

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

Case No. IT-02-54-T

IN THE TRIAL CHAMBER

Before: Judge Patrick Robinson, Presiding
Judge Richard May,
Judge O-Gon Kwon

Registrar: Mr. Hans Holthuis

Date Filed: 03 May 2004

THE PROSECUTOR

v.

SLOBODAN MILO{EVI}

PUBLIC VERSION

PROSECUTION RESPONSE
TO AMICI CURIAE MOTION FOR JUDGEMENT OF ACQUITTAL
PURSUANT TO RULE 98 BIS

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PUBLIC VERSION

PROSECUTION RESPONSE
TO AMICI CURIAE MOTION FOR JUDGEMENT OF ACQUITTAL
PURSUANT TO RULE 98 BIS

I INTRODUCTION

1. In accordance with the Trial Chamber's Order of 25 February 2004, the Prosecution hereby responds to the Amici Curiae Motion for Judgement of Acquittal dated 3 March 2004 ("the Motion").
2. Since references are made to a combination of evidence from open and private or closed sessions of the trial, the motion is filed confidentially in its present form.¹ The Prosecution is, however, preparing a redacted version of its response, which will be available for public filing in the coming days.
3. In the present response, the Prosecution concentrates on the issues challenged by the Amici Curiae in its Motion. Were the Chamber to consider that any other issue should have been addressed in this context, the Prosecution respectfully requests that the Chamber grant the Prosecution an opportunity to do so. The Prosecution will remain at the disposal of the Chamber to make any submission, either orally or in writing, to answer any point that requires further explanation or any additional query by the Chamber.
4. For ease of reference, this response adopts the structure of the Motion. The references (inclusive) in the headings below are to the paragraphs of the Motion. Previously the

¹ In fact, although the Amici Motion was filed openly, there were certain references in it to non-public material.

Prosecution has produced documents summarising its evidence, and referred to them as "fill-box" documents. Updated versions of these documents are being produced separately from this response, and are now referred to as "Prosecution Summary, Kosovo", "Prosecution Summary, Croatia", and "Prosecution Summary, Bosnia and Herzegovina".² These terms will be abbreviated to "PS(K)", "PS(C)" and "PS(B)" respectively.

5. Where the Amici submit that no evidence or insufficient evidence has been led of crimes set out in Schedules A-F of the Indictment, the Prosecution takes the challenge to relate to the crimebase evidence. In respect of the responsibility of the Accused for the crimes in question, the Prosecution refers generally to the evidence as summarised in documents PS(K), PS(C), and PS(B) which goes to establishing the responsibility of the accused for the remaining crimes on the indictment, and to which the Motion does not refer specifically.

II. Rule 98 bis (Motion: paragraphs 3-7)

6. The Amici have correctly summarised the jurisprudence on Rule 98 bis, and identified the appropriate test to be applied by the Trial Chamber as that formulated by the Appeals Chamber in *Jelisić*.

² In due course these documents will be converted and replaced by a Casemap file, which will be maintained in that format updated with any defence evidence.

III. KOSOVO INDICTMENT (Motion: paragraphs 8-10)

- A. The Indictment
- B. Territorial jurisdiction
- C. Applicable Substantive Law: Articles 3 and 5 of the Statute

7. The Amici raise no issues here requiring a response.

D. Armed conflict

(i) Introduction (Motion: paragraphs 11–14)

8. The Prosecution agrees, as a matter of law, that crimes under Articles 3 and 5 of the Statute must be committed in armed conflict, but disputes the key submission of the Amici, set out in paragraph 13, “that before 24 March 1999, there was no armed conflict in Kosovo”. The evidence adduced by the Prosecution during trial is sufficient (if accepted) to satisfy a reasonable trier of fact beyond reasonable doubt that an armed conflict existed in Kosovo at all times relevant to the indictment.

9. Almost all of the crimes charged in the Kosovo Indictment are alleged to have taken place on or after 24 March 1999, i.e. when, as the Amici Curiae concede, an international armed conflict existed. The only specific crime charged in the indictment to have taken place before 24 March 1999 concerns the events in Racak on or about 15 January 1999 (paragraph 66a. of the indictment).

(ii) The law (Motion: paragraphs 15 and 16)

10. The test is agreed.

(iii) Internal Armed Conflict – “Protracted Armed Violence” (Motion: paragraphs 17-23)

11. As held by the Trial Chamber in *Prosecutor v. Rutaganda*, the definition of an armed conflict “per se is termed in the abstract, and whether or not a situation can be described as an “armed conflict”, meeting the criteria...” is to be decided on a case-by-case

basis.³ The Prosecution does not oppose the submission of the Amici Curiae that Common Article 3, Additional Protocol II and the Commentaries can – to a certain extent - provide guidance in the definition of the legal elements constituting “armed conflict”.⁴ Another instrument which may also serve as reference tool is the Rome Statute for an International Criminal Court.⁵

12. However, first and foremost the existing case law and jurisprudence of the Tribunals should be consulted when establishing the legal threshold for the armed conflict requirement under Articles 3 and 5 of the Statute. The Trial Chamber in *Prosecutor v. Delali} et. al.* held that “in order to distinguish from cases of civil unrest or terrorist activities, the emphasis is on the protracted extent of the armed violence and the extent of organisation of the parties involved.”⁶ The Trial Chamber in *Prosecutor v. Akayesu* found that “(t)he distinction pertaining to situations of conflicts of a non-international character emanates from the differing intensity of the conflicts.” It stressed that the ascertainment of the intensity of a non-international conflict does not depend on the subjective judgement of the parties to the conflict as, in most cases, there would be a tendency for the conflict to be minimised by the parties thereto.⁷ The Trial Chamber further noted that the criteria suggested by the ICRC commentary on Common Article 3⁸ “were enunciated as a means of distinguishing genuine armed conflicts from mere acts of banditry or unorganized and short-lived insurrections”, ruling out internal disturbances and tensions.⁹ The Trial Chamber concluded that “an armed conflict is distinguished from internal disturbances by the level of intensity of the conflict and the

³ In *Prosecutor v. Jean-Paul Akayesu*, the Trial Chamber further observed that the Security Council itself has never determined how an armed conflict should be characterised; Trial Chamber Judgment, Case No. ICTR-96-4-T, 2 September 1998, para 606.

⁴ Para 23 of the Amicus Curiae Brief.

⁵ The ICC Statute has adopted a mixed solution. It has incorporated the phraseology from the Tadi} Jurisdiction Decision in one of its provisions. For war crimes consisting of violations of Common Article 3 standards in non-international armed conflicts, set out in Article 8 (2)(c), Article 8 (2)(d) excludes “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.” This language is borrowed from Additional Protocol I. However, for violations of the law on conduct of hostilities, set out in Article 8(2)(e), the ICC Statute stipulates in Article 8(2)(f) that, in addition to the threshold set for Common Article 3, these provisions apply to “armed conflicts that take place on the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups”. It appears that the latter phrase, which is based on the Tadic Jurisdiction Decision, results in a threshold that is lower than the one set out in explicit terms for Additional Protocol II and the ICRC Commentary for the application of Common Article 3. A/CONF.182/9, 17 July 1998 (entered into force 1 July 2002).

⁶ *Prosecutor v. Zejnir Delali}, Zdarvko Muci}, Hazim Deli} and Esad Landzo*, Trial Chamber Judgment, Case No. IT-96-21-T, 16 November 1998, para 184.

⁷ *Prosecutor v. Jean-Paul Akayesu*, Trial Chamber Judgment, Case No. ICTR-96-4-T, 2 September 1998, paras 602 and 603.

⁸ The ICRC criteria are referred to and set out in the Amici Curiae Motion, para 19.

degree of organization of the parties to the conflict.”¹⁰ The Trial Chamber in Prosecutor v. Rutaganda adopted the ruling of the Trial Chamber in Akayesu which it called the “evaluation test” and held that in order to determine whether there was an armed conflict “... it is necessary to evaluate the intensity and the organisation of the parties to the conflict”.¹¹

13. Based on the existing jurisprudence, there exists a twofold test to distinguish armed conflict from cases of civil unrest, short-lived insurrections, internal disturbances or tensions and terrorist activity. The distinctive criteria for an armed conflict are (a) the protracted extent of armed violence and (b) the extent of the organisation of the parties involved. The protracted extent of armed violence appears to imply primarily a time element.¹² Protracted armed violence is proved by evidence showing the existence of armed clashes between the parties over a period of time. Additional criteria, as, for instance, the intensity of the clashes, the number of forces engaged on both sides, the number of victims, the extent of destruction, the sophistication of weapons used and the nature of the operations conducted, can be taken into account by a Trial Chamber when deciding whether the armed violence exerted is to be classified as “protracted”.

14. As to the second criteria, the extent of organisation of the parties to the conflict, the Appeals Chamber in Prosecutor v. Tadić has held that an organised group differs from an individual in that “the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority.” These criteria should be the standard to be applied by a Trial Chamber when deciding whether a party to the conflict is to be considered sufficiently organised to meet the threshold of Article 3 of the Statute. The non-governmental group need not have the same structure as an army but needs to function in certain respects as do the armed forces of the State. A non-governmental group under responsible command, with an internal system of discipline and able to carry out open and concerted military operations would thus constitute an identifiable and “organised” group in the meaning of Article 3 of the Statute.

⁹ Ibid, para 620.

¹⁰ Ibid, para 625.

¹¹ Prosecutor v. Georges Anderson Nderubumwe Rutaganda, Trial Chamber Judgement and Sentence, Case No. ICTR-96-3-T, 6 December 1999, para 93. Referring to the 1949 Diplomatic Conference of Geneva leading to the adoption of the Conventions, the Trial Chamber further noted that “mere acts of banditry, internal disturbances and tensions, and unorganized and short-lived insurrections are to be ruled out”; Ibid, para 92.

¹² The dictionary meaning of “protracted”, according to the Oxford English Dictionary (2nd ed., Vol. XII), is lengthened, extended, prolonged, a) in time or, b) in space.

15. In sum, for all charges in the indictment pertaining to Article 3 (and Article 5) of the Statute to be retained by the Trial Chamber in the Rule 98 bis proceedings, it suffices to demonstrate that there is evidence upon which (if accepted) a reasonable tribunal of fact could be satisfied beyond reasonable doubt that there was protracted armed violence between governmental authorities and organised groups in Kosovo at the time relevant to the indictment.

(iv) Nexus between Conduct and Armed Conflict (Motion: paragraphs 24- 26)

16. Agreed.

(v) Submission on the Armed Conflict in Kosovo (Motion: paragraphs 27-32 and Confidential Annexes 1 and 2)

17. It is interesting that the Amici in paragraph 27 somewhat cut across their own submission by analysing the events as comprising a single armed conflict (“the armed conflict”) divided into two phases: pre- and post- 24 March 1999. The Prosecution agrees that this is indeed the correct approach, and also notes in this regard that during the trial the Amici put to a witness the proposition now highlighted at page 61 of their Confidential Annex 1, marked line 20, that: “The winter of 1998 was meant to be, so to speak, a reduction of hostilities between the parties,” again suggesting that the Amici themselves recognise that the evidence is quite capable of supporting the existence of an armed conflict as defined for the purposes of Articles 3 and 5 before 24 March 1999.

18. The evidence referred to by the Amici Curiae in Confidential Annexes 1 and 2 to the Motion in support of their argument is in fact replete with proof that there was an armed conflict in Kosovo. Their selected material goes instead to support the Prosecution’s submission that there existed protracted armed violence in Kosovo before 24 March 1999 and that the KLA was an organised group in the meaning of Article 3 of the Statute prior to that date.

19. The Trial Chamber is referred to the PS(K) document for a summary of relevant evidence adduced by the prosecution. The Prosecution responds to the points made under sub-paragraphs (i) – (vi) of paragraph 31 of the Motion, as follows:

- (i) Intensity of the conflict between the KLA and the Serb Forces (“protracted armed violence”)

20. The Amici Curiae submit that the intensity of the conflict between the KLA and the Serb forces had not risen to the level of protracted armed violence to render international humanitarian law applicable. The Amici Curiae did not provide any arguments supporting this contention but generally referred the Trial Chamber to the summary of evidence contained in Confidential Annexes 1 and 2 to the Motion.
21. Sufficient evidence has been adduced (if accepted) for a reasonable trier of fact to find beyond reasonable doubt that protracted armed violence was applied at all times relevant to the indictment.
22. First, the evidence shows serious armed clashes between the KLA and the governmental forces took place over a period of years, not just months. The armed violence was therefore prolonged, i.e. protracted. The overwhelming majority of the evidence referred to by the Amici Curiae indeed allows no other conclusion. Witnesses testified that already from 1995 to 1997, the KLA conducted various operations against the police.¹³ A great many witnesses testified that in the period from early 1998 until 24 March 1999, the fighting between the KLA and Serb security forces intensified and that armed clashes occurred continuously throughout various areas of Kosovo.¹⁴ Exhibits admitted by the Trial Chamber also support the Prosecution’s position that the fighting

¹³ K 6, T 6628, 6632 (referred to at pp. 4-7 of Confidential Annex I); Exhibit 224 (referred to at p. 71 of Confidential Annex II).

¹⁴ Fred Abrahams, T 6059, 6068 and 6165 (referred to at pp. 10-11 and 21 of Confidential Annex I); Ratimir Tanic, T 4919 (referred to at pp. 11-12 of Confidential Annex I); Veton Surroi, T 3491 (referred to at p. 13 of Confidential Annex I); John Crosland, T 8009 and 8020 (referred to at p. 24 and 14 of Confidential Annex I); Mahnut Halii, T 3881 (referred to a p. 16 of Confidential Annex I); Fehim Elshani, T 790, 826 and 838 (referred to at pp. 16, and 20 of Confidential Annex I); Baton Haxhiu, T 5428 (referred to at p. 17 of Confidential Annex I); Sabit Kadriu, T 1639 and 1836 (referred to at pp. 19, 45 of Confidential Annex I). Ali Hoti, T 3619 (referred to at p. 19 of Confidential Annex I); Loshi Liri, T 9454 (referred to at pp. 19-20 of Confidential Annex I). Martin Prishi, T 9226 (referred to at p. 20 of Confidential Annex I); Shukri Buja, T 6354 (referred to at p. 21 of Confidential Annex I); Halit Barani, T 1234 (referred to at p. 22 of Confidential Annex I); [REDACTED]; Klaus Naumann, T 6995 (referred to at p. 25); Karol Drewienkiewicz, T 2846, 2850, 2851, 2855, 3013, 4794, 2963, 2958, 2965 (referred to at pp. 25-27, 43 and 49-50 of Confidential Annex I); J.O.M. Maisonneuve, T 5776 and 5807 (referred to at pp. 30-31, 66 of Confidential Annex I); Richard Ciaglinski, T 3159 (referred to at pp. 31-32 and 54 of Confidential Annex I); Mehdi Gerguri, T 9404 (referred to at pp.45-47 of Confidential Annex I); Isuf Loku, T 4856-4857 (referred to at pp. 47-48 of Confidential Annex I); Milazim Thaqi, T 7137 (referred to at p. 56 of Confidential Annex I).

between the KLA and the Serb forces gained a new dimension throughout the year 1998 due to its continuity and intensity.¹⁵

23. The KLA conducted operations, inter alia, in Junik, Decani, Malisevo, Orahovac, Istok, Obilic, Shallaska Bajgora throughout 1998.¹⁶ Intense armed clashes occurred as early as in February and March 1998 in Drenica valley.¹⁷ Ratomir Tanic testified that around Easter 1998, the centre of Decani was "razed to the ground" by a tank unit of the Serb forces.¹⁸ Mahmut Halimi testified about an attack on 6 May 1998 in Mitrovica.¹⁹ Sabit Kadriu testified that in June and July of 1998, the conflict in the Drenica area was expanding.²⁰ John Crosland testified that it was in summer 1998 when the VJ and the MUP started a combined clearance operation throughout the province of Kosovo.²¹ Fehim Elshani testified that from 1998 to March 1999 there were clashes in several areas of the town of Nagafc in Rahovec.²² Shukri Buja testified that on 23 August 1998, there was a large-scale offensive against the villages of Racak, Petrova and Mullopolc.²³ Frederick Abrahams testified about fighting in and around Gornje Obrinje in September 1998.²⁴ There is also evidence about an offensive in the village of Gali}e in Vushtrine commune in the same month.²⁵ Klaus Naumann testified that by mid-November 1998 there was an increasing number of incidents.²⁶ Karol Drewienkiewicz testified that on 24 December 1998, "a really significant force" came out of the barracks in Pristina and attacked the area west of Podujevo.²⁷ Witnesses Maisonneuve and Ciaglinski both testified about armed clashes that took place in early January 1999, before the Racak incident.²⁸ Mehdi Gerguri testified that in February 1999, the Serb

¹⁵ Exhibit 202 (referred to at p. 72 of Confidential Annex II); Exhibit 224 [REDACTED]; Exhibit 204 (referred to at p. 73 of Confidential Annex II); Exhibit 50 (referred to at p. 74 of Confidential Annex II); Exhibit 156 (referred to at p. 74 of Confidential Annex II); Exhibits 315, [REDACTED] 259, 156, 164 (referred to at pp. 74-75 of Confidential Annex II); Exhibits 50, [REDACTED] 94 (referred to at p. 76-80, 93-95 of Confidential Annex II); Exhibit 200 (referred to at p. 83 of Confidential Annex II); Exhibit 212 (referred to at pp. 88-89 of Confidential Annex II).

¹⁶ K6, T 6632 (referred to at p. 6 of Confidential Annex I).

¹⁷ Frederick Abrahams, T 6059 (referred to at p. 10 of Confidential Annex I).

¹⁸ T 4997 (referred to at p. 15 of Confidential Annex I).

¹⁹ T 3881 (referred to at p. 16 of Confidential Annex I).

²⁰ T 1639 (referred to at p. 19).

²¹ T 7926 (referred to at p. 19 of Confidential Annex I).

²² T 790 (referred to at p. 16 of Confidential Annex I).

²³ T 6354 (referred to at p. 21 of Confidential Annex I).

²⁴ T 6068 (referred to at p. 21 of Confidential Annex I).

²⁵ Halit Barani, T 1234 (referred to at p. 22 of Confidential Annex I).

²⁶ T 6995 (referred to at p. 25 of Confidential Annex I).

²⁷ T 2855 (referred to at p. 27 of Confidential Annex I).

²⁸ T 5776 (ambush on 8 January in Stimlje pass, referred to at p. 30 of Confidential Annex I) and T 3159 (activity of KLA, VJ and MUP near Jablanica and Decani, referred to at p. 31 of Confidential Annex I).

army started shelling his village Studime e Eperme.²⁹ Karol Drewienkiewicz testified that in the same month, the KLA attempted to open a new zone of operations in Kacanik.³⁰

24. There is further evidence to support the position that protracted armed violence existed at all times relevant to the indictment. The Accused himself appears to allege that already in 1998, 1,854 attacks or more than four attacks per day on average were carried out by the KLA in Kosovo.³¹ Exhibit 320 documents that in the period from 8 January to 20 March 1999, 18 MUP policemen were killed in hostilities with the KLA.³² Exhibit 312 expresses the view of the VJ itself, as the publication was written by VJ officers, and states: "The long standing crisis in Kosovo and Metohija escalated during 1997 and 1998 with terrorist activities..., this soon became an open armed insurgence which developed into an internal armed conflict...The attacks by Nato forces were,... launched in order to prevent a humanitarian disaster in Kosovo ... Thus the internal conflict in Kosovo and Metohija acquired the dimension of an international armed conflict".³³ Exhibit 218.2 also states that before 24 March 1999, operations were conducted on a widespread basis.³⁴ Exhibit 106 states that an internal armed conflict existed from October 1998.³⁵ Exhibits 202 and 204 conclude that an armed conflict existed already in late February 1998.
25. This evidence is sufficient for a reasonable Trial Chamber to find that there existed protracted armed violence from February 1998 onwards. Indeed, the evidence shows that there was not a single month between February 1998 and 24 March 1999 in which there was no serious armed violence between the KLA and the Serb forces. The evidence also reveals that the armed violence was not only protracted in time but also in space, as it spread over the territory of Kosovo in the course of the 14 months before NATO intervened.

²⁹ T 9409 (referred to at p. 45 of Confidential Annex I).

³⁰ T 2958 (referred to at p. 49 of Confidential Annex I).

³¹ This was put to John Crosland by the Accused in cross-examination, T 9013.

³² Exhibit 320, Section 3 of Part II.

³³ English translation of the 2001 book, "VJ in Kosovo and Metohija 1998 to 1999", Exhibit 312 at p. 15

³⁴ Exhibit 318 Tab 2 at paragraph 5. See also Annex 2 to Exhibit 318 Tab 2 which contains a summary of the OSCE KVM daily reports from 8 January 1999 to 23 March 1999, showing that armed clashes occurred on a daily basis during this period.

³⁵ Exhibit 106 only covers the period from October 1998 to June 1999. It does thus not make any findings as to whether an internal armed conflict may even have existed already before this time; at p. 13.

26. Second, the intensity of the armed clashes continuously increased throughout this period. The growth of the KLA, the increasing number of governmental forces sent to Kosovo, the weapons used by both parties and the number of displaced population demonstrate that the conflict between the KLA and government forces had reached the level of "protracted armed violence" at all times relevant to the indictment.
27. The KLA grew from a handful of men in 1995 and 1996 to having several thousand members in 1998 and 1999.³⁶ Baton Haxhiu testified that the rapid growth started after the Prekaz massacre in 1998 and that by May 1998 the number amounted to 20,000, although not all of them were armed and in uniform but included sympathisers as well.³⁷ Halit Barani testified that in 1998, the KLA grew from day to day.³⁸ Liri Loshi testified that in summer 1998, there were about 400 or 500 KLA soldiers present in the area covered by the 112th Brigade.³⁹ Shukri Buja testified that in mid-January 1999, the actual number of armed members of the KLA in the zone of his responsibility was about 1,000.⁴⁰ At the time of the Racak incident, the KLA had about 14,000 soldiers in total.⁴¹
28. Richard Ciaglinski testified that shortly before the KVM left (which was on 20 March 1999), there were possibly as many as 10,000 people in uniform belonging to the KLA.⁴² Radomir Markovi} also testified that the number of KLA fighters went up before 24 March 1999 and that when the bombing started, there may have been about 10,000 or 20,000 KLA fighters.⁴³
29. As to the arms used by both parties, Shukri Buja testified that the KLA soldiers were equipped with automatic rifles, mortars, machine-guns of 7.9 calibre, machine-guns of 12.7 calibre, 60-millimetre grenade launchers, M-48 rifles, AK-47s, and mortars.⁴⁴ Frederick Abrahams testified that in early 1997 about 700,000 small arms were

³⁶ K6 testified that in November 1996, the KLA had about 200 members, T 6594 (referred to at p. 2 of Confidential Annex I). Ratomir Tanic testified that in 1996, 1997, the KLA counted about 2,000 members, T 4932 (referred to at p. 4 of Confidential Annex I). See also Exhibit 151 (referred to at p. 72 of Confidential Annex II).

³⁷ T 5428-5429 (referred to at p. 17 of Confidential Annex I).

³⁸ T 1235 (referred to at p. 10 of Confidential Annex I).

³⁹ T 9452 (referred to at p. 19 of Confidential Annex I).

⁴⁰ T 6362.

⁴¹ Shukri Buja, T 6462.

⁴² T 3334 (referred to at p. 51 of Confidential Annex I).

⁴³ T 8789 (referred to at p. 54 of Confidential Annex I).

⁴⁴ T 6365.

obtained by the KLA from Albania, which was a contributing factor to the KLA's rapid explosion.⁴⁵ He also testified that the KLA was bringing arms and supplies from Northern Albania in 1998.⁴⁶ Gani Baqaj who joined the KLA in June 1998 testified that they had automatic rifles, even if not enough for everyone.⁴⁷ John Crosland testified that towards the end of 1998, roughly in October 1998, the KLA managed to achieve more up-to-date small arms, including new rifles, sub-machine guns and a limited quantity of anti-armour grenades. The KLA did not have tanks however.⁴⁸

30.

[REDACTED]

Ratomir Tanic referred to a tank unit of the VJ operating in Decani around Easter 1998.⁴⁹ Martin Pnishi testified about tanks near the border on 31 July 1998.⁵⁰ John Crosland testified that in about July or August 1998, the VJ and the MUP started a combined "clearance operation" across the whole province of Kosovo.⁵¹ An operational report issued by Battle Group 4 (BG-4) of the 125th Motorised Infantry Brigade of the VJ for September 1998 states that the VJ was using artillery, mortars, T-55 tanks, anti-aircraft artillery, armoured personnel carriers and other heavy weapons in armed clashes with the KLA.⁵² A similar report is dated February 1999. BG-4 consisted of an infantry company, a tank platoon, an artillery battery, a heavy mortar platoon, an air-defence artillery platoon, and a recoilless rifle platoon. This report described a classic combined arms (infantry, artillery, armour) offensive operation with MUP fulfilling (with VJ) the role of infantry.

31. The intensity of the conflict between the KLA and the Serb forces is also reflected by the consequences for the civilian population. Witnesses testified about civilians migrating from one village to another and seeking refuge from the armed clashes as

⁴⁵ T 6059 (referred to at p. 8 of Confidential Annex I).

⁴⁶ Ibid.

⁴⁷ T 9249 (referred to at p. 18 of Confidential Annex I).

⁴⁸ Maisonneuve, T 5776 (referred to at p. 31 of Confidential Annex I).

⁴⁹ T 4997 (referred to at p. 15 of Confidential Annex I).

⁵⁰ T 9223 (referred to at p. 20 of Confidential Annex I).

⁵¹ T 7926 (referred to at p. 19 of Confidential Annex I).

⁵² Exhibit 320.

early as 1998.⁵³ According to Exhibit 106, about 200.000 to 300.000 Albanians were driven from their homes between April and September 1998.⁵⁴

32. Taken as a whole this evidence demonstrates that the conflict between the KLA and the Serb forces in 1998 and at all times relevant to the indictment, had reached an intensity that clearly transcended the threshold of protracted armed violence and, thus, amounted to an armed conflict.

(ii) "Banditry, unorganised and short-lived insurrections, or terrorist activities"

33. The evidence on which the Prosecution relies under the previous heading equally demonstrates that the conflict went beyond activity of this sort.

34. It is irrelevant how the parties to the conflict, in particular the governmental or other international authorities, classified the conflict at the time it occurred. The intensity of a non-international conflict does not depend on the subjective judgement of the parties to the conflict.⁵⁵ The mere fact that KLA operations were sometimes and by some sources deemed "terrorist action" should not be relied upon by the Trial Chamber in the determination as to whether the threshold for protracted armed violence was met.

35. Similarly, the testimony of witness Ratomir Tani} (T 4919, referred to at pp. 11-13 of Annex I to the Motion), referring to a recommendation officially to proclaim the KLA a terrorist organisation, is irrelevant for the determination whether protracted armed violence existed at the time relevant to the indictment. The same applies to witness Klaus Naumann's testimony that NATO called the KLA a terrorist organisation and to witness Lord Ashdown's classification of the KLA as a "terrorist organisation" (p. 59 of Annex I). The evidence referred to at pp. 23-24 states that a terrorist organisation can grow and develop towards being forces and that by October 1998 the KLA was a force (John Crossland, T 7984).

⁵³ Fehim Elshani, T 790, 826, 838 (referred to at pp. 16, 20, 21 of Confidential Annex I);

⁵⁴ At p. 6.

⁵⁵ Paragraph 11 supra

36. The further Prosecution evidence quoted by the Amici Curiae does not support their argument of the KLA being a terrorist group or their actions constituting short-lived unorganised insurrections or banditry. Instead, it leads to opposite conclusion.
37. The evidence referred to by the Amici Curiae at p. 19 in Annex II of the Motion does not refer to the KLA as "terrorist" group at all. All evidence marked in bold text demonstrates that there was a "severe conflict" (Kadriu Sabit, T 1639), and that the KLA was in control over certain territory in Kosovo (John Crossland, T 7926; Ali Hoti, T 3619). As to the evidence referred to at pp. 25-26 in Confidential Annex II to the Motion, the evidence supports the Prosecution's argument that the number of incidents increased steadily throughout 1998 (Klaus Naumann, T 6995). The evidence referred to at pp. 50, 58, 67 and 68 in Confidential Annex I does not support the argument of the Amici Curiae, since it reveals a conflict of greater rather than lesser intensity.
38. It is unclear to which evidence the Amici Curiae intend to refer at paragraph 31(ii) of the Motion because, as filed, Confidential Annex II to the Motion does not contain pages numbered 6, 7 or 8. In any event, none of the selected evidence referred to in Confidential Annex II to the Motion is sufficient to prevent the Chamber relying at this stage on the evidence quoted under heading (i) above in support of the Prosecution's case.

(iii) Organised armed group

39. The Amici Curiae further submit that the KLA did not constitute a sufficiently organised group under responsible command. It is argued that the Prosecution evidence set out in Confidential Annex 1 and marked in bold italics at pp. 1, 3, 7, 10, 13, 19, 22, 23, 28-28, 30, 43-44, 50, 58, 59, 67 and 68 and in Confidential Annex 2 at pp. 5, 6, 7, 8, 9, 10-11, 28 and 29 supports this contention.
40. As above, the legal elements for "organised group" according to the Appeals Chamber jurisprudence are that an organised group must possess: a structure, a chain of command and a set of rules as well as the outward symbols of authority. The evidence adduced by the Prosecution (if accepted) is a sufficient basis upon which a reasonable

trier of facts can find that the KLA, at the time relevant to the indictment, fulfilled these criteria.

41. The evidence shows that the KLA, at least from 1998 onwards, possessed a structure, had a clear chain of command and a set of rules. Again, much of the evidence quoted by the Amici Curiae supports this position of the Prosecution. Shukri Buja testified that the KLA had a formal structure already back in 1996, that there was a headquarters issuing instructions that had to be followed by him.⁵⁶ Ratomir Tanic testified that in 1996 and 1997, according to intelligence, the KLA had about 2,000 people, distributed in small groups with a leadership abroad.⁵⁷ Halit Barani testified that from November 1997 onwards, the KLA appeared openly.⁵⁸ Frederick Abrahams testified that before February 1998, the KLA was a disorganised organisation.⁵⁹ That evidence, however, does not affect the indictment period.

42. Dr. Ibrahim Rugova testified that initially the KLA started as individual groups but by the end of 1998 and early 1999, they were unified and had one joint command.⁶⁰ Karol Drewienkiewicz testified that the KLA were, from time to time, not obeying the orders they received down their chain of command, thereby implying that such chain of command indeed existed within the KLA. He also testified that it always took a long time for orders to get down the chain of command within the KLA and that they sometimes felt that the KLA was not restraining themselves even when their High Command had told them to do so.⁶¹ According to Exhibit 94, there was a control and command structure for the KLA, but the local commanders had considerable autonomy.⁶² Lord Ashdown testified the KLA appeared well organised to him.⁶³ During his visit, Ashdown was able to establish that the KLA had a growing command structure and that there were KLA senior representatives in Pristina and Tirana. He was further aware that there was a KLA operational basis in Bajrum Curi and local field headquarters within Kosovo.⁶⁴ Exhibit 315 states that although the KLA is primarily a guerilla army, it was by February 1998 an organised military force for the purpose of

⁵⁶ T 6301 (referred to at p. 3 of Confidential Annex I).

⁵⁷ T 4932 (referred to at p. 4 of Confidential Annex I).

⁵⁸ T 1333 (referred to at p. 9 of Confidential Annex I).

⁵⁹ T 6059 (referred to at p. 11 of Confidential Annex I).

⁶⁰ Ibrahim Rugova, T 4263 (referred to at pp. 28-29 of Confidential Annex I).

⁶¹ T4800 (referred to at p. 44 of Confidential Annex I).

⁶² Referred to at pp. 77-78 of Confidential Annex II.

⁶³ T 2341 (referred to at p. 58 of Confidential Annex I).

international humanitarian law.⁶⁵ Exhibit 202 draws the same conclusion.⁶⁶ Exhibit 94 states that two operations by the KLA were “co-ordinated, organized, and executed very well, even professionally” and that the KLA “shows an increasing tendency to represent itself as an official army in its dealings with the KVM”.⁶⁷

43. [REDACTED]

44. There is further evidence supporting the position that the KLA was organised and structured and had a clear chain of command. Veton Surroi testified that he considered the KLA to be a guerilla organisation, a movement which had undergone a transformation.⁶⁸ Adnan Merovci testified that the KLA was an organised and commanded army.⁶⁹ Maisonneuve testified that in his opinion, the KLA was an assemblage of paramilitary forces, almost a rebel organisation.⁷⁰ Exhibit 145 states that the KLA organised itself in a more centralised structure in the year 1998, that KLA fighters, although not always, in late 1998 and 1999 displayed discipline and that in interviews and statements, KLA spokesmen repeatedly underlined the KLA’s willingness to respect the rules of law.⁷¹

45. Witness Shukri Buja, who was a KLA Commander of the Nerodime Operational Zone that covered the areas from Caraleva Gorge/Crnoljevo Gorge, in Shtime municipality to Gllloboqica/Globo•ica, in Kaçanik municipality, and who was in command of two

⁶⁴ Exhibit 81 (referred to at pp. 96-97 of Confidential Annex II).
⁶⁵ Referred to at pp. 73-74 of Confidential Annex II.
⁶⁶ Referred to at p. 72 of Confidential Annex II.
⁶⁷ Referred to at pp. 97-98 of Confidential Annex II.
⁶⁸ T 3485.
⁶⁹ T 5490-5491.
⁷⁰ T 5817.
⁷¹ At pp. 100-101.

Brigades⁷², provided great detail in his witness statement (admitted into evidence) as to the structure and chain of command of the KLA. According to Buja, there were seven zones and their areas of responsibility were as follows: 1) DRENICA – Skenderaj, Glllogovc/Glogovac, Klina and surrounding villages. 2) PASHTRIK - Malishevë, Prizren, Lipjan and surrounding villages. 3) DUKAJIN – Peja/Peëë, Deqan/De•ane, Gjakova/Djakovica and surrounding villages. 4)SHALA – Mitrovica, Vushtrri/Vu•itrn, Zubin Potok, Leposaviq/Leposavië and surrounding villages. 5) LLAP – Prishtina, Podujeva/Podujevo, Obiliq/Obilië, Fushë Kosova/Kosova Polje and surrounding villages. 6) NERODIME – Lipjan, Shtime, Ferizaj, ShtRPCë/Štrpce, Kaçanik/Ka•anik and surrounding villages. 7) KARADAK – Gjilan/Gnjilane, Kamenica, Vitia/Vitina, Novobërda/Novo Brdo and surrounding villages. The number of men attached to zone No. 6 was 1400 – 1700 at various times. All the other zones had greater numbers. Zone 7 was less developed and consequently had lesser numbers of soldiers than any other zone.⁷³ Buja was able to name the Commanders and Deputy Commanders for all of the above zones.⁷⁴ Exhibit 145 fully corroborates these descriptions of structure and chain of command.

46. Buja further described the KLA General Command to consist of a General Commander (Azem SYLA then Sylejman SELIMI), a Deputy General Commander (Jakup KRASNIQI), a Chief of Main HQ (Bislim ZYRAPI and later Agim ÇEKU), a Director of Political Issues (Hashim THAÇI), a Director of Police Issues (Fatmir LIMA), a Director of Civil Administration (Ream BUJA), a Director of Operational Issues (Sali VESELI) and a Director of Information Services (Kadri VESELI). This KLA General Command Staff moved from zone to zone for security reasons. At the end of the war it progressed to the Interim Government.⁷⁵
47. Buja testified that it was decided at the KLA Main Headquarter that he should have an operational role in fighting instead of reporting. His duty was to organise units during the most difficult period when the KLA had to carry the weapons from Albania and at the same time take military action. Buja also had to source people to join the KLA. He did this from March to May 1998. In Buja’s zone of responsibility, the KLA HQ was in Mullopolc/Malopoljce in Shtime municipality most of the time. They had a Hospital, a

⁷² Exhibit 212, p. 7

⁷³ Exhibit 212, pp. 4-5.

⁷⁴ Exhibit 212, pp. 4-5.

Kitchen, a Training Area and other zone sectors such as the one where the Commander and Deputy Commander stayed, Logistics, Personnel, Chief of HQ, Intelligence Sector and Operations. There was about 150 staff running this HQ, which included the Guard Unit. The Nerodime Zone used the Staff System G1, G2, G3 etc. This HQ was established here in November 1998.⁷⁶

48. Within the command of the operational zones, the KLA had branches. One of these was a branch for relations with civilians. Its task was to warn civilians of potential attacks of Serb forces.⁷⁷ The KLA had a logistics unit where about 20 people worked. They were responsible for supplying the entire KLA with food, clothes, footwear and weapons.⁷⁸ The KLA further had their own training sites, centres and shooting grounds.⁷⁹ The KLA also had a political representative that spoke for them, Mr. Demaci.⁸⁰ Further, there existed a KLA military police⁸¹ and an KLA intelligence service.⁸² The KLA was also relatively sophisticated in the area of communications, possessing cellular phones, satellite radios and Motorolas. In some zones, they also had computers for establishing databases.⁸³
49. Further, the evidence established that the KLA possessed outward symbols of authority. Many witnesses testified that KLA soldiers wore uniforms, even though there may not have been enough uniforms available for all KLA soldiers at all times.⁸⁴ KLA soldiers further carried automatic weapons, although, again, there may have not have been enough weapons for all KLA members at all times.⁸⁵ John Crosland testified that the first indication that the KLA was a force was in 1998 and that a terrorist organisation

⁷⁵ Exhibit 212, pp. 4-5.

⁷⁶ Exhibit 212, p. 6.

⁷⁷ Shukri Buja, T 6354 (referred to at p. 21 of Confidential Annex I).

⁷⁸ Mehmet Aliu, T 3971 (referred to at pp. 64-65 of Confidential Annex I).

⁷⁹ Mehmet Aliu, T 3944 (referred to at p. 64 of Confidential Annex I); Exhibit 164 (referred to at pp. 75-76 of Confidential Annex II).

⁸⁰ Ibrahim Rugova, T 4355 (referred to at p. 29 of Confidential Annex I); Halit Barani, T 1235 (referred to at p. 10 of Confidential Annex I). Ex 94 (referred to at p. 82 of Confidential Annex II) refers to a "senior spokesman".

⁸¹ Exhibit 212 (referred to at pp. 88-89 of Confidential Annex II) and Exhibit 94 (referred to at p. 93 of Confidential Annex II).

⁸² Exhibit 163 (referred to at p. 96 of Confidential Annex II); Shukri Buja, T 6398.

⁸³ Exhibit 106 at p. 26.

⁸⁴ Baton Haxhiu, T 5428 (referred to at p. 17 of Confidential Annex I); Sadik Xhemajli, T 8899 (referred to at p. 69 of Confidential Annex I); [REDACTED]; Shukri Buja, T 6328. K 5 testified that he once was given a KLA uniform, Chinese grenades and a KLA emblem for a certain operation; T 5535.

can develop into an established force. He concluded that towards the end of 1998, the KLA was better equipped with both weapons and uniforms.⁸⁶ Karol Drewienkiewicz testified that most of the KLA members that they photographed in December 1998 were wearing uniforms.⁸⁷ Finally, the KLA had its own emblem or logo and its own flag.⁸⁸

50. Therefore, the Prosecution submits that the evidence is sufficient to find that the KLA at all times relevant to the indictment constituted an organised armed group.

(iv) Armed forces of the KLA acting under the direction of an organised civil authority

51. The Amici Curiae submit that the armed forces of the KLA did not act under the direction of an organised civil authority. It is argued that the Prosecution evidence set out in Confidential Annex 1 and marked in bold italics at pp. 21 and 49 support this contention.

52. The requirement that an armed group must act under organised civilian authority is not a legal element of "protracted armed violence" required by the jurisprudence of the Tribunal. Such element was only set out in the Commentary on the Geneva Convention of 1952 as one possible factor relevant for the determination whether there is protracted armed violence. These factors set out by the ICRC are, in the Prosecution's submission, however neither generally accepted nor have they ever been directly applied by the ICTY or the ICTR when the question whether an armed conflict existed was determined in earlier decisions. A finding that there was protracted armed violence does not necessitate proof that the KLA was acting under the direction of an organised civilian authority.

⁸⁵ Gani Baqaj, T 9249 (referred to at p. 18 of Confidential Annex I); Liri Loshi, T 9454 (referred to at pp. 19-20 of Confidential Annex I); Agim Zeqiri, T 767-768 (referred to at p. 54 of Confidential Annex I); Gani Hajredinaj, T 4088 (referred to at p. 65). Shukri Buja, T 6330.

⁸⁶ T 7988, 8009 (referred to at pp. 23-24 of Confidential Annex I).

⁸⁷ T 2850 (referred to at p. 26 of Confidential Annex I).

⁸⁸ Baton Haxhiu, T 5428 (referred to at p. 18 of Confidential Annex I); Paddy Ashdown, T 2489 (referred to at p. 59 of Confidential Annex I). The flag was red with the eagle on it;

53. However, as a matter of fact, sufficient evidence (if accepted) has been adduced by the Prosecution upon which a Trial Chamber could find that the KLA was acting under the direction of an organised civil authority.
54. Witness Halil Barani testified that the KLA had a political representative, Adem Demaci.⁸⁹ Witness Dr. Ibrahim Rugova testified that he had control over the LDK and KLA in the countryside but not over larger guerilla movements.⁹⁰ Dr. Rugova further testified that the KLA in 1998/1999 did not have a party but a political representative, Mr. Demaci.⁹¹ Lord Ashdown confirmed that Dr. Rugova had control, if even diminishing control, over the part of the KLA, that was better-organised politically. Lord Ashdown differentiated between “three” different wings of the KLA and testified that for the “third” KLA wing – known as FARK -, the control lines went back to Salil Berisha. Lord Ashdown stated that Dr. Rugova had a good control over the LDK elements in the countryside and therefore of the Home Guard elements of the KLA.⁹² Lord Ashdown himself spoke with several village representatives who accepted Dr. Rugova as their leader.⁹³
55. There is also further evidence, not referred to by the Amici Curiae, which supports the position that the KLA was acting under the control of a civil authority. Shukri Buja testified that the political decision taken in 1993 when the KLA was formed was intended to liberate the occupied Albanian territories reckoned to include territories in Macedonia, Serbia and Montenegro. But following the response of international policy-makers, the General Staff of the KLA sat down and thought about the political dimension of the KLA and took the political decision to give up these extensive claims and to concentrate on Kosova. So Kosova was designated itself as a zone, and then the subzones became operational zones. Shukri Buja underlined that this was more a political than a military decision.⁹⁴
56. Shukri Buja further testified that Fehmi Mujota was the KLA officer in charge of moral and political issues who was in contact with the OSCE. He was not wearing a uniform

⁸⁹ T 1235 (referred to at p. 10 of Confidential Annex I).

⁹⁰ T 2439 (referred to at p. 22 of Confidential Annex I).

⁹¹ T 4355 (referred to at p. 22 of Confidential Annex I).

⁹² T 2440 and Exhibit 81 (referred to at p. 69 of Confidential Annex I and at p. 97 of Confidential Annex II).

⁹³ Exhibit 81 (referred to at p. 97 of Confidential Annex II).

⁹⁴ T 6353.

or weapons (T 6409). Mahmud Bakalli, a member of the delegation of Kosovo Albanian Leaders who met with Milo{evi} in 1998, testified that while he did not have direct contacts with KLA troops or commanders, he was asked by Adem Demaci, the political representative of the KLA in Pristina, to be his advisor and to give him his political ideas and views. The political representative of the KLA used to keep daily contacts with foreign diplomats.⁹⁵

57. Witness Surroi testified that Dr. Agani was fully respected by all parties and movements. He testified that he saw at the Rambouillet negotiations that Dr. Agani was respected by all members of the delegation, including the KLA. He further testified that even before the Rambouillet talks, in 1998, Dr. Agani had contacts with various political representatives of the KLA.⁹⁶ Exhibit 145 states that by 1999, the KLA had established civilian political structures that issued decrees in areas under KLA control.
58. Hashim Thaci was the main political representative of the KLA who represented the KLA at political negotiations such as the Rambouillet conference.⁹⁷ Shukri Buja testified that Thaci was the head of the KLA delegation to Rambouillet because he was director of the political directorate within the auspices of the General Staff. He was the man who dealt with political affairs within the KLA.⁹⁸ Veton Surroi also testified that not only Mr. Thaci but also other members of the delegation came from the ranks of the KLA.⁹⁹ Other KLA representatives met with General Clark outside Rambouillet and the principal efforts of General Clark had to do with persuading this part of the delegation not only to sign up to the agreement but also to take steps to transform the KLA into civilian life.¹⁰⁰
59. Dr. Ibrahim Rugova testified that the Kosovar delegation, after the massacre at Racak consisted mainly of the LDK, including himself, and other political groups, as the movement for democratic unity and the KLA and other civil societies. There were about 15 members in this team.¹⁰¹ William Walker testified that at Rambouillet, he talked to at least three KLA commanders and asked them why they had asked for the

⁹⁵ T 532 and 540.

⁹⁶ T 3411-3412.

⁹⁷ At p. 100.

⁹⁸ T 6350-6351.

⁹⁹ T 3478.

¹⁰⁰ Ibid.

¹⁰¹ T 4127.

two-week delay. They said that while at Rambouillet, the delegation recognised that they were dealing with a historic moment for their people and that what they signed their names to would be of incredible importance to their people. They also said that this was the first time in their memory that Albanians from Kosovo had been at a negotiating session in person, and they were somewhat overwhelmed with their own lack of experience in negotiations. They wanted to touch base with their various constituencies to make sure that the Albanian population that they represented was truly in favour of their signing it. They told Walker that they had conducted whatever sort of survey they could do and had come to the conclusion that the Albanian population wanted peace, wanted their delegation to sign on their behalf. So they returned to Rambouillet, and indicated their willingness now to sign.¹⁰²

60. Wolfgang Petritsch testified that there was an internal structure in the Kosovo Albanian delegation to the Rambouillet conference, as it was in the Yugoslav delegation, with the head of delegation and the smaller negotiating team. The agreement was therefore only signed by Rugova, Thaci and Surroi. Rugova representing one part of this rather heterogeneous group, Thaci the KLA and Surroi representing the so-called independents.¹⁰³ The decision to sign was taken collectively by the delegation. There was also unanimous agreement inside the Kosovo Albanian delegation that these three should sign.¹⁰⁴ Petritsch further testified that he had personal contacts with KLA members of the Kosovo Albanian delegation, in particular, with Mr. Thaci.¹⁰⁵
61. The Prosecution submits that this evidence is sufficient for a reasonable trier of fact to find that the KLA was acting under civilian authority at the time relevant to the indictment.
- (v) KLA exercising control over a part of the territory of Kosovo
62. The Amici Curiae submit that the KLA did not exercise control over part of the territory of Kosovo so as to enable it to carry out sustained and concerted military operations, It is argued that the evidence set out in Confidential Annex 1 and marked in bold italics at

¹⁰² T 6815-6816.

¹⁰³ T 7290.

¹⁰⁴ T 7292.

¹⁰⁵ T 7300.

pp. 12-13, 18, 24, 25-26, 48-49 and in Confidential Annex 2 at pp. 5, 8, 26, 27 and 28 supports this contention.

63. The requirement that an armed group must exercise control over territory is not a legal element of "protracted armed violence" required by the jurisprudence of the Tribunal. This element also originates from the 1952 Commentary on the Geneva Convention of 1952 where it was quoted as one potential factor to be considered in the determination. As already addressed above, these factors set out by the ICRC are neither generally accepted nor have they been confirmed as relevant by the jurisprudence of the ICTY or the ICTR. It is thus submitted that a finding that there was protracted armed violence does not necessitate the proof that the KLA was in control over territory in Kosovo.
64. In any event, sufficient evidence (if accepted) has been adduced by the Prosecution upon which a Trial Chamber could find that the KLA was, at certain times, in control over certain territory in Kosovo. The evidence referred to by the Amici Curiae does not support their allegation. Instead, much of the other evidence set out by the Amici Curiae in Confidential Annexes I and II supports the Prosecution's allegation that the KLA was in control over territory in Kosovo at certain times relevant to the indictment. For instance, witness John Crossland testified that the KLA controlled 50 % of the territory in Kosovo and, in early summer 1998, three of the major roads across Kosovo which were a precondition for life there.¹⁰⁶
65. The Accused himself, while cross-examining John Crossland referred to the KLA occupying 50 % of the territory in Kosovo and three of the major roads at that time.¹⁰⁷ Ali Hoti testified that he heard from refugees that in summer 1998, the KLA took control of Orahovac.¹⁰⁸ Adnan Merovci testified that in the course of 1998 and the beginning of 1999, the KLA had various regions under its control.¹⁰⁹ Mehdi Gerguri testified that in February 1999 the Serb army started shelling his village Studime e Eperme because the area was under the control of the KLA.¹¹⁰ Emin Kabashi testified that all of Drenica was under KLA control for a while.¹¹¹

¹⁰⁶ T 7926, 8015, 8020 (referred to at pp. 13, 14 and 19 of the Motion).

¹⁰⁷ T 8015-8016.

¹⁰⁸ T 3619 (referred to at p. 19 of the Motion).

¹⁰⁹ T 5490 (referred to at p. 29 of the Motion).

¹¹⁰ T 9404 (referred to at p. 45 of the Motion)

¹¹¹ T 4046 (referred to at p. 65 of the Motion).

70. While reports such as those of Human Rights Watch are not conclusive in the sense that their conclusions in any way bind the Trial Chamber, taken along with the other evidence in the case, they are highly persuasive summaries of the situation on the ground in Kosovo. The Chamber is entitled to accord them weight, and to find it a relevant circumstance that a respected, and legally knowledgeable, human rights organisation regarded the situation at the time as amounting to an armed conflict for the purposes of international humanitarian law.
71. All Human Rights Watch reports admitted into evidence state that the armed conflict began in February 1998 and not, as claimed by the Amici Curiae in the Motion, in February 1999.¹¹⁸
72. The Human Rights Watch reports referred to in paragraph 31(vi) of the Motion (p. 18) were admitted into evidence by the Trial Chamber.¹¹⁹ By doing so, the Trial Chamber already accepted these reports as relevant and as having probative value pursuant to Rule 89(C). As set out above, the Prosecution has called many witnesses and submitted a number of documents on the question of the existence of an armed conflict in Kosovo. The Prosecution has never submitted to the Trial Chamber and is not suggesting now that the findings of Human Rights Watch should be regarded on their own as conclusive for the commencement of the armed conflict.
73. However, witness Frederick Abrahams has testified in detail and was cross-examined about the methodology used for creating the Human Rights Watch reports in questions.¹²⁰ For the details of his testimony, the Trial Chamber is referred to pp. 409-410 of the PS(K) document. His testimony reveals that Under Orders was compiled on the basis of a sound methodology indicating that the information and conclusions presented in the report are reliable and impartial. Furthermore, the opportunity the Accused had to cross-examine Mr. Abrahams allowed him both to test the methodology used to generate the report (in particular he did this by challenging the impartiality of

¹¹⁸ See p. 18 of the Motion, referring to Exhibits 145, 191, 198, 204 and 206.

¹¹⁹ Exhibits 145, 191, 198, 204, 206.

¹²⁰ T 6029-6185 (3 and 4 June 2002)

the witness,¹²¹ and of HRW¹²²) and to cross-examine an individual responsible for the writing and most of the investigation for about half of the report.

74. Also, as with the report "As Seen, As Told" the Accused has on occasion sought to rely on the report. Indeed, the report was initially introduced because the Accused requested that a particular statement within it be admitted.¹²³ It is thus for the Trial Chamber when reviewing Frederick Abraham's testimony and the complete evidence adduced on the question of armed conflict to attach the appropriate probative weight to the Human Rights Watch reports in evidence. It is reiterated that, in the Prosecution's submission this review of the complete Prosecution evidence will show that there is a sufficient basis upon which a reasonable trier of fact could find that an armed conflict existed at all times relevant to the indictment.
75. The application of the Amici Curiae to excise part of paragraph 63(k)(i) and paragraph 66(a) be rejected.

E. INDICTMENT ANALYSIS - KOSOVO

(i) COUNT 1 DEPORTATION (Motion: paragraphs 33-35)

76. The Prosecution agrees with paragraphs 33 to 35 of the Motion.

The Law (Motion: paragraphs 36-38)

77. The Amici Curiae submit that deportation requires a cross-border transfer.¹²⁴ They cite the Krsti} and Kronjelac Trial Judgements in support of this submission and seek to distinguish the Staki} Trial Judgement which found that Article 5(d) does not require a

¹²¹ The Accused bought up the fact that the witness had worked for the OTP (T.6128). The witness confirmed this but made it clear he did not draft the indictment. He also pointed out that the witness had published an article stating that the Accused should be indicted (T.6129-6131). The witness did not deny this but made it clear that this was HRW's position as well.

¹²² The Accused challenged the impartiality of HRW at T. 6117-6127 and 6150-6151(4 June 2002). In particular he suggested that the HRW sources of finance made the organisation biased. Fred Abrahams responded that funding in no way affected the research HRW conducted (T. 6127). The Accused also alleged that Zimmerman and others influenced HRW. Mr. Abrahams responded that Zimmerman and others were only on an advisory committee and did not influence HRW findings (T.6118-6119).

¹²³ T. 4821-4822 & 4874-4876 (28 May 2002).

¹²⁴ Motion, para. 36. The Amici note in making this argument that this issue is presently under appeal in the case Prosecutor v. Naletili} and Martinovi}.

specific destination and thus held that deportation includes transfers from an area in which civilians are lawfully present to an area under the control of another party.¹²⁵

78. The Staki} Trial Judgement cannot be so readily distinguished. The Trial Chamber in that case highlighted the need to focus on the protected interests behind the prohibition of deportation, namely the right and expectation of individuals to be able to remain in their homes without interference, rather than on the destination of the individuals.¹²⁶ Focusing on the protected interests involved, rather than on the destination of victims, is also suggested by the Krnojelac Appeals Judgement,¹²⁷ accords with the approach adopted in the Bla{ki} Trial Judgement,¹²⁸ and accords with the intention of the drafters of the ICTY Statute.¹²⁹

¹²⁵ Motion, Footnote 51 citing *Prosecutor v. Radislav Krsti}*, Trial Chamber Judgement, Case No. IT-98-33-T, 2 August 2001 (hereinafter *Krsti}* Trial Judgement), para. 521; *Prosecutor v. Milorad Krnojelac*, Trial Chamber Judgement, IT-97-24-T, 15 March 2002 (hereinafter *Krnojelac* Trial Judgement), para. 474, footnote 1429; *Prosecutor v. Milomir Staki}*, Trial Chamber Judgement, Case No. IT-97-24-T, 31 July 2003 (hereinafter *Staki}* Trial Judgement), para. 677-679.

¹²⁶ The *Staki}* Trial Judgement states at para. 677, "The Trial Chamber is therefore of the view that it is the actus reus of forcibly removing ... which is the rationale for imposing criminal responsibility and not the destination resulting from such a removal. The Trial Chamber believes that, should a definite destination requirement be specified, it would often be difficult to determine whether and when the crime occurred because the victims may have been transferred in several stages and therefore through several territories and across borders that may have changed every day. A fixed destination requirement might consequently strip the prohibition against deportation of its force."

¹²⁷ See *Prosecutor v. Milorad Krnojelac*, Appeals Chamber Judgement, Case No. IT-97-25-A, 17 September 2003 (hereinafter *Krnojelac* Appeal Judgement) In their reasons for concluding that forcible displacement underlying the crime of persecution in Article 5(h) is not limited to displacements across national borders the *Krnojelac* Appeals Chamber stated at para. 218: "The prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference. The forced character of displacement and the forced uprooting of the inhabitants of a territory entail the criminal responsibility of the perpetrator, not the destination to which these inhabitants are sent." However, it is important to note that *Krnojelac* Appeals Chamber determined that there was no need for it to define deportation in Article 5(d) of the Statute as no reference was made to this Article in the Indictment in that case. Thus there is no Appeals Chamber jurisprudence directly on point.

¹²⁸ See *Prosecutor v. Tihomir Bla{ki}*, Trial Chamber Judgement, Case No. IT-95-14-T, 3 March 2000 (hereinafter *Bla{ki}* Trial Judgement). In *Blaski}* Trial Judgement deportation is defined as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law"; *Blaski}* Trial Judgement, para. 234, citing Article 7(2)(d) of the Statute of the International Criminal Court (Cf. in particular the Report of the International Law Commission on the work of its 48th Session, 6 May-26 July 1996; GAOR, 51st Sess., Supp. No. 10 (A/51/10), pp. 100-101.)

¹²⁹ As noted in the *Staki}* Trial Judgement, para. 676, the Statute of this Tribunal was formulated, inter alia, specifically to address the crimes popularly labelled "ethnic cleansing"; see Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993), UNSC, UN Doc. S/25704 (1993), paras 47 and 48; reprinted in 32 ILM (1993) 1163 in which the Secretary-General noted: "Crimes against humanity refer to inhumane acts of a very serious nature In the conflict of the former Yugoslavia, such inhumane acts have taken the form of so-called "ethnic cleansing" and widespread and systematic rape and other forms of sexual assault, including enforced prostitution." The forcible movement of population lies at the heart of ethnic cleansing. Article 5(d) is the only reference in the Statute to the forcible movement of population. Therefore, it must have been intended to apply to both internal and cross-border transfers.

79. In international humanitarian law, the term “deportation” has often been associated with the removal of people from one country to another. This is not surprising given that the relevant instruments are concerned with the regulation of international armed conflicts.¹³⁰ Furthermore, some international humanitarian law instruments do conflate of the terms “deportation and forcible transfer”;¹³¹ this approach has also been adopted in the Statute of the International Criminal Court (“ICC”).¹³² The provisions of international law regulating international armed conflicts should not limit the prohibition against “deportations” as a crime against humanity to cross-border transfers. Rather, in this context, “deportation” should be viewed as an umbrella term that covers acts of forcible displacement, whether internal or cross-border.¹³³
80. In their analysis of the deportation evidence, the Amici submit that for certain sites, specifically Nogavac/Nagavc, within Orahovac/Rahovec municipality, and the municipalities of Gnjilane/Gjilan and Kacanik, sufficient evidence has been adduced to prove forcible transfer but not deportation.¹³⁴ Crucially, this means that the Amici concede that a crime has been committed at each of these sites - the crime of forcible transfer charged in Count 2 of the Indictment. In addition, the fact that individuals from these three places crossed the border into Albania or Macedonia is not in dispute. The only submission the Amici make is that the passage of individuals from these three places across the border was voluntary and therefore does not constitute deportation.
81. Should the Trial Chamber consider that deportation does not require a cross-border transfer, the Amici submissions in relation to these sites become moot. However, on the

¹³⁰ Article 49 of Geneva Convention IV refers to “... forcible transfers, as well as deportations of protected persons from the occupied territory to the territory of the Occupying Power or to that of any other country...”. See also, the Geneva Convention IV, Article 70 (which prohibits deporting nationals of the Occupying Power “from the occupied territory”); and Geneva Convention IV, Article 147 (designating “unlawful deportation or transfer” as grave breaches).

¹³¹ Article 85 of Additional Protocol I (also relating to international armed conflicts) suggests that the terms “deportation” and “forcible transfer” may be used almost synonymously to cover population movements both within and outside an occupied territory.

¹³² The ICC employs a single category of “deportation or forcible transfer” sharing a common definition, namely the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”; Statute of the International Criminal Court, Article 7(1)(d). It is submitted that this approach is instructive.

¹³³ This approach is supported by Bassiouni who argues that “(d)eportation” usually means expulsion of persons from one country to another. However, a careful reading of Article 6 [of the Nuremberg Charter] warrants a broader interpretation to include all unjustified forceful transfers. Since Article 6(c) applies to non-international and internal situations, the acts under Article 6(c) would also apply to non-international and internal conflicts. Thus, internal displacement would also be covered.” See M. Cherif Bassiouni, *The Law of the International Criminal Tribunal for the Former Yugoslavia* (1996), p. 628.

facts of the case a determination of whether deportation requires a cross-border transfer may not be necessary. This is because, in the Prosecution's submission, the passage of these civilians into Albania or Macedonia was both forced and the result intended by forces of the FRY and Serbia. Submissions as to the correct meaning of force in the context of deportation and the level of intent required by a perpetrator are set out below.

82. As noted by the Amici Curiae deportation is only illegal when forced.¹³⁵ Tribunal case law interprets "force" to include, in addition to physical force, the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.¹³⁶ The essential element is that the displacement be involuntary in nature;¹³⁷ that the relevant persons had no real choice.¹³⁸
83. Furthermore, expressions of consent or voluntariness do not necessarily render a transfer legal. In its recent decision in Krnojelac, the Appeals Chamber found that evidence showed that prisoners at the KP Dom detention facility were happy about exchanges, which would result in their displacement, and that some went as far as to ask to be exchanged.¹³⁹ However, the Appeals Chamber held; "that this does not necessarily imply that it was a matter of "genuine choice". Yet it is the absence of genuine choice that makes displacement unlawful".¹⁴⁰ The Appeals Chamber found that when analysing the evidence concerning expressions of consent, it was necessary to put such expressions into the context of the situation and atmosphere that prevailed at

¹³⁴ Motion, para. 50 (Nogavac/Nagavc within Orahovac/Rahovec municipality), 59 (Gnjilane/Gjilan) and 66 (Kacanik).

¹³⁵ Amici Curiae Motion, para. 36. See Article 49, Geneva Convention IV and Commentary to Geneva Convention IV, at p. 279 which states that "•••n order to make due allowances for the legitimate desire to leave the place of their residence, voluntary transfers are allowed by implication, and only "forcible" transfers are prohibited". For application at the Tribunal see Krsti• Trial Judgement, para. 528; Krnojelac Trial Judgement, para. 475.

¹³⁶ Krsti• Trial Judgement, para. 529. This was noted by the Amici Curiae in their Motion, para. 36, footnote 52. See also Krnojelac Trial Judgement, para. 475.

¹³⁷ See ICRC Commentary to Geneva Convention IV, which notes that in drafting Article 49 of Geneva Convention IV, language prohibiting all transfers was rejected in favour of forcible transfers; at p. 279 - "The Conference had particularly in mind the case of protected persons belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account and might therefore wish to leave the country. In order to make due allowances for that legitimate desire the Conference decided to authorise voluntary transfers by implication, and only to prohibit 'forcible' transfers". Thus, departures motivated by the fear of discrimination are not necessarily in violation of the law; see Krsti• Trial Judgement, para. 528.

¹³⁸ Krnojelac Trial Judgement, para. 475.

¹³⁹ Krnojelac Appeal Judgement, para. 229.

¹⁴⁰ Krnojelac Appeal Judgement, para. 229. In this sense, the Appeals Chamber applied a similar approach to that taken in relation to the crime of rape where apparent consent induced by force or threat of force has been

the KP Dom.¹⁴¹ The Appeals Chamber concluded that the living conditions in the KP Dom made the non-Serb detainees subject to a coercive prison regime which was such that they were not in a position to exercise genuine choice.¹⁴² Consequently the Chamber concluded that the 35 detainees were under duress and that the Trial Chamber had erred in finding they had freely chosen to be exchanged.¹⁴³

84. In the context of the campaign of terror and violence directed at the Kosovo Albanian population by forces of the FRY and Serbia from 1 January 1999 until 20 June 1999, the existence of which has not been challenged in the Motion, the choice of final destination of a witness who has been forcibly transferred from his or her village can not be a voluntary one. In such a context, an individual is totally deprived of his or her ability to exercise a genuine choice. The evidentiary sections below make this plain in the case of each witness who, the Amici claim was not deported from Kosovo.
85. The Amici submit that for deportation to be proved, the forces of the FRY and Serbia must have had deportation as their objective. This brief statement does not clearly set out the required standard. No specific (meaning racial, national, religious or political) intent on the part of the perpetrator is required for deportations as a crime against humanity.¹⁴⁴ All that is required is that the perpetrator either directly intended that the victims would leave¹⁴⁵ or acted in the awareness of the substantial likelihood that this would occur as consequence of their action.¹⁴⁶

found not to be real consent; Prosecutor v. Dragoljub Kunarac et al., Appeals Chamber Judgement, Case No. IT-96-23 & IT-96-23/1-A, 12 June 2002 (hereinafter Kunarac Appeal Judgement), para. 453

¹⁴¹ Krnojelac Appeal Judgement, para. 229.

¹⁴² Krnojelac Appeal Judgement, para. 233.

¹⁴³ Krnojelac Appeal Judgement, para. 233.

¹⁴⁴ Blaski} Trial Judgement, para. 260. "It ensues from the Tadi} Appeal Judgement that for a widespread or systematic attack and the resultant crimes - murder, extermination, enslavement, deportation - to be characterised as crimes against humanity they need not have been perpetrated with the deliberate intent to cause injury to a civilian population on the basis of specific characteristics. In other words, to be found guilty of such an offence, those responsible for the attack need not necessarily have acted with a particular racial, national, religious or political intent in mind."

¹⁴⁵ As to the permanency of departure, see Prosecutor v. Milan Simi}, Sentencing Judgement, Case No. IT-95-9/2-S, 17 October 2002 (hereinafter Simi} Sentencing Judgement), paras. 132 -134.

¹⁴⁶ See Tadi} Appeals Judgement, para. 220 where the Appeals Chamber stated that the required mens rea for each co-participant is satisfied when the member of the group is able to predict the result: "What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called dolus eventualis is required (also called "advertent recklessness" in some national legal systems)."

86. As to the destination the perpetrator needs to have intended to move the victims too, in accordance with the Prosecution's submission that no cross-border transfer is required for deportation to be proved, it is submitted that the intent required is just that the victims would be forcibly transferred (removed from the place where they are lawfully present). However, it is also submitted that the forces of the FRY and Serbia actually intended that the victims leave Kosovo, so a determination of the destination the perpetrator intended is unnecessary.

(a) Nogavac/Nagavc (Motion: paragraphs 39 -51)

Fehim Elsani (Motion: paragraphs 41 and 42)

87. The Amici Curiae state that "the Trial Chamber may be of the opinion that there is sufficient evidence to support the contention that the witness was forcibly transferred from his village of Nogavac". The Amici Curiae make reference to the witness being advised to leave his house by a plain-clothed state security officer for his own safety.¹⁴⁷ However, this is only the last in a chain of events leading the witness to leave Nogavac/Nagavc.¹⁴⁸ This chain of events indicates that the witness had good reason to fear forces of the FRY and Serbia and to take seriously advice to leave for his own safety.

88. The witness did not travel directly to the border but rather took injured civilians from the bombing in Nogavac/Nagavc to hospital.¹⁴⁹ However, the witness testified that he felt he could not stay in Prizren and had no choice but to go to Albania.¹⁵⁰ Thus when

¹⁴⁷ See footnote 59 of the Motion, referring to T.818 and 820-821 of the witness' testimony (21 February 2002).

¹⁴⁸ The witness testified that his village of Nogavac/ Nagavc and surrounding villages were attacked on 25 March 1999, involving the burning of property and shooting into houses; T. 791-799. The witness consequently left and joined a ground of about 20,000 people. This group was redirected back to Nogavac/ Nagavc by forces of the FRY and Serbia; T. 801-805. Then on 1 April 1999 the witness was woken by two loud detonations and saw dead and wounded outside and the remains of a bomb with a cyrillic inscription on it; T.809-813 & 868. The following day he saw tanks coming towards the town and hid in his cellar with others. When police found the group, they threatened the group a knife; T. 816-817. Only after this was the witness advised to leave for his own safety.

¹⁴⁹ T. 819

¹⁵⁰ The witness stated T.857: "...when I was in Prizren, I stayed there illegally. I know of cases when Serb police forces have entered from one home to another, from one house to another, to see whether they had any refugees from Prizren territory. And these people, if they have found people in these houses in Prizren, they had driven them out and escorted them to Albania, where the owner, they have imprisoned him because he has taken guests in an illegal way. I don't know if I need to make any comments or if this is the accurate answer. So there was no other place for us to go other than to Albania. I think this was what the Serb government

the invalids were released from hospital, the witness borrowed a tractor and took everyone to Albania.¹⁵¹ En route, the witness saw that all villages he went through were empty, except for paramilitaries, the army and the police.¹⁵² Also, as noted by the Amici Curiae, the witness was stopped by a policeman and a soldier who asked him to show his passport and then told him to continue his trip to Albania.¹⁵³ Thus, the correct characterisation of this witness' departure from Kosovo is that he had no choice but to leave Kosovo and that his departure was intended by the forces of the FRY and Serbia. His departure should therefore be characterised as deportation.

Ali Hoti (Motion: paragraphs 43-45)

89. This witness states that during the attack on his village, Velika Kru{a/Krushë e Madhe, by forces of the FRY and Serbia on 26 March 1999, the forces fired at the village and then, when the villagers had left, looted and burned the houses.¹⁵⁴ The next day the villagers were ordered by police to go to Nogavac/ Nagavc where they stayed until 1 April 1999 during which time the witness learnt from survivors,¹⁵⁵ or victims,¹⁵⁶ about many killings perpetrated against civilians by Serb forces in nearby areas. The witness and his family were also robbed at gun-point.¹⁵⁷ The witness left Nogavac/ Nagavc after it was bombed (by planes the witness states were not NATO planes as NATO planes flew higher)¹⁵⁸ causing destruction, injuries, deaths and terror amongst the civilians. The witness and his family then joined a column of people going towards the border.

wanted us to do." In relation to the proposition that he could go back to his village: T 858 "As far as going back to the villages where we used to live, we couldn't do that. There was no opportunity to do that."

¹⁵¹ T.820, T. 855.

¹⁵² T. 856.

¹⁵³ T. 821

¹⁵⁴ See Exhibit 105, Ali Hoti 92bis Statement. The summary set out above is taken directly from this Statement.

¹⁵⁵ For instance, Mehmet KRASNIQI, a badly burnt survivor of the murder of 110 men in Mala Kru{a/Krusë e Vogel, told the witness about this event; Exhibit 105.

¹⁵⁶ For instance, on route to collect tractors and vehicles the villagers were stopped by police who checked their documents, found an eagle drawn on the leather wallet of one boy and shot him. The witness did not see this occur but tended to the boy when he was brought back to Nogavac/ Nagavc - the boy died shortly thereafter from his wounds; Exhibit 105.

¹⁵⁷ The witness was stopped by police who pointed a rifle at his chest, checked his ID card and took his money. They then directed him at gunpoint to the house where he was staying and ordered all the people to hand over money and valuables. They also told the refugees that the village was surrounded by snipers who were watching them all the time; Exhibit 105.

¹⁵⁸ See Exhibit 105, Ali Hoti 92bis Statement, p. 8 of the English version. The Accused questioned the witness extensively about his knowledge of whether a NATO or Serb plane dropped these bombs; T. 3607-3111. The Amici Curiae also asked questions on this point; T. 3629 - 3630. During this questioning, the witness remained firm in his conviction that Serb forces had perpetrated the bombing on the basis that the planes that had done the bombing flew lower than NATO planes and that he had seen fragments of the bombs and they had cyrillic writing on them.

On route they passed through villages, including Velika Kruça/Krushë e Madhe, where they saw the corpses of people and livestock and the burnt remains of their houses - including the witness' house and clinic. They were also taunted and insulted by Serb forces along the way, had their registration plates taken and were told to go to Albania and not come back.

90. The many instances of violence and threats of force the witness experienced or heard about coupled with the fact that the forces of the FRY and Serbia had expelled him from his village and burnt his home and medical practice meant that the witness was unable to exercise genuine choice as to his destination, and indicates that the forces intended for him to leave Kosovo or were aware of the substantial likelihood that this would be the result of their actions. Thus the correct characterisation of this witness's departure from Kosovo is that he was deported.

Sabri Popaj (Motion: paragraphs 46-47)

91. Sabri Popaj's evidence about events at Nogavac/ Nagavc confirms the evidence that Fehim Elshani and Ali Hoti gave that the town was bombed in early April, early in the morning, by low-flying planes and that the people thereafter left the town.¹⁵⁹ It in no way discredits, undermines or contradicts their testimony.
92. As to why he left Kosovo, Sabri Popaj testified (via 92bis statement) about the attack on Bela Crkva/Bellacërkvë on 25 March 1999, during which his son and two brothers were killed with many others during a massacre in the Belles' stream. After the attack the witness found his house and his parents' house completely destroyed by fire and looted.¹⁶⁰ The witness remained in Kosovo locating the bodies of people who had been killed in nearby villages and burying them until 13 May 1999 when he decided to leave.¹⁶¹ However, given the foregoing events which had already forced the witness' family to leave Kosovo, he was not in a position to be able to exercise genuine choice and thus the correct characterisation of his departure is that he was deported.

Lufti Ramadani (Motion: paragraph 48)

¹⁵⁹ Exhibit 225, Ali Hoti 92bis Statement, p. 10 (0081-3916) of the English version.

¹⁶⁰ Exhibit 225, Ali Hoti 92bis Statement, p. 3-6 (0081-3909-0081-3912) of the English version.

¹⁶¹ Exhibit 225, Ali Hoti 92bis Statement, p. 6 - 12. (0081-3912-0081-3917).

93. Agreed.

Mehmet Avdyli (now Krasniqi¹⁶²) (Motion: paragraph 49)

94. The witness gave evidence (via 92bis statement) of the attack by Serb forces on the village of Mala Kru{a/Krusë e Vogel on 25 March 1999 during which Serb forces separated the men from the women, telling the latter to go to Albania, and attempted to kill all the men by forcing them into a small house and, once they were inside, shooting them and setting the house on fire. The witness managed to escape, suffering severe burns as he did so, to a nearby house from where he saw policemen continue to fuel the fire in the house and loot property from the village. He then retreated to the forest and remained there for two days as police were still in the area and then proceeded to Nogavac/ Nagavc where he got medical treatment. After this he left for Albania.

95. The witness had thus been forced from his village, which had been looted and burned, he had almost been killed by forces of the FRY and Serbia and the last he had seen of his family was them being sent to Albania. In these circumstances, his departure from Kosovo was involuntary and intended by the forces who attacked his village.

(b) Gnjilane/Gjilan (Motion: paragraphs 52-60)

96. The Prosecution agrees that no direct evidence of deportation or forcible transfer was led in relation to Prilepnica/Përlepticë. However, as the Amici Curiae point out Exhibit 106 (As Seen, As Told) contains material supporting the allegations made about this village.¹⁶³ The Amici Curiae complain that the report is a summary. However, the Chamber will recall that it expressly allowed for this report and Exhibit 145 (Under Orders),¹⁶⁴ to be admitted even though they summarise the statements of others.¹⁶⁵ For

¹⁶² See Exhibit 227, Mehmet Krasniqi 92bis Statement, Addendum to 4 April 1999 Statement (English ERN: 0305-0869-0305-0871). In this Addendum the witness states that following his return from Albania in 1999, after the war, he changed his second name from AVDYLI to KRASNIQI.

¹⁶³ Exhibit 106, OSCE/ ODIHR, Kosovo/ Kosova, As Seen, As Told: An analysis of the human rights findings of the OSCE Kosovo Verification Mission October 1998 to June 1999, Switzerland, 1999.

¹⁶⁴ Exhibit 145, Human Rights Watch. Under Orders: War Crimes in Kosovo, New York, 2001, tendered into evidence on 14 May 2002 at T.4876.

¹⁶⁵ See comment by Trial Chamber at T. 6170 (4 June 2002).

the reasons set out in the following paragraphs, these reports, even standing alone, are capable at this stage of constituting sufficient proof concerning Prilepnica/Përlepnicë.

97. The Prosecution called Sandra Mitchell, the Director of the Human Rights Division of the OSCE Mission in Kosovo, to testify in relation to Exhibit 106.¹⁶⁶ Ms. Mitchell testified about information collected during the period 20 March 1999 - 8 June 1999 (the period that is relevant to Prilepnica/Përlepnicë and other sites for which Exhibit 106 is the only evidence) and the subsequent analysis of this evidence in order to write *As Seen, As Told*. Specifically, she testified that: information, primarily during the period 20 March 1999 - 8 June 1999 in the form of witness interviews, was kept securely and could not have been tampered with;¹⁶⁷ witness interviews were conducted using standard forms,¹⁶⁸ and in, to the extent possible, a private environment;¹⁶⁹ interviewees were selected through an appropriate mechanism given the situation and the structures within Kosovo Albanian society;¹⁷⁰ human rights staff responsible for taking statements were trained in the importance of impartial information collection;¹⁷¹ "Guidelines on Classification" were prepared for the compilation of *As Seen As Told*;¹⁷²

¹⁶⁶ Sandra Mitchell testified on 4-5 July 2002. Her 92bis statement was tendered as Exhibit 243. Ms. Mitchell was responsible for the collection and management of the material which formed the basis for *As Seen As Told* and, at all times during the reporting period and preparation of the report, had primary responsibility for ensuring the credibility of the human rights findings and the integrity of the conclusions drawn on behalf of the OSCE; Exhibit 243, p. 2 (K022-7445) of the English version.

¹⁶⁷ Completed interview forms were stored in the headquarters of the Human Rights Division in Skopje and Tirana, numbered, in binders and in a locked cabinet. Also, at all times, including when *As Seen As Told* was being prepared, access to these interviews was limited to human rights staff and others approved by Ms. Mitchell or the Head of Mission; Exhibit 243, p. 4 (K022-7447) of the English version.

¹⁶⁸ Exhibit 243, p. 4 (K022-7447) of the English version. Copies of these standard forms are Attachments 5 and 6 (K022-7505-K022-7509) to Exhibit 243.

¹⁶⁹ OSCE often set up camps to provide a private and safe place for speaking to refugees and when this was not possible used OSCE vehicles as mobile offices; Exhibit 243, p. 3 (K022-7446) of the English version.

¹⁷⁰ See T. 7546-7547. The witness explained that OSCE-KVM had a good relationship with the Kosovo-Albanians and therefore that community leaders (family patriarchs) would approach their distinctive vehicles with requests for assistance. When they did so, OSCE-KVM would indicate their interest in interviewing witnesses to the more serious crimes and violations.

¹⁷¹ For example, in "Human Rights Tasks Overview", attached to Exhibit 243, Sandra Mitchell 92bis Statement, which describes the core tasks for the KVM human rights division, was distributed to all staff and was the basis for day-to-day management of the human rights field mission between December 1998 and March 1999, states at p. K022-7459, "Violations unless addressed by KVM quickly and openly also start to take on mythic qualities. This is where independent and unbiased monitoring by KVM could play a particularly important role. The ability to discern the truth rapidly disappears as time passes, and the saying that truth is the first casualty of war is nowhere more evidence than in virulent internal conflicts." It also states at K022-7460 under the heading, "2.3 Impartiality" that the OSCE must strive for impartiality and states that an Operational Principle of the mission is that "KVM action in promoting and protecting human rights will be evenhanded and consistent so as to be impartial and neutral".

¹⁷² These guidelines are Attachment 7 (K022-7510-K022-7523) to Exhibit 243, Sandra Mitchell 92bis Statement. Ms. Mitchell approved the classification guidelines and enforced their application during the reporting analysis and preparation and the guidelines were used by all who worked on the reports; Exhibit 243, Addendum (K022-7449). The guidelines set out a lot of detail as to what constitutes a violation of international

findings for the period 20 March 1999 - 8 June 1999 are presented from three perspectives, providing the writers of the report with three opportunities to confirm and cross-reference with different interviews conducted;¹⁷³ *As Seen As Told* distinguishes between information acknowledged to be hearsay and that which is a directly witnessed and also notes inconsistencies between accounts;¹⁷⁴ and the authors of the report believed allegations leading to the conclusions found in the report to be true and well-founded.¹⁷⁵

98. Together, the points that Ms. Mitchell developed reveal that *As Seen, As Told* was compiled on the basis of a sound methodology and indicate strongly that the information and conclusions presented in the report are reliable. The fact that the Accused had the opportunity to cross-examine the witness extensively about the report also suggests that no prejudice is caused to him by relying on the report.¹⁷⁶ The Accused questioned the witness, *inter alia*, about the reliability,¹⁷⁷ and representative nature of the underlying witness interviews.¹⁷⁸ The Accused has also indicated that he

humanitarian and human rights law. However, before this, under the heading "Standard for Strength of Claim the guidelines say the following "; "Because there is such a variety in the quality of the incident reports and refugee interviews, I suggest we divide the material in two categories: Category A - Claims which is verified or substantiated either by evidence or corroborating statements Category B - Claims which are not verifiable and not strongly substantiated

Category A claims should contain some of the following: supporting documentation".

¹⁷³ Sandra Mitchell, T.7530 (5 July 2002).

¹⁷⁴ Exhibit 243, Sandra Mitchell 92bis Statement, p. 5 (K022-7447) of the English version. This is in accordance with direction William Walker, the head of the OSCE-KVM mission, states that he gave to Sandra Mitchell. William Walker testified that, "Sandra Mitchell was an officer on my staff in Kosovo who I had come to respect. I had given her the task of dealing with the human rights situation in Kosovo, and in our Macedonian exile, I asked her to put together a team to go to the camps and to collect as many of these stories of what had happened to these refugees. I told her that we wanted only first-person accounts. We didn't want hearsay; we didn't want people talking about things they had heard about, but only things that they had witnessed."; T. 6816-6817 (12 June 2002). Note the Methodology sub-section of the Introduction to *As Seen As Told* accordingly states, "Where information is acknowledged by the interviewee to be hearsay, rather than the statement of a direct victim or witness, this is noted, as are inconsistencies when interviewees differ in their accounts of the same incidents.", p. xv (K035-0428).

¹⁷⁵ Sandra Mitchell, T. 7526-7527 (5 July 2002). Specifically, the witness stated, "Nothing in any of the books is based on any allegation that we did not believe was well-founded and based on conclusive evidence of those allegations. So those conclusions of interviews that were conducted and that we believe to be true have been reported in these books."

¹⁷⁶ The Accused was given an-hour-and-a-half to cross examine the witness; Sandra Mitchell, T. 7543-7544 (5 July 2002). Transcript of the cross examination is T.7524-7562 (5 July 2002).

¹⁷⁷ See for instance T.7528-7529 where the witness was asked, "did you find there to be a practice of lying about atrocities and then making propaganda out of them, and in particular, was there -- were there instances which you found out about people making things up which were subsequently found to be untrue". She responded that the mission went through great efforts to try and obtain the truth and verify as much as possible the information conveyed. In particular she pointed to numerous protocols, many of which were attached to her 92bis Statement (exhibit 243), as the method used to try and ensure that the information they got was reviewed, analysed and interpreted in the most accurate way.

¹⁷⁸ See T. 7546-7547. The witness explained that OSCE-KVM had a good relationship with the Kosovo-Albanians and therefore that community leaders would approach their distinctive vehicles with requests for

agrees with certain incidents reported in *As Seen, As Told*.¹⁷⁹ This both indicates the report's impartiality and suggests that accrediting considerable weight to the information contained within it would not cause prejudice.

99. The situation is similar for the report entitled *Under Orders*. As set out above, Fred Abrahams, a Senior Researcher for Human Rights Watch (HRW) testified in relation to this report and gave a detailed account of the methodology applied, thereby demonstrating its reliability and credibility.¹⁸⁰ The Trial Chamber is referred to the arguments set out under (D)(vi) above and KSE pages 409-410.
100. Furthermore, substantial evidence has been adduced indicating that what was happening in Prilepnica/Përlepticë and other sites (discussed below) for which the only evidence adduced is that in *As Seen, As Told* or *Under Orders* occurred all over Kosovo.¹⁸¹ Against this backdrop, the events that are alleged to have occurred in Prilepnica/Përlepticë are not exceptional and the witness accounts summarised in *As Seen, As Told* and *Under Orders* are credible.
101. The Amici also challenge the allegations of property and cultural site destruction contained in paragraph 63.i. of the Indictment. However, the following sufficient evidence has been adduced to allow a reasonable trier of fact to conclude that houses were burnt in villages through-out Gnjilane/Gjilan and that Serb forces attacked the town of Vlačica/Vlastica leading to the destruction of the mosque. Qamil Shabani testified that the houses of some of the villagers gathered in Donja Stubla had been

assistance. When they did so, OSCE-KVM would indicate their interest in interviewing witnesses to the more serious crimes and violations.

¹⁷⁹ See for instance cross-examination of Ali Hoti, T. 3619-3620 (22 April 2002) where the Accused indicated that allegations he was putting to the witness were from Exhibit 106. The Accused suggested that this increased the reliability of the allegations he put to the witness. The Accused put forward a similar argument during his cross-examination of Merfidete Selmani at T.8114-8115 (16 July 2002).

¹⁸⁰ Fred Abrahams testified on 3-4 June 2002 from T. 6049.

¹⁸¹ See the Deportation and Forcible Transfer Overview section of the Kosovo Summary of Evidence document. As well as many crimebase witnesses, MUP and VJ personnel such as witnesses K5 (Dates of testimony: 24-27 May 2002, T.5521-T.5646), K32: Dates of testimony: 17-22 July 2002, T.8216-8324), K41 (Dates of testimony: 5-6 September 2002, T.9666-9667; 9758-9862) and Nike Peraj (Dates of testimony: 9-13 May 2002, T. 4647-4746, 92bis Statement tendered as Exhibit 143), all testified to the existence of campaigns to ethnically cleanse areas of Kosovo Albanians. In addition, it is worth noting that Ms. Mitchell stated, "the accounts of forced deportation is the one charge where I would say that the evidence that we collected was overwhelming and consistent. Of the nearly 2.800 statements that we collected from refugees in the camps in Albania and Macedonia every single one of those statements described a departure from Kosovo which was less than voluntary"; Sandra Mitchell, T.7535-7536 (5 July 2002).

burnt by Serb forces.¹⁸² As Seen, As Told details how the attacks on a number of villages in Gnjilane/Gjilan involved the burning of houses.¹⁸³ Evidence of the destruction of the Vlačica/Vlastica mosque, including a photograph showing the damage, was adduced as part of Andras Riedlmayer's expert report.¹⁸⁴ In addition, Qamil Shabani testified that on the evening of 28 March he heard firing coming from the Serb village of Pasjan, where there were soldiers and reservists, towards the village of Vlačica/Vlastica.¹⁸⁵

102. Sufficient evidence has also been adduced to allow a reasonable trier of fact to conclude that people were deported from Gnjilane/Gjilan. The Amici do not dispute that there is evidence amounting to forcible transfer of villagers from @egra/Zhegër, Nosalje/Nosalë and Vladovo/Lladovë. Qamil Shabani testified that people from these and other villages were gathered in Donja Stubla - up to 20,000 people were there in total.¹⁸⁶ In Donja Stubla there was insufficient food and water and people had resorted to living in nylon tents so from 15 April 1999 people left Donja Stubla in the direction of Macedonia, "because they thought they would find salvation there".¹⁸⁷ The witness left in a group of 600 on 4 May 1999 because of the poverty and insecurity of their situation.¹⁸⁸ On route to the border, the group was stopped by Serb forces who stole property from them, separated the men from the women, threatened and insulted them and ordered them in a particular direction on pain of death.¹⁸⁹ The group made it to the border the following day with the collusion of Serb forces.¹⁹⁰

103. Given that the witness and the others who left from Donja Stubla had been forcibly transferred from their homes and, due to the circumstances created by Serb forces, felt

¹⁸² Qamil Shabani, (4 March 2002) T.1534: "Did any of the people, the 20.000, try to go home again; and if so, did they come back with stories about what they found? If you don't know, that's fine. A. No. It's true that when some of them returned home, they found the houses looted and raided, some burned down, but this happened after some time, after the tenth day in Delekare and Remnik. The other part of the population fled."

¹⁸³ Exhibit 106, *As Seen As Told*, p. 203-205 specifies that houses were burnt in Vlastica/Llastice (p.203), @egra/Zhegër (p.204) and Prilepnica/Përlepnice (p.204).

¹⁸⁴ Exhibit 88, tendered on 9 April 2002 at T. 2633. The relevant pages are K020-9382-K020-9384.

¹⁸⁵ Qamil Shabani, T.1527-1528 (4 March 2002)

¹⁸⁶ Qamil Shabani, T.1533-1534 & T.1563 (4-6 March 2002)

¹⁸⁷ Qamil Shabani, T.1534 (4 March 2002).

¹⁸⁸ Qamil Shabani, T. 1535 (4 March 2002): "driven out of poverty, misery and lack of foodstuffs and the constant danger threatening us, listening to the firearms, gunshots coming from the Serbian army and which were present in that area, seeing their movements, we felt completely insecure. This is why we decided, as a group of about 600 people, to leave that place and head towards the border with Macedonia."

¹⁸⁹ Qamil Shabani, T. 1535-1537 (4 March 2002).

¹⁹⁰ Qamil Shabani, T1538-1539 (4 March 2002).

justifiably insecure and did not have sufficient resources to remain in Kosovo, they were not able to genuinely chose to leave and therefore the correct characterisation of their departure is that they were deported. The circumstances also indicate that the Serb forces directly intended that the civilians leave Kosovo or were aware of the substantial likelihood that this would result. As Seen, As Told, which should be accorded considerable weight for the reasons set out above, corroborates the evidence of forcible transfer and deportation from Gnjilane/Gjilan.¹⁹¹

(c) Urosevac/Ferizaj (Motion: paragraphs 61-63)

104. Considerable evidence has been given by witnesses about attacks on villages around Uro{evac/Ferizaj,¹⁹² which is corroborated by the summary of evidence about attacks in this area given in As Seen, As Told.¹⁹³ In addition, the evidence detailed below has been adduced of attacks (although not shellings) on the villages identified by the Amici.

(a) Biba/Bibe

105. This village is just the other side of the road connecting Gnjilane/Gjilan with Uro{evac/Ferizaj from Staro Selo/Fshati iVjet.¹⁹⁴ Bajram Bucaliu testified to the forcible transfer of the residents of Staro Selo/Fshati iVjet.¹⁹⁵ He also testified that when he went to Ferizaj station on 15 April 1999, after having been forced out of his village, there were around 4,000 - 5,000 people at the station.¹⁹⁶ On cross-examination he confirmed that Biba/Bibe, along with the other villages surrounding his village, were

¹⁹¹ Exhibit 106, p. 203-205 details how the villages of Vlastica/Llastice, @egra/Zhegër, Vladovo/Lladovë, Lovce/Llovë, Inatovce/Inatofe, Podgradje/Prograxhë (Pogragje), Prilepnica/Përlepnicë and Malisevo/Malishevë were attacked resulting in forcible transfers. It also specifies how the residents of Prilepnica/Përlepnicë (p.204) and some of those from Malisevo/ Malishevë (p. 204-205) crossed the border into Macedonia.

¹⁹² See in particular Exhibit 138, 92bis Statement for Florim Krasniqi and transcript of testimony (7 May 2002, from T. 4476) and also transcript of testimony for K5 (24 -27 May 1999, from T. 5521) in particular, T.5550-T5551 and T.5557-5566 (27 May 1999). See also evidence of Bajram Bucaliu, 12-13 March 2003 from T. 2040 and Avni NeBosnia and Herzegovinau, 8 May 1999 from T. 4507, Exhibit 139 - 92bis Statement. Attacks referred to by witnesses and in Exhibit 106, As Seen, As Told, focus on the area within a 10 km radius from Uro{evac/Ferizaj - a limited area given the number of attacks referred to.

¹⁹³ Exhibit 106, p. 376.

¹⁹⁴ See Exhibit 83, *Kosovo Atlas 2*, p. 12, grid reference U21. In addition Bajram Bucaliu testified (T.2043), "The surrounding villages bordering on my village are Sojeva, Bibaj, Komogllave, Varosh. These are the neighbouring villages and also the outskirts of Ferizaj."

¹⁹⁵ Bajram Bucaliu, 12-13 March 2003 from T. 2040.

¹⁹⁶ Bajram Bucaliu, T. 2068 (12 March 2003).

emptied of Albanians.¹⁹⁷ As Seen, As Told also refers to witness statements which state there was an attack (or attacks) on Biba/Bibe involving the terrorisation of the population and their departure.¹⁹⁸ Thus evidence has been adduced of an attack on Biba/Bibe and of FRY and Serb forces entering the village and forcing, through their acts or conduct, the population to leave for the Uro{evac/Ferizaj railway station.

(b) Muhad`er Prelez/Prelez i Muhaxherëve

106. Florim Krasniqi both testified¹⁹⁹ and stated in his 92bis statement²⁰⁰ that people from the village of Prelez²⁰¹ sought refuge in his village.²⁰² In addition, As Seen, As Told contains information about an attack on this village.²⁰³ Thus evidence has been adduced indicating strongly that Muhad`er Prelez/Prelez i Muhaxherëve was attacked and the villagers expelled.

(c) Raka/Rakaj

¹⁹⁷ Bajram Bucaliu, T.2106: "I knew about the neighbouring villages which were all emptied of people. I said Kamoja [phoen], Sore [phoen], Bibaj, and Varosh. These four villages, they were evicted from Albanians [sic]." The villages referred to here are clearly Sojeva, Bibaj, Komogllave, Varosh - the villages the witness had referred to in his examination in chief. Also, from Exhibit 83, Kosovo Atlas 2, p. 12, grid reference U21 it is clear that by Bibaj the witness means Biba/Bibe.

¹⁹⁸ Exhibit 106, As Seen, As Told at p. 376 confirms that that Biba/Bibe and Staro Selo were close to one another (it says they are strategically located on either sides of a power sub-station on the road connecting Urosevac and Gnjilane/Ghilan). It says they were both attacked on 20 March 1999. Bajram Bucaliu gave no evidence about an attack on this date but this does not mean part of Staro Selo was not targeted then. Page 377 then sets out the pattern of attacks on villages in the area, including Biba/Bibe. This page refers in footnotes to 6 witness interviews and indicates that they state that in Biba/Bibe: the village was surrounded by forces of the FRY and Serbia who threw grenades, causing indiscriminate killings (footnote 69); warnings to leave within a set period were given (footnote 75) and also no warnings were given of attack (footnote 76); and an atmosphere of fear was created by the presence of forces (footnotes 78 and 83).

¹⁹⁹ Florim Krasniqi, 7 May 2002, from T. 4476.

²⁰⁰ Exhibit 138, 92bis Statement for Florim Krasniqi, tendered 7 May 2002, T. 4477.

²⁰¹ Note that Exhibit 88, p.12. grid reference T20, includes two towns called Prelez next to one another; Muhad`er Prelez/Prelez i Muhaxherëve and Jerli Prelez/ Prelez. The references by Florim Krasniqi may have been to the latter in which case, as the towns are only about 1 km apart, an attack on one of these towns is likely to affect the other.

²⁰² Exhibit 138, p. 1 (0074-9328) in the English version, states that on 5 April 1999 after hearing automatic weapons, firing and shelling; "A short time later a great many refugees came to our village. They were citizens of Pojatista and also there were many internally displaced refugees from other areas that had been staying in Pojatista . I would estimate that there were about 1,000 people. They were coming from many different villages in the area including; Pojatista, Urosevac , Prelez, Mohovci and many other villages." The witness testified in cross-examination in relation to being forced out of his village on 8 April 1999 (T.4493); " There were tractors, a lot of tractors in this group. ... besides the local people, there were also a large number of people from other villages such as Pojatishte Mohovci, Prelez, and many others. And these people had come to Mirosale to seek refuge because, until 8th of April, Mirosale was rather more peaceful than other places and had not been occupied by Serbian forces."

²⁰³ Exhibit 106, As Seen, As Told at p. 377 refers in a footnote (69) to one interview with a witness from Muhad`er Prelez/Prelez i Muhaxherëve who stated that the town was targeted with grenades which caused indiscriminate killings.

107. Witness K5²⁰⁴ gave evidence that the VJ was stationed in Raka/Rakaj and expelled villagers from this village.²⁰⁵ He also testified that he took his family to Raka/Rakaj soon after the NATO bombing campaign started and that there were paramilitaries there who he didn't know and was consequently afraid of, to the extent that he took his family back home.²⁰⁶ After returning to his home K5 was given jobs by the SAJ including to kill Isuf Ademi who lived in Raka/Rakaj. Accordingly, K5 went with other members of the SAJ to Raka/Rakaj, surrounded the family compound of Isufi Ademi, shot at his house and set fire to six or seven houses in the compound and to the garage.²⁰⁷ As Seen, As Told also contains an account from a woman from Raka/Rakaj stating she was ordered to leave and while doing so the group she was in was shot at, killing three of her children.²⁰⁸ Thus evidence has been adduced showing that Raka/Rakaj was subjected to attacks by FRY and Serb forces, some involving the killing of residents, and that these attacks forced occupants to leave the village.

(d) Papaz

108. No witness explicitly mentioned this village, however witnesses did testify about events in villages close to Papaz.²⁰⁹ Also, As Seen, As Told refers to two interviews of witnesses who were expelled from Papaz. As Seen, As Told states that these witness statements support the proposition that a combination of police, VJ, paramilitaries and reservists gave people in the village a warning to leave.²¹⁰ Thus evidence has been adduced of an attack on the village causing the villagers to leave.

(e) Varo{ Selo/Varosh

²⁰⁴ K5 testified on 24 -27 May 1999, from T. 5521.

²⁰⁵ K5, T.5550 (27 May 1999)

²⁰⁶ K5, T.5550-T5551 (27 May 1999). Note the witness said he left his home because paramilitaries were firing at it with hand-held motars. He must have been quite scared of the paramilitaries in Rakaj in order to turn back to his home.

²⁰⁷ K5, T.5565-5567 (27 May 1999).

²⁰⁸ Exhibit 106, p.378. She also says there were 2,000 people trying to escape and 300 FRY and Serb forces forcing them to leave. As Seen, As Told also refers to another interview with a witness from Raka/Rakaj who stated that he/she was hiding in the hills and was rounded up by FRY and Serb forces.

²⁰⁹ Florim Krasniqi gave evidence of attacks on his village, Mirosavlje/Mirosalë, as well as Pojatiste/Pojatishtë, a town he called Mohovci (called Muhovcë/Muhoc in Exhibit 88, p. 12, grid reference T21), and Prelez (either Muhad`er Prelez/Prelez i Muhaxherëve and Jerli Prelez/ Prelez - see Exhibit 88, p.12. grid reference T20); see Exhibit 138, p. 1-2 (0074-9328-0074-9328), T.4479 and 4493 (7 May 1999). All these towns are within a few kilometres of Papaz.

²¹⁰ Exhibit 106, p. 377. The interviews are referred to in footnotes 74 and 75.

109. Where Bajram Bucaliu gave evidence about Biba/Bibe he also gave evidence about Varo{ Selo/Varosh.²¹¹ In addition, As Seen, As Told refers to two interviews of witnesses from Varo{ Selo/Varosh.²¹² Thus evidence has been adduced of an attack on Varo{ Selo/Varosh and of FRY and Serb forces entering the village and forcing, through their acts or conduct, the population to leave for the Uro{evac/Ferizaj railway station.

(d) Kacanik (Motion: paragraphs 64-67)

110. While conceding that evidence sufficient to support forcible transfer has been presented in relation to Kacanik, the Amici once again challenge the voluntariness of the villagers' subsequent movement over the border. All five of the witnesses from Kacanik who crossed the border into Macedonia testified that their village had been attacked,²¹³ including shelling and shooting,²¹⁴ sometimes looting²¹⁵ and frequently burning²¹⁶ of

²¹¹ See paragraph setting evidence adduced about Biba/Bibe above and accompanying footnotes.

²¹² Exhibit 106, p. 376 refers in footnote 69 to a witness interview that states that Varo{ Selo/Varosh was a place where FRY and Serb forces surrounded the village and targeted the villages with grenades, thereby indiscriminately killing people. Footnote 83 refers to another witness interview that states that police and paramilitaries who dispersed through Varo{ Selo/Varosh were particularly cruel.

²¹³ For Kotlina/Kotlinë see Hazbi Loku, T.1936-1946 (11 March 1999) and Exhibit 144, Isuf Loku 92bis Statement, p.2-3 (0081-3786-0081-3787) of the English version. For Kacanik, see Exhibit 125, Isa Raka 92bis Statement, p.3-4 (K011-0876-K011-0877) of the English version. For the village of Vata, see Exhibit 135, Sejdi Lami 92bis Statement, p.3-4 (K019-3512-K019-3513) of the English version. For Dubrava/Lisnaje, Exhibit 137, Fadil Vishi 92bis Statement, p.3-4 (K007-4448-K007-4449) of the English version.

²¹⁴ For Kotlina/Kotlinë see Exhibit 144, Isuf Loku 92bis Statement, p.2-3 (0081-3786-0081-3787) of the English version, which states that the village was shelled on 8 March 1999 and then shelled, shot at and fired on by tanks on 24 March 1999. For Kacanik, see Exhibit 125, Isa Raka 92bis Statement, p.3 (K011-0876) of the English version, which states that the witness saw 20-30 police move into firing positions in the factory across the river and that these men then shot with rifles, mortars and grenades at the houses on the other side. For the village of Vata, see Exhibit 135, Sejdi Lami 92bis Statement, p.3-4 (K019-3512-K019-3513) of the English version, which states that Pragas and soldiers shot at the village and that there was no return fire from the village.

²¹⁵ This occurred in Kotlina/Kotlinë. Isuf Loku states that in the attack on 8 March 1999 houses were looted and cars were stolen; Exhibit 144, Isuf Loku 92bis Statement, p.2-3 (0081-3786-0081-3787) of the English version. Also, Hazbi Loku, T. 1938-1941 (11 March 1999) testified that in the attack on 24 March 1999 when women and children were separated they were searched and their valuables were taken.

²¹⁶ For Kotlina/Kotlinë see Hazbi Loku, T. 1950-1953 (11 March 1999) who testified that when he returned to the village after the Serb forces had left, the village had been destroyed. Hazbi Loku also testified about the burning of the village Ivaja; T.1924-1926. Also, Isuf Loku (Exhibit 144, Isuf Loku 92bis Statement, p.2-3 (0081-3786-0081-3787) of the English version) states that during the attack of 8 March 1999 he saw houses being intentionally set alight and that 17 houses in his hamlet, including his house, were burnt during this attack. He also states that on 24 March 1999 all remaining houses in the village were burnt and that when he inspected the houses, it looked like the fires had been started from the inside. Houses were also burnt in hamlets around Vata (Exhibit 135, Sejdi Lami 92bis Statement, p.5 (K019-3514) of the English version) and in Dubrava/Lisnaje, where Fadil Vishi saw his house burning from his vantage point in the woods (Exhibit 137, Fadil Vishi 92bis Statement, p.4 (K007-4449) of the English version).

the village, in one case the removal of women and children from the village²¹⁷ and in each case the killing of civilian villagers²¹⁸. It was in these circumstances that each witness, and many of the other occupants from their villages, decided to cross the border into Macedonia.²¹⁹

111. In the circumstances described the villages were not able to exercise a genuine choice. Furthermore, the circumstances indicate that the FRY and Serbian forces responsible for the attacks either directly intended or were aware of and had accepted the substantial likelihood that this would be the result of the violence they perpetrated. In particular, the burning of houses strongly indicates that the forces did not intend for the villagers to return to their villages and given the proximity of Kacanik to the border with Macedonia, where there were no forces of the FRY and Serbia perpetrating acts of violence rendering it a safe haven, this was clearly intended as the place the villagers would go. Thus the evidence amounts to deportation.

(e) Decan/Decani (Motion: paragraphs 68-70)

112. There is evidence both in K20's²²⁰ testimony and in As Seen, As Told²²¹ of an attack on Drenovac/Drenoc the day before the attack on Beleg. As Seen, As Told also refers to

²¹⁷ This occurred in Kotlina/Kotlinë, see Hazbi Loku, T. 1942-1944 (11 March 1999).

²¹⁸ For Kotlina/Kotlinë see Hazbi Loku, T. 1938-1950 (11 March 1999) who states that people who had been herded into a field were taken to wells and thrown down them. He also testified about other bodies found around the village. Isuf Loku also discusses the killing of civilians in Kotlina/Kotlinë during both the attack on 8 March 1999 and the one on 24 March 1999; Exhibit 144, Isuf Loku 92bis Statement, p.3 (0081-3787) of the English version. For Kacanik, see Exhibit 125, Isa Raka 92bis Statement, p.3-5 (K011-0876-K011-0878) of the English version, which states that guards in the factory where the police shot from were killed and civilians across the river, including the witness' wife, were shot and died as a consequence of their wounds. For the village of Vata, see Exhibit 135, Sejdi Lami 92bis Statement, p.4-5 (K019-3513-K019-3514) of the English version, which states that four civilians were killed in Vata and more were killed in other hamlets. For Dubrava/Lisnaje, see Exhibit 137, Fadil Vishi 92bis Statement, p.4 (K007-4449) of the English version.

²¹⁹ Hazbi Loku and Isuf Loku left for Macedonia in a group of approximately 50 people on the same day as the 24 March 1999 attack; Hazbi Loku, T. 1950 (11 March 1999) & Exhibit 144, Isuf Loku 92bis Statement, p.3 (0081-3787) of the English version. Isa Raka left Kacanik the day after the attack; Exhibit 125, Isa Raka 92bis Statement, p.4 (K011-0877) of the English version. Sejdi Lami states that he had been trying to cross into Macedonia with his family since before the attack because Serbs were shelling different villages every day. After the attack, the whole population of Vata village went to Macedonia; Exhibit 135, Sejdi Lami 92bis Statement, p.3-5 (K019-3512-K019-3514) of the English version. Fadil Vishi states that when the Dubrava/Lisnaje was surrounded he told the people to go to Macedonia so the women, children and elderly men formed a convoy which was stopped by the FRY and Serb forces, who removed from it some men, but was then allowed to then continue to Macedonia. The day after the attack, he followed suit; Exhibit 137, Fadil Vishi 92bis Statement, p.4 (K007-4449) of the English version.

²²⁰ K20, T.2514 (8 April 2002).

²²¹ Exhibit 106, As Seen, As Told, p. 167 states, "On 28 March Drenovac/Drenoc was surrounded by police who arrested 100 men". The source for this information is a witness interview with an individual whose husband and two sons were amongst those arrested.

witness interviews stating that there were attacks on the nearby villages of Gornji Crnobreg/Carrabreg i Eperm and Donja Crnobreg/Carrabreg i Ulte in preceding days.²²² This is sufficient evidence of attacks on villages surrounding Beleg for a reasonable Trial Chamber to find that attacks against them have been proved.²²³

(ii) COUNTS 3 and 4: MURDER (Motion: paragraph 71)

113. Agreed.

The Law (Motion: paragraph 72)

114. Agreed.

The Evidence

(a) Djakovica – 134a Ymer Grezda Street (Motion: paragraphs 73-75)

115. While the Prosecution decided not to call any witnesses who could give direct evidence about the events that occurred at this site, this decision being reflected in a map provided to the Chamber,²²⁴ evidence about the site has been adduced. As the Amici point out, a summary of the events that occurred at this location, taken from 8 witness interviews, many of whom listed the victims, is included in As Seen, As Told.²²⁵ In addition, Nike Peraj states that he heard about the Ymer Grezda incident and that he heard the Black Hand paramilitary group were the perpetrators of it.²²⁶ Furthermore,

²²² Exhibit 106, As Seen, As Told, p. 167, see also footnotes 37 and 38.

²²³ Note also that K20 was not the only witness to give evidence about events in Decani/Deçan. Witness Nike Peraj states that the massive VJ, MUP and paramilitary operation on the Carragojs valley affected the area "from Junik to the direction of Gjakove"; Exhibit 143, 92bis Statement of Nike Peraj, paragraph 14 of statement dated 18 April 2000. Junik is in Decani/Deçan municipality. The area affected by the attack is shown in the map tendered as Exhibit 143.4 and explained by Nike Peraj during his testimony (T.4659-4663 (9 May 2002)).

²²⁴ At the request of the Trial Chamber, towards the end of 2003 the Prosecution provided to the Trial Chamber a map entitled, "Kosovo Indictment - Crime Base Locations; Killing Sites - Evidence Status". This map indicated that no Prosecution evidence had been presented in relation to this site. This (inaccurate) representation was made as a consequence of no direct evidence having been led in relation to the events at this site.

²²⁵ Exhibit 106, As Seen, As Told, p. 174 and footnote 31. The Amici also refer to reference to this site in Exhibit 145, Under Orders, p. 216. As the source for the material in Under Orders is As Seen, As Told and the Indictment in this case, it adds no evidence that the Chamber need consider.

²²⁶ Exhibit 143, 92bis Statement of Nike Peraj, statement dated 15 February 2001, paragraph 71. Nike Peraj also states that he heard that the attack was motivated by the fact Zenelabedin Dervishdana (one of the victims

forensic evidence has been adduced identifying 6 exhumed bodies as those of the victims listed in Schedule D to the indictment as victims of the Ymer Grezda incident, and indicating that these individuals died of gunshot wounds,²²⁷ which accords with the summary included in As Seen, As Told. The above is sufficient evidence to allow a reasonable Trial Chamber to conclude that residents of 134a Ymer Grezda were murdered by forces of the FRY and Serbia.

(iii) COUNT 5: PERSECUTIONS (Motion: paragraph 76)

116. Agreed.

The law (Motion: paragraphs 77-79)

117. Agreed.

The Evidence

(a) Prizren (Motion: paragraphs 80 and 81)

118. As noted by the Amici, Xhafer Beqiraj gave evidence about three girls being taken out of a convoy of civilians leaving Prizren by forces of the FRY and Serbia.²²⁸ In addition, Asman Thaci testified about the rape of more than 50 woman from a convoy of people

listed in Schedule D), the Sheh in the Dervish Sect, had been given money by other town residents for safekeeping.

²²⁷ All bodies are identified in autopsy reports included in Exhibit 159. Exhibit 159 was tendered through Eric Baccard on 21 May 2002. Eric Baccard's Expert Report (Exhibit 168) provides an expert analysis of the forensic reports relating to this site. The autopsy reports state that all bodies died from multiple gunshot wounds. For a summary of each report and details of which parts of Exhibit 159 relate to each victim, see the Schedule D section of the chart entitled, "Proof of Death Evidence" attached as Attachment A to "Prosecution Submission of Kosovo "Proof of Death" Report and Motion Seeking the Admission of Additional Exhibits in relation to the Kosovo Indictment", filed 16 February 2004. In its "Order on Prosecution Submission of Kosovo "Proof of Death" Report and Motion Seeking the Admission of Additional Exhibits in relation to the Kosovo Indictment", filed 25 February 2004, the Trial Chamber stated that this document would not be admitted into evidence but would be considered as an analytical document.

²²⁸ Exhibit 103, 92bis Statement of Xhafer Beqiraj, p. 5 (K020-9140) of the English version. He states, "Whilst waiting to cross [the border] I also saw three girls, pretty girls, taken out of the line by police, with paramilitaries there as well, one was taken into a house nearby, two were taken by the paramilitary into the bushes nearby. I could not hear anything it was very noisy in the column."

from Prizren municipality.²²⁹ Under Orders also documents sexual assaults that occurred in Prizren municipality.²³⁰

119. The Trial Chamber will recall hearing evidence that there is a significant social stigma attached to sexual assault in Kosovo Albanian society meaning that women are reluctant to testify or even approach investigators.²³¹ These circumstances make it difficult for as much evidence of sexual assaults to be adduced as for other crimes such as deportation and murder. However, even though a map provided to the Chamber incorrectly suggested to the contrary,²³² sufficient evidence has been adduced for a reasonable Trial Chamber to conclude that women were removed from convoys in Prizren municipality and sexually assaulted.

²²⁹ Asman Thaci testified on 8 May 2002 (from T.4558). Exhibit 140, 92bis Statement of Asman Thaci, states at p. 4 (K011-0498) that on 17 April 1999 a convoy of over 2,000 people mainly from Lubizde village but also other villagers was stopped by VJ soldiers. After shooting some of the men, the convoy was sent to Lubizde village where the forces separated more than 50 of the prettiest women and girls and raped them. After the rape, the convoy was taken to the villages of Dedaj and Tutanaj in Prizren municipality. Asman Thaci testified that Lubizde is half in Djakove and half in Prizren (T.4567). This can be seen on Exhibit 83, Kosovo Atlas 2, p. 10, grid reference J23 and J24. According to Mr. Thaci, the people in the convoy were from the Prizren municipality part; T. 4577.

²³⁰ Exhibit 145, Under Orders, p. 131 contains a map indicating where incidents of rape that HRW considered credible occurred in Kosovo. These incidents are taken from HRW interviews and reports of other non-governmental organisations and were corroborated to the extent possible. There are 7 reported incidents of rape in Prizren municipality indicated on the map.

²³¹ Fred Abrahams testified at T. 6091-6092 (3 June 2002), in relation to the HRW report Rape as a Weapon of Ethnic Cleansing which was tendered as Exhibit 202: "I would emphasise, as the report does, that these 96 cases in no way represent the full magnitude of this problem. It was very obvious that the number is larger, primarily on account of the social taboo connected with crimes of this nature Clearly there is a social stigma connected with crimes of this nature to the extent that women, Albanian women, might not be able to find a husband if it's known that they had been a victim of sexual crime. Or in the very least, viewed in a very negative way by the society. It's an unfortunate reality, but it is a traditional place." See also Exhibit 267, 92bis Statement for K31, page 6 (K021-8770) where the witness indicates that she did not mention she was raped in her first statement because of the shame associated with such an offence in Muslim culture. In addition, Exhibit 106, As Seen, As Told, p. 55 states that OSCE-KVM had great difficulty trying to obtain information about rapes on account of the stigma associated with it.

²³² At the request of the Trial Chamber, towards the end of 2003 the Prosecution provided to the Trial Chamber a map entitled, "Kosovo Indictment - Crime Base Locations; Cultural Destruction & Sexual Assault - Evidence Status". This map incorrectly indicated that no Prosecution evidence had been presented in relation to sexual assaults in Prizren. It also incorrectly indicated that no evidence was adduced in relation to sexual assaults in Kosovska Mitrovica/Mitrovicë.

CROATIA

A. The Indictment (Motion: paragraph 82)

120. Agreed.

B. Applicable Substantive Law: Articles 2, 3, and 5 of the Statute (Motion: paragraph 83)

121. Agreed.

C. Armed Conflict and Croatia

(i) Introduction (Motion: paragraphs 84-86)

122. International doctrine and practice establishes the effective date of Croatian succession to be 8 October 1991. To the contrary, the Amici Curiae in their Motion contend that Croatia could not be said to be a State until a later date, namely between 15 January 1992 and 22 May 1992.

(ii) The Law

(a) International Armed Conflict (Motion: paragraphs 87 and 88)

123. An armed conflict can be said to be international in character where, inter alia, the conflict takes place between two or more States.²³³ Accordingly, the conflict in 1991 will be of an international character once the Republic of Croatia can be said to have met the requirements of Statehood under general international law.

(b) Statehood (Motion: paragraphs 89-94)

124. The Prosecution and the Amici Curiae largely concur on the legal criteria of Statehood as set forth in Article 1 of the Montevideo Convention on Rights and Duties of States

²³³ Additionally – and the limb which has in practice commanded the most attention in the Tribunal's jurisprudence to date – a conflict is of an international character where one or more States intervene within a hitherto internal conflict taking place within the territory of another State, either directly through their own troops, or indirectly through, inter alia, subordinate armed forces, militias or paramilitary groups placed under the "overall control" of the intervening State. (See inter alia Prosecutor v. Tadić, Judgement, 15 July 1999 (hereinafter Tadić Appeals Judgement), paras. 84, 137).

(“Montevideo Convention”) as interpreted in international legal doctrine and practice.²³⁴

125. A State, strictly speaking is not a “fact” in the same way as other material objects, but is rather a legal construction in which significance is attached to the existence of a certain state of affairs.²³⁵ The question of Statehood is, therefore, a mixture of fact and law.²³⁶ The Prosecution therefore examines the evidence in relation to each of the elements proposed in Article 1 of the Montevideo Convention, as interpreted in the light of international doctrine and recent practice.

Population

126. The Montevideo Convention refers to “a permanent population.” This criterion is used in association with that of territory, and connotes a stable community.²³⁷ Article 1 of the Croatian Constitution, promulgated on 22 December 1990 and continually in force until 16 December 1998, is an expression of this criterion.²³⁸

Defined territory

²³⁴ “The Motion”, para 89.

²³⁵ This is not to say that the notion of Statehood is a purely legal construction. As Marek notes: “International law does not “create” States, just as State law does not “create” individuals. But it is international law and international law alone which provides the legal evaluation of the process, determines whether an entity is in fact a State, delimits its competencies and decides when it ceases to exist.” Matthew Craven, *The European Community Arbitration Commission on Yugoslavia*, 66 *British Year Book of International Law* (1995), p 369 footnote 153; Marek repeats that principle in a slightly different context. (Marek, *Identity and Continuity of States in Public International Law* (1954), pp. 191-8).

²³⁶ The possession of legal personality in any legal system is a mixed question of law and fact. Certain facts must exist and the law must recognise those facts to constitute a person for legal purposes” Waldock, “General Course on Public International Law,” *Recueil des Cours*, 106 (1962-II), 5, at p. 146.

²³⁷ See Brownlie, *Principles of Public International Law* (6th Edn, 2003), at p. 70.

²³⁸ It states: “the Republic of Croatia is a unitary and indivisible democratic and social State. Power in the Republic of Croatia derives from the people and belongs to the people as a community of free and equal citizens. The people shall exercise this power through the election of representatives and through direct decision making.” (MFI Exhibit 330 Tab 34 , Stipe Mesi} (October 2002) *Narodne novine*, no. 56/90, 135/97 and 8/98). This constitution and the fact that it listed the Croatian people as constituent nation was the subject of various testimonies, for example in cross-examination of Hrjove [arini], the latter answered a question by the Accused regarding the elimination of the Serbs from the new (Croatian) Constitution by citing the constitution as follows: “ Croatia is a national state of the Croatian people and a state of all other nations and minorities who are citizens of the Republic of Croatia”. After that [arini} said that the “minorities” included the Serbs, “who will be completely equal with members of the Croatian nation in the realisation of their national aspiration”, T. 31320 (21 January 2004); Also on the same subject, see Milan Babi}, T. 12901 and cross-examination T.13794-13796 (18 November 2002); Petar Kriste, cross-examination T. 14888 (27 January 2003) and Stipe Mesi}, cross-examination T. 10641-10642 (2 October 2002).

127. There must be a reasonably stable political community and this must be in control of a certain area. It is clear from past practice that the existence of fully defined frontiers is not required and that what matters is the effective establishment of a settled community.²³⁹ The fact that there was a defined Croatian territory was not disputed, both during examination in chief and cross-examination.²⁴⁰ Maps used during the testimony of many witnesses defined the Croatian territory.²⁴¹ These maps usually followed the Republican borders within the SFRY. During these events the Serbian leadership including the Accused did not dispute the existence of a Croatian territory, but rather, pursued the redistribution of territories in inter alia the Republic of Croatia based on ethnic principle.²⁴² Exhibit 447 Tab 6 was a televised address by the Accused in June 1990 to the Serbian Assembly. In this speech he states that the administrative borders of the Republics and that of Serbia are an open political issue.²⁴³ Witness Milan Kucan, former President of the Republic of Slovenia when confronted with that claim responded that the Republic borders were not merely administrative borders but that these borders were drawn on a consensual basis in the first Yugoslav constitution after World War II. In this constitution as well as in the subsequent ones, it is determined that these borders can only be changed by consensus of all Republics.²⁴⁴ He further stated that borders between the republics could not be changed without the agreement of the affected republic.²⁴⁵ Moreover, official SFRY documentation in October 91 recognised both characterisations "the territory of the Republic of Croatia" and "the Republic of Croatia".²⁴⁶ In effect, upon the acquisition of international legal personality, the Republican borders of Croatia became instead international frontiers.

Government

²³⁹ E.g. In 1913, Albania was recognised by a number of states in spite of a lack of settled frontiers and Israel was admitted to the United Nations in spite of disputes over its borders (idem Brownlie).

²⁴⁰ Petar Kriste speaks about a war being waged in the territory of Croatia and that the JNA attacked citizens, who then defended the territory and the citizens. T. 14915; 14919 (27 January 2003),

²⁴¹ Map Exhibits 326 Tab 2 and Tab 3; and Tab 11 and Tab 12.

²⁴² Exhibit 596 Tab 2: Jovi}'s Book on the "Last Days of the SFRY", entry dates 27 and 28 June 1990, pp 142-143; and 16 and 17 October 1990, pp 186-191

²⁴³ Exhibit 447 Tab 6 Video containing various excerpts from RTS News relating to the Accused including a speech the Accused gave in the Serbian Assembly on the new Serbian Constitution, dated 25 June 1990.

²⁴⁴ E.g. Milan Ku-an, T. 20888 (21 May 2003)

²⁴⁵ Ibid, T. 20918

²⁴⁶ Exhibit 446 Tab 64: Letter by the SSNO Moral Guidance Administration, Nr 6-83, General Blagoje Ad`i}, 12 Oct 1991; or Exhibit 406 Tab 15: Order on the observation of the regulations of international humanitarian law, Colonel General Blagoje Ad`i}, 14 October 1991

128. The shortest definition of a State is a stable political community, supporting a legal order, in a certain area. The existence of effective government, with centralised administrative and legislative organs, is the best evidence of a stable political community.²⁴⁷ Once a State has been established, extensive civil strife or the breakdown of order through foreign invasion or natural disasters are not considered to affect personality.
129. In Croatia, an effective government existed by 8 October 1991. Previously, Croatia was a Republic in a Federation with an established and functioning government. These organs formed the nucleus of the modern day Republic of Croatia. Several witnesses who testified so far were indeed members of this government.²⁴⁸
130. By or around this date, the Croatian legislative organs had enacted a comprehensive body of laws and in general, the organs of the Croatian State were functioning. Although labouring under the constraints imposed by wartime conditions, a functioning political apparatus capable of the effective exercise of sovereign power was thus in existence by this date. The process of establishment of the political, legal and military components of the Republic of Croatia was also very much in evidence.²⁴⁹ For instance, by 8 October 1991, the Croatian Army (HV) comprised the (nascent) national army of a

²⁴⁷ Brownlie, *op. cit.*, p 71 et seq. However, the existence of effective government is in certain cases either unnecessary or insufficient to support Statehood. E.g. Some States have arisen before their governments were very well organized, such as, for example, Poland in 1919 and Burundi and Rwanda, admitted to membership of the United Nations at the seventeenth session of the General Assembly (*idem*). Indeed, both Bosnia and Herzegovina and Croatia were also admitted to the UN at a stage when it can hardly be said to have had effective control over the entirety of its territory (18 May 1992).

²⁴⁸ For instance, Petar Kriste testified that after the elections in May 1990 he was the first Defence Minister, afterwards Trade Minister in the government. Petar Kriste (27 January 2003), T. 14838. See also Exhibit 370 Tab 2, produced by Kriste, Decision of the Government of Croatia of 30 Nov. 91 with reference to the 58th Government session to send a government delegation to the Dubrovnik region for both negotiations with the JNA and establish and maintain contact with international organisations. From this document, it is also obvious that the Croatian government maintained Crisis Headquarters in the regions in which the armed conflict took place, such as Dubrovnik and Osijek. In addition, Witness Hrvoje [arini], was from 1990 onwards part of the Croatian government starting with the position of Chief of Cabinet for the Croatian President (Hrvoje [arini], Exhibit 641 Tab 1, (21 January 2004)).

²⁴⁹ See *inter alia*, Exhibit 641 Tab 24 (Hrvoje [arini]-21 January 2004) "Law on adopting federal laws in the field of defence to be implemented in Croatia as Republican laws", Narodne novine, no 1244/91 and "Exhibit 641 Tab 25 "Law on Human Rights and Liberties and the Rights of National Communities and Minorities in the Republic of Croatia", "Decision on opening a Foreign Office of Republic of Croatia in Ottawa, Ontario, Canada", Narodne novine, no. 65/1991; See also *inter alia* Exhibit 641 Tab 26, "Law adopting the criminal code of the SFRY within Croatia", Narodne novine, no 1294/91; Exhibit 641 Tab 27, "Law on Croatian citizenship", dated 26 June 1991; Exhibit 641 Tab 28, "Law on Defence of the Republic of Croatia", dated 8 October 1991; Exhibit D-78, Rules and Regulations regarding record keeping for the members of volunteer youth units of Civil Defence dated 6 August 1990 produced by the Accused during the cross-examination of witness Kriste (27 January 2003).

separate State (the Republic of Croatia).²⁵⁰ On 21 September 1991 the separate character of the HV was further reinforced by the creation of a Main Staff of the HV.²⁵¹ Witness General ret. Imra Agotic testified that by October 1991, the HV had 24 Brigades, but these brigades had no sufficient weaponry. By the end of the year, there were 63 fully armed brigades, including 230 tracked vehicles (APC's, tanks) and 400 artillery captured from the JNA.²⁵²

131. The Accused himself does not seem to dispute the existence of an effective Croatian government. With various high level witnesses, he discussed the actions of this government. For instance during the cross examination of witness Kriste he spoke of the "new authorities in Croatia" and their policy towards Muslims, referring to spring 1991.²⁵³ The Prosecution has so far produced a variety of documents reflecting the activities of the Croatian authorities in 1991 before and after the 8 October 1991.²⁵⁴

Independence or capacity to enter into relations with other states²⁵⁵

132. Independence (or "sovereignty") has been stressed by many jurists as the decisive criterion of Statehood.²⁵⁶ In many cases, independence as a criterion will create few problems.²⁵⁷ In the first place, independence may be used in close association with a

²⁵⁰ Following the May 1990 JNA seizure of the weapons stocks of the entire Territorial Defence (TO), the Croats commenced organising a national army (Croatian National Guard's Corps, i.e. ZNG) by expanding their police forces from the Ministry of the Interior (MUP). See Exhibit 447 Tab 3 Order issued by Col Gen Blagoje Ad' i} 14 May 1990 to take over TO weapons and store them into JNA warehouses, produced by Imra Agoti}, T23257. The witness explained the political background to the order; i.e that it was issued to remove Croatian government control of the TO weapons. Exhibit 475 Tab 2 (Imra Agoti}-27 June 2003), The Socialist Republic of Croatia, Municipality of Split, Territorial Defence Headquarters, Report on Relocating Weapons and Ammunition to the JNA Depots, no. 365/3 from 21 May 1990. This document also indicates the existence of a functioning military structure. See also Imra Agoti}-27 June 2003, who was the commander in chief of the Croatian National Guards Corps, (" ZNG") from July 1991 to September 91, explained that at that time the ZNG had a strength of 8,000 to 9,000 men. These men were committed to the defence of Croatia but lacked training and there were only long barrel weapons for 30% of the troops, T. 23260-23261. Petar Kriste (27 January 2003), T.14922 refers to the ZNG as a legal military formation.

²⁵¹ Imra Agoti}, T. 23262-23263 (27 June 2003),

²⁵² Imra Agoti}, commenting on Exhibit 475 Tab 3, T. 23268-23269 (27 June 2003)

²⁵³ Petar Kriste, cross-examined by the Accused, T.14912(27 January 2003)

²⁵⁴ For details see the list of documents provided in paragraph 129.

²⁵⁵ Although Montevideo Convention refers to the "capacity to enter into relations with other states" this has generally been treated as meaning "independence". (See for example, Harris, Cases and Materials on International Law (5th edn,1998), p 102 et seq Crawford, " State Practice and International Law in Relation to Secession", BYBIL (1998), p 85-117 hereinafter "Crawford")

²⁵⁶ E.g. Guggenheim, Marek, (Brownlie, 6th Edition 2003, page 72,74)

²⁵⁷ However, there are sources of confusion. Since a State is, in part, a legal order, there is a temptation to rely solely on formal criteria. However, issues of formal State structure (i.e. whether the State in question is a unitary State or a Federation with a degree of devolution of powers to constituent units) do not, in general,

requirement of effective government. Certainly, if an entity has its own executive and other organs, conducts its foreign relations through its own organs, has its own system of courts and legal system and nationality laws of its own, then there is prima facie evidence of Statehood.²⁵⁸ The practice of States has been to ignore – insofar as the issue of Statehood is concerned – various forms of political and economic blackmail and interference directed by States against the weaker members of the international community.²⁵⁹

133. The capacity to enter into relations with other states is a further aspect of this criterion.²⁶⁰ Crucial in this regard is the fact that Croatia has always maintained its own delegation in international negotiations, even before 8 October 1991. Ante Markovic the former President of the Federal Executive Council (SIV) of the SFRY testified to bi-lateral negotiations between the Presidents of Serbia and Croatia as early as March 1991 in Karadjordjevo dealing with the partition of Bosnia and Herzegovina.²⁶¹ Representatives of the “Republic of Croatia” entertained their own negotiations with international observers and were recognised as a party and signatory to such negotiations and resulting agreements, such as the Brioni Declaration on 8 July 1991 or the “Igalo agreement” in September 1991.²⁶² Several ECMM documents provided by

raise issues insofar as Statehood is concerned, although the status of constituent States may create problems (Brownlie, *ibid*, pp. 72-74).

²⁵⁸ Brownlie, *idem*.

²⁵⁹ The distinction is thus one of agency and control by foreign powers, on the one hand, and ad hoc interference on the other. (*ibid*, p 72).

²⁶⁰ See e.g. Shaw, *International Law*, at p. 140: “The capacity to enter into relations with other states is an aspect of the existence of the entity in question.... It is essential for a sovereign state to be able to create such legal relations with other units as it sees fit. Where this is not present, the entity cannot be an independent state. One is not talking here of political pressure by one country over another which may cause it to adopt, or reject, a particular course of action, something which is constantly occurring throughout the spectrum of the international community, but rather the lack of competence to enter into legal relations. The difference is the presence of absence of legal capacity, not the degree of persuasion or influence that may affect decisions.”

²⁶¹ Ante Markovi}, T.28026-28027 (23 October 2003); Also Petar Kriste (27 January 2003), T.14841-14843; Similar meeting took place between Slovenia and the Accused as early as January 1991. In April 1991 a tripartite meeting took place between the Accused, the Slovenia President and the Croatia President. The Accused was already willing to let Slovenia achieve its independence but still opposed Croatia's. Mile Ku-an, (21 May 2003), T. 20893-20894 See also Exhibit 338 Tab 4, produced by Nikola [amarad`i} (08 October 2002) (letter of the government of Serbia to the government of Croatia on 5 October 1991, indicating the conduct of bi-lateral negotiations).

²⁶²Exhibit 330 Tab 35 Brioni Joint Declaration of 7 July 1991 of the European Community with all parties directly concerned by the Yugoslav crisis. Excerpt from “Documents of the European Communities”. Ante Markovi} on 23 October 2003, T.28040, states that this agreement was essentially signed by Tu|man, Milo{evi} and Kadijevi} and shows the power of the individuals over their respective armed forces, in particular Milo{evi}'s control over the JNA. By contrast, the representatives of the self-declared Autonomous Region of Krajina (“SAO Krajina”) were not recognised as a separate independent party to such negotiations but often were represented by the Serbia and Montenegro (MFI Exhibit 330 Tab 37 (Stipe Mesi}) Cease-fire agreement, dated 01-Sep-91, signed by Mesi}; Markovi}, Izetbegovi}; Bulatovi}, Tu|man; Gligorov; Ku-an; Milo{evi}).

witness General Mangan show that the Croatian government was accepted by the EU and UN Commissions and representatives.²⁶³

(iii) Submissions (Motion: paragraph 95)

134. The identification of 8 October 1991 as the effective date of Croatian independence is consistent with the approach taken to the break-up of the SFRY by the international community as a whole. The international response to the Yugoslavia crisis was largely articulated through the Conference on Yugoslavia established on 27 August 1991 by the European Communities. The Conference on Yugoslavia established an Arbitration Commission, presided over by Robert Badinter, President of the French Constitutional Court, to advise it on legal issues in relation to the crisis. The Commission gave a series of opinions, of which Numbers 1, 3, 5, 8 and 11 are the most relevant.²⁶⁴

The Arbitration Commission's findings

135. The Prosecution contention that Croatia was independent as of 8 October 1991 is principally based upon the conclusion arrived at by the Arbitration Commission in Opinion 11, rendered on 16 July 1993. The factual criteria in play emphasise Croatia's formal assertion of Statehood, 8 October 1991 being the date upon which the Croatians themselves asserted that they had assumed responsibility for their international affairs.²⁶⁵ Croatia thus clearly regarded itself as independent as of 8 October 1991, a fact expressly recognised by the Badinter Commission in the following terms:²⁶⁶

•The Republics of Croatia and Slovenia ... declared their independence on 25 June 1991 and suspended their declarations of independence for three months on 7 July 1991, as provided by the Brioni declaration. In accordance with the declaration, the suspension ceased to have effect on 8 October 1991. Only then did these two Republics ... become sovereign States in international law. For them, then, 8 October 1991 is the date of State succession.

²⁶³ Exhibits 400 Tab 1, Tab 2, Tab 3, and Tabs 4-9 all originate from the time before and around 8 October 1991. In addition these documents make reference to "Croatian territories" and "Croatian forces", produced by Col. General Colm Mangan (27 February 2003). In particular in Exhibit 400 Tab 6 of 10 October 1991, special reference is made to the new legal status of Slovenia. In paragraph 3 of this same document the actions related to Croatia's declaration of independence are referred to.

²⁶⁴ Exhibit 641 Tab 32 produced by Hrvoje [arini] (21 January 2004)

²⁶⁵ See Mesi], T.10641 (2 October 2002); see also Babi], T. 13885 (4 December 2002).

²⁶⁶ Exhibit 641 Tab 32 Arbitration Commission, Opinion No. 11, op. cit., p. 1588.

136. The Commission's conceptual and methodological approach closely mirrored the classical criteria for Statehood, mentioned above.²⁶⁷
137. In its Opinion No. 1, dated 29 November 1991, the Arbitration Commission expressed the view that the situation in Yugoslavia was one involving the dissolution of the SFRY and the consequent emergence of its constituent Republics as independent States, even if that process was not yet complete.²⁶⁸
138. The Badinter Commission's conclusion was strongly affected by the following facts: four of the six Republics, containing a substantial majority of the population of the SFRY, were attempting to break away; the constitutional order, under which the constituent Republics themselves "participated in the exercise of political power within the framework of institutions common to the Federation"²⁶⁹ had completely broken down; and Yugoslavia was undergoing large-scale and unrelenting ethnic conflict, which threatened to lead to, and did in fact lead to war crimes and crimes against humanity.²⁷⁰
139. The Arbitration Commission, in providing the underlying legal rationale for the positions taken by the members of the EU and eventually by most members of the United Nations, thus proceeded on the basis that the break-up of the Yugoslav Federation was a matter of fact, and that the emergence to independence of the constituent Republics was a consequence of that fact. Furthermore, in the absence of a re-constituted Federal government, which represented the population of Yugoslavia as a whole, the underlying assumption of the Arbitration Commission was that there was no government, which had the authority to seek to prevent the separation of the constituent Republics, and that such separation would lead inevitably to the disappearance of the SFRY itself. Ante Markovic, the Federal Executive Counsel President testified at length on the inability of the Federal government to function properly as of spring 1991

²⁶⁷ Exhibit 641 Tab 32, Arbitration Commission, Opinion No. 1, op. cit., p. 1495, where it states that "the existence or disappearance of the State is a question of fact", that "a State's existence or non-existence has to be established on the basis of universally acknowledged principles of international law concerning the constituent elements of a State" and that in this respect, a State is "commonly defined as a community which consists of a territory and a population subject to an organised political authority."

²⁶⁸ Exhibit 641 Tab 32, Arbitration Commission, Opinion No. 1, op. cit., p. 1497.

²⁶⁹ Exhibit 641 Tab 32, Arbitration Commission, Opinion No. 1, op. cit., p. 1495.

²⁷⁰ Craven, op. cit, p 333 seq.

and the total breakdown of its functioning in the beginning of October 1991.²⁷¹ Former SFRY President Mesic concluded that “when Yugoslavia lost its integrating factors, when it became quite clear that the executive council, the Supreme Court, the Presidency of Yugoslavia, the constitutional court, had become blocked, that no institutions were functioning, it was quite clear that such a federation, such as it was, was untenable”²⁷². Consequently, and after noting “the desire for independence •as• expressed through referenda in the Republics of Slovenia, Croatia and Macedonia” in conjunction with the fact that “the composition and functioning of essential bodies of the •Yugoslav• Federation no longer satisfied the intrinsic requirements of a federal State regarding participation and representativeness,”²⁷³ the Republic of Croatia was found to have seceded from the SFRY on 8 October 1991.²⁷⁴

140. Further evidence that the community of nations as a whole has subsequently accepted 8 October 1991 as the effective date of Croatian independence is found within international treaty practice. For instance, the Croatian notification of succession to the Geneva Conventions, lodged on 11 May 1992, took effect from 8 October 1991; namely, the effective date of Croatian succession.²⁷⁵ Depositary notifications lodged with the United Nations Secretary General uniformly indicate that Croatia succeeded to membership of various multilateral treaties as of 8 October 1991.²⁷⁶

Chronology of events

141. The Prosecution contends that the Republic of Croatia emerged as a state by 8 October 1991 in consequence of the following sequence of events:

²⁷¹ Exhibits 570 Tab 16 and Tab 17, Resignation speech by Ante Markovi} on the occasion of his resignation in December 1991. Markovi} outlined how the “Rump” Presidency could not make any valid decisions, how the government was made dysfunctional, how cease-fires, signed by Tu|man, Milo{evi} and Kadijevi} were continuously violated, how form was more important than contents and how war was the preferred option over peace and how the break-up of Yugoslavia led to war. Ante Markovi}, T. 28017-28018 (23 October 2003)

²⁷² See e.g. Mesi}, T. 10698 (1 October 2002)

²⁷³ Exhibit 641 Tab 32, Arbitration Commission, Opinion No. 1, op. cit., p. 1496.

²⁷⁴ Exhibit 641 Tab 32, Arbitration Commission, Opinion No. 11, op. cit., p. 1589.

²⁷⁵ Exhibit 641 Tab 33 (Hrvoje [arini]-21 January 2004): This procedure, i.e. a notification of succession coupled with an earlier date, that being the date upon which the successor State considers itself bound as an international legal person by the treaty provisions, is consistent with international practice.

²⁷⁶ For example, Exhibit 641 Tab 34 (Hrvoje [arini]-21 January 2004): Croatia’s Notification to the governments of the State Parties to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, Conventions and Additional Protocols, dated 7 July 1992. Croatia notified of its succession to the conventions and protocols at the date of its independence, i.e. 8 October 1991.

- The dissolution of the SFRY was already predicted by the Accused as early as June 1990 inasmuch as he addressed already the possibility of Serbia becoming a sovereign state on the occasion of a new Serbian Constitution.²⁷⁷ By late 1990, political initiatives aimed at the dismemberment of the SFRY were already discernible.²⁷⁸
- In May 1991, a breakdown in the constitutional arrangements of the Federation occurred when the normal rotation arrangements for the federal presidency were rejected by the Government of Serbia;²⁷⁹
- On 25 June 1991, following earlier plebiscites, Slovenia and Croatia declared their independence and an armed conflict broke out in Slovenia;²⁸⁰
- On 7 July 1991, by an agreement signed at Brioni, the two constituent Republics suspended their declarations of independence for three months. In the absence of any agreement on the restructuring of the Federation, those declarations were renewed on 8 October 1991;²⁸¹
- On 18 July 1991, the SFRY Presidency passed a decision to withdraw the JNA from Slovenia within three months and thus accepting the secession of Slovenia.²⁸²

²⁷⁷ Exhibit 447 Tab 6; Borisav Jovi} the then SFRY President talked openly at that time of the preparation of a new law which would give nations the right of self-determination and/or secession. See for example Milan Babi}, T.12921-12922 (18 November 2002)—See also Exhibit 596 Tab 2: Jovi} Book on the “Last Days of the SFRY”, entry dated 16 May 1990, p 130- Borisav Jovi} referred to the right of peacefully leaving the Federation but that a Law on Secession be adopted before doing so. As noted above, the Prosecution’s submissions concerning the independence of Croatia as of 8 October 1991 is not predicated on Croatian self-determination, but rather, its emergence as a successor State in consequence of the dissolution of the SFRY.

²⁷⁸ Towards the end of June 1990 Borisav Jovi}, the Accused and General Kadijevi} discussed the expulsion of Slovenia and Croatia under the condition that new borders had to be drawn. (Exhibit 596 Tab 2: Jovi}’s Book on the “Last Days of the SFRY”, entries dated 27 and 28 June 1990, pp 142-143). Jovi} Book entries towards the end of the year 1990 clearly reveal that the break-up of Yugoslavia is inevitable and that the aim is the redistribution of the territories of those seceding republics based on ethnic principles. (See also Exhibit 596 Tab 2: Jovi} Book on the “Last Days of the SFRY”, entries for 16 and 17 October, pp 186-191, entry date for 26 December 1990, pp 208-209. It is made clear in the latter references that the Federal State is not liquidated officially for tactical reasons).

²⁷⁹ See for example Stipe Mesi} T. 10537, 10555, 10567, 10573 (1 October 2002)

²⁸⁰ Exhibit 641 Tab 21, (Hrvoje [arini]- 21 January 2004) Narodne novine, no. 31 of 25 June 1991. See also Milan Ku-an, T. 20895-20896, (21 May 2003)

²⁸¹ See Babi}, T. 13886 (4 December 2002), Markovi}, T. 28048-28050 (23 October 2003)

²⁸² Milan Ku-an, T 20900 states that from that moment on it was recognised that Yugoslavia could no longer be kept together and that with the withdrawal of the JNA from Slovenia the mission of the JNA changed from protecting the whole of Yugoslavia to protecting a smaller Yugoslavia, namely the parts inhabited by ethnic Serbs. Milan Ku-an T20917 also states that Slovenia was a constitutive element of SFRY and that the SFRY could not exist without Slovenia (21 May 2003). Borisav Jovi} in his book on 27 June 1991, refers to the Accused’s insistence that the JNA must defend the future borders of Yugoslavia and not engage in Slovenia. Jovi} refers to the military “which is intoxicated with the unity of Yugoslavia that no longer exists”. A meeting between the Accused, Jovi} and Kadijevi} took place where it was discussed that “the JNA should be transformed into a military force of those who want to remain in Yugoslavia” (Exhibit 596 Tab 2, Borisav Jovi}’s Book “The Last Days of the SFRY”, introduced through Borisav Jovi} (18 November 2003), p 306-307 (27 June 1991), p 311-312 (5 July 1991) p 326 (30 July 1991)).

- On 1 October 1991, the Rump Presidency declared that war had started and that all-federal organs had ceased to function.²⁸³
- After the expiration of the three-month moratorium, Croatia proclaimed its independence with effect from 8 October 1991;²⁸⁴
- Statement of the Parliament of the Republic of Croatia, at a joint session of all Chambers of 5 December 1991, declaring the decision of the Republic of Croatia to initiate the necessary procedures for the admittance, or membership, of all international governmental and other institutions, in particular the United Nations;²⁸⁵
- On 5 December 1991, a Declaration of the Croatian parliament stated that "as of 8 October 1991 the function of Stjepan Mesic as a member and the President of the Presidency of the former SFRY has ceased".²⁸⁶
- The earliest States to recognise the Republic of Croatia did so in July 1991, with the majority of doing so from late December 1991 onwards. By mid 1992, the Republic of Croatia had been accorded recognition by the vast majority of States within the international community.²⁸⁷ Croatia was admitted as a member State of the United Nations on 22 May 1992.²⁸⁸

²⁸³ Stipe Mesic, T. 10577, 10732 and Exhibit 328 Tab 21- Letter of Protest by President Mesic regarding the establishment of the Rump-Presidency, dated 2 October 1991; After attending the 1st "official" session of the Rump Presidency Bogic Bogicevi (Bosnia-Herzegovina representative) and Vasil Tupurkovski (Macedonia representative) decided they would no longer take part in the Presidency meetings, Stipe Mesic, T. 10582-10584

²⁸⁴ Exhibit 641 Tab 22, Narodne novine, no. 53/91 of 8 October 1991 (Hrvoje [arini]-21 January 2004). "Croatia postponed the implementation of its decision, hoping that a political solution would be reached within 3 months' time, namely, a political model as to how we would move from that federation which no longer functioned into something that was different. We said that we wanted a confederal model. If it did not function, then everybody would take their own path. But as an independent state without wars ... And once these months had elapsed, when there was no more Presidency, when Croatia was independent, I had nothing to do with the Presidency" (emphasis added). Mesic, T. 10747 (2 October 2002). Ante Markovi explained that this moratorium was the last chance to come to a peaceful resolution for the future of the SFRY. Nevertheless it took one month until a presidency session could convene and discussions proved fruitless and irreconcilable. (Markovi), T. 28049-28050, 23 October 2003).

²⁸⁵ Exhibit 641 Tab 23 (Hrvoje [arini]-21 January 2004).

²⁸⁶ Exhibit 641 Tab 23 (Hrvoje [arini]-21 January 2004)

²⁸⁷ For example: Exhibit 641 Tab 30 (Hrvoje [arini]-21 January 2004): Recognition of the Republic of Lithuania, dated 30 July and 13 August 1991; Exhibit 641 Tab 31 (Hrvoje [arini]-21 January 2004): Statement by the Presidency of the European Union on the recognition of the Republics of Slovenia and Croatia, 15 January 1992. For a complete list of dates upon which various States recognised Croatia, see "Date of Recognition and Establishment of Diplomatic Relations", Ministry of Foreign Affairs, Croatia, available at www.mvp.hr/eng/1-2-1-datumi-priznanja.htm.

²⁸⁸ Exhibit 641 Tab 31 (UN General Assembly Resolution 46/238 of 22 May 1992 (admitting Croatia to membership of the United Nations)), (Hrvoje [arini]-21 January 2004). The criteria for admission to UN membership under Article 4 of the UN Charter is statehood. Thus, by 22 May 1992, Croatian statehood was incontrovertible. The Prosecution submits that admission to UN membership as of 22 May 1992 in fact means that Croatia had met the required conditions for membership at a point prior to this date.

142. While it is true that most States recognised the Republic of Croatia after the 8 October 1991²⁸⁹, the Prosecution submits that given the retrospective and declaratory character of recognition, this fact does not establish the claim of the Amici Curiae that Croatia cannot therefore be regarded as independent as of that date. The Prosecution further notes that the vast majority of States did in fact accord recognition to Croatia within a few months of this date,²⁹⁰ and submits that, as a matter of doctrine, recognition is in any case largely declaratory of Statehood.²⁹¹ The Arbitration Commission also endorsed a declaratory approach to recognition, in which the date of commencement of Statehood is to be divined by reference to the existence of factual criteria and not to the retrospective, discretionary acts of the recognising States – an approach which is undoubtedly correct given the well-known drawbacks embodied by the constitutivist view of Statehood.²⁹² However, it submitted that recognition practice is far from irrelevant to the issue and in this regard, the Arbitration Commission adopted a balanced view, noting that “while recognition of a State by other States has only declaratory value, such recognition, along with membership of international organisations, bears witness to those States’ conviction that the political entity so recognised is a reality and confers on it certain rights and obligations under international law.”²⁹³ The Prosecution notes that it is significant that the Republic of

²⁸⁹ “The Motion” page 43 argument (g)

²⁹⁰ For a list of the dates upon which various States recognised Croatia, see footnote supra. Further, on 7 October 1991, the Montenegrin Assembly passed an “initiative acknowledging the international character of the border between the Republic of Montenegro and the Republic of Croatia” and subsequently passed a conclusion the next day. In an explanation of this initiative suggestions are made regarding the determination of the sea and land borders between Croatia and Montenegro. The existence of Croatia as an independent state in its former internal borders was not disputed (Exhibit 641 Tab 29, (Hrvoje [arini]-21 January 2004)).

²⁹¹ The Amici Curiae in their submission correctly identified that there exists a doctrinal dispute between “declaratory” or “constitutivist” views on recognition of states and governments. (“The Motion” footnote 132).

²⁹² Exhibit 641 Tab 32 (Hrvoje [arini]-21 January 2004) Arbitration Commission, Opinion No. 10, op. cit.: “recognition is ... a discretionary act that other States may perform when they choose and in a manner of their own choosing”. In contrast to the declaratory view of recognition, the constitutive theory sees recognition of a State as a necessary condition for its existence in the international sphere. In the latter half of the 20th century, the constitutive theory has been less frequently applied to the determination of statehood than previously, as it embodies a number of drawbacks. If recognition continues to be left to individual States, an otherwise deserving entity might nonetheless see recognition of its international legal personality withheld for political reasons whereas undeserving putative States might find recognition with relative ease. Furthermore, the piecemeal character of recognition would make it difficult to determine with precision the date upon which the new State was welcomed into the international community. Indeed, it is generally accepted that the formal act of “recognition” is a discretionary one and that there is no duty to accord recognition to a State even if it happens to fulfil the requisite criteria.

²⁹³ Exhibit 641 Tab 32 (Hrvoje [arini]-21 January 2004) Arbitration Commission, Opinion No. 8, op. cit., at p. 1523. For the reasons stated above, preferences appear to have shifted in recent decades toward the declaratory theory of recognition, which holds that recognition is, or at least should be, the acknowledgement of a factual situation: when the generally accepted criteria for the existence of a State are fulfilled, the State exists. It would nevertheless be an exaggeration to claim that the constitutive approach to recognition is entirely redundant. For instance, it does appear, in State practice, to be of greater relevance where the purported secession is of a revolutionary character, as in practice, most cases of revolutionary secessions appear to have

Croatia, within a relatively short period of its declaration of independence, attracted widespread international recognition, thus attesting to its universal acceptance within the community of nations.²⁹⁴

143. Finally, it should be noted that the determination of a precise date of Statehood is always a matter of retrospective political and/or judicial appreciation. Given this inevitable element of post-facto-ism in any evaluation of this nature, many of the above-mentioned features of Croatian statehood may have only been concretised by subsequent events.²⁹⁵ However, the Badinter Commission's identification of 8 October as the effective date of Croatian succession represented a useful distillation of complex and often contradictory State practice and has, moreover, since come to be widely accepted within international legal scholarship and practice as the date upon which the Republic of Croatia joined the community of nations.

No expert or other witness called by the Prosecution

144. The *Amici Curiae* note in paragraph 95 (iii) that no expert or other witness has been called by the Prosecution to give evidence on the date of Croatia's statehood. The Prosecution submits that as this issue contains a mixture of factual and legal element, the trier of fact is best placed to determine this issue on the basis of the foregoing submissions of fact and law.

The findings of the Badinter Commission are not legally binding and are of limited legal relevance

145. It is correct, as the *Amici Curiae* have noted in para 95 (iv) (b) of their brief, that the Arbitration Commission was not created by virtue of an international arbitration agreement between the disputing parties and had no treaty base. Its opinions were

become accepted into the international community of States only upon recognition (see Craven, *op. cit.*, p. 364). The case of Bosnia-Herzegovina is perhaps also instructive, where recognition was highly "constitutive" of Statehood, given that the international community was prepared to afford diplomatic recognition to Bosnia-Herzegovina at an early stage and in spite of its obvious lack of effectiveness.

²⁹⁴ Cf. for example, to other claimant states such as the SAO Krajina or the Turkish Republic of Northern Cyprus whose failure to attract significant international recognition prevents their widespread acceptance as States within the international legal order.

²⁹⁵ See also, in a slightly different context, Brownlie, *op. cit.*, p. 77: "It is justifiable, both legally and practically, to assume the retroactive validation of the legal order during a period prior to general recognition of a State, when some degree of effective government existed". Similarly also Craven, *op. cit.*, pp 389-390.

directed not to the parties concerned but to the Conference itself, and were delivered in a consultative capacity. However, and as is uncontroversial with respect to the International Court of Justice, advisory opinions delivered by independent judicial bodies have considerable moral and political authority, and while not having the effect of *res judicata*, may be declaratory of general international law.²⁹⁶ Even if the Arbitration Commission cannot strictly be seen as an "independent judicial body", it was certainly independent of the disputing parties, it attempted to conduct its activities in a broadly judicial manner, and it sought to found its opinions in general international law. As such, its opinions ought to be treated as authoritative statements of the relevant law.²⁹⁷

Croatia had insufficient control over its territory by 8 October 1991

146. The Motion claims in paragraph 95 (iv) (b) that Croatia had insufficient control over its territory for it to be considered an independent State by 8 October 1991. The evidence clearly shows that by August of 1991, Croatia was in control of 70 to 75 % of its territory, while around 25 to 30% of the Croatian territory was under Serbian control.²⁹⁸
147. The principle of effectiveness should not be calculated in strictly mathematical terms. Rather, it should be determined by effectiveness on the ground, namely by reference to population and territory over which the government continues to hold sway. As mentioned above, Croatia had, despite some losses to the Serb forces in Croatia, retained effective control over a large part of its territory.²⁹⁹ There is also ample evidence in state practice and in judicial and arbitral decisions to show that in order to constitute a State, it is not necessary for an entity to have exactly defined or undisputed boundaries or an absence of internal strife either at the time that it comes into being or subsequently.³⁰⁰

²⁹⁶ See e.g. *Peace Treaties case*, ICJ Reports, 1950, p. 79 per Judge Azevedo (Sep. Op.)

²⁹⁷ Craven, *op. cit.*, p. 334.

²⁹⁸ Imra Agoti}, T. 23265-23266 (27 June 2003); Petar Kriste, T 14885 (27 January 2003), explained that 75 % of the territory were controlled by the Croatian government.

²⁹⁹ Map Exhibit 326 Tab 5, Two Maps of Croatia - one map entitled "SAO's such as controlled by the end of 1991" showing the areas occupied by the Serbs, and the second map entitled "SAO's such as declared and such as controlled by the end of 1991" showing the occupied areas as well as the areas declared as SAO's by the Serbs.

³⁰⁰ For instance, many States the world over suffer from border disputes or are encountering domestic insurgency or other difficulties of control over significant portions of their territory whilst still being regarded as States; for example, Colombia and Afghanistan. See also Shaw, *International Law*, p. 140: "The need for a defined territory focuses upon the requirement for a particular territorial base upon which to operate."

148. Moreover, the Prosecution notes that Croatia continued to lack effective control over much of its present territory not merely prior to 8 October 1991 but throughout the entirety of the period in question. It must further be stressed that even after the admission of Croatia to UN membership³⁰¹ in May 1992, Croatia still lacked control over much of its territory. Thus, in the light of recent practice with regard to the Balkans, a dilution of the notion of effectiveness can perhaps be discerned within international legal doctrine. As noted by Shaw:

Recent practice with regard to the new states of Croatia and Bosnia-Herzegovina emerging out of the former Yugoslavia suggests the modification of the criterion of effective exercise of control by a government throughout its territory. Both Croatia and Bosnia-Herzegovina were recognised as independent states by European Community member states and admitted to membership of the United Nations ... at a time when both states were faced with a situation where non-governmental forces controlled substantial areas of the territories in question in civil war conditions.³⁰²

149. In conclusion, as of 8 October 1991, the conflict in Croatia can be said to be international in character in so far as Croatia can be said to have satisfied the criteria of statehood under general international law by this date. Accordingly, the Motion by the Amici Curiae on this issue ought to be dismissed.

(iv) Relevant Counts before the Conflict became International

(a) Counts 17, 22, 25, and 28 (Motion: paragraph 96)

150. These Counts cover a campaign of destruction throughout the targeted territories (Count 17) and specifically Dubrovnik (Count 28). In relation to the events in Dubrovnik, the

However, there is no necessity in international law for defined and settled boundaries. A State may be recognised as a legal person even though it is involved in a dispute with its neighbours as to the precise demarcation of its frontiers, so long as there is a consistent band of territory which is undeniably controlled by the government of the alleged State. For this reason at least, therefore, the "State of Palestine" declared in November 1988 at a conference in Algiers cannot be regarded as a valid State. The Palestinian organisations did not control any part of the territory they claim. Albania prior to the First World War was recognised by many countries even though its borders were in dispute. More recently, Israel has been accepted by the majority of nations as well as by the United Nations as a valid State despite the fact that its frontiers have not to this day been finally settled and despite its involvement in hostilities with its Arab neighbours over its existence and territorial delineation. Thus what matters is the presence of a stable community within a certain area, even though its frontiers may be uncertain."

³⁰¹ UN membership, in accordance with Article 4 of the UN Charter, is limited to "States".

³⁰² Shaw, *op. cit.*, p. 140.

Counts 22 and 25 charge the killing and wounding of citizens of Dubrovnik. The conduct was part of an ongoing military campaign starting in August 1991 until May 1992 with the majority of events taking place after 9 October 1991. The Prosecution submits that therefore the Article 2 charges can be retained.³⁰³

(b) Count 5 (Motion: paragraph 97)

151. In relation to Count 5, the Prosecution made clear in the indictment that this Count applies only to the killings committed during the time period after 8 October 1991 and specifically excluded incidents before this date.

(c) Counts 9, 10 11 and 16 (Motion: paragraph 98)

152. These Counts relate to the detention of thousands of non-Serbs in various detention facilities in Croatia, Serbia and Bosnia and Herzegovina over a time period starting in August 1991 until March 1992. In relation to this criminal conduct the majority of events took place after 8 October 1991 so that the Article two charges can be retained.³⁰⁴

(d) Count 14 (Motion: paragraphs 99 and 100)

153. The Prosecution's submissions regarding heads (a) and (c) above respond to paragraphs 99 and 100 of the Motion, as do the Prosecution arguments concerning the legal requirements for deportation. There is sufficient evidence before the Trial Chamber of a continuous policy of expulsions and deportations, most of which took place after 8 October 1991, with some of these deportations taking place as late as April 1992.³⁰⁵

C. INDICTMENT ANALYSIS – CROATIA

(i) Count 1 (Motion: paragraph 101)

³⁰³ See PS(C) document, entries *re* paragraph 71 of the Croatia indictment

³⁰⁴ See PS(C) document, entries *re* paragraphs 63-65 of the Croatia indictment

³⁰⁵ See PS(C) document, entries *re* paragraphs 67-69; Exhibit 631 (Rule 92bis statement of Stana ALBERT) at pp 4-5 (deportation of people from Erdut in April 1992)

kilometres from Dubica, in the village of Bacin, they got off the bus by the river and were shot. C-1141 heard that people in a village located about one kilometre from the execution site could hear gunfire and moaning coming from there.³⁰⁹

160. At paragraph 106 of their Motion, the Amici Curiae stated that the Prosecution did not present evidence to substantiate the claim that “In addition, the Serb forces brought at least 13 non-Serb civilians from Bacin and Cervoljani (sic) to the same location. All 56 victims were killed there. At approximately the same time, the Serb forces took away an additional 30 civilians from Bacin and 24 from the villages Dubica and Cervoljani into an unknown location where they killed them.”

161. On this point, the Prosecution refers the Trial Chamber to the evidence from Ivan GRUJIC where he said that the list of 56 victims contained in Annex I of the Croatia indictment includes victims from Cerovljani and Dubica that they found in one mass grave in Bacin itself. GRUJIC therefore provides evidence for the 13 remaining victims, i.e. the difference between the 56 alleged to have been killed at a location near Bacin and the 43 people that remained at the fire station after C-1141 left.³¹⁰ The evidence from JOSIPOVIC quoted by the Amici Curiae at footnote 149 of their Rule 98 bis Motion, although admittedly hearsay and of general nature, is corroborated by expert GRUJIC’s evidence and therefore should bear some weight.

162. The evidence of C-1141, as one of the only survivors of the Bacin massacre, coupled with the pattern evidence given by Milan BABI}, the evidence from Josip JOSIPOVIC and the evidence from expert witness GRUJIC is enough to sustain the allegations made at paragraph 40 of the Indictment.

(b) Indictment paragraph 41 (Motion: paragraph 108)

³⁰⁹ C-1141, T11936-11937. The bodies were identified by relatives (T11970).

³¹⁰ Ivan GRUJIC, T17282-17283. See also Exhibit 402 Tab 6: Excerpt from Annex I of the Milo{evi} Croatia indictment annotated by expert witness GRUJIC related to paragraph 40 - Bacin, produced by Ivan GRUJIC, T17282; Exhibit 402 Tab 7: Chart giving statistics regarding population, expulsion, missing, and identifications from exhumations for Bacin, produced by Ivan Gruji; Exhibit 402 Tab 8: Chart giving statistics regarding population, expulsion, missing, and identifications from exhumations for Hrvatska Dubica, produced by Ivan GRUJIC; Exhibit 402 Tab 9: Chart giving statistics regarding population, expulsion, missing, and identifications from exhumations for Cerovljani, produced by Ivan GRUJIC; Exhibit 402 Tab 10: Individual records relating to the Bacin crime scene, produced by Ivan GRUJIC.

163. The Amici submitted that the passage “as soon as the Serb forces entered the villages, they killed all remaining non-Serb inhabitants they found” from paragraph 41 of the indictment should be excised.
164. The pattern evidence given by Milan BABI} according to which “the few people who stayed behind, mostly elderly people, would then be disposed by individual killings, which in most cases would not be elucidated,” on the opposite, supports this allegation.³¹¹
165. Ivan MARJANOVIC, the Prosecution’s main witness for paragraph 41, stated that when burying the bodies of the BROZINICEVIC family, he saw two Croat villagers close to the sight (presumably the only remaining Croats in the village). He did not see these men come back afterwards. They went missing and were never found even after Operation Storm.³¹² The witness added that about 35 Croats were exhumed from graves in the surrounding villages,³¹³ a significant number in light of the size of the towns in the Saborsko-Poljanak-Lipovaca area.
166. The Prosecution also presented crime-base evidence that supports the allegation contained in paragraph 41 for the area closely surrounding Lipovaca. C-1220, a Serb TO member who participated to the Saborsko attack, stated that a special unit was sent to “mop-up” the area and bury the dead with an excavator.³¹⁴
167. Vlado VUKOVIC, a policeman from the Saborsko area testified that he attended exhumations in Saborsko in August 1995. The exhumation team uncovered two mass graves and found ten skeletons of elderly people in their homes who had either been killed and burned with their homes or killed when their homes were burned. A total of 29-30 bodies were found and 7 of the villagers are still missing to date.³¹⁵ The witness recognised about 90 per cent of the victims as former residents of Saborsko. He noted that all of them were civilians except Mate SPEHAR, who was a Croatian policeman.

³¹¹ Milan BABI], T13066.

³¹² Ivan MARJANOVI], T25010.

³¹³ Ivan MARJANOVI], T25021-25022, 25011-25014; Exhibit 511 (92 bis statement of Ivan MARJANOVI]) at p. 4.

³¹⁴ C-1220, T11602-11603, 11609-11610.

³¹⁵ Vlado VUKOVI], T23688, 23711-23714; Exhibit 479 Tab 1 (92 bis statement of Vlado VUKOVI]) at para. 13, Addendum.

The victims were all people who were roughly about 60 to 70 years of age. One of them, Mate MATOVINA, was 95 years old.³¹⁶

168. Therefore, the evidence from the above-described mixture of witnesses to the effect that there was a policy to “mop-up” and rid the villages of the presence of any non-Serbs inhabitants is not only substantiated in Lipovaca but also in its immediate region. The evidence adduced in relation from villages further afield but still in the Krajina region, such as Skabrnja, is also indicative of this policy.³¹⁷

(c) Indictment paragraph 50 (Motion: paragraphs 109-111)

169. The Prosecution has presented strong, contemporaneous evidence that the eleven victims named in the indictment were murdered by members of the TO of the SAO SBWS, led by Zeljko RAZNATOVIC aka “Arkan”.

[REDACTED]

[REDACTED]³¹⁸ The envelope contained a letter from CIZMIC dated only two days after this incident. This letter – prepared presumably at great risk to its author – described how in the evening of 21 September 1991, Goran HADZIC, Arkan, and 20 of Arkan’s men broke into the Dalj prison, released two prisoners, and took 11 other prisoners away. The eleven names listed in this report match the eleven names listed in the Croatia Indictment.³¹⁹

170. [REDACTED]

³¹⁶ Vlado VUKOVI], T23689.

³¹⁷ See for instance the statement of Bo{ko BRKI], introduced under Rule 92 bis (C), where he states that: “Of all people that the witness knows stayed in [kabrnja during the occupation (until February 1992), only two survived (Mile and Marija Vukovi)”. Exhibit 630 (92 bis statement of Bo{ko BRKI]) at p.2.

³¹⁸ [REDACTED]

³¹⁹ Ex. 375 Tab 1.

[REDACTED]

171. The description in this written document was confirmed at trial by an eyewitness to these events, Luka SUTALO. This witness was one of the two men released by Arkan and HADZIC when they broke into the Dalj police station. SUTALO also confirmed the identify of the other men who were being held with him at the time, but who were not released by Arkan and were murdered.³²⁰

172. [REDACTED]
[REDACTED]
[REDACTED] Missing Person Questionnaires prepared by the victims' families confirm that the victims came from Baranja.³²¹

(d) Indictment paragraph 51 (Motion: paragraphs 112-114)

173. Nine of the eleven persons listed in the indictment have been exhumed and identified.³²² One of the persons listed, Pavle Beck, was found in a well that contained 20 other bodies – including victims from other incidents involving Arkan's men (paragraphs 53, 56, 57 and 58 of the indictment).³²³ All persons in the grave died as a result of trauma inflicted by a blunt object.³²⁴

³²⁰ [UTALO, T25545-25547; Ex. 520 (92 bis statement of Luka [UTALO), at paras. 39-53.

³²¹ Ex. 403 Tab 28.

³²² GRUJI], T17290; Ex. 401; Ex. 402 Tabs 25, 26 and 27; Ex. 403 Tab 28.

³²³ Ex. 402 Tab 27. The bodies found in the well included Pavle BECK (para. 50); Franjo PAP (para. 53); Aleksandar RAJI], Matej BUTKOVI], Ivan KOVA^EVI] (all para. 56); Manda MAJ, Andrija MATIN, Franjo PITTL, Stjepan TE[ANAC, Andrija [IMEK and Josip ZORETI] (all para. 57); Ana TERZI], \uro ALBERT, Helena ALBERT & Viktorija ALBERT (all para. 58). The body of Arkan's deputy, Milorad STRI^EVI] was found in the same well. Six bodies found in this well are still unidentified. The way in which the bodies were found in the well, that is to say, those who had disappeared earlier on were found on the bottom level of the well, whereas the ones who disappeared soonest were at the top, is consistent with the known dates of the disappearance of these victims. GRUJI], T17294.

³²⁴ STRINOVI], T17944; Ex. 410 Tabs 32-33.

174. The Prosecution has presented strong, contemporaneous evidence that the victims named in the indictment were murdered by members of the TO of the SAO SBWS, led by Zeljko RAZNATOVIC aka "Arkan". Documentary support for the occurrence of this incident is found in an "official note" prepared by Zeljko CIZMIC, commander of the Dalj Milicija, shortly after this incident occurred in which he described Arkan's men arriving at the police station, and dead bodies being carried from the room where the prisoners were being held.³²⁵ Witnesses reported that the bodies were later thrown in the Danube River.³²⁶ This report was written by the same police commander who prepared the report on the incident described in paragraph 50 of the Croatia Indictment.
175. The information in this report was corroborated by Ivan GRUJIC and Davor STRINOVIC. GRUJIC confirmed that of the 30 listed in the indictment annex, 19 have been identified. Their bodies were found in a mass grave in Ilok – a village that is down-river from the village of Dalj. They had been taken out of the Danube River. The bodies of Marinko Somodvorac and Vinko Oroz were found in Novi Sad (FRY). According to the documentation the ODMP received from the parallel FRY institutions, these two bodies were retrieved from the Danube across from the town of Ilok.³²⁷
176. STRINOVIC testified that thirteen of the bodies died as a result of gun shot injuries, two probably through gun shot wounds, and one through trauma. Vinko Oroz and Marinko Somodvorac were killed by bullets through their heads.³²⁸
177. Information about the identity of the victims was provided by Ivan RASTIJA, father of one of the named victims. He confirmed that his son was arrested in Baranja and taken prisoner by the Knezevi Vinograd TO.³²⁹ He also confirmed that two other named victims were arrested in Baranja at about the same time.³³⁰

[REDACTED]

[REDACTED]

³²⁵ Ex. 375 Tab 2.

³²⁶ GRUJI], T17291.

³²⁷ GRUJI], T17290-17291; Ex. 401; Ex. 402 Tab 29; Ex. 403 Tab 32.

³²⁸ STRINOVI], T17945, 17957, 17969; Ex. 410 Tabs 33-35.

³²⁹ Ex. 629 (92 bis statement of Ivan RASTIJA), at pp. 2-4.

³³⁰ Ex. 629 (92 bis statement of Ivan RASTIJA), at p. 4.

181. Finally, the bodies of at least one of the victims was found in a well that contained other known victims of Arkan.³³²

182. [REDACTED]

183. Witness C-057 testified about an official investigation into the disappearance of the victims of the first two incidents. He confirmed that the victims of the second incident were the relatives of those in the first incident. One of the victims was the owner of the "Saran Inn".³³³ An investigation report written about this incident was suppressed. A short time later, Arkan took over the Saran Inn and moved poker machines into it.³³⁴

184. [REDACTED]

³³² Ex. 402 Tab 38. The bodies found in the well included Pavle BECK (para. 50); Franjo PAP (para. 53); Aleksandar RAJI], Matej BUTKOVI], Ivan KOVA^EVI] (all para. 56); Manda MAJ, Andrija MATIN, Franjo PITTL, Stjepan TE[ANAC, Andrija [IMEK and Josip ZORETI] (all para. 57); Ana TERZI], \uro ALBERT, Helena ALBERT & Viktorija ALBERT (all para. 58). The body of Arkan's deputy, Milorad STRI^EVI] was found In the same well. Six bodies found in this well are still unidentified. The way in which the bodies were found in the well, that is to say, those who had disappeared earlier on were found on the bottom level of the well, whereas the ones who disappeared soonest were at the top, is consistent with the known dates of the disappearance of these victims. GRUJI], T17294.

³³³ [REDACTED]

³³⁴ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Croatian authorities later found the body of Maria SENASI in this well.³³⁵ This evidence is sufficient to show Marija Senasi was arrested by the SNB and subsequently murdered, as the indictment alleges.

(f) Indictment paragraph 55 (Motion: paragraphs 118-121)

185. Sufficient evidence has been submitted on all of the essential allegations in paragraph 55 (Vukovar – Lovas Farms).³³⁶ A reasonable inference from the evidence produced is that men taken prisoner after the fall of Vukovar were taken to Dalj, where they were imprisoned under the control of the TO; that some of those prisoners were murdered by the TO a short time later; and that their bodies were buried in two common graves near Dalj.

186. Davor STRINOVIC testified about the bodies of 34 persons who disappeared from Vukovar on 20 November 1991. These bodies were recovered from two locations: Dalj (11 bodies) and Lovas farm (24 bodies). At Dalj, one person probably died from a gunshot wound, nine probably died as a result of explosives, and for one cause of death unknown. At Lovas farm near Dalj, the cause of death for 20 persons was gunshot wounds, for one a probable gunshot wound, for two, trauma; and for one the cause of death was unknown.³³⁷ Ivan Grujic confirmed that all 11 persons listed in the indictment annex for paragraph 55 have been exhumed and identified. In addition, another three people have since been identified, and the remains of 21 people from these two graves have not yet been identified.³³⁸

187. Given the common way in which the victims in this grave disappeared, the common way they were murdered, and finally their burial in a common grave, it can be inferred that the story of one of these victims can stand for the story of all. One of the named victims identified by GRUJIC was the husband of witness C-1071; his story was told by

³³⁵ [REDACTED]

³³⁶ Although the witnesses who testified at trial did not address some of the factual circumstances leading up to the murders, those subsidiary details are unnecessary for proving the crimes detailed in this paragraph.

³³⁷ STRINOVI], T17949-50; Ex. 410 Tabs 45-46.

his widow. Through her testimony we learned that C-1071's Croat husband was taken prisoner on 19 November 1991, when Vukovar fell. In a field guarded by JNA soldiers, the men were separated from the women. That was the last time C-1071 saw her husband alive. Although she heard sporadic reports after this that her husband was seen in Dalj and even that he was shot there, she did not get confirmation of his fate until his gunshot ridden body was found in the common grave in Lovas farms, between Dalj and Borovo Selo.³³⁹

188. The story of C-1071's husband was picked up by witness C-1175. This witness confirmed that prisoners taken at the fall of Vukovar were being held in Dalj, under the control of the TO commander, Pavle MILOVANOVIC aka "Pajo". Several days later, this same "Pajo" came and told the witness that he needed help burying bodies. Witness C-1175 found the bodies – including that of the husband of witness C-1071 – scattered on a slope leading to the Danube at Lovas Farms. The TO Commander "Pajo" told C-1175 that these people had been killed by the Borovo Selo TO. The burial was supervised by a police officer from Vukovar.³⁴⁰

(g) Indictment paragraph 56 (Motion: paragraphs 122-124)

189. The evidence for this paragraph shows that the five named victims disappeared from Erdut in December 1991 – a time when Arkan and his men were operating in the area.³⁴¹ Three of the five bodies were subsequently found in a well, co-mingled with other known victims of Arkan and his men (including the body of Milorad STRICEVIC).³⁴² Two of the persons died from trauma, one probably from a gunshot wound.³⁴³ This is sufficient to support the conclusion that these people fell victim to

³³⁸ GRUJI], T17293; Ex. 401; Ex. 402 Tabs 51 & 52; Ex. 403 Tab 53.

³³⁹ Exhibit 518 Tab 1 (92 bis statement of C-1071) at p.2-4.

³⁴⁰ C-1175: T25463, 25467-68; Ex. 517 Tab 1 (92 bis statement of C-1175) at paras. 21-23, 27.

³⁴¹ [UTALO, T25545-47; Ex. 520 (92 bis statement of Luka [UTALO), at paras. 55; Ex. 631 (92 bis statement of Matija ALBERT) at p. 4.

³⁴² GRUJI], T17293; Ex. 401; Ex. 402 Tabs 54 & 55; Ex. 403. The bodies found in the well included Pavle BECK (para. 50); Franjo PAP (para. 53); Aleksandar RAJI], Matej BUTKOVI], Ivan KOVA^EVI] (all para. 56); Manda MAJ, Andrija MATIN, Franjo PITT], Stjepan TE[ANAC, Andrija [IMEK and Josip ZORETI] (all para. 57); Ana TERZI], \uro ALBERT, Helena ALBERT & Viktorija ALBERT (all para. 58). The body of Arkan's deputy, Milorad STRI^EVI] was found in the same well. Six bodies found in this well are still unidentified. The way in which the bodies were found in the well, that is to say, those who had disappeared earlier on were found on the bottom level of the well, whereas the ones who disappeared soonest were at the top, is consistent with the known dates of the disappearance of these victims. GRUJI], T17294.

³⁴³ STRINOVI], T17950; Ex. 410 Tabs 47-48.

"members of the TO of the SAO SBWS led by Zeljko RAZNATOVIC and members of the Militia of the SAO SBWS,." as stated in the Croatia Indictment.

(h) Indictment paragraph 57 (Motion: paragraphs 125-129)

190. According to the testimony of Ivan GRUJIC, the bodies of six of the seven persons listed in the indictment annex have been exhumed and identified; Nikola Matosevic is still listed as missing.³⁴⁴ These bodies were found in a grave co-mingled with the bodies of others known to be victims of Arkan and his men.³⁴⁵ The cause or probable cause of death was gunshot wounds.³⁴⁶

191. The inference that these people were the victims of Arkan and his men is supported by the statement of witness Jasna MIHAJLOVIC. This witness was one of the last to see some of the victims alive. This witness was arrested by Arkan's men on 25 December 1991.³⁴⁷ While she was being held at Arkan's Training centre in Erdut, she saw victim Manda MAJ. In fact, witness Jasna MIHAJLOVIC was questioned about Manda MAJ's son, Dinko MAJ, in the presence of Manda. Manda MAJ was then led away.³⁴⁸ Witness Jasna MIHAJLOVIC also saw a "Jura ZORETIC" tied or cuffed to the handrail of the staircase.³⁴⁹ He had been badly beaten, and his face was completely bloody. While the witness was being interrogated, she could hear him screaming from the stairwell.³⁵⁰

192. The fact that Arkan was interested in Manda MAJ was corroborated by the 92 bis statement of Stana ALBERT. According to ALBERT, around the third week of August, a local Serb came to her house with another man whom she didn't recognise.

³⁴⁴ GRUJIC, T17294; Ex. 401; Ex. 402 Tabs 57 & 58; Ex. 403 (Tab 59)

³⁴⁵ Ex. 402 Tab 58. The bodies found in the well included Pavle BECK (para. 50); Franjo PAP (para. 53); Aleksandar RAJI, Matej BUTKOVI, Ivan KOVA^EVI (all para. 56); Manda MAJ, Andrija MATIN, Franjo PITTL, Stjepan TE[ANAC, Andrija [IMEK and Josip ZORETI] (all para. 57); Ana TERZI, Nuro ALBERT, Helena ALBERT & Viktorija ALBERT (all para. 58). The body of Arkan's deputy, Milorad STRI^EVI was found in the same well. Six bodies found in this well are still unidentified. The way in which the bodies were found in the well, that is to say, those who had disappeared earlier on were found on the bottom level of the well, whereas the ones who disappeared soonest were at the top, is consistent with the known dates of the disappearance of these victims. GRUJIC, T17294.

³⁴⁶ STRINOVI, T17951, Ex. 410 Tabs 49-51

³⁴⁷ The victims in this paragraph were all arrested at about the same time. See "Missing Person Questionnaires" in Ex. 403 Tab 59.

³⁴⁸ Exhibit 481 (92 bis statement of Jasna MIHAJLOVIC), at p. 3.

³⁴⁹ Annex I to the Croatia Indictment identifies him as Josip ZURATI.

³⁵⁰ Ex. 481 (92 bis statement of Jasna MIHAJLOVIC) at p. 3.

The local Serb asked her where her friend Manda MAJ was. Stana ALBERT said she later heard that this local Serb worked for Bozo Balic, the local Police Chief, and Arkan. Manda MAJ later visited Stana ALBERT and told her she had been taken for questioning later that day. Manda MAJ was released the same day. Manda MAJ was taken to Arkan's Training Centre and questioned there about her son Dinko. Manda MAJ told Stana ALBERT that she was questioned by two men while two other men stood with wooden sticks in their hands. Manda MAJ told Stana ALBERT that she believed she would be killed. Stana ALBERT noted that Manda MAJ disappeared before Christmas.³⁵¹

193. Stana ALBERT also witnessed the arrest of victims Franjo PTIL, Andrija MATIN, and Stevo TESANAC shortly before Christmas 1991. According to ALBERT, the parents of police chief Bozo BOLIC moved into TESANAC's house shortly after he disappeared, showing that Arkan was working closely enough with the local police chief that he quickly knew when someone who had "disappeared" would not be coming back to his home. The permissible inference is that BOLIC knew that the person had been killed.

194. [REDACTED]

(i) Indictment paragraph 58 (Motion: paragraphs 130 and 131)

195. All four victims were found in a well co-mingled with the bodies of others known to be victims of Arkan and his men, including the body of one of Arkan's chief deputies, Milorad STRICEVIC.³⁵² According to Davor STRINOVIC, the cause or probable cause of death for one victim was a gunshot wound; for a second, gunshot wound with explosives; for a third, explosives; and for the fourth, trauma.³⁵³

³⁵¹ Ex. 631 (92 bis statement of Stana ALBERT) at p. 2.

³⁵² Ex. 401; Ex. 402, Tab 60 & 61; Ex. 403 Tab 62. The bodies found in the well included Pavle BECK (para. 50); Franjo PAP (para. 53); Aleksandar RAJI], Matej BUTKOVI], Ivan KOVA^EVI] (all para. 56); Manda MAJ, Andrija MATIN, Franjo PITTL, Stjepan TE[ANAC, Andrija [IMEK and Josip ZORETI] (all para. 57); Ana TERZI], \uro ALBERT, Helena ALBERT & Viktorija ALBERT (all para. 58). The body of Arkan's deputy, Milorad STRI^EVI] was found in the same well. Six bodies found in this well are still unidentified. The way in which the bodies were found in the well, that is to say, those who had disappeared earlier on were found on the bottom level of the well, whereas the ones who disappeared soonest were at the top, is consistent with the known dates of the disappearance of these victims

³⁵³ STRINOVI], T 17955; Ex. 410 Tabs 52-53.

196. [REDACTED]

197. [REDACTED]

198. As shown above, there is sufficient evidence to retain all of the allegations challenged by the Amici. Nevertheless, it is important to remember that this is a “command responsibility case”, in the words of His Honour Judge May.³⁵⁴ What the Prosecution has attempted to do is to present a sample of the kind of random murders that were perpetrated by Serb forces between October 1991 and May 1992. In the end, it does not matter if the evidence on one or two incidents is of a more general nature, since in a trial like this what the Prosecution is proving is what was happening in the area in general, and not proving all circumstances of individual crimes. In a leadership case like this one, the details of individual crimes are only important in so far as they show a

³⁵⁴ Judge May, T5935.

pattern of numerous mass murders of civilians that were never elucidated nor punished.³⁵⁵ High-level figures like Arkan, Goran HADZIC, and Milan MARTIC, who bragged that they were close to the Accused, were personally involved or directed some of these murders. Ultimately, the Trial Chamber should conclude that there is sufficient evidence to go forward on the offences of extermination, murder and wilful killing as alleged in Counts 2, 3, 4 and 5 of the Croatia Indictment.

(iii) Counts 6 to 13 (Motion: paragraph 132)

199. Narrative Agreed

(a) Indictment paragraph 64(b) (Motion: paragraph 133-136)

200. The Prosecution concedes that no direct evidence was presented with regards to paragraph 64 (b). As pointed out by the Amici, Ivan GRUJIC was the only witness to give evidence about the existence of this detention camp. The witness the Prosecution had earmarked to give evidence on the Kumbor camp, C-1197, was dropped.

201. Due to the strong evidence presented on paragraphs 64 (a) (Morinj military warehouses) and 64 (c) (Bileca military barracks)³⁵⁶ and the comparatively small number of prisoners alleged to have been detained in Kumbor,³⁵⁷ the Prosecution concedes that paragraph 64 (b) should be excised from the indictment.

(b) Indictment paragraph 64(f) (Motion: paragraphs 137 and 138)

202. The Prosecution agrees that it did not provide direct evidence to support the allegations contained at paragraph 64 (f). C-1176, the witness earmarked by the Prosecution to prove the allegations, was dropped.

³⁵⁵ See Milan BABI], T13066.

³⁵⁶ Morinj and Bile]a were the two main camps where non-Serbs' from the Dubrovnik area were detained by the JNA. Direct evidence was provided by the very compelling crime-base witnesses Robert HAUSVKCKA and Marko KNEZI] and was completed by the full 92 bis statement of Mario CURI], Montenegro insider Nikola SAMARDZI] and expert Ivan GRUJI].

³⁵⁷ According to the OTP investigations and the testimony of Ivan GRUJI] (T17302), only a few detainees stayed at Kumbor.

203. During the trial, the Prosecution did provide strong evidence about other detention camps in Serbia³⁵⁸ where non-Serbs detainees, mostly from the Vukovar area, were taken to camps run by the JNA. The evidence has clearly demonstrated how they were transported in an organised way from Croatia and then from one camp to the other only to find the same system of ill treatment and terrible living conditions.³⁵⁹ The Zrenjanin detention camp allegedly contained a comparatively small number of detainees.³⁶⁰ In the Prosecution's submission, removing paragraph 64 (f) does not take away any strength to the allegations made generally at paragraphs 63 and 65 to support counts 6 to 13, especially in light of the strength of paragraphs 64 (d), (e), (g) and (o). For these reasons, the Prosecution concedes that paragraph 64 (f) should be excised from the indictment.

(c) Indictment paragraph 64(h) (Motion: paragraphs 139 and 40)

204. The Amici Curiae correctly state that the Prosecution has not provided direct evidence in support of the allegations contained in paragraph 64 (h). The witness earmarked to testify about the Knin prison, C-1073, was dropped during the proceedings.

205. Nevertheless, the evidence provided by the insider and alleged JCE member Milan BABI} is very strong on this point. At the time relevant to the indictment, Milan BABI} was the highest political authority in SAO Krajina. He testified that he received information from, among others, his Minister of Justice Risto MATKOVIC that there were two prisons in Knin where non-Serbs detainees were detained, one that was controlled by the JNA (64 (h)) and another one controlled by MARTIC's police (64 (i)).³⁶¹ For this reason and the fact that about 150 prisoners are alleged to have been detained in Knin, which was at the time the political and military centre of the self-proclaimed SAO Krajina, the Prosecution is not prepared to concede that this paragraph should be excised from the indictment.

³⁵⁸ Evidence related to paragraphs 64 (d) (Staji}evo farm), paragraph 64 (e) (Becej camp), paragraph 64 (g) (Sremska Mitrovica) and paragraph 64 (o) ([id military prison) was provided by crime-base witnesses C-1149, C-1160, C-1164, C-1171, Emil CAKALI] and was completed by witnesses Vesna BOSANAC, Dejan ANASTASIJEVI] and expert Ivan GRUJI].

³⁵⁹ See for instance the evidence of C-1164 (T26891-92; Exhibit 545 (92 bis statement of C-1164) at p. 5-7); C1160 (Exhibit 542 (92 bis statement of C-1160) at paras. 42-56, 62-64, 76); C-1149 (T24271, 24294, 24306-09); C-1171 (T24217, 24231); and, to a lesser extent, Vesna BOSANAC (T15639-40, 15729, 15751); and Dejan ANASTASIJEVI] (T11521, 11546-11547).

³⁶⁰ About 25 prisoners, according to OTP investigations.

³⁶¹ Milan BABI] , T13067.

(d) Indictment paragraph 64(j) (Motion: paragraphs 141-143)

206. At paragraph 142 of their Rule 98 bis Motion, the Amici Curiae stated that the Prosecution has presented three witnesses in relation to the Dalj detention facility. The Prosecution actually presented five witnesses.³⁶²

207. Also, in their consideration of the evidence on this point, the Amici Curiae omitted to consider the remainder of C-013's evidence with respect to the co-operation between the JNA, the local Serb TO and the SAO SBWS government led by Goran Hadzic in the SAO SBWS region. In fact, C-013 testified that the respective headquarters of the local Serb TO and the JNA in Borovo Selowere only some 50 metres away from each other and that they co-operated closely.³⁶³ He further stated that local Serb TO staff would go to meetings and briefings of the JNA to obtain assignments.³⁶⁴

208. [REDACTED]

209. The Prosecution submits that although the Dalj detention facilities may not have been guarded by the JNA, as conceded by Luka SUTALO, they could still be considered to

³⁶² In addition to the three witnesses identified by the Amici Curiae in footnote 176, Ivan GRUJI] discussed the detention facility (T17306) as did Stana ALBERT (Exhibit 631 (92 bis statement of Stana ALBERT) at p. 3-4).

³⁶³ Borovo Selo is approximately 15 kilometres away from Dalj.

be running the detention camps because they were handing out taskings to the local Serb TO, who was running the facility. Luka SUTALO, as a crime-base witness, was not in a position to know that. On the other hand, insider C-013 made it clear in his evidence that the JNA, local Serb TO, SAO SBWS government, high officials of the MUP of Serbia and Arkan's men all worked together towards the same goal, as alleged in paragraphs 6-9 of the Indictment. The Prosecution submits that the imprisonment of non-Serb and the subsequent murders of some of them by Arkan's men was part of the persecution campaign conducted by the joint criminal enterprise in which the JNA participated – especially actively in this region – as witnesses such as C-013, C-047, C-057, C-025 and Milan MILANOVI] made clear.

210. For these reasons, the Prosecution is not prepared to concede that the reference to this facility being "run by the JNA" should be excised from the Indictment.

(e) Indictment paragraph 64(p) (Motion: paragraphs 144 and 145)

211. C-1176, one of the two witnesses the Prosecution intended to call to confirm that non-Serbs were detained in the police station in Opatovac as alleged in paragraph 64 (p), was dropped.

212. [REDACTED]

213. [REDACTED] As a matter of interest, C-1176 said, in her statement, that she also had to report every morning to the police station. This was the same place where all the men from Opatovac were detained and mistreated. In such a small town, chances are that there were not two different public

³⁶⁴ C-013, T15127-28, 15234-36.

buildings where the non-Serbs had to report every day during the war. It is rather likely that the police station was an integral part of the local community building and that C-1126 and C-1176 were referring to the same location but used a different term. The Prosecution did prove that Croat detainees were detained in a public building in Opatovac. The legal qualification of this location does not alter the charge as such. The Prosecution has already pointed out that the JNA in general terms was involved in the running of all the detention facilities in the region.

214. For the above-stated reasons, the Prosecution submits that only the detention camps listed in paragraphs 64 (b) (Kumbor military barracks) and 64 (f) (Zrenjanin military barracks) should be excised from the Indictment. On the other hand, the detention camps listed at paragraphs 64 (h) (Knin prison), 64 (j) (Dalj police buildings and hangar near the railway station), and 64 (p) (Police Station in Opatovac) should remain to support counts 6-13, despite the challenges presented by the Amici Curiae in their Rule 98 bis Motion.

(iv) Counts 17 to 20 (Motion: paragraph 146)

215. Narrative agreed.

(a) Indictment paragraph 71 (Motion: paragraphs 147 to 154)

Nadin (Motion: paragraph 149)

216. The Amici Curiae argue that the evidence called by the Prosecution in relation to Nadin is insufficient to found the allegations made at paragraph 71 to support counts 17 to 20.

217. In the same way that the Prosecution noted with regard to paragraph 36 (I), Marko MILJANIC supported the pattern evidence given by Milan BABI} on Nadin.³⁶⁵ Marko MILJANIC stated that: "On 2 October 1991, the JNA attacked Nadin and Zemunik Gornji, using infantry and tanks. When people from Nadin fled through Skabrnje the Air Force attacked Skabrnje using cluster and inflammatory bombs, killing two persons

³⁶⁵ Milan BABI], T13065, 13405.

in Nadin, however none in Skabrnje.”³⁶⁶ As previously stated, it is difficult to conceive that the heavy weaponry used by the JNA to take over a small town such as Nadin, killing two people in the process, would not have caused significant destruction to homes and cultural sites.

Celija (Motion: paragraph 150)

218. The Prosecution concedes that no evidence supporting counts 17 to 20 in relation to Celija was presented. Two internationals, Herbert Okun and Charles Kirudja talked about Celija being attacked but did not give any details that would tend to support the allegations made at paragraph 71 in relation to Celija.

219. For this reason, the Prosecution concedes that the name of the village of Celija should be excised from paragraph 71 of the indictment.

Bapska and Sarengrad (Motion: paragraphs 151 and 153)

220. With regard to Sarengrad, Stipan KRALJEVIC said that “on 4 October, Sarengrad and Bapska were heavily shelled by the JNA. The JNA then entered the village of Bapska from Sid.”³⁶⁷ Furthermore, witness KRALJEVIC introduced a document entitled “List of cultural items from Ilok destroyed after expulsion of population”³⁶⁸ that contains relevant information about the destruction of cultural monuments in Bapska and Sarengrad.³⁶⁹ The Prosecution has previously highlighted excerpts of this exhibit in connection with paragraph 36 (I) that clearly demonstrate the extent of the damage caused by the heavy shelling from the JNA. From these excerpts and the evidence presented by witness KRALJEVIC, it is clear that sufficient evidence was presented on these two villages to make a prima facie case in support of including these villages within counts 18 and 19. In light of the evidentiary value of these allegations in illustrating the pattern of looting and plunder of public and property followed by the Serb forces in their march to take over territory in Croatia, the Prosecution is not

³⁶⁶ Marko MILJANI], T24318; Exhibit 501 (92 bis statement Marko MILJANI]) at para 11.

³⁶⁷ Exhibit 516 Tab 1 (92 bis statement of Stipan KRALJEVI]) at p. 3.

³⁶⁸ Exhibit 516 Tab 12.

³⁶⁹ In contradiction to the claim of the Amici Curiae at paragraph 153 that evidence in support of counts 17-20 in the village of Bapska has not been presented by the Prosecution.

prepared to concede that Bapska and Sarengrad should be excised from paragraph 71 of the indictment.

Bruska (Motion: paragraph 152)

221. The evidence presented on Bruska in support of counts 17-20 is sufficient, contrary to the views expressed by the Amici Curiae at paragraph 152. The evidence of Jasna DENONA, a resident of Bruska,³⁷⁰ combined with the overview evidence of Milan BABI} who specifically mentioned Bruska when describing the pattern of attacks of the Serb forces in Krajina should be sufficient to support its inclusion in paragraph 71.³⁷¹ DENONA, as noted previously, stated that when she came back to her house in 1995 after Operation Storm, "the house had been looted. The doors and windows were stolen. The house was full of ammunition including rifle ammunition, hand grenades, artillery shells, and other things."³⁷²
222. With regard to the identification of the perpetrators, DENONA said that on 21 December 1991, members of the "Krajina Milicija" burst into her house, firing an automatic weapon at her door.³⁷³ Ten civilians were killed in the hamlet of Marinovic that day, as alleged in paragraph 48 of the indictment. The Prosecution has also introduced strong documentary evidence pointing to the involvement of the Krajina Police (i.e. Milicija) in the killings.³⁷⁴ The Prosecution submits that the fact that the

³⁷⁰ As previously stated, DENONA lived in Marinovi}i, a hamlet of Bruska. Her house was therefore part of the village of Bruska. At footnote 146, the Amici Curiae erroneously stated that Marinovi}i is a hamlet near to Bruska.

³⁷¹ By using heavy artillery, the JNA forced the Croatian armed forces and the civilian population to retreat from their villages and towns. The territories captured were therefore left without any Croatian inhabitants, or very few of them. Houses and buildings were destroyed in the combat operations and subsequently, property was looted. In this way, the JNA gained control of territory, fighting together with other armed formations that were within its ranks. The other formations under the JNA umbrella constituting the Serb forces were the Serb TO forces, SAO Krajina police (aka Marti}'s police) and other volunteers (aka paramilitaries). Those other formations were under the control of the parallel structure led by Milan MARTI] , Jovica STANI[I] and Frenki SIMATOVI] (T13064), and ultimately under the control of the Accused (T14041). In the region near Knin, were [kabrnja, Nadin, and Bruska, the same pattern was used by the Serb forces under the command of the JNA working in association with the Serbian DB-sponsored forces (T13065).

³⁷² Exhibit 576 (89 (F) statement of Jasna DENONA) at p. 4.

³⁷³ Jasna DENONA, T28203-28204, 28215; Exhibit 576 (89 (F) statement of Jasna DENONA) at p. 2-3.

³⁷⁴ See Exhibit 475 Tab 6, a report issued by JNA Major Branislav RISTI] (180th Motorised Bde), dated 4 April 1992 regarding a crime committed in the village of Bruska. The report states that police officer Bo`o MILJKOVI] is the one that knows the most about it and that it is most likely that he was transferred "overnight" to a new work position somewhere in Serbia. RISTI] further states: "I do not know who secured him that transfer, but surely someone with a top position in MUP. MILJKOVI] comes from Medvida while the murderer or the murderers are also from the same village." RISTI] adds his information is consistent with

Krajina Milicija attacked the witness's house and killed ten civilians in the way described in her evidence creates a strong inference that they also participated in the looting and destruction that the witness found upon return to his house in 1995.³⁷⁵ The modus operandi of the local Serb forces described by Milan BABI] further supports this inference.³⁷⁶

223. For these reasons, the Prosecution is not prepared to concede that the village of Bruska should be excised from paragraph 71 of the indictment and still contends that the evidence on this village supports counts 17 to 20.

224. For the above-stated reasons, the Prosecution submits that only the village of Celija should be excised from paragraph 71 while the villages of Saregrad, Bapska, Nadin, and Bruska should remain in paragraph 71 to support counts 17-20, despite the challenges presented by the Amici Curiae in their Rule 98 bis Motion.

previously received information that the murder in Bruska was committed by someone called Fnu PUPOVAC and Fnu [KORI], both from Medvida.

³⁷⁵ The Krajina Militia has also been identified by other witnesses as "MARTI] 's police". The Prosecution submits that these two expressions are synonyms for the police forces under the control of Milan MARTI].

³⁷⁶ Milan BABI}, T13064-13066.

BOSNIA

- A. The Indictment (Motion: paragraph 155)
- B. Genocide – Counts 1 and 2 (Motion: paragraph 156)

225. The Prosecution contends that the commission of the acts charged in paragraph 32 of the indictment has been established. These acts, listed under Article 4(2) as constitutive of genocide, targeted Bosnian Muslims for destruction. They were committed in Bosnia from the first takeover in Bijeljina on 31 March 1992 to the signing of the Dayton agreement in December 1995. The Amici Curiae does not challenge that these acts have been proved, but indicates that the intent of the Accused has not been established. The Prosecution will therefore concentrate on this issue and will not address in this Response the actus reus of the crime of genocide, although it remains at the disposal of the Chamber to do so if required.

226. The prosecution will depart from the motion structure in this section, in order to set out better its own approach to the proof of intent.

- (i) The law

227. Notwithstanding its focus on the protection of groups “as such”, Article 4(2) does not require intent to destroy an entire group or even the majority of a group. Like the Genocide Convention itself, the article refers to intent to destroy the group “in whole or in part”. The Trial Chamber generally is “left with a margin of discretion in assessing what is destruction “in part” of the group”.³⁷⁷

228. Akayesu made explicit that: “the “genocidal” act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership in a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of

³⁷⁷ Krsti} Trial Judgement, para. 590.

genocide is the group itself and not only the individual.”³⁷⁸ “The perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or part, the group of which the individual is just one element.”³⁷⁹

229. The International Law Commission reported that: “...the intention must be to destroy the group “as such”, meaning as a separate and distinct entity, and not merely some individuals because of their membership in a particular group”.³⁸⁰ Thus, the need to establish that the accused intent is to destroy a group, in whole or in part, as such, does not preclude that the said intent may be “only” to destroy part of a group as such.
230. The jurisprudence developed by the ICTY allows the definition of the whole group as a geographically limited whole group, in a country, in a region or in a given municipality or community. On the basis of the Sikirica jurisprudence,³⁸¹ the genocidal intent may be inferred from the targeting of a geographically limited part of the larger group: “The Chamber agrees with the Prosecution’s submission that the intent to destroy a multitude of persons belonging to a group may amount to genocide, even where these persons constitute only part of a group within a given geographical area: a country or a region or a single community.”³⁸² Furthermore, the Chamber observed in Sikirica that: “(w)hether the group belongs to a country or a region or a single community, it is clear that it must belong to a geographic area, limited though it may be” (italics added).³⁸³ Similarly, in Jelusic, the Chamber found: “In view of the object and goal of the Convention and the subsequent interpretation thereof, ... that international custom admits the characterisation of genocide even when the exterminatory intent only extends to a limited geographic zone.”³⁸⁴

³⁷⁸ Akayesu Trial Judgement, para. 521.

³⁷⁹ Ibid, para. 522.

³⁸⁰ 1996 Report of the International Law Commission, comment no. 7 on article 17 (genocide).

³⁸¹ Sikirica et al, Judgement on the Defence Motion to Acquit, 3 September 2001.

³⁸² Ibid, para. 68.

³⁸³ Ibid, para. 68.

³⁸⁴ Jelusic Trial Judgement, para. 83 (“The Trial Chamber notes that it is accepted that genocide may be perpetrated in a limited geographic zone. Furthermore, the United Nations General Assembly did not hesitate in characterising the massacres at Sabra and Shatila as genocide, even if it is appropriate to look upon this evaluation with caution due to its undoubtedly being more of a political assessment than a legal one. Moreover, the Trial Chamber adopted a similar position in its Review of the Indictment Pursuant to Article 61 filed in the Nikolic case. In this case, the Trial Chamber deemed that it was possible to base the charge of genocide on events which occurred only in the region of Vlasenica.”)

231. Alternatively, The jurisprudence establishes that the term “in part” implies either a reasonably substantial number relative to the total of the group as a whole, or else a significant section of a group such as its leadership. In Krsti•, the Trial Chamber identified three bases for the identification of a part of a protected group, namely, “a large portion or the entire group”,³⁸⁵ “significant section of that group”³⁸⁶ or “a group within a limited geographical area such as the region of a country or even a municipality.”³⁸⁷ The Chamber indicated that “the killing of all members of the part of a group located within a small geographical area ... would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area. Indeed, the physical destruction may target only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue.”³⁸⁸ It noted that “an intent to destroy only part [that is, to do so “in part”] of the group must nevertheless concern a substantial part thereof, either numerically or qualitatively”.³⁸⁹ The genocide conviction of Krsti} was obtained on the basis of the Chamber’s finding that he “participated in the genocidal acts of ‘killing members of the group’ under Article 4(2)(a) with the intent to destroy a part of the group”.³⁹⁰

232. Therefore, the intent to destroy a group within a limited geographical area may be described as genocide and may be inferred from the intent to kill members of the group within that area. A conviction for genocide may be obtained on the basis of either the demonstration of an intent to destroy a geographically limited group, or alternatively of an intent to destroy part of the group.

233. Judge Elihu Lauterpacht, the ad hoc Judge nominated by Bosnia-Herzegovina in the case before the International Court of Justice regarding the application of the Convention on the Prevention and Punishment of the Crime of Genocide, concluded, inter alia, that there were acts of genocide in Bosnia and Herzegovina because they were “intended to destroy that group, if not in whole certainly in part, to the extent

³⁸⁵ Krsti} Judgement, para. 587.

³⁸⁶ Ibid, para. 587.

³⁸⁷ Ibid, paras. 588 and 589.

³⁸⁸ Ibid, para. 590.

³⁸⁹ Ibid, para. 634.

necessary to ensure that that group no longer occupies the parts of Bosnia-Herzegovina coveted by the Serbs".³⁹¹

234. Finally, it is clear that the existence of a plan or policy to commit genocide is not a legal ingredient of the crime of genocide. This issue was settled in *Jelisić*, where the Appeal Chamber held that "the existence of a plan or policy is not a legal ingredient of the crime", although "in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases."³⁹²

(a) The Bosnian Muslims in the proposed Serbian state in Bosnia were targeted

235. For the purpose of this case, the Prosecution submits that the intent requirement of Article 4(2) is satisfied by an intent to destroy the Bosnian Muslims within a limited geographic area, in this case the territory in Bosnia and Herzegovina which was targeted for inclusion in a Serb state. That territory includes at least those municipalities identified in count 3 of the indictment, and is most broadly constituted by the territory declared on 9 January 1992 as the Republic of Serbian People of Bosnia and Herzegovina³⁹³ and proclaimed as a distinct Republic in March 1992.³⁹⁴ That includes the Serbian Autonomous Regions,³⁹⁵ and would also embrace those areas targeted by reason of their place in the six strategic objectives.³⁹⁶ When the Accused and others moved against the Bosnian Muslims, they did so across this targeted area of Bosnia and Herzegovina where the continuing existence of a substantial Muslim population could not be tolerated.

236. Alternatively, the Prosecution submits, on the basis of the jurisprudence developed in *Krstić*, that the intent requirement of Article 4(2) is satisfied by an intent to destroy a

³⁹⁰ *Ibid*, para. 634. The Chamber found that the "part of the group" which was a "substantial part of the Bosnian Muslim group" was the Bosnian Muslims in Srebrenica.

³⁹¹ Emphasis added. Application of the Convention on the Prevention and Punishment of the Crime of Genocide, *Bosnia-Herzegovina v. Yugoslavia (Serbia and Montenegro)*, Order on further Requests for the Indication of Provisional Measures, ICJ Reports (1993), pp. 325-795. Cited in the *Krstić* Trial Judgement, para. 588.

³⁹² *Jelisić* Appeal Judgement, para. 48.

³⁹³ PS(B), para. 72. Adjudicated Facts Decision, 10 April 2003; Facts 51-86.

³⁹⁴ PS(B), para. 72.

³⁹⁵ Miroslav Deronji: Serbs began to form autonomous regions from August to October 1991. 89(F) statement, paras. 41-44. Defined by Proclamation in the Official Gazette of the Serbian People in Bosnia and Herzegovina dated 15 January 1992: Map at Ex. 343 tab 1.

substantial part of the Bosnian Muslim group, namely those located in the territory in Bosnia and Herzegovina which was targeted for inclusion in a Serb state (as defined above).

(b) The intent to be proved is the Accused's intent to destroy that group

237. The Accused intended to destroy the Bosnian Muslims in the areas targeted for inclusion in a Serbian state. Whether the result was only partially achieved is immaterial, since the actual destruction of the group (or part thereof) is not a requirement of the offence of genocide.³⁹⁷ The Staki} Trial Chamber emphasised that "in view of the requirement of a surplus of intent, it is not necessary to prove a de facto destruction of the group in part... It is the *dolus specialis* that predominantly constitutes the crime."³⁹⁸ The intent to destroy a group, even if only in part, means seeking to destroy a distinct part of the group as opposed to an accumulation of isolated individuals within it".³⁹⁹ Nevertheless, the intent must encompass the destruction of the defined group as such, even if that objective (as in all known genocides) is only partially achieved.

238. Article 4(2) of the Statute does not require that the perpetrator intend the death of every single individual member of the group (or of part thereof) which is intended for destruction. Article 4(2) of the Statute defines Genocide as "... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." It is clear from the words "group, as such" that Article 4 protects national, ethnical, racial and religious groups as such and not primarily the individual members of the group. It is in other words the social fabric, the community or society made up of the individuals that is protected. Moreover, it is well established that the acts listed in Article 4(2)(a) to (e) have to be committed against members of the group because of their membership of their group. It is thus not only the individuals as such but the broader concept of the group that is protected by Article 4. The fact that it is the broader concept of the group, as opposed to the lives of its individual members,

³⁹⁶ Ex. 451 tab 12.

³⁹⁷ Staki} Trial Judgement, para. 522. The Akayesu Trial Judgement states that genocide "does not imply the actual extermination of (the) group in its entirety, but is understood as such once any of the (enumerated) acts ... is committed with the specific intent to destroy "in whole or in part" a national, ethnical, racial or religious group", see para. 497 (emphasis added).

³⁹⁸ Staki} Trial Judgement, para. 522.

³⁹⁹ Krsti} Trial Judgement, para. 590; cited with approval in Staki} Trial Judgement, para. 524.

that is protected by the Statute is also clear from the fact that the acts mentioned in Article 4(2)(b) and (e) do not necessarily result in the death of the individual members of the group.

239. A number of cases from domestic jurisdictions support this interpretation,⁴⁰⁰ and the Commission of Experts adopted a similar position finding that an intent to destroy the social fabric of a group would amount to genocide: "If essentially the total leadership of a group is targeted, it could also amount to genocide. Such leadership includes political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others – the totality per se may be a strong indication of genocide regardless of the actual number of killed. A corroborating argument will be the fate of the rest of the group. ... The intent to destroy the fabric of the society through the extermination of its leadership, when accompanied by other acts of elimination of a segment of society, can also be deemed genocide."⁴⁰¹ It is submitted that this clearly shows that not only are the members of the group (or of part thereof) protected under Article 4, but the social fabric or community is protected.

⁴⁰⁰ In *Nulyarimma v. Thomson*, a Judgement involving claims by the members of the Aboriginal community of Australia that certain Commonwealth Ministers and members of Parliament had engaged in genocide. In the Judgement by the Federal Court of Appeal of Australia, the Presiding Judge J. Wilcox, while rejecting that genocide had been committed in general in Australia, held that certain past acts would amount to genocide. For example, he cited "... the rounding up of the remaining Tasmanian Aboriginals in the 1830s, and their removal to Flinders Island." ; *Nulyarimma v. Thomson* [1999] FCA 1192, para. 12. It is submitted that the Federal Court did not conclude that simple displacement constitutes genocide, but rather the surrounding acts, including the displacement constituted genocide because it destroyed the social unit of the Aboriginal people. A similar analysis was employed by the Higher State Court of Düsseldorf in the *Jorgi* case. *State Attorney's Office against Nikola Jorgi*, IV – 26/96, 2 StE 8/96. Paragraph 220(a) of the German Criminal Code contains a prohibition of genocide. The *chapeau* of this provision is a *verbatim* reproduction of the Article II of the Genocide Convention, and thus the same as Article 4(2) of the Statute. In the *Jorgi* case it was held that intent to commit genocide as set forth in paragraph 220(a) "... means destroying the group as a social unit in its specificity, uniqueness and feelings of belonging ..." *Ibid.*, p. 95 *et seq.* Thus, the Higher State Court of Düsseldorf was clearly of the view that the perpetrator does not have to intend the death of all members of the (part of the) group. Intent to destroy the group as a social unit or a community meets the intent requirements of the German genocide provision. Thus, the Higher State Court of Düsseldorf was clearly of the view that the perpetrator does not have to intend the death of all members of the (part of the) group. Intent to destroy the group as a social unit or a community meets the intent requirements of the German genocide provision.

⁴⁰¹ Report by the Commission of Experts, S/1994/675, para. 94. For a similar approach see: Bassiouni and Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia*, Transnational Publishers, 1996, p. 530, quoting Kuper, *Genocide: Its Political Use in the Twentieth Century*, 1981. See also S. DeWeese, *The Failure of the International Court of Justice to Effectively Enforce the Genocide Convention*, 26 *Denv. J. Int'l, & Pol'y* (1998) 625.

(c) Means of proof of the Accused's intent

240. The intent which is peculiar to the crime of genocide need not be expressed clearly by the perpetrator or by an accused.⁴⁰² It is generally accepted that it may be inferred either from a "pattern of purposeful action",⁴⁰³ from the general political doctrine which gave rise to the genocidal acts, and the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group - which are not in themselves covered by the list in Article 4(2) but which are committed as part of the same pattern of conduct.⁴⁰⁴ Evidence of a pattern or repetition of destructive and discriminatory acts is powerful evidence of an intent to destroy the group in whole or in part, particularly where the perpetrator's group is systematically excluded from the crimes.⁴⁰⁵ The Krsti• Trial Judgement is support for the proposition that, criminal acts set out in Article 4(2) and simultaneous attacks on the cultural and religious property, as well as symbols of the targeted attacks,⁴⁰⁶ and the massive deportations and forcible transfers⁴⁰⁷ can be proof of the intent to destroy the group. Intent may be inferred from the scale of atrocities committed.⁴⁰⁸ It may also be inferred from the hatred for the group of the Accused and/or his associates participating in the commission of the offence.⁴⁰⁹ Selective targeting of members of a group is probative of an intent to

⁴⁰² Karad`i} and Mladi} Rule 61 Decision, para. 94.

⁴⁰³ Staki} Trial Judgement, para. 526, citing the Kayishema and Ruzindana Trial Judgement, para. 93 with approval.

⁴⁰⁴ Karad`i} and Mladi} Rule 61 Decision, para. 94.

⁴⁰⁵ Akayesu Trial Judgement, para. 523 (including among factors from which genocidal intent may be inferred "deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups").

⁴⁰⁶ Krsti} Trial Judgement, para. 580. See also Karad`i} and Mladi} Rule 61 Decision, para. 94.

⁴⁰⁷ Ibid. para. 595. See also Karad`i} and Mladi} Rule 61 Decision, para. 94.

⁴⁰⁸ Akayesu Trial Judgement, para. 523; Jelisi} Appeal Judgement, para. 47. The Prosecution notes however that it is not required to prove a certain number or percentage of victims within the targeted Serb state to sustain a charge of genocide against this Accused. See Staki} Trial Judgement, para 5.22: There is no "numeric threshold of victims necessary to establish genocide".

⁴⁰⁹ The crime of genocide does not require proof of hatred of the group. The Prosecution is required to prove genocidal intent, not genocidal motive. Motive is not a constituent element of the crime. See Jelisi} Appeals Judgement, para. 49. Nevertheless, see the following sections for evidence which the Prosecution says establishes the motives which underlay this Accused's genocidal intent.

destroy the whole group.⁴¹⁰ Mass killing of members of the group is strong evidence of the intent⁴¹¹, but not definitive of it.

241. Intention is normally thought of as a state of mind, and the only way an accused's mind can be known is by observing how he acts – by examining what he says and what he does. If a coherent series of acts makes sense when regarded as directed towards a particular result, an accused will normally be said to have intended that result.⁴¹²
242. It follows that where, as in this case, and at this stage of the trial, a Chamber has very little indication from the Accused himself as to his actual subjective intent, the Trial Chamber is obliged to look objectively at evidence of the Accused's actions as evidence of his intent.
243. This approach is supported by jurisprudence. In *Akayesu*, the Trial Chamber remarked that: "... intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact."⁴¹³ According to *Akayesu*, it is possible to deduce genocidal intent, as it is "inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others."⁴¹⁴ "Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act."⁴¹⁵ *Jelisić* further clarified that, when an individual knowingly acts against the backdrop of the widespread and systematic violence being committed against only one specific group, it could not reasonably be denied that he

⁴¹⁰ See *Krstić* Trial Judgement (targeting of Bosnian Muslim men of military age) para. 595; 598; and *Sikirica* Rule 98 bis Judgement, where the Trial Chamber concluded that intent to destroy in part may be established if the destruction to a significant section of the group, such as the leadership in Prijedor, which would have an impact on the survival of the group as such: para. 76. Further, *Jelisić* Trial Judgement, para. 82 (large majority of group in question or the most representative members of the targeted community may meet the requirement of part of the group); and *Stakić* Trial Judgement, para. 526 (*Sikirica* Rule 98 bis Judgement cited with approval).

⁴¹¹ The *Stakić* Trial Judgement is support for this proposition: para. 553.

⁴¹² G.H. Gordon *Criminal Law*, 3rd Edition 2000, p. 261, citing *Windeyer J. in Parker v. R. (1963) 11 C.L.R. 610, 648-649.*

⁴¹³ *Akayesu* Trial Judgement, para. 523.

⁴¹⁴ *Ibid.*

chose his victims discriminatorily.⁴¹⁶ “As to proof of specific intent, it may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts”.⁴¹⁷

244. The intent of an accused to destroy may be inferred from one or more of a number of factors. Factors found to be relevant to determining intent, as found by Chambers of the ICTY and ICTR include but are not limited to: (1) utterances of the accused;⁴¹⁸ (2) “the general political doctrine which gave rise to the “prohibited” acts”;⁴¹⁹ (3) the general nature of atrocities in a region or a country;⁴²⁰ (4) existence of a genocidal plan and the accused’s participation in its creation and/or execution;⁴²¹ (5) “the scale of atrocities committed”;⁴²² (6) the general context of the perpetration and/or repetition of other destructive or discriminatory acts committed as part of the same pattern of conduct, systematically directed against the same group, whether committed by the same offender or by others;⁴²³ (7) “the perpetration of acts which violate, or which the perpetrators themselves consider to violate, the very foundation of the group”;⁴²⁴ (8) the hatred for the group of the accused and/or his or her associates participating in the

⁴¹⁵ Ibid, para. 728.

⁴¹⁶ Ibid, para. 73.

⁴¹⁷ Ibid, para. 47.

⁴¹⁸ See Akayesu Trial Judgement, para. 728; Kayeshima and Ruzindana Trial Judgement, para. 538; Prosecutor v. Alfred Musema, Case No. ICTR-96-13-T, Judgement, 27 January 2000, para. 933.

⁴¹⁹ Prosecutor v. Radovan Karadžić, Case No. IT-95-5-R61, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence (hereinafter referred to as “Karadžić Rule 61 Decision”), 11 July 1996, para. 94.

⁴²⁰ Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgement, 2 September 1998, para. 523; Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-T, Judgement, 21 May 1999, para. 93.

⁴²¹ The Jelisić Appeals Chamber Judgement states that “the existence of a plan or policy is not a legal ingredient of the crime”, Prosecutor v. Goran Jelisić, Case No. IT-95-10-A, Judgement, 5 July 2001, para. 48.

⁴²² Akayesu Trial Judgement, para. 523.

⁴²³ Akayesu Trial Judgement, para. 523.; Karadžić Rule 61 Decision, para. 94. An example of other destructive acts could be the commission of persecutions as a crime against humanity, where the perpetrator chooses his victims because they belong to a specific community but does not himself seek to destroy the community in whole or in part, as such. The UN Preparatory Commission on the International Criminal Court decided to add such an element requiring either that the genocidal conduct “took place in the context of a manifest pattern of similar conduct against that group” or that the conduct “could itself effect such destruction”, UN document PCNICC/2000/INF/3/Add.2, 6 July 2000, p. 6. The Commission intended the term “similar conduct” to refer to other crimes within the subject-matter jurisdiction of the ICC, in particular, persecution as a crime against humanity, as evidenced by statements made by several delegates during the negotiations.

⁴²⁴ Karadžić Rule 61 Decision, para. 94.

commission of the offence including superiors and subordinates;⁴²⁵ and (9) the degree to which the group was in fact destroyed in whole or in part.⁴²⁶

(ii) Submissions (Motion: Paragraphs 161 and 162)

245. Concerning genocidal crimes charged in paragraph 32 of the indictment committed in Bosnia and Herzegovina from the first takeover in Bijeljina on 31 March 1992 to the signing of the Dayton agreement in December 1995, the Amici carefully limit their submissions. Although they say that they make no “concessions or admissions”⁴²⁷ as to proof of the crime of genocide, they make no submission that insufficient evidence has been led to prove the underlying prohibited acts, or that there is no case for the accused to answer on other counts in the indictment concerning the very same acts as underpin the genocide count. The Prosecution therefore reads the references to modes of liability in Paragraph 161, including in subparagraph 161(d), in this light.

246. It is the Prosecution’s case that inferences from the crimebase evidence, together with evidence of the actings and role of the Accused himself, allow the Trial Chamber at this stage to hold that the Accused did possess the requisite intent to destroy in whole or in part a national, ethnical, racial or religious group as such.

247. Nor are the Amici arguing that the Accused played no part in those events and cannot be linked to them. The submission, expressed in its different aspects in sub-paragraphs (a) –(h), is rather that proof of an essential element of genocide is lacking: the submission is about proof of intent.

248. There were widespread killings of Bosnian Muslims in the course of the takeovers of municipalities, and Bosnian Muslims were systematically killed, maltreated, and subjected to appalling conditions of life in detention facilities. All of these criminal acts occurred in the context of a violent campaign of ethnic cleansing or persecution.

⁴²⁵ The crime of genocide does not require proof of the hatred for the group.

⁴²⁶ This factor should be viewed in light of the fact that “the crime of genocide does not imply the actual extermination of [the] group in its entirety”, Akayesu Trial Judgement, para. 497. Thus, the “degree to which the group was destroyed in whole or in part is not necessary to conclude that genocide has occurred”, Karadžić • Rule 61 Decision, para. 92.

⁴²⁷ Concepts perhaps out of place in a submission under Rule 98 bis by Amici Curiae.

The submission of the Amici Curiae is that there is no proof that the Accused intended to bring about that result.

249. The Prosecution accepts that there is little direct evidence to that precise effect, such as a specific order to commit genocide signed by the Accused or a confession by him. The Trial Chamber must also look at all the facts and circumstances proved in the Prosecution case. If a sufficient number of circumstances can be objectively identified that together demonstrate a coherent series of actions on the part of the Accused, a reasonable tribunal of fact would be entitled to draw the necessary inference that the Accused did intend the destruction of part of the Bosnian Moslem group. *Acta exteriora indicant interiora secreta*.
250. Nor do the Amici assert that there is insufficient evidence to connect the Accused with the commission of the crimes on the ground. That perhaps reflects the reality that the "linkage" evidence in this case takes many forms, and involves constructing a complex array of interlocking proof of the structure of the various Serb forces and bodies involved and the Accused's direction of them. Accordingly, the Prosecution, in this response will not range over the entirety of its evidence, but will focus on the limited issue raised by the Amici. The nature of the Accused's involvement in genocidal acts, including (more in his case than in the case of any other) planning events in advance, the extent of his knowledge (of events on the ground consequential on his planning and otherwise) and the degree to which he controlled the actions of others are, however, in themselves key circumstances from which his intent can be inferred: the deeper a person's involvement in an enterprise, and the more extensive his control over it, the more likely it is that he intends the results it achieves.
251. The Motion does not dispute that the Bosnian Muslims can be regarded as a group, and that they constitute a national, ethnical, racial or religious group protected for the purposes of the crime of genocide and Article 4 of the Statute.⁴²⁸
252. It is the prosecution case that the Accused intended to destroy the Muslim population of those parts of Bosnia and Herzegovina essentially earmarked for inclusion into a Greater Serbia. Without that destruction the Accused's goals could not be realised.

⁴²⁸ The Prosecution has not led evidence to establish that a Bosnian Croat group was destroyed.

The Bosnian Muslim population was the principal obstacle to his territorial designs, and he could not tolerate their existence as a group in those municipalities. For the purposes of the indictment, the Prosecution regards the relevant protected group as being those Muslims in territory in Bosnia and Herzegovina targeted for inclusion in a Serb state.

253. It may be that the Accused operated at the strategic level and did his planning at the highest levels of abstraction. The evidence paints a vivid picture of the Accused as a calculating powerbroker, whose every move, every plan and every thought addressed issues of global concern, regional stability, and state structures. Using his monopoly of power (and his access to the “monopoly of violence”), the Accused dealt not at the level of houses, streets, villages and their individual citizens, but at the level of entire territories, nation states, whole populations and human groups. Just as his policies were formulated in terms of groups, so his intent was directed towards groups.
254. The Accused may therefore have intended his acts ultimately to bring about the destruction of the entire Muslim population of Bosnia and Herzegovina. But it is not necessary or appropriate to assert this when the intent revealed relates to a smaller but sufficient “group”. More immediately it is apparent that his focus lay within the boundaries of those territories within Bosnia and Herzegovina he wished to see incorporated into an extended Serbia. There is certainly no evidence that he intended the physical destruction of the Muslim population in Serbia or the FRY itself, but that population, being defined as a national minority, did not lie in the path of his political territorial ambitions; and the Accused’s attitude towards these people does not negate at all his attitude towards Muslims in Bosnia and Herzegovina. However his cynical, pragmatic approach to Muslim minorities in Serbia and Montenegro was fully revealed in the persecutory campaign mounted against Kosovo Albanians through out the 1990’s and culminating in 1998 and 1999. This was the largest Muslim minority on the territory of the FRY, and was the principal obstacle to the Accused’s retention of a significant part of “Serb” territory.
255. Although proof of motive is always relevant in a criminal trial, it is not necessary for the Prosecution to prove the Accused’s ultimate motive, and it may well be that he was driven by a determination to remain in power over as large a territory as possible. In Jelisić, the Appeals Chamber recalled the necessity “to distinguish specific intent from

motive. The personal motive of the perpetrator of the crime of genocide may be, for example, to obtain personal economic benefits, or political advantage or some form of power. The existence of a personal motive does not preclude the perpetrator from also having the specific intent to commit genocide.⁴²⁹

256. The Accused was an authoritarian leader. Authoritarian leaders typically have as their main goal the preservation of personal power and authority. This goal may be based on or linked to some idealological or other purpose, frequently nationalism. Authoritarian rulers may - in their determination to preserve personal power - adopt, as if their own, policies of those whose support is necessary to retain power, in the case of the Accused, Serb nationalists. They may let such policies flourish in the slipstream of the trajectories of their own objectives, objectives that have for them a higher priority. They may seek to limit their public affiliation with such policies despite letting them have the freedom to flourish, despite giving them support in practical terms. The fact that these policies may possibly come further down the personal ladder of priorities of authoritarian leaders does not allow them to deny having the intent to execute them. On the contrary: to make cold, calculating decisions to assist the policies or objectives of others, not instinctively one's own, must fix an authoritarian leader with the clearest of intentions. The intention is even more visible to him - as the detached observer - than to those emotionally embroiled (as may be) with the creation or execution of the policies themselves.

257. So here, an accused who supports policies that have a genocidal intent is fixed with that intent himself if he adopts those policies, even if for practical or cynical purposes, to achieve his own ends. He masterly exploited the potentials of the nationalist type of ideology. Using the popular media, he created and endorsed a clear distinction between "them" and "us" group, first in regard to the Kosovo Albanians, but later effectively expanding "them" group to other groups, i.e. the Croats and the Bosnian Muslims. This process eventually led to "dehumanization" of "them" groups, making them an easy target for the genocidal and other crimes of mass killings in the years to come.⁴³⁰

258. The fact that the genocide was halted by the forceful intervention of NATO-led troops and with the signing of the peace accords in Dayton in December 1995 does not negate

⁴²⁹ *Jelusic* Appeal Judgement, para. 49.

that it constitutes a genocide. It started with the first takeover in Bosnia in March 1992. Genocidal crimes⁴³¹ falling under Article 4(2) (a) to (c) of the Statute perpetrated against Bosnian Muslims systematically and repetitively, and on a massive scale, (while carefully sparing Bosnian Serb people and their property) are sufficient evidence of the intent to destroy the Bosnian Muslims. The killing and confinement of, and atrocities committed against, Bosnian Muslim men of military age and their leadership, the raping of Bosnian Muslims, in the territory targeted for inclusion in the Serb state, is also evidence of the intent to destroy the whole of the Bosnian Muslims in that territory. These crimes may be viewed against a pattern of conduct designed to reach the very foundations of the group: the deliberate and simultaneous destruction of the mosques and homes of Bosnian Muslims in the targeted area and the deliberate and simultaneous forcible transfer a significant part of the Bosnian Muslim population.⁴³² Demographic evidence shows that an estimated 329,869 Muslims (and 62,373 Croats) in the area which later became the Republika Srpska⁴³³ were forcibly transferred or deported from the region. There were 344,803 Muslims born before 1980 living in the targeted area in 1991. Only about 15,000 remained.⁴³⁴

259. Evidence of the genocidal acts, the context in which they were committed as evidence of specific intent, and the part played in them by the Accused, from which is intent is revealed or can be inferred, is addressed in detail in the paragraphs below.⁴³⁵

(a) The Accused's specific intent is proved by his words and by his actions

Overview

260. The Prosecution draws upon evidence summarised in the PS(B) document in support of the above conclusions. The Accused's actions are summarised principally at paragraph 25 and its sub paragraphs. As a separate document, the Prosecution has provided a schedule of the Accused's own statements across the time period for all three

⁴³⁰ See Zwaan expert report.

⁴³¹ As alleged in paragraph 32 of the Indictment.

⁴³² The Prosecution by this proposition does not seek to contend that the intention to displace a population is equivalent to the intention to destroy it (having in mind the Staki} Trial Judgement, at para. 554.)

⁴³³ As defined by the Dayton Accords 1995.

⁴³⁴ Tabeau's estimated figures. Ex 548, tab 2 Annexes A1 and A3.

⁴³⁵ The Prosecution will identify the evidence supportive of an inference of specific intent when it addressed the actus reus, and other acts committed with the intent to destroy the Bosnian Muslim group, below.

indictments. In this document, and at paragraphs 6, 7 32, and also paragraph 25 (g) of the PS(B) document, evidence of his words may be found.

261. The Accused's plan in the late 1980's, increasingly clear in 1990, was that the Serbian people scattered throughout the former Yugoslavia should live or remain in one state, a state in which they had a majority⁴³⁶. The evidence shows that he was ahead of Serb leaders in Croatia and in Bosnia and Herzegovina in planning and in the execution of the plan. In the case of Bosnia and Herzegovina he conceived the plan together with the Bosnian Serb leadership as early as 1991, perhaps before, that Serbs in Bosnia should remain part of one state linked territorially and politically to Serbia and to the Serb designated territories in Croatia⁴³⁷.
262. This amounted – de facto – to planning for a Greater Serbia. There was not a single, fully-articulated plan from the outset and the plan changed with changing circumstance, mostly responding to external forces, i.e. the actions of the other Yugoslavian Republics or the actions of the International community after June 1991.

Discussion

263. By the Accused's own words we see that in 1991 he formulated a plan in concert with the Bosnian Serb leadership, principally through Radovan Karadžić, regarding the political future of Bosnia and Herzegovina. The goal was to gain territory for Serbs in Bosnia and Herzegovina and to redraw the map of Bosnia and Herzegovina to ensure that Serbs there were linked territorially to Serbia. He projected that plan as one to eradicate the perceived injustice – or humiliation - of Serbs in Bosnia and Herzegovina being potentially a minority in a newly declared Bosnian state.
264. He was the initiator and the moving force behind the execution of the plan to secure Serb designated areas in both Croatia and in Bosnia Herzegovina. The Accused's actions show how very close he was to the campaign in Bosnia and Herzegovina. They show how far he influenced, supported and, in reality the Chamber may decide, controlled its formulation and implementation. In 1991, he directed Karadžić's strategy; in 1992 he provided a co-ordinated body of forces – the JNA and after May

⁴³⁶ Jovic Diary, Exhibit 596 tab 2

1992 the VJ, the Serbian MUP and paramilitaries from Serbia (including Arkan's and [e]l's paramilitaries) to implement the campaign. He continued to influence and control the political leadership in Bosnia. He maintained close contact with them. He knew of the appalling horrors perpetrated in furtherance of the goal⁴³⁸. He provided logistical, financial, military and paramilitary support to the Bosnian Serb campaign in Bosnia and Herzegovina until 1995 and beyond. He controlled the VJ in its operations in Bosnia from May 1992 onwards, and he established and controlled the special forces of the Serbian MUP, and through them, Arkan⁴³⁹. He controlled the VRS, through the supply of resources and through his influence over Mladi}, through the VJ and through the 30th Personnel Centre.

(b) The Accused as the Leader of all Serbs

(Evidence: See PS(B) document paras. 6, 7 and 24.)

265. The starting point from which all of the Accused's words, and all his actions should be read, is his undisputed position as leader and protector of all Serbs. He was the principal actor in everything that came to pass in the decade during which he was the main political figure in Serbia.⁴⁴⁰

266. The Accused was the political leader of Serbia but was regarded as the leader and protector of all ethnic Serbs dispersed throughout the former Yugoslavia.⁴⁴¹ No strategic decision in Serbia or the FRY during the indictment period could have been made without his approval and authority. This is how the Accused portrayed himself; this was how he was perceived; and this was the reality. There is not a single witness who has testified in this case as to the Accused's relationship with his political contemporaries whose evidence does not support this conclusion.

267. Milo{evi} was the all-powerful leader because he controlled the State institutions of the Republic of Serbia, and of Montenegro. After the creation of the FRY in April 1992, he also controlled the federal institutions of the FRY.⁴⁴² He did so through his control over

⁴³⁷ See evidence on intercepts below

⁴³⁸ Exhibit 359 tab 3; Morillon T 31963; Smith T27296-7

⁴³⁹ T19494, PS(B) pp336

⁴⁴⁰ Borisav Jovi} T29181; Ex. 596, tab 1, para 7.

⁴⁴¹ Babi}: T12915.

⁴⁴² Babi}: T12976-12977; 14046-14048.

individuals⁴⁴³. He used people. He fostered a personality cult around him. He removed those who disagreed with him.⁴⁴⁴ He also controlled the Bosnian and Croatian Serb leadership through loyal individuals.

268. Milo{evi} was able to control the institutions in Serbia because he was head of the SPS party, which dominated the Republican and Federal Parliaments.⁴⁴⁵ From 1994 most of the appointments to the key public institutions in the FRY were made by Milo{evi} in consultation with the JUL, which party he also dominated⁴⁴⁶. No single decision could have been made by the Serbian Government without his approval.⁴⁴⁷ He controlled members of the SFRY Presidency from Serbia, Vojvodina, Kosovo and Montenegro⁴⁴⁸, including Jovic.⁴⁴⁹ He controlled Lili{c}⁴⁵⁰, President of the FRY 1993 – 1997, who described himself in Babi{c}'s hearing as being at Milo{evi}'s "disposal", a "useable man".⁴⁵¹

269. The perception, and reality, of Milo{evi} as all powerful is evident in the way that internationals dealt with him and in the way that he held himself out, in the course of international negotiations over the years, to speak for all Serbs. As Milo{evi} told Ambassador Okun in one of his earlier meetings: "We are one delegation. It's a fact;" he spoke, of course, of the delegation headed by Milo{evi}.⁴⁵² Lord Owen gives similar

⁴⁴³ Babi{c} gives evidence of his use of his control over individuals. T13009.

⁴⁴⁴ Borisav Jovi{c}: T29175-6; 29407-8; T29438; Exhibit 596, tab 1 para. 124-5.

⁴⁴⁵ Milan Babi{c}: T13009; Zoran Lili{c}: T22551-52. No decision of the SPS of any significance could be taken without his approval and authority: Zoran Lili{c}: T22557-22558.

⁴⁴⁶ Lili{c}: T22620.

⁴⁴⁷ Ante Markovi{c} T 28064-5; 28044-46.

⁴⁴⁸ Stjepan Mesi{c}: T11164.

⁴⁴⁹ Jovi{c} would often excuse himself from the Presidency sessions to go speak to Milo{evi} to find out what his opinion would be: Mesi{c}, T10537.

⁴⁵⁰ Milan Babi{c}: T13009.

⁴⁵¹ Babi{c} T14046-48.

⁴⁵² Herbert Okun T16959. Okun also gave concrete examples of instances in which Milo{evi} exercised control over the key Serb participants in the conflict. One such example was Milo{evi}'s assent to a proposal for UN peacekeeping troops in Croatia and his signature on a cessation of hostilities agreement in furtherance of a peace-keeping mission. Vance, Lord Carrington and Okun were of the firm conviction that Milo{evi} by his signature to the Cessation of Hostilities Agreement was giving the assent of the political forces of Serbia, Serbian-controlled political forces, Serbian-influenced political forces. They understood Milo{evi}'s signature to indicate the assent of the paramilitaries and irregulars, as was recorded in the document, because these groups were under Milo{evi}'s control. Herbert Okun: T17168-17169. Ex. VMY Book /Tab 1, page 131.

⁴⁵² Owen was of the view that Milo{evi} could have used his undoubted power over the Bosnian Serb leadership to push through the Vance Owen peace plan. He said: "I believe it was a massive mistake by President Milo{evi} not to use his undoubted power to impose on his fellow Serbs in Bosnia those same settlements, and had he done so, it would have been in the best interests of the Serbian people as a whole." (Chamber Exhibit 16, Statement David Owen, p. 3).

evidence.⁴⁵³ Wesley Clark gives evidence that in August 1995, before Dayton, Richard Holbrooke asked the Accused who he should deal with in negotiating a peace plan – him or the Bosnian Serbs. He replied: “With me, of course”. Milo{evi} promised that he would deliver the Serbs.⁴⁵⁴

270. The reality – crucially - is that Milo{evi} could deliver the Bosnian Serbs, but he deployed this power publicly only when it was politically expedient or necessary for him to do so.⁴⁵⁵ Others could reveal what was not so publicly visible. By way of example, in an intercepted conversation between Radovan Karad`i} and Vojo Kupre{anin on 27 July 1991, Karad`i}, referring to the situation in the Krajina said, “Slobodan Milo{evi} has achieved the maximum possible.”⁴⁵⁶

271. Witness Ton Zwaan’s analysis is that genocidal crimes never develop from the bottom up. The highest state authorities are always responsible for what happens in the genocidal process, with the leadership making very general decisions, giving other people the means and the organisation to undertake the process in detail.⁴⁵⁷

(c) The Accused’s own words

(Evidence: Formulation of plan with Bosnian Serb leadership.)

(See PS(B) document paragraphs 6, 7, 32; and Schedule of Accused’s statements.)

Common goal: Greater Serbia, all Serbs in one state.

⁴⁵³ Owen was of the view that Milo{evi} could have used his undoubted power over the Bosnian Serb leadership to push through the Vance Owen peace plan. He said: “I believe it was a massive mistake by President Milo{evi} not to use his undoubted power to impose on his fellow Serbs in Bosnia those same settlements, and had he done so, it would be been in the best interests of the Serbian people as a whole.” (Chamber Exhibit 16, Statement David Owen, p. 3).

⁴⁵⁴ Wesley Clark: Ex. 619; T30371-72; 30428; 30431031; 30479-84. Although the Americans intended the Bosnian Serbs to initial the Dayton agreement, Milo{evi} said that his initials were enough and that he would produce the Bosnian Serbs’ signatures later: T30380.

⁴⁵⁵ Lord Owen said he used to ask himself all the time why is it that the Accused is not using the power which he had against his fellow Serb leaders. There was an urgency, every day more people were being killed, ethnic cleansing continued and facts were created on the ground. This is the tragedy ... On repeated occasions, the Accused knew perfectly well that the Bosnian Serbs’ position was absurd, that Karad`i} or Kraji{nik or even Mladi}, that it was not going to stand. He would argue against them, but at the end of the day he would say: “Well, it’s up to you.” T28432-33; 28424-5; 77; 28549-50. See below: Following Dayton – Clark’s evidence re control of BSL; Owen’s evidence re why Milo{evi} failed to deliver the Bosnian Serbs on Dayton.

⁴⁵⁶ Exhibit 613 tab 147, T30104.

⁴⁵⁷ Report of Ton Zwaan, Exhibit 639, paras. 40-42; 37-38. T31181-82; 31175-79.

272. When speaking about the political goals he wanted to achieve, there was an obvious discrepancy between his words and his deeds; in truth it amounted to an enormous gulf between his public utterances and his underlying hidden agendas. The evidence shows that in 1989–1990 his proclaimed goal was to preserve the Yugoslav state while in reality he was obstructing the democratic processes necessary for the Yugoslav State to survive.⁴⁵⁸
273. A further example (of the difference between stated goal and real purpose) is that in the disintegration of Yugoslavia, the Accused advocated the self-determination of peoples as the principle for the formation of new states, as opposed to self-determination of republics, the principle generally accepted by the international community.⁴⁵⁹ The self-determination of the republics would leave the borders exactly as they were in the SFRY. However, the self-determination of the Serbian people would include the territories with Serb majorities in Croatia and Bosnia and Herzegovina, achieving a de facto "Greater Serbia", a term he always avoided using in public or at all. And including territories from republics with already established borders would inevitably bring a high risk - or certainty - of violence. This use of violence was something the Accused necessarily embraced and was something he never once genuinely disavowed - until all had been achieved de facto with only international recognition and acceptance to be obtained over time.⁴⁶⁰
274. In 1991, Milo{evi} was also instructing members of the Krajina Serb and Bosnian Serb leadership – Babi}⁴⁶¹ and Karad`i}⁴⁶² – to deceive the public: they were to talk in terms of Yugoslavia and not of Serbia; they were to conceal or minimise the public acknowledgement of the Accused's involvement in events in Croatia and Bosnia. In an intercepted phone conversation with Karad`i} on 30 December 1991 the Accused cautioned him not to indicate any new concept for Yugoslavia but rather the continuation of the old Yugoslavia. He said, "Take care, it's dangerous if they think that something new is being created..."⁴⁶³

⁴⁵⁸ E.g. Ante Markovi}: T28004 –28012, T28012 – 28014;

⁴⁵⁹ Milan Ku-an: T20883-20889, 20957

⁴⁶⁰ See speech Council for Harmonisation 9 January 1993, quoted below

⁴⁶¹ Milan Babi}: T13116-13117.

⁴⁶² Intercept 30 December 1991, exhibit 613, intercept 151, Exhibit 551 tab 10, T30104

⁴⁶³ Exhibit 613 tab 151.

275. The Accused's political goals were, however, sometimes revealed to internationals such as Lord Owen who remarked that Milo{evi} would not have ruled out the possibility that all Serb areas be eventually united.⁴⁶⁴ The Accused candidly expressed this view in a meeting with Hrvoje [arini] on 12 November 1993, "I am telling you frankly that with Republika Srpska in Bosnia, which will sooner or later become part of Serbia, I have resolved ninety percent of Serbia's national question, the same way as Tu|man has resolved the national issue of Croatia through Herceg-Bosna."⁴⁶⁵ During a meeting with [arini] on September 1995 Milo{evi} again reiterated this goal, seeking Croatian support for a proposal designed ultimately to achieve it. "We, Hrvoje, are going to solve our problem and without the international community. We are each going to annexe our part of Bosnia Hercegovina."⁴⁶⁶

Formulation of plan

276. The fact that the Accused could be seen comparatively easily to share, from 1991 onwards, with Bosnian Serb leadership a common goal does not mean that the plan was first formulated then. On more careful examination he can be found suggesting his aims publicly as early as mid 1990.⁴⁶⁷ The public line, so far as Croatia was concerned, was a political settlement allowing for the right of self-determination of the Serb people in Croatia.⁴⁶⁸ Shortly thereafter, In January 1991, he was articulating the desire on the part of Serbs to live in one state⁴⁶⁹. More generally witnesses were clear that the Accused wanted to create a Greater Serbia.⁴⁷⁰ He would say publicly that he wanted to preserve Yugoslavia. In fact, his aim was to "preserve" Yugoslavia for the Serbian people⁴⁷¹.

⁴⁶⁴ Lord David Owen, T28403-28404.

⁴⁶⁵ Hrvoje [arini] Exhibit 641 tab 2, 89 F statement of Hrvoje [arini], T31269-90.

Vladislav Jovanovi}, the Federal Foreign Minister echoed the same sentiment in an intercepted conversation with Karad`i} in 1992, when advising him on the position he should adopt at an international conference on Bosnia that the confederalization should leave the door open for eventual secession or joining Serbia. Exhibit 613 tab 243.

⁴⁶⁶ Hrvoje [arini] T31282-31283.

⁴⁶⁷ 25 June 1990 in a parliamentary speech, he outlined the future of Serbia. He said that there should be a confederation in Yugoslavia, then Serbia's borders would remain an "open political issue". Exhibit 447, tab 6.

⁴⁶⁸ Borisav Jovi}: T29302-29303.

⁴⁶⁹ On 26 January 1991 at a meeting of the Croatian and Serbian leadership. Ex. 641, tab 2. 89(F) Statement of [arini], para. 1.

⁴⁷⁰ Stjepan Mesi}, T10530-10532; 10555; 10723-10724. Contrast Milan Babi}: T13012-13014. Contrast Borisav Jovi}: T19314-19315; 19347-19348.

⁴⁷¹ Milan Babi}, T13803.

277. The realisation of the plan for Bosnia and Herzegovina had to be different from what had happened in Croatia (where Serb-designated territory could simply be occupied). In March 1991, during a secret meeting at Kara|or|evo, he agreed with President Tudman the division of Bosnia along ethnic lines and its annexation to Croatia and Serbia respectively, allowing the possibility for the Bosnian Muslims to live in an enclave.⁴⁷² The fact that a larger Serbia and larger Croatia were to be created by the Accused and Tudjman at the expense of Bosnia and Herzegovina territory is relevant to the intent of the Accused. His intent was to single out Bosnian Muslims as the group that was to be partially destroyed. Only in this way could his plan be realised.
278. The Accused revealed his understanding of what he had planned and achieved in a retrospective account of his own success. On 9 January 1993 in the State Council for Harmonisation, the Accused stated:

"(...) objectively and according to all our relations such as political, military, economy, cultural and educational, we have that integrity (of states). Question is how to get the recognition of the unity now, actually how to legalise that unity. How to turn the situation, which de facto exists and could not be de facto endangered, into being de facto and de jure. Accordingly, the road which would lead us to de jure leads through a 'small labyrinth.' (...). We gain that we would have fewer casualties and in that way we would save our people. We have to sacrifice everything for the people except the people itself".

What had been achieved de facto had all been obtained by violence, as the Accused well knew. He reflects here on a long term common plan that he happily recognised had been executed by violence in a way the Prosecution says is, and was obviously, criminal.

279. The genocidal nature of the Accused's plan for Bosnia and Herzegovina is readily to be found in - and within - things that he said to Bosnian Serb leaders or about the Bosnian conflict. In a conversation between Milan Babi}, Radovan Karad`i} and the Accused in July 1991, Karad`i} says he would chase the Muslims into the river valleys in order to link up all Serb territories in Bosnia and Herzegovina. The Accused says that Babi}

⁴⁷² Ante Markovi}: T28026. Hrvoje [arini}: 89(F) Statement, para. 2-5; 8-9; 13; T31263-31265; 31333-31334; 31338, 31352; 31359; 31396-31398. Stjepan Mesi}: T10559-10563; Milan Babi}: 13111-13113; 13575-13576.

should not "stand in Radovan's way". The context is a conversation about why they should wait for the unification of the Croatian and Bosnian Krajinas.⁴⁷³

280. In 1993, at the 30th Session of the RS Assembly in Pale, Milo{evi} speaks of the "goal" of Serbian people in the Balkans. It is clear from the Session that he is talking about the goal of unifying Serbs in one state.⁴⁷⁴ It was his view that the Vance-Owen plan played a role in the progress towards that goal. During the course of his second speech, which was given after the session had been closed to the public, he assured his audience - the elected members of the Bosnian Serb Assembly - "The question was asked, which I really find unacceptable: Whether we give up our goal? I shall tell you no, we do not give up our goal."⁴⁷⁵

281. On 2nd June 1993, the Accused told a meeting of the SDC: "The war option in Bosnia has been exhausted, they have taken everything that was supposed to be taken."⁴⁷⁶

282. In pursuit of the Accused's plan, as the record of an SDC session on 30 August 1994 shows, and in a discussion on the Contact Group peace plan, Milo{evi} gave a long speech affirming his long term plan. On definition of the national interest he said the following:

"By pursuing a unanimous policy, and quite successfully in my mind, we have managed to save the country from war, and at the same rendered as much support as possible to our people across the Drina in creating Republica Srpska, in creating the Republic of Srpska Krajina, and in winning them a normal status in the negotiations leading to the ultimate goal, which now even the international community has offered to recognise. And that is Republica Srpska stretching over a half of the territory of the former Bosnia and Herzegovina!"⁴⁷⁷

"Therefore a sound national policy must take all this into account. We have actually been offered to expand the territory by one fourth, because Yugoslavia's territory is 102,000 square kilometers and to increase the population by one tenth and to legalise it as well! And even to have a confederation right away!"⁴⁷⁸

⁴⁷³ Milan Babi}: T13054-13056; 13808-13813. Milosevi} endorsed this thesis, but told Babi} not to expedite it. Milan Babi}: T13016-13017; 13787-13792; 13808.

⁴⁷⁴ Dr. Robert Donia. T26494.

⁴⁷⁵ Dr. Robert Donia, T28742-28743.

⁴⁷⁶ SDC Minutes reference no. 9; 2nd June 1993 pp16-17.

⁴⁷⁷ SDC minutes reference no. 25, dated 30 August 1994, p. 22.

⁴⁷⁸ Ibid, p. 25.

It is noteworthy here – as elsewhere – that he never expressed or revealed concern about human suffering.⁴⁷⁹ All he had were goals that he was implementing.⁴⁸⁰

283. On the complaints of the RS leadership that they could not accept the map as offered by the Contact Group Plan because the “territory was not compact” he said this in August 1994:

“ Look at the map – when you draw Bosnia and Herzegovina, of course it does not seem compact. But when you draw it together with Serbia and Montenegro, then whole eastern part is more than compact, because there is a territorial corridor – not the United Nations corridor – but a corridor with territorial sovereignty permitting the passage of military convoys and everything else needed for a compact western part!”⁴⁸¹

The area required to make the map “compact” was the enclaves that included Srebrenica, Gora`de and @epe. The Accused’s understanding of the need for, and his determination to have, a “compact” map sealed the fate of the enclaves in the summer of 1995. Yet again, the tragic events that slowly unfolded were not the chaotic consequences of the acts of individual local perpetrators but the consequences of the Accused’s planning and foresight, stripped as it was of moral concern.

(d) Accused’s “ethno-egoism”/“ethno-centrism” and use of ideology and ancient hatreds (See Schedule of Accused’s statements; PS(B) document paras. 6 and 7.)

284. Ton Zwaan gave evidence of the importance of ideology and use of propaganda in setting the context for genocide. He talks of creating a division between perpetrator and victim groups, and the use of collective historical memory and propaganda to exacerbate this.⁴⁸² The Serbian media’s endless references to the Second World War inculcated feelings of hatred and fear in the Serbian population, demonising the enemy.⁴⁸³ The designation of scapegoats facilitated and trivialised the commission of

⁴⁷⁹ (The suffering of individuals) - In Stjepan Mesić’s presence. Mesić gave evidence that he never saw any sign of feelings in the Accused ever. T10607.

⁴⁸⁰ Stjepan Mesić: T10607, 10634-10635.

⁴⁸¹ Ibid, p. 29.

⁴⁸² Ton Zwaan’s Report, Ex. 639-640; T31181-31182. Reflected in De la Brosse’s evidence of the basic techniques of propaganda: keeping the message simple, using the news to your own advantage, repeating your message endlessly, relying on myths and history, creating a national consensus. (T 20730)

⁴⁸³ For evidence see examples given by De la Brosse: Paragraphs 64 and 68 of this report. Tabs 60, 61, 63 of the Exhibits. (T 20735-20736); (T 20757:22 – 20759: 6); T 20763).

crimes against non-Serbs. Serbian resentment against other groups was legitimised, creating a national consensus: Serbs against non-Serbs.⁴⁸⁴

285. On one approach, there is in Milo{evi}'s speeches over the years a thread of "ethno-centrism" and of an identification of Serbs as victims to justify and render socially acceptable the destruction of those groups that were perceived as a threat. Babi} comments on a continued pattern of "ethno-egosim". He says there was a thesis according to which it would be "humiliating" for the Serbs to become a minority in an independent Croatia or Bosnia and Herzegovina. That notion was advocated by the Serbian leadership in Belgrade and by the Serb leadership in Croatia and Bosnia.⁴⁸⁵

286. Milo{evi} used the media, which he controlled,⁴⁸⁶ to create the pre-conditions for commission of genocidal crimes against Bosnia's Muslims.⁴⁸⁷ This was effected by repeating the idea – endlessly - that Serbs were threatened by genocide,⁴⁸⁸ by invoking stories of the ancient heroism of Serbs,⁴⁸⁹ by glorifying historic dignity⁴⁹⁰, by accounts of past defeats requiring redress⁴⁹¹. These ideas he also articulated in private.⁴⁹²

⁴⁸⁴ De la Brosse: T 20783-20784. De la Brosse, helped by a team in Belgrade, looked through 20.000 pages of the representative media in Serbia. The excerpts that were chosen from the television came basically from the major television news programme, which was broadcast on RTS, the Belgrade television station. (T 20841-20843) See Ex. 446, tab 26: Video clips entitled: "Images and Words of Hate".

⁴⁸⁵ Milan Babi}, T13013-13021; 13466-13467; 13508; 13556-13557; 13668-13670; 13791-13802; 13931-13932; 14010-14011; 14039.

⁴⁸⁶ See Borisav Jovi}'s evidence. T29180-29181; 29401-29404, Ex. 596, tab 1, para. 132-133: The Accused was well aware of the power of the media and the role it has in war time when atrocities are committed on a large scale.

⁴⁸⁷ De la Brosse concludes: After having studied all the documentation available to him he agrees with the conclusion of the special rapporteur of the UN Tadeusz Mazowiecki that "the phenomenon of nationalist rhetoric and sweeping attacks and slurs against other peoples have (...) led directly to the commission of fearful atrocities on the battlefields ..." (See Exhibit 446, Tab 27) (T 20719-20720).

⁴⁸⁸ Audrey Budding gave evidence that in around 1990/1991, there was a flood of stories in the Belgrade media – as well as the public exhumation and reburial of the bones of Ustasha victims – which promoted the idea that Serbs outside Serbia were again threatened by the genocide they had suffered during the Second World War: Audrey Budding, Expert Report on Serbian Nationalism in the Twentieth Century: Historical Background and Context, Ex. 508, p. 68. Edhem Pasi} said that the media, both written and television had an incredible contribution, and almost every night television there were programmes talking about the fact that all other nations were genocidal and it was only the Serbs that were threatened and jeopardised during that time, that they should return their dignity: Edhem Pasi} T24036-24037. Borisav Jovi}: said that the Serbian leadership feared genocide for the Serbian people in view of history, particularly of WWII. (T29205-29210, 29272). Milo{evi} and Jovi} saw the upcoming break-up of Yugoslavia as a grave danger for the Serbs living outside of the mother country and this is why they were prepared to use force to protect them. (T29332-29334, 29340).

⁴⁸⁹ See Schedule of statements: Extract from Ex. 446, tab 30.

⁴⁹⁰ See Schedule of statements: Extract from Ex. 446, tab 26.

⁴⁹¹ See Schedule of statements: Extract from Ex. 446, tab 2.

⁴⁹² To Aernout van Lynden, T26711-26712, 26750-26751, 26756-26757: In July or August 1991, Aernout van Lynden interviewed Milo{evi}. Off camera, over a drink, Milo{evi} said the Serbs were threatened by "a

Although he never publicly expressed hatred for Muslims⁴⁹³, he deployed nationalist ideology - mostly ideology seen to be of others – in his ruthless pursuit of power and in his aim to be leader of a state of all Serbs.⁴⁹⁴

287. From the many examples of the speeches and sayings of others that form part of the political environment in which the Accused's words are set and to be weighed for their effect, the theme of Serbs as potential victims of genocide is reflected in the following quote from General Kadijevic⁴⁹⁵ in the context of Croatia in 1991:

"The fascist regime in Croatia claims that we have occupied a third of the Croatian territory on behalf of Serbia while individuals and groups in other parts of the country, blinded by nationalism and their lust for power under any cost, call us traitors". "Acting in accordance with the decision of the Presidency, we had only one goal, to prevent the bloody ethnic clashes and hinder the repetition of a genocide of the Serbian people. To this end, we have engaged our main forces in the crisis areas."⁴⁹⁶

Identifying Serbs as possible victims of genocide is a none-too-subtle way of justifying in advance the genocide to be committed by Serbs against Bosnian Muslims.

288. On the same topic the Accused can be seen in 1997 at the ceremony in Kula marking the anniversary of the founding of the Red Berets, listening to Franko Simatovi} saying, of the founding aims of this unit: "It's combat operations were anti-terrorist, directed at preventing war crimes, mass retaliation and genocide". This secret military force - a "para-state" military formation formed in May 1991 – can thus be seen to have been built in part on generated fears of genocide against the Serbs, so easily manipulated into a driving force for genocide by Serbs against others.

papist German Fourth Reich, an Islamic fundamentalist conspiracy against the Serb people, which he said was led by Hans Dietrich Genscher, the then German foreign minister."

⁴⁹³ Lord Owen did not think that Milosevi} was one of those who wanted all Muslims out of Republika Srpska any more than he wanted all Muslims out of Serbia. He was not an ethnic purist: T28404-05; 28511. Contrast, however, [arini}'s evidence of Milosevi}'s comments – to what, he may have thought, was a sympathetic ear - in their first few meetings: [arini} says that it was clear to him that Milosevi} was obsessed with the danger of Islamic fundamentalism in the Balkans. This fear of the Muslim "green transversal" was the Accused's leitmotiv. During a meeting on 18 January 1994, the Accused mentioned the Muslims' demographic explosion and that they should watch out because if they were not careful, it would all cost them dearly. Hrvoje [arini} 89(F) Statement para. 28-29; T31271-31272; T31390.

⁴⁹⁴ Owen: Milosevi}'s main goal was the retention of power: T28405; Ch. Ex 17; Annexe B COREU 30 March 1994). He rode the "tiger of nationalism" when it suited him to achieve and retain political power: T28405. He may have been in favour of compromise of the conflict in Bosnia, but didn't force it because it meant offending the nationalists in Belgrade who were his constituents: T28432-33; 28424-5, 77, 28549-50.

⁴⁹⁵ At the time Federal Secretary for National Defence.

289. The same theme is reiterated four years later in the 1995 plan of unification of the RS and the RSK, after the commission by the Bosnian serbs of grave genocidal crimes and before they were to commit the greatest single European genocidal crime since the Second World War in Srebrenica,⁴⁹⁷:

“The objective and clear commitment of Serbs was to live in a joint state with the remaining Serbian nation, and they were aware that only that type of state could protect them from new genocide and guarantee national freedom and equality ... One-sided and unconstitutional secession of Croats and Muslims from former Croatia and former Bosnia and Herzegovina was carried out in order to destroy the joint Yugoslav state, to bring to an end its state-legal identity and continuity, and to deprive Serbian people of the status of constitutive nation, to get it to a position of humiliated minority deprived of its right of self-determination”.

(e) Expressions of genocidal intent on part of Bosnian Serb Leadership

(Evidence: Fillbox paras. 7, 25 (c) 32.)

290. The Accused may not have explicitly expressed his intent to target the Bosnian Muslims for destruction: as he often did, it was for others, in this instance the Bosnian Serb leadership, particularly Radovan Karadzic, to articulate their shared intent.

291. The genocidal ambitions of the Bosnian Serb leadership is frequently evident in their discussions and speeches. There is ample evidence before the Chamber that they did not make any effort to disguise these intentions from either the international community or the Accused. David Harland described both Biljana Plavcic and Karadzic clearly telling him of their objective of ethnically cleansing Bosnia of Muslims and that there was nothing to suggest that this intention was hidden from the Accused.⁴⁹⁸

292. Genocidal intent on the part of Karadzic and other members of the Bosnian Serb leadership found its expression in particular in speeches at the 16th Session of the

⁴⁹⁶ Exhibit 328, tab 14: Statement by Veljko Kadijevic, published in Tanjug on 3 October 1991, produced by Stjepan Mesi. See also exhibit 446, tab 63 and 64.

⁴⁹⁷ Ex. 352, tab 27: Statement issued by the Work Group for Preparation of the Plan of Unification of the Republic of Serbian Krajina and Republika Srpska issued in Banja Luka on 25 May 1995. T13012.

⁴⁹⁸ David Harland, T 28705.

Bosnian Serb Assembly on 12 May 1992⁴⁹⁹ and in intercepts of communications between Karadžić and others in 1991 to 1992.

293. Two documents - the "Variant A and B document"⁵⁰⁰ and the "Six Strategic Objectives of the Serbian people"⁵⁰¹ - are the clearest manifestations that a plan existed to remove non-Serbs from power in all targeted areas and to essentially remove non-Serbs physically from targeted parts of Bosnia regardless of whether they formed the ethnic majority or not. Taken in the context of Karadžić's and others' increasing references to the annihilation of Muslims in Bosnia, and what followed, these documents may also be seen as vehicles employed by the Bosnian Serb leadership to implement a genocidal plan. The first strategic goal - "separating the Serbian people from the other two ethnic communities" - is articulated by Karadžić in the 16th Assembly Session.⁵⁰² In the 42nd Assembly session, Karadžić spelled out another formulation of the first goal as follows: "... that is beyond doubt insofar as we want to achieve the first strategic goal: which is to rid our house of the enemy, that is, the Croats and Muslims, so that we will no longer be together in a state".⁵⁰³

Intercepts

294. On 12 October 1991, Karadžić had a lengthy discussion with Gojko Vogo⁵⁰⁴. During the conversation, Karadžić repeated five times that the Muslims will disappear in case of war. He said that the Serbs are armed to the teeth already and prepared to fight to stay in Yugoslavia, and that the JNA too knows the score – implying that they will support the Serbs fully "this time". The conversation merits quoting in part:

⁴⁹⁹ Evidence has been led on sessions held between Spring 1992 and 1995. See Dr. Robert Donia's Report at Exhibit 537, Tab 2.

⁵⁰⁰ Exhibit 434 tab 3: Instructions issued by the SDS for the Organisation and Activity of the Organs of the Serbian people in Bosnia and Herzegovina in Extraordinary Circumstances. Blue-print for SDS take-overs in the municipalities". The Instructions were disseminated at a meeting convened in Sarajevo on 19 December 1991 presided over by Karadžić and attended by deputies of the Bosnian Serb Assembly and by Presidents of the Municipal Boards. They identified precise steps to be taken within the respective municipalities in order to establish Bosnian Serb control. Deronjić Statement Ex. 600 paras 45-46.

⁵⁰¹ Decision on Strategic Objectives of the Serbian People in Bosnia and Herzegovina, 12 May 1992. Official Gazette of the Republika Srpska. Ex. 451, tab 12.

⁵⁰² 16th Assembly Session. Ex.537, Tab 2.

⁵⁰³ Evidence of Robert Donia (T26486). Ex. 537, Tab 2.

⁵⁰⁴ Exhibit 613 Intercept 88. Vogo was a Belgrade-based poet/professor from Bosnia and Herzegovina, President of the Association of Serbs from Bosnia and Herzegovina in Belgrade. Later, the RS proposed him as the next Minister for Relations with Serbs outside Serbia.

Radovan Karadžić: Yes, to /one word illegible/ ... his ... to Ozren, to /one word illegible/ Doboj, to do anything ... he can, he can have the power in half of Sarajevo, Zenica, in half of Tuzla and that's it. Over. Gracanica, and these little ... But he is ... They do not understand that there would be bloodshed and that the Muslim people would be exterminated. The deprived Muslims, who do not know where he is leading, to what he is leading the Muslims, would disappear.

Gojko VOGO: Yes, yes, yes, yes.

...

Gojko VOGO: Where does he ... where does he mean to start a war, in Sarajevo? Is he a madman?

Radovan KARADŽIĆ: He is. I think that they should be beaten if they start the war. They will be ... they will ... well, they will disappear, that is ...

Gojko VOGO: There will be a lot of blood, but ...

Radovan KARADŽIĆ: They will disappear, that people will disappear from the face of the Earth if they, if they insist now. Their only chance was to accept what we had offered them. It was too much, we did offer them too much. But this ..."

295. On 13 October 1991 Karadžić speaks with Momo Mandić⁵⁰⁵ on the eve of a crucial Bosnian Assembly session⁵⁰⁶ at which he made very similar statements. He forecasts war in Bosnia, the destruction of Sarajevo and massive Muslim casualties:

Karadžić: And that is the way Croatia took and we know what is going to happen here, that has nothing to do with Karadžić's or anyone else's decision, we know exactly what is going to happen, there is no...

Mandić: Definitely, that is clear to people in Belgrade.

Karadžić: In just a couple of days, Sarajevo will be gone and there will be five hundred thousand dead, in one month Muslims will be annihilated in Bosnia and Herzegovina, number of Serbs will be reduced and Croats will be the only ones to profit because they will keep their municipalities...⁵⁰⁷

296. On 15 October 1991, Karadžić forecasts extermination of the Muslims in case of war in Bosnia.⁵⁰⁸ In a conversation with Miodrag Davidović and Luka Karadžić (Radovan's brother), Karadžić says: "In the first place no one of their leadership would stay alive, in three, four hours they'd all be killed. They wouldn't have a chance to survive at all".
297. On the same day, in his famous televised speech in the Bosnian Assembly, Karadžić says:

⁵⁰⁵ Mandić was a leading Bosnian Serb police official in Sarajevo.

⁵⁰⁶ Ex 613, Intercept 89.

⁵⁰⁷ Intercept of conversation with Momcilo Mandić dated 13 October 1991. Ex. 613 tab 89.

⁵⁰⁸ Intercept of conversation with Miodrag Davidović dated 15 October 1991. Exhibit 613 tab 237.

"This is the road that you want Bosnia and Herzegovina to take, the same highway of hell and suffering that Slovenia and Croatia went through. Don't think you won't take Bosnia and Herzegovina to hell and Muslim people in possible extinction. Because, Muslim people will not be able to defend itself if it comes to war here!"⁵⁰⁹

RS Assembly Sessions

298. References to "genocide" before the RS Assembly are almost always in reference to the Serbs' belief that they were the target or object of genocide in the Second World War and were likely to be or had been victims of genocide during the war 1992-1995.⁵¹⁰ Justifications for the identification of Bosnian Muslims as a threat to Serbs in Bosnia may be read alongside calls by members of the Assembly for their annihilation.
299. At the 16th session of Assembly of Serbian People of Bosnia and Herzegovina⁵¹¹, Mladić says this:

"People and peoples are not pawns nor are they keys in one's pocket that can be shifted from here to there. ... We cannot wage war on all fronts nor against peoples. I would like to make one suggestion here that we adopt such a wisdom that we are against the war but that we will fight if attacked, and that we do not want a war against the Muslims as a people, or against the Croats as a people, but against those who steered and pitted these people against us. ... Therefore, we cannot cleanse nor can we have a sieve to sift so that only Serbs would stay, or that the Serbs would fall through and the rest leave. Well that is, that will not, I do not know how Mr. Krajišnik and Mr. Karadžić would explain this to the world. People, that would be genocide."⁵¹²

"We must now see and assess what makes one, and who is, our ally or our enemy, and which enemy would be easier to handle. On the basis of this we must make our move and eliminate them, either temporarily or permanently, so that they would not be in trenches. With artillery I will clear the path for the soldiers, what do I care, I do not have to use the volunteer street. I shell him until I have driven him crazy, once we have driven him crazy he will either flee of his own accord, or, he does not even have to run away."⁵¹³

Karadžić: "What will we do if we get a state in which we are a minority? What will we do if, because of one stream or barren hill, we are again killed and again get enemies in our state in that manner? ... Europe does not desire and does not dare allow creation of an Islamic state here, that's our greatest problem. They want us and the Croats to remain in a unified Bosnia so that we control the Muslims. We cannot be in that unified state. We well know, where fundamentalism arrives, you cannot live any more. There's no tolerance. By means of a high birth rate, they've increased four times, and we Serbs have not increased, nor did the Christians in Lebanon increase because they lacked that

⁵⁰⁹ Ex. 446, tab 33, p.3. Karadžić in the Bosnia and Herzegovina Assembly on 15 October 1991. Transcript and video admitted in evidence.

⁵¹⁰ Dr. Robert Donia. T26516-26517.

⁵¹¹ Exhibit 427 Tab 32.

⁵¹² Robert Donia's Report (Ex. 537, tab 2) p.6.

⁵¹³ Ex 538 MFI.

oriental mentality that Islam bestows. Serbs and Croats together by birth rate cannot control the intrusion of Islam in Europe, for in 5-6 years in a unified Bosnia, the Muslims would be over 51%. So if they don't want any kind of Islamic state in the Balkans, they will be even less likely to want a pure Islamic state, an Islamic canton, a Muslim canton on Bosnian territory This conflict was incited so that the Muslims would not exist."⁵¹⁴

300. By late November 1992, deputies were describing their successes at the municipal level:

Srdjo Srdi} (Chairman of Prijedor Municipal Board of SDS): "We didn't ask you, or Mr. Karad`i}, or Mr. Kraji{nik, what we needed to do in Prijedor. Prijedor was the single "green" municipality in the Bosnian Krajina, and if we had listened to you, we would still be green today, Krupa and Prijedor, Prijedor would not be. We assembled them, and packed them in closely wherever there as room for them".⁵¹⁵

301. In a discussion of the Union of Three Republics Peace Plan in 1993, Karad`i} said: "We have preserved 250,000 places of the living space where Muslims lived."⁵¹⁶

302. Kraji{nik, at the 37th Session on 10th January 1994, says: "Believe me, it would be the greatest tragedy if the Muslims accepted to live together with us. You've seen how they ingratiate themselves with the Croats . . . The Croats won't . . . we would lose our state. I simply wouldn't accept that; I would accept a lesser percentage than we have now in order remain divided, that we have or state and not be with the Muslims".⁵¹⁷

Srebrenica

303. A clearly expressed genocidal intent on the part of the Bosnian Serb leadership in respect of Srebrenica may be found in the following key pieces of evidence:

i. During the 33rd Session of the RS Assembly, held on the 20th and 21st of July, 1993, Karad`i} says that if the Bosnian Serb forces had entered Srebrenica (in

⁵¹⁴ Robert Donia's Report, p.13. Ex. 538 MFI. Further, Dragan Kalini}: "... knowing who are enemies are, how perfidious they are, how they cannot be trusted until they are physically, militarily destroyed and crushed, which, of course, implies eliminating and liquidating their key people. I do not hesitate in selecting the first option, the option of war...." Robert Donia's Report at p.4. Exhibit 538 MFI. Around this time, Colm Doyle remembers Plav{i} saying that if the conflict were to go ahead, if it meant the death of three million people, then let it be done. Colm Doyle: Exhibit 515, tab 1 (para 90) : T 25291- 25292. Plav{i} said to Harland on one occasion: "It's good if all the non-Serbs go. We want them to go. We're not living well together. Let them – let them all leave when we take over certain areas." David Harland: T26998. See also Robert Donia, Mr. Pejovi}, referring to Eastern Bosnia, specifically Gora`de said, "That's a single oasis that must be completely cleansed as soon as possible, breaking all Sarajevo's links with the East." T26488-26489.

⁵¹⁵ Exhibit 537 tab 2, p. 16. At the 34th Session, regarding Prijedor, Srdi} says, during an exchange regarding a law regulating the occupancy of apartments that this problem only exists because those in other municipalities were insufficiently diligent: "They needed to cleanse their municipalities the way we cleansed ours," referring to the success of the genocidal campaign in Prijedor municipality. Dr. Robert Donia's report, page 44.

⁵¹⁶ Dr. Robert Donia: T 26488-26489.

- 1993), there would have been "blood to the knees".⁵¹⁸ In 1994, Karadžić said (in the context of the enclaves): "If the international community treats us like a beast, then we will behave like a beast," mentioning the use of utilities as a means of war.⁵¹⁹ In 1995, Karadžić stated that the enclaves were a "timebomb waiting to explode".⁵²⁰
- ii. On 8 March 1995 Karadžić issued the following Directive: "By planned and well-thought out combat operations create an unbearable situation of total insecurity with no hope of further survival of life for the inhabitants of Srebrenica and Zepa."⁵²¹
 - iii. Deronjić gave evidence about what Karadžić said to him on 9th July 1995: "Miroslav, all of them need to be killed". Karadžić added: "everything you can get your hands on" and "along the lines of Western Slavonia" in a reference to the recent Croat attacks in Western Slavonia. Deronjić understood this to refer to the widespread belief that the Croats killed everyone they came in contact with including civilians; and that they attacked the escaping column.⁵²²
 - iv. On 13 July 1995, Colonel Ljubisa Beara tells Deronjić (of the prisoners from Srebrenica held in Bratunac): "I have orders from the top, orders from the top to kill the prisoners."⁵²³
 - v. Telling is Karadžić's reaction after Srebrenica at the 52nd Assembly Session, 6th August 1995: No surprise, and no remorse for what he must have known by then had happened: "As you know, we had success in Srebrenica and Zepa. There's nothing to criticise or comment on there. Of course, many stupidities were committed after that, for many Muslim soldiers roamed the surrounding woods, and there we suffered some losses. In the action itself, we didn't have losses."⁵²⁴
 - vi. Equally telling, at the 54th Session on 15-16 October 1995: "As Supreme Commander, I stood behind the plans for Zepa and Srebrenica, mainly for Srebrenica. Zepa was understood. Gentlemen, we should have lost the war had

⁵¹⁷ Dr. Robert Donia's report, page 53.

⁵¹⁸ Dr. Robert Donia: T28726.

⁵¹⁹ David Harland. Ex. 470 tab 25. T26978-26979; T27003-27004. In 1995, Karadžić said in relation to his demand for the lifting of sanctions in return for a cessation of hostilities, that if the international community treated Bosnian Serbs like beasts in a cage, that is how they would behave. General Rupert Smith, meeting on 30 April 1995. Ex. 553, tab 5, T27945.

⁵²⁰ General Rupert Smith, meeting on 21 May 1995. Ex. 553, tab 6. T27947-27948.

⁵²¹ Exhibit 553 Tab 2. Produced by General Rupert Smith.

⁵²² Exhibit 600: 89 F statement of Deronjić, Miroslav; paras. 172-181; T29635-19675. PS(B) at para. 32.

⁵²³ Deronjić: Ex. 600, paras. 207-210; T29636.

⁵²⁴ Dr. Robert Donia's report, page 72.

Zepa, with 90,000 armed Muslims, continued to exist. I personally looked over the plans without the knowledge of the General Staff, not intentionally, but by coincidence, found General Krstić and advised him to go into the city and proclaim the fall of Srebrenica, and after that we will chase the Turks through the woods. I approved that radical mission, and I feel no remorse for it.”⁵²⁵

- vii. So far as Mladić is concerned: Lord Owen did not consider it to be beyond General Mladić’s record of behaviour to have been complicit in massacres of Muslims. Owen believed Mladić was a racist, had many quite irrational attitudes to the Muslim population, and his record as a general demonstrated that there was a callousness and a brutality about the man that would have allowed him to make such decisions. Owen said that it was possible that Mladić acquiesced to a massacre of Muslims such as the one that took place in Srebrenica.⁵²⁶
- viii. A video showing Mladić’s arrival in Srebrenica on 11th July 1995 has Mladić saying this: “Here we are on the 11th of July 1995 in Serbian Srebrenica. On the eve of one more great Serbian holiday we present this town to the Serbian people. After the rebellion against the Turkish governor, the moment has finally come for us to take revenge on the Turks here. Look everything over. Come on. Naser’s hideout, brother.”⁵²⁷
- ix. At the Hotel Fontana meeting on 11 and 12 July 1995, Mladić offers the Muslims the option of surviving or disappearing. His menacing tone is apparent from the video recording of these meetings.⁵²⁸
- x. [REDACTED]

(f) Nature of relationship with Bosnian Serb leadership
(Evidence: PS(B) document, para. 25 (c).)

⁵²⁵ Dr. Robert Donia’s report, page 83.

⁵²⁶ T28541-28544, Chamber Exhibit 17, Annex C, Profile of Ratko Mladić.

⁵²⁷ Exhibit 514, tab 7. Produced by Dražen Erdemović. (T25148-25150)

⁵²⁸ Ex. 592 Srebrenica compilation video.

304. There is no express reference to genocide in the evidence of conversations between Milo{evi} and Karad`i}, but it is inconceivable, given their relationship, that Milo{evi} would not, at the very least, have known of Karad`i}'s intention in Bosnia.
305. From 1991 through to 1995, Milo{evi} exercised enormous influence over the Bosnian Serb leadership. A body of intercepts of telephone conversations between Milo{evi} and Karad`i} in 1991 are key in demonstrating Karad`i}'s dependence on Milo{evi} for political direction and guidance, and the level of influence Milo{evi} held over Karad`i}. A conversation dated 9 July 1991 sets the tone: Karad`i}: "Get in touch with me maybe daily. It is very important for me to hear your assessment".⁵²⁹ These conversations did occur daily – sometimes up to 2 or 3 times – and at a minimum weekly in the period from mid 1991 to early 1992. The intercepts have Milo{evi} issuing instructions⁵³⁰ and orders⁵³¹ to Karad`i}, and they show that Milo{evi} continued to pursue and direct the development and implementation of the common goal in the period 1991 to early 1992⁵³².
306. The Prosecution draws on the following specific examples:
- i. On 11 June 1991, Milo{evi} wants to meet and agree positions with Karad`i}, as preparation for a very important meeting at which only Bora and Dobrica (Jovic and Cosic) would be present. Karad`i} agrees to attend even if it means that he can not attend a session of the RS Assembly. Milo{evi} tells him to leave his deputies with the instructions that B-H has to stay in Yugoslavia.⁵³³
 - ii. On 31 July 1991, Milo{evi} tells Karad`i}: "The Serbs will not be divided into many states. That should be the basic premise for your thinking".⁵³⁴

⁵²⁹ Ex. 613, Intercept 4.

⁵³⁰ Examples: Intercept dated 11 June 1991: Milo{evi} tells Karad`i} to leave his deputies with the instructions that Bosnia has to stay in Yugoslavia, Ex. 613, Intercept 7. Intercept dated 10 September 1991, Ex. 613, Intercept 60; complied with on same day in conversation with Kraji{nik, Ex. 613, Intercept 61: Reference to Milo{evi} as the one from "above".

⁵³¹ Example: Intercept dated 8 July 1991, Ex. 613 Intercept 17; complied with on 9 July 1991, Ex. 613 Intercepts 19 and 20.

⁵³² Examples: Intercept dated 1 July 1991, Ex. 613 Intercept 15. See also intercept between Karad`i} and Anđelko Grahovac dated 24 June 1991: Karad`i} tells Grahovac that Serb ethnic territories in Bosnia and Croatia must remain in Yugoslavia, but not unite with one another; he has agreed the position with Milo{evi}, Ex. 613, Intercept 12. Ex. 613, Intercept 25. See references to the Belgrade initiative in August 1991: Intercept dated 7 August 1991, Ex. 613, Intercept 27; Intercept dated 4 September 1991, Ex. 613, Intercept 34.

⁵³³ Ex 613, Intercept 7: Intercepted conversation produced by B-1793, dated 11-Jun-91.

⁵³⁴ Ex 613, Intercept 25.

- iii. On 13 September 1991, Milo{evi} describes his position along the lines of the Belgrade Initiative: A reduced Yugoslavia that would include Serbia, Montenegro and Bosnia-Herzegovina. Karad`i} adds that he would not be even against the creation of the cantons as long as Bosnia-Herzegovina stays in Yugoslavia.⁵³⁵
- iv. On 10 September 1991, Milo{evi} says: "Please let's move. We don't give into anybody anymore. And if they want to fight, we'll fight." "Who wants to join Alija to beat us, he may. He will lose".⁵³⁶
- v. In a conversation dated 24 October 1991, Karad`i} exclaims that there is no price at which the Serbs would live in the same state with the Muslims. Milo{evi} insists in trying to keep Muslims in a Yugoslavia. Karad`i} disagrees and says that the Serbs in Bosnia Herzegovina are going to control 60% of the Bosnia-Herzegovina territory and are going to constitute parallel state organisations. Milo{evi} questions whether it is the smart thing to do, but does not seriously challenge it."⁵³⁷
- vi. On 17 December 1991, Karad`i} says international recognition of Bosnia will mean war – and that Yugoslavia must be saved. Milo{evi} says that Serbia is the pillar for the preservation of Yugoslavia⁵³⁸.
- vii. On 12 March 1993, Milo{evi} recounted for the members of the SDC an instruction he gave to Karad`i}, "I told Radovan to go for radical cuts, by which he would keep the territory on the left bank of the Drina, the corridor and the Bosnian Krajina, and not grasp every bit of the Sarajevo province."⁵³⁹
- viii. Dr. Williams described a meeting in April 1994 during which Milo{evi} gave Karad`i} a direction to call his subordinates and order them to remove obstacles that had been erected in Rogatica. Karad`i} promptly followed this directive and the obstacles were removed shortly thereafter.⁵⁴⁰

307. The relationship of the Accused with the Bosnian Serb leadership compels the conclusion that they would not have hidden their intentions from him. David Harland

⁵³⁵ Ex 613, Intercept 63.

⁵³⁶ Ex 613, Intercept 60.

⁵³⁷ Ex 613, Intercept 100.

⁵³⁸ Ex 613, Intercept 140.

⁵³⁹ SDC minutes, 12 March 1993, ERN 0113-2411-0113-2413.

⁵⁴⁰ Dr. Michael Williams, T22933-22934.

gave evidence that Plav{i} and Karad`i} stated clearly to him that they had a clear objective of ethnic cleansing. He says: There is no suggestion that they kept this intention hidden from the Accused.⁵⁴¹ During the course of the 36th session of the Bosnian Serb Assembly on 30-31 December 1993, Karad`i} told the representatives there about his consultation with Milo{evi} on Sarajevo: "I have already talked to Milo{evi} about this. Serbian Sarajevo will be supported by all of the 12 million Serbs."⁵⁴²

308. It was Dr. Williams' view in 1994 (around the time of the Gorazde crisis in April 1994) that Milo{evi} was clearly the dominant political figure in Serbia, and that he had profound influence on the Bosnian Serb political and military authorities.⁵⁴³ By April 1995, a serious rift had developed between the military and political leaderships in Pale, aggravated by the ongoing economic blockade (and tacitly encouraged by Milo{evi}).⁵⁴⁴ Other witnesses have given evidence of a deterioration in the relationship between Milo{evi} and Karad`i} in 1995; the relationship between the Accused and Mladi} remained strong.⁵⁴⁵ Even in this time period, the evidence supports a finding that the channels of communication and influence remained open, in particular, through Jovica Stanisic,⁵⁴⁶ evident in Stanisic's presence in Srebrenica in 1995⁵⁴⁷, his involvement in resolving the UN hostage crisis in May/June 1995,⁵⁴⁸ and his presence at Dayton.⁵⁴⁹
309. Milo{evi} and the Bosnian Serb leadership may have had their differences, but the evidence suggests that his influence over them – when he wanted to use it – continued

⁵⁴¹ David Harland: T28705. See above.

⁵⁴² Dr. Robert Donia's report. T26517-22 Exhibit 537 tab 2.

⁵⁴³ Dr. Williams: T23073.

⁵⁴⁴ Dr. Williams gave evidence about a meeting on 21 April 1995 allegedly convened without Karad`i}'s knowledge: Exhibit 470 tab 8; T22910-22912.

⁵⁴⁵ See Hrvoje [arini]: Mikeli} told [arini} that Mladi} was "two hundred per cent" loyal to Milosevi}. Milosevi} realised that in Bosnia, he had to play the military card. Mikeli} claimed that 2 days earlier, on 11 January 1995, he had personally brought Mladi} by car to see Milosevi}; Hrvoje [arini}, Ex. 641, tab 2, 89 (F) Statement, para. 42-44; T31279-31280; 31361-31365.

⁵⁴⁶ Babi} gave evidence that Milosevi} controlled Karad`i} through Stanisic}. Their relationship may be seen in conversations between Karad`i} and Stanisic} in 1991 (Examples: Conversations on 8 August 1991 (Ex 613, Intercept 28); 8 September 1991 (Ex 613, Intercept 44); 9 September 1991 (Ex 613, Intercept 55); 28 November 1991 (Ex 613, Intercept 130); 4 December 1991 (Ex 613, Intercept 131); 21 December (Ex 613, Intercept 144); 29 December 1991 (Ex 613, Intercept 148); 5 January 1992 (Ex 613, Intercepts 152 and 155); 6 January 1992 (Ex 613, Intercepts 156 and 157); 12 January 1992 (Ex 613, Intercept 160).

⁵⁴⁷ See evidence of Deronji}. Ex. 600: paras. 172-181; T29635-29675.

⁵⁴⁸ See evidence of David Harland. Ex. 546, tab 24; T26957-58: Release effected due to pressure by Milo{evi} on Karad`i}; Charles Kirudja: Involved in direct negotiations with Stani{i} concerning UN hostages. Kirudja understood that Stani{i} already had the forces present in Bosnia and that he would simply identify the most critical ones to the hostage situation and contact them directly. Ex 378, tab 17, 18. T15478-82.

through to 1995. That influence was manifest both during Dayton, and in the period before and after the signing of the accords.⁵⁵⁰ Whatever the personal relationship, the evidence in the following section shows that the reality was that Milo{evi} exercised influence and control over the Bosnian Serb leadership and events in Bosnia through – at the very least – his total and absolute support of the RS economy and its war effort.

310. Of their disagreements, Karad`i} says, on 10-11 May 1994:

(We are at the door of being recognised). "I think that everything Slogo says can be accepted, except on things we have not abandoned. We are leading them to our goal. Without Serbia nothing would have happened, we don't have the resources and would not have been able to make war. There are disagreements; they are visible. The primary big disagreement was over the Vance – Owen Plan, and that was serious and was not any kind of game, but it's better that the people believe it was a game."⁵⁵¹

311. The sanctions said to have been imposed in August 1994 by FRY against RS to reflect the reality of the "split" were, in truth, honoured only in the breach.⁵⁵² This "split" was in reality dishonoured by continuing connection. The evidence shows that a real breach in relations between the Accused and Karad`i} did not occur until August 1995. Even then, the tension between the two was personal and did not limit or stop the Accused's support in continuing the flow of assistance through the 30th Personnel Centre. The evidence also shows that, by then, Milo{evi} clearly favoured Mladi} above Karad`i}.⁵⁵³

(g) The Accused's own actions

312. By his modes of participation in the joint criminal enterprise, it may be inferred that the Accused shared genocidal intent with Mladi}, Karad`i} and the Bosnian Serb leadership.

⁵⁴⁹ See Wesley Clarke. T30375.

⁵⁵⁰ Wesley Clarke on meeting before Dayton: General Clark and Holbrooke had a meeting with Milosevi} at a lodge near Belgrade on 13 September 1995. After speaking to Milosevi}, Milosevi} recommended that they speak to Mladi} and Karad`i}. When they agreed, Milosevi} announced that they were in a building approximately 200 metres away: General Clark: (T30374-75).

⁵⁵¹ Dr. Robert Donia's report, page 62; 40th Session of the RS Assembly. Ex. 537, tab 2.

⁵⁵² See Milo{evi} at the meeting in Dobanovci, 25 August 1994, Ex. 469, tab 20: "...the blockade was merely a formality and aid flows daily."

⁵⁵³ See the 42nd session of the SDC at which Mladi} was present.

313. The Prosecution will refer to the modes of participation in the joint criminal enterprise at paragraph 25 of the Indictment, and the Fillbox.

Indictment para. 25 (a) Effective control over elements of the JNA

(Evidence: Fillbox paras. 25 (a) and para. 28; in particular Expert Reports of General Vegh and Reynaud Theunens)

314. The Presidency of the SFRY exercised de jure control over the JNA via the SSNO.⁵⁵⁴ Milo{evi} was not a member of the SFRY Presidency and therefore had no de jure powers over the JNA.⁵⁵⁵ He exercised de facto control over the JNA⁵⁵⁶ via at least three routes:

- i. His control of the SFRY Presidency: He exercised de facto control over the SFRY Presidency via certain individual members.⁵⁵⁷ He was therefore de facto in charge of the JNA.⁵⁵⁸
- ii. He exercised direct control over Chiefs of the Main Staff, Generals Kadije{vi}, Ad`i} and Pani{.}⁵⁵⁹ In various intercepts in late 1991 Milo{evi}'s control over Ad`i} and Kadije{vi} is seen either explicitly or implicitly. It can be seen that Ad`i} and Kadije{vi} communicate directly with Milo{evi} and Karad`i}, both of whom have no de jure command over them.⁵⁶⁰ The JNA was loyal to Milo{evi} because he financed them.⁵⁶¹ Officers who were not loyal to him were replaced

⁵⁵⁴ Various charts produced by witnesses show the de jure and de facto command structure of the JNA. Exhibit 387, tab 1; Exhibit 326, tab 21; Exhibit 406, tab 2; Exhibit 463, tab 2; BABI]; Vasiljevic; Jovic; C-032.

⁵⁵⁵ Note, he was however President of Serbia and therefore head of the Serbian TO.

⁵⁵⁶ Witness Lazarevic also testified about MILO[EVI]'s de facto control: T15261.

⁵⁵⁷ Samardzi} T11164; Mesi} T10587; Vasiljevic testified that real power lay with the Republic Presidents, and the members of the Presidency merely advocated their positions and had roles similar to Ambassadors; BABI] testified as to Milo{evi}'s control over individual members of the Presidency (see above); Jovic gave evidence that Milo{evi} could dismiss him but this did not necessarily mean that he controlled him or the Presidency. (T29328-9, T29360-1, T29396, T29419-20) He, however, also gave evidence that Milo{evi} had absolute power: T29131; Edhem Pasic was told by Dobric COSI] that he was merely a puppet in the hands of MILOSEVI]. T24030-33.

⁵⁵⁸ BABI] (T13685, 13700-13704); Mesi} (T10573).

⁵⁵⁹ Nikola Samard`i} gave evidence that he directly observed the control MILO[EVI] exercised over both Ad`i} and Kadije{vi} at a meeting on 16 September 1991. T11182-83. Markovi}: Whilst Kadije{vi} had initially supported Markovi}, he had later supported MILO[EVI]. T28061-3. Okun: Milo{evi} controlled the JNA in Oct 1991 via Kadije{vi}. T16893-5

⁵⁶⁰ See Exhibit 613, Intercepts 37, 38, 39, 42, 115. Also see the set of intercepts concerning Marti} arrest.

⁵⁶¹ The JNA was in part financed from contributions from the Republics. When Croatia realized the JNA was working for a Greater Serbia and to its own detriment, it stopped contributing to the budget of the Army. Because the Army was in a difficult financial position, it was willing to follow Milo{evi}, who was the most willing to sponsor them through primary issues, foreign loans and NBY loans. (T10571-10572; T10594) The Council of Governors had to approve loans but by mid-1991, the Croatian representatives had left the Council

by younger, loyal officers.⁵⁶² In February 1992, Milo{evi} contacted Ad`i} directly over the retirement of 33 Generals.⁵⁶³ On 8 May 1992, 38 generals were retired, including Vasiljevi}. Ad`i} was not consulted about these retirements.⁵⁶⁴

- iii. He exercised control over certain JNA officers via the Vojna Linija, through the State Security Service and Stanisi}. Vasiljevi} testified that there were the normal chains of command over the JNA, but also that the "Vojna Linija" - through Stani{i} and the Serbian MUP - allowed contact with certain generals, and in turn cooperation with paramilitary units.⁵⁶⁵

Indictment Para. 25 (b) Provision of financial, logistical and political support for the VRS/ Control over and support to VRS/ Relationship with Mladi}

(Evidence: Fillbox paras. 25 (b) and para. 29; in particular, expert reports of General Vegh and Reynaud Theunens).

315. There is sufficient evidence to show that the Accused treated the VRS (and General Mladi}, its Chief of General Staff) and the VJ as one common army which was fulfilling the objectives of the joint criminal enterprise and his genocidal plan. This is reflected in the observations of a number of witnesses. Clark, for example, says that the separation between the VJ and the VRS was political, not substantive. Training, officer assignments, promotion and pay were all subject to the control of the VJ. There was also an integrated air defence system.⁵⁶⁶ He said: "The Serb military had been carved out of the Yugoslav military".⁵⁶⁷

giving a free hand to Milo{evi} who controlled the Council of Governors just like he controlled the JNA. (T10573)

⁵⁶² C-001: T15261

⁵⁶³ Under Kadijevi}, Milo{evi} would not have had this ability to dismiss generals. Vasiljevi} T16229-30; T15902-03.

⁵⁶⁴ Vasiljevi} T15914-16

⁵⁶⁵ Vasiljevi}: Generals contacted by the Vojna Linija include: Arandjelovi} (Commander of the 1st Guards Mechanised Division in Sid visited by Stani{i} and Stoji-i}), Pani} (1st Military District), Biorcevic (Commander of the Novi Sad Corps) Ivanovi} (Chief of Staff of the Novi Sad Corps). Vasiljevi} testifies that they also contacted: Stevanovic (commander of the air force and the anti-aircraft defense) and Bo{kovi} (with the security service of army of Yugoslavia). T15860.

⁵⁶⁶ Clark: T30410-11. A memorandum prepared in advance of a co-ordination meeting between the VJ, VRS and the RSK armies held in December 1993 described the co-ordination of the three armies achieved. This included the transfer of weapon systems, the plan to establish secure communications between the three armies, and the creation of a joint air defence system. See Theunens Ex. 643, tab 1; and B- 127.

⁵⁶⁷ Clark: T30375.

316. The VRS and the VJ were created out of the JNA. A huge amount of logistics were provided by the JNA to the VRS on its creation. General Vegh gives the following analysis: The JNA "provided strong, determined assistance in the creation and organisation of an emerging armed force. Transfer of the previous year's experiences in combat operation and organisation would have made the co-operation between the JNA, the local Serb Territorial Defence and MUP effective, consolidated and fast. The JNA served as the basis for forming the new, ethnic based army." In his opinion "the status of the JNA in Bosnia-Herzegovina, its transformation, withdrawal of its elements, and the methods of further support should have been determined by the approval made by political leadership", then implemented by the military chain of command. The military leadership would have "functioned under the direction of political control, and would not have carried out any strategic actions independently from political influence". "Only the strategic level supreme leadership ... has the ability to draw up a plan for far-reaching transformation, withdrawal, and personnel and materiel support".⁵⁶⁸

317. Continuing throughout the war, the VRS was provided with logistical support on an enormous scale by the VJ. This was recognised by Mladić on the formation of the VRS⁵⁶⁹, and midway through the war⁵⁷⁰. David Harland testified that the Bosnian Serbs were almost entirely dependent on support from Serbia. Had a serious effort been made to restrain them they would certainly have been responsive; they told the UN as much themselves.⁵⁷¹ Milošević characterized this support in the following way: "The same applies to the expenditures incurred by providing equipment, from a needle to an

⁵⁶⁸ Vegh's Expert report, Exhibit 644.

⁵⁶⁹ Exhibit 427, tab 3.

⁵⁷⁰ Dr. Robert Donia's report, Ex 537, Tab 2 (50th Assembly Session 16 April 1995). "As an illustration for increase, I submit an overview of expenditures of certain kinds of supplies from the beginning of the war to 31 December 1994, with needs for 1995 that we have at present. From the beginning of the war to date, a total of 9,185 tons of infantry ammunition has been expended. 1.49% was self-produced; 42.2% came from supplies that we inherited and were withdrawn from enclaves and kasernes of the former JNA; 47.2% was provided by the Yugoslav Army; and 9.11% was imported. At the present we have 9.69% of the total needs for 1995. ... We have expended 18,151 tons of artillery munitions, 26.2% of it from production, 39% from supplies, 34.4% provided by the Yugoslav Army, and 0.26% imported. At the present we have 18.36% of the needs for this year. As for anti-aircraft ammunition, we expended 1,336 tons. We secured none from production, which means we didn't produce one shell, one bullet, ... 42.7% came from supplies, 52.4% were provided by the Yugoslav Army, and 4.9% came from imports. We have 7.89% of the needs for this year."

⁵⁷¹ David Harland: T 26973-26974. Harland thought that the Bosnian Serb domination of the battlefield was largely a function of support from Belgrade. The withdrawal of support would have taken away their military advantage and would have forced them to settle on terms that might have made it impossible to bring about the major relocation of populations that they had been pursuing. He said that the Bosnian Serbs were actually using the support provided by Serbia to achieve ethnic cleansing. Ratko Mladić himself had even conceded this when asked about how they had taken Visegrad, Rogatica, and Brčko and acknowledged that hundreds of tanks had been provided by the JNA/VJ for this purpose. T 26997-26998; T 27009-27009. See also the evidence of Okun: T19061-62; 17162: "... what happened was to put it plainly, the JNA in effect became the VRS, the Bosnian army."

anchor, for the security forces and special anti-terrorist roces in particular, from light weapons and equipment to helicopters and other weapons which still remain where they are today".⁵⁷²

318. Funding for the VRS and SVK emerged from a single financing plan for all three Serb armies: the JNA (later the VJ), the VRS and the SVK. A large part of the financial and material support for these armies was provided indirectly through contributions made to cover the budget deficits of the RS and the RSK.⁵⁷³ This support was provided with a level of secrecy consistent with other evidence of the Accused's deception and denials of his involvement in Bosnia-Herzegovina.⁵⁷⁴

319. Former serving officers of the JNA remaining in Bosnia and Herzegovina in the VRS and JNA civilian personnel remaining in the VRS were paid directly by Belgrade. The Accused and successive VJ Chiefs of General Staff regarded these officers serving in the VRS as VJ officers for whom they set up a "dummy" formation in order to conceal their involvement in Bosnia. Initially this formation was known as the 40th and 41st Educational Centres. It later became the 30th and 40th Personnel Centres.⁵⁷⁵

[REDACTED]

320. A good insight is provided in extracts of meetings of the SDC. In particular:

[REDACTED]

⁵⁷² Morten Torkildsen, T19015.

⁵⁷³ Expert Report of Morten Torkildsen; Ex. 426 (T19010-19011).

⁵⁷⁴ See Exhibit 427, tab 3: T19029, T19058, T19015: The Accused's speech on his arrest in Belgrade.

⁵⁷⁵ Theunens expert report Ex 643, tabs 1 and 8

[REDACTED]

[REDACTED]

321. In cross-examination by the Accused, Smith gives his view of the importance of payment of the officer corps in this way:

Slobodan Milo{evi}: .. payment of salaries for officers was not secret at all, but that this did not constitute command.

General Rupert Smith: .. the man who pays the cheque is usually the person who is in control eventually.⁵⁷⁶

322. General Pani} was the Chief of the General Staff of the newly formed VJ from May 1992 to August 1993. The Supreme Defence Council (SDC) of the FRY was in effect the Supreme Commander of the VJ. The SDC consisted of the Accused, Lilic and Bulatovic.

323. Through consensus, acting through Lilic (the President of the FRY), it gave orders to the Army⁵⁷⁷. The VJ operated through the usual military doctrinal concept of "chain of command". As such the Chief of General Staff received orders from the SDC which were passed down the chain of command to be implemented on the ground by VJ officers. Likewise the CGS and SDC would get regular briefings on the events on the ground in both the RS and RSK and what each of their respective armies were engaged in. Panic was a regular attendee of SDC minutes in his capacity as Chief of General Staff. The evidence led by the Prosecution indicates that the Accused was not only a simple member of the SDC, but that through his dominant political position in the FRY⁵⁷⁸, his influence and authority over the other members of the SDC (Lilic⁵⁷⁹ and

⁵⁷⁶ Smith: T 28004-28004; T 28005-28005.

⁵⁷⁷ Lili} : T22582.

⁵⁷⁸ See Lilic's evidence on the dominance of the SPS in Serbia and Serbia's financial contribution to the FRY budget. T22589.

Bulatovic) in practice gave him at the minimum de facto if not de jure control of the SDC.⁵⁸⁰ This control gave the Accused de jure as one of the SDC, de facto in any event, the ability to give orders to the Army through the Chief of General Staff, and punish those members of the Army who acted illegally, through the Chief of General Staff.

324. There is also sufficient evidence to show that the Accused was able, through his dominant position on the SDC, to promote, and punish, officers of the VRS⁵⁸¹. The SDC meetings provide telling evidence on this issue⁵⁸².

[REDACTED]

325. At the 37th Session of the SDC held on 13 June 1995: Perisic proposed a number of officers for promotion including: Mladen Mihailovi}, head of engineering administration (according to Perisic, he contributed greatly to the training of Serbs in the RS and the RSK) and Milosav Brkic, commander of the 608 logistics base (according to Perisic, he contributed to delivering to the RS and the RSK everything that the SDC decided should be given to them).⁵⁸³ These promotions, and references in this session to the "main staff" of the 30th Personnel Centre give the clearest possible

⁵⁷⁹ See Babi}'s evidence, above.

⁵⁸⁰ Slobodan Milo{evi} used to meet privately with Momcilo Peri{i} to discuss matters outwith SDC meetings. Zoran Lili} T22609.

⁵⁸¹ Whereas the Prosecution accepts that within Bosnia and Herzegovina the VRS operated with a legal framework established by the law of the Republika Srpska and obeyed specific orders issued by the Bosnian Serb Presidency through the VRS Main Staff, Milo{evi}, through the supply of resources, through his relationship with Mladi}, through the VJ and the 30th Personnel Centre, exercised authority and influence over the VRS.

⁵⁸²

[REDACTED]

⁵⁸³ See also Decree by the President of FRY on retirement of Gen Maj Gali}, Stanislav, signed by LILI], Zoran, certified by Col FEZER, Branko. Exhibit 469 tab 17. Introduced through Zoran Lili}. (T 22668-22668) Lili} said he signed off on the termination papers of General Gali} who was a member of the 30th Personnel Centre fighting in the Republika Srpska with the Army of Republika Srpska on a voluntary basis. The decree which Zoran Lili} signed probably came as a proposal from Karad`i}. (T 22668-22668).

indication that soldiers in the VRS were under the control of the VJ through these Personnel Centres.⁵⁸⁴

326. [REDACTED]

327. [REDACTED]

[REDACTED] There is evidence from the SDC that from 1993 the Accused was suggesting that the leadership of the RSK and the RS attend SDC meetings to discuss the defence of their territory and what support they would receive from the SDC.⁵⁸⁵

328. The Accused, personally or through the SDC, at a minimum had a great deal of influence and control over Mladić, with the ability to punish. This was either directly or through the Office of the VJ Chief of General Staff. Throughout the war, and latterly by the 30th Personnel Centre, Mladić was a salaried (JNA then) VJ officer. His army was largely dependent on the FRY and the VJ for its personnel, logistical, financial and other military support.⁵⁸⁶

329. The evidence reveals the following insights into the Milošević-Mladić relationship:

⁵⁸⁴ SDC session no. 37, dated 13 June 1995.

⁵⁸⁵ SDC minutes reference no. 6, 9/12/1992.

⁵⁸⁶ Expert Report of Reynaud Theunens; Ex. 463, tab 7.

- (i) Owen: Milo{evi} appointed Mladi} as the commander of the VRS, and Mrksic as commander of the SVK. Owen's assumption was that Milo{evi} could therefore control them.⁵⁸⁷
- (ii) General Rupert Smith: During the course of his duties as UNPROFOR Force Commander in 1995, Smith had meetings with both Dr Radovan Karad`i} and Ratko Mladi}. He formed the view that there was influence coming from Belgrade, or Slobodan Milo{evi} because of the reliance for support that the Bosnian Serbs had on the Serbian army or Serbian armed forces (VJ); and from their own account they were dealing with the General Staff in Belgrade."⁵⁸⁸
- (iii) David Harland: Ratko Mladi} had connections with the Yugoslav Army at several levels. Firstly there was a basic level of support from Serbia to the Bosnian Serbs and in particular to the Bosnian Serb military. They provided everything from money to vehicle maintenance and anti-aircraft systems, and so on. So there was a level of common cause and the military emphasised that their chain of command really ran to Belgrade. When David Harland personally had to write the signs for negotiation meetings for General Mladi} and the Bosnian Serb delegation, Mladi} would cross out the word "Bosnian" and say, "No, no, we are a single Serb delegation. You know, Belgrade is our capital". In general, when the UN had problems with getting the Bosnian Serb civilians to take the appropriate decision, there would often be a delegation would go to Belgrade, as in the case of Gorazde. They would talk with Milo{evi}, who would be able to bring about the desired outcome with the Bosnian Serb military.⁵⁸⁹
- (iv) David Harland: The UN were able to detect direct intervention by Slobodan Milo{evi} or by others in Belgrade over the VRS only at a few key points in time; most evidently around Gorazde. These instances gave them the impression that the VRS were very amenable to influence by Slobodan Milo{evi} or by others in Belgrade. The fact that nothing was done to restrain the VRS around Sarajevo or Srebrenica was taken as meaning that Slobodan Milo{evi} either acquiesced or supported these activities. Further that Slobodan Milo{evi} was able to influence their behaviour.⁵⁹⁰

⁵⁸⁷ David Owen: Chamber Exhibit 16, Statement David Owen, p. 4; Chamber Exhibit 16, Annex G (5) (FT interview between Laura Silber and General Mladi}); Chamber Exhibit 17, Annex A, p. 166; Chamber Exhibit 18, p. 344; T28393-28394.

⁵⁸⁸ Rupert Smith: T27933-27933.

⁵⁸⁹ David Harland: T 26968-26968.

⁵⁹⁰ David Harland: T 27007-27007.

- (v) David Harland: Manojlo Milovanovic and Ratko Mladić would say, "We aren't taking orders from Dr Radovan Karadžić." Sometime at the beginning of August 1995, Karadžić even officially fired Ratko Mladić. Mladić continued in his post with the support of Belgrade.⁵⁹¹

Dr. Williams: Both before the imposition of sanctions in August 1994 and afterwards, the indications are that General Mladić was a frequent visitor to Belgrade, that no matter what the political tensions were that were self-evident in the relationship between Belgrade and Pale, these did not seem to affect unduly his comings and goings.⁵⁹² Sarinic said that when his relationship with Karadžić deteriorated, Milošević shifted his contacts in the RS onto Mladić.⁵⁹³



- (vi) An intercept of a conversation between Mladić and Milošević in May 1995 demonstrates the close relationship between the two men.⁵⁹⁴

Indictment Para 25 (c): Substantial influence over and assistance of Bosnian Serb leadership

330. Evidence on this issue is addressed above.

Indictment Para. 25 (d): Provision of general support to the RS including financial support

(Evidence: PS(B) document at para. 25 (d).)

⁵⁹¹ David Harland: T 26967-26968. Babić also gave evidence that Milošević controlled Mladić. (T13576-13577).

⁵⁹² Williams: T 22908-22908.

⁵⁹³ [arini] 89 (F) statement Ex 641, tab 2 para 42.



⁵⁹⁴ Ex. 641, tab 9.

331. Milo{evi} has acknowledged that financial support was provided to the RS and the RSK by Serbia and the FRY. He has spoken of the organisation of the economies of the (S)FRY, the RS and the RSK into what can best be described as an economic and monetary federation to facilitate the provision of this support.⁵⁹⁵ In his closed session speech at the 30th RS Assembly on 5-6 May 1993, Milo{evi} said:

“The question is especially asked now how are we going to amalgamate the economy of the Serb provinces. Since you are an assembly, you probably know that we made a united system of money transfer, that we intend to introduce the same money, that we intend to have every possible link and transaction between the economies, as well as that we are going to stabilize the entire unified area of economy in which those Serb lands shall belong economically, culturally, educationally and in every other aspect...” He says: Accordingly, I suppose it doesn’t take too much imagination to realise where this process is heading.”⁵⁹⁶

332. Through his control of the organs of Government in the (S)FRY and Serbia, the Accused was able to direct the provision of financial support to the RS. That support is yet another indicator of the level of influence held by him over the Bosnian Serb leadership and the VRS.

333. The National Banks of the RS and RSK operated as main branch offices of the National Bank of Yugoslavia (NBJ), and under its authority alone. They were subordinate to the NBJ. Both were required to implement the decisions of the NBJ and the governor of each was required to attend the sessions of the council of the NBJ, although without voting rights. These banks ultimately financed the RS and the RSK armies.⁵⁹⁷

334. RS (and RSK) budget deficits were covered by the supply of primary issue from the (S)FRY.⁵⁹⁸ By the end of 1991, the Accused controlled the National Bank of Yugoslavia (NBJ) through the Council of Governors. The Council of Governors made the decision on any primary issue, including when the NBJ would be used to

⁵⁹⁵ Also see Conclusion of the Second Expert Report of Morten Torkildsen, Ex. 426.

⁵⁹⁶ Dr. Robert Donia, above. The Accused did not appear to challenge, in cross-examination of financial investigator Morten Torkildsen, that “both the RS and the RSK addressed the Federal Republic of Yugoslavia for assistance, and the Republic of Serbia and the Republic of Montenegro and Serbs in the diaspora, so there is no dispute over that. It is not disputed either that they received such assistance.” Morten Torkildsen: T19048; also see T19107.

⁵⁹⁷ Morten Torkildsen: T19112; Second Expert Report of Morten Torkildsen, Ex. 426; Ex. 427, tab 18.

⁵⁹⁸ Morten Torkildsen: T19010-12.

finance the deficit of the federal budget.⁵⁹⁹ In Lilić's time, Serbia financed 90 % of the FRY budget.⁶⁰⁰ That budget was approved by the Federal Assembly, over which body the Accused had control.⁶⁰¹

Indictment Para 25 (e): Provision of Direction and Support to Special Forces of the Serbian MUP, including Arkan

335. The Serbian DB's, and Arkan's, involvement in the takeovers in Bosnia-Herzegovina in 1992 and in actions in Bosnia in the years to 1995 is addressed below.

336. Milošević had both de jure⁶⁰² and de facto control over the Serbian MUP and the State Security Service (DB).⁶⁰³ His power over the DB is best seen through his relationship with Jovica Stanišić.⁶⁰⁴ Real power in the Serbian MUP resided in Stanišić, rather than in its minister, Sokolović.⁶⁰⁵ Stanišić is described as Milošević's executioner and protector.⁶⁰⁶ It was through Stanišić that Milošević controlled Mladić and Karadžić, and it was through him that he controlled the Serbian DB.⁶⁰⁷ Stanišić was the number 2 man in Milošević's regime. He once said to Babić that he dealt with the internal affairs of the country, whereas Milošević dealt with foreign affairs.⁶⁰⁸

337. Through Stanišić and Franko Simatović, Milošević built the forces which operated under the control and direction of the DB – the Red Berets, a group which later became known as the JATD, and even later, the JSO - into a "praetorian guard"⁶⁰⁹, over which he had direct control. Ante Marković recounted Milošević's statement at the time: "...I

⁵⁹⁹ Ante Marković: T28015; T28043-44.

⁶⁰⁰ Zoran Lilić.

⁶⁰¹ Through his control of the SPS and the JUL. See Lilić's evidence. T 22555-22556; T 22620-22620.

⁶⁰² See Law on Internal Affairs 1989. By the 1989 law, he had control and command functions over the DB. Report of Budimir Babović, Ex. 465, 466.

⁶⁰³ Appointments to the State Security Department were also made on the basis of his recommendation. Vasiljević: T15859-60; T16031-36. By the Law on Ranks 1995, the power to appoint generals in the Serbian police service was vested in the President. This gave to Milošević a de jure power to influence the membership of the police service. See Expert Report of Budimir Babović; Ex. 465, sections 5.12-5.18.

⁶⁰⁴ [REDACTED]

⁶⁰⁵ [REDACTED]

⁶⁰⁶ Babić: T13175-76; 13575.

⁶⁰⁷ Babić: T13576-77.

⁶⁰⁸ Babić: T13175-76; 13575.

⁶⁰⁹ [REDACTED]. Owen took the view from watching closely that the police were under Milošević's direct control, and that Milošević built them up into more like a militia so that he had a counterbalance to a somewhat more independent, at times, JNA. Owen: T28397-98; 28438-28440; 28444. Chamber Exhibit 17, p.136.

ordered mobilisation of the reserve task force of the Serbian Ministry of Interior Security Forces and the urgent forming of supplementary forces of the Republic of Serbia police.”⁶¹⁰

338. Milo{evi} gave the Red Berets every priority in terms of resources – even over the Yugoslav Army.⁶¹¹ An extract from a video of the celebration at Kula Camp of the anniversary of the foundation of the Red Berets has Zivojin Ivanovic, one of the founding members of the Red Berets⁶¹², toasting Milo{evi} as follows:

“...health, that all wishes come true and from this date on, history continues as usual. All of us from the Service, together with you, honoured guests, operatives, analysts, chiefs, we are at the disposal of the people, in the service of the state President. Soldiers, your health.”⁶¹³

339. [REDACTED]

340. In his speech to mark the occasion, Franko Simatovic articulates what were alleged to have been the founding aims of the Red Berets:

“Mr. President, we thank you for accepting the invitation to attend the ceremony marking the anniversary of the formation of the Special Operations Unit of the State Security Service. It was constituted on 4 May 1991⁶¹⁴ at the time of break-up of the former Yugoslavia. Its combat operations were anti-terrorist, directed at preventing war crimes, mass retaliation and genocide.”⁶¹⁵

341. Stanistic was also a member of the so-called Ba-ka Palanka lobby - made up of individuals working for the secret police, the SPS, with information/propaganda, and criminals - who worked together to implement the orders of the Accused. Members of the lobby were Mihalj Kertes, Radovan Pankov, Jovica Stanistic, Milorad Vucelic, Marko Kekovic, Milovan Popivoda, Milutin Popivoda, Frenki Simatovic, Brana

⁶¹⁰ Ante Markovi}, T28059. On 16 March 1991.

⁶¹¹ Lili}: Milo{evi} gave primary to the needs of the Serbian MUP as opposed to the Yugoslav Army (T22594).

⁶¹² [REDACTED]

⁶¹³ Exhibit 390, Tab: 9.

⁶¹⁴ Note that a matter of weeks before this, on 16 March 1991, the Accused had publicly stated that he had ordered “the urgent forming of supplementary forces of Republic of Serbia police”: Ante Markovi}, T28059. Ex. 328 tab 29.

⁶¹⁵ Exhibit 390, Tab: 9, Excerpt: Simatovi} speech clip no. 1 (12:25). Produced by Dragan Vasiljkovi} (T16556).

Crncevic, Vesko Vukotic and Darko Asanin⁶¹⁶ - indicative of just how influential the lobby was. In the first weeks of March 1993, the Accused attended a meeting at a casino in Novi Sad where members of the Backo Palanka lobby would meet. Mihalj Kertes and Jovica Stanisic were amongst those present.⁶¹⁷ Milo{evi} asked Stani{i} about the situation in Eastern Slavonia and Baranja. Stani{i} replied that everything was going according to the plan, that the terrain had been cleansed of Croats, and that the situation on the ground was stable (T19688). Milo{evi} said: "Very well. So we have completed the main part of the job. Carry on like that but in a subtle way."

342. Evidence led regarding Stanisic's dealings on behalf of the Accused with the Bosnian Serb leadership, and with internationals, particularly in 1995, provides further demonstration of his importance and influence.⁶¹⁸

343. The evidence supports a finding that the Red Berets were subordinated directly to Franko Simatovic (aka "Frenki"), and through the chain of command via Stanisic, to Milo{evi}.⁶¹⁹

344. The evidence also supports a finding that, through the DB and the Red Berets, Milo{evi} also controlled "Arkan" and his paramilitary group, "Arkan's Tigers", or the Arkanovci. The Tigers did nothing without DB support or permission. B-129 describes them as serving as a reserve force of the MUP or the DB of Serbia.⁶²⁰

345. Coming as they did so directly under his control, Milo{evi} well knew what the DB, the Red Berets and Arkan's Tigers were doing in Bosnia. Evidence led demonstrates that he kept a close eye on the activities of forces under his control. He was kept informed about daily meetings at the MUP of Serbia⁶²¹, and, at the videoed ceremony referred to

⁶¹⁶ C-048.

⁶¹⁷ C-048: T19693-19694; T19686-19687; 19771-19675; 19799-19801; 19816.

⁶¹⁸ See above.

⁶¹⁹ [REDACTED]

⁶²⁰ B-129: T19445-46. B-129 gives evidence of specific operations carried out by the Tigers in 1994 and 1995 during which they were subordinated to the DB. See also Dobrila Gajic-Gliscic: Arkan's Tigers were under the Serbian MUP. On one occasion, Sokolovic, the Minister of the Interior, said that Arkan's Tigers were "our" special forces. Sokolovic also said that "criminals" were let loose to reinforce Arkan's forces. Simovic asked who ordered that and Sokolovic responded, "I don't know, the boss." Dobrila Gaji}-Glisi}, T27842, 27848-27849, 27877.

⁶²¹ [REDACTED]

above, he can be heard saying to Radojica Bozovic, another of the first members of the Red Berets⁶²², the following:

Colonel Ivanovic: "Mr. President, allow me to introduce the unit's veteran officers. Mr. President, Colonel Radojica Bozovic!"

(Milo{evi} is exchanging greetings and shaking hands.)

Milo{evi}: "Hello Bozovic, I read those reports of yours."

Colonel Bozovic: "Thank you (inaudible words) God forbid there should be more of them, but should there be, I'm here."⁶²³

346. The Prosecution has demonstrated with other evidence the role Bo`ovi} played in the crimes committed in Bosnia.⁶²⁴

347. Repeated discussions with internationals regarding Arkan's activities in Bosnia are addressed below, as are discussions held regarding paramilitary units, including Arkan's Tigers, at SDC meetings and meetings of the Council for Harmonisation at which the Accused was present.

348. The Accused made the following comments in the presence of witnesses regarding Arkan's men: To Hrvoje [arini}, the Accused laughed and said, "Someone also has to do part of the work for me too." He said that as a joke, but left a strong impression that there was an element of truth to it, as though he wanted to say that a skilful and capable politician also needs people like Arkan.⁶²⁵ In the presence of C-048, at the March 1993 meeting at the Casino Royal, Milo{evi} asked Kertes if Arkan was under control and was assured that he was. Milo{evi} underlined that "we need people like this now, but no one should think that they are more powerful than the state."⁶²⁶

Indictment Para. 25 (f): Support of Serbian paramilitary groups
(Evidence: Para. 25 (f) of thePS(B) document.)

⁶²² See B-050; C-020.

⁶²³ Exhibit 390, Tab 1: Video of Red Berets Awards Ceremony ("Awards Ceremony"), produced by Dragan Vasiljkovi}, (T16450 – T16451).

⁶²⁴ [REDACTED]; Slobodan Lazarevi} T12422-27; B-104 T18778-81; K-2 T14578-14580; C-020 T12209; [REDACTED]; B-129 T19461; T19485.

⁶²⁵ Hrvoje [arini}. T31270.

⁶²⁶ At the March 1993 meeting at the Casino Royal in Novi Sad. C-048, T19689-19690; 19749; 19814.

349. There is strong evidence to support a finding that – at the very least - the Accused provided support in the shape of weapons, ammunition, use of military facilities, training and transportation⁶²⁷ – through organs that he controlled, directed or was close to - to paramilitaries from Serbia. Unsurprisingly, this sort of activity was covert.⁶²⁸ At this stage, the Prosecution does not propose to deal in any depth with this aspect of its case. The Chamber is referred in particular to the paramilitaries sent to the front by Vojislav Seselj – the Seseljevci - and Vojislav Seselj's own comments regarding co-operation with the Accused in the period 1991-1992.⁶²⁹
350. The Accused well knew of the activities of these paramilitaries: See the evidence of Herbert Okun regarding his meeting with the Accused and Cyrus Vance on 6 January 1993;⁶³⁰ and the evidence of Galbraith regarding his report dated August 1992 and disseminated in Belgrade in December 1992.⁶³¹ Evidence of Milo{evi}'s awareness and tolerance amounting to a clear indication of support of paramilitaries from Serbia may also be seen in stenographic notes/minutes of sessions of the SDC, and minutes of meetings of the State Council of Harmonisation⁶³².
351. There is evidence that paramilitary groups from Serbia cooperated and coordinated in the field with forces under Milo{evi}'s control. By a Decision of the SFRY Presidency, dated 10 December 1991, volunteers were to be subordinated to the JNA.⁶³³ In some municipalities in Bosnia, there is evidence to support a finding that this was indeed the

⁶²⁷

[REDACTED]. See also Ex. 458, tab 22, interview dated 13 May 1995 in which [e{elj} talks of the role played by the Bubanj Potok base in equipping and training volunteers. Produced by C-047, T21647. See also Expert Report of Reynaud Theunens; Ex. 643, tabs 4, 5, 20.

⁶²⁸ See C-047: The JNA Colonel at the training base in Bubanj Potok objected to raising the ^etnik flag next to the official flag, mainly due to the risk of the flag being seen by passers-by, especially foreigners: C-047, T21647. Volunteers reporting to the VRS in Skelani were requested to hand in their Serbian identification cards so that nobody could become aware of Serbian military personnel being deployed in Bosnia. This was common practice in other areas as well. C-047, T21699.

⁶²⁹ See [e{elj}'s comments in a video produced by witness Dulovi}: Ex. 342, tab 13, [REDACTED]. C-047 gave evidence that [e{elj}'s SRS party co-operated with the SPS. He observed that on the local level, the SRS and the SPS held close contact and supported each other. C-047, T2158621587.

⁶³⁰ Addressed below.

⁶³¹ Addressed below.

⁶³² Addressed below.

⁶³³ Ex. 387, tab 12: "Order on engagement of volunteers etc." Expert Report of Reynaud Theunens, Ex. 643, tab 17.

case.⁶³⁴ Documents produced by witness B-1448 support a finding that in 1992 paramilitaries in Bosnia were receiving equipment from JNA barracks Bubanj Potok near Belgrade⁶³⁵, and further that these paramilitaries⁶³⁶ were coordinating with the JNA.

352. For evidence generally as to the coordinated activity of paramilitaries from Serbia and forces acting under Milo{evi}'s control and direction, see below.

Indictment Para. 25 (g): Control and use of the media
(Evidence:PS(B) document, para. 25 (g))

353. The Prosecution has addressed this issue above.

(h) Accused's awareness of crimes; his deception and denials

Milo{evi} had an unusually detailed knowledge of what was going on on the ground in Bosnia and Herzegovina

354. Milo{evi} controlled, directed and supported forces operating in Bosnia and Herzegovina. He followed their movements with an unusual attention to detail bearing in mind his position. Charles Kirudja observed, based upon his experiences of Milo{evi} in 1994-1995, that the Accused had a good command of detail and knowledge with regard to matters he discussed with him. In Kirudja's experience, for someone of this level in government to have this level of knowledge was unusual. Milo{evi} was not assisted by any aide as would be normal and was very informed about policy right down to the detail.⁶³⁷

355. This was also Wesley Clark's experience: During the peace talks at Dayton an important issue arose regarding establishing a geographic link between Sarajevo and

⁶³⁴ B-1505 testified that Col. Jovanovi} (of the U`ice Corps) said that the White Eagles were under his command. Ex. 523, tab 1.

⁶³⁵ Ex. 579, tab 2; Ex. 579, tab 3 and Ex. 579, tab 6 produced by B-1448, T28285-28286.

⁶³⁶ In this case paramilitaries acting under the direction of Ljubi{a Savi} (aka Mauzer): B-1448, T28297.

⁶³⁷ Kirudja drew to his superiors' attention in a report that in respect of negotiations with Milo{evi} there was no need for large delegations to be involved. Milo{evi} was very well informed and it was sufficient that you met with him. Charles Kirudja: T15483-84. Okun made a similar observation: Milo{evi} was able to provide

Gorazde. Clark worked with Milo{evi} over the course of approximately an hour with a sophisticated computer map imaging equipment trying to identify the best link between the two. During the course of this exercise, Milo{evi} evidenced intimate knowledge of the geography of that part of Bosnia and familiarity with the strategic significance of villages and the terrain. Without consulting with any member of the Bosnian Serb team, Milo{evi} identified that portion of Serb-held land which he was willing to return to the Federation of Bosnia and Herzegovina to establish a link between Sarajevo and Gorazde.⁶³⁸ Similarly, Milo{evi} demonstrated the same detailed knowledge during his negotiations regarding which portions of Sarajevo would be returned to the Federation.⁶³⁹

This detailed information came from various sources – including the Serbian MUP, the UB and Karad`i}.

356. The evidence led reveals some of the sources of the detailed information that Milo{evi} had of what was going on on the ground in Bosnia and Herzegovina and Croatia:

- (i) Special Telephone lines: There were special telephone lines installed in Brana ^rn-evi}'s office directly connected with Milo{evi} and the State Security of the MUP of Serbia. The purpose of the direct lines was to know exactly what was happening on the theatre of war.⁶⁴⁰ Milo{evi} was also kept informed about daily meetings at the DB.⁶⁴¹
- (ii) UB (Security Administration) Reports: In March 1992, Vasiljevic was called for a meeting with the Accused. Milo{evi} requested that UB reports be forwarded to him so he could have a look at them. Vasiljevic responded that he sent that kind of information on a regular basis to the MUPs of Serbia and Montenegro and to the federal MUPs and that Milo{evi} probably received copies. Milo{evi} responded that he did receive some information, but that he was not sure whether he received the information in its entirety on every occasion.⁶⁴²

commitment without interrupting the meeting for consultation, by phone or otherwise. He never expressed necessity to discuss matters with some other parties involved. T16905 - 16911, Ex. 397, tab 3, p. 40.

⁶³⁸ Wesley Clark: T30379-80.

⁶³⁹ Wesley Clark: T30378-30379.

⁶⁴⁰ B-179: T26594-26595.

⁶⁴¹ B-179: T26606-09.

⁶⁴² Aleksandar Vasiljevi}, T15908-15910, 16263

(iii) Close associates: ██████ told a close associate of the Accused about the crimes he observed in Eastern Bosnia in the spring of 1992, knowing that Milo{evi} would then be apprised of the gravity of the situation.⁶⁴³

(iv) Serbian MUP:

██
██
██

(v) Karad`i}: Milo{evi} was also kept informed in his regular communications with Karad`i}. Example: Intercept of conversation with Karad`i} on 26 July 1991. (See above).⁶⁴⁴ Further, see conversations in July, September and November 1991.⁶⁴⁵ Example: On 24 September 1991, Milo{evi} has a conversation with Karad`i} during which he discusses the detail of arranging the transport of military equipment and units from Serbia to the Krajina.⁶⁴⁶ Further example: On 8th July 1992, Karad`i} and Milo{evi} discuss the armament of the Sipovo and Mrkonjic Grad TO.⁶⁴⁷

(vi) State of knowledge of Bosnian Serb leadership: Dr. Williams testified to having raised with Bosnian Serb leaders, at every opportunity, the crimes that were being reported to the international community.⁶⁴⁸ A letter from Sergio de Mello to Karad`i} dated 3 March 1994 cites specific instances of deliberate targeting of civilian housing by Bosnian Serb forces. The letter includes references to Bosanska Krupa, Otoko, Dornja, Pokoj, and Bosnia and Herzegovinaac. De Mello draws Karad`i}'s attention to the Geneva Conventions. The letter is representative

⁶⁴³ ██████

⁶⁴⁴ Exhibit 613, Intercept 21.

⁶⁴⁵ Examples: Intercept dated 26 July 1991, Ex. 613 Intercept 21 (Discussion of current situation in Croatia; and casualties on the Danube due to army actions); Intercept dated 6 September 1991, Ex. 613, Intercept 37; Intercept dated 10 September 1991, Exhibit 613, Intercept 59; Further intercept dated 10 September 1991, Ex. 613, Intercept 59 (discussion re destruction caused by Serb forces in Croatian town of Gospi); Intercept dated 19 September 1991, Ex. 613, Intercept 67 (discussion re Vukovar); Intercept dated 19 September 1991, Ex. 613, Intercept 68 (re seizure of a JNA garrison in Virovitica and Petrinja); Intercept dated 19 September 1991, Ex. 613, Intercept 69 (re JNA in Western Slavonia). Intercepts dated 20 September 1991, Exhibit 613 Intercepts 70, 71; Intercept dated 23 September 1991, Ex. 613, Intercept 73. Intercepts dated 24 September 1991, Exhibit 613 Intercepts 76,77. Intercept dated 2 November 1991, Ex. 613, Intercept 109. Detailed updating through Stani{i} on 4 December 1991, Ex. 613 Intercept 131; and further updating on 4 December 1991 to the Accused; Ex. 613, Intercept 132.

⁶⁴⁶ Exhibit 353, Intercept 40: Intercept of conversation between Radovan Karad`i} and Slobodan Milo{evi}, dated 24 September 1991, produced by Milan Babi}, T13446-13447.

⁶⁴⁷ Selak: T22246-7.

⁶⁴⁸ Dr. Michael Williams, T22902.

of a number of letters to Karadžić from either de Mello or Akashi during Dr Michael Williams' tenure.⁶⁴⁹

- (vii) Example of Milošević's knowledge of detail: An example of the extent of Milošević's knowledge of events in Bosnia may be found in the evidence of B-1120 regarding his intervention in the KP-Dom detention facility in Foča municipality: The Accused secured the release of some detainees there.⁶⁵⁰

The Accused's denials of the culpability of forces under his control or direction, or supported by him is telling

357. The Accused's knowledge of crimes perpetrated by the forces controlled or directed or supported by him, whether through the channels of information available to him or through internationals, is instructive in demonstrating his intentions. In the example of Arkan's paramilitaries, the Accused's denials of their culpability or their connection to him, through the Serbian MUP or otherwise, in the face of all evidence (see above) to the contrary, is particularly telling. The evidence led in this case shows a pattern of the Accused saying (denying) one thing, and doing another, not only to internationals, but also for the purposes of keeping his culpability out of internal records (for example, SDC minutes/stenographic notes or minutes of meetings of the Council for Harmonisation).

Notice through internationals of criminal activities of forces under the Accused's control or direction, or supported by him.

358. Evidence of internationals regarding notice to the Accused is compelling, and may be found in the following:

- (i) 1991: In a speech in 1991, James Baker said: "However the Government of Serbia and the Yugoslav federal army are the bearers of a special and, by all means, bigger responsibility for the dark future that is facing the people of Yugoslavia unless they stop the bloodshed and redirect the violent course in which they're heading at the moment... It is clear that the federal Yugoslavian army does not

⁶⁴⁹ Letter dated 3 March 1994 from the head of civil affairs, Mr. De Mello, to Dr Radovan Karadžić. Exhibit 470 tab 3. Introduced through Dr. Michael Williams. (T22902-22903)

⁶⁵⁰ B-1120 at T24155-24155. The Accused agreed in cross-examination of witness B-1120 that he had intervened to secure the release of detainees in KP-Dom.

serve as a neutral guarantee for the cease-fire in Croatia...On the contrary, it actively supports local Serb forces in the violation of cease-fire, causing deaths of citizens...It is equally clear that the Serb leadership is actively supporting and encouraging the use of force in Croatia...Obvious goal of the Serb leadership and Yugoslav army, if you're working as a team, is the creation of a smaller Yugoslavia or Greater Serbia."⁶⁵¹

- (ii) 10 September 1991: Babi} tells how on the destruction of Gospi} by Serbian forces, Milo{evi} instructed Karad`i} to mislead E.C. diplomats on the cause of the destruction.⁶⁵²
- (iii) Early 1992: Security Council Resolutions dated 1992, in particular, Resolution 752 (15 May 1992)⁶⁵³: Resolution 752 called for the withdrawal from Bosnia-Herzegovina of the JNA and Croatian army forces and called upon all parties to ensure that attempts to change the ethnic composition of the population anywhere in the former Yugoslavia cease immediately.
- (iv) Early 1992: Helsinki Watch wrote to Milo{evi}, General Adzic, as Acting Minister of Defence and JNA Chief of Staff on 21 January 1992 calling on them to investigate: "serious human rights abuses by the Serbian Government and the Yugoslav Army", and to prevent such abuses re-occurring. These abuses include "the summary execution of civilians; the indiscriminate and disproportionate use of force against civilian targets; the torture and mistreatment of detainees; disappearances and the taking of hostages; the forced displacement and resettlement of civilian populations; and the killing of journalists covering the war".⁶⁵⁴ The letter relates to crimes perpetrated in Croatia. It was, according to Jeri Laber, delivered to members of the Accused's government, Milo{evi} and Adzic having refused to receive her⁶⁵⁵. The letter of complaint was heavily

⁶⁵¹ Exhibit 328, tab 5: Speech by James Baker, 25 September 1991, produced by Stjepan MESI] , (T10609)

⁶⁵² Milan Babi}: T13328; Ex. 613, tab 59.

⁶⁵³ See also Resolutions 740 (7 February 1992) and 755 (20 May 1992) at Exhibits 615 tabs 2 and 3 respectively. Produced by Diego Arria at T31713. See response by the SFRY to sanctions imposed at Ex. 615 tab 4 in a letter dated 30 May 1992. Resolution 752: Ex. 547, tab 2.

⁶⁵⁴ Ex. 359 tab 3.

⁶⁵⁵ Jeri Laber: T14261;14249;14266-68; 14368-70; 14303-04

publicised in the foreign (including NY Times and London Times) and national press (including Borba – the official newspaper of the Republic of Serbia).⁶⁵⁶

- (v) Milo{evi} had notice of the Helsinki Watch letter because he responded to it on 11 February 1992 through his Chief of Cabinet, Milinovic. "Concerning the letter sent to the president of the Republic of Serbia, Mr. Slobodan Milo{evi}, by the US Helsinki Watch Committee on January the 21st, we want to inform you as follows: The places in which the mentioned crimes were committed are not within the territory of the Republic of Serbia, therefore, the Republic is not competent for nor involved in such acts in any way. Consequently, the Republic of Serbia cannot be responsible for that. "The president of the Republic of Serbia asked the competent organs of the Republic of Serbia to investigate the abuses enumerated in your letter, and if any of the citizens of the Republic of Serbia participated in those crimes, they will be brought to justice." ⁶⁵⁷
- (vi) 1991/1992: In a series of meetings with Ambassador Okun in late 1991 and 1992:
- On 13 October 1991: Milo{evi} made the point that the Bosnia and Herzegovina Serbs are 30% of people and occupy 60% of land. It was clear to Okun from this remark that Milo{evi} appreciated the possibility of a

⁶⁵⁶ Jeri Laber T14272. A further letter was sent dated 4 February 1992: Helsinki Watch expressed concerns about extrajudicial executions in Vojvodina and restates concerns about the fate of the people who disappeared in Vukovar. The letter ends with: "We await your response and urge you to respect your obligations under international law." Exhibit 359, tab 5: Further Helsinki Watch letter to Slobodan Milosevi} and General Blagoje Ad`i}, dated 4 February 1992. Produced by Jeri Laber, T14273.

⁶⁵⁷ Ex. 359 tab 5; T14274-75. The Serbian Government sent further letters on 18 March and 1 September 1992: On 18 March 1992: "Serbia wants to contribute to halt human rights abuses but express surprise that Helsinki Watch consider the government of the Republic of Serbia to be responsible for such abuses in the Croatian conflict. (...)". The letter attempts to answer some of the complaints from Helsinki Watch including the Vukovar hospital massacre and allegations of discriminations against the Albanian population in Kosovo. It announces that "a decision has been taken at the federal level on the creation, powers, and composition of a commission to investigate war crimes and crimes of genocide perpetrated against the population of Serbia and other nationality during the armed conflict in Croatia and other parts of the country." Exhibit 359, tab 7: Letter from the Deputy Prime Minister of Serbia to the U.S. Helsinki Watch Committee, dated 18 March 1992. Produced by Jeri Laber, T14277. On 1 September 1992: The letter informs Helsinki Watch that since the last letter of Serbia, the state commission for war and genocide crimes has been established. It goes on to say that crimes were committed by Bosnian forces against Serbs in the area of Sarajevo. Although this commission was set up to investigate crimes against all nationalities, the letter deals exclusively with crimes against the Serbs, people of Serbian nationality. Exhibit 359, tab 8: Letter from Deputy Prime Minister of Serbia to Helsinki Watch, dated 1 September 1992. Produced by Jeri Laber, T14285.

humanitarian catastrophe in Bosnia and Herzegovina because there was already a clear link between people and land.⁶⁵⁸

- On 21 November 1991, Vance/Okun convey to Milo{evi} disturbing reports about Serb irregulars and paramilitaries in Bosnia and Herzegovina: even four months before fighting broke out in Bosnia and Herzegovina, paramilitaries had begun to commit crimes in Bosnia and Herzegovina.⁶⁵⁹ Milo{evi} "feigns surprise".⁶⁶⁰
- On 6 January 1992, Secretary Vance expressed to Milo{evi} his concern about the criminal activities of Seselj and Arkan. He told him these had to be stopped. President Milo{evi} assured him that anyone who was a problem would end up in jail.⁶⁶¹
- On 3rd April 1992, Okun notes in his diary entry that fighting in Bosnia and Herzegovina had already been going on for about a month. Ethnic cleansing was getting worse. Vance raised the problem with Milo{evi}. Milo{evi} said that he called Karad`i} and "told him to cool it".⁶⁶²
- On 15th April 1992, Vance and Okun held a meeting with Milo{evi} and Jovanovic (FRY Foreign Minister) about the situation in Bosnia. Vance discussed in detail reports received about the activities of Serbian paramilitaries and irregulars in Bosnia, along the eastern border of the Drina. Vance: "What about Arkan on the Drina?" "General Adzic said Arkan would be there." Milo{evi} denied this information, referring to a television statement made by Arkan in which he says that he was in Bijeljina privately. Vance told Milo{evi} that he did not believe that Arkan would be in Bijeljina on his own account. Milo{evi} says: "Arkan was in Bijeljina only at the beginning. The rest of the time he was in Belgrade". Vance

⁶⁵⁸ Okun: T17078, Ex 396 tab 14; See also meetings on 18 November 1991 (regarding the Croatian Krajinas) Ex. 397, tab 3, p. 40, T16905-11; and on 2 December 1991 (Serb paramilitary in Krajina; fighting in the Dalmation), Ex. 397, tab 4, p.30, T16931-16935.

⁶⁵⁹ Okun at T17076-77. Ex 396, tab 14.

⁶⁶⁰ Okun: T 16922 – 16925; Ex. 397, tab 3, p. 97. At the same meeting, Vance informed Milo{evi} about extremely heavy damage and disproportionate use of force observed by Vance/Okun in Vukovar and about paramilitaries they had seen intermingling and fraternising with JNA troops. Milo{evi} responded that Vukovar was a special case and that the world would understand Serb and JNA actions.

⁶⁶¹ Herbert Okun, T17078-17079. This comment indicated strongly to Secretary Vance and to the witness that President Milo{evi} knew that these indeed were criminal activities.

⁶⁶² Okun, Ex. 396 tab 13; T17074.

voices his disbelief, saying that he has reliable information about Arkan and other Serbian types with heavy equipment along the Drina in Bosnia. Milo{evi} said: "only some individuals not in control of Serbian authorities. We forbid paramilitaries". Later, Vance said: "Everyone knows Arkan was there". Milo{evi} answered: "Yes, but others as well".⁶⁶³

- On 6th May 1992, at a meeting attended by Okun, Vance, Milo{evi}, Momir Bulatovic and Foreign Ministers of Serbia and Montenegro respectively, Jovanovic and Samardzic, Lord Carrington confronted the Accused with reports about Serb activity in Bosnia, the Krajina, Kosovo and in Vojvodina. Milo{evi} answered that all Serbs and the JNA would be out of Bosnia within two weeks and that Bosnia would not be within the competencies of FRY. "All Serbs" was, according to Okun, understood to mean paramilitaries. Cutileiro described specific reports to Milo{evi} about paramilitary activity in Fo-a. Milo{evi} disclaimed responsibility⁶⁶⁴.

(vi) August 1992: Galbraith prepared a public report on ethnic cleansing in Bosnia and Herzegovina and concluding that Serbian paramilitary groups, some associated with prominent Serbian political figures, were operating with impunity in Bosnia. The report was published and received considerable attention in the press. It went to the Yugoslav Embassy in Washington and was given by Galbraith to relevant officials in Belgrade, maybe the Accused himself, in October 1992.⁶⁶⁵

Discussion of crimes in Bosnia-Herzegovina at the level of the SDC and the State Council for Harmonisation

359. August 1992: At a meeting of the State Council for Harmonisation on 18 August 1992, attended by Milo{evi}, Dobrica Cosic, Milan Panic and others, Milan Panic reported on "ethnic cleansing", that he had received information from the UN that afternoon that ethnic cleansing had begun: 15,000 Muslims from Sanksi Most were given eight hours to leave their homes and make the twenty kilometres to Jajce. The UN had told Panic that he should stop this. He acknowledges that they (those present)

⁶⁶³ Okun, Ex 387 tab 39; T16952-16956.

⁶⁶⁴ Okun: Exhibit 397 tab 7 T16957-T16959. check ref?? check where Cutileiro quote from. At a meeting on 16 June 1992, Colm Doyle expressed Carrington's concerns that Milo{evi} use his influence over Serb irregulars in Bosnia and Herzegovina. Colm Doyle: Exhibit 515 tab 12. T25303.

⁶⁶⁵ Galbraith: T23079. Ex. 471, tab 5.

are assisting ethnic cleansing. Panic says that it is important to discuss whether it is possible to stop the war. Milo{evi} explicitly says that Serbs in Bosnia-Herzegovina are not provided with war aid, but humanitarian aid – food, clothes, and money. (This is not true.) Notably, despite reference to the London conference in the course of this meeting, there is no mention of the detention camps in Bosnia-Herzegovina – the conference was convened after the world’s media made public the existence of these camps and the appalling conditions in them.⁶⁶⁶

360. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Milo{evi} sought to deceive internationals about the culpability of forces under his control or direction, or supported by him; and dishonestly distanced himself from the war in Bosnia Herzegovina.

361. Milo{evi}’s attitude towards internationals is summed up in the evidence of Hrvoje Sarinic: Sarinic summarised Milo{evi}’s view of things as, “What do those phoneyes from all over the world want? They understand nothing of our situation! When trouble occurs, they start shouting for a while, and then they always accept the situation as it happened to be in the field!”⁶⁶⁷

362. Milo{evi} lied to Colm Doyle, saying there were no regular or irregular forces from Serbia itself on Bosnian soil - that Belgrade was constantly cast in the role of aggressor although there wasn’t a single Serb from Serbia fighting in Bosnia-Herzegovina. He said if the contrary were true, it would be impossible to keep secret.⁶⁶⁸ Milo{evi} lied to Ambassador Okun and Cyrus Vance⁶⁶⁹; to other internationals, and to his associates about the involvement of forces under his control and direction (or supported by him) in the commission of crimes in Bosnia.

⁶⁶⁶ Ex. 469, tab 42. Produced through Zoran Lili}.

⁶⁶⁷ He used the example of Galbraith and Ahrens who prepared the Z-4 plan without knowing what they were doing. Exhibit 641, tab 2, Exhibit 89 (F) Statement Hrvoje [arini}, para. 54, T31284-31285.

⁶⁶⁸ Colm Doyle at T253601-04. Ex 515 tab 12.

⁶⁶⁹ See below.

363. In questioning by Milo{evi} in the course of his testimony, Lord Owen gave the following evidence:

"It is a sad fact and I wish to make it abundantly clear, the Bosnian Serbs were responsible for many more cases of malnutrition, of maltreatment, of killing or of raping or of a whole range of issues than were either the Croats or the Muslim population".⁶⁷⁰

"This is an issue which you have to face up to. It is understandable to defend the Serbian people, and people could understand it but there is no impartial observer of what was going on in Bosnia-Herzegovina during those years who has not come to the conclusion that the Bosnian Serbs were offending on all of these grounds substantially more than were the Bosnian Croats or the Bosnian Muslims. And that is why the world opinion at times may not strike you as being impartial, because they did see this pattern of aggression, a pattern of violence, and a pattern of racism which they found and still find deeply offensive, and that is why this Tribunal is hearing this case at the moment, and these are issues which legitimately have to be raised and need to be resolved if the world is to stop these practices taking place in the future."⁶⁷¹

Milo{evi}'s denials and deception about his relationship with Arkan

364. Milo{evi}'s desire to conceal the extent of his control and support over Arkan may be seen in his attempts to deceive his own associates:

(i) Jovic spoke to Milo{evi}, possibly in Autumn 1991, about Arkan telling him "Arkan was putting our reputaiton in jeopardy and that all relations, if any, must be severed". Milo{evi} replied "that Arkan was a criminal and that it was unthinkable that our official organs would co-operate with someone like Arkan". Jovic said "we should clear it up and break any possible connection with that criminal... thus avoiding any attacks on our reputation". Milo{evi} agreed, but Jovic noted that not only was nothing ever done in this connection, but also "Arkan even became so powerful that he had his own army, his own uniforms... he had become a state within a state".⁶⁷²

(ii) SDC minutes on 31 July 1992 show the pattern of Milo{evi}'s political behaviour: saying one thing for the record (even the internal record) but knowing, doing or supporting the opposite⁶⁷³: Pavle Bulatovic reports that Arkan was driving across Herzegovina in a car with Federal MUP plates M-900, that Captain Dragan's men

⁶⁷⁰ Lord Owen at T28486-28487.

⁶⁷¹ Lord Owen at T28486-28487; 28545-28546.

⁶⁷² Borisav Jovi}: Ex 596 tab 1 at para 107.

came to Brčko as instructors for the reservists, and that paramilitary units were moving from one region to the other in uniforms and full military gear, with official IDs of whatever entity.⁶⁷⁴ Milošević asserted there was no problem as far as Serbia was concerned: paramilitary formations had been disarmed and various measures were proposed to stop the activities of paramilitary organisations. The main idea was that the MUP should react and be assisted by the VJ when needed. Milošević confirmed that Arkan was on the battlefield, as a volunteer under the command of the VJ, and not on his own. Momir Bulatović replied that, in his view, Arkan was de facto the commander on the front.

(iii)

[REDACTED]

(i) Post facto acquiescence and approval

365. The Accused's approval, acquiescence and continuing support following the commission of atrocities by forces under his control, direction, or supported by him, is a telling indication of his intentions.

Evidence relating to Srebrenica shows the Accused's tacit approval of genocidal acts committed, supporting a finding of continuing genocidal intent

366. High level meetings of the SDC and of the Serb and Bosnian Serb leadership following Srebrenica are critical in their demonstration of the Accused's tacit approval of the atrocities. The evidence is sufficient to show that the Accused, in 1995, remained fixed with a genocidal intent and that the expression of that intent culminated in Srebrenica, with the genocidal and other acts perpetrated there in July 1995 by forces acting under

⁶⁷³ SDC minutes, reference no. 4, dated 31 July 1992.

the military leadership of General Mladi}, with the support (and under the control) of Milo{evi}.

The Accused's state of knowledge prior to the commission of genocidal and persecutory acts in Srebrenica raises the inference that he had a continuing genocidal intent

367. Internationals gave evidence that strongly suggests that Milo{evi} knew about the atrocities intended for Srebrenica prior to their commission. His knowledge, and failure to do what was necessary to prevent the commission of genocidal and persecutory acts – and the Prosecution say that there is sufficient evidence to suggest that he could have prevented their commission – raises the inference of a continuing genocidal intent:

- (i) General Wesley Clark: At a meeting on 17 August 1995 between Wesley Clark, Richard Holbrooke and the US delegation, and Milo{evi}, Clark, at one point, asked Milo{evi}: "Mr, President . . . if you have so much influence over the Bosnian Serbs . . . how is it you allowed General Mladi} to kill all of those people at Srebrenica?" Milo{evi} replied, "Well, General Clark, I warned him not to do it, but he did not listen to me." It was very clear to Clark that Milo{evi} was talking about the crimes committed after the fall of the enclave and not the attack on the enclave.⁶⁷⁵
- (ii) General Wesley Clark: On 18 August 1995, Holbrooke and Clark, during a meeting with Tudman, gave an account of the 17 August meeting with Milo{evi}. In that account, Holbrooke said he had told Milo{evi} that what had occurred in Srebrenica was a war crime; Milo{evi} said " I know."⁶⁷⁶
- (iii) David Harland: David Harland gave the following evidence: The massacres at Srebrenica took place on or after the 14th of July. The town fell on Tuesday, the 11th of July. At least one member of the contact group said that he had seen Milo{evi} in Serbia with General Mladi} on 7th of July, and that is one day after the attack had begun but still well before the fall of the town and the massacres.⁶⁷⁷

⁶⁷⁴ Momir Bulatovic reports that paramilitaries are very present in Montenegro and that the MUP cannot disarm them.

⁶⁷⁵ General Wesley Clark: T30372-73, T30489, T30492-98, T30559-60, T30569-73, Ex. 619.

⁶⁷⁶ General Wesley Clark: T30372-73, T30489, T30492-98, T30559-60, T30569-73, Ex. 619.

⁶⁷⁷ David Harland: T 26980-26981; T 28692-28694.

- (iv) General Rupert Smith: Three code cables dated 11 July 1995 show that Milo{evi} had been briefed on the situation in Srebrenica. (They also include an assessment that "the BSA is likely to separate the military-age men from the rest of the population, an eventuality about which UNPROFOR troops will be able to do very little. The fact that the VRS will have practical difficulties controlling 40,000 people may mitigate against their desire to prolong or exacerbate the plight of the Srebrenica population".)⁶⁷⁸
- (v) General Rupert Smith: General Smith formed the view that Milo{evi} did have knowledge after the event of the killings that had occurred in Srebrenica because of a meeting that occurred on the 15th July with Ratko Mladi}:⁶⁷⁹ On 15th July 1995, Smith attended a meeting in Belgrade with Bildt, Milo{evi} and Mladi}. Mladi} was with Slobodan Milo{evi} when Bildt and the witness arrived. The meeting began with everyone together, but Milo{evi} directed Mladi} to go with the witness into a military group and sort out the recovery of the Dutch Battalion and access to prisoners. General Rupert Smith assessed that Slobodan Milo{evi} was clearly the superior to Ratko Mladi}, referred to him by his Christian name, and that Ratko Mladi} was deferring to him. He also assessed that the conclusion to the meeting was a pre-cooked deal imposed upon Ratko Mladi} by Slobodan Milo{evi}. Ratko Mladi} was in a good mood and gave a detailed account of the taking of Srebrenica, claiming that Bosnian troops from Srebrenica had been involved in the Bosnian offensive in Treskavica, including an attack on his birthplace. Ratko Mladi} told General Rupert Smith that the battle for Zepa was over and warned that his troops were in the Gorazde area awaiting his orders to attack. He also claimed a significant victory in the Treskavica Mountains near Sarajevo.⁶⁸⁰

In the example of Srebrenica, high level meetings of the SDC and FRY and Bosnian Serb leadership demonstrate the Accused's tacit approval of the atrocities, supporting a finding of continuing genocidal intent

⁶⁷⁸ Exhibit 533 tabs 13, 14 and 15: Three code cables from the 11th July 1995 relating to events in Srebrenica, produced by General Rupert Smith. (T 27952-27953)

⁶⁷⁹ General Rupert Smith, T27965-27966.

⁶⁸⁰ General Smith: T 27956-27959; Exhibit 552 p17 89(F). Exhibit 553 tab 20 is a report of the meeting.

368. In the first meeting of the SDC after Srebrenica, on 29 July 1995, not a word is spoken about the atrocities in the Srebrenica area⁶⁸¹. Perisic: "The response to the provocations issuing from Zepa in Srebrenica provided the West with a pretext to proceed with preparations for massive air strikes". There is a decision to aid the RS and the RSK further, and Perisic talks about continuing to extend material and expert assistance to the VRS and the SVK.

369. In a meeting of the SDC on 5 August 1995, by which time the massacre in Srebrenica was globally known, again, no reference to Srebrenica. Milo{evi} speaks of Mladi} in matter of fact terms and appears to disapprove of his being dismissed by Karad`i}⁶⁸².

370. [REDACTED]

371. On 23 August 1995, at the first SDC meeting following Srebrenica at which Mladi} is reported as present, there is no mention of the atrocities. Mladi} is not only allowed in without reference to or inquiry about the recent massacre, but is revealed as the favoured partner over Karad`i}.⁶⁸³

372. The first of the two meetings at Dobanovci in August 1995 of the FRY and RS leadership provide evidence of Milo{evi}'s knowledge of and association with Mladi}'s actions in Srebrenica. On Mladi}'s arrival, all are effectively sworn to secrecy for no

⁶⁸¹ According to the record.

⁶⁸² Revealing his knowledge in advance of Mladi}'s movements (to consolidate the front in Western Bosnia).

⁶⁸³ SDC minutes reference no. 42, date 23 August 1995. There is no record of Mladi} ever having been questioned or punished for Srebrenica.

expressed reason.⁶⁸⁴ Milo{evi} states that the enclaves will not need to be exchanged as they would blend into the Serbian surroundings without a fight, and.... "if the Muslims refuse the peace solution they will be told that they are to be left alone with the sword of Damocles hanging over them in the form of General Mladi}"⁶⁸⁵ Milo{evi} observes "There is no need to ask the generals. They have completed their part of the job with honour and politics has turned out to be sterile".

373. This extraordinary meeting reveals much, especially when seen in the context of the better-prepared and perhaps somewhat mannered SDC meetings. The discussion following Mladi}'s arrival is utterly revealing of the willingness for the future to rely on Mladi}'s reputation for and exercise of frightening violence. What does this say for Milo{evi}'s knowledge of and association with Mladi}'s recent horrifying violent past? Nothing in this meeting suggests that Milo{evi} wanted to dissociate himself from what had been done. On the contrary his remark about the generals' work having been done "with honour" shows exactly the opposite. Mladi} was the hero of the hour.

The genocidal crimes committed in Srebrenica were foreseeable to internationals, and others, providing further support for a finding that the Accused possessed the requisite genocidal intent

374. Set this evidence of the Accused's approval of crimes against compelling evidence led as to what was foreseeable to internationals, and others, in Bosnia. This evidence is supportive of more than a finding that the Accused had actual knowledge of the genocidal intentions of others, or that their genocidal intentions were foreseeable to him. It is further evidence to support a finding that he too continued to possess the requisite genocidal intent.

- i. 1993: Diego Arria⁶⁸⁶ states: "we saw the slow motion genocide taking place and a massacre would take place. The degrading conditions when we visit Srebrenica were really unimaginable. The suffering by the people in the area had not been described to us and the Security Council at all. We thought that Srebrenica was under siege but never that it had been taken over it was like an open goal where

⁶⁸⁴ Ex. 469, tab 20. Produced through Lili}.

⁶⁸⁵ Ibid., p.8.

⁶⁸⁶ who led the UN Security Council Mission in April 1993.

the slow motion genocide was taking place and when actually finalised in the second stage of 1995".⁶⁸⁷

- ii. March 1993: On 25 March 1993, General Morillon travelled to Belgrade to meet with Milo{evi} regarding the situation in Srebrenica. He requested a meeting be arranged with Mladi}. Milo{evi} told General Morillon that he had earlier that day met with UNHCR mission head Jose Maria Mendiluce and that after the meeting he had called Karad`i} in New York to tell him that the fighting had to stop.⁶⁸⁸ Morillon knew from the beginning that the only person who could assist him in this attempt to save the people was Milo{evi}.⁶⁸⁹ At that time Mladi}, who was the only person who really had authority on the territory of the Republika Srpska, was still capable of obeying orders from Belgrade.⁶⁹⁰ Morillon was convinced that Milo{evi} still had control over him. The concrete result proved that he wasn't wrong. Morillon told Milo{evi} that if convoys weren't allowed to pass and the situation wasn't calmed down in Srebrenica something terrible could happen and it would block the entire peace process. There will be a terrible drama. World public opinion would not forgive the Serbs. They would be satanised and you (Milo{evi}) would not be forgiven. That was the personal intuition Morillon had. He said: Two years later, and he is still haunted by this, his fears proved true. If he hadn't had such high hopes for the realisation of the Vance Owen Peace Plan, Morillon said, he would have undertaken the evacuation of the town at that time, even if that meant participating in a form of ethnic cleansing.⁶⁹¹
- iii. March 1993: One of General Morillon's subordinates, Colonel Leentjes, reported: "There is systematic cleansing of the Srebrenica enclave that has been going on

⁶⁸⁷ Diego Arria T31724; Ex 645 tab 15. The Report describes how all the Mission members – UN Security Council Ambassadors – foresaw a massacre of 25,000. Ex 645 tabs 16-22: Reports detailing the mission talk about "slow motion genocide".

⁶⁸⁸ 89 (F) statement of General Morillon, Exhibit 684, tab 2, paras. 50-52. Exhibit 684 tabs 20 and 21 memorialize this meeting.

⁶⁸⁹ Morillon said to Milo{evi}: "There was already a spot on the flag of your republic. Believe me, if you don't do everything to help disarm this dreadful bomb that is now threatening the entire population of Srebrenica because of the degree of hatred that has developed there, you will have an even worse blemish on your reputation and world public opinion will not forgive you." Morillon thinks that Milo{evi} heard the message and that he assisted later in establishing the peace process which at least started to dismantle this bomb, at least temporarily. 89 (F) statement of General Morillon, Exhibit 684, tab 2, para. 50-52; Exhibit 684, tabs 20 and 21; T31972-76.

⁶⁹⁰ Later, after the failure of the implementation of the Vance Owen Peace Plan in May, Morillon thinks that Mladi} moved outside of all control. T31972-3.

full force now since at least the beginning of March and perhaps early January. The Serbs are ethnically cleansing a village at a time, first by shelling the village, and then attacking with ground forces. These attacks, designed to ethnically cleanse all of the remaining Muslim areas along the Drina, where in co-ordination with entities and resources from the Republic of Serbia, including airplanes, artillery, VJ soldiers, Serb paramilitaries."⁶⁹²

- iv. April 1993: On 16 April 1993, Lord Owen saw a report which indicated the involvement of the VJ in attacks on Srebrenica, alongside the VRS. It was this report in particular that convinced him to speak to Milo{evi}. He warned the Accused that despite repeated assurances from Dr. Karad`i}, the Bosnian Serb was proceeding to take Srebrenica. The pocket was greatly reduced in size. He rarely heard Milo{evi} so exasperated and also so worried. Milo{evi} feared that if the Bosnian Serb troops entered Srebrenica, there would be a bloodbath/massacre because of the tremendous bad blood that existed between the two armies. Milo{evi} believed it would be a great mistake for the Bosnian Serbs to take Srebrenica and promised to tell Karad`i} so. Karad`i} agreed not to take Srebrenica after Milo{evi} put pressure on him. Owen has no doubt that Milo{evi} also intervened with General Mladi} to prevent him taking Srebrenica at this stage.⁶⁹³
- v. April 1993: The ICJ, in 1993, on an application on the part of Bosnia-Herzegovina under the Genocide Convention ordered: that the government of the Federal Republic of Yugoslavia should immediately take measures within its power to prevent the commission of the crime of genocide and to ensure that any military, paramilitary, or irregular armed units which may be directed or supported by it as well as any organisations and persons which may be subject to its control, direction, or influence do not commit any acts of genocide or conspiracy to commit genocide or direct and public incitement to commit genocide.⁶⁹⁴

⁶⁹¹ 89 (F) statement of General Morillon, Exhibit 684, tab 2, para. 50-52; Exhibit 684, tabs 20 and 21; T31972-76.

⁶⁹² General Morillon; Ex 684, tab 2 paras. 6, 17-22, 26, 27, 29, 30, tab 10, tab 11. T31967-68.

⁶⁹³ David Owen: T28411-28416, 28419, 28430, 28543; Chamber Exhibit 16, Statement David Owen, p. 36-37; Chamber Exhibit 16, Annex G (3) (5) and (6); Chamber Exhibit 17, Annex A, p. 143, 353.

⁶⁹⁴ Exhibit 645, Tab 9 International Court of Justice (ICJ) order in the case concerning the application of the Convention on the Prevention and punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia, dated 8-Apr-93. (Serbia and Montenegro) ERN 0342-3741-0342-3793, produced by Diego Arria (T31718-19)

- vi. April 1993: Milo{evi} demonstrated his appreciation of the likelihood of a humanitarian catastrophe in writing a letter to Akashi in which he asked for the deployment of international observers to the Srebrenica area because he feared a humanitarian catastrophe. He was aware in 1993 of a situation that would only result in extraordinary bloodshed if the Bosnian Serbs took the enclave and nothing occurred between then and 1995 to dissipate that potential.⁶⁹⁵
- vii. 1993: UN Security Council Resolutions in 1993, in particular, Resolutions 819 (16 April 1993), 820 (17 April 1993), 824 (6 May 1993), 836 (4 June 1993).⁶⁹⁶ Resolution 819 identifies the situation in Srebrenica and surrounding areas as a "tragic humanitarian emergency", condemns Bosnian Serbs for forcing large scale civilian displacement and demands that Serb paramilitaries cease their attacks.
- viii. May 1993: A Memorandum on the situation in Bosnia and Herzegovina prepared by the Caucus of Non-Aligned members of the UNSC stated: "Bosnia and Herzegovina has become a symbol of the resistance to the resurgence of the crime of genocide". It set out more than a hundred thousand deaths, saying that no one could claim ignorance or a lack of knowledge of these facts.⁶⁹⁷
- ix. 1994-1995: During Dr. Williams' tenure in the former Yugoslavia, there were tangible objective signs that if the enclave of Srebrenica were to fall a humanitarian crisis on a grand scale would have followed. Dr. Williams felt very considerable concern as to what would happen if one of the attacks prosecuted by the Bosnian Serbs went through to its final conclusion, namely that an enclave, a safe area, would fall into their hands. The record of the Bosnian Serbs from the onset of this war in 1992, and certainly during Dr. Williams' tenure, showed not only an inability to distinguish between civil and military targets in war but, on the contrary, a deliberate targeting of civilians during warfare and also continuing when areas they had taken were occupied.⁶⁹⁸
- x. 1995: In early 1995, a Code Cable from Akashi to Kofi Annan reads: "Slobodan Milo{evi} concurred that the situation in Bosnia Herzegovina would deteriorate

⁶⁹⁵ Morillon, Ex 684, tab 2; Ex 648, Tab 35.

⁶⁹⁶ Ex. 547, tabs 19, 20, 21, 22 respectively.

⁶⁹⁷ Exhibit 645, tab 23: Document entitled "Caucus of the Non-Aligned members of the UNSC – Memorandum on the situation in the Republic of Bosnia-Herzegovina", dated 14-May-93, ERN 0345-0661-0345-0665, produced by Diego Arria (T3173-32), para. 15.

⁶⁹⁸ Dr. Michael Williams, T22965-22967.

and blamed it on the international community's focus on "details and not the situation as a whole." As of February 1995, Milo{evi} appreciated the gravity of the situation in Bosnia Herzegovina. There was one crisis after another from Sarajevo in February 1994 to the Gorazde crisis in April 1994, to Bosnia and Herzegovinaa} in October and November, and it was obvious, given the continuing deterioration on the ground in Bosnia and around the Eastern enclaves, that one could premise a further crisis and deterioration in 1995.⁶⁹⁹

- xi. July 1995: Deronjic described his view on the "spiral" of events in Bosnia. He wanted to show that what happened in Bratunac and in the Drina region happened according to a "Domino" effect. He summarised these events and concluded that Srebrenica 1995 was it's logical conclusion, and the only thing that could have been the result of these events.⁷⁰⁰

Evidence led about the Eastern Bosnia operations in 1992/1993 provides further support for a finding that Milo{evi}'s genocidal intent continued from 1992 to its culmination in Srebrenica in 1995

375. Operations carried out in Eastern Bosnia in 1992 and 1993, involved a coordinated body of forces - Serbian MUP, the VJ, VRS, paramilitaries from Serbia, and the RS MUP. They provide further evidence of the continuation of the genocidal campaign in the Serb targeted state in Bosnia⁷⁰¹ – continuing to the atrocities perpetrated in Srebrenica in 1995 – and of the continued and key involvement of forces acting under the Accused's direction or control, or with his support. The Prosecution refers the Chamber to evidence led concerning the organised deployment of Red Berets in Eastern Bosnia in 1992 and 1992⁷⁰², under the direct command of Frenki Simatovic. The clandestine manner in which this operation carried out is particularly telling⁷⁰³. The Prosecution has, in particular, led evidence on the genocidal crimes perpetrated in Skelani by this coordinated body of forces: evidence which again shows the systematic

⁶⁹⁹ Exhibit 470 tab 29:UNPROFOR Code Cable from Akashi to ANNAN entitled "Meeting with President Milosevi} ", produced by Dr. Michael Williams. (T22967-22967)

⁷⁰⁰ Deronji}: T29622-29629; [REDACTED]

⁷⁰¹ Recognising that Serb forces had faced AbiH gains over time to which their immediate actions may have been responsive.

⁷⁰² B-104.

⁷⁰³ See B-104 and B-174.

pattern of crimes to their culmination in Srebrenica in 1995.⁷⁰⁴ There is evidence to support a finding that approximately 1,000 people were killed during the Skelani/Drina operations.⁷⁰⁵

(j) Features of Genocidal and Persecutory Acts
(Evidence: Paras. 32, 34, Schedules A, B, C, D.)

Genocidal Acts

376. The Prosecution has led evidence on four of the municipalities – Br-ko, Prijedor, Sanski Most, Srebrenica - previously identified as municipalities in respect of which evidence as to genocide would be led⁷⁰⁶. It is the Prosecution's case that genocidal acts were perpetrated in other municipalities – in fact wherever required to implement the strategic objectives of the SDS leadership.
377. There is sufficient evidence to show that in Br-ko, Sanski Most, Prijedor and Srebrenica, and in other municipalities in Bosnia – including Zvornik and Bratunac⁷⁰⁷ - crimes within the meaning of Article 4(2) were perpetrated on a large scale as part of the genocidal campaign across the whole of the proposed Serbian state in Bosnia. Evidence led on these municipalities shows the system: and a repetition and pattern in the perpetration of genocidal and persecutory crimes in Bosnia.

Targeting of leadership

378. There is also sufficient evidence to show that the Bosnian Muslim leadership were targeted in a number of municipalities.⁷⁰⁸

Persecutory acts

⁷⁰⁴ B-174. The pattern in 1992 is addressed in full below.

⁷⁰⁵ B-174. See also the evidence of C-047.

⁷⁰⁶ See the Pre-Trial Brief paragraph 1092. Limited evidence has been led on municipalities Kotor Varo{, Klju- and Bosanski Novi.

⁷⁰⁷ The Prosecution refers the Chamber to paragraph 34 of the Fillbox, and Schedules A, B and C.

⁷⁰⁸ See the evidence below: Br-ko, Bratunac, Zvornik. In Bijeljina, B-1003 testified to the use of lists T18693-94. [REDACTED]

379. There is sufficient evidence to show that genocidal crimes were perpetrated against a backdrop of persecutions of the remainder of the population, forcible transfers and deportations, and the destruction of religious and cultural property in the above six, and other municipalities in the targeted Serb state. Demographic evidence shows that an estimated 329,869 Muslims (and 62,373 Croats) in the area which later became the Republika Srpska⁷⁰⁹ were forcibly transferred or deported from the region. There were 344,803 Muslims born before 1980 living in the targeted area in 1991. Only about 15,000 remained.⁷¹⁰ The evidence of Andras Riedlmayer shows that all Islamic heritage sites in Bosnia-Herzegovina were singled out for destruction, and in particular, mosques. Of the 277 mosques in 19 municipalities, most of which were situated in territories held by Bosnian Serb forces during the conflict, none were undamaged. In a number of cases mosques were not only razed to the ground, but the site cleared and other objects placed on the site, such as rubbish tips.⁷¹¹ A majority of the religious sites identified in Riedlmayer's report were destroyed while there was no fighting going on in the vicinity.⁷¹²

(i) Br-ko municipality

380. The takeover in Br-ko took place on 30 April 1992. It followed other takeovers in Eastern Bosnia, in Bijeljina (31 March 1992⁷¹³), Fo-a (7 April 1992⁷¹⁴), Zvornik (8 April 1992⁷¹⁵), Visegrad (14 April 1992⁷¹⁶), Bratunac (17 April 1992⁷¹⁷) and Vlasenica (23 April 1992⁷¹⁸). Br-ko was a minority Serb municipality but was of strategic importance to the goal of joining all Serbian territories. Dr. Malinko Vojanovic aka Beli attended meetings of the RS Assembly on behalf of Br-ko, so it can be inferred that the SDS takeover was part of the Variant A and B plan.

⁷⁰⁹ As defined by the Dayton Accords 1995.

⁷¹⁰ Tabeau's estimated figures. Ex 548, tab 2 Annexes A1 and A3.

⁷¹¹ Andras Riedlmayer's Report, Ex. 486, pp. 9-11; 12.

⁷¹² This can be concluded from the fact that often surrounding buildings were untouched and from the fact that a very common way of destroying a mosque was to place explosives in it. It was very unlikely that such a thing would happen in the context of a military conflict. Ex. 486; T23883-84. Riedlmayer produces a map which shows that mosques were destroyed in the area of Bosnia now constituted by the Republika Srpska. Ex. 488, tab 4. T23820-22.

⁷¹³ B-1738, B-1498

⁷¹⁴ B-1120

⁷¹⁵ B-024.

⁷¹⁶ B-1505

⁷¹⁷ [REDACTED], B-1500

⁷¹⁸ Ibro Osmanovic

381. There was a JNA garrison in Br-ko, and in mid 1991 the JNA started arming the local Serb population.⁷¹⁹ A special unit of the Serbian DB (Red Berets) arrived at the barracks about a month before the take-over and started training the local Serbs. In April, paramilitaries from Serbia and other places also arrived, and were staying in the JNA barracks with the JNA command.⁷²⁰ The JNA themselves had dug in their tanks and pointed their weapons at the town.⁷²¹ On 30 April, morning of 1 May, the 3 main bridges in Br-ko were blown up within a minute or two of each other. This caused a large number of Muslim casualties and created chaos in the town.⁷²² This was a deliberate act carried out by Rade Bozic⁷²³, a Red Beret⁷²⁴, and others. The JNA, having agreed not to enter the town, did so anyway and opened fire.⁷²⁵ The Serb paramilitaries, together with locals, then launched their assault on Br-ko.⁷²⁶ On around 4 May, the Serbian forces, including notorious paramilitaries like Mauzer and Captain Dragan, took over Br-ko.⁷²⁷
382. Hundreds of killings took place in Br-ko.⁷²⁸ A large number of Muslim men were detained at the Luka camp where they were killed, beaten and ill-treated.⁷²⁹ The main culprit was Goran Jelisic who often made statements about killing Muslims and would often choose his victims according to lists.⁷³⁰ Leading SDA figures were particularly targeted.⁷³¹ One detainee at Luka saw members of the JNA daily whilst he was in detention as well as Arkan's men and SRS radicals.⁷³² On one occasion, Luka was visited by members of the Serbian MUP.⁷³³ The Prosecution refers the Chamber to paragraph 34 of the PS (B) document, and to Schedules A, B and C.

⁷¹⁹ B-1414, B-1011 and B-1409.

⁷²⁰ B-1011 and B-1414.

⁷²¹ B-1409.

⁷²² B-1450, B-1414, [REDACTED] and B-1409.

⁷²³ B-1414.

⁷²⁴ [REDACTED]

⁷²⁵ B-1409.

⁷²⁶ B-1011, B-1408, B-1409 and [REDACTED].

⁷²⁷ B-1450 and B-1011.

⁷²⁸ B-1011, B-1407 and B-1414.

⁷²⁹ B-1408, B-1411, B-1446, B-1414 and B-1450.

⁷³⁰ B-1408, B-1450 and B-1411.

⁷³¹ B-1408 and B-1409.

⁷³² B-1414.

⁷³³ B-1414.

383. Most, if not all, of the mosques in Brčko were destroyed⁷³⁴, and a large number of Muslims were deported. Ewa Tabeau identifies Brčko as one of the seven most affected municipalities in Bosnia in terms of population movement during the war.⁷³⁵

(ii) Sanski Most municipality

384. The takeover of Sanski Most took place on 26 May 1992.⁷³⁶ Sanski Most was a Variant A municipality, and the takeover in Sanski Most was carried out according to the Variant A and B instructions.⁷³⁷ The SDS municipal leadership intended the creation of the Serbian Municipality of Sanski Most to be within the Serbian Republic of Bosnia and Herzegovina.⁷³⁸

385. Mass killings of Muslim civilians were perpetrated by Bosnian Serb forces following the takeover.⁷³⁹ In addition Muslim men were incarcerated in detention facilities in inhumane conditions.⁷⁴⁰ The grounds for detention were laid down by the Sanski Most SDS Crisis Staff on 4 June 1992.⁷⁴¹ The Prosecution refers the Chamber to paragraph 34 and Schedules A, B and C of the Fillbox.

386. Numerous mosques in Sanski Most were destroyed,⁷⁴² and mass expulsions of Muslims took place.⁷⁴³ In 1995 RS sources recorded that only 3,350 Muslims, compared to a population of 28,136 in 1991, and only 1050 Croats, compared to a 1991 population of 4,322, lived in Sanski Most.⁷⁴⁴

⁷³⁴ Andras Riedlmayer Exhibits 486, 487. T23800.

⁷³⁵ See Annex A6.3 Brčko of Ex 548, tab 2; Milan Babi } T13081-82; B-1408; B-1407.

⁷³⁶ Ex. 434 tab 2: Diary of RASULA a senior SDS municipal leader

⁷³⁷ [REDACTED]; Ex. 434 tab 2: Diary of RASULA sets out the way in which the SDS took power and how this followed the pattern laid down in the Variant A and B instructions.

⁷³⁸ Ex. 434 tab 2: Diary of RASULA.

⁷³⁹ [REDACTED]; B-1042; [REDACTED]; B-1684; B-1043.

⁷⁴⁰ B-1043; B-1377; B-1376; B-1042; [REDACTED] B-1684.

⁷⁴¹ Exhibit 434, tab 9: The Crisis staff concluded, " Mirko VRU] INI] , Nedeljko RA [ULA and Colonel Ne | o ANI ^ I] shall be in charge of resolving the issue of prisoners and their categorisation and deportation to Manja-a. 1st category – politicians 2nd category – nationalist extremists 3rd category – people unwelcome in Sanski Most municipality In view of this, have a talk with Colonel STEVILOVI] from the 1st Krajina Corps."

⁷⁴² B-1042; [REDACTED]; B-1630 testified that it was common knowledge that the destruction of cultural property had been ordered by Rasula; [REDACTED]

⁷⁴³ B-1630 testifies about the cleansing of Probriježje by the SOS and being required to sign over property. Charles Kirudja also gave evidence that in June 1992 he was visited by the President of the SDS in Sanski Most and told that Muslims wanted to leave. Exhibit 627, tab 3 includes the conclusions of the Sanski Most Assembly in which they said 18000 Muslims are to be voluntarily resettled.

⁷⁴⁴ See the Annex A5 of the expert report of Ewa Tabeau, Exhibit 548, tab 2.

387. The evidence demonstrates the close involvement of and direction given by the SDS leadership at the municipal level in Sanski Most, pursuant to the Variant A and B instructions. The campaign also involved the JNA,⁷⁴⁵ the TO,⁷⁴⁶ Marti}'s men,⁷⁴⁷ SOS,⁷⁴⁸ local paramilitaries⁷⁴⁹ and the White Eagles.⁷⁵⁰ The 6th Light Partisan a unit of the JNA, which later became the 6th Sana Brigade, were also involved.⁷⁵¹ The campaign included at municipal level SDS statements of a genocidal nature.⁷⁵² There is specific reference made to the crimes perpetrated during the 1992 campaign in Sanski Most in a meeting of the Council for Harmonisation in August 1992.

388. Demonstrative of a genocidal campaign continuing to 1995, Arkan's men came to Sanski Most in 1995 as part of the Banja Luka operation.⁷⁵³ During this operation Arkan was personally present. Rade Bozovic was in charge on the DB side and Arkan's men were subordinated to the DB. They were assisting General Tali}'s forces. Arkan met Frenki regularly during the Banja Luka operation.⁷⁵⁴ There is sufficient evidence to show that Arkan's men, in this period, perpetrated genocidal crimes in Sanski Most.

(iii) Prijedor municipality

389. The takeover of Prijedor took place around the end of May 1992.⁷⁵⁵ The SDS had prepared for the takeover by setting up a parallel Government and mobilising Serb reservists only. The Muslims were called upon to surrender their weapons. They then lost their jobs and started to be arbitrarily arrested. Muslim villages were attacked and

⁷⁴⁵ [REDACTED]

⁷⁴⁶ [REDACTED]; B-1044.

⁷⁴⁷ B-1684.

⁷⁴⁸ B-1630.

⁷⁴⁹ B-1376,

⁷⁵⁰ B-1043 also testified that the White Eagles arrived in Sanski Most in April 1992.

⁷⁵¹ [REDACTED].

⁷⁵² Ex. 434 tab 2: Nedeljko Račula's diary contains details of SDS meetings in Sanski Most: Entry as follows: "That prisoners should be taken over from MUP, that they should be held tonight, that the most extreme should be separated and punished so as not to waok this earth." [REDACTED].

⁷⁵³ B-129.

⁷⁵⁴ B-129, at T19485-19488.

⁷⁵⁵ Prijedor was a Var. B municipality.

large areas cleansed with their inhabitants either being put in one of three camps or killed.⁷⁵⁶

390. The camps were Omarska, Keraterm and Trnopolje.⁷⁵⁷ Areas that were cleansed, the Muslim population expelled, included the Brdo area with surrounding villages of Carakovo, Biscani, Hambarine and Kozarac.⁷⁵⁸ Most of the cleansing was carried out by the VRS and TO, with special police in support.⁷⁵⁹ Back in 1991, members of these special police had been secretly trained by specialists from Serbia and the Krajina. Brdanin and Zupljanin had both been aware of this secret "anti-terrorist" training.⁷⁶⁰ Conditions in the camps were appalling with large scale killings and beatings taking place⁷⁶¹, in particular, at Keraterm and Omarska⁷⁶². There is evidence that on at least one occasion over 100 men were taken off a convoy of men being deported out of Prijedor and executed at Vlasic mountain.⁷⁶³ The Prosecution refers the Chamber to paragraph 34 of the PS(B) document, and Schedules A, B and C.
391. Brdanin, head of the Crisis Staff in the ARK, and Sr|a Srdi}, Chairman of the Prijedor Municipal Board of the SDS, both attended the RS Assembly and would have been aware of the 6 strategic objectives. There are specific references made in RS Assembly sessions to the genocidal campaign in Prijedor.
392. Most, if not all, of the mosques in Prijedor were destroyed⁷⁶⁴, and the evidence suggests that the figure deported was large. Ewa Tabeau indicates that there was a large scale displacement of the Muslim population in Prijedor during the war.⁷⁶⁵

⁷⁵⁶ B-1088; B-1085; Osman Selak; [REDACTED] and B-1083.

⁷⁵⁷ Schedule C.

⁷⁵⁸ Schedule A and Para 34.

⁷⁵⁹ [REDACTED]

⁷⁶⁰ [REDACTED]

⁷⁶¹ Schedules B and C.

⁷⁶² B-1083; B-1088; [REDACTED]; Exhibit 624, tab 3 produced by Charles Kirudja and Adjudicated Facts Decision 16 December 2003.

⁷⁶³ [REDACTED] and B-1085. There were several other cases where large groups of men, in particular, were killed at the camps: see for example the evidence of B-1083.

⁷⁶⁴ Andras Riedlmayer, Exhibits 486, 487; Charles Kirudja, Milan Babi}; [REDACTED]. Riedlmayer gives evidence of the following quote from Simo Drlja-a, police chief in Prijedor: "With their mosques you must not just break the minarets, you've got to shake up the foundations because that means they cannot build another. Do that, and they'll want to go. They'll just leave by themselves. Ex. 486, p. 12. T23886-87.

⁷⁶⁵ Ex. 548, tab 2 Annex A5. In 1993, 42,000 of the original population of 49,351 Muslims in 1991 had left Prijedor (from RS sources).

(iv) Zvornik and Bratunac municipalities

393. The takeovers in Zvornik and Bratunac provide further evidence of the pattern of crimes. Zvornik received and implemented the Variant A and B instructions both prior to and after the takeover. Zvornik was a variant B municipality.⁷⁶⁶ Prior to the take-over local Serbs in Zvornik were armed by both the JNA and local Serbs who received weapons from Serbia and distributed through the pre-established SDS network.⁷⁶⁷ The takeover of Zvornik Town occurred between the 8 and 9 April 1992 when Arkan's men,⁷⁶⁸ Serbian and local paramilitaries⁷⁶⁹ attacked and took over the town.⁷⁷⁰ The attack was supported by JNA shelling from Serbia⁷⁷¹ and Serbian TO from Loznica. Many Muslims were killed during the takeover.⁷⁷² Biljana Plav{i} came to Zvornik both before and shortly after the takeover to meet the SDS leadership and see how the Variant A and B document was being implemented.⁷⁷³ She met with the SDS crisis staff as well as Arkan and other paramilitaries.⁷⁷⁴ Marko Pavlovic, appointed head of the TO in Zvornik, had strong connections with both Rade Kostic, and senior officers of the JNA. He was a veteran of the Croatian war and believed to be a member of the Serbian DB.⁷⁷⁵ Over the coming weeks other parts of the municipality were taken over by Serb forces including Arkan's men, the JNA and Serb Paramilitaries.⁷⁷⁶ There is evidence of mass killings of men in Zvornik⁷⁷⁷ – 750 men were massacred at the Karakaj Technical School in the second biggest massacre in Bosnia after Srebrenica⁷⁷⁸ – and detention in brutal detention facilities where many were tortured and killed.⁷⁷⁹ Most, if not all, of the mosques in Zvornik were

⁷⁶⁶ B-024.

⁷⁶⁷ Miroslav Deronji}; B-1804; B-161; B-024.

⁷⁶⁸ ; B-1804; B-1493; B-1524; B-1058.

⁷⁶⁹ ; B-1058;

⁷⁷⁰ B-1058; B-1804; B-024.

⁷⁷¹ B-1461; B-1804; B-1524.

⁷⁷² B-1058; B-1775.

⁷⁷³ B-024.

⁷⁷⁴ B-024.

⁷⁷⁵ ; B-1461; Fadil Banjanovi}; B-1780;

⁷⁷⁶ ; B-1605; B-1461; ;

⁷⁷⁷ testified that the 150 Muslim women, children and men from Kostijerevo and other Muslims from nearby villages were taken to the Drinjaca Dom Culture on 30 May 1992. The women and children were separated before the men were beaten and then at least 55 were executed by paramilitaries from Serbia; B-1780; ; B-1516;

⁷⁷⁸ ; B-1775; ; B-1097.

⁷⁷⁹ ; B-1461; B-1097; ; B-1780.

destroyed.⁷⁸⁰ There was a mass displacement of people in Zvornik along ethnic lines,⁷⁸¹ this includes the deportations from Kozluk.⁷⁸²

394. Bratunac town, was taken over by the JNA, Arkan's men, Seselj's men and local Serbs on 17 April 1992.⁷⁸³ Muslim villages in Bratunac municipality were taken over in the following weeks.⁷⁸⁴ Prior to that, the Serbs in Bratunac had been armed with weapons from Serbia and the JNA, and the JNA had ordered all the Muslim villages to disarm.⁷⁸⁵ The JNA in Serbia pointed heavy artillery across the Drina in the direction of Bratunac, and a JNA unit from outside Bosnia arrived in March 1992 and started to secretly train local Serbs.⁷⁸⁶ Members of the Serbian MUP arrived in Bratunac as well as the Semberija Corps from Serbia.⁷⁸⁷ Deronjic, head of the Crisis Staff in Bratunac, attended the 19th December 1991 meeting in Sarajevo when Karad`i} handed out and explained the Variant A and B document. Deronjic implemented these instructions in Bratunac. After the attack, he reported the general situation in Bratunac to Karad`i} at a meeting in Pale.⁷⁸⁸
395. Mass killings of Muslim men took place in Bratunac municipality, including in Gologova.⁷⁸⁹ Prominent Muslim leaders were rounded up⁷⁹⁰ and detained at the Vuk Karad`i} School, after the women had been separated at the sports stadium.⁷⁹¹ At Vuk Karadzic School many detainees were tortured and killed before being bussed out of the municipality.⁷⁹² By 29 May, all the Muslim villages in Bratunac had been

⁷⁸⁰ [REDACTED]; Andras Riedlmayer; Exhibits 486, 487; T23802-3; T23823-4.

⁷⁸¹ B-1804; Colm Doyle; B-024; Milan BABI]; B-1058; B-1237; B-1098; B-1461; In 1997/8, 99.3% of the Muslims from Zvornik (RS) identified in both the 1991 Census and 1997/8 Voters register were no longer at their 1991 residence. Figures taken from Annex A6.7 Zvornik of the expert report of Ewa Tabeau, Exhibit 548, tab 2.

⁷⁸² [REDACTED]; Fadil Banjanovi}; Michel Riviere.

⁷⁸³ Miroslav Deronji}; Dzemail Be-irovi}; Dzevad Gusi}; B-1500; B-1070.

⁷⁸⁴ Miroslav Deronji}; Dzemail Be-irovi}; Dzevad Gusi}; B-1010; B-1500; [REDACTED].

⁷⁸⁵ Miroslav Deronji}; Dzemail Be-irovi}; Dzevad Gusi}; B-1070.

⁷⁸⁶ Dzemail Be-irovi}; Dzevad Gusi}.

⁷⁸⁷ B-1070.

⁷⁸⁸ Miroslav Deronji}.

⁷⁸⁹ Miroslav Deronji}; B-1701; B-1500; [REDACTED]; [REDACTED].

⁷⁹⁰ B-1500.

⁷⁹¹ B-1070; Miroslav Deronji}.

⁷⁹² Miroslav Deronji}; B-1070.

ethnically cleansed.⁷⁹³ All 10 mosques in Bratunac were destroyed,⁷⁹⁴ and mass scale deportations took place.⁷⁹⁵

(v) Srebrenica municipality

396. The Srebrenica enclave was surrounded by Serb forces for 3 years during which time those living there endured horrific humanitarian conditions.⁷⁹⁶ In 1993, Serb operations around the enclave involved VJ special forces.⁷⁹⁷ Thousands fled in convoys which Mladić had allowed to leave whilst blocking humanitarian supplies and utilities into the enclave.⁷⁹⁸
397. In July 1995 the Srebrenica enclave was overrun by VRS forces under the command of Mladić⁷⁹⁹. Men of military age were captured and killed and the women and children forcibly transferred.⁸⁰⁰ There is sufficient evidence to show that approximately 7,000 Muslim men were killed in the Srebrenica area following the take-over.⁸⁰¹ Evidence has been led of massacres at Cerska,⁸⁰² Kravica,⁸⁰³ Orahovac,⁸⁰⁴ Petkovci Dam,⁸⁰⁵ Branjevo Military Farm,⁸⁰⁶ Pilica Dom⁸⁰⁷ and Kovluk.⁸⁰⁸ Some 2,500 bodies of Muslim men from Srebrenica have been exhumed and evidence suggests they were mainly executed by gunshot many in situ. Many blindfolds and ligatures were found in the graves.⁸⁰⁹ The massacres were perpetrated by units of the VRS,⁸¹⁰ and organised at the

⁷⁹³ Dzemail Be-irovi}.

⁷⁹⁴ Andras Riedlmayer, Exhibits 486, 487; T23813.

⁷⁹⁵ Dzemail Be-irovi}; Mirsad Deronji}; B-1500; B-1010; Dzevad Gusi}; B-1070; In 1997/8, almost 100% of the Muslims from Bratunac (RS) identified in both the 1991 Census and 1997/8 Voters register were no longer at their 1991 residence. Figures taken from Annex A6.2 Bratunac of the expert report of Ewa Tabeau, Exhibit 548, tab 2.

⁷⁹⁶ Dzemail Be-irovi}; General Morillon; Diego Arria; Exhibit 645, tab 5.

⁷⁹⁷ ██████; Miroslav Deronji}. See further below.

⁷⁹⁸ Dzemail Be-irovi}; General Morillon.

⁷⁹⁹ Franken; Drazen Erdemovi}; Exhibit 592 Srebrenica Compilation Video; Exhibit 553, tab 3; Exhibit 514, tab 7; Defence Exhibit 219.

⁸⁰⁰ Exhibit 547, tab 36 UN Secretary General's Report on Srebrenica.

⁸⁰¹ Col. Janković told Franken on 14 July 1995 that the VRS had 6,000 POW; Exhibit 533, tab 16, a code cable of 13 July 1995, details that 4,000 men are being held in Bratunac awaiting screening for war crimes; B-161 was told by Drago NIKOLIĆ that there were 6,900 captured Muslims who needed to be killed in 5 days; B-1804 was told by Jokic that the VRS had 3,000 people who needed to be killed.

⁸⁰² B-1397.

⁸⁰³ B-1395; Miroslav Deronji}.

⁸⁰⁴ B-1399; B-1804.

⁸⁰⁵ B-1401; B-1804.

⁸⁰⁶ Drazen Erdemovi}.

⁸⁰⁷ Drazen Erdemovi}.

⁸⁰⁸ Dean Manning.

⁸⁰⁹ Dean Manning.

highest levels of the VRS.⁸¹¹ Members of the Zvornik Brigade who were mopping up the area around Srebrenica between at least 20 and 30 July 1992 did not take prisoners – they shot everyone they captured.⁸¹² There is evidence that the orders for the massacres were given by Karadžić.⁸¹³ There is also evidence that Mladić was at the collection points prior to men being sent to the execution sites⁸¹⁴ and that he personally ordered the killings.⁸¹⁵

398. There is sufficient evidence to show that the rest of the Bosnian Muslim population was forced from the enclave. A large number of men fled in a column in the direction of Tuzla.⁸¹⁶ The women and children and approximately 1000 men went to the UN base in Potocari where they suffered appalling conditions.⁸¹⁷ At the Hotel Fontana meetings, attended by Mladić, Zivanovic, Jankovic, Popovic, Kosoric and Krstić top commanders of the VRS Main Staff and the Drina Corps, Mladić presented the Muslim population with the choice to, "survive or disappear".⁸¹⁸ Some 25,000 women and children and some elderly men were forcibly transferred by bus out of Potocari.⁸¹⁹ Prior to loading the buses leaving Potocari the men, and some boys, were separated and held in the "white house"⁸²⁰ before being taken to execution sites.⁸²¹ Bosnian Muslim homes in Srebrenica were destroyed⁸²² and the principal mosque in Srebrenica was destroyed soon

⁸¹⁰ [REDACTED]; B-1399 a survivor from Orahovac recognised Gojko Simic as an executioner; Exhibit 646, tab 21 and 28 provide evidence that Gojko Simic was a member of the Zvornik Brigade; Exhibit 646, tab 24-27 are vehicle logs linking the Zvornik Brigade to the Petkovci Dam killings; Drazen ERDEMOVIĆ who along with other members of the 10th Sabotage Attachment of the VRS was given orders by an unknown VRS Lt. Col.; Mirsad DERONJIĆ details the involvement of VRS members; B-161.

⁸¹¹ B-1804; Drazen Erdemović; B-161; Exhibit 646, tab 36, Zvornik Brigade Duty Officers log book details that during the time period 13-15 July 1995 VRS main staff, including Beara, were at the Zvornik Brigade headquarters and communicating back to headquarters. In addition to the general support that the VJ was providing the VRS at this time some support was of specific assistance to the attack on Srebrenica and the massacres. B-1804 considered himself to be a VJ officer and the id papers of Krstić, indicate that he was also a VJ officer. Drazen ERDEMOVIĆ also provided evidence that his unit received training by the VJ.

⁸¹² [REDACTED]

⁸¹³ Deronjić gave evidence that he met Karadžić on 9 July 1995 and that Karadžić said all of the Muslims needed to be killed. Further, he was visited on the night of 13 July 1995 by Beara, who conveyed Karadžić's instruction that everyone was to be killed; See also Ex 601: Karadžić's instructions to Deronjić that the goods were to be put into the warehouse before dawn.

⁸¹⁴ B-1395; B-1399.

⁸¹⁵ [REDACTED]

⁸¹⁶ Dezmail Beirović; B-1395; B-1397; B-1399; B-1401.

⁸¹⁷ Franken; Exhibit 594, tab 1-38.

⁸¹⁸ Srebrenica Compilation Video, Exhibit 592.

⁸¹⁹ Franken; Exhibit 591, tab 9; Exhibit 533, tab 16; Miroslav Deronjić; Exhibit 592; B-1395.

⁸²⁰ Franken; Ewa Tabeau T27078; 27082-6; 27091-92; Ex 548 tab 2 Annex A6.5 Srebrenica.

⁸²¹ Franken testified that the VRS prevented Dutchbat from escorting the buses with women and children leaving Potocari and also the men who had been taken to the "White House".

⁸²² Exhibit 594, tab 1-38.

after the attack.⁸²³ Following the massacres the bodies were exhumed from their primary graves in an operation involving the highest levels of the VRS and moved to secondary graves.⁸²⁴

Decisions of other Trial Chambers

399. In relation to Prijedor municipality, the Prosecution notes the Staki} Rule 98 bis Decision, which found "that a reasonable trier of fact could, on the basis of the evidence adduced in this case, be satisfied beyond reasonable doubt that genocide was committed in Prijedor Municipality in 1992."⁸²⁵ The Staki} Trial Judgement also made extensive factual findings and concluded that "a comprehensive pattern of atrocities against Muslims in Prijedor municipality in 1992 emerges that has been proved beyond a reasonable doubt."⁸²⁶

400. In relation to the ARK (and therefore both Prijedor and Sanski Most), the Prosecution notes the Br|anin Rule 98 Decision, which found:
"that there is sufficient evidence of killings, infliction of serious bodily harm and the deliberate imposition of conditions of life calculated to bring about physical destruction, carried out against Bosnian Muslims and Bosnian Croats and intended to bring about the destruction in part of the groups as such which, if believed, could satisfy a reasonable trier of fact beyond reasonable doubt that genocide was committed in the municipalities mentioned in the Indictment (including Prijedor and Sanski Most) between April and December 1992." (Parenthesis added).⁸²⁷

401. Finally, in relation to Srebrenica, the Krsti} Trial Chamber has found that: "the intent to kill the Bosnian Muslim men of military age in Srebrenica constitutes an intent to

⁸²³ Drazen ERDEMOVI]; Andras RIEDLMAYER.

⁸²⁴ Dean MANNING; Miroslav DERONJI]; B-1804; Exhibit 646, tab 35 is the authorisation for fuel for the reburial signed by MLADI].

⁸²⁵ Staki} Rule 98 bis Decision, para. 35.

⁸²⁶ Prosecutor v. Milomir Staki}, Case No. IT-92-24-T, Judgement, 31 July 2003 ("Staki} Trial Judgement), para. 35.

⁸²⁷ Prosecutor v. Radoslav Br|anin, Case No. IT-99-36-T "Decision on Motion for Acquittal Pursuant to Rule 98 bis", para. 60. ("Br|anin Rule 98 bis Decision".)

destroy in part the Bosnian Muslim group within the meaning of Article 4 and therefore must be qualified as genocide".⁸²⁸

(k) Evidence of Coordination, Pattern and System

402. Zwaan's analysis is that a genocidal process takes time, energy and investments to get going. Once it is organised and running, it might gather speed like a flywheel: it will be running smoothly and have become routinised, with perpetrators learning by their actions, finding ways and means to go on with their genocidal campaign.⁸²⁹

403. The evidence supports a finding that there was a systematic pattern according to which municipalities in Bosnia targeted for inclusion in the Serb state were taken over by the Bosnian Serbs – pursuant to the Variant A and B instructions – and a systematic pattern, developed in the war in Croatia, according to which Serb forces set the framework for the commission of, and committed, genocidal and persecutory crimes.

404. Evidence of repetition, pattern, or system is indicative of the presence of a genocidal plan or campaign conceived at the leadership level. With the involvement of forces under his direction or control, or supported by him, in the implementation of the campaign at the municipal level, Milo{evi}'s intentions are clear, whether his forces are involved as the direct perpetrators of genocidal or persecutory crimes, or not.

405. The pattern of what had gone on before in the war in Croatia is important. Vegh says this: "Transfer of the previous year's experiences in combat operation and organisation would have made the co-operation between the JNA, the local Serb Territorial Defence and MUP effective, consolidated and fast."⁸³⁰

406. Milan Babi} gave evidence of the pattern of attack in Croatia: State Security Service forces sponsored by the Serbian DB (SAO Krajina police and volunteers) would engage in provocations, individual shooting towards the Croatian settlements. Then, the

⁸²⁸ Prosecutor v. Krsti}, Case IT-98-33-T, Judgement, para. 598. Note that the Prosecution, in proving its case on municipalities Sanski Most, Prijedor, Jeli{i} and Srebrenica admitted a body of evidence adduced in the earlier trials under Rule 92 bis (D).

⁸²⁹ Report of Ton Zwaan, Exhibit 639, paras. 40-42; 37-38. T31181-82; 31175-79.

⁸³⁰ Ex. 644: Expert Report of General Vegh. An example of coordinated action in Croatia may be seen in the events in Vukovar in late 1991. It is a reflection of the organisation generally of combat operations on the ground in Croatia in 1991.

Croatian forces would fight back, giving an excuse to the JNA to intervene, which they would do, using heavy artillery, also using all the various units under their command to attack the Croatian towns. The large majority of the population would flee trying to reach Croatian-controlled territory, leaving a few elderly and sick behind. After the JNA had conquered the villages, the police and the army would leave them without control for a while. Widespread looting and destruction would go on unabated for a few days, after which the JNA and police would regain hold of the villages, securing the Serb territorial gains. The people who stayed behind were often killed individually and those crimes would not be elucidated, meaning that no investigation would be launched and the perpetrators would remain unpunished⁸³¹.

407. The same pattern of attacks against non-Serbs by Serb forces commanded by the JNA and sponsored by the Serbian DB was repeated in Bosnia. Milan Babi} had personal experience of this in August 1992 when he passed through Bosnia. He saw that the settlements in which Croats and Muslims had lived before the war were devastated, completely empty and destroyed. He passed through Bosanski Novi, Sanski Most, Prijedor, the area around Banja Luka, towards Brčko and Bijeljina, and the area around Zvornik, towards Han Pijesak and Pale. He knows that this pattern continued for the months and years to come⁸³². Milan Babi} commented that Milo{evi} must have known about this as his services were present at all times. Besides, he met the heads of the security services, Jovica Stanisic and Frenki Simatovic, in the areas where the "pattern" had been followed⁸³³.

408. Deronjic, in Bratunac, says: There was a pattern, chronology, order in the chain of events. First, the volunteers would arrive in a certain place and the rest would start followed by killings, liquidations, intimidation of the residents, panic, and so on. After that the army, the JNA would arrive, and would try to introduce order. All that resulted in intimidation of the Muslims, and would be followed by ethnic cleansing. All of these events were something that was designed in order to have the Serbs take over power, and all of that is linked with the completion of plan A and plan B and creation of the RS.⁸³⁴

⁸³¹ Milan Babi}: T13065-13067, 13501, 14104-14105.

⁸³² Milan Babi}: T13081.

⁸³³ Milan Babi}: T13081-13082.

⁸³⁴ Deronji}: Ex. 600, paras 62-64. David Harland remembers a meeting in either 1993 or 1994 with Karad`i} during which Karad`i} stated: "If the Muslims don't do what we want we will take up to five of their

409. B-1493, in Bijeljina, described the general strategy employed during take-overs. It would involve infiltration of well organised and trained paramilitaries (whom he calls Special Units) from Serbia to cause chaos by killing civilians and looting, so that the JNA would come in and blockade the area and in fact eventually occupy it.⁸³⁵ B-1493 notes that his superior JNA officers knew about the infiltration of paramilitary groups. He says there was no reaction when crimes against civilians were committed by these groups.⁸³⁶

(l) The Accused's liability under Article 7(1) joint criminal enterprise

410. On the basis of all the above submissions, there is sufficient evidence to show that the Accused planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of genocide and genocidal acts.

411. The Prosecution's principal submission is that the Accused participated in a joint criminal enterprise the objective of which was the destruction of the Bosnian Muslim group in the territory in Bosnia-Herzegovina which was targeted for inclusion in a Serb state. Members of that joint criminal enterprise included the Bosnian Serb leadership, notably Radovan Karadžić, and Ratko Mladić. The Accused participated in the execution of the common plan, design or purpose in the respects alleged in paragraph 25 of the indictment. A broad analysis of the evidence led on each of the subparagraphs of paragraph 25 is set out above.

412. Sufficient evidence has been led to prove, prima facie, a case for the existence of the genocidal plan (summarised in the paragraphs above), its membership, and the Accused's participation in it (summarised in the paragraphs above).

(m) The Accused's liability under JCE III

municipalities. We might trade back two in a final peace settlement, but they've got to know that we are – we are going to keep making things worse for them" until they agreed to the peace settlement that he was pursuing at that time. David Harland's experience of the other towns they had taken showed a fairly standard pattern: that would imply very dire consequences for the local population. David Harland.

⁸³⁵ B-1493 at T18886-18889; See also Jovan Dulovic.

⁸³⁶ B-1493.

413. The mens rea requirement of the offence of genocide is compatible with the mental state requirement for a conviction pursuant to JCE III. The specific issue of whether or not JCE III can apply to genocide, as well as to the other specific intent offences adjudicated before the Tribunal, has been the subject of a recent Decision on Interlocutory Appeal from the Trial Chamber's Decision on Motion for Acquittal Pursuant to Rule 98 bis in Brdanin.⁸³⁷ The Prosecution relies, generally, upon the reasoning set out in this Decision, and specifically, that it is necessary to distinguish between the mens rea required for the offence (genocide) and the mental state required for a particular mode of liability (JCE III). Modes of liability cannot change or replace the elements of crimes and all elements must be proved before the commission of a crime is established. Similarly, however, elements of crimes cannot change or replace the requirements of specific modes of liability. In particular, there is no requirement for importing the specific intent element of a crime (genocide) into a mode of liability (JCE III).
414. Therefore, it is sufficient that the Accused entered into a joint criminal enterprise to commit a different crime with the awareness that the commission of that agreed upon crime made it reasonably foreseeable to him that the crime charged would be committed by other members of the joint criminal enterprise, and that indeed this crime was committed. Where the different crime is the crime of genocide, the Prosecution is required to establish that it was reasonably foreseeable to the Accused that an act specified under Article 4(2) would be committed and that it would be committed with genocidal intent. JCE III is no different from other forms of criminal liability which do not require proof of intent to commit a crime on the part of an Accused, before criminal liability can attach. Aiding and abetting is another example.
415. There is sufficient evidence of a prima facie case of JCE III liability on the part of this Accused. Should the Prosecution fail to prove that the Accused intended the destruction of the Bosnian Muslim group in the planned Serbian state, then there is sufficient evidence to prove in any event his participation in a joint criminal enterprise, the aim of which was the removal of the Bosnian Muslim population from the territory of the planned Serbian state. Co-perpetrators included the Bosnian Serb leadership, and there is sufficient evidence to prove their genocidal intent, and further that it was

⁸³⁷ Prosecutor v. Radoslav Brđanin, Case No. IT-99-36-A, "Decision on Interlocutory Appeal", 29

reasonably foreseeable to the Accused that genocidal acts would be committed with genocidal intent on the part of the Bosnian Serb leadership. The Prosecution refers the Chamber to section (e) - Expressions of Genocidal Intent on part of Bosnian Serb leadership, section (f) - Nature of the Accused's Relationship with the Bosnian Serb leadership) and section (h) - Accused's Awareness, Deception, Denials above. Evidence concerning the Accused's participation in this joint criminal enterprise is the same evidence relied upon in demonstrating his participation in the genocidal plan. It is addressed in section (g) - Accused's own actions above.

416. An alternative proposition, not the Prosecution's primary case, would be that in the course of the campaign of persecution in Bosnia and Herzegovina, the Bosnian Serb leadership's intent and criminal acts escalated to and constituted genocide in certain municipalities where it became necessary to destroy the Bosnian Muslim groups in order to achieve the objectives of ethnic cleansing. Such escalation would have been foreseeable to the Accused.

(n) The Accused's liability under Article 7(1) for Aiding and Abetting

417. The existing jurisprudence firmly establishes that the requisite mens rea for aiding and abetting pursuant to Article 7(1) of the ICTY Statute, as applied to the substantive crimes in the Statute in general, is knowledge, not intent.⁸³⁸

418. More specifically in relation to persecution, a specific intent offence, the Appeals Chamber has held that knowledge is sufficient. In Krnojelac, the Appeals Chamber considered that,

... the aider and abettor in persecution, an offence with a specific intent, must be aware of not only of the crime whose perpetration he is facilitating but also of the discriminatory intent of the perpetrators of that crime. He need not share the intent but he must be aware of the discriminatory context in which

March 2004.

⁸³⁸ E.g., Tadic Appeal Judgement, para. 229; Aleksovski Appeal Judgement, para. 162; ^elebi}i Appeal Judgment, para. 352; Bagilishema Trial Judgement, para. 26-28 and 32; Kayishema and Ruzindana Trial Judgement, para.205; Kupre{ki} Trial Judgement, para. 772; Kordi• Trial Judgement, para. 400; Kunarac Trial Judgement, para. 392; Vasiljevi} Trial Judgement, para. 26;. See also Tadi} Trial Judgement, para. 692 (stating that the relevant mens rea requirement, pursuant to Article 7(1) of the ICTY Statute is that the accused "knowingly" participate in the commission of an offence). This reasoning was applied in the ^elebi}i Trial Judgement, para. 328; the Musema Trial Judgement, para. 112 and confirmed in the Kayishema and Ruzindana Appeal Judgement, para. 198.

the crime is to be committed and know that his support or encouragement has a substantial effect on its perpetration.⁸³⁹

419. The approach in Krnojelac was reiterated in the recent Appeals Chamber “Decision on Interlocutory Appeal” in Br|anin.⁸⁴⁰ In the Decision in Br|anin, the Chamber has held that the Trial Chamber erred by conflating the mens rea requirement of the crime of genocide with the mental requirement for the mode of liability by which criminal responsibility attaches to an accused. Applying this Decision to aiding and abetting as a mode of liability, would clearly result in the requirement of knowledge of the crime whose perpetration he is facilitating and also of the genocidal intent of the perpetrators of that crime.

420. In the Ojdani} appeal, the Appeals Chamber examined the distinction between aiding and abetting and joint criminal enterprise modes of liability and stated that “insofar as a participant shares the purpose of the joint criminal enterprise (as he or she must do) as opposed to merely knowing about it, he or she cannot be regarded as a mere aider and abettor to the crime which is contemplated.”⁸⁴¹ Implicit in this statement is the conclusion that “knowledge” is the required standard for aiding and abetting, and it is distinct from joint criminal enterprise responsibility precisely because of this. As Judge Hunt stated in his separate opinion, “the person who merely aids and abets must be aware of the essential elements of the crime committed, including the state of mind of the person who physically carried it out, but he need not share that state of mind.”⁸⁴²

(o) The Accused’s liability under Article 7(3)

421. If the Trial Chamber is not willing to find specific intent on the part of the Accused as a principal actor, but only fix him with knowledge of the crimes of others, the Trial Chamber would then be able to consider the responsibility of the Accused as a superior for acts of person who could be considered in law to be his subordinates under Article 7(3) of the Statute. To do so, the Trial Chamber must address the question of the effective control of the Accused over others. There is no barrier in law to the

⁸³⁹ *Prosecutor v. Krnojelac*, Judgement, 17 September 2003, para. 52.

⁸⁴⁰ *Prosecutor v. Br|anin*, Decision on Interlocutory Appeal, 19 March 2004, para. 8.

⁸⁴¹ *Ojdani* Joint Criminal Enterprise Decision, para. 20.

conviction of a superior for failing to prevent or punish a crime requiring specific intent.

422. There is sufficient evidence to show that the Accused had effective control over some individuals. There is clear evidence of direction and influence; the degree is ultimately a matter to be determined on the totality of the evidence in the case. For the purposes of Article 7(3), and at this stage of the proceedings, a sufficient threshold level of proof has been passed to allow Article 7(3) superior responsibility to stand as a mode of liability.
423. The jurisprudence establishes that the requisite mens rea for command responsibility pursuant to Article 7(3) of the Statute, as applied to the substantive crimes in the Statute in general, is knowledge, not intent. The Appeals Chamber in *Prosecutor v. Krnojelac*⁸⁴³ has already held that Article 7(3) liability could be applicable for torture (a specific intent crime)⁸⁴⁴ and that aiding and abetting liability could be applicable for persecution (another specific intent crime).⁸⁴⁵ The Prosecution submits it is necessary to adopt the same approach with respect to all specific intent offences (genocide, terror, torture and prosecution) and all modes of liability requiring a state of knowledge as the mental state (aiding and abetting, JCE III, and command responsibility). As this approach was adopted, notably in the recent decision of the Appeals Chamber on the *Br|anin Interlocutory Appeal*, and related Appeals Chamber precedents such as *Krnojelac*, Article 7(3) liability is applicable to genocide.⁸⁴⁶

⁸⁴² *Separate Opinion of Judge David Hunt on Challenge by Ojdani to Jurisdiction Joint Criminal Enterprise*, para. 29.

⁸⁴³ *Prosecutor v. Krnojelac Appeals Judgement*, Case No. IT-97-25-A, 17 September 2003 (“*Krnojelac Appeal*”)

⁸⁴⁴ *Ibid* para 155.

⁸⁴⁵ *Ibid* para 52.

⁸⁴⁶ The Chamber may find instructive the ratio, on a different issue (“effective control” of armed forces by a foreign power thereby rendering the conflict international) in *Prosecutor v. Tadić*, IT-94-1-A, Appeals Judgement, 15 July 1999, as follows; “Undue emphasis upon the ostensible structures and overt declarations of the belligerents, as opposed to a nuanced analysis of the reality of their relationship, may tacitly suggest to groups who are in de facto control of military forces that responsibility for the acts of such forces can be evaded merely by resort to a superficial restructuring of such forces or by a facile declaration that the reconstituted forces are henceforth independent of their erstwhile sponsors.” (Para. 154) “As the Appeals Chamber has already pointed out, international law does not require that the particular acts in question should be the subject of specific instructions or directives by a foreign State to certain armed forces in order for these armed forces to be held to be acting as de facto organs of that State.” (Para. 156)

424. There is sufficient evidence to show a “superior-subordinate” relationship, in the sense that the Accused had effective control⁸⁴⁷, over the following individuals:
- i. General Ad`i}, Chief of the Main Staff of the JNA.
 - ii. General Mladi}, Chief of the General Staff of the VRS.
 - iii. Franko Simatovi} and Jovica Stani{i} of the Serbian DB.
425. The Accused had the material ability to prevent or punish the commission of crimes by forces subordinated to each of these individuals.
426. The evidence led also supports a prima facie finding that this Accused’s influence and direction over the Bosnian Serb leadership amounting to de facto control in the sense that he could have prevented their implementation and continuation of the genocidal campaign in Bosnia, had he wished to.
427. The Prosecution’s short analyses of the evidence led in relation to the Accused’s direction, control and support of the JNA, VJ, VRS, the Serbian MUP, and the Bosnian Serb leadership is set out in the above section (g) - Accused’s own Actions.

General Ad`i}: Genocidal crimes perpetrated by forces subordinated to the JNA

428. Sufficient evidence has been led (summarised at paragraphs 25 (a) and 28 of the PS(B)) to show that the Accused had de facto control over General Ad`i} at the time of the takeovers in Bosnia in 1992. Evidence sufficient to demonstrate a prima facie case may be inferred that General Ad`i} held a genocidal intent and further that forces subordinated to him were involved in the commission of genocidal crimes. The inference is that the Accused, by virtue of his position, would have had actual knowledge of the intentions of the Chief of the Main Staff. He is liable for genocidal crimes perpetrated by forces subordinated to General Ad`i} having failed to exercise his powers of prevention and punishment after the commission of those crimes.

General Mladi}: Genocidal crimes perpetrated by forces subordinated to the VRS

⁸⁴⁷ Within the meaning of the ^elebi}i Trial Judgement, para. 378 (Prosecutor v. Delali} et. al, Case No. IT-96-21). See also ^elebi}i Appeals Judgement ((Prosecutor v. Delali} et. al, Case No. IT-96-21-A, 20 February 2001), para. 196.

429. The newly formed VJ army by 20 May was under the command of General Pani}. Sufficient evidence has been led (summarised at paragraphs 25 (b) and 29 of the PS(B) document) to show that the Accused had, at a minimum, de facto powers to give orders to the Army through the Chief of General Staff Pani}, and to punish those members of the Army who acted illegally, through Pani}. There is also sufficient evidence to show that the Accused was able, through his dominant (de jure and de facto) position on the SDC, to promote, and punish, officers of the VRS, including General Mladi}, and to do so de jure. The Accused's power to prevent in the case of the VRS and General Mladi} can be seen in the sense that he could have given appropriate orders, and if he withdrew all the support he provided to the VRS then it would have collapsed or ceased to function to the degree necessary to enable it to wage war effectively and retain territories. The power to punish may be seen not only in terms of a direct power to punish, given the constitutional position of the SDC, but also in terms of his ability to withdraw support at the military level, or, at the individual level, to stop the payment of salaries and/or sack those VJ/VRS officers serving in Bosnia who had committed crimes. These would include Mladi}.

430. Sufficient evidence has been led to show that Mladi} possessed the requisite genocidal intent across the whole of the campaign in Bosnia to Srebrenica in 1995. The Prosecution relies upon and refers the Chamber to the evidence summarised above (at section h) and in the Fillbox as to the Accused's actual knowledge of Mladi}'s state of mind, and as to the commission of genocidal crimes by those subordinated to him.

Jovica Stani{i} and Franko Simatovi}: Genocidal crimes perpetrated by forces subordinated to the Serbian DB (including Arkan's men)

431. Sufficient evidence has been led to show the superior-subordinate relationship between the Accused and Jovica Stani{i}, and down the chain of command to Franko Simatovi}. The participation of forces under their control in actions in Bosnia is sufficient foundation for a prima facie case that they possessed genocidal intent. Sufficient evidence has been led that genocidal crimes were committed by forces subordinated to them, including Arkan's men. The Accused failed to prevent or punish the commission of these crimes and is, as such, liable for their commission under Article 7(3).

(p) The Accused's liability for Complicity in Genocide

432. The Prosecution has charged the accused with genocide (count 1), and a separate count of complicity in genocide (count 2). In relation to the count of genocide, the accused can be found guilty if he participates in a manner set out in Article 7(1) of the Statute, including aiding and abetting. If the legal requirements are met for aiding and abetting genocide, a count should be entered under Count 1 for the crime of genocide.
433. In the alternative, the accused has also been charged with complicity in genocide, as a separate crime. As set out in the following paragraphs, it is submitted that complicity essentially coincides with aiding and abetting genocide, and therefore if the elements are met a conviction should be entered under Count 1.⁸⁴⁸ If the Trial Chamber concludes that complicity is a separate crime or has separate elements, applicable to this case, then the Chamber may conclude that a conviction is warranted under Count 2.
434. The elements for complicity in genocide under Article 4(3)(e) of the Statute are: (1) the Accused was an accomplice in the commission of a crime;⁸⁴⁹ (2) the crime was committed;⁸⁵⁰ and (3) the Accused knew that the crime was being committed in furtherance of the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.⁸⁵¹
435. Complicity in genocide as provided in Article 4(3)(e) substantially coincides with aiding and abetting genocide under Article 7(1). As expressed by the Staki} Trial Chamber, "there is no material distinction between complicity in genocide and 'the

⁸⁴⁸ The only possible distinction, as noted in the *Semanza* Trial Judgement, 15 May 2003, is that complicity may refer to accessory after the fact (in addition to those acts which would fall under aiding and abetting). For the purposes of this case, the acts in question would fall within the scope of aiding and abetting genocide. It is also open to argument as to whether complicity is a separate crime, under Article 4 of the Statute.

⁸⁴⁹ The Akayesu Trial Judgement stated that even a "small cog, even an insignificant operator" in a genocidal machine may be regarded as an accomplice. Paras. 542-43 (quoting the Eichmann case (Israel 1961) 36 ILR 340).

⁸⁵⁰ See Akayesu Trial Judgement, para. 529: "The Chamber notes that, as stated above, complicity can only exist when there is a punishable, principal act, in the commission of which the accomplice has associated himself. Complicity, therefore, implies a predicate offence committed by someone other than the accomplice"; see also *Ibid.*, para. 530. This element was reiterated in the *Musema* Trial Judgement, para. 173.

⁸⁵¹ An alternative formulation of this element is found in the Akayesu Trial Judgement, para. 540: "As far as genocide is concerned, the intent of the accomplice is thus to knowingly aid or abet one or more persons to commit the crime of genocide" (emphasis added).

broad definition accorded to aiding and abetting."⁸⁵² The Akayesu Trial Judgement, for example, identified three forms of accomplice participation: complicity by instigation, by aiding and abetting, and by procuring means.⁸⁵³ The Prosecution submits that each of these variations of complicity falls within aiding and abetting as defined by the Appeals Chamber.⁸⁵⁴

436. The two ad hoc Tribunals have clearly established that knowledge, not specific intent, is the mens rea applicable for aiding and abetting in genocide.⁸⁵⁵ The standard currently accepted in the jurisprudence of the ICTR and the ICTY is that, whether charged with crimes which require specific intent or with those which do not, an aider-abettor need only have knowledge of the crimes being committed.⁸⁵⁶

437. The same standard applies to complicity in genocide. As the Trial Chamber in the Akayesu Trial Judgement stated, it is sufficient for complicity that the Accused "knowingly aided or abetted or instigated one or more persons in the commission of genocide, while knowing that such a person or persons were committing genocide, even though the Accused himself did not have the specific intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".⁸⁵⁷ In other words, knowledge, not specific genocidal intent, is the requisite mental state for complicity in genocide, just as it is for aiding and abetting genocide,⁸⁵⁸ although an aider and abetter falls to be convicted under Article 7(1) of the Statute.

⁸⁵² Staki} Trial Judgement, para. 531.

⁸⁵³ See Akayesu Trial Judgement, para. 535.

⁸⁵⁴ See Tadi} Appeal Judgement, para. 229 (defining aiding and abetting as acts that "assist, encourage or lend moral support" to the commission of a crime).

⁸⁵⁵ The only exception in this regard is the finding of Trial Chamber I of the ICTR in Akayesu. See Akayesu Trial Judgement, para. 485. In Kayishema and Ruzindana, however, Trial Chamber II held that knowledge was sufficient for aiding and abetting in genocide. See Kayishema Trial Judgement, paras. 204-05. Trial Chamber I consequently departed from its previous position and agreed with Trial Chamber II that knowledge provided an adequate mens rea standard for aiding and abetting in genocide. See Bagilishema Trial Judgement, para. 26-28, 32. The Kayishema and Ruzindana Appeals Chamber endorsed this standard. See Kayishema Appeals Judgement, para. 198.

⁸⁵⁶ See authorities cited in the previous footnote. Regarding ICTY decisions, the Kvo-ka Trial Judgement specifically states that persecution as a specific intent crime requires only knowledge for aiding and abetting (para. 262), and the Kupre{ki} Appeals Judgement (para. 254) notes that aiding and abetting in persecution requires knowledge.

⁸⁵⁷ Akayesu Trial Judgement, para. 545 (emphasis added). See also Semanza Trial Judgement, n. 648.

⁸⁵⁸ The Prosecution notes that the act of assistance itself must be deliberate, in the limited sense that it can never be done by accident or "in all innocence." This position is consistent with the understanding of the drafters of the Genocide Convention. See Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Summary Records of Meetings 21 September-10 December 1948, Eighty-seventh

438. An Accused who renders substantial support to a crime under the Tribunal Statute and intends its commission is a co-perpetrator, not an aider-abettor.⁸⁵⁹ It follows that an Accused who, in addition to rendering substantial support to one or more persons committing genocide, intends to destroy the group in whole or in part, is guilty of genocide under Article 4(3)(a) of the Statute rather than complicity in genocide under Article 4(3)(e).⁸⁶⁰
439. The Prosecution's primary case is that the Accused is liable as a co-perpetrator. In the event that that submission fails, the Prosecution will say that sufficient evidence has been led regarding: (1) genocidal intent of the Bosnian Serb leadership (see section (e) above), (2) the Accused's state of knowledge (see section (h) above) and (3) the substantial support and assistance (see section (g) above) provided by him in the commission of genocidal crimes in Bosnia to fix upon him liability for the crime of complicity in genocide.

C. INDICTMENT ANALYSIS (Motion: paragraph 163 and Schedules A-F)

440. For ease of reference the Prosecution has incorporated in Annex B the Schedules A-F from the Motion, shading grey those crimes for which it is conceded that either no evidence or insufficient evidence was led. The unshaded entries thus represent the scheduled incidents over which a dispute remains.

Schedule A

441. The Motion asserts that the Prosecution has not introduced evidence regarding the following crimes alleged in Schedule A of the indictment:

meeting, pp. 254-259. The requirement of an intentional act of assistance is completely distinct from the notion of specific intent.

⁸⁵⁹ See Tadić Appeal Judgement, para. 196.

⁸⁶⁰ See Ntakirutimana Trial Judgement which, having found that one of the accused had the requisite specific intent, nevertheless held him liable only for aiding and abetting in genocide. The Prosecution's position in that appeal is that he should have been held liable as a co-perpetrator. Paras. 783-790. The Prosecution has appealed a similar issue in the Semanza case, where the Trial Chamber recognised that complicity in genocide requires only knowledge, see note 648 (rejecting the findings of both the Akayesu Trial Chamber and the Ntakirutimana Trial Chamber that aiding and abetting genocide requires proof that the accused possessed the requisite intent to commit genocide), but convicted under Article 4(3)(e) despite finding that the accused acted with specific intent to destroy. Para. 436-36, 553.

- Bosanski Novi: (Blagaj Japra, 7 Muslims, 09-Jun-92); (Alici, 27 Muslims, 23-Jun-92)
- Fo-a: (Jelec, 18 Muslims, 4-10-May-92); (Brod, 14 Muslims, 22-Jun-92)
- Gacko: (Mount Zelengora, 2 Muslims, 18-Jun-92); (Mount Zelengora, 8 Muslims, 18-23-June-92)
- Kljuc: (Prhovo, 38 Muslims, 01-Jun-92)
- Kotor Varos: (Kotor Varos town, 13 non-Serbs, 25-Jun-92); (Dabovci, 15 Muslim, Aug-92); (Grabovice, a large number Muslims and Croats, Nov-92)
- Nevesinje: (Kiser, 17 Muslims, mid July-92); (Lipovaca and Dubrovaci, 34 Muslims, Jun-Jul-92)
- Prijedor: (Kamicani, 8 non-Serbs, 26-May-92); (Jaskici, 19 Muslims, 14-Jun-92); (Brisevo, 68 non-Serbs, 24-Jul-92); (Ljubija, 8 Muslims, 25-Jul-92); (Tomasica, 4 non-Serbs, 03-Dec-92)
- Sanski Most: (Donji Kruhari, 5 Croats, 02-Nov-92)
- Vlasenica: (Zaklopaca, 58 Muslims, 16-May-92)
- Ilijas: (Greater Sarajevo) (Ljesevo, 21 Muslims. 04-Jun-92)

Because of time limitations, the Prosecution did not introduce evidence of these crimes and concedes that they are unsupported by evidence.

442. The Motion also asserts that the Prosecution's evidence for the following crimes alleged in Schedule A of the indictment is insufficient, the Prosecution submits there is sufficient evidence.⁸⁶¹

- Prijedor: (In Hambarine and Behlici, at least 3 Bosnian Muslims were killed, 11-Jun-1-Jul-92) Witness B-1369 refers to the attack on Hambarine on 23 May 1992 and personally seeing 2 dead people.⁸⁶² This is corroborated by hearsay evidence from [REDACTED].⁸⁶³ Witness B-1369 also saw the soldiers kill people they had brought from the surrounding houses to the Zeger bridge.⁸⁶⁴

⁸⁶¹ The Prosecution assumes that the Amici are not challenging that there is sufficient evidence concerning the Schedule A Fo-a Killing,: Filipovici, 5 Muslims, 26-Apr-92.

⁸⁶² 92 bis (D) transcripts of B-1369, Exhibit 658 tabs 1 and 2: T12648-12649.

⁸⁶³ [REDACTED]

⁸⁶⁴ 92 bis D transcripts of B-1369, Exhibit 658 tabs 1 and 2: T12655-12657.

- Prijedor: (In Ljubija, 3 Bosnian Muslims, 25-Jul-92) Witness B-1369 clearly states that her husband who was at the Stadium told her that they were killing people at the Stadium, loading them into vans and taking them to camps.⁸⁶⁵
- Prnjavor: (Lisnja, 4 Muslims, May-92) Witness B-1610 states that all Muslims in the village of Lisnja surrendered their weapons to the Serbs after which the Serbs shelled and attacked the village. When the witness returned to the village he saw houses which had been looted and others had been set fire to, a destroyed Mosque and some dead people. Titus Porok who was a Serb boasted that he had killed 3 people. The witness dug graves and saw 3 dead men who he was able to name.⁸⁶⁶ Not a single bullet was fired in resistance from Lisnja when it was attacked. The Prosecution submits that under these circumstances the inference can be drawn that the 3 dead men were killed by the Serb forces during the attack on Lisnja.
- Sanski Most: (Sasina, 65 non-Serbs, 21-Sep-95) Witness B-108 states that when Arkan withdrew from Sanski Most 60-70 Muslims from the village of Sasina were killed. B-1043 heard that Arkans men took 18 men from his village and executed them near Sasina.⁸⁶⁷ There is corroborative evidence that Arkans men were in Sanski Most at that time and were carrying out similar executions.⁸⁶⁸
- Srebrenica: (Kozluk, Zvornik, 340 Muslims, 15/16-Jul-95) Dean Manning provided exhumation and forensic evidence in support of this incident. During the exhumation many blind folds and ligatures were found. There is evidence the bodies were killed in situ by gunshot. The men's clothing and possessions showed them to be Muslim civilians and no weapons were found. The date of creation of the Kozluk grave was determined using aerial imagery. Four bodies found were identified using their identification cards as being persons on the ICRC Srebrenica missing persons list. There is also evidence that the primary Kozluk grave was robbed and the bodies moved to the secondary graves of Cancari Road. The evidence described above clearly indicates that Kozluk was an execution point linked with the fall of Srebrenica in July 1995. The move of the bodies to secondary graves is further evidence that the men in the grave were the victims of a massacre, which the perpetrators attempted to conceal rather than combat victims.⁸⁶⁹

⁸⁶⁵ 92 bis (D) transcripts of B-1369, Exhibit 658; tab 2: T 3930-3932.

⁸⁶⁶ [REDACTED]

⁸⁶⁷ T 19916

⁸⁶⁸ See for example the evidence of B-1047 at T22496 and T22527

⁸⁶⁹ T31411-31413; Dean Manning 89(f) statement Exhibit 642, tab 1; Exhibit 642, tabs 3-6, 8-11, 16-20, 23-26

- Visegrad: (Bikavac, 70 Muslims, 27-Jun-92) This crime is sufficiently identified by the evidence, albeit hearsay, of B-1054. The witness gives evidence of deaths of civilians from Koritinik in Visegrad by fire caused by Lukic. The witness testified to the following "And finally after escaping from Visegrad, did you learn that this group had perpetrated a similar crime to another group of Muslim civilians in a house in Visegrad, without going into the detail of that event? A. Yes, at the Bikavac, about 80 people were burnt by this same group. Again, these were civilians, elderly people and children."⁸⁷⁰

- Vlasenica: (Drum, 22 Bosnian Muslims, Jun-92) B-1056 went to collect the dead bodies at Drum which was a Muslim suburb of Vlasenica. All the bodies had been shot between the eyes at close range. At that time the Serbs had established authority in Vlasenica and there was no armed resistance. The Serbs also made the witness assist in burying the bodies in an unmarked mass grave.⁸⁷¹

The Prosecution relies on the evidence introduced in support of these allegations as summarised above and in greater detail in the respective entries for those crimes in the PS(B) document.

Schedule B

443. The Motion asserts that the Prosecution has not introduced evidence regarding the following crimes alleged in Schedule B of the indictment:

- Banja Luka: (Manjaca camp, 20 non-Serbs, 04-Jul-92)
- Bileca: (SUP Detention facility, 2 non-Serbs, 25-Jun -18 Dec-92)
- Gacko: SUP building, 5 Muslims, 3-Jul-92)
- Teslic: (Teslic town, 5 non-Serbs, Jun-92)

Because of time limitations the Prosecution did not introduce evidence of the above crimes committed in Banja Luka, Bileca, Gacko and Teslic and concedes that they are unsupported by evidence.

444. The Motion asserts that the Prosecution's evidence for the following crimes alleged in Schedule B of the indictment is insufficient, the Prosecution submits there is sufficient evidence:

⁸⁷⁰ T25596- T25600.

- Bosanski Samac: (Crkvina camp, 17 non-Serbs, 06-May-92) Witness B-1643 provides evidence that detainees were beaten and shot. He states that 16 were murdered.⁸⁷²
- Cajnice: (Mostina Lodge, 53 non-Serbs, 19-May-92) Witness Malesevic provided the following evidence: "I'm going to ask you about five more locations. Number 11, Cajnice. A. The hunting lodge Mostina, where about 100 detainees were kept. Again the conditions were horrific. They were starved, tortured, beaten up. But in July, after the death of a combatant at the Gorazde front, a massacre occurred. More than 62 inmates were killed on that occasion. A witness survived this and can testify about it."⁸⁷³
- Kalinovik: (Gunpowder warehouse, 23 Muslims 05-Aug-92) Witness Malesevic provided the following evidence: Q. Number 15, Kalinovik, please. A. Kalinovik. The gunpowder warehouse there where 101 detainees were kept. Our witness, the only survivor from that camp, describes how they were liquidated. After a certain period of time, they were forced to board trucks waiting for them. There were three trucks, and they tied the detainees and telling them to move on, that they were going to take them to the prison in Fo-a. However, on the way there, the truck on which our witness was stopped. They were told to get off. Four detainees were selected from the group, and the rest were executed. Our witness was just wounded, and he watched the whole scene. These four were untied and told to throw in the bodies into a shed, and then they too entered and then four men in uniform poured gasoline over the bodies and some tyres and set fire to them. Our witness managed to survive and to testify about this. Q. Thank you. A. This was a group of 23. As for the others - Q. Sorry. The group of 23 that were burned; is that correct? A. Yes. And as for the others, we don't know how they ended up.⁸⁷⁴
- Sanski Most: (Keraterm and Omarska, 100 non-Serbs, 05-Aug-92) B-1088 helped to identify several dead bodies that were listed on his list.. The bodies he identified were part of the group who had left Keraterm on August 5th. The bodies were recovered from Hrastova Glavica, Sanski Most.⁸⁷⁵

⁸⁷¹ 89(F) Statement of B-1056

⁸⁷² 92 bis (D) transcript of B-1643, Exhibit 654: T11571-11575, 11557-11583.

⁸⁷³ T17431-17432

⁸⁷⁴ T17432

⁸⁷⁵ 92 bis transcript of B-1088, Exhibit 624: T2527

- Sanski Most: (Sanakeram factory, 10 non-Serbs 30-Sep-09-Oct-92) The Prosecution submit that its pending 92 *bis*(C) application for admission of the evidence of B-1090, if granted, would provide sufficient evidence to support this allegation.
- Zvornik: (Novi Izvor, 2 non-Serbs, May-92) Witnesses B1461 and B1516 refer to 11 prisoners at the Novi Izvor building, who were taken away to search houses, and not seen again. Both eyewitnesses therefore corroborate each other as all the detainees came from the close, small village of Divic in Zvornik then had those released lived it would have become known.⁸⁷⁶

The Prosecution relies on the evidence introduced in support of these allegations as summarised above and in greater detail in the respective entries for those crimes in the respective entries for those crimes in the PS(B) document.

Schedule C

445. The Amici in their submission assert that the Prosecution's evidence for the following crimes alleged in Schedule C of the indictment is insufficient:

- Bileca: (SUP Detention facility, 10 June -19 Dec 1992)
- Bosanski Novi: (Bosanska Kostajnica Police Station, May-Jul-92)
- Cajnice: (SUP building, June-July 1993)
- Doboj: (Seslija Camp, Mar-Oct-93)
- Kotor Varos: (Elementary School, Aug-Sep 92)
- Prijedor: (Miska Glava, Jul-92)

Because of time limitations the Prosecution did not introduce evidence of these crimes and concedes that are unsupported by evidence.

446. With regard to Schedule C which concerns the existence of Detention Facilities the Prosecutor places reliance on the evidence of B-1446 Ms Malika Malesevi} :

- (i) Ms Malesevi} is the Secretary of the Alliance for Former Camp Inmates in Bosnia and Herzegovina (the Alliance). Ms Malesevi} gave evidence on 10-3-03.⁸⁷⁷

⁸⁷⁶ 92 *bis* (A) transcript of B-1461, Exhibit 437; T 20197; 92 *bis* (A) transcript of B-1516, Ex. 606; T29719.

⁸⁷⁷ T17413-17483

- (ii) During the course of her evidence Ms Malesevi} explained that the Alliance was governed by Statute and had a rigorous procedure for admitting former detainees. Detainees had to provide detailed information about their detention in dossiers which were then screened for their accuracy and reliability.⁸⁷⁸
- (iii) Ms Malesevi}'s evidence concerning the existence of the Detention facilities was based on the information provided by former camp inmates in their dossiers. Such information confirmed the existence of all the detention facilities in Schedule C of the Indictment except for the New Slaughterhouse in Bijeljina. Ms Malesevi} also put on record 63 different types of torture that were committed against some of the detainees in such facilities.
- (iv) Although strictly speaking Ms Malesevi}'s evidence can be regarded as hearsay her evidence is based on the foundation of documents of others who can be called to give direct evidence. Indeed, a part of the reason why the Prosecutor called Ms Malesevic was to save the time of the Chamber by lessening the need to call each and every person who had been detained in such facilities
- (v) On 12th December 2003 the Prosecution made an application to admit the written documents which had formed the basis of Ms Malesevi}'s testimony into evidence without cross examination. The Trial Chamber permitted these written documents to be admitted into evidence subject to Ms Malesevi} returning for cross-examination.
- (vi) Due to time constraints Ms Malesvi} was unable to be recalled. It remains, however, the contention of the Prosecution that these Detention Facilities listed in Schedule C existed and that the detainees were subject to cruel and inhuman treatment which amounted to Persecution as Charged in the Indictment.
- (vii) At this point in the trial therefore it is the submission of the Prosecutor that Ms Malesevi} has given sufficient evidence about the existence of these Detention Facilities and about some of the ill treatment which the detainees received at them to continue to form a part of this Indictment.
- (viii) The accused is free to give evidence to rebut the existence of the Detention Facilities and in turn the Prosecution in its rebuttal case would be free to recall

⁸⁷⁸ Exhibit 404, tabs 1-9

Ms Malesevic or provide any other further evidence to prove their existence and the kind of treatment that detainees were subject to.

- (ix) In order, however, not to unduly prolong the trial and because the Prosecution is relying to a certain extent on evidence of a systematic pattern in the Bosnia part of the Indictment a few of the less significant detention facilities have been withdrawn

447. The Motion asserts that the Prosecution's evidence for the following crimes alleged in Schedule C of the indictment is insufficient, the Prosecution submits there is sufficient evidence:

- Bosnia and Herzegovinaac: (Traktorski Servis, Jul-Oct-92). B-1446 Melika Malesevic provided the following specific evidence: "MR. NICE: Tab 7 of Exhibit 404, please. And again this is a document really to become a document of record rather than one that we need go through in detail. Q. Have you prepared a list of the detention facilities under Serbian control? And we can see simply on page 1, for example, the ten facilities you've identified within that period of years in Banja Luka, or further down the page, the 15 that you've identified in Bijeljina. And if we go to the last page, we will see that you total those facilities as the that you have given us in evidence. A. Yes. Yes. We compiled this list in the Centre for Research and Documentation on the basis of statements that we had available to us. And for all these detention facilities, we have documentation and members who are willing to provide more detailed information about them, if necessary."⁸⁷⁹ "Tab 8. It's the page from the indictment against this accused, page 29, and it's the Schedule C identifying detention facilities. Have you reviewed this list of detention facilities referred to in the indictment? A. Yes, I have, and found that all the camps were recorded in our Alliance, all these detection facilities."⁸⁸⁰ The Prosecution also relies on Melika Malesevi}'s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸¹
- Cajnice: (Mostina Lodge, April, May 1992). Ms Malesevic gave specific evidence of the crimes actually committed at this facility: "I'm going to ask you about five more locations. Number 11, Cajnice. A. The hunting lodge Mostina, where about 100 detainees were kept. Again the conditions were horrific. They were starved, tortured,

⁸⁷⁹ T17429

⁸⁸⁰ T17429

⁸⁸¹ T17429 – 17430

beaten up. But in July, after the death of a combatant at the Gorazde front, a massacre occurred. More than 62 inmates were killed on that occasion. A witness survived this and can testify about it.”⁸⁸² The Prosecution also relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸³

- Kalinovik: (Gunpowder warehouse, 5 July-5-Aug-92). Ms Malesevic gave specific evidence of the crimes committed at this facility: Q. Number 15, Kalinovik, please. A. Kalinovik. The gunpowder warehouse there where 101 detainees were kept. Our witness, the only survivor from that camp, describes how they were liquidated.⁸⁸⁴ The Prosecution also relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸⁵
- Kotor Varos: (Kotor Varos Prison, Jun - Nov-92) The Prosecution relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸⁶
- Kotor Varos: (Sawmill, Jun-92) The Prosecution relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸⁷
- Kotor Varos: (Police Station, May-Sep 92) The Prosecution relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸⁸
- Nevesinje: (Heating Factory, Jun-Jul 92) The Prosecution relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁸⁹
- Sanski Most: (Boiler Room of Old Hotel, 21-Sep-95 to 25-Sep-95). The Prosecution submit that its pending 92 bis(C) application for admission of the evidence of B-1090, if granted, would provide sufficient evidence to support this allegation. The Prosecution also relies on Melika Malesevi}’s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁹⁰

⁸⁸² T17431-17432

⁸⁸³ T17429 – 17430

⁸⁸⁴ T17432

⁸⁸⁵ T17429 – 17430

⁸⁸⁶ T17429 – 17430

⁸⁸⁷ T17429 – 17430

⁸⁸⁸ T17429 – 17430

⁸⁸⁹ T17429 – 17430

⁸⁹⁰ T17429 – 17430

- Teslic: (Pribinic, old post office, Jun-Oct 92) The Prosecution relies on Melika Malesevi}'s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁹¹
- Teslic: (TO Building, Jun-92) The Prosecution relies on Melika Malesevi}'s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁹²
- Teslic: (SUP Building, Jun-92). The Prosecution relies on Melika Malesevi}'s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁹³
- Visegrad: (Vilina Vlas, 01-May-92); (Uzamnica, Aug-92 - Oct-94). The Prosecution relies on Melika Malesevi}'s testimony regarding her review of Schedule C of the Bosnia Indictment.⁸⁹⁴ In addition B-1510 makes it clear that this was a place where the Serbs in Visegrad detained people against their will.⁸⁹⁵

The Prosecution relies on the evidence introduced in support of these allegations as summarised above and in greater detail in the respective entries for those crimes in the PS(B) document.

Schedule D

448. The Amici submit that in respect of a number of municipalities in Bosnia the Prosecution has produced no evidence or insufficient evidence to retain the allegation of forcible transfers.⁸⁹⁶
449. The Prosecution has charged forcible transfers in Counts 3, 16, 17 and 18 of the Bosnia section of the indictment.⁸⁹⁷ Schedule D specifies the municipalities from which the Prosecution alleges forcible transfers took place, the scale of the forcible transfers and in some cases the country to which persons were forcible transfers were transferred.

⁸⁹¹ T17429 – 17430

⁸⁹² T17429 – 17430

⁸⁹³ T17429 – 17430

⁸⁹⁴ T17429 – 17430

⁸⁹⁵ 92 *bis* (D) transcript of B-1510, Exhibit 661

⁸⁹⁶ See paragraph 163 of the Motion and the following table detailing schedule D of the Bosnia section of the indictment.

⁸⁹⁷ Count 3: Persecutions on political, racial or religious grounds, a Crime Against Humanity, punishable under Articles 5(h) and 7(1) and 7(3). Count 16: Deportation, a Crime Against Humanity, punishable under Articles 5(d) and 7(1) and 7(3). Count 17: Inhumane Acts (Forcible Transfers), a Crime Against Humanity, punishable

450. The Prosecution has charged the Accused with forcible transfers by municipality as listed in Schedule D. There is no requirement that the Prosecutions evidence at trial match the allegations in the indictment exactly. The fact that the evidence produced shows a different, but a similar number were transferred from each municipality, or fails to show exactly where in the municipality the forcible transfers took place is not a matter of sufficiency of the evidence. The number and precise location of where people were forcibly transferred from is a matter for ultimate determination by the Chamber.
451. The Prosecution concedes that in respect of a number of municipalities due to time constraints it produced no evidence in the form of direct witness testimony that non-Serbs were forced to leave these municipalities, either in the sense of being put on a bus at gun point or fleeing by their own means "voluntarily".
452. However, the lack of direct witness testimony regarding population movement and the reasons for that movement does not mean that the charges in respect of these municipalities automatically fail. Rather there are several alternative forms of evidence on which the Trial Chamber can rely, either independently or in combination.
453. The Prosecution has produced detailed demographic evidence showing population movements in each municipality. This evidence uses statistical analysis to represent the population movements in various ways and can be found in the expert demographic report of Ewa Tabeau.⁸⁹⁸ The report is based upon sources that represent mainly internally displaced population and only partly out-migration from Bosnia-Herzegovina. The absolute figures from the report are therefore conservative, i.e. the true statistics of the internally displaced and out-migration population are higher. The Prosecution has extracted from this report figures in respect of each municipality challenged by the Amici. The table in Annex A shows the number of Muslims and Croats who, from those who were residing in the municipality in

under Articles 5(i) and 7(1) and 7(3). Count 18: Unlawful Deportation or Transfer, a Grave Breach of the Geneva Conventions of 1949, punishable under Articles 2(g) and 7(1) and 7(3).

⁸⁹⁸ See the expert report of Ewa Tabeau, Exhibit 548, tab 2 and testimony on 7 October 2003 at T27068

1991,⁸⁹⁹ were in 1997/8⁹⁰⁰ living outside the municipality.⁹⁰¹ To provide a basis of comparison the number of Serbs who have left is also listed.⁹⁰² These figures are represented as absolute figures⁹⁰³ and as estimated figures⁹⁰⁴ of those who have left the municipality. In respect of a number of municipalities challenged in addition figures of population movement from the various municipalities are available from RS sources for the years 1993 and 1995.⁹⁰⁵

454. Please note that the 1991 total population figures by ethnicity in each municipality which is compared against the RS 1993 or 1995 figures, is higher than the 1991 population figure by ethnicity which is compared against the 1997/8 OSCE Voters Register figures. The 1993 and 1995 figures are compared against the 1991 Census figures for the population of each ethnicity, including those born after 1980. The 1997/8 figures have been compared against the numbers of each ethnic group born before 1980 living in the municipality at the time of the 1991 census and who were therefore of voting age and included in the 1997/8 voters register.
455. The Prosecution has set out above in the Kosovo section detailed submissions as to the test to be applied when considering whether transfers are legal. The Prosecutions repeats here that in its submission the essential element is that the displacement be

⁸⁹⁹ The 1991 figures are taken from the 1991 Census, which as a source records the entire population living in a municipality. The figures quoted are for those members of the population born before 1980, who by 1997/8 were of voting age.

⁹⁰⁰ The 1997/8 figures are taken from the 1997 and 1998 OSCE Voters Registers.

⁹⁰¹ The figures for the table in Annex A are extracted from the tables in Annexes A1, A2 and A3 of the Ewa Tabeau's expert report.

⁹⁰² The number of people who were classified as "others" in the 1991 Census is not included.

⁹⁰³ The absolute figure has been calculated by comparing individual names in the 1991 Census to the 1997/8 OSCE Voters Registers and determining who now resides outside the municipality. It can be said that the 1997 and 1998 OSCE Voters Registers only capture a sample of the whole population as eligible voters as recorded in the 1991 census. This is because not everyone will have registered. Reasons for non-registration include that registration is voluntary and persons registered in the 1991 census may be dead or now living abroad. For this reason it can be seen that those voters listed under the absolute figure did leave their 1991 municipality and further that this figure must be seen as a minimum.

⁹⁰⁴ Using statistical analysis Ewa Tabeau provided estimates of the more complete numbers of each ethnicity who had left the municipality who were born before 1980 and registered in the 1991 Census.

⁹⁰⁵ These figures are presented in Annex A5 of Ewa Tabeau's report, "Population Change in Some Municipalities of the MILO[EVI] Case Area between 1991, 1993 and 1995, Based on RS Sources". The 1993 figures are from the list of citizens who have moved out and into the area covered by the sector, Banja Luka SNB /National Security Service/ Sector, Banja Luka, May 1993. ERN: B009-8148-B009-8153. The 1993 figures refer to Muslims who have moved out of the municipality. The 1995 figures are from overview of data on the number and ethnic structure of population according to municipalities in the area of the Banja Luka RDB /State Security Department/ Centre for 1991 and 1995, Banja Luka, February 1995. ERN: B003-1169-B003-1183. The 1995 figures refer to numbers of Muslims or Croats who resided in the municipality in 1995. It can be assumed that those Muslims who originally lived in the municipality have either left, have been detained or have been killed.

involuntary in nature and the relevant persons had no real choice. Furthermore, expressions of consent or voluntariness do not necessarily render a transfer legal when they are not a matter of "genuine choice".⁹⁰⁶

456. The Prosecution has summarised below in respect of each municipality challenged the evidence it has produced showing that forcible transfers occurred and where this is not available evidence of general ongoing abuses in the municipality itself. Evidence of the detention of non-Serbs often amounts in effect to prima facie evidence of forcible transfer as those detained who were not killed were often on released not allowed to returned to their homes, but rather exchanged. Where no evidence was produced in respect a specific municipality due to time constraints, the Prosecution has listed the neighbouring municipalities on which evidence was presented. In the Prosecution submission the events in these neighbouring municipalities establish that the population movements in the challenged municipalities were involuntary. In addition the expert report of Andras Riedlmayer provides evidence of the destruction of cultural property in each of the municipalities challenged.⁹⁰⁷ The evidence of abuses generally in Bosnia and Herzegovina, in addition to municipal level evidence (including the destruction of religious property), provides further evidence of the context in which the population movements took place and that they were not voluntary.

457. In the Prosecution's submission the demographic evidence when read in conjunction with the other evidence available demonstrates both the scale of the population movement and its involuntary nature. In the case of some municipalities the large population movements of non-Serbs out of a municipality can itself be seen as evidence the movement was involuntary.

458. The Prosecutions evidence in respect of each municipality challenged is set out below:⁹⁰⁸

⁹⁰⁶ See law section in Kosovo component.

⁹⁰⁷ See the Expert Report of Andras Riedlmayer entitled "Destruction of Cultural Heritage in Bosnia-Herzegovina, 1992-1996: A Post-war Survey of Selected Municipalities" and Exhibit 487 Andras Riedlmayer's database regarding the destruction of non-Serb cultural property in Bosnia in 1992.

⁹⁰⁸ All figures of population movements quoted are taken from the Expert Report of Ewa Tabeau. 1997/8 figures are summarised for all municipalities in the table in Annex A. The 1993 and 1995 figures are from RS sources as summarised in Annex A5 of the expert report. Further detail on these figures and their sources is detailed above.

Banja Luka (Motion: Schedule D – No.1)

459. The Prosecutions submits that evidence that the transfers were to Hungary is not required for the forcible transfers to be maintained in respect of Banja Luka municipality. Irrespective of the question of whether the crime of deportation requires movement across national borders,⁹⁰⁹ there remains evidence that there were forcible transfers from Banja Luka which of itself constitute a crime under Counts 3, 17 and 18 of the Bosnia section of the indictment.⁹¹⁰

Bileca (Motion: Schedule D – No. 2)

460. In 1997/8 a minimum of 856 and, with 95 % confidence, an estimated 1522 Muslims from the original population of 5180 in 1991 had left Bileca. This compares with an estimated only 243 Serbs who had left from an original population of 8789 in 1991. The Prosecution has produced evidence of forcible transfer from the neighbouring municipality of Gacko.⁹¹¹

Bosanska Krupa (Motion: Schedule D – No.5)

461. The Prosecution submits that where the evidence at trial does not match precisely the statement of fact as alleged in the indictment, this does not require the municipality to be struck from Schedule D.

Bosanska Dubica (Motion: Schedule D - No. 6)

462. In 1997/8 an estimated 4928 Muslims from the original population of 5180 in 1991 had left Bosanska Dubica. This compares with an estimated only 431 Serbs who had left from an original population of 18642 in 1991. The absolute minimum number of Muslims who left is 3048. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1993 approximately 70% of the Muslims (4500 of the original 6440) and 82% of the Croats (approximately 400 of the original 488) living in

⁹⁰⁹ It is the Prosecution's position that deportation does not require movement across national borders. See the Prosecutions response in respect of forcible transfer in Kosovo section above. The Prosecution further submits that sufficient evidence of transfer across national borders has been presented in the Bosnia section of the case for the charge of deportation to be maintained if the Trial Chamber is of the view that movement across national borders is required. In particular the Prosecution has produced evidence of the forcible transfer of the Muslim population from Kozluk (Zvornik Municipality) to Hungary. See the testimony of witnesses Fadil Banjanovi} B-1517 and ██████████ B-1462.

⁹¹⁰ Count 3 Persecution a crimes against humanity, Count 17 Inhuman Acts a crimes against humanity and Count 18, Unlawful Transfer a grave breach of the Geneva Conventions of 1949.

⁹¹¹ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

Bosanska Dubica in 1991 had left. Further that by 1995 only 400 Muslims of the original 6440 remained in Bosanska Dubica. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipalities of Bosanski Novi; and Prijedor and the nearby municipality of Sanski Most.⁹¹²

Bosanska Gradiska (Motion: Schedule D - No. 7)

463. In 1997/8 an estimated 11363 Muslims from the original population of 13008 in 1991 had left Bosanska Gradiska. Similarly in 1997/8 an estimated 1752 Croats from the original population of 2999 in 1991 had left. This compares with an estimated only 773 Serbs who had left from an original population of 30617 in 1991. The absolute minimum number of Muslims who left is 6858 and Croats is 510. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1993 approximately 60% of the Muslims (9500 of the original 15851) and 29% of the Croats (approximately 1000 of the original 3471) living in Bosanska Dubica in 1991 had left. Further that by 1995 only 3500 Muslims only some 22% of the original 15851 Muslims and 500 Croats some 15% of the original 3417 Croats remained in Bosanska Gradiska. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipalities of Bosanski Novi and Banja Luka, and the nearby municipalities of Sanski Most and Prijedor.⁹¹³

Bosanski Petrovac (Motion: Schedule D - No. 9)

464. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1993 3200 Muslims almost the entire Muslim population of the original 3288 Muslims living in Bosanska Petrovac in 1991 had left. It can be seen that by 1997/8 a large part of the Muslim population had returned, but an estimated 957 Muslims had still not returned. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipalities of Sanski Most and Ključ, and the nearby municipalities of and Prijedor, Banja Luka and Bosanski Novi.⁹¹⁴

Brčko (Motion: Schedule D - No. 12)

⁹¹² See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

⁹¹³ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

⁹¹⁴ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

465. The Prosecution submits where the evidence at trial does not match precisely the statement of fact as alleged in the indictment, this does not require the municipality to be struck from Schedule D.

Cajnice (Motion: Schedule D - No. 13)

466. In 1997/8 an estimated 3346 Muslims from the original population of 3346 in 1991 had left Cajnice. This compares with an estimated only 183 Serbs who had left from an original population of 3986 in 1991. The absolute minimum number of Muslims who left is 2269. Witness B-1446 Melika Malesevic gave evidence that at the Mostina Hunting Lodge in Cajnice, 62 detainees were executed.⁹¹⁵ The Prosecution has also produced evidence of abuses including forcible transfer from the neighbouring municipality of Foča and the nearby municipality of Visegrad.⁹¹⁶

Celinac (Motion: Schedule D - No. 14)

467. In 1997/8 an estimated 1030 Muslims from the original population of 1154 in 1991 had left Celinac. This compares with an estimated only 659 Serbs who had left from an original population of 13551 in 1991. The absolute minimum number of Muslims who left is 575. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1995 only 190 Muslims some 13% of the original 1446 Muslims and 15 Croats some 20% of the original 76 Croats remained in Celinac. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipality of Banja Luka, and the nearby municipalities of and Doboj and Prijedor.⁹¹⁷

Donji Vakuf (Motion: Schedule D - No. 16)

468. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1993 approximately 96% of the Muslims (12970 of the original 13509) and 70% of the Croats (approximately 480 of the original 682) living in Donji Vakuf in 1991 had left. Further that by 1995 only 81 Muslims only some 0.1% of the original 13509 Muslims and 32 Croats some 5% of the original 682 Croats remained in Donji Vakuf. It can be seen that by 1997/8 a large part of the Muslim population had returned, but an estimated 1915 Muslims had still not returned. Osman Selak testified

⁹¹⁵ T17431-17433

⁹¹⁶ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

⁹¹⁷ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

that he meet the President of Donji Vakuf on 9th April 1992 who informed him about the political and security situation in the municipality. He asked for the army to intervene, to resolve that, to help with the settlement of the security situation in his municipality. Mr. Selak's notebook includes a number of entries concerning the situation in Donji Vakuf in April 1992.⁹¹⁸

Gorazde (Motion: Schedule D - No. 19)

469. The humanitarian situation in Gorazde has been described by several witnesses including Michael Williams, David Harland and General Van Baal.⁹¹⁹ It is estimated that 6546 (3452+3094) Muslims who had lived in Gorzade in 1991 no longer lived there in 1997/8.

Kalinovik (Motion: Schedule D - No. 20)

470. In 1997/8 an estimated 1152 Muslims from the original population of 1156 in 1991 had left Kalinovik. This compares with an estimated only 152 Serbs who had left from an original population of 2448 in 1991. The absolute minimum number of Muslims who left is 614. The municipality also borders Sarajevo municipality. Evidence of the Schedule B killing at the Gunpowder warehouse in August 1992 of 23 Muslims has been provided by Melika Melasevic.⁹²⁰ Witness B-1537 also provides evidence that he was held in a police station jail in Kalinovik where they were imprisoned for six months. The witness left Kalinovik on 21 March 1993 and was taken for exchange.⁹²¹ The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipalities of Fo-a and Gacko.⁹²²

Kotor Varos (Motion: Schedule D - No. 22)

471. In 1997/8 an estimated 7964 Muslims from the original population of 8790 in 1991 had left Kotor Varo{. Similarly in 1997/8 an estimated 7876 Croats from the original population of 8243 in 1991 had left. This compares with an estimated only 611 Serbs who had left from an original population of 11506 in 1991. The absolute minimum number of Muslims who left is 4561 and Croats is 2362. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1995 only 1800

⁹¹⁸ Exhibit 643, tab 52; T13015-13030

⁹¹⁹ See the evidence summarised in the PS(B) in para 35(k).

⁹²⁰ T17432

⁹²¹ 92 bis testimony B-1537, Exhibit 494; T2404-2409

⁹²² See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

Muslims only some 16% of the original 11090 Muslims and 1000 Croats some 9% of the original 10695 Croats remained in Kotor Varo{.

Rogatica (Motion: Schedule D - No. 26)

472. In 1997/8 an estimated 10846 Muslims from the original population of 10851 in 1991 had left Rogatica. This compares with an estimated only 246 Serbs who had left from an original population of 7095 in 1991. The absolute minimum number of Muslims who left is 6843. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipalities of Srebrenica and Visegrad.⁹²³

Nevesinje (Motion: Schedule D - No. 23)

473. In 1997/8 an estimated 2431 Muslims from the original population of 2434 in 1991 had left Nevesinje. Similarly in 1997/8 an estimated 138 Croats from the original population of 158 in 1991 had left. This compares with an estimated only 308 Serbs who had left from an original population of 9339 in 1991. The absolute minimum number of Muslims who left is 1445 and Croats is 54. Witness C-017 has provided evidence that he saw Muslims being bussed out of Nevesinje by Seselj men.⁹²⁴

Prnjavor (Motion: Schedule D - No. 25)

474. In 1997/8 an estimated 5531 Muslims from the original population of 5934 in 1991 had left Prnjavor. Similarly in 1997/8 an estimated 981 Croats from the original population of 1518 in 1991 had left. This compares with an estimated only 1215 Serbs who had left from an original population of 28765 in 1991. The absolute minimum number of Muslims who left is 3087 and Croats is 345. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1993 approximately 29% of the Muslims (2053 of the original 7143) and 54% of the Croats (approximately 923 of the original 1721) living in Prnjavor in 1991 had left. Further that by 1995 only 2500 Muslims only some 35% of the original 7143 Muslims and 460 Croats some 27% of the original 1721 Croats remained in Prnjavor. B-1610 gave evidence that around April 1992 soldiers with SAO Krajina insignia and police surrounded Lisnja and ordered the surrender of all private hunting rifles and TO issued machine-guns.⁹²⁵

⁹²³ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

⁹²⁴ T22049-22050

⁹²⁵ [REDACTED]

Immediately after the surrender of weapons people started to flee as the Serbs announced that everybody remaining in the village would be considered an enemy.⁹²⁶

Rudo (Motion: Schedule D - No. 27)

475. In 1997/8 an estimated 2697 Muslims from the original population of 2699 in 1991 had left Rudo. This compares with an estimated only 84 Serbs who had left from an original population of 6875 in 1991. The absolute minimum number of Muslims who left is 1627. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipality of Visegrad⁹²⁷ and the situation in Gorazde.⁹²⁸

Sekovici (Motion: Schedule D - No. 30)

476. In 1997/8 an estimated 261 Muslims from the original population of 263 in 1991 had left Sekovici. This compares with an estimated only 626 Serbs who had left from an original population of 7442 in 1991. The absolute minimum number of Muslims who left is 156. The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipalities of Zvornik and Bratunac.⁹²⁹

Sipovo (Motion: Schedule D - No. 31)

477. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1993 approximately 81% of the Muslims (2400 of the original 2965). Further that by 1995 only 350 Muslims only some 12% of the original 2965 Muslims remained in [ipovo. It can be seen that by 1997/8 a large part of the Muslim population had returned, but an estimated 2333 Muslims had not returned.

Sokolac (Motion: Schedule D - No. 32)

478. In 1997/8 an estimated 4250 Muslims from the original population of 13072 in 1991 had left Sokolac. This compares with an estimated only 274 Serbs who had left from an original population of 8646 in 1991. The absolute minimum number of Muslims who left is 2775. The municipality borders Sarajevo.

⁹²⁶ [REDACTED]

⁹²⁷ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

⁹²⁸ See the evidence summarised in the PS(B), in para 35(k).

⁹²⁹ See the evidence summarised in the Bosnia fillbox, Schedule D and general evidence in para 34.

Teslic (Motion: Schedule D - No. 33)

479. In 1997/8 an estimated 9094 Muslims from the original population of 10184 in 1991 had left Teslic. Similarly in 1997/8 an estimated 6689 Croats from the original population of 8044 in 1991 had left. This compares with an estimated only 1469 Serbs who had left from an original population of 26681 in 1991. The absolute minimum number of Muslims who left is 5538 and Croats is 2059. The figures provided in Annex A5 of Ewa Tabeau's expert report provide evidence that by 1995 only 3765 Muslims only some 29% of the original 12802 Muslims and 1294 Croats some 14% of the original 9525 Croats remained in Tesli}. Vasiljevic provides hearsay evidence that the Red Berets killed 58 prominent Muslims in Teslic.⁹³⁰ The Prosecution has produced evidence of abuses including forcible transfer from the neighbouring municipality of Prnjavor and Doboj.⁹³¹

Trebinje (Motion: Schedule D - No. 34)

480. In 1997/8 an estimated 4460 Muslims from the original population of 4533 in 1991 had left from Trebinje (RS). This compares with an estimated only 263 Serbs who had left from an original population of 17216 in 1991. The absolute minimum number of Muslims who left is 2823.

Vlasenica (Motion: Schedule D - No. 36)

481. In 1997/8 an estimated 14243 (7663+6580) Muslims from the original population of 14261 (7681+6580) in 1991 had left Vlasenica. This compares with an estimated only 1014 (258+756) Serbs who had left from an original population of 11744 (5194+6550) in 1991. The absolute minimum number of Muslims who left is 7333 (4171+3162). Ibro Osmanovic, in addition to testifying about events in Vlasenica generally, including killings and detentions,⁹³² gives evidence about forcible transfer. The Muslims were afraid after the takeover by Yugoslav People's Army of Vlasenica. Muslims who left had things such as "Muslims leave" and "We will kill all Ustasha" painted on their shops.⁹³³ B-1500 also testified about being detained in Vlasenica in May 1992 prior to being taken with other men to being executed. While detained he

⁹³⁰ T15898; T16326

⁹³¹ See the evidence summarised in the PS(B), Schedule D and general evidence in para 34.

⁹³² See the evidence summarised in the PS(B), in para 34, and Schedules A-C

⁹³³ Exhibit 597, tab 1, Exhibit 597, tab 2, Exhibit 597, tab 3

was told by a guard that the Beli Orlovi were mainly responsible for the killings in the Vlasenica area.⁹³⁴

City of Sarajevo and Greater Sarajevo (Motion: Schedule D - No. 38-45)

482. In 9th September 1991 in a series of intercepted conversations including one with MILO[EVI], Karadžić threatened that if the arrest of Milan Martić was not resolved satisfactorily, then the Bosnian Serbs would block Sarajevo.⁹³⁵ On 19 September 1991 Karadžić informs MILO[EVI] of the BSL's goal to take half of Sarajevo. One of the strategic objectives as articulated on 12 May 1992 was to divide Sarajevo.⁹³⁶ This evidence shows a clear intention on the part of the Bosnian Serb Leadership of which MILO[EVI] was aware to create ethnically pure areas of Sarajevo.⁹³⁷ By mid-May 1992 Sarajevo was effectively divided in two.

483. In an intercepted conversation on 20 May 1992, Legija reports to Arkan the existence of a column of 7, 200 Muslims.⁹³⁸

484. The Prosecution submits that it has produced a great deal of evidence about the tragic events which occurred in Sarajevo during the indictment period.⁹³⁹ This includes not only the evidence of a shelling and sniping campaign which deliberately targeted civilians, but also the catastrophic humanitarian situation in Sarajevo deliberately brought about by the Bosnian Serbs.⁹⁴⁰ The numbers of each ethnic population who had left the various districts of Sarajevo by 1997/8 can be found in the table at Annex A.

Schedules E and F

⁹³⁴ 92 bis Statement of B-1500, Exhibit 472, para 28.

⁹³⁵ See intercepts Exhibit 613, Intercepts 48, 50, 51, 54, 56 and 57.

⁹³⁶ Ex. 451, tab 12.

⁹³⁷ The populations figures from the 1991 Census, as recorded in the table in Annex A show that many of the districts of Sarajevo were ethnically mixed and consequently any mass population movements to create ethnically pure areas was likely to require the use of force; The intent of the Serbs to expel Muslims can also be seen in two intercepted communications, see Exhibit 613, Intercepts 90 and 168.

⁹³⁸ Ex. 613, intercept 228.

⁹³⁹ See the summary of Sarajevo evidence as collated in the Bosnia fillbox in paragraphs 35(k), 43 to 45 and Schedule F. This is in addition to the specific evidence of forcible transfer from Hadzici given by B-1011 as identified by the Amici. See 92 bis Statements of B-1011, Exhibit 615.

⁹⁴⁰ Further, Bosnian Serb politicians and Mladić openly admitted to David Harland that they were blocking food supplies and utilities so as to force Izetbegović to accept the Owen-Stoltenberg peace plan, T26953-26955.

485. With respect to the scheduled sniping incidents as contained in Schedule E to the Indictment, the Amici submit that there is no evidence for each of the incidents they list in their Schedule E. The Prosecution concedes that it has not led evidence on any of these specific sniping incidents.
486. In addition, the Prosecution also concedes that it has not led evidence on three other sniping incidents in Schedule E of the indictment, namely incidents 7, 12 and 19. These are not included in the Motion.
487. In the result, the Prosecution has led evidence only of scheduled sniping incident no. 27 (Seid Solak – 22 July 1994).
488. With respect to the Sarajevo shelling incidents in Schedule F, the Amici submit that no evidence was led on any of the specified shelling incidents except incidents 1 and 4 (the “football” and “humanitarian aid” incidents respectively⁹⁴¹).
489. The Prosecution firstly concedes that no evidence was led on all the shelling incidents barring incidents 1, 4,5 and 26 (“Markale II”).⁹⁴²
490. Concerning incident 1, the Amici aver that the evidence led is insufficient, and the Prosecution concedes that this is so. The evidence concerning this incident came in the form of an admitted transcript of evidence from witness Hamill (who had testified in the Gali} case) absent cross-examination. In Gali} the witness stated, during a visit to the incident site later he was able to observe the two craters marked with a red plastic-like substance which had the effect of preserving the craters. He goes on to say that it was his opinion that the craters were formed by explosions caused by artillery shells of a field calibre somewhere between 100 and 130 millimetres, which had been fired from an approximate direction of 2.200 mils in the direction of east-southeast. He states that they might have been caused by a medium mortar, that is, an 81 or an 82 millimetre mortar. As to the source of fire, witness Hamill believed that the projectiles were fired from an area called Toplik, to the east of Sarajevo city, an area which he knew contained artillery weapons of that nature. The Bosnian Serb army

⁹⁴¹ 1 June 1993 and 4 February 1994 respectively.

⁹⁴² See Testimony of Rupert Smith.

controlled the area. The conclusion as to direction of fire is accurate whether it was a gun or a mortar.⁹⁴³

491. With respect to shelling incident 4, the Amici have similarly contended that the evidence led was insufficient for it to be sustained at this stage. The Prosecution concedes that the evidence led on this incident did not speak to matters concerning origin of fire. Witness Hafizovic's transcript of evidence given in the Gali} case was admitted in this case absent cross-examination and concerned the fourth scheduled incident.
492. Similarly, with respect to shelling incident 26, the Prosecution concedes that the evidence is insufficient.
493. It is noted, however, that although the Prosecution concedes that most of the scheduled incidents have not been proven, it submits that the overview evidence of the shelling and sniping campaign in Sarajevo during the indictment period is sufficient for a reasonable trial chamber to convict on with respect to paragraphs 43-45 of the Indictment.
494. Although evidence was not led of nearly all of the specific incidents listed in Schedules E and F, viva voce evidence from inter alia witnesses Van Baal, Van Lynden, Williams and Harland, and other Rule 92 bis (D) evidence such as Harding's and Mandilovic's evidence clearly establishes a prima facie case in respect of the allegations set out in paragraphs 43-45 of the Indictment that a campaign of indiscriminate or deliberate shelling and sniping was perpetrated during the indictment period against the civilian population of Sarajevo.
495. In addition to the crimes specifically addressed above or by the Amici, the Prosecution accepts that it has led no evidence of the following crimes in Schedule A:
- Banja Luka: (Culum-Kostic, 5 non-Serbs, 15-Aug-92)
 - Bosnia and Herzegovinaac: (Orasce and Duljci, 18 non-Serbs, 20-22 Sep 92).
 - Bosanska Gradiska: Bosanska Gradiska town, 4 Muslims, 15-Aug-92).

⁹⁴³ T.6114-7

- Bosanski Petrovac: Hujici 2 Muslims, 20-Sep-92).
- Celinac: (Rifet Mujkanovic, 31-July-92,); (2 non-Serbs, 2-Aug-92,).
- Doboj: (Gornja Grapska, 34 Muslims, 10-May-92).
- Foča: (Didevo, 11 Muslims, 20-Apr-92).
- Gacko: (Meduljici, 5 non-Serbs, 17-Jun-92).
- Ključ: (Pudin Han, 11 non-Serbs, 27-May-92); (Near Peci, 9 Muslims, 01-Jun-92).
- Kotor Varos: (Vrbanjci, 7 Muslims, 25-Jun-92).
- Prnjavor: (Kremna, 8 Muslims, Apr-92).
- Rudo: Setova, Vranj Mrsovo, Srpci and Sjeverin, 50 non-Serbs, May-92); (Rudo, 40 non-Serbs, May-92); (Vranja, A number of Muslims, 02-Aug-92).
- Sokolac: (Tocionik, 7 non-Serbs, 21-Jul-92); (Meljine, 3 non-Serbs, 31-Jul-92); (Zulj, two non-Serbs, 01-Aug-92).

496. Because of limitations of time the Prosecution did not introduce evidence of the following further crimes alleged in Schedule B:

- Rudo: (JNA barracks, one Muslim, In or around 1992).
- Sokolac: (Novoseoci, 44 non-Serbs, 22-Sep-92).
- Novi Grad (Sarajevo): (Srednje, 47 Muslims, 14-Jun-92).

497. Because of time limitations the Prosecution did not lead evidence of the following detention centres listed in Schedule C of the indictment:

- Bijeljina: New Slaughterhouse (Nova Klaonica), From Mar 92).
- Cajnice: (Cajnice SUP building, June-July 1993).
- Banja Luka: (Former JNA Barracks Mali Logor (Military Remand Prison), Aug-Sep-92); (Viz Tunjice Penitentiary, Jun-Nov 92).
- Bosanska Dubica: (SUP Building, Jun-Sep 92).
- Bosanski Novi: (Bosanski Novi Fire Station, Jul-Aug 92).
- Bosanski Petrovac: (Kozila Camp, May-Aug 92).
- Celinac: (Municipal building in Celinac, 01-Aug-92).
- Donji Vakuf: (Vrbas Promet camp, 11-Jun-92); ("The House," a house across the street from the MUP building, 07-Jun-92); (SUP building, 16-Jun-92); (TO warehouse, 16-Jun-92).

- Gacko: (Hotel "Metohija", 01-May-92).
- Kalinovik: (Kalinovik School (primary/elementary), Jul 92- Sept 92).
- Klju~: (Nikola Mackic Elementary School, May-92).
- Prnjavor: (Ruibnjak, June-92-June-93).
- Rogatica: (Veljko Vlahovic School, May-92 - Early-93).
- Rudo: (Basement of the cultural centre, June-93 - Feb -94).
- Sokolac: (KTK Leather Factory, July- Dec 92); ("Slavisa Vajner Cica Elementary School); (Planja's house); (Cavarine).

CONCLUSION

Except where the Prosecution has expressly conceded in this response that there is not evidence to support the indictment where challenged by the Amici Curiae, the Trial Chamber, applying the test whether there is evidence (if accepted) upon which a reasonable tribunal of fact could be satisfied beyond reasonable doubt of the guilt of the accused on the particular charge in question, should dismiss the Motion for Acquittal Pursuant to Rule 98 bis.

The trial should now proceed to the Defence case, and the Chamber should hear the evidence presented by the Accused in his Defence, cross-examination by the Prosecution, and, if appropriate, further evidence called by the Prosecution in Rebuttal or by the Chamber ex proprio motu.

Carla Del Ponte
Prosecutor

Dated This 3rd Day of May 2004
In The Hague
Netherlands

ANNEX A

Table of Population Movements for Schedule D Bosnia Municipalities⁹⁴⁴

Municipality	All Ethnicities	Muslims			Croats			Serbs		
		1991 Census	1997/8 IDPs and Refugees	1997/8 Estimate number of DPs	1991 Census	1997/8 IDPs and Refugees	1997/8 Estimate number of DPs	1991 Census	1997/8 IDPs and Refugees	1997/8 Estimate number of DPs
MILO[EVI] Case Area	1,803,259	720,325	231,830	403,566	140,918	29,581	83,859	785,553	115,411	204,646
of which:										
- Republika Srpska (RS)	1,094,417	344,803	186,179	329,869	79,127	20,482	62,373	587,307	14,645	25,390
- The Federation of BH (FBH)	708,842	375,522	45,651	73,697	61,791	9,099	21,485	198,246	100,766	179,256
1. Banja Luka (RS)	165,140	24,297	11,121	20,956	25,043	6,558	19,024	90,331	1,278	2,302
4. Bile}a (RS)	10,867	1,535	956	1,522	34	3	7	8,789	157	243
5. Bosanska Dubica / Kozarska Dubica (RS)	26,734	5,180	3,048	4,928	437	75	179	18,642	266	431
6. Bosanska Gradi{ka / Gradi{ka (RS)	50,644	13,008	6,858	11,363	2,999	510	1,752	30,617	490	773
7. Bosanska Krupa:										
- Bosanska Krupa (FBH)	29,073	18,955	1,269	2,426	117	21	57	9,206	5,252	9,166
- Bu`im (FBH)	12,630	12,412	453	840	5	0	0	78	10	60
- Bosanska Krupa / Krupa na Uni (RS)	4,478	1,724	0	0	10	0	0	2,690	429	864
8. Bosanski Novi:										

⁹⁴⁴ Figures extracted taken from the expert demographic report of Ewa Tabeau Exhibit 548, tab 2. 1991 Cencus figures from Annex A1; 1997/8 IDPs and figures represent absolute figures from Annex A2; and 1997/8 Estimates of numbers DPs taken from Annex A3.

- Bosanski Novi / Novi Grad (RS)	29,663	9,811	5,689	9,549	223	27	68	18,154	287	479
- Kostajnica (RS)	5,252	1,416	593	1,088	146	13	54	3,431	132	249
9. Bosanski Petrovac:										
- Bosanski Petrovac (FBH)	13,270	2,760	626	957	44	17	36	9,967	6,076	9,936
- Petrovac (RS)	264	0	0	0	2	0	0	261	0	0
12. Br-ko:										
- Rahi} / Ravne (Br-ko Federation) (FBH)	25,632	10,877	875	2,173	10,727	628	3,219	3,329	1,518	3,296
- Br-ko (RS)	47,294	20,309	11,792	19,542	8,337	1,851	7,131	12,199	479	779
13. ^ajni-e (RS)	7,526	3,346	2,269	3,346	5	1	2	3,986	133	183
14. ^elinac (RS)	15,323	1,154	575	1,030	72	6	14	13,551	388	659
16. Donji Vakuf (FBH)	19,499	10,647	1,406	1,915	563	244	505	7,645	5,319	7,628
19. Gora`de:										
- Gora`de (FBH)	26,957	18,301	2,356	3,452	74	25	47	7,509	4,791	7,473
- Gora`de / Srpsko Gora`de (RS)	3,952	3,094	1,924	3,094	3	0	0	794	176	508
20. Kalinovik (RS)	3,712	1,156	614	1,152	16	5	13	2,448	104	152
22. Kotor Varo{ (RS)	29,304	8,790	4,561	7,964	8,243	2,362	7,876	11,506	368	611
23. Nevesinje (RS)	12,117	2,434	1,445	2,431	158	54	138	9,339	188	308
25. Prnjavor (RS)	40,171	5,934	3,087	5,531	1,518	345	981	28,765	657	1,215
26. Rogatica (RS)	18,281	10,851	6,843	10,846	18	3	5	7,095	162	246
27. Rudo (RS)	9,813	2,699	1,627	2,697	5	0	0	6,875	49	84
29. Sarajevo - Centar (FBH)	67,228	32,995	3,390	5,122	4,921	653	1,307	14,542	5,097	9,932
30. Sarajevo - Had`iji (FBH)	19,498	12,190	906	1,214	644	248	424	5,262	3,356	5,098
31. Sarajevo - Ilid`a:										
- Ilid`a (FBH)	49,709	22,555	3,766	5,605	5,836	1,606	3,287	16,285	8,824	14,840
- Ilid`a / Srpska Ilid`a (RS)	5,875	831	545	829	83	34	51	4,696	324	490
32. Sarajevo - Ilija{ (FBH)	20,718	8,411	1,132	1,648	1,505	532	1,075	9,601	6,244	9,407
33. Sarajevo - Novi Grad (FBH)	112,618	55,789	5,912	8,873	7,982	1,489	2,828	31,890	14,709	27,170
34. Sarajevo - Novo Sarajevo:										

- Novo Sarajevo / Srpsko Novo Sarajevo (RS)	2,282	154	3	154	15	0	0	2,055	32	93
- Novo Sarajevo (FBH)	78,632	28,187	3,650	5,530	7,999	1,390	2,640	26,313	10,271	20,726
35. Sarajevo - Pale:										
- Pale (FBH)	1,384	963	121	348	1	0	0	407	90	407
- Pale (RS)	12,433	2,658	1,648	2,652	112	18	33	9,195	177	255
36. Sarajevo - Stari Grad:										
- Stari Grad Sarajevo (FBH)	41,224	32,435	3,539	5,521	1,002	130	287	3,566	1,344	2,673
- Stari Grad Sarajevo / Srpski Stari Grad (RS)	1,112	121	10	121	4	2	3	975	38	68
37. Sarajevo - Trnovo:										
- Trnovo (FBH)	2,689	2,182	426	743	0	0	0	462	250	462
- Trnovo (RS)	3,233	1,873	1,421	1,870	15	5	8	1,272	262	352
38. Sarajevo - Vogošća (FBH)	19,970	9,872	1,454	2,042	922	293	640	7,406	4,719	7,011
39. Sokolac (RS)	13,072	4,250	2,775	4,250	17	3	5	8,646	192	274
41. [ekovi]i (RS)	7,943	263	156	261	8	0	0	7,442	345	626
42. [ipovo (RS)	12,936	2,341	1,426	2,333	27	4	8	10,356	525	948
43. Teslić (RS)	48,539	10,184	5,538	9,094	8,044	2,059	6,689	26,681	829	1,469
44. Trebinje:										
- Ravno (FBH)	1,676	15	3	5	772	194	344	859	365	859
- Trebinje (RS)	24,412	4,533	2,823	4,460	409	74	163	17,216	181	263
46. Vlasenica:										
- Vlasenica (RS)	13,273	7,681	4,171	7,663	26	3	6	5,194	156	258
- Milići (RS)	13,370	6,580	3,162	6,580	7	1	2	6,550	478	756

ANNEX B

Schedule A – Killings not Associated with Detention Facilities

No	Place/Event	Comment on Evidence	
2	<u>Bosanski Novi</u> - In Blagaj Japra, 7 Bosnian Muslim men were killed during the expulsion of Bosnian Muslims	No evidence	09-Jun-92
2	<u>Bosanski Novi</u> - In Alici, 27 Bosnian Muslim men were killed.	No evidence	23-Jun-92
5	<u>Foča</u> - In Filipovici, at least 5 Bosnian Muslims were killed by Serb soldiers in a military warehouse.	N.B. Proved by witness Taranin 10/7/03. Witness B-1011 referred to in Prosecution fill-box deals with Brčko.	26-Apr-92
5	<u>Foča</u> In Jelec, 18 Bosnian Muslims, including elderly people and 8 members of one family, were executed by JNA soldiers.	No evidence	4-10-May-92
5	<u>Foča</u> In Brod, 14 Bosnian Muslim men from Trnovaca were executed by Serb soldiers.	No evidence	22-Jun-92
6	<u>Gacko</u> 2 Muslim males killed by Serbs in a field near Mount Zelengora	No evidence	18-Jun-92
6	<u>Gacko</u> At least 8 Muslims killed by Serb soldiers near Mount Zelengora	No evidence	18-23-June-92
7	<u>Kljuc</u> In Prhovo, 38 Bosnian Muslim villagers, including women and children, were killed by shooting and grenades.	No evidence	01-Jun-92
8	<u>Kotor Varos</u> In Kotor Varos town, approximately 13 non-Serbs were killed in and around the Medical Centre.	No evidence	25-Jun-92
8	<u>Kotor Varos</u> In a barn in Dabovci, at least 15 Bosnian Muslim men were killed.	No evidence	Aug-92
8	<u>Kotor Varos</u> In Grabovice, a large number of Bosnian Muslim and Bosnian Croat detainees were held in the Grabovice School, beaten and never seen again.	No evidence	Nov-92
9	<u>Nevesinje</u> At or near Lipovaca and Dubrovaci, at least 34 Bosnian Muslim men, women and children were killed.	No evidence	Jun-Jul-92

	<u>Nevesinje</u> Near Kiser, approximately 17 Bosnian Muslim civilians were killed by Serb soldiers	No evidence	mid July-92
10	<u>Prijedor</u> In Hambarine and Behlici, at least 3 Bosnian Muslims were killed.	Insufficient evidence. B1369 (Exhibit 658) refers to the attack on Hambarine on 23 May 1992. [REDACTED]	11-Jun-1-Jul-92
	<u>Prijedor</u> In Kamicani, approximately 8 non-Serbs were killed in Mehmed Sahoric's house.	No evidence	26-May-92
	<u>Prijedor</u> In Jaskici, at least 19 Bosnian Muslim men were killed.	No evidence	14-Jun-92
	<u>Prijedor</u> In Brisevo, at least 68 non-Serbs were killed during the attack	No evidence	24-Jul-92
	<u>Prijedor</u> In Kipe iron ore mine (near Ljubija), at least 8 Bosnian Muslim men were executed.	No evidence	25-Jul-92
	<u>Prijedor</u> In Ljubija, at least 3 Bosnian Muslim men were executed at the football stadium.	Insufficient evidence. See witness B1369 at Exhibit 658 in relation to hearsay evidence concerning this allegation.	25-Jul-92
	<u>Prijedor</u> In Tomasica, 4 non-Serbs were killed.	No evidence	03-Dec-92
11	<u>Prnjavor</u> In Lisnja, 4 Bosnian Muslim men were executed	Insufficient evidence. Witness B-1610 9/9/03, Ex 532 Tr. p.16017 – "Tito Porok told us I had killed these guys" Evidence in cross-examination on the issue did not establish manner of cause of death – could have been aggression or self-defence. 9/9/03 Tr.p. 26183-84 "Q. Do you know how they were killed, how they lost their lives? Do you know anything about that? A.. No, I don't know anything about that, but I do know that they were killed, and I do know that there was a cross drawn on their bodies Q. Tell me, were they killed during the fighting that took place there or were they executed	May-92

		<p>by someone? Which is it? A. Well, there wasn't any fighting going on there. Not a single bullet was fired. There was no fighting, no combat. Q. And where did these people actually come from? How did these men come to be killed? A. I don't know how they were killed. All I do know is that their bodies were found and that they had to be buried in the morning. Q. All right. So you don't know how they were in fact killed.</p>	
12	<u>Sanski Most</u> In Donji Kruhari near Skrljevit, 5 Bosnian Croat men were killed.	No evidence	02-Nov-92
	<u>Sanski Most</u> In Sasina, at least 65 non-Serb men were executed by members of Arkan's Tigers under the direct command of Arkan	Insufficient evidence.	21-Sep-95
13	<u>Srebrenica</u> No.7. Kozluk (Zvornik Municipality), at least 340 Bosnian Muslim men.	No evidence- Witnesses dealing with Kozluk – (a) <u>Banjanovic</u> 9/5/03, Tr.p.20614 Ex 444 R.92 bis and 19/5/03 Tr.p.20626 (b) <u>B-024</u> 5/6/03 Tr.p.21894 (c) <u>Riviere</u> 28/10/03 Tr.p.28139	15/16-Jul-95
14	<u>Visegrad</u> In Bikavac settlement, approximately 70 Bosnian Muslim and other non-Serb civilians were burnt to death in a house ignited by Serb paramilitaries led by Milan Lukic.	Insufficient evidence – Witness B-1054 29/8/03 Tr.p.25596 R.92 bis Ex 522 gives evidence of deaths of civilians from Koritinik in Visegrad by fire caused by Lukic. At Tr.p 25600 “And finally after escaping from Visegrad, did you learn that this group had perpetrated a similar crime to another group of Muslim civilians in a house in Visegrad, without going into the detail of that event?A. Yes, at the Bikavac, about 80 people were burnt by this same group. Again, these were civilians, elderly people and children.” Only heard about deaths by	27-Jun-92

		fire in Bikavac.	
15	<u>Vlasenica</u> In Drum (Vlasenica town) approximately 22 Bosnian Muslim men were killed.	Insufficient evidence.	
15	<u>Vlasenica</u> In Zaklopaca, at least 58 Bosnian Muslim men, women and children were executed during the Serb attack on the village.	No evidence	16-May-92
17	<u>Ilijas (Greater Sarajevo)</u> In Ljesevo, 21 Bosnian Muslims were killed.	No evidence	04-Jun-92

Schedule B – Killings Associated with Detention Facilities

No.	Place/Event	Comment on Evidence	
1	<u>Banja Luka</u> Between Krings camp and Manjaca camp, approximately 20 non-Serb men were killed during transportation between the camps.	No evidence	04-Jul-92
2	<u>Bileca</u> In SUP Detention facility, 2 non-Serb detainees killed.	No evidence	25-Jun -18 Dec-92
4	<u>Bosanski Samac</u> In Crkvina camp, approximately 17 non-Serb detainees were killed.	Evidence of 16 killed on 7 May 1992. See Witness [REDACTED].	06-May-92
7	<u>Cajnice</u> At Mostina Hunting Lodge, 53 non-Serbs killed.	Insufficient evidence. Witness Malesevic 10/3/03 Tr.P.17431-32 "I'm going to ask you about five more locations. Number 11, Cajnice. A. The hunting lodge Mostina, where about 100 detainees were kept. Again the conditions were horrific. They were starved, tortured, beaten up. But in July, after the death of a combatant at the Gorazde front, a massacre occurred. More than 62 inmates were killed on that occasion. A witness survived this and can testify about it." Hearsay and no direct evidence of the event.	19-May-92
9	<u>Gacko</u> 5 Bosnian men killed in the SUP building in Gacko	No evidence.	3-Jul-92
10	<u>Kalinovik</u> Approximately 23 Muslim men and boys from the Gunpowder warehouse shot in a field near Ratine.	Insufficient evidence. Witness Malesevic 10/3/03 Tr.P.17432: Q. Number 15, Kalinovik, please. A. Kalinovik. The gunpowder warehouse there where 101 detainees were kept. Our witness, the only survivor from that camp, describes how they were liquidated. After a certain period of time, they were forced to board trucks waiting for them. There were three trucks, and they	05-Aug-92

		<p> tied the detainees and telling them to move on, that they were going to take them to the prison in Foča. However, on the way there, the truck on which our witness was stopped. They were told to get off. Four detainees were selected from the group, and the rest were executed. Our witness was just wounded, and he watched the whole scene. These four were untied and told to throw in the bodies into a shed, and then they too entered and then four men in uniform poured gasoline over the bodies and some tyres and set fire to them. Our witness managed to survive and to testify about this. </p> <p> Q. Thank you. A. This was a group of 23. As for the others -- </p> <p> Q. Sorry. The group of 23 that were burned; is that correct? </p> <p> A. Yes. And as for the others, we don't know how they ended up. </p>	
14	<u>Sanski Most</u> Near Hrastova Glavica, approximately 100 non-Serb men taken from Keraterm and Omarska camps were killed.	Insufficient evidence.	05-Aug-92
14	<u>Sanski Most</u> At Sanakeram ceramics factory, at least 10 non-Serb men were killed	No evidence.	30-Sep-09-Oct-92
15	<u>Teslic</u> In Teslic town, at least 5 non-Serb men were killed at the Territorial Defence building.	No evidence	Jun-92
17	<u>Zvornik</u> At Novi Izvor building, at least 2 non-Serb male detainees were killed.	<p> Insufficient evidence: B1461 (Exhibit 437) and ██████████ refer to 11 prisoners at the Novi Izvor building, who were taken away to search houses, and not seen again. There is no evidence that these persons were subsequently killed. </p>	May-92

Schedule C – Detention Facilities

No.	Place/Event	Comment on Evidence	
2	<u>Bosnia and Herzegovina</u> Traktorski Servis, Ripac (garages and houses)	Insufficient evidence. See Witness Malesevic date 10/3/03 Ex 404 Tr.p.17429 "MR. NICE: Tab 7 of Exhibit 404, please. And again this is a document really to become a document of record rather than one that we need go through in detail.Q. Have you prepared a list of the detention facilities under Serbian control?And we can see simply on page 1, for example, the ten facilities you've identified within that period of years in Banja Luka, or further down the page, the 15 that you've identified in Bijeljina. And if we go to the last page, we will see that you total those facilities as the that you have given us in evidence.A. Yes. Yes. We compiled this list in the Centre for Research and Documentation on the basis of statements that we had available to us. And for all these detention facilities, we have documentation and members who are willing to provide more detailed information about them, if necessary." Tr.p. 17429 "Tab 8. It's the page from the indictment against this accused, page 29, and it's the Schedule C identifying detention facilities. Have you reviewed this list of detention facilities referred to in the indictment? A. Yes, I have, and found that all the camps were recorded in our Alliance, all these detection facilities." Hearsay and not direct evidence of the place.	Jul-Oct-92
4	<u>Bileca</u> SUP Detention facility.	Insufficient evidence, see argument at point 2.	10 June- 19 Dec 1992
4	<u>Bileca</u> Student Hostel (Dacki Dom).	Insufficient evidence, see argument at point 2.	25 June - 5 Oct 1992
8	<u>Bosanski Novi</u> Bosanska Kostajnica Police Station	Insufficient evidence, see argument at point 2.	May-Jul-92
11	<u>Cajnice</u> Mostina Hunting	Insufficient evidence, see	April, May

	Lodge	argument at point 2 and Witness Malesevic 10/3/03 Tr.P.17431-32 "I'm going to ask you about five more locations. Number 11, Cajnice. A. The hunting lodge Mostina, where about 100 detainees were kept. Again the conditions were horrific. They were starved, tortured, beaten up. But in July, after the death of a combatant at the Gorazde front, a massacre occurred. More than 62 inmates were killed on that occasion. A witness survived this and can testify about it." Hearsay and not direct evidence of the place.	1992
11	<u>Cajnice</u> Cajnice SUP building	Insufficient evidence, see argument at point 2.	June-July 1993
12	<u>Doboj</u> Seslija Camp	Insufficient evidence, see argument at point 2.	Mar-Oct-93
15	<u>Kalinovik</u> Gunpowder warehouse between Jelasica and Jazici.	Insufficient evidence, see argument at point 2 and Witness Malesevic 10/3/03 Tr.P.17432: Q. Number 15, Kalinovik, please. A. Kalinovik. The gunpowder warehouse there where 101 detainees were kept. Our witness, the only survivor from that camp, describes how they were liquidated. Hearsay and not direct evidence.	5 July-5-Aug-92
16	<u>Kotor Varos</u> Kotor Varos Prison	Insufficient evidence, see argument at point 2.	Jun - Nov-92
16	<u>Kotor Varos</u> Kotor Varos Sawmill	Insufficient evidence, see argument at point 2.	Jun-92
16	<u>Kotor Varos</u> Kotor Varos Police Station	Insufficient evidence, see argument at point 2.	May-Sep 92
16	<u>Kotor Varos</u> Kotor Varos Elementary School	Insufficient evidence, see argument at point 2.	Aug-Sep 92
17	<u>Nevesinje</u> Central Heating Factory (Kilavci)	Insufficient evidence, see argument at point 2.	Jun-Jul 92
18	<u>Prijedor</u> Miska Glava	Insufficient evidence, see argument at point 2.	Jul-92
20	<u>Sanski Most</u> Boiler Room of Old Hotel.	Insufficient evidence, see argument at point 2.	21-Sep-95 to 25-Sep-95
21	<u>Teslic</u> Pribinic (old post office)	Insufficient evidence, see argument at point 2.	Jun-Oct 92
21	<u>Teslic</u> TO Building	Insufficient evidence, see argument at point 2.	Jun-92
21	<u>Teslic</u> SUP Building	Insufficient evidence, see	Jun-92

		argument at point 2.	
22	<u>Visegrad</u> Detention centre in tourist hotel in Vilina Vlas.	Insufficient evidence, see argument at point 2. Furthermore, it is submitted that there is insufficient evidence that the hotel was a detention centre as opposed to a place where the witness and others were temporally confined. See Witness B1510, Exhibit 661.	01-May-92
22	<u>Visegrad</u> Uzamnica, a former military warehouse and barracks.	Insufficient evidence, see argument at point 2.	Aug-92 - Oct-94

Schedule D – Forcible Transfers

No.	Place/Event	Comment on Evidence	Deportations
1	<u>Banja Luka</u> Deportations to Hungary 19359	Evidence of forcible transfer, but no evidence from Prosecution witnesses of deportation of persons from Banja Luka into Hungary.	Hungary
2	<u>Bileca</u> Deportations to Montenegro 993	No evidence of forcible transfer or deportation. The evidence presented at trial relates to the camps/prison in Bileca, not forcible transfer or deportation from Bileca.	Montenegro
5	<u>Bosanska Krupa:</u> Bosanska Krupa 1439 Buzim 389 Krupa na Uni 1	There is evidence of forcible transfer from Bosanska Krupa. However, there is no evidence of forcible transfer from Buzim. The evidence in relation to Buzim refers to its aspirations to become a separate municipality [See the testimony of Easad Velic on 24.11.03 at Tr.29578.] There is no evidence of forcible transfer from Krupa na Uni.	
6	<u>Bosanska Dubica</u> 3310	No evidence of forcible transfer.	
7	<u>Bosanska Gradiska</u> 7516	No evidence of forcible transfer.	
9	<u>Bosanski Petrovac:</u> Bosanski Petrovac 778 Petrovac unknown █	No evidence of forcible transfer. The evidence at trial in relation to this location refers to the bombing of a column of civilian refugees in the vicinity of Bosanski Petrovac (Tr.24668 on 22.7.03)	

12	<u>Br~ko:</u> Ravne / Rahic 1532	There is evidence of forcible transfer from Br~ko, but not in relation to Ravne/Rahic which is cited in Schedule D.	
13	<u>Cajnice</u> 2214	No evidence of forcible transfer.	
14	<u>Celinac</u> 608	No evidence of forcible transfer.	
16	<u>Donji Vakuf</u> 1729	No evidence.	
19	<u>Gorazde</u> Gorazde FBosnia and Herzegovina Srpsko Gorazde	Insufficient evidence.	
20	<u>Kalinovik</u> 612	No evidence of forcible transfer from this location.	
22	<u>Kotor Varos</u> 6870	No evidence of forcible transfer.	
26	<u>Rogatica</u> 6650	No evidence of forcible transfer.	
23	<u>Nevesinje</u> 1483	No evidence of forcible transfer.	
25	<u>Prnjavor</u> 3490	No evidence of forcible transfer.	
27	<u>Rudo</u> Deportations to Macedonia 1614	No evidence of forcible transfer or deportation to Macedonia.	Macedonia
30	<u>Sekovici</u> 162	No evidence of forcible transfer.	
31	<u>Sipovo</u> 1427	Insufficient evidence of forcible transfer.	
32	<u>Sokolac</u> 2670	No evidence.	
33	<u>Teslic</u> 7789	No evidence. No reference to forcible transfers from Teslic municipality. 	
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34	<u>Trebinje:</u> Trebinje 3116 Ravno 201	Insufficient evidence of forcible transfer. The evidence cited in relation to Ravno concerns killings, not forcible transfer : Stjepan Kljuic (15.7.03) at Tr.p.24448.	Insufficient evidence of forcible transfer from Trebinje. C-017 and Babi} provide evidence in relation to Trebinje. C-017: (10.6.03) at Tr. P. 22049-50 – this evidence relates to people being sent to Trebinje.  Babi}: (22.11.02) at Tr.p.13347 – evidence concerning reserves to be situated in Trebinje.
36	<u>Vlasenica</u> 6942	Insufficient evidence of forcible transfer.	See B1056 Ex 597.
38-45	<u>City of Sarajevo and Greater Sarajevo</u>	There is evidence of forcible transfer from Hadzici in Greater Sarajevo. Insufficient evidence in relation to the other locations.	

Schedule E – Sarajevo Sniping Incidents

No	Place/Event	Comment on Evidence	
1	Fadila ZGODIC, a woman aged 52 years, was shot and wounded in the hip while carrying bread near Darovalaca Krvi Street, presently Kolodvorska Street, in the area of Novo Sarajevo.	No evidence.	7 Nov 1992
2	Anisa PITA, a girl aged 3 years, was shot and wounded in the right leg as she was taking off her shoes while on the porch of her residence on Zagrici Street in the Sirokaca area of Sarajevo.	No evidence.	13 Dec 1992
3	The victim, a girl aged 9 years, was shot and wounded in the back as she played in the front garden of her house in the Sedrenik area of Sarajevo.	No evidence.	17-Apr-93
4	Muhamed HAZNADAREVIC, a man aged 52 years, was shot and wounded in the back and chest while trying to tend a vegetable plot in Slatinski Put 5, presently Slatinski Put 13, Kobilja Glava, north of Sarajevo.	No evidence.	25-Jun-93
5	Almasa KONJHODZIC, a woman aged 56 years, was shot dead near the junction of Dure Dakovica and Kranjcevic Street, presently Alipasina and Kranjcevic, while walking with her family.	No evidence.	27-Jun-93
6	Munira ZAMETICA, a woman aged 48 years, was shot dead while collecting water from the Dobrinja River in area of Dobrinja II and III.	No evidence.	11-Jul-93
7	Mejra JUSOVIC, a woman aged 45 years, was shot and wounded while pulling a load of wood towards her home near Rasadnjak, Sedrenik area, Sarajevo.	No evidence.	24-Jul-93
8	Vildana KAPUR, a woman aged 21 years, was shot and wounded in the leg while transporting water home along Stara cesta, Hotonj	No evidence.	05-Aug-93

	area.		
9	Nafa TARIC, a woman aged 35 years, and her daughter Elma TARIC, aged 8 years, were shot by a single bullet while walking together in Ivana Krndelja Street, in the centre of Sarajevo. The bullet wounded the mother in the left thigh and wounded the daughter on the hand and in the abdomen.	No evidence.	03-Sep-93
10	Sacir BOSNIC, a man aged 56 years, was shot dead while gathering wood across the road from the Hambina Carina Reservoir and adjacent to Zelengorska Street, presently Hambina Carina Street, at Sirokaca, Skenderija.	No evidence.	07-Sep-93
11	Faruk KADRIC, a boy aged 16 years, was shot and wounded in the neck while riding as a passenger in his father's truck along Ante Babi}a Street, in the west end of Sarajevo.	No evidence.	04-Oct-93
12	Edin RAMOVIC, a man aged 29 years, was shot and wounded in the left upper arm while walking in Stara cesta Road, in the Bare area of Sarajevo.	No evidence.	07-Oct-93
13	Ramiz VELIC and Milan RISTIC, aged 50 and 56 years respectively, were wounded by a burst of gunfire while they were working clearing rubbish along Brace Ribara Street, presently Porodice Ribar Street, in the Hrasno area of Sarajevo.	No evidence.	02-Nov-93
14	Ramiza KUNDO, a woman aged 38 years, was shot and wounded in the left leg while she and another woman were returning from a water well carrying buckets of water near Brijesko Brdo Street, presently Bulbulistan Street, in the west end of Sarajevo.	No evidence.	02-Nov-93
15	Fatima OSMANOVIC, a woman	No evidence.	13-Nov-93

	aged 44 years, was shot and wounded in the right side of her face while she was carrying water in Brijesko brdo Street, presently Bulbulistan Street, in the west end of Sarajevo.		
16	Sanija DZEVLAN, a woman aged 32 years, was shot and wounded while riding a bicycle across a bridge in Nikola Demonja Street, Dobrinja.	No evidence.	06-Jan-94
17	Hetema MUKANOVIC, a woman aged 38 years, was shot and killed in her apartment on the first floor of Obala 27. Jula 89/1, presently Aleja Lipa 64, in the Hrasno area of Sarajevo. At the time she was sitting with her husband and neighbours, drinking coffee by candlelight.	No evidence.	11-Jan-94
18	Ivan FRANJIC, a man aged 63 years, was walking with two others on Ante Babi}a Street in Vojnicko Polje, in the west end of Sarajevo. He was shot and wounded in the stomach while one of his companions Augustin VUCIC was shot and later died from his injuries.	No evidence.	13-Mar-94
19	Sadeta PLIVAC, a woman aged 53 years and Hajra HAFIZOVIC a woman aged 62 years, were both shot and wounded in their legs while passengers in a crowded bus near the junction of Nikolje Demonje and Bulevar AVNOJ, presently Nikolje Demonje and Bulevar Branioca Dobrinja, in Dobrinja.	No evidence.	25-May-94
20	Fatima SALCIN, a woman aged 44 years, was shot and wounded in the hand when walking with her father-in-law in Ive Andrica Street, in the Mojnilo area of Sarajevo.	No evidence.	13-Jun-94
21	Sanela MURATOVIC, a girl aged 16 years, was shot and wounded in the right shoulder while walking with a girlfriend in Dure Jaksica	No evidence.	26-Jun-94

	Street, presently Adija Mulabegovica, in the west end of Sarajevo.		
22	Jasmina KUCINAR, a pregnant woman aged 31 years, and her son Damir KUCINAR, aged 4 years, were lightly wounded in the legs by a shot penetrating a crowded tram in which they were travelling. The tram was travelling west on Zmaja od Bosne Street towards Alipasino Polje. Mensur JUSIC, a man aged 36 years, sustained a slight leg wound and Belma SUKIC nee LIKIC, a woman aged 23 years, was wounded in the left armpit in the same attack. The tram was near the Holiday Inn hotel at the time of the incident.	No evidence.	6-10-Jul-94
23	Rasid DZONKO, a man aged 67 years, was shot and wounded in the back whilst sitting watching television in his apartment situated at Milanka Vitomira Street, presently Senada Mandica Dende Street 5 in Vojnicko Polje, in the west end of Sarajevo.	No evidence.	17-Jul-94
25	Alma CUTUNA, a woman aged 43 years, was wounded in the right upper leg while travelling on a tram on Zmaj od Bosne Street in Sarajevo.	No evidence.	08-Oct-94
26	Adnan KASAPOVIC, a boy aged 16 years, was shot in the chest and killed while walking in an alley adjoining Dorde Andrijevic Kuna Street.	No evidence.	24-Oct-94
27	Fata GUTA, a woman aged 59 years, was shot and wounded in the hand while she was going with jerri-cans to collect water from the Moscanica spring in Gazin Han, to the east of Sarajevo.	No evidence.	08-Nov-94
28	Sanja SMJECANIN, a pregnant woman aged 28 years, was shot and wounded while travelling with her husband and sister-in-law in a car on Zmaj od Bosne Street.	No evidence.	09-Nov-94

29	Dzenana SOKOLOVIC, a woman aged 31 years, and her son Nermin DIVOVIC, a boy aged 7 years, were fired on while walking in Zmaj od Bosne Street. Ms. SOKOLOVIC was wounded with a bullet in the abdomen. The bullet passed through her and hit her son in the head, killing him. They had been walking home from Hrasno, where they had gone to collect firewood the previous day.	No evidence.	18-Nov-94
30	Hajrudin HAMIDIC, a man aged 52 years, was wounded in the arm and face when the tram he was driving westbound on Zmaj od Bosne was fired on.	No evidence.	21-Nov-94
31	Sanela DEDOVIC, a girl aged 12 years, was wounded in the left ankle while she was walking to school. The incident occurred at the junction of Sedrenik Street and Red'epa Gorusanovica Street, in the north east corner of Sarajevo.	No evidence.	22-Nov-94
32	Hafiza KARACIC, a woman aged 31 years and Sabina SABANIC, a woman aged 26 years, were both wounded in the right shoulder when the tram they were travelling on came under fire on Zmaj od Bosne, between the Technical School and Marshal Tito Barracks.	No evidence.	23-Nov-94
33	Lejla BAJRAMOVIC, a woman aged 24 years, was sitting in a friend's apartment in Franca Lehara Street, near the centre of Sarajevo, when she was shot in the head and killed. The shot came through the apartment window.	No evidence.	08-Dec-94
34	Dervisa SELMANOVIC, a woman aged 49 years, was shot and wounded in the right knee while she was gathering firewood in the backyard of a house in Sedrenik Street, in the north east end of Sarajevo.	No evidence.	10-Dec-94
35	Malkan PLEHO, a man aged 62	No evidence.	11-Dec-94

	years, was shot and wounded in the right lower leg while climbing the front steps to his house in Sedrenik, in the north east end of Sarajevo.		
36	Halid DEMIROVIC, a man aged 62 years, was shot and wounded in the right heel while he was gathering firewood on Pasino Brdo, in the north east corner of Sarajevo.	No evidence.	13-Dec-94
37	Senad KESMER, a man aged 31 years, Alma CEHAGIC, a woman aged 19 years, Alija HOLJAN, a man aged 55 years, and others, were shot and wounded while travelling in a westbound tram on Zmaj od Bosne Street. The tram was near the Tito Barracks at the time.	No evidence.	27-Feb-95
38	Azem AGOVIC, a man aged 46 years and Alen GICEVIC, a man aged 33 years, were shot and wounded while travelling in an eastbound tram on Zmaj od Bosne Street. The tram was near the Holiday Inn at the time.	No evidence.	03-Mar-95
39	Tarik ZUNIC, a boy aged 14 years, wounded in the hand while he was walking home from school at Sedrenik Street, in the north east of Sarajevo. He emerged from behind a protective screen, about 100 metres from home, when he was hit.	No evidence.	06-Mar-95
40	Vahid BALTA, a man aged 52 years, was walking with his wife in Sedrenik Street, in the north east of Sarajevo, when he was shot in the ankle.	No evidence.	06-Mar-95
41	A young man was crossing the junction of Nikole Demonje and Bulevar Avnoj Streets in the Dobrinja area, when he was shot in the left side and killed.	No evidence.	18-Mar-95
42	Semsa COVRK, a woman aged 27 years, was shot and wounded in	No evidence.	03-May-95

	the abdomen while walking in Josipa Krasa Street, Novi Grad, holding her young son's hand at the time.		
43	A man was shot and killed in Dinarska Street, Hrasno Brdo.	No evidence.	13-May-95
44	Durgut COBIC, a man aged 80 years, was shot and wounded in the shoulder when he opened the balcony of his apartment door Kunovska Street 4/I, Dobrinja.	No evidence.	25-May-95

Schedule F – Sarajevo Shelling Incidents

No.	Place/Event	Comment on Evidence	
1	Two shells were fired upon a crowd of approximately 200 persons who were watching and participating in a football game in a parking lot bordered on three sides by residential apartment blocks and on the fourth side by the Lukavica Road in Dobrinja 3B, a residential settlement. At least twelve people, including 3 children under the age of 15 years, were killed and at least 70 people, including 10 children, were wounded. The origin of fire was VRS-held territory approximately to the east-south-east.	Insufficient evidence. Witness Hamill (who testified on 13.11.03), Rule 92bis (D); Exhibit 590; Transcript pp. 6114-7, 6160-6164. No evidence shells fired by Bosian Serbs.	01-Jun-93
2	An 82 mm mortar shell was fired upon about 100 civilians who were waiting to access a communal water pump in the front yard of a residence at 39 Hakiije Turajlica (previously Aleja Branka Bulica then Spasenije Cane Babovic) in Dobrinja, a residential settlement. At least twelve people were killed and fourteen people were wounded. The origin of fire was VRS-held territory approximately to the west-north-west.	No evidence.	12-Jul-93
3	Three mortar shells landed in the area of Alipasino Polje, the first in a park behind, and the second and third in front of residential apartment buildings at 3 Geteova Street (previously Centinjska Street) and at 4 Bosanska Street (previously Klara Cetkin Street), where children were playing. The second and third shells killed six children under the age of 15 years and wounded one adult and four such children. The origin of fire was from VRS-held territory approximately to the west.	No evidence.	22-Jan-94
4	A salvo of three 120 mm mortar	Insufficient evidence.	04-Feb-94

	shells hit civilians in the Dobrinja residential area. The first landed to the front of a block of flats at Oslobodilaca Sarajeva Street hitting persons who were distributing and receiving humanitarian aid and children attending religious classes. The second and third landed among persons trading at a market in an open area to the rear of the apartment buildings at Mihajla Pupina Street and Oslobodilaca Sarajeva Street. Eight people, including 1 child under the age of 15 years, were killed and at least 18 people, including 2 children were wounded. The origin of fire was from VRS-held territory, approximately to the east.	Hafizovic, Exhibit 588, Transcript p. 7758 – 7766. No evidence of shells fired by Bosnian Serbs.	
6	A 120 mm mortar shell impacted on the Igman Road amongst a group of civilians at a bus stop. One person was killed and fifteen were injured. The origin of fire was Vojkovici VRS territory.	No evidence.	30-Oct-94
7	Three mortar shells struck Livanjska Street, a street of civilian dwellings. Two persons were killed and six were injured. The origin of fire was Poljine direction VRS territory.	No evidence.	08-Nov-94
8	One 120 mm mortar shell hit Partizanska Street 18 in Hrasnica. Two children aged eight years and two years were killed and three adults were injured.	No evidence.	17-Nov-94
9	An 82 mm mortar shell hit adjacent to a civilian dwelling killing an elderly man and injuring his elderly wife. The origin of fire was VRS territory.	No evidence.	12-Dec-94
10	Two 76 mm shells in quick succession hit a flea market in the old commercial quarter of Bascarsija in Old Town. Two persons were killed and seven were injured. The origin of fire was	No evidence.	22-Dec-94

	Trebevic, VRS positions.		
11	A modified aircraft bomb hit a residential area in Hrasnica at the foot of Mount Igman destroying one dwelling, severely damaging eleven other dwellings. One person was killed and three injured. The origin of fire was Ilidza, VRS territory.	No evidence.	07-Apr-95
12	A 60 mm mortar shell hit a concrete area near the Sarajevo railway station. Seven people were injured. The origin of fire was Zlatiste, VRS territory.	No evidence.	12-Apr-95
13	A missile landed and exploded on the asphalt of Safeta Zajke street at approximately 9.45, killing two and injuring five people. The missile came from the southeast, direction of Lukavica.	No evidence.	24-May-95
14	A modified air-bomb landed at Majdanska Street bb. Two civilians were killed and six were wounded. The origin of fire was from the southeast VRS territory of Pavlovac.	No evidence.	24-May-95
15	A modified air-bomb struck a building near apartment blocks in Safeta Hodzica Street, destroying the top three floors of an apartment building. This explosion was followed by several artillery rounds landing in the same area. Serious damage was caused to a number of buildings. Two people were seriously injured and fifteen persons were slightly injured. The fire was determined to have come from VRS territory to the West/ Southwest.	No evidence.	26-May-95
16	At about 10.00 hours, a modified aircraft bomb was fired from the North West. The bomb landed and exploded on the building of the UMC and Oncology Department at Dositejeva street 4-a. There was a lot of damage and three persons were slightly injured.	No evidence.	16-Jun-95

17	At about 15.20 hours, a modified aircraft bomb, most probably fired from Lukavica, exploded next to 10, Trg Medunarodnog Prijateljstva, slightly injuring seven people and causing considerable damage to neighboring buildings.	No evidence.	16-Jun-95
18	At 17.20 hours, a modified aircraft bomb was fired from the North West. It exploded on the builder house at Cobanija Street 7. Two people were wounded.	No evidence.	16-Jun-95
19	A 120 mm mortar shell struck a line of civilians, numbering approximately 50-70, waiting for water distribution in Marka Oreskovica Street, Dobrinja. Seven people were killed and twelve injured. The origin of fire was Nedzarici, VRS territory.	No evidence.	18-Jun-95
20	A projectile was fired into the street Bulevar Mese Selimovica, probably from the direction of Rajlovac. There were no victims.	No evidence.	29-Jun-95
21	At about 13.30 hours, a high impact missile landed just outside the house number 5 in Radenko Abazovica. It was fired from the Western part of the city (Ilidza – Rajlovac). There were no victims.	No evidence.	01-Jul-95
22	At about 21.30 hours, a rocket projectile with a concussion warhead exploded in Buni~ki Potok street. Thirteen people were injured. The projectile came from Ilidza.	No evidence.	01-Jul-95
23	A 120 mm mortar shell hit close to a dwelling at Vrbanjusa 95 (a residential area). One boy was killed. The origin of fire was VRS territory in the South.	No evidence.	19-Jul-95
24	A rocket missile with concussion warhead, coming from the direction of Ilidza/Blazuj, landed	No evidence.	23-Jul-95

	on the house Sokolovici, Bjelasnicka Street 54. Two persons were killed and eleven were lightly wounded.		
25	A modified explosive device exploded at the staircase between the 2nd and the 3rd floor of the BITAS building in Zmaja od Bosne Street 64. One person died, another received light injuries. The origin of fire was VRS territory in the South West.	No evidence.	22-Aug-95
26	A 120 mm mortar shell landed in Mula-Mustafe Baseskije Street outside the entrance to the City Market. 43 people were killed and 75 were injured. The origin of fire was Trebevic, VRS territory.	No evidnece.	28-Aug-95

THE INTERNATIONAL CRIMINAL TRIBUNAL
FOR THE FORMER YUGOSLAVIA

THE PROSECUTOR

v.

SLOBODAN MILO[EVI]

Case No. IT-02-54-T

ANNEX C
BOOK OF AUTHORITIES

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2. Marek: Portions of the Book “Identity and Continuity of States in Public international Law”. (1954)
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4. H. Waldock: Academie de Droit International, Recueil de Cours (1962-II)- “General Course on Public International Law”
5. G.H. Gordon: Criminal Law, 3rd Edition, (2000), Chapter 7 “The Criminal Mind”