence.

<sup>81</sup> *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Application for Provisional Release, 3 June 2005.

<sup>82</sup> *Prosecution v. Pandurević and Trbić*, Case No. IT-05-86-PT, Decision on Vinko Pandurević's Application for Provisional Release, 18 July 2005.

<sup>83</sup> Vinko Pandurević's Request for Provisional Release Until the Beginning of the Trial Phase of the Proceedings & Annex A, 30 Jan 2006.

<sup>84</sup> Decision on Pandurević's Renewed Motion for Provisional Release, 6 June 2006.

<sup>85</sup> Order assigning Judges to a case before a Trial Chamber, 30 June 2006.

<sup>86</sup> Order Assigning a Reserve Judge to a Case Before a Trial Chamber, 23 Aug 2006.

<sup>87</sup> Opening Statement, T. 382 (21 Aug 2006).

<sup>88</sup> T. 21222–21223 (7 Feb 2008).

<sup>89</sup> The number includes reopening and rebuttal witnesses called by the Prosecution.

<sup>90</sup> Among the expert witnesses, Smith and Bulter gave evidence as partially expert witnesses. *See also infra*, paras. 48–52.

<sup>91</sup> Decision on Prosecution Motion for Subpoena, 18 Jan 2007; Decision on Prosecution Motion for Subpoena, 19 Jan 2007; Decision on Prosecution's Motion for Issuance of a Subpoena, 21 Aug 2007; Decision on Prosecution's Motion for Issuance of a Subpoena, 21 Aug 2007; Decision on Prosecution Motion for Subpoena of Dragan Jokić and Decision on Protective Measures, confidential, 29 Aug 2007.

<sup>92</sup> Decision on Prosecution's confidential motion for testimony of witness 88 to be heard via video link, confidential, 26 June 2007; Decision on Prosecution motion requesting video-conference link testimony of witness 167 and Protective Measures, 23 Aug 2007.

## 2. Judgement of Acquittal

17. After the closing of the Prosecution case, on 14 and 15 February 2008, six of the Accused made oral submissions for acquittal under Rule 98 *bis*. **Popović** did not make a submission under Rule 98 *bis*.<sup>94</sup> The Prosecution responded orally to the Accused's submissions on 15 and 18 February 2008.<sup>95</sup> On 3 March 2008, the Trial Chamber gave an oral decision dismissing the Accused's motions in all respects. In its decision, the Trial Chamber held that there was sufficient evidence on all counts in relation to each of the Accused to support a possible conviction.<sup>96</sup> Following the decision, the Trial Chamber noted the Prosecution submission made on 18 February 2008, in which the Prosecution conceded that no evidence was adduced in support of the allegations contained in paragraph 31.1.b. and 31.1.c of the Indictment.<sup>97</sup> Therefore, the Trial Chamber noted that the Accused would not need to address these two allegations.<sup>98</sup>

18. On 10 March 2008, **Nikolić** filed a motion for certification to appeal the Rule 98 *bis* Decision.<sup>99</sup> The Trial Chamber denied the motion.<sup>100</sup>

## 3. The Defence Cases

19. The Defence cases started with the case for **Popović**, which commenced on 2 June 2008<sup>101</sup> and concluded on 8 July 2008.<sup>102</sup> **Popović** adduced evidence from 28 witnesses in total.<sup>103</sup> Twenty witnesses testified *viva voce*, of whom three were joint witnesses and three were expert witnesses. Two witnesses testified by video-conference link.<sup>104</sup> The Trial Chamber admitted the evidence of ten witnesses pursuant to 92 *bis*.<sup>105</sup>

20. The case for **Beara** commenced on 10 July 2008<sup>106</sup> and concluded on 11 September 2008.<sup>107</sup> **Beara** adduced evidence from 45 witnesses in total. Twenty-five witnesses testified *viva voce*, of whom six were expert witnesses and two were joint witnesses, including one joint expert witness.

<sup>93</sup> T. 9857–9858 (2 Apr 2007). Đuro Rodić, a joint Defence intercept expert, gave evidence on 24 May and 12 June 2007. T. 12059–12130 (24 May 2007), T. 12452–12525 (12 June 2007).

<sup>94</sup> T. 21302 (14 Feb 2008).

<sup>95</sup> T. 21383–21389 (15 Feb 2008), T. 21392–21457 (18 Feb 2008).

<sup>96</sup> T. 21461–21473 (3 Mar 2008).

<sup>97</sup> Prosecution Submission Concerning Paragraphs 31.1b and 31.1c of the Indictment, 15 Feb 2008.

<sup>98</sup> T. 21473 (3 Mar 2008).

<sup>99</sup> Defence Motion on Behalf of Drago Nikolić seeking Certification of the Trial Chamber Rule 98 *bis* Decision, 10 Mar 2008.

<sup>100</sup> Decision on Motion for Certification of 98 *bis* Decision, 15 Apr 2008.

<sup>101</sup> T. 21555 (2 June 2008).

<sup>102</sup> T. 23508 (8 July 2008). *See also* T. 23515 (10 July 2008).

<sup>103</sup> The number includes one witness called by **Popović** after the case was reopened.

<sup>104</sup> Decision on Popović's Motion Requesting Video-Conference Link Testimony of Two Witnesses, 29 May 2008.

<sup>105</sup> The witnesses include Oliver Stojković, Dušan Đunjić and Đuro Rodić.

<sup>106</sup> T. 23515 (10 July 2008).

<sup>107</sup> T. 25648 (11 Sept 2008).

Two witnesses gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of 18 witnesses pursuant to Rule 92 *bis*.

21. The case for **Nikolić** commenced on 15 September 2008<sup>108</sup> and concluded on 2 October 2008.<sup>109</sup> **Nikolić** adduced evidence from 27 witnesses in total.<sup>110</sup> Fourteen witnesses testified *viva voce*, of whom four were expert witnesses, including three joint expert witnesses. One of the *viva voce* witnesses was granted protective measures. Eight witnesses gave evidence pursuant to 92 *ter*, of whom two testified by video-conference link.<sup>111</sup> The Trial Chamber admitted the evidence of four witnesses pursuant to Rule 92 *bis* and one pursuant to Rule 92 *quater*.

22. The case for **Borovčanin** commenced on 6 October 2008<sup>112</sup> and concluded on 13 November 2008.<sup>113</sup> **Borovčanin** adduced evidence from 15 witnesses in total. Eleven witnesses testified *viva voce*, of whom four were expert witnesses, including one joint expert witness. One witness gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of three witnesses pursuant to Rule 92 *bis*.

23. The case for **Miletić** commenced on 12 November 2008<sup>114</sup> and concluded on 22 January 2009.<sup>115</sup> **Miletić** adduced evidence from 17 witnesses in total. Fourteen witnesses testified *viva voce*, of whom three were joint witnesses and one was an expert witness. Two witnesses gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of one witness pursuant to Rule 92 *bis*.

24. **Gvero** made an opening statement prior to the start of the Prosecution case.<sup>116</sup> **Gvero** initially did not call any evidence in his case-in-chief and he made an opening statement only.<sup>117</sup> **Gvero** later filed a request to reopen his case, which was granted.<sup>118</sup> Subsequently, four witnesses testified *viva voce*. The Trial Chamber admitted evidence of one witness pursuant to Rule 92 *quater*.<sup>119</sup>

<sup>108</sup> T. 25653 (15 Sept 2008).

<sup>109</sup> T. 26633 (2 Oct 2008).

<sup>110</sup> The number includes one reopening witness and one witness who previously testified for the Prosecution.

<sup>111</sup> The Trial Chamber orally granted **Nikolić**'s motion for the testimony of the two witnesses by video-conference link. T. 25751–25752 (16 Sept 2008).

<sup>112</sup> T. 26636 (6 Oct 2008).

<sup>113</sup> T. 28124 (13 Nov 2008).

<sup>114</sup> T. 28173 (13 Nov 2008).

<sup>115</sup> T. 30590 (22 Jan 2008).

<sup>116</sup> T. 610–617 (23 Aug 2006).

<sup>117</sup> T. 30600–30611 (26 Jan 2009).

<sup>118</sup> *See infra*, para. 35.

<sup>119</sup> Decision on Gvero's Motion for the Admission of Evidence Pursuant to Rule 92 *quater*, 3 Feb 2009.

25. The case for **Pandurević** commenced on 27 January 2009<sup>120</sup> and concluded on 12 March 2009.<sup>121</sup> **Pandurević** adduced evidence from nine witnesses in total. Five witnesses, including **Pandurević**, testified *viva voce*, of whom three were joint witnesses and one was an expert witness. One witness gave evidence pursuant to Rule 92 *ter*. The Trial Chamber admitted the evidence of three witnesses pursuant to Rule 92 *bis*. The Trial Chamber granted **Pandurević**'s request for access to his counsel, subject to the limitation that any attorney-client communications during cross-examination or re-examination could not cover the substance of the testimony given in examination-in-chief.<sup>122</sup>

26. A total of 2,474 Accused exhibits were admitted into evidence.

#### 4. The Chamber Witness

27. On 10 March 2009, the Trial Chamber issued an order to summon Momir Nikolić<sup>123</sup> to testify as a Chamber witness pursuant to Rule 98, instructing that his testimony would proceed pursuant to Rule 92 *ter*.<sup>124</sup> Momir Nikolić gave evidence between 21 and 28 April 2009.<sup>125</sup> A total of three Chamber's exhibits were admitted with his own evidence.

#### 5. Rebuttal and Reopening

28. On 7 April 2008, the Prosecution filed a motion seeking to reopen its case against **Popović** and to admit evidence from three witnesses along with 10 related documents.<sup>126</sup> On 9 May 2008, the Trial Chamber granted the motion.<sup>127</sup> On 27 May 2008, the Trial Chamber granted **Popović**'s request for certification to appeal the decision.<sup>128</sup> On 24 September 2008, the Appeals Chamber dismissed **Popović**'s appeal against the Trial Chamber decision on 9 May 2008.<sup>129</sup> Subsequently,

<sup>120</sup> T. 30644 (27 Jan 2009).

<sup>121</sup> T. 32690 (12 Mar 2009).

<sup>122</sup> T. 30638 (26 Jan 2009).

<sup>123</sup> Momir Nikolić originally appeared on the Prosecution's Rule 65 *ter* Witness List in the present case, but was withdrawn by the Prosecution on 2 November 2007. T. 17398 (2 Nov 2007).

<sup>124</sup> Order to Summon Momir Nikolić, 10 Mar 2009. The Trial Chamber also ordered Momir Nikolić to review his Statement of Facts which was attached to his plea agreement with the Prosecution and provide the Trial Chamber with a written statement confirming his Statement of Facts or indicating, with an explanation, any specific parts of his Statement of Facts he no longer agrees to ("Further Statement"); and ordered him to attest that his Statement of Facts and Further Statement accurately reflect what he would say if examined. *Ibid.*, pp. 2–3.

<sup>125</sup> T. 32895–T. 33364 (21–28 Apr 2009).

<sup>126</sup> Motion to Reopen the Prosecution Case, With Two Appendices, confidential, 7 Apr 2008. The Prosecution further requested the Trial Chamber to issue an order forbidding the release of the substance of the interviews, or names of the witnesses in question without approval of the Trial Chamber. The Trial Chamber granted this request. Order on the Motion to Reopen the Prosecution Case, 8 Apr 2008.

<sup>127</sup> Decision on Motion to reopen the Prosecution Case, 9 May 2008.

<sup>128</sup> Decision on Popović's Motion for Certification of Decision on the Motion to Reopen the Prosecution Case, 27 May 2008.

<sup>129</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR73.5, Decision on Vujadin Popović's Interlocutory Appeal against the Decision on the Prosecution's Motion to Reopen its Case-In-Chief, 24 Sept 2008.



these witnesses, one of whom was subpoenaed, testified on 10, 11 and 25 March 2009.<sup>130</sup> On 2 March 2009, the Prosecution sought leave to introduce rebuttal evidence from six witnesses and requested once more to reopen its case to lead *viva voce* evidence from two witnesses.<sup>131</sup> The Prosecution also sought to introduce supporting documentary evidence in both rebuttal and in reopening.<sup>132</sup> The Trial Chamber rendered a decision on 18 March 2009 and a further decision on 27 March 2009,<sup>133</sup> granting the motion in part and permitting the Prosecution to call two rebuttal witnesses<sup>134</sup> and two witnesses for the purpose of reopening its case.<sup>135</sup> The Trial Chamber further permitted admission of some documents supporting the evidence of one witness. **Nikolić's** request for certification to appeal the decision on 18 March 2008 was denied.<sup>136</sup> The four Prosecution witnesses gave evidence on 23 March, 1, 4–5, 29 April 2009.

29. On 23 April 2009, the Prosecution filed another motion to reopen its case and/or admit evidence in rebuttal, seeking leave to tender three videos and Mladić's notebook which the Prosecution obtained after the close of its case.<sup>137</sup> In its decision issued on 8 May 2009, the Trial Chamber granted the Prosecution motion in part, allowing the admission into evidence of the three videos but denying the request for admission of the notebook.<sup>138</sup> The Trial Chamber denied requests for certification to appeal the decision filed by **Gvero** and **Popović**, respectively.<sup>139</sup>

30. On 16 December 2009, the Prosecution filed another motion seeking leave to reopen its case for the purpose of entering two documents into evidence in order to answer a query of the Trial Chamber.<sup>140</sup> On 26 January 2010, the Trial Chamber granted the motion in part.<sup>141</sup>

<sup>130</sup> Two of these witnesses were granted protective measures. T. 32562 (10 Mar 2009), T. 32777 (25 Mar 2009).

<sup>131</sup> Prosecution's Motion to Admit Evidence in Rebuttal Under Rule 85(A) and to Reopen its Case with Appendices A-G, confidential, 2 Mar 2009.

<sup>132</sup> Prosecution's Motion to Admit Evidence in Rebuttal Under Rule 85(A) and to Reopen its Case with Appendices A-G, confidential, 2 Mar 2009, paras. 9–11.

<sup>133</sup> Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen its Case, confidential, 18 Mar 2009; Further Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 27 Mar 2009.

<sup>134</sup> Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 18 Mar 2009.

<sup>135</sup> Further Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 27 Mar 2009.

<sup>136</sup> Decision on **Nikolić** Expedited Motion for Certification of the Partial Decision on Prosecution's Motion to Admit Evidence in Rebuttal and to Reopen Its Case, confidential, 20 Mar 2009.

<sup>137</sup> Prosecution's Second Motion to Reopen its Case and/or Admit Evidence in Rebuttal Under Rule 85(A), confidential, 27 Mar 2009.

<sup>138</sup> Decision on Prosecution Second Motion to Reopen its Case And/Or Admit Evidence in Rebuttal, confidential, 8 May 2009.

<sup>139</sup> Decision on **Gvero** Motion Seeking Certification to Appeal the Decision on the Prosecution's Second Motion to Reopen its case, 3 June 2009; Decision on **Popović** Request for Certification to Appeal the Decision on the Prosecution Second Motion to Reopen its Case, confidential, 3 June 2009.

<sup>140</sup> Prosecution's Motion Seeking Leave to Reopen its Case, 16 Dec 2009.

<sup>141</sup> Decision on Prosecution Motion to Reopen its Case, 26 Jan 2010.

31. As a result of the Prosecution's first reopening, **Popović** sought leave to reopen his case in order to call four witnesses and to call two other witnesses to rebut evidence led by the Prosecution during its reopened case.<sup>142</sup> On 14 May 2008, the Trial Chamber issued a decision permitting the *viva voce* testimony of one witness in order to rebut evidence given by Chamber's witness Momir Nikolić.<sup>143</sup> On 9 June 2008, the Trial Chamber issued a further decision, permitting four witnesses to be called pursuant to Rule 92 *ter* and admitting the evidence of one expert witness.<sup>144</sup> On 12 May 2009, a subpoena was issued for Svetozar Kosoric,<sup>145</sup> who testified on 30 June 2009. On 22 July 2009, the Trial Chamber denied a new **Popović** motion to reopen his case.<sup>146</sup>

32. Following the Trial Chamber's decision which denied his motion requesting the Trial Chamber to exercise its discretionary powers to call a witness pursuant to Rule 98,<sup>147</sup> **Nikolić** filed a motion requesting the Trial Chamber to issue a subpoena for Sreten Milošević to give evidence before the Tribunal.<sup>148</sup> The Trial Chamber granted the motion.<sup>149</sup> As a reopening witness for **Nikolić**, Milošević gave *viva voce* evidence on 15 July 2009.<sup>150</sup>

33. On 1 April 2009, **Miletić** sought leave to reopen his case to admit evidence he had obtained after the completion of his case.<sup>151</sup> Additionally, **Miletić** sought another month to consider whether he wished to present further evidence following the Prosecution's introduction of new evidence during its reopening.<sup>152</sup> The Trial Chamber granted the motion in part.<sup>153</sup> The Trial Chamber also permitted **Miletić** one week from the date of its decision to determine whether he wished to present further evidence, if any, to rebut evidence led by the Prosecution during its reopening.<sup>154</sup>

<sup>142</sup> Vujadin Popović's Motion to Call Witnesses, With Annexes, confidential, 27 Apr 2009; Vujadin Popović's Addendum to the Motion to Call Witnesses, confidential, 1 May 2009.

<sup>143</sup> Partial Decision on Popović's Motion to Call Witnesses, confidential, 14 May 2009.

<sup>144</sup> Further Decision on Popović Motion to Call Witnesses, confidential, 9 June 2009.

<sup>145</sup> Decision on Vujadin Popović's Request for a Subpoena *ad Testificandum*, 14 May 2009.

<sup>146</sup> Vujadin Popović's Motion to Reopen his Case, With Confidential Annexes, partly confidential, 10 July 2009.

<sup>147</sup> Decision on Nikolić Motion Requesting the Trial Chamber to Exercise its Discretion Pursuant to Rule 98, 15 June 2009.

<sup>148</sup> Expedited Motion on behalf of Drago Nikolić Requesting the Trial Chamber to Issue a *Subpoena Duces Tecum*", 18 June 2009.

<sup>149</sup> Decision on the Expedited Motion on Behalf of Drago Nikolić Requesting the Trial Chamber to Issue a *Subpoena Duces Tecum*, 24 June 2009.

<sup>150</sup> Sreten Milošević, T. 33953–34040 (15 July 2009).

<sup>151</sup> General Miletić's Motion to Reopen the Defence Case, confidential, 1 Apr 2009 (French original), 7 Apr 2009 (English translation).

<sup>152</sup> General Miletić's Motion to Reopen the Defence Case, confidential, 1 Apr 2009 (French original), 7 Apr 2009 (English translation).

<sup>153</sup> Decision on General Miletić's Motion to Reopen the Defence Case, confidential, 23 Apr 2009.

<sup>154</sup> Decision on General Miletić's Motion to Reopen the Defence Case, confidential, 23 Apr 2009. On the same day the Trial Chamber also granted another motion sought by Miletić, seeking protection of the documentary evidence it had sought to tender pursuant to 92 *bis*. Decision on General Miletić's Motion for the Application of Rule 70 and for Protective Measures, confidential, 23 Apr 2009.

34. On 28 April 2009, **Miletić** again sought to reopen his case to introduce video evidence.<sup>155</sup> The Trial Chamber granted the motion.<sup>156</sup> On 18 May 2009, **Miletić** also requested, pursuant to Rule 92 *bis*, the admission into evidence of statement made by a protected witness.<sup>157</sup> The statement was admitted.<sup>158</sup> On 22 July 2009, the Trial Chamber denied **Miletić**'s third motion to reopen his case.<sup>159</sup>

35. On 12 June 2009, **Gvero** filed a motion seeking four Prosecution witnesses to be re-called and the reopening of his case to present additional witnesses to rebut evidence presented during the Prosecution's second reopening.<sup>160</sup> In its decision on 15 June 2009, the Trial Chamber denied the request to recall the Prosecution witnesses.<sup>161</sup> In its further decision on 24 June 2009, the Trial Chamber permitted **Gvero** to reopen his case and to call five of the six witnesses requested.<sup>162</sup> On 26 June 2009, the Trial Chamber denied a **Gvero** motion seeking reconsideration from the Trial Chamber of its decision on 15 June 2009.<sup>163</sup> **Gvero** called four of these witnesses on 2 and 3 July 2009.<sup>164</sup>

## 6. Final Briefs and Closing Arguments

36. The Prosecution and all Accused filed their final briefs on 30 July 2009.<sup>165</sup> The Prosecution made its closing argument between 2 and 7 September 2009.<sup>166</sup> **Popović** made his closing argument

<sup>155</sup> General Miletić's Second Motion to Reopen the Defence Case, confidential, 28 Apr 2009 (French original), 7 May 2009 (English translation).

<sup>156</sup> Decision on General Miletić's Second Motion to Reopen the Defence Case, confidential, 15 May 2009.

<sup>157</sup> General Miletić's Motion to Admit a Written Statement Pursuant to Rule 92 *bis* of the Rules of Procedure and Evidence, confidential, 18 May 2009 (French original), 28 May 2009 (English translation).

<sup>158</sup> Decision on General Miletić's Motion to Admit a Written Statement Pursuant to Rule 92 *bis*, confidential, 9 June 2009.

<sup>159</sup> Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, 22 July 2009.

<sup>160</sup> Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-Opening of Milan Gvero's Case, 12 June 2009.

<sup>161</sup> Partial Decision on Gvero Motion Seeking the Recall of Certain Prosecution Witnesses and the Reopening of the Case, 15 June 2009.

<sup>162</sup> Further Decision on Gvero Motion Seeking to Recall Prosecution Witnesses and to Reopen the Case, confidential, 24 June 2009, p. 2. The Trial Chamber denied **Gvero**'s request to call Zdravko Tolimir on the basis that this was opposed by the Prosecution because it would involve core factual issues that would bear directly on the criminal involvement of the Accused. *Ibid.*, pp. 2–3.

<sup>163</sup> Decision on Motion on behalf of Milan Gvero seeking Reconsideration and, in the Alternative, Certification, 26 June 2009.

<sup>164</sup> One witness was granted protective measures, T. 33831 (2 Jul 2009).

<sup>165</sup> Prosecution Filing of Final Trial Brief Pursuant to Rule 65ter (E), confidential, 30 July 2009; Vujadin Popović's Final Brief, confidential, 30 July 2009; Defendant, Ljubiša Beara's Final Trial Brief, confidential, 30 July 2009; Final Trial Brief On Behalf of Drago Nikolić, confidential, 30 July 2009; Ljubomir Borovčanin's Final Trial Brief, public with a confidential annex, 30 July 2009; Final Trial Brief of The Defence For General Miletić, confidential, 30 July 2009 (French original), 24 Aug 2009 (English translation); Final Brief on Behalf of Milan Gvero, confidential, 30 July 2009; Defence Final Trial Brief on Behalf of Vinko Pandurević, confidential, 30 July 2009; Filing of Pandurević Defence Final Trial Brief with Paragraph Numbers, confidential, 2 Sept 2009. The Prosecution filed a public redacted version of the sentencing section of its final brief. Prosecution's Motion to File a Public Redacted Version of Chapter XIV (Sentencing) of the Prosecution Final Trial Brief, public with confidential appendix, 4 Sept 2009. The Prosecution and a few Accused file corrigenda to their final briefs: Corrigendum to the Prosecution Final Brief, 2 Sept 2009; Second Corrigendum to the Prosecution Final Trial Brief,

on 7 September 2009,<sup>167</sup> followed by **Beara** on 8 September 2009,<sup>168</sup> **Nikolić** on 8 and 9 September 2009,<sup>169</sup> **Borovčanin** on 9 and 10 September 2009,<sup>170</sup> **Miletić** on 10 and 11 September 2009,<sup>171</sup> **Gvero** on 11 September 2009<sup>172</sup> and **Pandurević** on 14 September 2009.<sup>173</sup> **Nikolić** and **Gvero** made a respective statement at the closing arguments.<sup>174</sup>

### 7. Agreed Facts, Stipulations, and Adjudicated Facts

37. On 5 May 2006, the Prosecution filed a motion requesting the Trial Chamber to take judicial notice pursuant to Rule 94(B) of 534 facts adjudicated in the *Krstić* Trial Judgement of November 2001, the *Krstić* Appeal Judgement of April 2004, and the *Blagojević and Jokić* Trial Judgement of January 2005.<sup>175</sup> The Trial Chamber granted the motion in part, taking judicial notice of 288 adjudicated facts.<sup>176</sup> Subsequently, **Popović** and **Nikolić** filed motions seeking certification to appeal the decision pursuant to Rule 73 (B).<sup>177</sup> The Trial Chamber denied the request.<sup>178</sup>

38. On 1 May 2008, **Popović** filed a motion requesting the Trial Chamber to take judicial notice pursuant to Rule 94 (B) of 66 facts adjudicated in the *Krajišnik* Trial Judgement and the *Orić* Trial.<sup>179</sup> The Trial Chamber granted the motion in part, taking judicial notice of 50 adjudicated facts.<sup>180</sup>

39. A number of “Stipulations” between the Parties were admitted into the record during the course of trial.<sup>181</sup>

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1 Oct 2009; Vujadin Popović’s Corrigendum to his Final Brief, confidential, 7 Sept 2009; Corrigendum to Final Trial Brief on behalf of Drago Nikolić, 15 Sept 2009; Borovčanin Defence Corrigendum to its Final Trial Brief, confidential, 4 Sept 2009. **Borovčanin** filed a response to the Prosecution’s corrigendum. Borovčanin Response to ‘Second Corrigendum to the Prosecution Final Trial Brief’, 15 Oct 2009. On 23 April 2010, **Borovčanin** filed his public and corrected final brief. Ljubomir Borovčanin’s Public and Corrected Final Trial Brief, 23 Apr 2010.

<sup>166</sup> T. 34043–34322 (2–7 Sept 2009).

<sup>167</sup> T. 34322–34400 (7 Sept 2009).

<sup>168</sup> T. 34409–34466 (8 Sept 2009).

<sup>169</sup> T. 34466–34551 (8–9 Sept 2009).

<sup>170</sup> T. 34551–34605 (9–10 Sept 2009).

<sup>171</sup> T. 34606–34675 (10–11 Sept 2009).

<sup>172</sup> T. 34676–34743 (11 Sept 2009).

<sup>173</sup> T. 34745–34835 (14 Sept 2009).

<sup>174</sup> T. 34896–34911 (15 Sept 2009).

<sup>175</sup> Prosecution’s Motion for Judicial Notice of Adjudicated Facts, 5 May 2006.

<sup>176</sup> Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 Sept 2006.

<sup>177</sup> Defence Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 2 Oct 2006; Motion on behalf of Drago Nikolić Joining the Popović Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 3 Oct 2006.

<sup>178</sup> Decision on Defence Motion for Certification to Appeal Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 20 Oct 2006.

<sup>179</sup> Vujadin Popović’s Motion for Judicial Notice of Adjudicated Facts, 1 May 2008.

<sup>180</sup> Decision on Popović’s Motion for Judicial Notice of Adjudicated Facts with annex, 2 June 2008.

<sup>181</sup> Stipulations Between the Office of the Prosecution and the Accused Ljubisa Beara Regarding the Testimony of Dražen Erdemović, 7 May 2007; Stipulations Between the Office of the Prosecutor and the Accused Vujadin Popović Regarding the Testimony of Dražen Erdemovic, 14 May 2007; Stipulation Between Representatives of the

40. On 21 July 2006, the Prosecution filed a motion for judicial notice of facts of common knowledge pursuant to Rule 94(A), requesting the Trial Chamber to take judicial notice of a proposed fact.<sup>182</sup> On 26 September 2006, the Trial Chamber denied the motion.<sup>183</sup>

## 8. Contempt Proceedings

41. Dragan Jokić, who at the time was serving a nine-year prison sentence for his conviction entered by this Tribunal on 17 January 2005 in the *Blagojević* and *Jokić* case, was subpoenaed on 29 August 2007 to give oral testimony in this case.<sup>184</sup> On 31 October 2007, upon being asked to take the solemn declaration, Jokić claimed he was unable to testify.<sup>185</sup> The Trial Chamber instructed Jokić to provide a confidential and *ex parte* filing justifying his alleged inability to testify,<sup>186</sup> which he filed later that same day.<sup>187</sup> On 1 November 2007, the Trial Chamber decided that nothing in the filing justified Jokić's refusal to testify.<sup>188</sup> As a result of Jokić's continuing refusal to testify,<sup>189</sup> the Trial Chamber found sufficient grounds to initiate proceedings against him for contempt of the Tribunal.<sup>190</sup> Pursuant to Rule 77(D)(ii) it decided to prosecute the matter itself.<sup>191</sup>

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Office of the Prosecutor and the Accused Drago Nikolić Regarding the Testimony of Dražen Erdemović, 15 May 2007; Ex. 3D00585 (confidential); Stipulation between the Office of the Prosecutor and the Accused Radivoje Miletić Concerning Convoy-related Documents with Appendix, 2 June 2009. During the proceedings on 7 February 2008, three stipulations were admitted: a stipulation on the admission of the so-called "Scorpions video"; a stipulation on the admission of still images during the Borovčanin interview; and a stipulation with regard to Ahmo Hasić's description of the school where he was held in Bratunac, T. 21188–21191 (7 Feb 2008); Ex. P03248, "Stipulation: Statement of Agreed Facts Concerning the Execution Video showing the Killing of Six Bosnian Muslim Men near Trnovo"; Ex. P03246, "Borovčanin Interview Book of Still Images with Stipulation". During the proceedings on 26 January 2009, the Prosecution and Gvero notified their stipulation concerning Thomas Dibb, T. 30599–30600 (26 Jan 2009); Ex. 6D00337, "Stipulation made by Gvero and the Prosecution regarding Thomas Dibb". Stipulations related to the Trivić diary were admitted on 26 January 2010 in the "Decision on Prosecution Motion to reopen its case", Ex. 7D01240, "Stipulations between the Prosecution and the Defence concerning the Diary of Mirko Trivić".

<sup>182</sup> Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 21 July 2006. The proposed fact reads: "Starting in April 1992 and until 16 April 1993, Bosnian Serb political and military leaders implemented a plan to link Serb-populated areas in Bosnia and Herzegovina together, to gain control over these areas and to create a separate Bosnian Serb state from which most non-Serbs would be permanently removed. This plan involved the forced movement of many Bosnian Muslims from their homes via a pattern of conduct commonly referred to as 'ethnic cleansing'". *Ibid.*, p.1.

<sup>183</sup> Decision on Prosecution Motion for Judicial Notice of Facts of Common Knowledge Pursuant to Rule 94(A), 26 Sept 2006 (noting that the judicial and documentary record provided by the Prosecution was not sufficient to establish that the proposed fact was notorious and commonly accepted).

<sup>184</sup> Decision on Prosecution Motion for Subpoena of Dragan Jokić and Decision on Protective Measures, confidential, 29 Aug 2007; Order, confidential and *ex parte*, 29 Aug 2007; Order, confidential and *ex parte*, 26 Oct 2007.

<sup>185</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17245–17247, 17254, 17268 (closed session) (31 Oct 2007).

<sup>186</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17263–17264 (closed session) (31 Oct 2007).

<sup>187</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Submission by Dragan Jokić Presenting Grounds to Justify His Refusal to Respond to the Summons to Appear before the Court, confidential and *ex parte*, 31 Oct 2007 (French original), 2 Nov 2007 (English translation).

<sup>188</sup> T. 17274 (closed session) (1 Nov 2007).

<sup>189</sup> T. 17274–17275, 17279 (partly in closed session) (1 Nov 2007).

<sup>190</sup> Upon being called Jokić refused to give a solemn declaration to allow the Trial Chamber to assess his fitness, T. 17244–17247 (closed session) (31 Oct 2007). After session Jokić lodged a submission detailing why he was unable to give evidence. Submission by Dragan Jokić Presenting Grounds to Justify His Refusal to Respond to the Summons to Appear before The Court, confidential and *ex parte*, 31 Oct 2007 (French original), 2 Nov 2007

42. The contempt case against Jokić was held on 19 November 2007, 10 December 2007 and 15 December 2008.<sup>192</sup> Jokić pleaded not guilty.<sup>193</sup> On 27 March 2009, the Trial Chamber issued its Judgement, in which it found that Jokić, by persistently refusing to testify without a reasonable excuse in this case while being a witness before the court, knowingly and wilfully interfered with the Tribunal's administration of justice.<sup>194</sup> Jokić was sentenced to four months imprisonment, to be served consecutively with the sentence he was already serving.<sup>195</sup>

43. On 14 April 2009, Jokić filed an appeal against the Trial Chamber Judgement.<sup>196</sup> On 25 June 2009, the Appeals Chamber upheld the Trial Chamber's Judgment.<sup>197</sup>

## 9. Evidentiary Matters

### (a) Borovčanin Statement

44. On 6 July 2007, the Prosecution filed a confidential motion seeking to amend its Rule 65 *ter* Exhibit List to add documents pertaining to the Borovčanin Statement and admit them into evidence.<sup>198</sup> On 25 October 2007, the Trial Chamber admitted Borovčanin Statement as evidence against him.<sup>199</sup> With regard to the use of Borovčanin Statement against the co-Accused, the Trial Chamber concluded, by majority with Judge Prost partially dissenting, that unless **Borovčanin** was able to be cross-examined the interview could not be used as evidence of the acts and conduct of his co-accused.<sup>200</sup> The Trial Chamber granted the parties certification to appeal the decision.<sup>201</sup>

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(English translation). On resumption of proceedings the following day the Trial Chamber rejected Jokić's submission as providing any basis for not giving evidence. T. 17275 (1 Nov 2007).

<sup>191</sup> See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, T. 17279–17281 (1 Nov 2007).

<sup>192</sup> Scheduling Order, 9 Nov 2007; *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, T. 1–7 (19 Nov 2007), T. 1–63 (partly in closed session) (10 Dec 2007), T. 1–70 (partially in closed session) (15 Dec 2008).

<sup>193</sup> *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, T. 2 (19 Nov 2007).

<sup>194</sup> *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 Mar 2009, para. 37.

<sup>195</sup> *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1, Judgement on Allegations of Contempt, 27 Mar 2009, para. 42.

<sup>196</sup> Notice of Appeal Filed by Dragan Jokić Against the Trial Judgement, confidential, 14 Apr 2009 (French original), 21 Apr 2009 (English translation).

<sup>197</sup> *Contempt Proceedings against Dragan Jokić*, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 25 June 2009.

<sup>198</sup> Prosecution's Motion for Leave to Amend 65 *ter* Exhibit List with 18 Exhibits Pertaining to Alistar Graham, confidential, 6 July 2007; Motion for Leave to Supplement Prosecution's 6 July 2007 65 *ter* Motion, 12 July 2007; Corrigendum to Prosecution's 6 July 2007 and 12 July 2007 Motions seeking leave to Amend 65 *ter* Exhibit List, 13 July 2007.

<sup>199</sup> Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007.

<sup>200</sup> Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007, Partial Dissenting Opinion of Judge Kimberly Prost.

<sup>201</sup> Decision on the Admissibility of the Borovčanin Interview and the Amendment of the Rule 65 *ter* Exhibit List, 25 Oct 2007.

45. The Appeals Chamber reversed the Trial Chamber's decision on the admissibility of the Borovčanin Statement against the co-Accused.<sup>202</sup> On 18 January 2008, the Trial Chamber admitted the Borovčanin Statement for all purposes.<sup>203</sup>

(b) Documentary Evidence Admitted from the Bar Table

46. On 14 March 2008, the Trial Chamber granted a motion by the Prosecution for admission of documents from the Bar Table.<sup>204</sup> On 12 May 2009, the Trial Chamber granted in part a motion by **Nikolić** seeking to admit documents from the Bar Table.<sup>205</sup>

47. Between June and July 2009, **Popović**, **Gvero** and the Prosecution filed motions seeking to admit further documentary evidence from the Bar Table.<sup>206</sup> The Trial Chamber denied these Motions.<sup>207</sup> **Popović** sought certification to appeal this decision,<sup>208</sup> and **Gvero** requested the Trial Chamber to either reconsider its decision, or to allow certification to appeal.<sup>209</sup> On 30 July 2009, the Trial Chamber reconsidered its decision, granted **Popović** and **Gvero**'s requests in part and admitted some of the proposed evidence.<sup>210</sup>

(c) Expert Witnesses

48. In this case, the Trial Chamber received evidence of 12 expert witnesses called by the Prosecution and 17 expert witnesses called by the Accused. The Trial Chamber hereby notes a few specific issues that arose with regard to expert witnesses.

<sup>202</sup> *Prosecutor v. Popović et al.*, Case No IT-05-88-AR73.1, Decision on Appeals against Decision admitting Material Related to Borovčanin's Questioning, 14 Dec 2007. The Appeals Chamber dismissed the motions by the Accused and allowed the Prosecution's motion in the part relating to the admissibility of the evidence.

<sup>203</sup> T. 19993 (18 Jan 2008).

<sup>204</sup> Decision on Prosecution's Motion for Admission of Exhibits from the Bar Table, Motion to Amend the Bar Table Motion, and Oral Motion for Admission of Additional Exhibit, 14 Mar 2008.

<sup>205</sup> Decision on Nikolić Bar Table Motion, confidential, 12 May 2009.

<sup>206</sup> Vujadin Popović's Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, with confidential annexes, partially confidential, 23 June 2009; Vujadin Popović's Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, partially confidential, 25 June 2009; Vujadin Popović's Further Addendum to the Motion to Amend his Rule 65 *ter* List and for the Admission of Documents from the Bar Table, confidential, 29 June 2009; Motion on Behalf of Milan Gvero Seeking the Admission of Five Documents from the Bar Table, 9 July 2009; Prosecution's Motion for Admission of Exhibits from the Bar Table with confidential appendix, confidential, 10 July 2009.

<sup>207</sup> Consolidated Decision on the Motions for the Admission of Evidence and Other Related Motions, 22 July 2009.

<sup>208</sup> Vujadin Popović's Request for Clarification of the 'Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions' and for Certification to Appeal", 24 July 2009.

<sup>209</sup> Motion on behalf of Milan Gvero seeking Reconsideration of the Trial Chamber's Refusal to Allow the Admission of Documents from the Bar Table and, in the Alternative, Certification of the Same, 24 July 2009.

<sup>210</sup> Decision on Gvero's and Popović's Motions Regarding Consolidated Decision on Motions for the Admission of Evidence and Other Related Motions, confidential, 30 July 2009.

49. On 9 June 2006, the Prosecution filed a notice of Richard Butler's military reports.<sup>211</sup> **Popović, Nikolić, Pandurević** and **Beara** filed motions opposing the admission of this report and objecting to Butler's status as an expert military analyst witness.<sup>212</sup> On 31 October 2006, the Prosecution confidentially disclosed five additional reports by Butler which were included in the Prosecution's disclosure of expert witness statements.<sup>213</sup> On 19 September 2007, the Trial Chamber permitted the Prosecution to call Butler as an expert witness, adding that the admissibility of Butler's reports would only be decided after his examination and cross-examination had concluded.<sup>214</sup>

50. On 26 September a Joint defence motion for certification was filed,<sup>215</sup> which the Trial Chamber granted on 30 October 2007.<sup>216</sup> Subsequently, a joint defence appeal was filed on 6 November 2007.<sup>217</sup> On 30 January 2008, the Appeals Chamber dismissed the appeal.<sup>218</sup>

51. On 6 February 2008 the Accused filed a joint motion seeking the exclusion of two narratives,<sup>219</sup> prepared by Butler and tendered by the Prosecution, on the basis that they lacked relevance and probative value.<sup>220</sup> On 27 March 2008, the Trial Chamber denied the motion, and admitted the narratives.<sup>221</sup>

52. In December 2006, **Gvero** and **Miletić** filed motions requesting the Prosecution to specify Rupert Smith's qualifications, and comply with the requirements set out in Rule 94 *bis* for calling

<sup>211</sup> Prosecution's Notice of Filing Military Report of Richard Butler, 9 June 2006. This report contained the "VRS Main Staff Command Responsibility Report" as Annex A.

<sup>212</sup> Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 2 Oct 2006; Motion on Behalf of Drago Nikolić Joining "Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler", 11 Oct 2006; Motion on Behalf of Vinko Pandurević and Ljubiša Beara Joining "Defence Motion Pursuant to Rule 127(A) for Extension of Time to File the Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler", 17 Oct 2006.

<sup>213</sup> Prosecution's Notice of Disclosure of Expert Witness Statements Under Rule 94 *bis*, confidential, 31 Oct 2006.

<sup>214</sup> Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 19 Sept 2007.

<sup>215</sup> Joint Defence Motion for Certification of the Trial Chamber's Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 26 Sept 2007; Motion on Behalf of Drago Nikolić Joining the Joint Defence Motion for Certification of the Trial Chamber's Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Richard Butler, 27 Sept 2007.

<sup>216</sup> Decisions on Motion for Certification of Decision on Defence Rule 94 *bis* Notice Regarding Prosecution Expert Witness Richard Butler, 30 Oct 2007.

<sup>217</sup> Joint Defence interlocutory appeal concerning the status of Richard Butler as an Expert Witness, partially confidential, 6 Nov 2007 (filed by **Popović, Beara, Nikolić** and **Pandurević**).

<sup>218</sup> *Prosecutor v. Popović et al.*, Case No IT-05-88 AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 Jan 2008.

<sup>219</sup> Srebrenica Military Narrative of 15 May 2000 and the Revised Srebrenica Military Narrative of 1 November 2002.

<sup>220</sup> Joint Defence Motion Challenging the Admissibility of the Narratives Prepared by Witness Richard Butler, 6 Feb 2008.

<sup>221</sup> Decision on the admissibility of the Narratives of Expert Witness Richard Butler, 27 Mar 2008; Comparison of Richard Butler's Srebrenica Military Narratives, 31 Mar 2008.



expert witnesses.<sup>222</sup> **Gvero** filed a further motion on 8 January 2007, arguing that the Prosecution's failure to comply with the requirement set out in Rule 94 *bis* should preclude it from eliciting evidence from Smith at trial.<sup>223</sup> **Gvero** further argued that Smith should be precluded from testifying as a witness because he was also appearing as a factual witness.<sup>224</sup> On 30 March 2007, the Trial Chamber rendered a decision, in which it ordered **Miletić** and **Gvero** to file submissions detailing all the objections to Smith testifying as an expert.<sup>225</sup> The Accused filed separate submissions on 20 April 2007 challenging the Prosecution's request to call General Smith as an expert in relation to the history, function and importance of a Main Staff in general; the function and operation of the VRS Main Staff; and the command doctrine of the VRS.<sup>226</sup> On 11 October 2007, the Trial Chamber permitted Smith to testify as an expert with regard to the history, function, and importance of a Main Staff in general, but not with regard to the function and operation of the VRS Main Staff, or the command doctrine of the VRS.<sup>227</sup>

53. Following Smith's testimony, **Miletić** and **Gvero** filed motions seeking the exclusion of Smith's statement from the evidence or alternatively the redaction of some parts of the Statement.<sup>228</sup> The Trial Chamber dismissed the motion on 11 March 2008, stating that it would not consider opinion evidence that went beyond Smith's previously established limits as an expert witness.<sup>229</sup> **Miletić** subsequently requested certification to appeal the decision,<sup>230</sup> which the Trial Chamber denied.<sup>231</sup>

54. On 1 May 2008, **Popović, Beara, Nikolić, Borovčanin** and **Pandurević** filed a joint notice pursuant to Rule 94 *bis*, in which they disclosed Professor Schabas' expert report and requested the

<sup>222</sup> Motion and Notice Pursuant to Rule 94 *bis* Relating to the Evidence of General Sir Rupert Smith, confidential, 15 Dec 2006; General Miletić's Motion Regarding the Testimony of General Sir Rupert Smith, confidential, 27 Dec 2006 (French Original), 10 Jan 2007 (English translation); Prosecution's Notice of Disclosure of Expert Witness Statements Under Rule 94 *bis*, confidential, 31 Oct 2006.

<sup>223</sup> General Gvero's Motion to Strike Prosecution Response as Untimely or For Leave to Reply: Motion Relating to Evidence of General Sir Rupert Smith, 8 Jan 2007, para. 10.

<sup>224</sup> General Gvero's Motion to Strike Prosecution Response as Untimely or For Leave to Reply: Motion Relating to Evidence of General Sir Rupert Smith, 8 Jan 2007, para. 11.

<sup>225</sup> Decision Regarding Evidence of General Rupert Smith and the Calculation of Time Limits Under Rule 126 *bis*, 30 Mar 2007, p. 4.

<sup>226</sup> Submission on Behalf of General Milan Gvero Pursuant to Rule 94 *bis* Relating to the Proposed Expert Evidence of General Sir Rupert Smith, 20 Apr 2007; Submissions of General Miletić in Respect of the Testimony of General Sir Rupert Smith, 20 Apr 2007 (French original), 1 May 2007 (English translation).

<sup>227</sup> Second Decision regarding the evidence of General Rupert Smith, 11 Oct 2007, p. 5.

<sup>228</sup> General Miletić's Objection to the Admission into Evidence of General Smith's Expert Statement, 21 Nov 2007 (French original), 28 Nov 2007 (English translation); Passages of the Expert Statement of General Smith to Which Objection is Taken by Milan Gvero, 21 Nov 2007.

<sup>229</sup> Decision on Defence Objections to Admission of the Expert Statement of General Rupert Smith, 11 Mar 2008, p. 2.

<sup>230</sup> General Miletić's Request for Certification to Appeal the Decision on Defence Objections to the Admission of Expert Statement of General Smith, 18 Mar 2008 (French original), 26 Mar 2008 (English translation).

<sup>231</sup> Decision on Miletić's Request for Certification of the Decision on Defence Objections to the Admission of the Expert Statement of General Rupert Smith, 15 Apr 2008.

Trial Chamber to take notice of its disclosure to the Prosecution.<sup>232</sup> On 19 May 2008, the Prosecution filed a notice, in which it requested the Trial Chamber not to admit the report and proposed evidence of Professor Schabas, challenging the relevance of the contents of his report and his proposed testimony.<sup>233</sup> On 1 July 2008, the Trial Chamber held that the five Accused would not be permitted to call Professor Schabas as an expert witness, nor tender the report as an expert report because the subject on which Professor Schabas' expertise was offered in this case was a matter which fell directly within the competence of the Trial Chamber.<sup>234</sup> On 30 July 2008, the Trial Chamber dismissed a request by the five Accused for reconsideration of this decision.<sup>235</sup>

(d) Impeaching one's own Witness

55. During the proceedings held on 17 September 2007, the Trial Chamber by majority, Judge Agius dissenting, ruled that any party may challenge the credibility of its own witness.<sup>236</sup> It granted a request by all the Accused for certification to appeal the decision.<sup>237</sup> The Appeals Chamber partly granted the joint appeal by the Accused, holding that the Trial Chamber had erred in putting the decision to impeach a witness in the hands of the party calling him.<sup>238</sup>

(e) Intercept Evidence

56. On 12 September 2006, the Trial Chamber decided to defer the ruling on the admission of intercepted communications until the issue could be addressed in a comprehensive manner.<sup>239</sup> Following an order issued by the Trial Chamber on 17 January 2007,<sup>240</sup> five Accused filed submissions substantially describing the nature of their objections to the intercept evidence.<sup>241</sup>

<sup>232</sup> Joint Notice of Disclosure of an Expert Witness Report Pursuant to Rule 94 *bis*—Historical Legal Expert, 1 May 2008.

<sup>233</sup> Notice Pursuant to Rule 94 *bis* Concerning Defence Non-Military Expert Reports and Two Military Expert Reports and Objection to the Schabas Report and Testimony, confidential, 19 May 2008.

<sup>234</sup> Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 1 July 2008.

<sup>235</sup> Decision on the Request for Reconsideration of the Decision on the Admissibility of the Expert Report and Proposed Expert Testimony of Professor Schabas, 30 July 2008.

<sup>236</sup> T. 15457–15458 (17 Sept 2007).

<sup>237</sup> Decision on Certification and Clarification of the Trial Chamber's Oral Decision on Impeachment of a Party's own Witness, 21 Nov 2007.

<sup>238</sup> *Prosecutor v. Popović et al.* Case No. IT-05-88-AR73.3, Decision on Appeal against Decision on Impeachment of a Party's Own Witness, 1 Feb 2008. The Appeals Chamber further held that a party must seek permission of the Trial Chamber to impeach its own witness in relation to that witness's credibility or the substance of their testimony; and that the scope of that challenge must be subjected to the Trial Chamber's control. *Ibid.*, paras. 24–28.

<sup>239</sup> Decision on Prosecution's *Confidential* Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92 *bis*, 12 Sept 2006, para. 103; Prosecution's Motion for Admission of Written Evidence in lieu of *Viva Voce* Testimony pursuant Rule 92 *bis* and attached annexes A-D, confidential, 12 May 2006.

<sup>240</sup> Order regarding intercepted Communications, 17 Jan 2007.

<sup>241</sup> Defence Submission on Behalf of Drago Nikolić Regarding its Objection to the Admissibility of Intercepted Communications, 2 Feb 2007; [Popović] Defence Submissions on the Exclusion of Intercept Evidence Pursuant to Rule 95, 2 Feb 2007; Accused Beara's Submissions Regarding the Lack of Admissibility of Intercept Evidence,

57. On 1 May 2007, the Prosecution filed a submission seeking admissibility of intercepted evidence.<sup>242</sup> In its decision of 7 December 2007, the Trial Chamber found that all of the intercepts tendered by the Prosecution were *prima facie* credible and therefore sufficiently relevant and probative to be admitted.<sup>243</sup> During the trial, the Prosecution tendered 213 individual intercepts of VRS communications, several related documents and called 28 former intercept operators to testify in support of the admission of the intercepts.<sup>244</sup>

#### 10. Provisional Release

58. On 25 April 2008, **Popović** filed a motion requesting provisional release “in the form of a custodial visit” on humanitarian grounds,<sup>245</sup> which was denied due to flight risk.<sup>246</sup> On a **Popović** appeal,<sup>247</sup> this decision was upheld.<sup>248</sup> On 9 July 2008, **Nikolić** filed a motion for provisional release under custodial conditions on compassionate grounds.<sup>249</sup> The Trial Chamber granted **Nikolić** provisional release for a period of four days (including travel time).<sup>250</sup>

59. On 15 December 2006, the Trial Chamber denied a second motion for release by **Borovčanin**.<sup>251</sup> This decision was upheld on appeal.<sup>252</sup> On 24 July 2007, the Trial Chamber granted **Borovčanin** seven days of custodial release.<sup>253</sup> On 9 April 2008, the Trial Chamber granted

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2 Feb 2007; General Miletić’s Submission Objecting to the Admissibility of Intercepted Communications, 2 Feb 2007 (French original), 9 Feb 2007 (English translation); Borovčanin Defence Notification on Joining Other Srebrenica Defence Preliminary Submissions Regarding Admissibility of Intercept Material and Evidence, 5 Feb 2007.

<sup>242</sup> Prosecution’s Submission in Support of the Admissibility of Intercept Evidence, with Confidential Annexes, 1 May 2007.

<sup>243</sup> Decision on Admissibility of Intercepted Communications, 7 Dec 2007.

<sup>244</sup> Decision on Admissibility of Intercepted Communications, 7 Dec 2007.

<sup>245</sup> The Accused Vujadin Popovic’s Motion for Provisional Release, in the Form of a Custodial Visit, Based on Humanitarian Grounds, confidential, 25 Apr 2008.

<sup>246</sup> Decision on Popović’s Motion for Provisional Release, confidential, 28 May 2008, public redacted version, 28 May 2008.

<sup>247</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Vujadin Popović’s Interlocutory Appeal Against the “Decision on Popović’s Motion for Provisional Release”, 4 June 2008.

<sup>248</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.7, Decision on Vujadin Popović’s Interlocutory Appeal Against the Decision on Popović’s Motion for Provisional Release, 1 July 2008.

<sup>249</sup> Motion on behalf of Drago Nikolic Seeking Provisional Release under Custodial Conditions on Compassionate Grounds, confidential, 9 July 2008.

<sup>250</sup> Decision on Nikolić’s Motion for Provisional Release, 21 July 2008. On 30 July 2008, the Trial Chamber granted Nikolić’s motion seeking variation of the terms of his release. Decision on Nikolić’s Motion Seeking a Variation of the Conditions of his Provisional Release, 30 July 2008.

<sup>251</sup> Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin, confidential and *ex parte*, 15 Dec 2006.

<sup>252</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Decision on Interlocutory Appeal of Trial Chamber’s Decision Denying Ljubomir Borovčanin Provisional Release, 1 Mar 2007; See also *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.3, Defence Interlocutory Appeal Against the Trial Chamber’s ‘Decision on Defence Motion for Provisional Release of Ljubomir Borovčanin’ dated 15 Dec 2006, confidential and *ex parte*, 21 Dec 2006.

<sup>253</sup> Decision on Borovčanin’s Motion for Leave to Withdraw Application for Provisional Release and to File Application for “Custodial Visit to his Father for a Short Fixed Period Based on Humanitarian Grounds”, confidential, 24 July 2007.

**Borovčanin** seven days of custodial release.<sup>254</sup> The Prosecution filed an appeal against this decision.<sup>255</sup> The Appeals Chamber remitted the decision to the Trial Chamber for *de novo* determination regarding the duration of release.<sup>256</sup> The Trial Chamber subsequently granted **Borovčanin** four days of custodial release in May 2008.<sup>257</sup> On 17 December 2008, the Trial Chamber denied **Borovčanin**'s request for provisional release under custodial conditions.<sup>258</sup> On 3 June 2010, **Borovčanin** was granted permission to visit the Embassy of the Republic of Serbia in The Hague on strict custodial conditions.<sup>259</sup>

60. **Miletić** and **Gvero** were again provisionally released during the 2006 and 2007 winter recess<sup>260</sup> and the 2007 summer recess.<sup>261</sup> Both Accused were also granted provisional release during the break before commencement of the Defence cases,<sup>262</sup> which the Prosecution appealed.<sup>263</sup> On 15 May 2008, the Appeals Chamber remitted the decision concerning **Miletić** to the Trial Chamber for re-determination and reversed the decision concerning **Gvero**.<sup>264</sup> On 22 May 2008, **Miletić** was granted provisional release for a period not exceeding four days (including travel time).<sup>265</sup> On 21 July 2008, the Trial Chamber granted **Miletić**'s motion for provisional release for a period not exceeding seven days (excluding travel time).<sup>266</sup> On 10 December 2008, the Trial Chamber again granted a **Miletić** motion for provisional release for a period not exceeding seven days (excluding travel time).<sup>267</sup> On 15 October 2009, the Trial Chamber denied a **Miletić** motion for provisional release by majority, Judge Prost dissenting.<sup>268</sup> On a **Miletić** appeal,<sup>269</sup> this decision was overturned

<sup>254</sup> Decision on Borovčanin's Motion for Custodial Visit, confidential, 9 Apr 2008, public redacted version, 9 Apr 2008.

<sup>255</sup> *Prosecutor v. Popović et al.* Case No. IT-05-88-AR 65.6, Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, confidential, 10 Apr 2008, public redacted version, 15 Apr 2008.

<sup>256</sup> *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.4, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, 15 May 2008.

<sup>257</sup> Further Decision on Borovčanin's Motion for Custodial Visit, 22 May 2008.

<sup>258</sup> Decision on Borovčanin's Motion for Custodial Visit, 17 Dec 2008.

<sup>259</sup> Decision on Borovčanin's Motion for Custodial Visit, confidential, 3 June 2010.

<sup>260</sup> Decision on Defence Motions for Provisional Release of Radivoje Miletić and Milan Gvero, 7 Dec 2006; Decision on Motions for Provisional Release during the Winter Judicial Recess, 7 Dec 2007.

<sup>261</sup> Decision on Motion for Provisional Release from 21 July 2007 until the Resumption of Trial, 13 July 2007.

<sup>262</sup> Decision on Miletić's Request for Provisional Release During the Break in the Proceedings, 9 Apr 2008; Decision on Gvero's Request for Provisional Release During the Break in the Proceedings, 9 Apr 2008.

<sup>263</sup> *Prosecution v. Popović et al.* Case No. IT-05-88-AR 65.6, Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, confidential, 10 Apr 2008, public redacted version, 15 Apr 2008.

<sup>264</sup> *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.5 and Case No. IT-05-88-AR65.6, Decision on Consolidated Appeal against Decision on Borovčanin's Motion for a Custodial Visit and Decisions on Gvero's and Miletić's Motions for Provisional Release during the Break in the Proceedings, 15 May 2008.

<sup>265</sup> Further Decision on Miletić's Motion for Provisional Release, 22 May 2008.

<sup>266</sup> Decision on Miletić Motion for Provisional Release, 21 July 2008.

<sup>267</sup> Decision on Miletić's Motion for Provisional Release, 10 Dec 2008.

<sup>268</sup> Decision on Miletić's Motion for Provisional Release, confidential, with public dissenting opinion of Judge Prost, 15 Oct 2009.

on 19 November 2009.<sup>270</sup> On 11 February 2010, the Trial Chamber denied another **Miletić** motion for provisional release by majority, Judge Prost dissenting.<sup>271</sup>

61. On 21 July 2008, the Trial Chamber partially granted a motion by **Gvero** seeking provisional release, permitting a period not exceeding 7 days (excluding travel time) during the summer recess.<sup>272</sup> On 25 November 2008, **Gvero** sought provisional release during the winter judicial recess,<sup>273</sup> which was granted.<sup>274</sup> On 1 May 2009, **Gvero** sought provisional release during the period for preparation of closing arguments,<sup>275</sup> which was granted by the Trial Chamber.<sup>276</sup> On a Prosecution appeal,<sup>277</sup> this decision was overturned.<sup>278</sup> On 28 July 2009, in response to a motion to reconsider the provisional release<sup>279</sup> the Trial Chamber granted **Gvero** provisional release.<sup>280</sup> This decision was, again, appealed by the Prosecution and overturned by a duty Judge.<sup>281</sup> On 17 December 2009, the Trial Chamber, by majority, with Judge Agius dissenting, granted a **Gvero** motion for provisional release for a period not exceeding 25 days (excluding travel time).<sup>282</sup> Judge Prost appended a separate declaration.<sup>283</sup> This decision was overturned by the Appeals Chamber on 25 January 2010.<sup>284</sup>

<sup>269</sup> *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.10, Appeal Against the Decision on General Miletić's Motion for Provisional Release, confidential, 19 Oct 2009 (French original), 27 Oct 2009 (English translation).

<sup>270</sup> *Prosecutor v. Popović et al.* Case No. IT-05-88-AR65.10, Decision on Radivoje Miletić's Appeal Against Decision on Miletić's Motion for Provisional Release, confidential, 19 Nov 2009, public redacted version, 19 Nov 2009.

<sup>271</sup> Decision on Miletić's Motion for Provisional Release, confidential, 11 Feb 2010.

<sup>272</sup> Decision on Gvero's Motion for Provisional Release, 21 July 2008.

<sup>273</sup> Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons during the December 2008 Recess, confidential, 25 Nov 2008.

<sup>274</sup> Decision on Gvero's Motion for Provisional Release, 10 Dec 2008 (for a period not exceeding 7 days (excluding travel time)).

<sup>275</sup> Motion Seeking the Provisional Release of Milan Gvero for Humanitarian Reasons during the Period Allowed for the Preparation of Final Briefs and Closing Arguments, confidential and partially *ex parte*, 1 May 2009.

<sup>276</sup> Decision on Gvero's Motion for Provisional Release, confidential, 15 June 2009, public redacted version, 16 June 2009 (for a period not exceeding 21 days (excluding travel time)).

<sup>277</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.8, Prosecution's Appeal against Decision on Gvero's Motion For Provisional Release, confidential, 17 June 2009.

<sup>278</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.8, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 20 July 2009, public redacted version, 20 July 2009.

<sup>279</sup> Request for Reconsideration of Milan Gvero's Motion for Provisional Release in light of the Appeals Chamber Decision of 20 July 2009, confidential & urgent, 22 July 2009.

<sup>280</sup> Decision on Request for Urgent Reconsideration of Gvero's Motion for Provisional Release, confidential, 28 July 2009, public redacted version, 28 July 2009.

<sup>281</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.9, Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 29 July 2009; *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.9, Decision on Prosecution's Appeal against Decision on Gvero's Motion for Provisional Release, confidential, 6 Aug 2009.

<sup>282</sup> Decision on Gvero's Motion for Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration, 17 Dec 2009.

<sup>283</sup> Decision on Gvero's Motion For Provisional Release with Judge Agius' Dissenting Opinion and Judge Prost's Separate Declaration, 17 Dec 2009.

<sup>284</sup> *Prosecutor v. Popović et al.*, Case No. IT-05-88-AR65.11, Decision on Prosecution's Appeal against Decision on Gvero's Further Motion for Provisional Release, confidential, 25 Jan 2010.

62. On 11 December 2007, **Pandurević** was granted custodial release for 10 days during the winter recess.<sup>285</sup> On 21 July 2008, **Pandurević** was further granted custodial release for four days during the summer recess.<sup>286</sup>

#### 11. Reconstitution of Defence Teams

63. As of 2 November 2007, co-counsel for **Popović** Ms. Condon was replaced by Ms. Mira Tapušковиć.<sup>287</sup> As of 5 June 2008, co-counsel for **Beara** Mr Meek was replaced by Mr. Predrag Nikolić.<sup>288</sup> As of 25 March 2008, co-counsel for **Borovčanin** Mr. Stojanović was replaced by Mr. Christopher Gosnell.<sup>289</sup> As of 21 January 2010, lead counsel for **Borovčanin** Mr. Lazarević was replaced by Mr. Gosnell; in turn Mr Gosnell's role as co-counsel was filled by Ms. Tatjana Čmerić.<sup>290</sup> Mr. Petrušić was appointed co-counsel for **Miletić** on 20 February 2007.<sup>291</sup> Mr. David Josse was appointed co-counsel for **Gvero** on 12 September 2006.<sup>292</sup> As of 12 June 2009, co-counsel for **Pandurević** Mr. Sarapa was replaced by Mr. Simon Davis.<sup>293</sup>

#### 12. Site Visit

64. An on-site visit was conducted from 2 to 7 October 2006 to view the relevant sites for the case, including the municipalities of Srebrenica, Bratunac, Zvornik and Vlasenica.<sup>294</sup> During this period the Judges only viewed the geographical locations without receiving evidence or comments regarding events alleged to have occurred there.<sup>295</sup>

<sup>285</sup> Decision on Pandurević's Request for Provisional Release on Compassionate Grounds, 11 Dec 2007.

<sup>286</sup> Decision on Pandurević's Motion for Provisional Release, confidential, 21 July 2008, public redacted version, 21 July 2008.

<sup>287</sup> Decision of the Deputy Registrar, 2 Nov 2007.

<sup>288</sup> Decision by the Registrar re. assignment of counsel, 5 June 2008.

<sup>289</sup> Decision (by the Registrar regarding the withdrawal and assignment of co-counsel), 25 Mar 2008.

<sup>290</sup> Decision of the Deputy Registrar, 22 Jan 2010, pp. 2–3.

<sup>291</sup> Decision of the Registrar, 23 Feb 2007 (assigning Mr. Petrušić pursuant to the "Decision on Third Request for Review of the Registry Decision on the Assignment of Co-Counsel for Radivoje Miletić", 20 Feb 2007).

<sup>292</sup> Decision of the Deputy Registrar, 12 Sept 2006.

<sup>293</sup> Decision of the Registrar, 15 June 2009.

<sup>294</sup> T. 2426–2427 (16 Oct 2006).

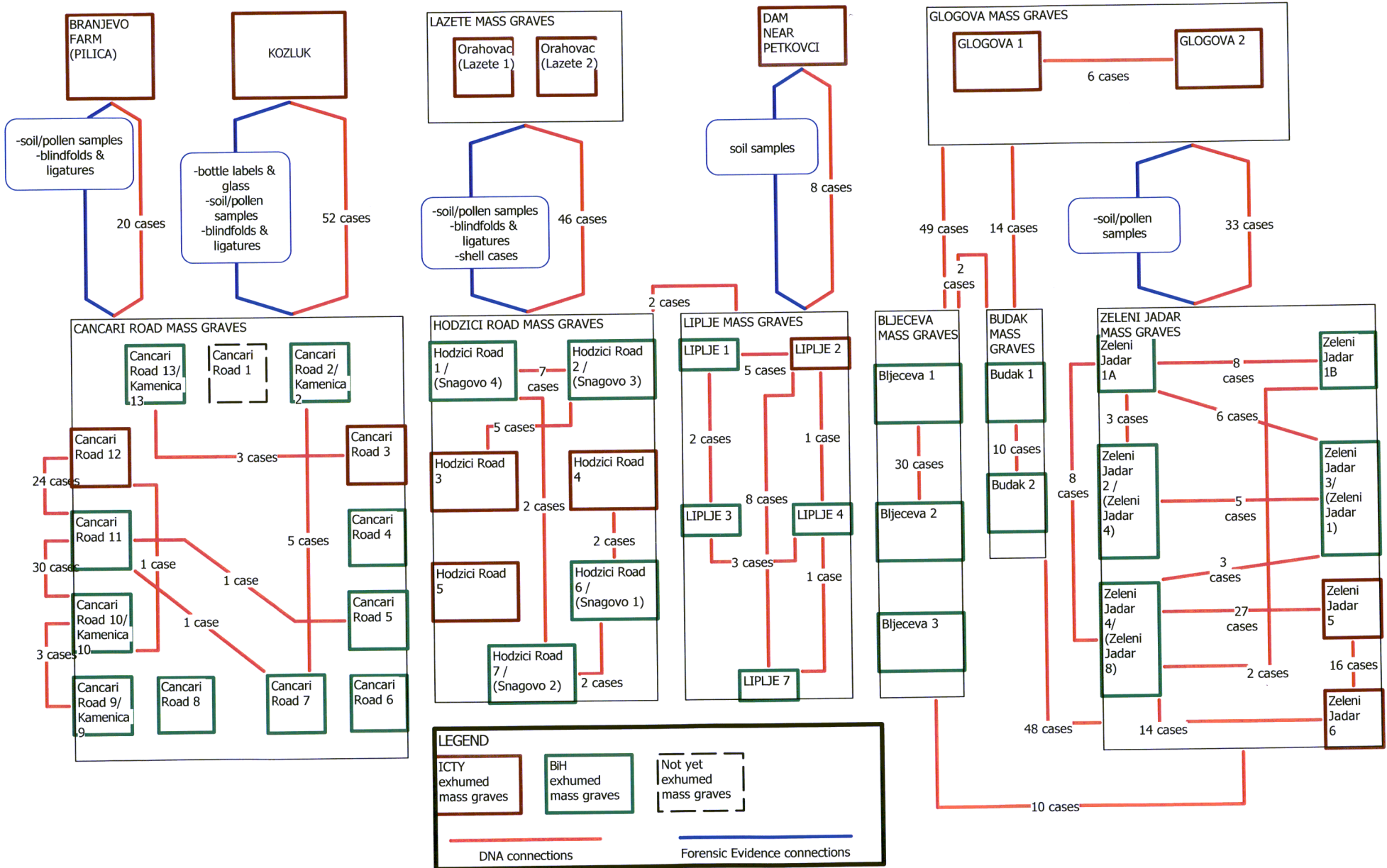
<sup>295</sup> T. 2426 (16 Oct 2006).

**DNA connection chart: Disturbed Mass Graves**  
**DNA and Forensic Evidence Connections: ICMP Data March 2009**

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